

6. Replace Chapter 6 (Customs) with:

## **CHAPTER 6**

### **STANDARDS, TECHNICAL REGULATIONS, AND CONFORMITY ASSESSMENT PROCEDURES**

#### **Article 6.1**

#### **Objectives**

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

- (a) ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade;
- (b) enhancing the implementation of the TBT Agreement;
- (c) promoting mutual understanding of each Member State's standards, technical regulations, and conformity assessment procedures;
- (d) strengthening information exchange and co-operation among the Member States 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 to realise these objectives.

## **Article 6.2**

### **Scope**

1. This Chapter shall apply to the standards, technical regulations, and conformity assessment procedures of central government bodies that may affect trade in goods among the Member States. This Chapter shall not apply to:

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

2. Each Member State 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 Member State 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 6.3**

### **Definition**

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

## **Article 6.4**

### **Affirmation and Incorporation of the TBT Agreement**

1. Each Member State affirms its rights and obligations under the TBT Agreement and the following provisions of the TBT Agreement are incorporated into and made part of this Agreement, *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 3 of Article 6;
- (e) paragraph 1 of Article 9; and
- (f) Annex 3, except paragraph A.

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 6.5**

### **General Provisions**

1. Member States shall take any of the following possible measures or their combinations to mitigate, if not totally eliminate, unnecessary technical barriers to trade:

- (a) harmonise national standards with relevant international standards and practices;
- (b) promote mutual recognition of conformity assessment results among Member States;
- (c) develop and implement ASEAN Sectoral Mutual Recognition Arrangements and develop ASEAN Harmonised Regulatory Regimes in the regulated areas where applicable; and
- (d) strengthen the co-operation among National Accreditation Bodies and National Metrology Institutes (NMIs) including relevant legal metrology authorities in ASEAN to facilitate the implementation of Mutual Recognition Arrangements (MRAs) in regulated and non-regulated sectors.

## **Article 6.6**

### **International Standards, Guides, and Recommendations**

1. Member States 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 Member State 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 (hereinafter referred to as “WTO TBT Committee” in this Chapter).

3. Member States shall, where appropriate, strengthen co-ordination 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 6.7**

### **Standards**

1. With respect to the preparation, adoption, and application of standards, each Member State 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. Whenever modifications of contents and structure of the relevant international standards are necessary, Member States shall ensure an easy comparison of the contents and structure of their national standards with the referenced international standards and provide information to explain the reason for such modifications. Member States shall endeavour to provide additional information at no cost within 30 days after receiving a written request. If the Member State is unable to provide the additional information at no cost, any fees charged for this service shall, apart from the cost of delivery, be the same for foreign and domestic persons.

3. In harmonising national standards, Member States shall, as the first and preferred option, adopt the relevant international standards when preparing new national standards or revising existing national standards. Where international standards are not available, the harmonisation of national standards shall be based on the latest edition of the ASEAN Guidelines for Harmonisation of Standards.

4. Further to paragraph 2, each Member State 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 technical barriers to international trade.

5. Each Member State shall encourage co-operation between the relevant standardising body or bodies in its territory and the standardising body or bodies of other Member States, in areas such as:

- (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.

6. Member States are encouraged to actively participate in the development of international standards, particularly in those sectors that have trade potential for ASEAN.

## **Article 6.8**

### **Technical Regulations**

1. Each Member State 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 Member State does not use such international standards, or their relevant parts, as a basis for its technical regulations, it shall, on request of another Member State, explain the reasons therefor.

2. In the preparation, adoption, and application of technical regulations, Member States shall ensure that:

- (a) these are not adopted with a view to, or with the effect of, creating technical barriers to trade;
- (b) these are based on international or national standards that are harmonised to international standards, except where legitimate reasons for deviations exist;
- (c) alternative means that are not more trade-restrictive than necessary to achieve the legitimate objectives are considered before a decision is taken on the adoption of technical regulations;
- (d) the adoption of prescriptive standards is avoided to ensure that unnecessary technical barriers to trade are not introduced, to enhance fair competition in the market or that it does not lead to a reduction of business flexibility; and
- (e) treatment accorded to products imported from Member States is no less favourable than that accorded to like products of national origin and to like products originating from any other Member State.

