

## **CHAPTER 6**

### **STANDARDS, TECHNICAL REGULATIONS, AND CONFORMITY ASSESSMENT PROCEDURES**

#### **Article 6.1: Definitions**

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

#### **Article 6.2: Objectives**

The objectives of this Chapter are to facilitate trade in goods among the Parties by:

- (a) ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade;
- (b) enhancing the implementation of the TBT Agreement;
- (c) promoting mutual understanding of each Party's standards, technical regulations, and conformity assessment procedures;
- (d) strengthening information exchange and cooperation among the Parties in the field of standards, technical regulations, and conformity assessment procedures including in the work of relevant international bodies;
- (e) addressing the issues that may arise under this Chapter; and
- (f) providing a framework to realise these objectives.

#### **Article 6.3: Scope**

1. This Chapter shall apply to the standards, technical regulations, and conformity assessment procedures of central government bodies that may affect trade in goods among the Parties. This Chapter shall not apply to:

- (a) any sanitary or phytosanitary measure, which is covered by Chapter 5 (Sanitary and Phytosanitary Measures); and
- (b) purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies.

2. 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.
3. Nothing in this Chapter shall prevent a Party from preparing, adopting, applying, or maintaining standards, technical regulations, and conformity assessment procedures in a manner consistent with the TBT Agreement and this Chapter.

#### **Article 6.4: Affirmation and Incorporation of the TBT Agreement**

1. Each Party affirms its rights and obligations under the TBT Agreement and the following provisions of the TBT Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*:
  - (a) Article 2, except paragraphs 4, 7, 8, and 12;
  - (b) paragraph 2 of Article 4;
  - (c) Article 5, except paragraph 4;
  - (d) paragraph 3 of Article 6;
  - (e) paragraph 1 of Article 9; and
  - (f) Annex 3, except paragraph A.
2. In the event of any inconsistency between any provision of the TBT Agreement incorporated under paragraph 1 and other provisions of this Chapter, the latter shall prevail.
3. No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any dispute that exclusively alleges a

violation of the provisions of the TBT Agreement incorporated under paragraph 1.

### **Article 6.5: International Standards, Guides, and Recommendations**

1. The Parties recognise the important role that international standards, guides, and recommendations can play in the harmonisation of technical regulations, conformity assessment procedures, and national standards, and in reducing unnecessary barriers to trade.
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 takes into account 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* (G/TBT/9, 13 November 2000, Annex 4), and subsequent relevant decisions and recommendations in this regard, adopted by the WTO Committee on Technical Barriers to Trade (hereinafter referred to as "WTO TBT Committee" in this Chapter).
3. The Parties shall, where appropriate, strengthen coordination and communication with each other in the context of discussions on international standards and related issues in other international fora, such as the WTO TBT Committee.

### **Article 6.6: Standards**

1. With respect to the preparation, adoption, and application of standards, each Party shall ensure that its standardising body or bodies that prepare, adopt, and apply national standards accept and comply with Annex 3 of the TBT Agreement.
2. Where modifications to the contents or structure of the relevant international standards were necessary in developing a Party's national standards, that Party shall, on request of another Party, encourage its standardising body or bodies to provide what the differences in the contents and structure are, and the reason for those differences. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic persons.

3. Further to paragraph 2, each Party shall ensure that its standardising body or bodies ensure that the modifications of the contents and structure of international standards are not prepared, adopted, or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.
4. Each Party shall encourage cooperation between the relevant standardising body or bodies in its territory and the standardising body or bodies of other Parties, in areas such as:
  - (a) exchange of information on standards;
  - (b) exchange of information relating to standard setting procedures; and
  - (c) international standardising activities in areas of mutual interest.

### **Article 6.7: Technical Regulations**

1. Each Party shall use relevant international standards or the relevant parts of them, to the extent provided in paragraph 4 of Article 2 of the TBT Agreement, as a basis for its technical regulations. Where a Party does not use such international standards, or their relevant parts, as a basis for its technical regulations, it shall, on request of another Party, explain the reasons therefor.
2. In implementing paragraph 2 of Article 2 of the TBT Agreement, each Party shall consider available alternatives in order to ensure that the proposed technical regulations to be adopted are not more trade-restrictive than necessary to fulfil a legitimate objective.
3. Each Party shall give positive consideration to accepting as equivalent, technical regulations of another Party, even if those regulations differ from its own, provided it is satisfied that those regulations adequately fulfil the objectives of its own regulations.
4. Where a Party does not accept a technical regulation of another Party as equivalent to its own, it shall, on request of the other Party, explain the reasons for its decision.

