CHAPTER 6

TECHNICAL BARRIERS TO TRADE

Article 6.1: Definitions

For the purposes of this Chapter, the terms and definitions of the *Agreement on Technical Barriers to Trade*, set out in Annex 1A to the WTO Agreement (hereinafter referred to as the "TBT Agreement") shall apply, *mutatis mutandis*.

Article 6.2: Objectives

The objectives of this Chapter are to:

(a) increase and facilitate trade between the Parties through collaborative efforts which shall ensure that the standards, technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade; and

(b) increase cooperation and technical assistance.

Article 6.3: General Provisions

The Parties affirm and incorporate in this Chapter the rights and obligations existing between them according to the TBT Agreement, *mutatis mutandis*.

Article 6.4: Scope and Obligations

1. This Chapter is applicable to all standards, technical regulations and conformity assessment procedures that may affect, directly or indirectly, trade in goods between the Parties.

2. Nothing in this Chapter shall prevent a Party from adopting or maintaining standards, technical regulations and conformity assessment procedures in accordance with its international rights and obligations, and conditions set out in the TBT Agreement.

3. This Chapter is not applicable to:

(a) sanitary and phytosanitary measures; and

(b) technical specifications prepared by governmental bodies for production or consumption requirements of such bodies.

Article 6.5: Trade Facilitation

1. The Parties agree to strengthen their national systems for standardisation, technical regulations and conformity assessment with a view to facilitating the access of goods to their respective markets. The Parties shall seek to identify initiatives that are appropriate for issues or sectors of common interest. Such initiatives may include, among others, cooperation and technical assistance on: regulatory issues such as convergence, recognition or harmonisation or equivalence of technical regulations, conformity assessment procedures and standards; alignment with international standards; promotion of reliance on a suppliers' declaration of conformity; and the use of accreditation to qualify conformity assessment bodies.

2. The Parties may start negotiations for the conclusion of mutual recognition agreements among their competent agencies in the areas of technical regulations and conformity assessment following the principles of the TBT Agreement. The terms of the mutual recognition agreements to be signed in the regulatory area will be defined in each case by the competent authorities of the Parties.

3. Where a Party declines a request from the other Party to enter into negotiations to conclude an agreement for recognition in its territory, in areas of technical regulation and conformity assessment procedures carried out in the territory of the other Party, it shall explain the reasons for its decision.

4. Where a Party detains at a port of entry a good originating in the territory of the other Party due to a perceived failure to comply with a technical regulation, it shall appropriately notify the importer of the reasons for the detention.

Article 6.6: International Standards

1. The Parties shall use international standards, guides and recommendations, or the relevant parts of them, to the extent provided in Articles 2 and 5 of 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.

2. In determining whether an international standard, guide or recommendation as mentioned in Articles 2 and 5 of and Annex 3 of the TBT Agreement exists, each Party shall base its determination on 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.

Article 6.7: 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 it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, at the request of the other Party, explain the reasons so that corrective action may be taken by the other Party, if necessary.

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

Article 6.8: Conformity Assessment Procedures

1. The Parties shall ensure, whenever possible, that results of conformity assessment procedures in the other Party are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures.

2. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of that other Party, give favourable consideration on explaining the reasons so that corrective action may be taken.

3. Each Party shall accredit, approve, license, 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. Where a Party accredits, approves, licenses, or otherwise recognises a body assessing conformity with a specific technical regulation or standard in its territory and refuses to accredit, approve, license, or otherwise recognise 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, give favourable consideration on explaining the reasons for its decision, so that corrective action may be taken, if necessary.

Article 6.9: Transparency

1. Each Party shall transmit electronically to the other Party, through the enquiry points each Party has established under the TBT Agreement, the notifications of its proposed technical regulations and conformity assessment procedures in accordance with the TBT Agreement, at the same time as the Party notifies WTO members.

2. Each Party should allow at least 60 days after it transmits a proposal for the other Party to provide comments in writing on the proposal. A Party shall give favourable consideration to reasonable requests for extending the comment period.

3. In case of emergency, a Party adopting technical regulations or conformity assessment procedures shall transmit electronically, through the enquiry points that each Party has established under the TBT Agreement such documents, at the same time as the Party notifies WTO members.

4. Each Party shall notify its technical regulations that are in accordance with the technical content of any relevant international standard.

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

6. The Parties shall ensure that all adopted technical regulations and conformity assessment procedures are available on an official website that is publicly available. Each Party shall implement this paragraph as soon as is practicable.

