

CHAPTER 5
TECHNICAL BARRIERS TO TRADE AND
SANITARY AND PHYTOSANITARY MEASURES

Section A: Technical Barriers to Trade

ARTICLE 5.1: SCOPE

1. Unless otherwise provided in paragraphs 3 and 4, this Section shall apply to all standards, technical regulations, and conformity assessment procedures of the central level of government that may, directly or indirectly, affect trade in goods between the Parties.
2. Each Party shall take such reasonable measures as may be available to it to ensure compliance with the provisions of this Section by regional or local government 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. Technical specifications prepared by governmental bodies for production or consumption requirements of such bodies shall not be subject to the provisions of this Section, but shall be addressed in Chapter 12 (Government Procurement), in accordance with its coverage.
4. This Section shall not apply to sanitary or phytosanitary measures, which are covered in Section B of this Chapter.

ARTICLE 5.2: AFFIRMATION OF THE TBT AGREEMENT

Further to Article 1.2 (Relation to Other Agreements), each Party affirms its existing rights and obligations with respect to each other in the TBT Agreement.

ARTICLE 5.3: INTERNATIONAL STANDARDS, GUIDES AND RECOMMENDATIONS

1. Each Party shall, in accordance with Articles 2.4 and 5.4 of the TBT Agreement, use international standards, guides and recommendations or the relevant parts thereof as a basis for its technical regulations and conformity assessment procedures.
2. Where a Party does not use an international standard, guide or recommendation or the relevant parts thereof as a basis for a technical regulation or conformity assessment procedure, it shall, on request of the other Party, in accordance with Articles 2.5 and 5.4 of the TBT Agreement, explain the reasons for its decision.
3. The Parties shall encourage their respective standards bodies to consult and exchange views on matters under discussion in relevant international or regional bodies that develop international standards, guides, or recommendations relevant to this Section.

4. 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 *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 (Annex 4 of G/TBT/9).

ARTICLE 5.4: TECHNICAL REGULATIONS

1. Each Party shall give positive consideration to accepting technical regulations of the other Party as equivalent to its own, even if these regulations differ from its own, provided that it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

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.

ARTICLE 5.5: 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. Each Party shall, in accordance with Article 2.2 of the TBT Agreement, ensure that technical regulations, including mandatory marking or labelling of products, are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. For this purpose, such technical regulations shall not be more trade restrictive than necessary to fulfil a legitimate objective.

3. Where a Party requires mandatory marking or labelling of products:

- (a) the Party shall endeavour to minimise the requirements for marking or labelling other than marking or labelling relevant to consumers or users of the product. Where marking or labelling for other purposes is required, including for fiscal purposes, such requirements shall be formulated, in accordance with the TBT Agreement, in a manner that is not more trade restrictive than necessary to fulfil a legitimate objective;
- (b) the Party shall, where it requires the use of a unique identification number by economic operators, issue such number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;
- (c) the Party shall remain free to require that information on the marks or labels be in a specified language. Where an international system of nomenclature has been accepted by the Parties, such nomenclature may be used. The simultaneous use of additional languages shall not be prohibited, provided that:

- (i) the information provided in the additional languages is identical to that provided in the specified language; or
 - (ii) the information provided in the additional languages does not constitute a deceptive statement regarding the product; and
- (d) the Party shall, where it considers that legitimate objectives in accordance with the TBT Agreement are not compromised thereby, endeavour to accept:
 - (i) non-permanent or detachable labels; or
 - (ii) marking or labelling in the accompanying documentation in place of marking or labelling attached to the product.

ARTICLE 5.6: CONFORMITY ASSESSMENT PROCEDURES

1. The Parties recognise that 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. For example:

- (a) a Party may agree with the other Party to accept the results of conformity assessment procedures that bodies located in the other Party's territory conduct with respect to specific technical regulations;
- (b) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the other Party's territory;
- (c) a Party may designate conformity assessment bodies located in the other Party's territory;
- (d) a Party may recognise the results of conformity assessment procedures conducted in the other Party's territory;
- (e) conformity assessment bodies located in each of the Parties' territories may enter into voluntary arrangements to accept the results of each other's assessment procedures; and
- (f) the importing Party may rely on a supplier's declaration of conformity.

