

## **CHAPTER 6**

### **TECHNICAL BARRIERS TO TRADE**

#### **ARTICLE 6.1: OBJECTIVES**

The objectives of this Chapter are to further the implementation of the TBT Agreement and to facilitate trade between the Parties through:

- (a) cooperation to ensure that technical regulations, standards and conformity assessment procedures do not create unnecessary barriers to trade;
- (b) improving access to information on technical regulations, standards and conformity assessment procedures;
- (c) enhancing mutual understanding of each Party's technical regulations, standards and conformity assessment procedures;
- (d) establishing communication links between agencies in the Parties and fostering cooperation at the regulatory level;
- (e) building on existing cooperation between standards, accreditation and conformity assessment organisations for the purpose of promoting recognition and acceptance of the results of conformity assessment; and
- (f) encouraging the reduction of transaction costs between the Parties.

#### **ARTICLE 6.2: SCOPE**

1. Unless otherwise provided in paragraphs 2 and 3, this Chapter applies to all standards, technical regulations and conformity assessment procedures of the central government that may, directly or indirectly, affect trade in goods between the Parties.
2. This Chapter does not apply to purchasing specifications prepared by government bodies for production or consumption requirements of such bodies.
3. This Chapter does not apply to sanitary and phytosanitary measures which are covered by Chapter 5 (Sanitary and Phytosanitary Measures).
4. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its rights and obligations under the TBT Agreement, standards, technical regulations and conformity assessment procedures.

5. Each Party shall take such reasonable measures as may be available to it to ensure compliance with the provisions of this Chapter by local government bodies and non-government bodies within its territory.

#### ARTICLE 6.3: DEFINITIONS

For the purposes of this Chapter:

- (a) **TBT Agreement** means the *Agreement on Technical Barriers to Trade* contained in Annex 1A of the WTO Agreement; and
- (b) **technical regulation, standard and conformity assessment procedures** shall have the meanings assigned to them in Annex 1 of the TBT Agreement.

#### 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

The Parties shall use international standards, guidelines and recommendations, or the relevant parts of international standards, as a basis for their technical regulations and related conformity assessment procedures where relevant international standards exist or their completion is imminent, unless such international standards or their relevant parts are ineffective or inappropriate to fulfil legitimate objectives.

#### ARTICLE 6.6: TECHNICAL REGULATIONS

1. 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 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 its reasons. The Parties will, if they so agree, give further consideration to whether a Party should accept a particular regulation as equivalent to its own and consider establishing an *ad hoc* working group, as provided for in Article 6.13.5(e), for this purpose.

#### ARTICLE 6.7: CONFORMITY ASSESSMENT PROCEDURES

1. The Parties shall work cooperatively, in particular on mandatory conformity assessment procedures, with a view to facilitating trade.
2. The Parties recognise that a broad range of mechanisms exists to facilitate the acceptance of conformity assessment procedures and the results thereof.
3. The Parties agree to exchange information on conformity assessment procedures, including testing, inspection, certification, accreditation and metrology, with a view to building mechanisms for cooperation in the field of conformity assessment procedures in a manner consistent with the TBT Agreement and the relevant domestic legislation of the Parties.
4. The Parties agree to encourage their conformity assessment bodies to work more closely with a view to facilitating the acceptance of conformity assessment results between both Parties.
5. Subject to paragraph 6, each Party shall accredit or otherwise recognise conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory.
6. China's domestic legislation requires a cooperation agreement between the Parties or their competent authorities before it can accredit, approve, license or otherwise recognise a body in the territory of Australia for assessing conformity with a particular technical regulation or standard.
7. This Article shall not preclude a Party from undertaking conformity assessment solely within specific government bodies located in its own territory or in the other Party's territory, subject to its obligations under the TBT Agreement.

#### ARTICLE 6.8: TRANSPARENCY

1. The Parties acknowledge the importance of transparency in decision-making on proposed technical regulations and conformity assessment procedures. Where a Party publishes a notice in accordance with Article 2.9 or 5.6 of the TBT Agreement, it shall:
  - (a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and
  - (b) transmit the proposal electronically from its own national TBT enquiry point to the enquiry point of the other Party established under Article 10 of the TBT Agreement, at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement.

Each Party, after it transmits a proposal to the other Party, should allow at least 60 days for the other Party to make comments in writing on the proposal.

2. Each Party shall respond in print or electronically to comments it receives from the other Party before it publishes the final technical regulation or conformity assessment procedure.

3. Where a Party makes an urgent notification in accordance with Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time transmit electronically the notification to the other Party through the enquiry point referenced in paragraph 1(b).

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

5. A Party shall provide in a timely manner responses to all reasonable requests received from the other Party for information, where available, concerning technical regulations and conformity assessment procedures, products subject to conformity assessment requirements, charges and fees for conducting conformity assessment activities, bodies accredited to carry out certification and laboratory testing activities, and the scope of business of such bodies.

