

## **CHAPTER 5**

### **TECHNICAL BARRIERS TO TRADE**

#### **Article 5.1: Definitions**

For the purposes of this Chapter, the terms and their definitions set out in Annex 1 of the TBT Agreement shall apply, *mutatis mutandis*.

#### **Article 5.2: Objectives**

The objectives of this Chapter are to increase and facilitate trade in goods through the enhanced implementation of the TBT Agreement, preventing and eliminating unnecessary technical barriers to trade, and the enhancement of bilateral cooperation.

#### **Article 5.3: Affirmation of the TBT Agreement**

The Parties affirm and incorporate their existing rights and obligations with respect to each other under the TBT Agreement, *mutatis mutandis*.

#### **Article 5.4: Scope**

1. This Chapter shall apply to the preparation, adoption, and application of all standards, technical regulations, and conformity assessment procedures, as defined in the TBT Agreement, that may, directly or indirectly, affect trade in goods between the Parties, including any amendments thereto and any addition to their rules or the product coverage thereof, except amendments and additions of an insignificant nature.
2. Notwithstanding paragraph 1, this Chapter shall not apply to:
  - (a) purchasing specifications prepared by governmental bodies for production or consumption requirements of these bodies; and
  - (b) sanitary and phytosanitary measures, as defined by Chapter 6 (Sanitary and Phytosanitary Measures).

#### **Article 5.5: International Standards**

1. The Parties recognize the important role that international standards, guides, and recommendations play in the harmonization of technical regulations, conformity assessment procedures, national standards and in reducing unnecessary barriers to trade.

2. The Parties shall use international standards, guides, and recommendations, or the relevant parts of them, to the extent provided in Articles 2 and 5 and Annex 3 to the TBT Agreement, as a basis for their technical regulations and related conformity assessment procedures where relevant international standards, guides, and recommendations exist or their completion is imminent, except when they or their relevant parts are ineffective or inappropriate to fulfil the legitimate objectives.

3. 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 Decisions of the Committee on Principles for the Development of International Standards, Guides and Recommendations (G/TBT/1/rev.15), as may be revised, and subsequent relevant decision and recommendations in this regard, adopted by the WTO Committee on Technical Barriers to Trade.

4. The Parties shall cooperate with each other, when feasible and appropriate, in the development of international standards, guides, and recommendations, in areas of mutual interest, that are likely to become a basis for technical regulations and conformity assessment procedures with a view that they do not create unnecessary obstacles to international trade.

#### **Article 5.6: National Standards**

1. With respect to the preparation, adoption, and application of national standards, each Party shall ensure that its standardizing body accepts and complies with Annex 3 of the TBT Agreement.

2. If modifications to the contents or structure of the relevant international standards were necessary in developing a Party's national standards, that Party shall comply with *ISO/IEC Guide 21-1 Regional or national adoption of International Standards and other International Deliverables — Part 1: Adoption of International Standards* in its current version. On request of the other Party, a Party shall endeavor to provide information, when applicable and feasible, and to reply any further questions raised. In case of any fees are charged for this service, that fees shall, apart from the real cost of delivery, be the same for foreign and domestic persons.

3. The Parties shall encourage cooperation between their standardizing bodies, in areas such as exchanging information relating to national standards and national standard setting procedures.

#### **Article 5.7: Technical Regulations**

1. Further to Article 2.7 of the TBT Agreement, if 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 within a reasonable period of time.

2. A Party seeking the acceptance of its technical regulation as equivalent should provide, as appropriate, information regarding the relationship of its technical regulation to international standards referenced in the technical regulation of the other Party, the circumstances which gave

rise to the adoption of its technical regulation, and the similarity of the respective conformity assessment procedures.

3. At the request of a Party which may have an interest in developing a similar technical regulation, and in order to minimize duplicate expenses, the other Party shall provide any available information or other relevant documents, except for confidential information on which it has relied in the development of a technical regulation.

