

CHAPTER 4

STANDARDS, TECHNICAL REGULATIONS, AND CONFORMITY ASSESSMENT PROCEDURES

Article 4.1: Consolidation with Amendments

The Agreement on Trade in Goods which entered into force on 1 January 2005 continues to remain in force with amendments as consolidated in this Chapter.

Article 4.2: Definitions

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

Article 4.3: Objectives

The objectives of this Chapter are to facilitate trade in goods among the Parties by:

- (a) ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade;
- (b) enhancing the implementation of the Agreement on Technical Barriers to Trade in Annex 1A to the WTO Agreement ("TBT Agreement");
- (c) promoting mutual understanding of each Party's standards, technical regulations, and conformity assessment procedures;
- (d) strengthening information exchange and cooperation among the Parties in the field of standards, technical regulations, and conformity assessment procedures including in the work of relevant international bodies;
- (e) addressing the issues that may arise under this Chapter;
and
- (f) providing a framework for the implementation of this Chapter.

Article 4.4: Scope

1. This Chapter shall apply to the standards, technical regulations, and conformity assessment procedures of each Party that may, directly or indirectly, affect trade in goods among the Parties. It shall exclude:
 - (a) sanitary and phytosanitary measures which are covered in Chapter 5 (Sanitary and Phytosanitary Measures); and
 - (b) purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies.
2. Each Party shall take such reasonable measures as may be available to it to ensure compliance, in the implementation of this Chapter, by local government bodies 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. Nothing in this Chapter shall prevent a Party from preparing, adopting, applying, or maintaining standards, technical regulations, and conformity assessment procedures in a manner consistent with the TBT Agreement and this Chapter.

Article 4.5: Affirmation and Incorporation of the TBT Agreement

1. The following provisions of the TBT Agreement are incorporated into and made part of this Chapter, *mutatis mutandis*:
 - (a) Article 2, except paragraphs 4, 7, 8, and 12;
 - (b) paragraph 2 of Article 4;
 - (c) Article 5, except paragraph 4;
 - (d) paragraph 1 of Article 9; and
 - (e) Annex 3, except paragraph A.

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

2. In the event of any inconsistency between any provision of the TBT Agreement incorporated under paragraph 1 and other provisions of this Chapter, the latter shall prevail.

Article 4.6: 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 to the TBT Agreement.
2. Each Party shall encourage its standardising body or bodies to cooperate with the standardising body or bodies of other Parties. Such cooperation shall include:
 - (a) exchange of information on standards;
 - (b) exchange of information relating to standard setting procedures; and
 - (c) international standardising activities in areas of mutual interest.
3. 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 another Party, encourage its standardising body or bodies to provide what the differences in the contents and structure are, and the reason for those differences. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic persons.
4. Further to paragraph 3, 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.

Article 4.7: 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 another Party, explain the reasons therefor.

2. In implementing paragraph 2 of Article 2 of the TBT Agreement, each Party shall consider available alternatives in order to ensure that the proposed technical regulations to be adopted are not more trade-restrictive than necessary to fulfil a legitimate objective.
3. Each Party shall give positive consideration to accepting as equivalent, technical regulations of another Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfill the objectives of its own regulations.
4. Where a Party does not accept a technical regulation of another Party as equivalent to its own, it shall, upon request of the other Party, explain the reasons for its decision.
5. 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 another Party, provide its reason therefor.
6. Except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise, 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 exporting Parties to adapt their products or methods of production to the requirements of importing Parties. 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.
7. On request of a Party that has an interest in developing a technical regulation similar to a technical regulation of another Party, the requested Party shall provide, to the extent practicable, relevant information, including studies or documents, except for confidential information, on which it has relied in its development.
8. Each Party shall uniformly and consistently apply its technical regulations that are prepared and adopted by its central government bodies to its whole territory. For greater certainty,

nothing in this paragraph shall be construed to prevent local government bodies from preparing, adopting, and applying additional technical regulations in a manner consistent with the provisions of the TBT Agreement.

Article 4.8: International Standards, Guides, and Recommendations

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 takes into account 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 (“WTO TBT Committee”). Such international standards may include those developed by the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU) and the Codex Alimentarius Commission (CAC).
3. The Parties shall, where appropriate, strengthen coordination and communication with each other in the context of discussions on international standards and related issues in other international fora, such as the WTO TBT Committee.

Article 4.9: Conformity Assessment Procedures

1. Each Party shall seek to enhance the acceptance of the results of conformity assessment procedures conducted in the territories of other Parties with a view to increasing efficiency, avoiding duplication, and ensuring cost-effectiveness of the conformity assessments.

