

CHAPTER 6

TECHNICAL BARRIERS TO TRADE

Article 6.1: Definitions

For purposes of this Chapter, the terms and their definitions set out in Annex 1 to TBT Agreement shall apply.

Article 6.2: Objectives

The objectives of this Chapter are to:

- (a) facilitate trade in goods between the Parties by addressing and eliminating unnecessary technical barriers to trade;
- (b) ensure that standards, technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade; and
- (c) promote transparency, cooperation and mutual understanding in the development, adoption and application of technical regulations and conformity assessment procedures.

Article 6.3: Scope

1. This Chapter shall apply to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures that may affect trade in goods between the Parties.

2. Notwithstanding paragraph 1, this Chapter shall not apply to:

- (a) sanitary and phytosanitary measures, which are covered under Chapter 5 (Sanitary and Phytosanitary Measures); and
- (b) purchasing specifications prepared by a governmental body for its production or consumption requirements.

3. Each Party shall take such reasonable measures as may be available to it to ensure compliance, in the implementation of this Chapter, by local government bodies and non-governmental bodies within its territory which are responsible for the preparation, adoption and application of standards, technical regulations and conformity assessment procedures.

Article 6.4: Affirmation of the WTO TBT Agreement

Both Parties reaffirm their existing rights and obligations with respect to each other under the TBT Agreement.

Article 6.5: International Standards, Guides and Recommendations

1. Each Party shall use relevant international standards, guides and recommendations, to the extent provided in Articles 2.4 and 5.4 of the TBT Agreement, as a basis for its technical regulations and conformity assessment procedures.
2. In determining whether an international standard, guide or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall base its determination on the principles set out in the *Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement*, adopted on 13 November 2000 by the WTO Committee on Technical Barriers to Trade and any subsequent version thereof.
3. The Parties' respective national standardising organisations shall cooperate with each other, in areas of mutual interest, in the context of their participation in international standardising bodies, with a view to ensuring that international standards developed within such organisations facilitate trade and do not create unnecessary obstacles to international trade.

Article 6.6: Technical Regulations

1. The Parties shall use international standards as a basis for preparing, adopting or applying their technical regulations, unless those international standards are ineffective or inappropriate for achieving the legitimate objective pursued. Each Party shall, upon request of the other Party, provide its reasons for not having used international standards as a basis for preparing its technical regulations.
2. Each Party shall give positive consideration to a request by the other Party to negotiate arrangements for achieving the equivalence of technical regulations.
3. Each Party shall, upon request of the other Party, explain the reasons why it has not accepted a request by the other Party to negotiate such arrangements.

4. The Parties shall strengthen communications and coordination with each other, where appropriate, in the context of discussions on the equivalence of technical regulations and related issues in international fora, such as the WTO Committee on Technical Barriers to Trade.

Article 6.7: Conformity Assessment Procedures

1. The Parties shall use international standards as a basis for preparing, adopting or applying their conformity assessment procedures, unless those international standards are ineffective or inappropriate for achieving the legitimate objective pursued. Each Party shall, upon request of the other Party, provide its reasons for not having used international standards as a basis for preparing its conformity assessment procedures.

2. The Parties recognise that, depending on the specific sectors involved, a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory. Such mechanisms may include:

- (a) recognising existing international recognition agreements and arrangements among conformity assessment bodies;
- (b) promoting mutual recognition of conformity assessment results by the other Party;
- (c) encouraging voluntary arrangements between conformity assessment bodies in the territory of each Party;
- (d) accepting a supplier's declaration of conformity where appropriate;
- (e) harmonising criteria for the designation of conformity assessment bodies, including accreditation procedures; or
- (f) other mechanisms as mutually agreed by the Parties.

3. Each Party shall ensure, whenever possible, that the results of conformity assessment procedures conducted in the territory of the other Party are accepted, even when those procedures differ from its own, provided that those procedures offer a satisfactory assurance of applicable technical regulations or standards equivalent to its own procedures. Where a Party does not accept the results of a conformity assessment procedure conducted in the

territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.

4. In order to enhance confidence in the consistent 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.

5. Each Party shall give positive consideration to a request by the other Party to negotiate agreements or arrangements for the mutual recognition of the results of their respective conformity assessment procedures in areas mutually agreed upon.

6. The Parties shall endeavour to intensify their exchange of information on acceptance mechanisms with a view to facilitating the acceptance of conformity assessment results.