2. The Parties shall exchange information on the range of mechanisms relevant to conformity assessment procedures in their respective territories with a view to facilitating the acceptance of conformity assessment results.

3. 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. A Party shall give positive consideration to a request from the other Party to negotiate agreements for the recognition of the results of the other Party's conformity assessment procedures. Where a Party declines a request from the other Party to engage in negotiations or conclude an agreement on facilitating recognition in its territory 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 5.7: JOINT COOPERATION

1. The Parties shall strengthen their cooperation in the fields of standards, technical regulations and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems, and facilitating access to their respective markets. In particular, the Parties shall seek to identify, develop and promote trade facilitating bilateral initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors. These initiatives may include cooperation on regulatory issues, such as:

- (a) equivalence of standards and technical regulations;
- (b) good regulatory practice;
- (c) transparency;
- (d) alignment with international standards;
- (e) reliance on a supplier's declaration of conformity;
- (f) use of accreditation to qualify conformity assessment bodies; and
- (g) mechanisms for the recognition of conformity assessment procedures.

2. On request of the other Party, a Party shall give positive consideration to a sector-specific proposal that the requesting Party makes for further cooperation under this Section.

ARTICLE 5.8: TRANSPARENCY

1. Each Party shall allow persons of the other Party to participate in the development of standards, technical regulations and conformity assessment procedures on terms no less favourable than those accorded to its own persons.

2. Each Party shall recommend that non-governmental bodies in its territory observe paragraph 1 in relation to the development of standards and voluntary conformity assessment procedures.

3. With a view to enhancing the opportunity for persons and the other Party to be aware of, and to understand proposed technical regulations and conformity assessment procedures,

and to be able to provide meaningful comments on such regulations and procedures, a Party publishing a notice or making a notification in accordance with Articles 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement shall:

- (a) include an explanation of the objectives the proposed technical regulation or conformity assessment procedures are meant to serve and how it addresses those objectives; and
- (b) transmit the proposal electronically to the other Party through, in the case of a Korean proposal, the Australian enquiry point established in accordance with Article 10 of the TBT Agreement or, in the case of an Australian proposal, the Korean Coordinator established in accordance with Article 5.9 at the same time as it notifies WTO Members of the proposal in accordance with the TBT Agreement.

Each Party should allow at least 60 days after it transmits a proposal in accordance with subparagraph (b) for the public and the other Party to make comments in writing on the proposal.

4. Each Party shall publish, or otherwise make available to the public, in print or electronically, its responses to significant comments it receives from the public or the other Party in accordance with paragraph 3 no later than the date it publishes the final technical regulation or conformity assessment procedure.

5. Where a Party makes a notification in accordance with Article 2.10 or 5.7 of the TBT Agreement, it shall, at the same time, transmit the notification electronically to the other Party through, in the case of a Korean proposal, the Australian enquiry point established in accordance with Article 10 of the TBT Agreement or, in the case of an Australian proposal, the Korean Coordinator established in accordance with Article 5.9.

6. On request of the other Party, a Party shall provide the other Party with information regarding the objective of, and rationale for, a standard, technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

ARTICLE 5.9: COORDINATION MECHANISM

1. Each Party shall nominate a TBT Coordinator and give appropriate information to the other Party when its TBT Coordinator changes. The TBT Coordinators shall work jointly in order to facilitate implementation of this Section and cooperation between the Parties in all matters pertaining to this Section.

2. The TBT Coordinators' functions shall include:

- (a) monitoring the implementation and administration of this Section;

- (b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations or conformity assessment procedures;
- (c) enhancing cooperation in the development and improvement of standards, technical regulations and conformity assessment procedures;
- (d) facilitating the consideration of any sector-specific proposal a Party makes for further cooperation between conformity assessment bodies, including, where appropriate, between governmental and non-governmental conformity assessment bodies in the Parties' territories;
- (e) facilitating the consideration of a request of the other Party that a Party recognise the results of conformity assessment procedures conducted by bodies in the other Party's territory, including a request for the negotiation of an agreement, in a sector nominated by that other Party;
- (f) exchanging information on standards, technical regulations and conformity assessment procedures in response to requests for information from a Party;
- (g) as appropriate, exchanging information on developments in non-governmental, regional and multilateral fora engaged in activities related to standardisation, technical regulations and conformity assessment procedures;
- (h) facilitating cooperation in the area of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities;
- (i) on request of a Party, consulting on any matter arising under this Section; and
- (j) reviewing this Section in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Section in light of those developments.