3. Member States shall also ensure that, wherever applicable, the preparation, adoption, and application of technical regulations are to facilitate the implementation of the respective ASEAN Sectoral Mutual Recognition

## Arrangements and ASEAN Harmonised Regulatory Regimes or ASEAN Directives.

4. Each Member State shall give positive consideration to accepting as equivalent, technical regulations of another Member State, even if those regulations differ from its own, provided it is satisfied that those regulations adequately fulfil the objectives of its own regulations.

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

6. In implementing paragraph 8 of Article 2 of the TBT Agreement, when a Member State does not specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics, the Member State shall, on request of another Member State, provide its reason therefor.

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

8. On request of a Member State that has an interest in developing a technical regulation similar to a technical regulation of another Member State, the requested Member State shall provide, to the extent practicable, relevant information, including studies or documents, except for

confidential information, on which it has relied in its development.

9. Each Member State 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.

10. Whenever the need for technical regulations is urgent for overcoming problems that arise or threaten to arise within the territory of a Member State and the available time does not allow such Member State to harmonise the relevant national standards, that Member State shall consider using the appropriate international standards or the relevant parts of them as the first alternative.

## **Article 6.9**

### **Conformity Assessment Procedures**

1. Further to paragraph 4 of Article 5 of the TBT Agreement, each Member State 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 Member State 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.

2. Each Member State recognises the importance of accepting the results of conformity assessment procedures

conducted in another Member State with a view to increasing efficiency, avoiding duplication, and ensuring cost effectiveness of conformity assessments.

3. Member States shall develop and implement ASEAN Sectoral Mutual Recognition Arrangement and ASEAN Harmonised Regulatory Regimes or ASEAN Directives in the regulated areas, where appropriate, in accordance with the provisions of the *ASEAN Framework Agreement on Mutual Recognition Arrangements*, done at Hanoi, Viet Nam on 16 December 1998 (Framework Agreement on MRA) and other relevant ASEAN guidelines, where appropriate.

4. Each Member State shall ensure, whenever possible, that results of conformity assessment procedures in another Member State 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.

5. Member States shall accept the results of conformity assessment produced by conformity assessment bodies designated by other Member States in accordance with the provisions of the Framework Agreement on MRA and the provisions of the respective ASEAN Sectoral Mutual Recognition Arrangements in all regulated areas.

6. A Member State shall, on request of another Member State, explain its reasons for not accepting the results of a conformity assessment procedure conducted in the other Member State.

7. Each Member State recognises that, depending on the situation of the Member State 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 Member State. Such mechanisms may include:

- (a) mutual recognition agreements for the results of conformity assessment procedures conducted by bodies in the Member States concerned;
- (b) co-operative (voluntary) arrangements between accreditation bodies or those between conformity assessment bodies in the Member States concerned;
- (c) the use of accreditation to qualify conformity assessment bodies, including through relevant multilateral agreements or arrangements, to recognise the accreditation granted by other Member States;
- (d) the designation of conformity assessment bodies in another Member State;
- (e) unilateral recognition by a Member State of results of conformity assessment procedures conducted in another Member State; and
- (f) manufacturer's or supplier's declaration of conformity.

8. Upon reasonable request, the Member States concerned shall exchange information or share experiences on the mechanisms referred to in paragraph 7, including their development and application, with a view to facilitating the acceptance of the results of conformity assessment procedures.

9. Member States shall strengthen co-operation among National Accreditation Bodies, and NMIs, particularly legal metrology, in ASEAN to facilitate the implementation of MRAs in regulated and non-regulated sectors through respective ASEAN Consultative Committee for Standards and Quality (ACCSQ) working groups.

10. Member States recognise the important role that relevant international, including regional, organisations can play in co-operation in the area of conformity assessment. In this regard, each Member State shall take into consideration the participation status or membership in such organisations of relevant bodies in the Member States in facilitating this co-operation.

11. Member States agree to encourage co-operation between their relevant conformity assessment bodies in working closer with a view to facilitating the acceptance of conformity assessment results between Member States.