5. In implementing paragraph 8 of Article 2 of the TBT Agreement, when a Party does not specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics, the Party shall, on request of another Party, provide its reason therefor.
6. Except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise, Parties shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to provide sufficient time for producers in exporting Parties to adapt their products or methods of production to the requirements of importing Parties. For the purposes of this paragraph, "reasonable interval" shall be understood to mean normally a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation.
7. On request of a Party that has an interest in developing a technical regulation similar to a technical regulation of another Party, the requested Party shall provide, to the extent practicable, relevant information, including studies or documents, except for confidential information, on which it has relied in its development.
8. Each Party shall uniformly and consistently apply its technical regulations that are prepared and adopted by its central government bodies to its whole territory. For greater certainty, nothing in this paragraph shall be construed to prevent local government bodies from preparing, adopting, and applying additional technical regulations in a manner consistent with the provisions of the TBT Agreement.

#### **Article 6.8: Conformity Assessment Procedures**

1. Further to paragraph 4 of Article 5 of the TBT Agreement, each Party shall ensure that central government bodies use relevant international standards or their relevant parts as a basis for their conformity assessment procedures, except where, as duly explained upon request, such international standards or relevant parts are inappropriate for the Party concerned, for, *inter alia*, such reasons as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.

2. Each Party recognises the importance of accepting the results of conformity assessment procedures conducted in another Party with a view to increasing efficiency, avoiding duplication, and ensuring cost effectiveness of conformity assessments.
3. Each Party shall ensure, whenever possible, that results of conformity assessment procedures in another Party are accepted, even when those procedures differ from its own, unless those procedures do not offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.
4. A Party shall, on request of another Party, explain its reasons for not accepting the results of a conformity assessment procedure conducted in the other Party.
5. Each Party recognises that, depending on the situation of the Party and the specific sectors involved, a broad range of mechanisms exists to facilitate the acceptance of the results of conformity assessment procedures conducted in another Party. Such mechanisms may include:
  - (a) mutual recognition agreements for the results of conformity assessment procedures conducted by bodies in the Parties concerned;
  - (b) cooperative (voluntary) arrangements between accreditation bodies or those between conformity assessment bodies in the Parties concerned;
  - (c) the use of accreditation to qualify conformity assessment bodies, including through relevant multilateral agreements or arrangements, to recognise the accreditation granted by other Parties;
  - (d) the designation of conformity assessment bodies in another Party;
  - (e) unilateral recognition by a Party of results of conformity assessment procedures conducted in another Party; and
  - (f) manufacturer's or supplier's declaration of conformity.
6. Upon reasonable request, the Parties concerned shall exchange information or share experiences on the mechanisms referred to

in paragraph 5, including their development and application, with a view to facilitating the acceptance of the results of conformity assessment procedures.

7. The Parties recognise the important role that relevant international, including regional, organisations can play in cooperation in the area of conformity assessment. In this regard, each Party shall take into consideration the participation status or membership in such organisations of relevant bodies in the Parties in facilitating this cooperation.
8. The Parties agree to encourage cooperation between their relevant conformity assessment bodies in working closer with a view to facilitating the acceptance of conformity assessment results between Parties.
9. Each Party shall, whenever possible, permit the participation of conformity assessment bodies in another Party in its conformity assessment procedures under conditions no less favourable than those accorded to conformity assessment bodies in the Party.
10. Where a Party permits participation of its conformity assessment bodies and does not permit participation of conformity assessment bodies in another Party in its conformity assessment procedures, it shall, on request of that other Party, explain the reason for its refusal decision.