2. 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; fundamental technological or infrastructural problems.
3. The Parties agree to encourage cooperation between their relevant conformity assessment bodies, and may encourage cooperation between their relevant competent authorities of conformity assessment¹ in working closer with a view to facilitating the acceptance of conformity assessment results between the Parties. Each Party shall ensure, whenever possible, that results of conformity assessment procedures in another Party are accepted, even when those procedures differ from its own, unless those procedures do not offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.
4. A Party shall, upon request of another Party, provide its reasons for not accepting the results of any conformity assessment procedure performed in the territory of that other Party.
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 another Party. Such mechanisms may include:
 - (a) mutual recognition agreements for the results of conformity assessment procedures conducted by bodies in the Parties concerned;
 - (b) voluntary cooperative arrangements, such as joint development of conformity assessment procedures in areas of mutual interest, between China's Competent Authorities of Standards and Conformity Assessment and relevant ASEAN committees including its working groups;

¹ "Competent authorities of conformity assessment" refers to the national competent authorities of China and ASEAN Member States, where applicable.

- (c) the use of accreditation to qualify conformity assessment bodies, including through relevant multilateral agreements or arrangements, to recognise the accreditation granted by another Party;
 - (d) the designation of conformity assessment bodies in another Party;
 - (e) unilateral recognition by a Party of results of conformity assessment procedures conducted in another Party; and
 - (f) the manufacturer's or the 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 results of conformity assessment procedures, or promoting the recognition of conformity assessment procedures in a manner consistent with the provisions of the TBT Agreement and the laws and regulations of the Parties concerned. Consideration should be given to applying information technology to enhance the transparency of information on conformity assessment procedures, policies and developments of the Parties, and to facilitate information access of stakeholders.
7. The Parties recognise the important role that relevant regional and international organisations can play in cooperation in the area of conformity assessment, and agree to promote the acceptance of the results of conformity assessment procedures among members under the relevant regional or international organisations. In this regard, when cooperating in conformity assessment, the Parties shall take into consideration their participation in the applicable regional or international organisations such as IEC, ITU, International Accreditation Forum (IAF), International Laboratory Accreditation Cooperation (ILAC), Asia-Pacific Accreditation Cooperation (APAC), the International Bureau of Weights and Measures (BIPM), the International Organisation of Legal Metrology (OIML) and other relevant regional or international organisations.
8. A Party shall give positive consideration to a request by another Party to enter into negotiations for a mutual recognition agreement.

9. The Parties shall explore and upon agreement, develop and implement Mutual Recognition Agreement in areas of mutual interest.
10. Each Party shall explain, on the request of the other Party, the reasons for its decision not to enter into negotiations for a mutual recognition agreement.
11. Each Party shall, whenever possible, permit the participation of conformity assessment bodies in another Party in its conformity assessment procedures under conditions no less favourable than those accorded to conformity assessment bodies in the Party.
12. Where a Party permits participation of its conformity assessment bodies and does not permit participation of conformity assessment bodies in another Party in its conformity assessment procedures, it shall, on request of that other Party, explain the reason for its refusal decision.

Article 4.10: Transparency

1. The Parties recognise the importance of the provisions relating to transparency in the TBT Agreement. In this respect, the Parties shall take into account relevant decisions and recommendations in the *Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995 (G/TBT/1/Rev.13)*, as may be revised.
2. Each Party affirms its commitment to ensuring that information regarding proposed new or amended technical regulations, standards and conformity assessment procedures is made available in accordance with the relevant requirements of the TBT Agreement.
3. Each Party shall make available the full text of its notified technical regulations and conformity assessment procedures to a requesting Party within 15 working days after receiving a written request. If the full text is unavailable, the Party shall provide to the requesting Party a summary stating the requirements of the notified technical regulations and conformity assessment procedures in the English language, within a reasonable period of time agreed by the Parties concerned 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.
4. Each Party shall, on request of another 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.
 5. 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 Parties 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 Parties into account and shall endeavour to provide responses to those comments upon request.
 6. Each Party shall allow persons of another Party to participate in consultation procedures that are open to the general public for the development of technical regulations, national standards and conformity assessment procedures by the Party, subject to its laws and regulations, on terms no less favourable than those accorded to its own persons.
 7. When a Party detains an imported consignment 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.
 8. 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 concerned and, if possible, within 60 days. Upon request, the requested Party shall provide such information or explanation in the language or languages agreed by the Parties concerned or, whenever possible, in the English language.

Article 4.11: Technical Consultations

1. When a Party considers the need to resolve an issue related to trade and provisions under this Chapter, it may request technical consultations. The requested Party shall respond as early as possible to such request.

