

## **CHAPTER 6 TECHNICAL BARRIERS TO TRADE**

### **Article 6.1 : Objectives**

The objectives of this Chapter are to:

- (a) increase and facilitate trade through enhancing the Parties' implementation of the TBT Agreement and building on the work of APEC on standards and conformance;
- (b) ensure that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade between the Parties;
- (c) reduce, where possible, costs associated with trade between the Parties;
- (d) promote regulatory co-operation to manage risks to health, safety and the environment; and
- (e) enhance mutual understanding and co-operation between the Parties.

### **Article 6.2 : Definitions**

1. For the purposes of this Chapter:

**designation** means the authorisation of a conformity assessment body to perform conformity assessment procedures, by a body with the authority to designate, monitor, suspend or withdraw designation, or remove suspension of conformity assessment bodies within the territories of the Parties.

2. The definitions set out in Annex 1 of the TBT Agreement are incorporated into and made part of this Chapter, *mutatis mutandis*.

### **Article 6.3 : Scope and Coverage**

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

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

- (a) technical specifications prepared by a governmental body for its production or consumption requirements which are covered by Chapter 13 (Government Procurement), to the extent they apply; or

- (b) sanitary or phytosanitary measures which are covered by Chapter 5 (Sanitary and Phytosanitary Measures).

#### **Article 6.4 : Rights and Obligations**

The Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement, of which Articles 2 through 9 are incorporated into and made part of this Agreement, *mutatis mutandis*.

#### **Article 6.5 : International Standards**

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 “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 2 to PART 1 of G/TBT/1/Rev11), and any subsequent development thereof.
3. The Parties shall encourage co-operation between their respective organisations in areas of mutual interest, in the context of their participation in international standardising bodies, to ensure that international standards developed within such organisations are trade facilitating and do not create unnecessary obstacles to international trade.

#### **Article 6.6 : Equivalence of Technical Regulations**

1. Consistent with the TBT Agreement, each Party shall give positive consideration to accepting as equivalent technical regulations of the other Party, 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. A Party shall, on the request of the other Party, explain the reasons why it has not accepted a technical regulation of the other Party as equivalent.
3. Each Party shall give positive consideration to a request by the other Party to negotiate arrangements for achieving the equivalence of technical regulations referred to in paragraph 1.
4. A Party shall, on the request of the other Party, explain the reasons why it has not accepted a request by the other Party to negotiate such arrangements.

5. The Parties shall strengthen communications and co-ordination 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. Each Party shall ensure that, where it requires a positive assurance of conformity, the required procedures are not more strict than is necessary, and grant access for suppliers from the other Party under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, as provided in Article 5.1 of the TBT Agreement.

2. 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. Such mechanisms include:

- (a) facilitating recognition of co-operative arrangements between accreditation agencies from each other's territory;
- (b) implementing mutual recognition of the results of conformity assessment procedures performed by bodies located in each other's territory with respect to specific technical regulations;
- (c) recognising existing regional, international and multilateral recognition agreements and arrangements between or among accreditation bodies or conformity assessment bodies;
- (d) recognising accreditation procedures for qualifying conformity assessment bodies;
- (e) designating conformity assessment bodies or recognising the other Party's designation of conformity assessment bodies;
- (f) unilaterally recognising the results of conformity assessment procedures performed in the other Party's territory; and
- (g) accepting a supplier's declaration of conformity.

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

4. A Party shall, on the request of the other Party, explain the reasons why it has not accepted the results of any conformity assessment procedure performed in the territory of the other Party.

5. The Parties may consult on such matters as the technical competence of conformity assessment bodies designated or recognised by a Party, as appropriate, to enhance confidence in the continued reliability of each other's conformity assessment results.
6. Each Party shall give positive consideration to a request by the other Party to negotiate arrangements to facilitate acceptance of conformity assessment procedures, as referred to in paragraph 2.
7. Where a Party declines a request under paragraph 6, it shall, upon request, explain its reasons.

### **Article 6.8 : Joint Co-operation**

1. The Parties shall strengthen their co-operation in the field of standards, technical regulations, and conformity assessment procedures with a view to:
  - (a) increasing the mutual understanding of their respective systems;
  - (b) enhancing co-operation between the Parties' regulatory agencies in achieving health, safety and environmental objectives; and
  - (c) facilitating access to their respective markets.
2. Recognising the important relationship between good regulatory practices and trade facilitation, the Parties shall co-operate on regulatory issues, which may include:
  - (a) promotion of good regulatory practice based on risk management principles;
  - (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;
  - (d) building understanding and capacity to promote better regulatory compliance; and
  - (e) exchange of market surveillance information, where appropriate.
3. The Parties shall seek to identify, develop, and, as appropriate, conclude trade facilitating initiatives that are appropriate for particular issues or sectors, including:
  - (a) transparency;
  - (b) alignment with international standards;

- (c) harmonisation or equivalence of technical regulations;
  - (d) mechanisms to facilitate acceptance of conformity assessment procedures conducted in the territory of the other Party; and
  - (e) understandings reached on compliance issues.
4. Any initiatives referred to in paragraph 3 may include the use of asymmetrical approaches where appropriate.
5. On the request of the other Party, a Party shall give favourable consideration to any sector-specific proposal that the other Party makes for further co-operation under this Chapter.
6. The Parties shall implement paragraphs 1 through 5 by establishing work programmes, on a case by case basis, by working groups established under Article 6.10.2(j).

