

CHAPTER 8

TECHNICAL BARRIERS TO TRADE AND MUTUAL RECOGNITION

ARTICLE 8.1 : OBJECTIVE

The objectives of this Chapter are to increase and facilitate trade between the Parties through:

- (a) the full implementation of the WTO Agreement on Technical Barriers to Trade (“WTO TBT Agreement”);
- (b) enhancing bilateral co-operation by deepening their mutual understanding and awareness of their respective standards, technical regulations and conformity assessment systems; and
- (c) creating and improving the business climate so as to increase business opportunities.

ARTICLE 8.2 : SCOPE AND MODALITIES

1. This Chapter applies to standards, technical regulations and conformity assessment procedures that may directly or indirectly affect trade in goods between the Parties and/or assessments of manufacturers or manufacturing processes.

2. The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures and/or assessments of manufacturers or manufacturing processes, with a view to facilitating market access. In particular, the Parties shall seek to identify initiatives that are appropriate for particular issues or sectors. Such initiatives may include co-operation on regulatory issues, such as, alignment to international standards, reliance on supplier’s declaration of conformity, and use of accreditations to qualify conformity assessment bodies.

3. In this respect, the Parties recognise that a broad range of mechanisms exists to facilitate the acceptance of conformity assessment results, including:

- (a) agreements on mutual acceptance of the results of conformity assessment

- procedures with respect to specified regulations conducted by bodies located in the territory of the other Party;
- (b) accreditation procedures for qualifying conformity assessment bodies;
 - (c) government designation of conformity assessment bodies;
 - (d) recognition by a Party of the results of conformity assessments performed in the other Party's territory;
 - (e) voluntary arrangements between conformity assessment bodies from each Party's territory; and
 - (f) the importing Party's acceptance of a supplier's declaration of conformity.

To this end, the Parties shall intensify their exchanges of information on the variety of mechanisms to facilitate the acceptance of conformity assessment results. Any such arrangements shall be formalised in a Sectoral Annex, as appropriate.

4. In accordance with Article 2.4 of the WTO TBT Agreement, where technical regulations are required and relevant international standards exist or their completion is imminent, the Parties shall use them, or the relevant parts of such standards, as a basis for their Mandatory Requirements, except when such international standards or relevant parts of such standards would be an ineffective or inappropriate means for the legitimate objectives pursued, for instance, as a result of fundamental climatic or geographical factors or fundamental technological problems.

5. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5, and Annex 3 of the WTO TBT Agreement exists, each Party shall apply the principles set out in "Section IX (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2 and 5, and Annex 3 of the Agreement) in the Decisions and Recommendations adopted by the Committee since 1 January 1995", G/TBT/1/Rev.8, 23 May 2002 and its Revision issued by the WTO Committee on Technical Barriers to Trade.

6. This Chapter does not apply to sanitary and phytosanitary measures as defined in the WTO Agreement on Application of Sanitary and Phytosanitary Measures which are covered by Chapter 7 (Sanitary and Phytosanitary Measures).

Article 8.3 : Definitions

1. For the purposes of this Chapter, all general terms concerning standards, and conformity assessment used in this Chapter shall have the meaning given in the definitions contained in the International Organisation for Standardisation/International Electrotechnical Commission (ISO/IEC) Guide 2:2004 "Standardization and related activities – General vocabulary" and ISO/IEC 17000:2004 "Conformity assessment – Vocabulary and general principles" published by the ISO and IEC, unless the context otherwise requires and as appropriate.

2 In addition, the following terms and definitions shall apply to this Chapter and its Sectoral Annexes unless a more specific meaning is given in the specified Sectoral Annex:

accept means the use of the results of conformity assessment procedures as a basis for regulatory actions such as approvals, licences, registrations and post-market assessments of conformity assessment;

acceptance has an equivalent meaning to **accept**;

certification body means a body, including product or quality systems certification bodies, that may be designated by a Party in accordance with this Chapter to conduct certification on compliance with its or the other Party's standards and/or specifications to meet relevant mandatory requirements;

confirmation means the confirmation of the compliance of the manufacturing or test facility with the criteria for confirmation by a competent authority of a Party pursuant to the mandatory requirements of the other Party;

