

## CHAPTER 6

### TECHNICAL BARRIERS TO TRADE

#### Article 6.1: Definitions

1. For the purposes of this Chapter, unless a more specific meaning is given in an Annex:

**equivalence of technical regulations** means that one Party accepts that the technical regulations of the other Party fulfil the legitimate objectives of its own regulations;

**regulatory authority** means the authority that is responsible for preparing or adopting technical regulations and conformity assessment procedures applicable to goods;

**TBT Agreement** means the *Agreement on Technical Barriers to Trade*, set out in Annex 1A to the WTO Agreement; and

**technical regulations** also include standards that regulatory authorities recognise as meeting the mandatory requirements related to performance based regulation.

2. The definitions in Annex I of the TBT Agreement are incorporated into this Chapter and shall form part of this Chapter, *mutatis mutandis*.

#### Article 6.2: Objectives

The objectives of this Chapter are to increase and facilitate trade through furthering the implementation of the TBT Agreement and building on the work of APEC on standards and conformance. Wherever possible, the Parties shall aim to reduce compliance costs by:

- (a) eliminating unnecessary technical barriers to trade in goods between the Parties;
- (b) enhancing cooperation among the Parties' regulatory agencies responsible for standards, technical regulations and conformity assessment procedures applicable to goods; and
- (c) providing a framework to address the impact of technical barriers to trade.

#### Article 6.3: Scope

1. This Chapter applies to all standards, technical regulations and conformity assessment procedures that may, directly or indirectly, affect the trade in goods between the Parties, except as provided in paragraph 2 and paragraph 3.

2. This Chapter shall not apply to technical specifications prepared by governmental entities for production or consumption requirements of such entities which are covered by Chapter 10 (Government Procurement).

3. This Chapter shall not apply to sanitary and phytosanitary measures which are covered by Chapter 5 (Sanitary and Phytosanitary Measures).

4. For greater certainty, nothing in this Chapter shall prevent a Party from adopting or maintaining technical regulations, standards or conformity assessment procedures in accordance with its rights and obligations under this Agreement, the TBT Agreement and any other relevant international agreement.

#### **Article 6.4: Incorporation of Certain Parts of the TBT Agreement**

The following provisions of the TBT Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*:

- (a) Article 2.1, Article 2.2, Article 2.4, Article 2.5, Article 2.9, Article 2.10, Article 2.11, Article 2.12;
- (b) Article 5.1, Article 5.2, Article 5.3, Article 5.4, Article 5.6, Article 5.7, Article 5.8, Article 5.9; and
- (c) Paragraph D, Paragraph E and Paragraph F of Annex 3.

#### **Article 6.5: Origin**

This Chapter applies to all goods traded between the Parties, regardless of the origin of those goods.

#### **Article 6.6: Trade Facilitation**

1. The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures with a view to facilitating access to each other's market. In particular, the Parties shall seek to identify initiatives between them that are appropriate for particular issues or sectors. Such initiatives may include cooperation on regulatory issues, such as harmonisation or equivalence of technical regulations and standards, alignment with international standards, reliance on a supplier's declaration of conformity, and use of accreditation to qualify conformity assessment bodies, as well as cooperation through mutual recognition.

2. Initiatives identified by the Parties shall be focused on the promotion of the use of international standards, transparency, exchange of information and reducing compliance costs.

### **Article 6.7: International Standards, Guides and Recommendations**

1. The Parties recognise the important role that international standards, guides and recommendations can play in supporting greater regulatory alignment, good regulatory practice and reducing unnecessary barriers to trade.
2. In this respect, and further to Article 2.4, Article 5.4 and Annex 3 of the TBT Agreement, to determine whether there is an international standard, guide or recommendation within the meaning of Article 2, Article 5 and Annex 3 of the TBT Agreement, each Party shall apply the *Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev.12)*, as may be revised, issued by the WTO Committee on Technical Barriers to Trade.
3. The Parties shall cooperate with each other, when feasible and appropriate, to ensure that international standards, guides and recommendations that are likely to become a basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to international trade.

### **Article 6.8: Equivalency of Technical Regulations**

1. Each Party shall give positive consideration to accepting as equivalent, technical regulations of the other Party, even if these regulations differ from its own, provided that those technical regulations produce outcomes that are equivalent to those produced by its own technical regulations in meeting its legitimate objectives and achieving the same level of protection.
2. A Party shall, on the request of the other Party, explain the reasons why it has not accepted a technical regulation of the other Party as equivalent.

### **Article 6.9: Mutual Recognition of Equivalence of Standards**

1. If regulatory compliance is required and if there is equivalence of outcomes, each Party shall give positive consideration to accepting the standards of the other Party as equivalent to its own corresponding standards.
2. A Party shall, on the request of the other Party, explain the reasons why it has not accepted a standard of the other Party as equivalent.

### **Article 6.10: Conformity Assessment Procedures**

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of conformity assessment results, including:
  - (a) the importing Party's reliance on a supplier's declaration of conformity;

- (b) unilateral recognition by one Party of the results of conformity assessments performed in the other Party's territory;
- (c) cooperative arrangements among conformity assessment bodies from each other's territory;
- (d) mutual recognition of conformity assessment procedures conducted by bodies located in the territory of the other Party;
- (e) accreditation procedures for qualifying conformity assessment bodies;
- (f) government designation of conformity assessment bodies; and
- (g) devising solutions to increase administrative efficiency, that avoid duplication and are cost effective.