7. Each Party shall, whenever possible, accredit, designate or otherwise recognize 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. Where a Party accredits, designates or otherwise recognizes a body assessing conformity with a specific technical regulation or standard in its territory and it refuses to accredit, designate or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its refusal decision.

Article 6.8: Cooperation

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations and conformity assessment procedures with a view to:

- (a) increasing the mutual understanding of their respective systems and facilitating access to their respective markets;
- (b) enhancing cooperation between the Parties' regulatory agencies on matters of mutual interests including health, safety and environmental protection;
- (c) facilitating trade by implementing good regulatory practices; and
- (d) enhancing cooperation, as appropriate, to ensure that technical regulations and conformity assessment procedures are based on international standards or the relevant parts of them and do not create unnecessary obstacles to trade between the Parties.

2. In order to achieve the objectives set out in paragraph 1, the Parties shall, as mutually agreed and to the extent possible, cooperate on regulatory issues, which may include the:

- (a) promotion of good regulatory practices based on risk-based approaches;
- (b) exchange of information with a view to improving the quality and effectiveness of their technical regulations;
- (c) development of joint initiatives for managing risks to health, safety or the environment, and preventing deceptive practices; and
- (d) exchange of market surveillance information where appropriate.

3. The Parties shall encourage cooperation between their respective bodies responsible for standardisation, conformity assessment and accreditation with a view to facilitating trade and avoiding unnecessary obstacles to trade between the Parties.

4. Each Party shall, on request of the other Party, give consideration to sector specific proposals for mutual benefit for cooperation under this Chapter.

5. On request of the other Party, a Party shall give favourable consideration to any sector-specific proposal that the other Party makes for further cooperation under this Chapter including:

- (a) promoting the harmonisation and use of international standards such as standards developed in the International Electrotechnical Commission (IEC) in the area of low voltage devices and Emerging Technology;
- (b) encouraging the Parties' national certification bodies to be members of the IEC System of Conformity Assessment Schemes for Electrotechnical Equipment and Components-Certification Bodies' Scheme (IECEE-CB scheme) and to accept IECEE-CB test certificates issued by the other Party's national certification bodies in the area of mutual interests as the basis for national certification in order to avoid duplicative testing and certification requirements; or
- (c) promoting cooperation in the framework established by regional, international and multilateral recognition agreements,

including the International Laboratory Accreditation Cooperation (ILAC) or its successor, Organization for Economic Cooperation and Development Good Laboratory Practice (OECD GLP) and Pharmaceutical Inspection Co-operation Scheme (PIC/S).

Article 6.9: Transparency

1. Each Party shall, upon request of the other Party, provide information, including the objective of, and rationale for, a technical regulation or conformity assessment procedure which the Party has adopted or proposes to adopt and may affect the trade between the Parties, within a reasonable period of time as agreed between the Parties.
2. When a proposed technical regulation is notified to the WTO, a Party shall give appropriate consideration to the comments received from the other Party, and, upon request of the other Party, provide written answers to the comments made by the other Party.
3. Each Party, consistent with its legal system, shall endeavour to publish proposed technical regulations and proposed conformity assessment procedures that it proposes to adopt, or publish in advance documents that provide a relevant description about such possible new technical regulations or new conformity assessment procedures to allow interested persons to comment.
4. The Parties shall ensure that all adopted technical regulations and conformity assessment procedures are publicly available.

Article 6.10: Technical Discussions

1. A Party may request technical discussions with the other Party, in written form through regular mail or any other means accepted by the Parties, regarding any matter arising under this Chapter.
2. The requested Party shall respond and enter into technical discussions within 60 days after the receipt of the written request referred to in paragraph 1. Technical discussions may be conducted via any means mutually agreed by the Parties.
3. If the requesting Party considers that the matter is urgent, it may request that technical discussions take place within a shorter time frame than that provided for under paragraph 2.

4. The technical discussions under this Article shall be without prejudice to rights and obligations pertaining to dispute settlement proceedings under Chapter 17 (Dispute Settlement).

Article 6.11: Contact Points

1. For purposes of coordinating the implementation of this Chapter, the Contact Points are:

- (a) for Korea, Korean Agency for Technology and Standards, or its successor; and
- (b) for Malaysia, Department of Standards Malaysia, or its successor.

2. Each Party shall ensure that its Contact Point facilitates the exchange of information between the Parties on standards, technical regulations and conformity assessment procedures in response to all requests related to this Chapter for such information from the other Party.

3. Each Party shall promptly notify the other Party of any change of its Contact Point.