6. The Parties, through their competent regulatory authorities, shall endeavour to enhance cooperation and develop mechanisms to notify the other Party, in a timely manner, of any relevant and possibly emerging product problems, the measures to be taken, and the reasons for the imposition of the measures.

#### ARTICLE 6.9: TRADE FACILITATION

1. The Parties shall work cooperatively in the fields of standards, technical regulations and conformity assessment procedures to facilitate trade between the Parties. In particular, the Parties shall seek to identify bilateral initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors so as to facilitate trade. Such initiatives may include:

- (a) cooperation on regulatory issues, such as convergence or equivalence of technical regulations and standards;
- (b) alignment with international standards;
- (c) feasibility of acceptance and reliance on a supplier's declaration of conformity;

- (d) use of accreditation to qualify conformity assessment bodies; and
- (e) cooperation through recognition of conformity assessment procedures.

2. The Parties shall encourage their respective standardising and conformity assessment bodies to consult and exchange views when developing standards, guidelines, recommendations or policies relevant to this Chapter, and to consult and exchange views on major issues under discussion in relevant international or regional bodies.

#### ARTICLE 6.10: INFORMATION EXCHANGE

Any information or explanation that is provided on request of a Party in accordance with this Chapter shall be provided in print or electronically within a reasonable period of time.

#### ARTICLE 6.11: COOPERATION AND TECHNICAL ASSISTANCE

1. Each Party recognises the rights and obligations relating to technical assistance in the TBT Agreement, especially for developing country Members.

2. Considerable cooperation already exists between the Parties and their competent authorities on TBT issues. To support implementation of this Chapter and increase mutual understanding of their respective systems, the Parties, through the Committee on Technical Barriers to Trade established under Article 6.13, shall consider further cooperation and technical assistance programs in the field of technical barriers to trade. Such cooperation and technical assistance may include:

- (a) conducting joint studies, symposiums and seminars;
- (b) exchange of information in respect of technical regulations, standards, conformity assessment procedures and good regulatory practice;
- (c) supporting the activities of international standardisation bodies and the WTO Committee on Technical Barriers to Trade;
- (d) reinforcing the role of international standards as a basis for technical regulations and conformity assessment procedures;
- (e) promoting the accreditation of conformity assessment bodies on the basis of relevant standards and guides of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC); and
- (f) any other areas as agreed by the Parties.

#### ARTICLE 6.12: CONSULTATION AND DISPUTE SETTLEMENT

1. The Parties shall endeavour to resolve any matter arising under this Chapter through cooperative mechanisms under this Chapter.
2. Neither Party shall have recourse to the provisions in Chapter 15 (Dispute Settlement) for any matter arising under this Chapter.

#### ARTICLE 6.13: COMMITTEE ON TECHNICAL BARRIERS TO TRADE

1. The Parties hereby establish the Committee on Technical Barriers to Trade (hereinafter referred to in this Article as the “Committee”), comprising representatives of each Party.
2. The Committee shall be:
  - (a) composed of representatives of the competent authorities of the Parties, who, upon agreement, may also invite representatives of relevant entities with necessary expertise relevant to the issues to be discussed; and
  - (b) co-chaired by officials of the competent authorities of the Parties.
3. For the purposes of this Article, the Committee shall be coordinated by Chapter Coordinators (“the Coordinators”):
  - (a) in the case of Australia, the Department of Industry or its successor; and
  - (b) in the case of China, the General Administration of Quality Supervision, Inspection and Quarantine or its successor.
4. The Coordinators shall also facilitate the implementation of this Chapter and the decisions of the Committee. The Coordinators shall communicate with each other by any agreed method that is appropriate for the efficient and effective discharge of their functions.
5. The Committee’s functions shall include:
  - (a) reviewing and monitoring the implementation and administration of this Chapter, including in light of any developments under the WTO Committee on Technical Barriers to Trade as well as the TBT Agreement, and, if necessary, developing recommendations for supplementing this Chapter;

- (b) upon a Party's written request, consulting on issues concerning technical barriers to trade arising under this Chapter. Where a Party declines a request from the other Party to consult on an issue relevant to this Chapter, it shall, on request, explain its reasons for its decision;
- (c) providing information on standards, technical regulations and conformity assessment procedures of a Party in response to all reasonable requests for information from the other Party;
- (d) discussing and developing appropriate project proposals on technical assistance and cooperation as needed and agreed by the Parties, and monitoring implementation;
- (e) establishing *ad hoc* working groups to discuss specific technical issues as needed and agreed by the Parties;
- (f) reporting to the FTA Joint Commission on its findings and the outcome of its discussions; and
- (g) carrying out other functions as may be delegated to it by the FTA Joint Commission.

6. In its first meeting, the Committee shall adopt its rules of procedure, which shall be updated if necessary.

7. The Committee shall convene at least once every two years, unless the Parties agree otherwise. The Committee may meet in person, by teleconference, by videoconference, or by any other means agreed by the Parties. The Parties may avail themselves of the opportunity to meet, where possible, in conjunction with other meetings related to the Agreement or in the margins of international meetings.