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.

8. If the full text of the notified documents is provided in languages other than English, the Party shall endeavour to provide an English summary of such technical regulations and conformity assessment procedures, which includes the main requirements thereof.

Article 6.10: Technical Consultations

1. If a Party determines that there are reasons to believe that a technical regulation or a conformity assessment procedure of the other Party is an unnecessary technical barrier to trade, the former Party may request technical consultation by submitting a written request to the other Party. The Party receiving the consultation request shall reply within 60 days.

2. Where the Parties have had recourse to consultations under paragraph 1, such consultations shall constitute consultations under Article 15.5 (Consultations).

Article 6.11: Cooperation and Technical Assistance

Upon the request of a Party, the other Party shall provide technical assistance and cooperation, to the extent possible, in order to:

(a) encourage the implementation of this Chapter;

(b) encourage the implementation of the TBT Agreement;

(c) strengthen and enhance cooperation between their respective organisations responsible for standardisation, technical regulations, conformity assessment and metrology, with a view to addressing issues covered by this Chapter;

(d) strengthen the technical competence among the above mentioned organisations, mainly intending to facilitate the negotiations and conclusions of mutual recognition agreements of common interest to the Parties;

(e) increase the participation in international organisations working in standardisation and conformity assessment;

(f) provide support in the development and application of international standards, as appropriate;

(g) provide, where possible, human resource training required for the implementation of this Chapter;

(h) facilitate, where possible, the acceptance of equivalence of standards, technical regulations and conformity assessment procedures on a case-by-case basis;

(i) give favourable consideration to any sector specific proposal that the requesting Party makes for further cooperation under this Chapter;

(j) promote good regulatory practices, and transparency, including mechanisms to promote better access to information on standards, technical regulations and conformity assessment procedures; and

(k) other areas as mutually agreed by the Parties.

Article 6.12: Sub-Committee on Technical Barriers to Trade

1. The Parties hereby establish the Sub-Committee on Technical Barriers to Trade (hereinafter refer to as "the Sub-Committee"), comprising representatives of each Party.

2. The functions of the Sub-Committee shall include:

(a) monitoring the implementation, operation and administration of this Chapter;

(b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations and conformity assessment procedures;

(c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures and, as appropriate, designing and proposing mechanisms for technical assistance of the type described in Article 11 of the TBT Agreement;

(d) where appropriate, facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies in the territories of the Parties;

(e) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations and conformity assessment procedures;

(f) upon request of a Party, consulting on any matter arising under this Chapter;

(g) reviewing this Chapter in light of any developments under the TBT Agreement and developing recommendations for amendments to this Chapter in light of those developments;

(h) taking any other step the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade;

(i) as it considers appropriate, reporting to the Joint Commission on the implementation of this Chapter; and

(j) establishing, if necessary, for particular issues or sectors, working groups for the treatment of specific matters related to this Chapter and the TBT Agreement.

3. The Sub-Committee shall meet preferably once a year and when it considers necessary, unless the Parties otherwise agree. The Sub-Committee shall carry out its work through the communication channels agreed to by the Parties.

4. The Sub-Committee shall be coordinated by:

(a) in the case of Peru, the Ministry of Foreign Trade and Tourism (*Ministerio de Comercio Exterior y Turismo – MINCETUR*), or its successor; and

(b) in the case of Thailand, the Thai Industrial Standards Institute (TISI) of the Ministry of Industry.

Article 6.13: Exchange of Information

1. Any information or explanation requested by a Party pursuant to this Chapter shall be provided by the other Party, in print or electronically, within a reasonable time, and if possible, within 30 days.

2. With respect to information exchanges, in compliance with Article 10 of the TBT Agreement, each Party shall apply as appropriate, relevant decisions and recommendations adopted by the WTO Committee on Technical Barriers to Trade.

Article 6.14: Annexes

1. The Parties may negotiate Annexes to deepen the implementation of this Chapter based on mutual interest, which shall form an integral part of this Chapter.

2. Sectors of mutual interest may include, but not limited to, vehicles, equipment and parts, electrical and electronics equipment, rubber products, medical devices, cosmetics, organic products and food supplements.

3. Each Party may propose additional sectors of interest for the negotiation of Annexes. The negotiation and inclusion of any sectors shall be subject to the consensus of the Parties.

4. The rights and obligations set out in each Annex to this Chapter shall apply only with respect to the sector specified in that Annex, and shall not affect any Party's rights or obligations under any other Annex.