competent authority means an authority of a Party with the power to conduct inspection or audits on facilities in its territory to confirm their compliance with mandatory requirements;

conformity assessment means any procedure concerned with determining directly or indirectly whether products, manufacturers or manufacturing processes fulfil relevant standards and/or specifications to meet relevant mandatory requirements set out in the respective Party's mandatory requirements. The typical examples of conformity

assessment procedures are sampling, testing, inspection, evaluation, verification, certification, registration, accreditation and approval, or their combinations;

conformity assessment body (“CAB”) means a body that conducts conformity assessment procedures;

designation means the authorisation by a Party’s designating authority of its CAB to undertake specified conformity assessment procedures pursuant to the mandatory requirements of the other Party;

designate has an equivalent meaning to “designation”;

Designating Authority means a body established in the territory of a Party with the authority to designate, monitor, suspend or withdraw designation of conformity assessment bodies to conduct conformity assessment procedures within its jurisdiction in accordance with the other Party’s mandatory requirements;

mandatory requirements means a Party’s applicable laws, regulations and administrative provisions;

mutual recognition means that each Party, on the basis that it is accorded reciprocal treatment by the other Party:

- (a) accepts the test reports of conformity assessment procedures of the other Party to demonstrate conformity of products and/or manufacturers/manufacturing processes with its mandatory requirements when the conformity assessment procedures are undertaken by conformity assessment bodies designated by the other Party in accordance with this Chapter, i.e., mutual recognition of test reports; or
- (b) accepts the certification of results of conformity assessment procedures of the other Party to demonstrate conformity of products and/or manufacturers/manufacturing processes with its mandatory requirements when the conformity assessment procedures are undertaken by conformity assessment bodies designated by the other Party in accordance with this Chapter, i.e., mutual recognition of certification of conformity assessment;

registered conformity assessment body (“registered CAB”) means a CAB registered

pursuant to Article 8.5;

registration means the authorisation by a Party's Designating Authority of a CAB proposed by the other Party to undertake specified conformity assessment procedures pursuant to the Party's mandatory requirements;

Regulatory Authority means an entity that exercises a legal right to determine the mandatory requirements, control the import, use or supply of products within a Party's territory and may take enforcement action to ensure that products marketed within its territory comply with that Party's mandatory requirements including assessments of manufacturers/manufacturing processes of products;

Sectoral Annex is an Annex to this Chapter which specifies the implementation arrangements in respect of a specific product sector;

stipulated requirements means the criteria set out in a Sectoral Annex for the designation of CAB;

technical regulations shall have the same meaning as in the WTO TBT Agreement;

test facility means a facility, including independent laboratories, manufacturers' own test facilities or government testing bodies, that may be designated by one Party's Designating Authority in accordance with this Chapter to undertake tests according to the other Party's mandatory requirements; and

verification means an action to verify in the territories of the Parties, by such means as audits or inspections, compliance with the stipulated requirements for designation or criteria for confirmation by a conformity assessment body or a manufacturing or test facility respectively.

3. For the purposes of this Chapter the singular should be read to include the plural and vice-versa, when appropriate.

Article 8.4 : Origin

This Chapter applies to all products and/or assessments of manufacturers or

manufacturing processes of products traded between the Parties, regardless of the origin of those products, unless otherwise specified in a Sectoral Annex, or unless otherwise specified by any mandatory requirement of a Party.

Article 8.5 : Mutual Recognition of Conformity Assessment

Scope

1. This Article shall apply to:
 - (a) mandatory requirements and/or assessments of manufacturers or manufacturing processes, maintained by the Parties to fulfill their legitimate objectives and appropriate level of protection; and
 - (b) the conformity assessment bodies and conformity assessment procedures for products as may be specified in the Sectoral Annexes.
2. For the purposes of this Article, a Sectoral Annex shall include *inter alia*:
 - (a) provisions on scope and coverage;
 - (b) applicable laws, regulations and administrative provisions, i.e., mandatory requirements of each Party concerning the scope and coverage;
 - (c) applicable laws, regulations and administrative provisions of each Party stipulating the requirements covered by this Article, all the conformity assessment procedures covered by this Article to satisfy such requirements and the stipulated requirements or criteria for designation of conformity assessment bodies or the confirmation of the manufacturing or test facilities covered by this Article; and
 - (d) the list of Designating Authorities or competent authorities.