12. Each Member State shall, whenever possible, permit the participation of conformity assessment bodies in another Member State in its conformity assessment procedures under conditions no less favourable than those accorded to conformity assessment bodies in the Member State.

13. Further to Article 9.1 of the TBT Agreement, a Member State shall consider adopting measures to approve conformity assessment bodies that have accreditation for the technical regulations or standards of the importing Party, by an accreditation body that is a signatory to an international or regional mutual recognition arrangement. Member States recognise that these arrangements can address the key considerations in approving conformity assessment bodies, including technical competence, independence, and the avoidance of conflicts of interest.

14. Where a Member State permits participation of its conformity assessment bodies and does not permit participation of conformity assessment bodies in another Member State in its conformity assessment procedures, it shall, on request of that other Member State, explain the reason for its refusal decision.

## **Article 6.10**

### **Post Market Surveillance**

1. Member States shall establish post market surveillance systems to complement the implementation of the ASEAN Sectoral Mutual Recognition Arrangements and ASEAN Harmonised Regulatory Regimes or ASEAN Directives.
2. The relevant authority that undertakes the post market surveillance system of the Member States shall take the necessary actions to ensure compliance of products placed in the market with the applicable ASEAN Sectoral Mutual Recognition Arrangements and ASEAN Harmonised Regulatory Regimes or ASEAN Directives.
3. Member States should ensure that the necessary laws and technical infrastructure are in place to support post market surveillance systems.
4. The effectiveness of the post market surveillance systems shall be further enhanced through the establishment of alert systems to provide information on market surveillance and related activities as agreed between Member States with a view to increase awareness on non-compliance or safety of product among Member States.

## **Article 6.11**

### **Implementation**

1. Member States shall take all necessary measures to ensure implementation of all the ASEAN Sectoral Mutual Recognition Arrangements, ASEAN Harmonised Regulatory Regimes or ASEAN Directives, and the relevant provisions of this Agreement within the time frame stipulated in the aforesaid agreements and to ensure compliance with aforesaid harmonised requirements.

2. The ACCSQ shall be responsible for monitoring and ensuring the effective implementation of this Chapter in accordance with its Terms of Reference. The Terms of Reference shall be reviewed periodically.

3. The ACCSQ shall provide support and co-operation under the relevant ASEAN Free Trade Agreements (FTAs) with dialogue partners, including capacity building and institutional strengthening programmes for standards, technical regulations, and conformity assessment procedures chapters in such ASEAN FTAs.

## **Article 6.12**

### **Co-operation**

1. Member States shall strengthen their co-operation in the field of standards, technical regulations, and conformity assessment procedures, consistent with the objectives of this Chapter.

2. Each Member State shall, on request of another Member State, give positive consideration to proposals for co-operation on matters of mutual interest on standards, technical regulations, and conformity assessment procedures.

3. Such co-operation, 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) co-operation between respective governmental or non-governmental organisations in the Member States, responsible for standardisation, conformity

assessment, technical regulations, accreditation, and metrology, on matters of mutual interest;

- (c) co-operation 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) enhancing co-operation in the development and improvement of standards, technical regulations, and conformity assessment procedures; and
- (e) strengthening communication and co-ordination in the WTO TBT Committee and other relevant international or regional fora.

### **Article 6.13**

#### **Technical Discussion**

1. When a Member State 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 Member State shall respond as early as possible to such a request. The written request and response are preferably made through electronic means.

2. The requested Member State shall enter into technical discussions with the requesting Member State within 60 days after receiving the request, unless otherwise mutually determined by the Member States concerned, with a view to reaching a mutually satisfactory solution.

3. If requesting Member State considers that the matter is urgent, it may request that any technical discussion take place

within 30 days. The responding Member State shall give positive consideration to that request.

4. Technical discussions may be conducted *via* any means agreed by the Member States concerned.

5. Member States shall endeavour to resolve the matter as expeditiously as possible, recognising that the time required to resolve a matter will depend on a variety of factors, and that it may not be possible to resolve every matter through technical discussions.

6. Unless Member States that participate in the technical discussions agree otherwise, the discussions and any information exchanged in the course of the discussions shall be confidential and without prejudice to the rights and obligations of the participating Member States under this Agreement, the WTO Agreement, or any other agreement to which the participating Member States are party.