#### **Article 6.9: Cooperation**

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations, and conformity assessment procedures, consistent with the objectives of this Chapter.
2. Each Party shall, on request of another Party, give positive consideration to proposals for cooperation on matters of mutual interest on standards, technical regulations, and conformity assessment procedures.
3. Such cooperation, which shall be on mutually determined terms and conditions, may include:
  - (a) advice, technical assistance or capacity building relating to the development and application of standards, technical regulations, and conformity assessment procedures;

- (b) cooperation between conformity assessment bodies, both governmental and non-governmental, in the Parties, on matters of mutual interest;
- (c) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures, such as enhancing participation in the frameworks for mutual recognition developed by relevant regional and international bodies;
- (d) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; and
- (e) strengthening communication and coordination in the WTO TBT Committee and other relevant international or regional fora.

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

### **Article 6.10: Technical Discussions**

1. When a Party considers the need to resolve an issue related to trade and provisions under this Chapter, it may make a written request for technical discussions. The requested Party shall respond as early as possible to such a request.
2. The requested Party shall enter into technical discussions with the requesting Party within 60 days, unless otherwise mutually determined by the Parties concerned, with a view to reaching a mutually satisfactory solution. Technical discussions may be conducted via any means agreed by the Parties concerned.

### **Article 6.11: Transparency**

1. The Parties recognise the importance of the provisions relating to transparency in the TBT Agreement. In this respect, the Parties shall take into account relevant decisions and recommendations in the *Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995*

(G/TBT/1/Rev.13), as may be revised, issued by the WTO TBT Committee.

2. Upon written request, a Party shall provide to the requesting Party, if already available, the full text or summary of its notified technical regulations and conformity assessment procedures in the English language. If unavailable, the Party shall provide to the requesting Party a summary stating the requirements of the notified technical regulations and conformity assessment procedures in the English language, within a reasonable period of time agreed by the Parties concerned and, if possible, within 30 days after receiving the written request. In implementing the preceding sentence, the contents of the summary shall be determined by the requested Party.
3. Each Party shall, on request of another Party, provide information regarding the objectives of, and rationale for, a technical regulation or conformity assessment procedure that the requested Party has adopted or is proposing to adopt.
4. Each Party shall normally allow 60 days from the date of notification to the WTO in accordance with paragraph 9 of Article 2 and paragraph 6 of Article 5 of the TBT Agreement for the other Parties to provide comments in writing, except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise. Each Party shall take the comments of another Party into account and shall endeavour to provide responses to those comments upon request.
5. Each Party shall allow persons of another Party to participate in consultation procedures that are available to the general public for the development of technical regulations, national standards and conformity assessment procedures by the Party, subject to its laws and regulations, on terms no less favourable than those accorded to its own persons.
6. When a Party detains an imported consignment, at the point of entry due to non-compliance with a technical regulation or a conformity assessment procedure, it shall notify the importer or its representative, as soon as possible, the reasons for the detention.
7. Unless otherwise provided in this Chapter, any information or explanation requested by a Party pursuant to this Chapter shall be provided by the requested Party, in print or electronically, within a reasonable period of time agreed by the Parties concerned and, if possible, within 60 days. Upon request, the

requested Party shall provide such information or explanation in the language or languages agreed by the Parties concerned or, whenever possible, in the English language.

### **Article 6.12: Contact Points**

1. Each Party shall, within 30 days of the date of entry into force of this Agreement for that Party, designate one or more contact points responsible for coordinating the implementation of this Chapter, and notify the other Parties of the contact details of the relevant official or officials in that contact point, including the telephone number, facsimile number, email address, and any other relevant details. Each Party shall promptly notify the other Parties of any change to those contact details.
2. Each Party shall ensure that its contact point or contact points facilitate the exchange of information between the Parties on standards, technical regulations, and conformity assessment procedures, in response to all reasonable requests for such information from another Party.

### **Article 6.13: Implementing Arrangements**

The Parties may develop bilateral or plurilateral arrangements to set out areas of cooperation of mutual interest for applying this Chapter. The Parties that have adopted such arrangements under this Chapter are encouraged, where mutually agreed, to report such arrangements to the Committee on Goods.

### **Article 6.14: Dispute Settlement**

Chapter 19 (Dispute Settlement) shall not apply to any matter arising under this Chapter at the entry into force of this Agreement, and this non-application shall be subject to a review by the Parties two years after the date of entry into force of this Agreement. In the course of the review, Parties shall give positive consideration to the application of Chapter 19 (Dispute Settlement) to either the whole or parts of this Chapter. Such review shall be completed within three years from the date of entry into force of this Agreement.