Obligations

3. Each Party shall accept, in accordance with the provisions of this Article, the results of conformity assessment procedures required by the mandatory requirements of that Party specified in the relevant Sectoral Annex, including certificates and marks of conformity, that are conducted by the registered CABs of the other Party.

4. Korea shall accept the results of conformity assessment procedures to demonstrate conformity of products with its mandatory requirements when the conformity assessment procedures are undertaken by CABs designated by Singapore's Designating Authority and registered by Korea's Designating Authority in accordance with this Article.

5. Singapore shall accept the results of conformity assessment procedures to demonstrate conformity of products with its mandatory requirements when the conformity assessment procedures are undertaken by CABs designated by Korea's Designating Authority and registered by Singapore's Designating Authority in accordance with this Article.

Designating Authorities

6. For the purposes of this Article, each Party shall:

- (a) unless otherwise provided in the relevant Sectoral Annex, designate a single Designating Authority to designate CABs to conduct conformity assessment procedures for products traded between the Parties, whether imports or exports;
- (b) then notify the other Party of such designation and any subsequent changes thereof;
- (c) notify the other Party of any scheduled changes concerning its Designating Authority; and
- (d) ensure that its Designating Authority:
 - (i) has the necessary power to designate, monitor (including verification), withdraw the designation of, suspend the designation of, and lift the suspension of the designation of, the CABs that conduct conformity assessment procedures within its territory based upon the requirements set out in the other Party's mandatory requirements as specified in the relevant Sectoral Annex; and
 - (ii) consults, as necessary, with the relevant counterpart in the other Party to ensure the maintenance of confidence in conformity assessment procedures including processes. The consultations may include joint participation in audits related to conformity assessment procedures or other assessments of registered CABs, where such participation is appropriate, technically possible and within reasonable cost.

Registration of CABs

7. The following procedures shall apply to the registration of a CAB:

- (a) each Party shall make a proposal that a CAB of that Party designated by its Designating Authority be registered under this Article, by presenting its proposal in writing, supported by the necessary documents, to the other Party and the TBT Joint Committee established in accordance with Article 8.7 (“TBT Joint Committee”);
- (b) the other Party shall consider whether the proposed CAB complies with the stipulated and mandatory requirements specified in the relevant Sectoral Annex and communicate, to the Party making the proposal and the TBT Joint Committee in writing, the other Party’s position regarding the registration of that CAB along with estimated date of registration within ninety (90) days from the date of receipt of the proposal referred to in paragraph (a). In such consideration, such other Party should assume that the proposed CAB complies with the aforementioned criteria. The TBT Joint Committee shall, within ninety (90) days from the date of receipt of the position of such other Party, decide whether to register the proposed CAB. Following the TBT Joint Committee’s decision, a Party’s Designating Authority shall inform the other Party about the date of registration of the proposed CAB within seven (7) days from the date of receipt of the TBT Joint Committee’s decision; and
- (c) In the event that the TBT Joint Committee cannot decide to register the proposed CAB, the TBT Joint Committee may decide to conduct joint verification with or request the proposing Party to conduct a verification of the proposed CAB with the prior consent of the CAB. After the completion of such verification, the TBT Joint Committee may reconsider the proposal.

8. The proposing Party shall provide the following information in its proposal for registration of a CAB and keep such information up-to-date:

- (a) the name and address of the CAB;
- (b) the products or processes the CAB is designated to assess;
- (c) the conformity assessment procedures the CAB is designated to conduct; and
- (d) the designation procedure and necessary information used to determine the

compliance of the CAB with the stipulated requirements for designation.