2. The Parties shall intensify their exchange of information on the range of mechanisms to facilitate the acceptance of conformity assessment results.

3. The Parties shall seek to ensure that conformity assessment procedures applied between them facilitate trade by ensuring that they are no more restrictive than is necessary to provide an importing Party with confidence that products conform with the applicable technical regulations, taking into account the risk that non-conformity would create.

4. Before accepting the results of a conformity assessment procedure, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on matters such as the technical competence of the conformity assessment bodies involved, as appropriate.

5. A Party shall, on the request of the other Party, explain its reasons for not accepting the results of a conformity assessment procedure performed in the territory of the other Party.

6. Each Party shall accredit, approve, license, or otherwise recognise conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory. If a Party accredits, approves, licenses or otherwise recognises a body assessing conformity with a particular technical regulation or standard in its territory and it refuses to accredit, approve, license, or otherwise recognise a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request, explain the reasons for its refusal.

7. If a Party declines a request from the other Party to enter into negotiations on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the territory of the other Party, it shall, on request, explain its reasons.

8. Further to Article 9.1 of the TBT Agreement, a Party shall consider adopting measures to approve conformity assessment bodies that have accreditation for the technical

regulations or standards of the importing Party, by an accreditation body that is a signatory to an international or regional mutual recognition arrangement. The Parties recognise that these arrangements can address the key considerations in approving conformity assessment bodies, including technical competence, independence, and the avoidance of conflicts of interest.

9. Further to Article 5.2.5 of the TBT Agreement any conformity assessment fees imposed by a Party shall be limited to the approximate cost of services rendered.

#### **Article 6.11: Transparency**

1. In order to enhance the opportunity for persons to provide meaningful comments, a Party publishing a notice under Article 2.9 or Article 5.6 of the TBT Agreement shall:

- (a) include in the notice a statement describing the objective of the proposal and the rationale for the approach the Party is proposing; and
- (b) transmit the proposal electronically to the other Party through the enquiry point established under Article 10 of the TBT Agreement at the same time as it notifies WTO members of the proposal pursuant to the TBT Agreement.

2. Each Party should allow at least 60 days from the transmission under Paragraph 1(b) for persons and the other Party to make comments in writing on the proposal.

3. When a Party makes a notification under Article 2.10 or Article 5.7 of the TBT Agreement, it shall at the same time transmit the notification to the other Party, electronically, through the enquiry point referred to in Paragraph 1(b).

#### **Article 6.12: Confidentiality**

1. A Party shall not be required to disclose confidential proprietary information to the other Party except where such disclosure would be necessary for the other Party to demonstrate the technical competence of its designated conformity assessment bodies and conformity with the relevant stipulated requirements.

2. A Party shall, in accordance with its applicable laws and regulations, protect the confidentiality of any proprietary information disclosed to it in connection with conformity assessment activities or designation procedures.

#### **Article 6.13: Contact Points**

1. Each Party shall designate and notify a contact point for matters arising under this Chapter.

2. A Party shall promptly notify the other Parties of any change of its contact point or the details of the relevant officials.
3. The responsibilities of each contact point shall include:
  - (a) communicating with the other Party's contact points, including facilitating discussions, requests and the timely exchange of information on matters arising under this Chapter;
  - (b) communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in its territory on relevant matters pertaining to this Chapter;
  - (c) consulting and if appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this Chapter.

#### **Article 6.14: Technical Consultations**

1. A Party may initiate technical consultations with the other Party through their respective contact points with the aim of resolving any matter arising under this Chapter.
2. Unless the Parties mutually determine otherwise, the Parties shall hold technical consultations within a reasonable period of time of the request for technical consultations by email, teleconference, video-conference, or through any other means, as mutually determined by the Parties. The Parties shall, from time to time, stipulate in writing the length of time that they consider to be reasonable.
3. Such technical consultations are without prejudice to the rights and obligations of the Parties under Chapter 14 (Dispute Settlement).

#### **Article 6.15: Annexes and Implementing Arrangements**

1. The scope of the Annexes to this Chapter are set out in each respective Annex.
2. The rights and obligations set out in each Annex to this Chapter shall apply only with respect to the sector specified in that Annex, and shall not affect any Party's rights or obligations under any other Annex.
3. The contact points shall, as and when required:
  - (a) review the implementation of the Annexes, with a view to strengthening or improving them and if appropriate, make recommendations to enhance alignment of the Parties' respective technical regulations, standards and conformity assessment procedures in the sectors covered by the Annexes; and

- (b) consider whether the development of Annexes concerning other sectors would further the objectives of this Chapter or the Agreement and decide whether to recommend to the Joint Commission that the Parties initiate negotiations to conclude Annexes covering those sectors.

4. The Parties may develop implementing arrangements setting out new areas of cooperation in respect of particular sectors with a view to removing or reducing regulatory barriers to the movement of goods, and facilitating trade, between the Parties, or details for the implementation of Annexes to this Chapter.

5. When a Party takes a measure to manage an immediate risk that it considers goods covered by an Annex or implementing arrangement to this Chapter may pose to health, safety or the environment, it shall notify the measure and the reasons for the imposition of the measure to the other Party, within the time limit as specified in the applicable Annex or implementing arrangement.