4. When a Party detains a product that is imported from the territory of the other Party, 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, without undue delay, the reasons for the detention.

### **Article 5.8: Conformity Assessment**

1. The Parties recognize that, depending on the situation of a Party and specific sectors involved, a broad range of mechanisms exists to facilitate the acceptance of the results of conformity assessment procedures conducted in the other Party. Those mechanisms may include:

- (a) mutual recognition agreement for the results of conformity assessment procedures performed by designated or accredited conformity assessment bodies located in each other's territory with respect to specific technical regulations;
- (b) recognize existing regional and international mutual recognition arrangements among accreditation bodies;
- (c) voluntary cooperative arrangements between accreditation bodies or those between conformity assessment bodies in the Parties;
- (d) use of accreditation to qualify conformity assessment bodies, particularly international systems of accreditation;
- (e) designating conformity assessment bodies by the government of a Party which is located in the territory of the other Party to perform conformity assessment procedures;
- (f) unilateral recognition by a Party of results of conformity assessment procedures conducted in other Party; or
- (g) acceptance of supplier's declaration of conformity, subject to its law and regulations.

2. Each Party shall exchange information with the other Party on its experience in the development an application of the approaches in paragraph 1 and other appropriate approaches with a view to facilitating the acceptance of the results of conformity assessment procedures.

3. A Party shall, on request of the other Party, explain its reasons for not accepting the result

of any conformity assessment procedures performed in the territory of that other Party.

4. If a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a specific technical regulation or standard in its territory and refuses to accredit, approve, license or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request of that other Party, explain the reasons for its decision.

5. Each Party shall give positive consideration to a request by the other Party to negotiate and conclude agreements to facilitate recognition of the results of conformity assessment procedures conducted by bodies located in the territory of the other Party. If a Party declines that request, it shall, on request of that other Party, explain the reasons for its decision.

### **Article 5.9: Transparency**

1. Each Party shall notify all technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides, or recommendations.

2. The Parties acknowledge the importance of transparency in decision-making, including giving a meaningful opportunity to provide comments on proposed technical regulations and conformity assessment procedures. If a Party notify under Articles 2.9, 2.10, 3.2, 5.6, 5.7 and 7.2 of the TBT Agreement, it shall notify the proposal electronically to the other Party through the inquiry points that each Party has established under Article 10 of the TBT Agreement, at the same time as it notifies to the WTO.

3. Each Party shall allow 60 days from the date of notification to WTO in accordance with Articles 2.9, 3.2, 5.6 and 7.2 of TBT Agreement for the other Party to present comments, except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise. A Party shall give favorable consideration to reasonable requests for extending the comment period.

4. The Parties shall ensure that all adopted technical regulations and conformity assessment procedures are available on an official website that is publicly available.

5. Each Party shall take into due consideration the comments of the other Party and shall, on request of that Party, endeavor to provide responses to these comments on request within a reasonable timeframe.

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

7. For the purposes of applying Articles 2.12 and 5.9 of the TBT Agreement, the term “reasonable interval” means a period of not less than six months, except when this would be

ineffective in fulfilling the legitimate objectives pursued by the technical regulation or by the requirements concerning the conformity assessment procedure.

#### **Article 5.10: Technical Cooperation**

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations, and conformity assessment procedures consistent with the objectives of this Chapter.
2. Each Party shall, on request of the other Party, give positive consideration to proposal for cooperation on matters of mutual interest on standards, technical regulations, and conformity assessment procedures.
3. That cooperation, which shall be on mutually determined terms and conditions, may include:
  - (a) providing advice or technical assistance and exchange experiences to improve the other Party's systems in terms of standards, technical regulations, conformity assessment procedures, and related activities;
  - (b) evaluating the equivalence of their respective technical regulations, standards, and conformity assessment procedures;
  - (c) cooperation between conformity assessment bodies, both governmental and non-governmental, in the Parties, and improve infrastructure for calibration, testing, inspection, certification, and accreditation to comply with standards, relevant international recommendations, and guidelines;
  - (d) cooperation between their respective organizations responsible for standardization, accreditation, and metrology, with a view to addressing issues covered by this Chapter;
  - (e) cooperation in the development and promotion of good regulatory practices, and transparency, including mechanisms to promote better access to information on standards, technical regulations and conformity assessment procedures; or
  - (f) other areas as agreed by the Parties.
4. A Party shall, on request of other Party, give due consideration to any sector specific proposal for cooperation based on mutual benefit under this Chapter.