9. Each Party shall ensure that its Designating Authority withdraws the designation of its CAB registered by the Designating Authority of the other Party when its Party's Designating Authority considers that the CAB no longer complies with the stipulated and mandatory requirements of the other Party set out in the relevant Sectoral Annex. The withdrawal of the designation shall be notified in writing to the other Party and the TBT Joint Committee. Each Party shall terminate the registration of a CAB when the Designating Authority of the other Party withdraws the designation of its CAB. The date of termination of registration of the CAB shall be the date of receipt of notification for withdrawal from the other Party.

10. Each Party shall propose the termination of the registration of its CAB when that Party considers that the CAB no longer complies with the stipulated requirements and mandatory requirements of that Party specified in the relevant Sectoral Annex. Proposal for terminating the registration of that CAB shall be made to the TBT Joint Committee and the other Party in writing. The registration of that CAB shall be terminated upon receipt by the Parties of the decision of the TBT Joint Committee.

11. In the case of a registration of a new CAB, the other Party shall accept the results of conformity assessment procedures conducted by that CAB from the date of the registration. In the event that the registration of a CAB is terminated, the other Party shall accept the results of the conformity assessment procedures conducted by that CAB prior to the termination, without prejudice to paragraphs 18 and 19.

12. Each Party shall notify the other Party of any scheduled changes concerning its designated CABs.

13. The Parties shall notify the general public of the registration of CABs, on a sector-by-sector basis.

Verification and Monitoring of Conformity Assessment Bodies

14. Each Party shall ensure that its Designating Authority:

- (a) shall undertake through appropriate means such as audits, inspections or monitoring, that the registered CABs designated by the Party fulfill the

stipulated and mandatory requirements set out in the Sectoral Annex. When applying the stipulated requirements for designation of the CABs, the Designating Authority of a Party should take into account the bodies' understanding of and experience relevant to the mandatory requirements of the other Party;

- (b) shall monitor and verify that the registered CABs designated by a Party maintain the necessary technical competence to demonstrate the conformity of a product with the standards, and/or specifications to meet the mandatory requirements of the other Party. This may include participation in appropriate proficiency-testing programmes and other comparative reviews such as mutual recognition agreements between non-governmental entities, so that confidence in their technical competence to undertake the required conformity assessment is maintained; and
- (c) shall exchange information concerning the procedures such as accreditation systems used to designate CABs and to ensure that the registered CABs designated by a Party are technically competent and comply with the relevant stipulated requirements.

15. When in doubt, a Party may request other designating Party in writing whether or not a registered CAB complies with the stipulated requirements for that Party's designation as set out in the mandatory requirements in the Sectoral Annex and/or request for a verification of the CAB to be conducted in accordance with that Party's mandatory requirements.

16. A Party may, with the prior consent of the other Party, participate at its own expense, in the verification process of the CAB conducted by the Designating Authority of the other Party, provided that there is prior consent of such CABs, in order to maintain a continuing understanding of that other Party's procedures for verification.

17. Each Party shall encourage its registered CABs to co-operate with the CABs of the other Party.

Suspension and Lifting the Suspension of Designation of Conformity Assessment Bodies

18. In case of suspension of the designation of a registered CAB, the Party, shall immediately notify the other Party and the TBT Joint Committee of the suspension.

The registration of that CAB shall be suspended from the date of receipt of the decision of the TBT Joint Committee. The other Party shall accept the results of the conformity assessment procedures conducted by that CAB prior to the suspension of the designation.

19. In the case of lifting of suspension of the designation of a registered CAB, the Party shall immediately notify the other Party and the TBT Joint Committee of the lifting of suspension. The lifting of suspension of the registration of that CAB shall be effective from the date of the receipt of the decision of the TBT Joint Committee. The other Party shall accept the results of the conformity assessment procedures conducted by that CAB from the date of lifting of the suspension of the registration.

Challenge

20. Each Party shall have the right to challenge a registered CAB's technical competence and compliance with the relevant stipulated requirements specified in the Sectoral Annex. This right shall be exercised only in exceptional circumstances and when supported by relevant expert analysis and/or evidence. A Party shall exercise this right by notifying the other Party and the TBT Joint Committee in writing.