## **Article 6.14**

### **Transparency**

1. Member States recognise the importance of the provisions relating to transparency in the TBT Agreement. In this respect, Member States 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.15)*, as may be revised, issued by the WTO TBT Committee.

2. Upon written request, a Member State shall provide to the requesting Member State, if already available, the full text or summary of its notified technical regulations and conformity assessment procedures in the English language within 15 days after receiving the written request. If unavailable, the

Member State shall provide to the requesting Member State 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 Member States 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 Member State.

3. Each Member State shall, on request of another Member State, provide information regarding the objectives of, and rationale for, a technical regulation or conformity assessment procedure that the requested Member State has adopted or is proposing to adopt.

4. Each Member State 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 Member State to provide comments in writing, except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise. Each Member State shall take the comments of another Member State into account and shall endeavour to provide responses to those comments upon request.

5. Each Member State shall allow persons of another Member State to participate in consultation procedures that are available to the general public for the development of technical regulations, national standards and conformity assessment procedures by the Member State, subject to its laws and regulations, on terms no less favourable than those accorded to its own persons.

6. When a Member State 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.

7. Unless otherwise provided in this Chapter, any information or explanation requested by a Member State pursuant to this Chapter shall be provided by the requested Member State, in print or electronically, within a reasonable period of time agreed by the Member States concerned and, if possible, within 60 days. Upon request, the requested Member State shall provide such information or explanation in the language or languages agreed by the Member States concerned or, whenever possible, in the English language.

8. Each Member State shall publish by electronic means:

- (a) all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures; and
- (b) all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures,

of central government bodies, that a Member State is required to notify or publish under the TBT Agreement or this Chapter, and that may have a significant effect on trade.

## **Article 6.15**

### **Annex**

The legal instruments in Annex 6-A (List of Legal Instruments to Implement ATIGA) and any future legal instruments agreed by Member States to implement the provisions of this Chapter, shall form an integral part of this Chapter.

## **Article 6.16**

### **Application of Digital Technology**

Member States are encouraged to consider the use of digital technology in relevant standards, technical regulations, and conformity assessment procedures activities such as electronic means for product certification, product registration, or product notification, where applicable.

## **ANNEX 6-A**

### **LIST OF LEGAL INSTRUMENTS TO IMPLEMENT ATIGA**

#### **I. Mutual Recognition Arrangements**

1. ASEAN Framework Agreement on Mutual Recognition Arrangements done at Hanoi, Viet Nam on 16 December 1998.
2. ASEAN Sectoral Mutual Recognition Arrangement for Electrical and Electronic Equipment done at Bangkok, Thailand on 5 April 2002.
3. ASEAN Sectoral Mutual Recognition Arrangement for Good Manufacturing Practice (GMP) Inspection of Manufacturers of Medicinal Products done at Pattaya, Thailand on 10 April 2009.
4. ASEAN Mutual Recognition Arrangement for Bioequivalence Study Reports of Generic Medicinal Products done at Manila, Philippines on 2 November 2017.
5. ASEAN Sectoral Mutual Recognition Arrangement for Inspection and Certification Systems on Food Hygiene for Prepared Foodstuff Products done at Singapore on 27 April 2018.
6. ASEAN Mutual Recognition Arrangement on Type Approval for Automotive Products done at Nay Pyi Taw, Myanmar on 16 January 2021.
7. ASEAN Sectoral Mutual Recognition Arrangement for Building and Construction Materials done at Phnom Penh, Cambodia on 9 March 2024.

#### **II. Harmonised Regulatory Regimes and Directives**

1. Agreement on the ASEAN Harmonized Cosmetic Regulatory Scheme done at Phnom Penh, Cambodia on 2 September 2003.

2. Agreement on the ASEAN Harmonized Electrical and Electronic Equipment (EEE) Regulatory Regime done at Kuala Lumpur, Malaysia on 9 December 2005.
3. ASEAN Agreement on Medical Device Directive done at Bangkok, Thailand on 21 November 2014.
4. ASEAN Food Safety Regulatory Framework Agreement done at Nonthaburi, Thailand on 12 January 2024.