2. The requested Party shall enter into technical consultations within 60 days after receiving the request. With a view to reaching a mutually satisfactory solution. Technical consultations may be conducted via any means agreed by the Parties concerned. If a requesting Party considers that the matter is urgent, it may request that any technical discussion take place within 30 days. The responding Party shall give positive consideration to that request.
3. Where a matter covered under this Chapter cannot be clarified or resolved as a result of consultations, the relevant Parties should establish an *ad hoc* working group, endorsed by the Committee on Standards, Technical Regulations, and Conformity Assessment Procedures (“STRACAP Committee”) referred to in Article 4.14 (Committee on Standards, Technical Regulations, and Conformity Assessment Procedures), to identify a workable and practical solution that would facilitate trade.
4. If a Party rejects the request of the other Party for the establishment of an *ad hoc* working group, that Party, upon request of the other Party, shall explain the reason for its rejection.

Article 4.12: Technical Cooperation

1. The Parties shall intensify their joint efforts in the fields of standards, technical regulations, and conformity assessment procedures in the areas of mutual interest, consistent with the objectives of this Chapter.
2. Each Party shall, upon request of another Party, give positive consideration to proposals to strengthen existing cooperation on standards, technical regulations, and conformity assessment procedures. Such cooperation, which shall be on mutually determined terms and conditions, may include:
 - (a) advice, technical exchange, technical assistance, capacity building or joint study relating to the development and application of standards, technical regulations, and conformity assessment procedures;

- (b) encouraging cooperation between conformity assessment bodies, both governmental and non-governmental, in the Parties, in the areas of mutual interest;
 - (c) use of accreditation to qualify conformity assessment bodies;
 - (d) enhancing technical capacity in calibration, testing, inspection, certification and accreditation to meet relevant international standards, recommendations and guidelines;
 - (e) 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 such regional and international bodies;
 - (f) strengthening communication and coordination in the WTO TBT Committee and other relevant regional or international fora;
 - (g) enhancing cooperation in the development and improvement, of standards, technical regulations, and conformity assessment procedures. In the absence of international standards, which shall be used as the first priority, or when the available international standards or their relevant parts would be ineffective or inappropriate, a Party may request the other Party to consider using the standard or technical regulation of another Party as reference to harmonise standards based on mutual interest; and
 - (h) sharing of experience in the implementation of the principle of transparency pursuant to Article 4.10 (Transparency).
3. Each Party shall, on request of another Party, give consideration to sector-specific proposals for mutual benefit for cooperation under this Chapter.

Article 4.13: Contact Points

1. Each Party shall, within 30 days of the date of entry into force of the CAFTA 3.0 Upgrade Protocol for that Party, designate a contact point or contact points.

2. Each Party shall provide the other Parties with the name and contact details of the designated contact point or contact points, including telephone, facsimile, email and any other relevant details. Each Party shall notify the other Parties promptly of any change in the name and contact details of its contact point or contact points.
3. Each Party shall ensure that its contact point or contact points have the responsibility for coordinating the implementation of this Chapter and the facilitation of 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 another Party.

Article 4.14: Committee on Standards, Technical Regulations, and Conformity Assessment Procedures

1. The Parties hereby establish a Committee on Standards, Technical Regulations, and Conformity Assessment Procedures (“STRACAP Committee”), consisting of representatives of the Parties, to monitor the implementation of this Chapter.
2. The STRACAP Committee shall review or revise the existing CAFTA SC STRACAP Work Programme in response to new priorities as identified and agreed by the Parties.
3. The STRACAP Committee may invite experts from international organisations, private sector entities, business communities, or other relevant institutions to participate in relevant activities as needed.
4. The STRACAP Committee may explore participation at platforms such as the China-ASEAN Standardization Cooperation Forum, and other agreed organisations where representatives may share and exchange views about ongoing cooperation under the agreement.
5. The STRACAP Committee shall report to the China-ASEAN Free Trade Area Joint Committee (“CAFTA-JC”).
6. The Parties recognise the importance of financial support for STRACAP cooperation. The Parties shall utilise the China-ASEAN Cooperation Fund and voluntary donations from Parties to promote capacity building and cooperation.

Article 4.15: Disclosure of Information

Nothing in this Chapter shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 4.16: Confidentiality

Unless otherwise provided in this Chapter, where a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the other Party shall, subject to its laws and regulations, maintain the confidentiality of the information.

Article 4.17: Amended or Successor International Agreements

If any international agreement, or any provision therein, referred to in this Chapter or incorporated into this Chapter is amended, or such an international agreement is succeeded by another international agreement, the Parties shall, on request of any Party, consult on whether it is necessary to amend this Chapter, unless otherwise provided in this Chapter.