3. The TBT Coordinators shall communicate with one another by any agreed method that is appropriate for the efficient and effective discharge of their functions.

4. The Parties may, as they consider appropriate, establish an *ad hoc* Working Group, comprising representatives of each Party. The scope and mandate of any *ad hoc* Working Group shall be determined by the Parties. Subject to decisions of the Parties, each *ad hoc* Working Group may:

- (a) include government representatives with responsibility for the standards, technical regulations or conformity assessment procedures;
- (b) include or consult with non-governmental experts and stakeholders; and
- (c) determine its work program, taking into account relevant international activities.

5. Where a Party declines a request from the other Party to establish an *ad hoc* Working Group, it shall, on request of the other Party, explain the reasons for its decision.

6. For the purposes of this Section, the TBT Coordinator shall be:

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

ARTICLE 5.10: INFORMATION EXCHANGE

Any information or explanation that a Party provides on request of the other Party in accordance with this Section shall be provided in print or electronically within a reasonable period, and where possible within 60 days.

ARTICLE 5.11: DISPUTE SETTLEMENT

Neither Party shall have recourse to dispute settlement under this Agreement for any matter arising under this Section.

ARTICLE 5.12: DEFINITIONS

For the purposes of this Section, **standard, technical regulation, conformity assessment procedures** and **non-governmental body**⁶ shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement.

Section B: Sanitary and Phytosanitary Measures

ARTICLE 5.13: SCOPE

This Section shall apply to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

ARTICLE 5.14: AFFIRMATION OF THE SPS AGREEMENT

Further to Article 1.2 (Relation to Other Agreements), each Party affirms its existing rights and obligations with respect to each other in the SPS Agreement.

⁶ For greater certainty, “local government body” in the definition of “non-governmental body” taken from the TBT Agreement includes regional level of government as defined in Article 1.4.

ARTICLE 5.15: CONTACT POINTS

1. Each Party shall designate a contact point relating to the operation of this Section. For the purposes of this Section, the contact point shall be:
 - (a) for Korea, the Ministry of Agriculture, Food and Rural Affairs, or its successor; and
 - (b) for Australia, the Department of Agriculture, or its successor.
2. The contact points shall:
 - (a) facilitate the exchange of information relating to this Section;
 - (b) coordinate the technical meeting referred to in Article 5.16; and
 - (c) facilitate any other communications between the Parties on any matter covered by this Section.

ARTICLE 5.16: TECHNICAL MEETINGS

1. The Parties shall hold technical meetings on sanitary and phytosanitary matters at such venues and on such dates as may be agreed by the Parties. Representatives of each Party's competent authorities who have responsibility for sanitary and phytosanitary matters shall participate in the meetings.
2. The technical meetings shall be coordinated by the contact points referred to in Article 5.15.
3. The functions of the technical meetings shall be to:
 - (a) review and monitor the implementation of this Section;
 - (b) enhance mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;
 - (c) engage in cooperative activities in accordance with Article 5.17.2;
 - (d) as appropriate, seek to address sanitary and phytosanitary matters of mutual interest to the Parties; and
 - (e) as appropriate, report the outcomes of discussions of the technical meeting to the Joint Committee.

ARTICLE 5.17: COOPERATION

1. The Parties shall enhance implementation of the SPS Agreement, including through:

- (a) cooperating, including exchanging views, in relevant international bodies engaged in food safety and human, animal or plant life or health issues;
- (b) facilitating the timely exchange of information on their respective sanitary and phytosanitary measures; and
- (c) sharing knowledge and experience.

2. The Parties shall explore opportunities for further cooperation and collaboration on sanitary and phytosanitary matters of mutual interest at the bilateral, regional and multilateral levels consistent with the provisions of this Section.

3. Where a Party makes a notification in accordance with paragraph 5(b) or 6(a) of Annex B of the SPS Agreement, it shall provide a copy of the notification to the contact point of the other Party at the same time as the notification is provided to the WTO.

ARTICLE 5.18: DISPUTE SETTLEMENT

Neither Party shall have recourse to dispute settlement under this Agreement for any matter arising in this Section.