21. Except in urgent circumstances, the Party shall, prior to a challenge exercised under paragraph 20, enter into consultations with the other Party with a view to seeking a mutually satisfactory solution. In urgent circumstances, consultations shall take place immediately after the right to challenge has been exercised. In all cases, consultations shall be conducted with a view to resolving all issues and seeking a mutually satisfactory solution within twenty (20) days or as specified in the relevant Sectoral Annex. If this is not achieved, the TBT Joint Committee shall be convened to resolve the matter.

22. Unless the TBT Joint Committee decides otherwise, the registration of the challenged CAB shall be suspended by the relevant Designating Authority for the relevant scope of designation from the date when its technical competence or compliance is challenged, until either:

- (a) the challenging Party is satisfied as to the competence and compliance of the CAB; or
- (b) the designation of that CAB has been withdrawn.

23. The Sectoral Annex may provide for additional procedures such as verification and time limits to be followed in relation to a challenge. This may involve the TBT Joint Committee being activated. Where the TBT Joint Committee decides to conduct a joint verification, it shall be conducted in a timely manner by the Parties with the participation of the Designating Authority that designated the challenged CAB and with the prior consent of the CAB. The result of such joint verification shall be discussed in the TBT Joint Committee with a view to resolving the issue within twenty (20) days or the time limit specified in the Sectoral Annex.

24. The results of conformity assessment procedures undertaken by a challenged CAB on or before the date of its suspension or withdrawal shall remain valid for acceptance for the purposes of paragraphs 4 and 5.

Article 8.6 : 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 CAB 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 procedures and/or designation activities.

3. Nothing in this Chapter shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers would:

- (a) be contrary to its essential security interests;
- (b) be contrary to the public interest as determined by its domestic laws, regulations and administrative provisions;
- (c) be contrary to any of its domestic laws, regulations and administrative provisions including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
- (d) impede law enforcement; or

- (e) prejudice legitimate commercial interests of particular public or private enterprises.

Article 8.7 : TBT Joint Committee

1. A TBT Joint Committee shall be established on the date of entry into force of this Agreement and it shall be responsible for the effective implementation of this Chapter.

2. The TBT Joint Committee shall be led by co-chairs from both Parties. The co-chairs shall be the initial contact point for the exchange of information. For this purpose, the Parties shall, through the co-chairs:

- (a) broaden their exchange of information;
- (b) notify any change in their mandatory requirements in accordance with their WTO obligations; and
- (c) give favourable consideration to any written request for consultation. Each Party shall respond to a written request for information from the other Party in print or electronically without undue delay, and in any case within fifteen (15) days from the date of the request, at no cost or at reasonable cost.

3. The TBT Joint Committee shall comprise representatives from both Parties.

4. The TBT Joint Committee shall make decisions and adopt recommendations by consensus. The TBT Joint Committee shall meet, under the co-chairmanship of both Parties, when necessary to discharge its function, including upon the request of either Party.

5. The TBT Joint Committee shall:

- (a) be responsible for administering and facilitating the effective functioning of this Chapter and applicable Sectoral Annex(es), including:
 - (i) facilitating the extension of this Chapter, such as the addition of new Sectoral Annexes or an increase in the scope of existing Sectoral Annexes;
 - (ii) resolving any questions or disputes relating to the interpretation or application of this Chapter and applicable Sectoral Annex(es);

- (iii) deciding on the registration of a CAB, suspension of registration of a CAB, lifting of suspension of registration of a CAB, and termination of registration of a CAB with reference to Article 8.5;
 - (iv) maintaining, unless the TBT Joint Committee decides otherwise, a list of registered CABs on a sector- by- sector basis;
 - (v) establishing appropriate modalities of information exchange referred to in this Chapter;
 - (vi) appointing experts from each Party for joint verification referred to in paragraph 16 of Article 8.5;
 - (vii) discharging such other functions as provided for in this Chapter; and
 - (viii) where appropriate, develop a work programme and mechanisms for co-operation in the areas of technical issues of mutual interest; and
- (b) determine its own operational procedures.

6. In case a problem is not resolved through the TBT Joint Committee, the Parties shall have final recourse to dispute settlement under Chapter 20 (Dispute Settlement).