#### **Article 6.9 : Transparency**

1. In order to enhance the opportunity for the other Party to provide meaningful comments on a proposed technical regulation or conformity assessment procedure, a Party publishing a notice or transmitting a notification in accordance with Article 2.9, 2.10, 5.6 or 5.7 of the TBT Agreement shall include an explanation of the objectives and the rationale for the proposal and how it addresses those matters.
2. At the same time as it notifies WTO Members of the proposal in accordance with the TBT Agreement:
- (a) Korea shall transmit the notification referred to in paragraph 1 electronically to New Zealand's enquiry point established under Article 10 of the TBT Agreement ; and
  - (b) New Zealand shall transmit the notification referred to in paragraph 1 electronically to Korea's contact point established under Article 6.10.5.
3. Each Party should allow at least 60 days after it transmits a notification in accordance with Article 2.9 or 5.6 of the TBT Agreement for the other Party to make comments on the proposal in writing.
4. Where goods are covered by an annex or an implementing arrangement to which Article 6.12 applies and a Party takes a measure to manage an urgent problem that it considers those goods may pose to health, safety or the environment, it shall notify the other Party immediately, through the contact points established under Article 6.10.5, of the measure and the reasons for the imposition of the measure.

5. On the 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 6.10 : Committee on Technical Barriers to Trade**

1. The Parties hereby establish a Committee on Technical Barriers to Trade (hereinafter referred to as “the Committee”), which shall comprise representatives of the Parties. The Committee may meet in person, via teleconference, via video-conference or through any other means, as agreed by the Parties.

2. The functions of the Committee shall include:

- (a) promoting and monitoring the implementation and administration of this Chapter;
- (b) enhancing co-operation in the development and improvement of standards, technical regulations, and conformity assessment procedures;
- (c) ensuring appropriate steps are taken promptly to address any issue that a Party may raise related to the development, adoption, application, or enforcement of technical regulations or conformity assessment procedures;
- (d) considering any sector-specific proposal a Party makes for further co-operation between regulatory authorities, accreditation bodies or conformity assessment bodies, including, where appropriate, between governmental and non-governmental conformity assessment bodies located in the Parties’ territories;
- (e) considering a request 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 developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;
- (g) on the request of the other Party, promptly facilitating technical discussions on any matter arising under this Chapter, which shall be without prejudice to the rights and obligations of the Parties under Chapter 19 (Dispute Settlement);
- (h) taking any other steps the Parties consider will enhance their implementation of the TBT Agreement and facilitate trade in goods between them;
- (i) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to the Chapter in light of those developments; and

(j) establishing working groups to undertake specific tasks under this Chapter.

3. The Parties shall take such reasonable measures as may be available to them to ensure that representatives of bodies responsible for the technical regulations, standards or conformity assessment procedures that are the subject of the technical discussions under paragraph 2(g) participate in those discussions.

4. The Committee shall meet within one year of entry into force of this Agreement, or at times mutually agreed by the Parties.

5. The Committee shall be coordinated by the following contact points:

(a) for Korea, the Korean Agency for Technology and Standards, or its successor; and

(b) for New Zealand, the Ministry of Business, Innovation and Employment, or its successor.

6. The contact points may communicate by any agreed method that is appropriate for the efficient and effective discharge of their functions.

7. The Parties shall notify each other promptly of any change of their contact points or any changes to the details of the relevant officials.

8. The contact points shall work jointly in order to facilitate implementation of this Chapter and co-operation between the Parties in all matters pertaining to this Chapter.

#### **Article 6.11 : Information Exchange**

A Party shall provide any information or explanation requested by the other Party pursuant to this Chapter in print form or electronically within a reasonable period. A Party shall endeavour to respond to each such request within 60 days.

#### **Article 6.12 : Annexes and Implementing Arrangements**

1. The Parties may conclude annexes to this Chapter setting out agreed principles and procedures relating to technical regulations and conformity assessment procedures applicable to goods traded between them.

2. The Parties may, through the Committee, conclude implementing arrangements setting out:

(a) details for the implementation of the annexes to this Chapter; and

(b) arrangements resulting from work programmes established under Article 6.8.6.

3. The Parties shall take account of any existing bilateral, regional and multilateral arrangements concerning technical regulations and conformity assessment procedures that both Parties participate in when developing annexes and implementing arrangements.
4. Where implementing arrangements have been concluded, they shall be applied to trade between the Parties.
5. The Parties agree to maintain a programme of ongoing review and enhancement of annexes and implementing arrangements.
6. The Parties shall facilitate dialogue on mutual recognition agreements or arrangements for conformity assessment, and discuss the feasibility of developing mutual recognition agreements or arrangements. The Parties shall give due consideration to any sector specific proposal made by either Party.<sup>1</sup>

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<sup>1</sup> Korea's interests in this regard include telecommunication equipment, electrical and electronic equipment, electromagnetic compatibility and medical devices. New Zealand's interests in this regard include alcoholic beverages.