

CHAPTER 6

TECHNICAL BARRIERS TO TRADE

Article 6.1: Objectives

The objectives of this Chapter are to increase and facilitate trade in goods between the Parties by enhancing the implementation of the TBT Agreement, by ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacle to trade, and by strengthening bilateral cooperation.

Article 6.2: Scope

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

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

Article 6.3: Definitions

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

Article 6.4: Affirmation of the TBT Agreement

The Parties affirm their rights and obligations with respect to each other under the TBT Agreement.

Article 6.5: International Standards

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 shall apply 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”).

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 the other Party, encourage its standardising body or bodies to provide what the differences in the contents and structure are, and the reason for those differences.
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 the other Party. Such cooperation may include:

(a) exchange of information on standards and their use of standards in support of technical regulations;

(b) exchange of information relating to standard setting procedures;

(c) cooperation in the work of international standardising bodies in areas of mutual interest; and

(d) exchange of information on cooperation agreement implemented by either Party on standardisation, provided that the information can be made available to the public.

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 the other Party, explain the reasons therefor.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, on request of the other Party, explain the reasons for its decision.

3. 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 the other Party, provide its reasons therefor

4. Except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise, the 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 the exporting Party to adapt their products or methods of production to the requirements of the importing Party. 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.

5. The Parties recognise the importance of good regulatory practice with regard to the preparation, adoption, and application of technical regulations, as provided for in 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; and fundamental technological or infrastructural problems.

2. Each Party recognises the importance of accepting the results of conformity assessment procedures conducted in the territory of the other 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 the other Party are accepted, even when those procedures differ from its own, provided that it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.

4. Where a Party does not accept the results of a conformity assessment procedure conducted in the other Party, it shall, on request of the other Party, explain the reasons for its decision.

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 the territory of the other Party. Such mechanisms may include:

(a) mutual recognition agreements for the results of conformity assessment procedures conducted by bodies in the Parties;

(b) cooperative (voluntary) arrangements between accreditation bodies or those between conformity assessment bodies in the Parties;

(c) the use of accreditation to qualify conformity assessment bodies, including through relevant multilateral agreements or arrangements, to recognise the accreditation granted by the other Party;

(d) the government designation of conformity assessment bodies, including bodies located in the territory of the other Party;

(e) unilateral recognition by a Party of results of conformity assessment procedures conducted in the other 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 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 the Parties.

8. Further to paragraph 4 of Article 6 of the TBT Agreement, where a Party permits participation of its conformity assessment bodies and does not permit participation of conformity assessment bodies in the other Party in its conformity assessment procedures, it is encouraged, on request of the other Party, to explain the reason for its refusal decision.

9. Where a Party declines a request from the other Party to engage in negotiations for the conclusion of agreement for the mutual recognition of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall, on request of the other Party, explain the reasons for its decision.

Article 6.9: Transparency

1. Each Party affirms its transparency obligations under the TBT Agreement with regard to the preparation, adoption, and application of standards, technical regulations, and conformity assessment procedures.
2. Upon written request, a Party shall provide to the requesting Party, if already available, the full text or summary of its notified mandatory standards, technical regulations, and conformity assessment procedures in the English language. If unavailable, the requested Party shall provide to the requesting Party a summary stating the requirements of the notified mandatory standards, technical regulations, and conformity assessment procedures in the English language, within a reasonable period of time agreed by both Parties 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 the other 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 Party 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 the other Party into account and shall endeavour to provide responses to those comments upon request.
5. 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 and, if possible, within 60 days. Upon request, the requested Party shall provide such information or explanation in the English language.
6. When a Party detains, 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.

Article 6.10: Cooperation

1. With a view to fulfilling the objectives of this Chapter, a Party shall, on request of the other Party, cooperate on matters of mutual interest on standards, technical regulations, and conformity assessment procedures.

2. 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, as defined under Annex 1 of the TBT Agreement, 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) enter into negotiations for the development of mutual recognition agreements (“MRAs”) to strengthen their cooperation in the field of technical regulations, standards, and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.

(e) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; and

(f) strengthening communication and coordination in the WTO TBT Committee and other relevant international or regional fora.

Article 6.11: 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 30 days, unless otherwise mutually determined by the Parties, with a view to reaching a mutually satisfactory solution. Technical discussions may be conducted via any means agreed by the Parties.

Article 6.12: Market Surveillance

1. For the purposes of this Article, “market surveillance” is the activities carried out and measures taken by regulatory or relevant public authorities of the Parties to monitor or address the compliance of product with the requirement set out in its laws and regulations.

2. The Parties recognise the importance of cooperation between their relevant regulatory authorities to exchange information, as the Parties are mutually interested, on market surveillance, safety, and compliance of products for the facilitation of trade and for the protection of consumers and other users.

3. The Parties shall endeavour to ensure that market surveillance functions are carried out by the competent authorities and that no conflicts of interest exist between the market surveillance function and the conformity assessment function.

Article 6.13: Marking and Labelling

1. For the purposes of this Article, and in accordance with paragraph 1 of Annex 1 of the TBT Agreement, a technical regulation may include or deal exclusively with marking or labelling requirements.

2. The Parties agree that, where their technical regulations contain mandatory marking or labelling, they will ensure that these are not prepared with a view to, or with the effect of, creating unnecessary obstacles to international trade, and should not be more trade restrictive than necessary to fulfil a legitimate objective, as referred to under paragraph 2 of Article 2 of the TBT Agreement.

3. For the purposes of this Agreement, where a Party requires mandatory marking or labelling of products:

(a) the Party shall endeavour to restrict its requirements only to those which are relevant for consumers or users of the product or to indicate the product's conformity with the mandatory requirements;

(b) the Party may specify the information to be provided on the label and may require compliance with certain regulatory requirements for the affixing of the label, but shall not require any prior approval or certification of labels and markings as a precondition for sale of the products in its market unless this is deemed necessary in light of the prevention of deceptive practices, national security requirements or the risk of the product to human health or safety, animal or plant life or health, or the environment;

(c) where the Party requires the use of a unique identification number by economic operators, the Party shall ensure that such numbers are issued to the relevant economic operators without undue delay and on a non-discriminatory basis;

(d) provided that it is not misleading, contradictory or confusing in relation to the information required in the importing Party of the goods, the Party shall permit the following:

(i) information in other languages in addition to the language required in the importing Party of the goods;

(ii) internationally-accepted nomenclatures, pictograms, symbols or graphics; and

(iii) additional information to that required in the importing Party of the goods;

(e) in order to facilitate trade, the Party shall, in cases where it considers that legitimate objectives under the TBT Agreement are not compromised thereby and where applicable, endeavour to develop processes and procedures to accept alternative forms of labelling, such as electronic labels, non-permanent or detachable labels, or marking or labelling in the accompanying materials packaged with the product.

4. Paragraph 3 shall apply to all products in paragraph 3 of Article 1 of the TBT Agreement in accordance with the Parties' laws and regulations.

Article 6.14: Contact points

1. Each Party shall, within 30 days of the date of entry into force of this Agreement, designate one or more contact points responsible for coordinating the implementation of this Chapter, and notify the other Party 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 Party of any changes 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 the other Party.