#### **Article 5.11: Committee on Technical Barriers to Trade**

1. The Parties hereby establish the Committee on Technical Barriers to Trade, comprising representatives of each Party.
2. The functions of the Committee on Technical Barriers to Trade shall include:

- (a) monitoring and managing the implementation of this Chapter;
- (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) sharing experiences on developments of both governmental or non-governmental, in regional and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;
- (d) where relevant, facilitating sectoral cooperation among governmental and non-governmental conformity assessment bodies in the territory of the Parties;
- (e) reviewing this Chapter in light of any developments under the TBT Agreement and when required, developing recommendations for amendments to this Chapter in light of those developments;
- (f) taking any other mutually agreed steps, the Parties consider will assist them in implementing this Chapter and the TBT Agreement;
- (g) as it considers appropriate, reporting to the Joint Commission on matters mutually agreed related to the implementation of this Chapter;
- (h) establishing, if necessary, for particular issues or sectors, working groups for the treatment of specific matters related to this Chapter; and
- (i) at a Party's request, consulting on any matter arising under this Chapter in accordance with Article 5.12 (Consultations).

3. The Committee on Technical Barriers to Trade shall meet at least once a year unless the Parties otherwise agree. The Committee on Technical Barriers to Trade shall carry out its work through the communication channels agreed to by the Parties, which may include electronic mail, videoconferencing, or other means.

4. The Committee on Technical Barriers to Trade shall be coordinated by contact points:

- (a) for Indonesia, the National Standardization Agency of Indonesia (*Badan Standardisasi Nasional - BSN*); and
- (b) for Peru, the Ministry of Foreign Trade and Tourism (*Ministerio de Comercio Exterior y Turismo - MINCETUR*);

or their successors.

5. Each Party shall provide the contact details of its designated contact point, and promptly notify the other Party of any change or amendments to the details of the relevant officials.

### **Article 5.12: Consultations**

1. A Party may request through contact points established under this Chapter to hold technical consultations with other Party in an attempt to resolve any concerns on specific issues arising from the application of this Chapter. The requested Party shall respond within 30 days to any reasonable request for that consultation. The Parties shall make every effort to reach a resolution.
2. The Parties shall enter into technical consultations within 60 days, from the date of the response received from the requested Party, unless otherwise determined by the Parties, with a view to reaching a mutually satisfactory solution. Technical consultations may be conducted by any means agreed by the Parties.
3. Where the Parties have had recourse to consultations under this Article, those consultations shall constitute consultations under Article 11.6 (Dispute Settlement - Consultations).

### **Article 5.13: Information Exchange**

1. A Party may request the other Party to provide information on any matter arising under this Chapter. A Party receiving a request under this paragraph shall provide that information within 60 days, by electronic means.
2. With respect to information exchanges, in compliance with Article 10 of the TBT Agreement, each Party shall endeavor to apply relevant and appropriate recommendations set out in *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 Committee on Technical Barriers to Trade.

### **Article 5.14: Implementing Agreements**

1. The Parties may negotiate any legal instruments, to deepen the implementation of this Chapter based on mutual interest, which shall form an integral part of this Chapter.
2. The rights and obligations set out in each legal instrument to this Chapter shall apply only with respect to the sector specified in that legal instrument, and shall not affect the rights or obligations of any Party under any other legal instrument.