7. The TBT Joint Committee may, where necessary, establish ad hoc groups to undertake specific tasks relating to this Chapter.

8. Any decision made by the TBT Joint Committee shall be notified promptly in writing to each Party.

9. Each Party shall, as applicable, bring into effect the relevant decisions of the TBT Joint Committee.

Article 8.8 : Preservation of Regulatory Authority

1. Each Party retains all authority under its laws to interpret and implement its mandatory requirements.

2. This Chapter shall not:

- (a) prevent a Party from adopting or maintaining, in accordance with its international rights and obligations, mandatory requirements, as appropriate to its particular national circumstances;

- (b) prevent a Party from adopting mandatory requirements to determine the level of protection it considers necessary to ensure the quality of its imports, or for the protection of human, animal or plant life or health, or the environment, or for the prevention of deceptive practices or to fulfil other legitimate objectives, at the levels it considers appropriate;
- (c) limit the authority of a Party to take all appropriate measures whenever it ascertains that products may not conform to its mandatory requirements. Such measures may include withdrawing the products from the market, prohibiting their placement on the market, restricting their free movement, initiating a product recall, initiating legal proceedings or otherwise preventing the recurrence of such problems including through a prohibition on imports. If a Party takes such measures, it shall notify the other Party and the TBT Joint Committee, within fifteen (15) days of taking the measures, giving its reasons;
- (d) oblige a Party to accept the standards or technical regulations or mandatory requirements of the other Party;
- (e) entail an obligation upon a Party to accept the results of the conformity assessment procedures and/or assessment of manufacturers or manufacturing processes of products and their mandatory requirements of any third country save where there is an expressed agreement between the Parties to do so; and
- (f) be construed so as to affect the rights and obligations of either Party as a member of the WTO TBT Agreement.

ARTICLE 8.9 : TERRITORIAL APPLICATION

This Chapter shall apply to the territory of Korea and to the territory of Singapore.

Article 8.10 : Language

1. Written communication between the Parties including between the TBT Joint Committee's co-chairs shall be in English.
2. A Party shall make every endeavour to provide, in English and in a timely manner, information on mandatory requirements and other information or documents such as

certificates, documentary evidence etc., necessary for the implementation of this Chapter and its Sectoral Annex(es).

3. The TBT Joint Committee meetings shall be conducted in English.

4. The decisions and records of the TBT Joint Committee shall be drawn up in English.

Article 8.11 : Sectoral Annexes

1. The Parties shall conclude, as appropriate, Sectoral Annexes which shall provide the implementing arrangements for this Chapter.

2. The Parties shall:

- (a) specify and communicate to each other the applicable articles or annexes contained in the mandatory requirements set out in the Sectoral Annexes;
- (b) exchange information concerning the implementation of the mandatory requirements specified in the Sectoral Annexes;
- (c) notify each other of any scheduled changes in its mandatory requirements whenever they are made; and
- (d) notify each other of any scheduled changes concerning their Designating Authorities and the registered CABs.

3. A Sectoral Annex shall enter into force on the first day of the second month following the date on which the Parties have exchanged notes confirming the completion of their respective (domestic legal) procedures for the entry into force of that Sectoral Annex.

4. A Party may terminate a Sectoral Annex in its entirety by giving the other Party six (6) months' advance notice in writing unless otherwise stated in the relevant Sectoral Annex. However, a Party shall continue to accept the results of conformity assessment for the duration of the six-month notice period.

5. Where urgent problems of safety, health, consumer or environment protection or national security arise or threaten to arise for a Party, that Party may suspend the

operation of any Sectoral Annex, in whole or in part, immediately. In such a case, the Party shall immediately advise the other Party of the nature of the urgent problem, the products covered and the objective and rationale of the suspension.

6. If a Party introduces new or additional conformity assessment procedures with the same product coverage to satisfy the requirements set out in the mandatory requirements specified in the Sectoral Annex, the Sectoral Annex shall be amended to set out the applicable laws, regulations and administrative provisions stipulating such new or additional conformity assessment procedures.

7. In case of conflict between the provisions of a Sectoral Annex and this Chapter, the provisions of the Sectoral Annex shall prevail.