



FAIR TRADE CERTIFICATION PRACTICES IN THE EXPORT PROCESS OF INDONESIAN COFFEE COMMODITIES TO THE UK MARKET IN TERMS OF THE TECHNICAL BARRIERS TO TRADE (TBT) AGREEMENT

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ABSTRACT

The application of fair trade certification to enter specialized markets in the United Kingdom affects the coffee trade transactions exported from Indonesia to the United Kingdom. This certification then becomes a challenge and creates unnecessary trade barriers. These barriers are included in technical barriers which in international trade activities are regulated through the Technical Barriers to Trade (TBT) Agreement. Based on the results of this study are first, the application of fair trade certification on Indonesian coffee commodities that want to enter the United Kingdom specialty market is an unnecessary international trade barrier. Second, Indonesia can take legal remedies through the WTO or other efforts such as negotiation, mediation, conciliation, and arbitration for dispute resolution.

Keywords: coffee; export; fair trade certification.

I. INTRODUCTION

Indonesia as a developing country still depends on the export of agricultural and plantation commodities, one of the promising agricultural and plantation commodities for Indonesia is coffee with HS code 0901. Related to coffee exports, the UK is included in the top 10 destination countries for coffee exports from Indonesia. With the development of sustainability-based international trade, the UK has also adjusted its regulations in this regard by applying fair trade certification to goods entering the UK market. This requirement is included in the niche market requirement along with organic.¹ By applying fair trade certification requirements to export commodities entering the UK, Indonesia faces a challenge as well as an obstacle to exporting coffee commodities to the UK.

The meaning of fair trade is outlined in The International Fair-Trade Charter as a form of trading partnership based on dialog, transparency, and respect, to achieve equality in international trade. Fair trade offers better trading conditions, securing the rights of producers and workers who are often marginalized, especially in developing countries. Fair trade is implemented by the Fair Trade Organization, a non-governmental organization that sets standards and certifies countries' international trade products and contributes to raising awareness and campaigning for changes in conventional international trade rules and practices.²

In international trade, there are two types of barriers, namely tariff and non-tariff barriers. One form of non-tariff barriers is technical barriers. Technical barriers occur when a country's actions or

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¹ CBI, "Entering British Coffee Market", <https://www.cbi.eu/market-information/coffee/united-kingdom/market-entry>, accessed on March 1, 2022 at 15.45 WIB.

² International Fair-Trade Networks (WFTO, Fairtrade International, and European Fair-Trade Association), "The International Fair-Trade Charter", 2018, pp. 11.

policies are technical in nature which in their application cause trade barriers. In this case, it is regulated through the Technical Barriers to Trade (TBT) Agreement which contains technical rules or standards for matters related to health, safety, consumer protection or the environment or other purposes, regulations or standards, as well as testing or certification plans, must not create unnecessary trade barriers.³The Preamble of the Technical Barriers to Trade (TBT) Agreement has a role to reduce technical barriers to trade related to technical regulations, standards and conformity assessment procedures. These three things regulate the harmonization of free trade by using international standards in regulating symbols, packaging, marking or labeling applied to a product to ensure that domestic policies do not hamper the ability of exporters to access local markets.⁴

In addition, as part of the GATT and WTO, the TBT Agreement has the same goal of realizing barrier-free multilateral trade, so in its formulation the TBT Agreement has basic principles:⁵

1. Non-discrimination, in this principle the principles of Most Favored Nation and National Treatment apply so that the imposition of technical regulations and standards on a good must be applied equally to similar goods without regard to where the goods come from.
2. Preventing unnecessary barriers to trade. In this case, the implementation of the TBT Agreement in a country is sought to be the least trade restrictive and takes into account the risk that the requirements set out cannot be met.
3. Harmonization, to avoid the occurrence of different standards member countries are encouraged to refer to internationally agreed standards in preparing their domestic standards.
4. Transparency, the entire process of determining technical regulations, standards, and conformity assessment procedures is carried out openly by following international notification requirements.

From the background described above, the author will analyze the application of fair trade certification requirements by the UK to coffee commodity exports from Indonesia in terms of TBT Agreement Article 2.2, Article 4.1, and Article 12.3, as well as the principles adopted by the TBT Agreement, especially Most Favored Nation and National Treatment.

II. RESEARCH METHODS

This research uses a normative juridical approach method, where this research will refer to discussing doctrines or principles in law.⁶ Research on legal principles is a study with the aim of finding legal principles or positive legal doctrines that apply. Research on legal systematics is a study with the aim of identifying the main or basic understanding of rights and obligations, legal events, legal relations, and legal objects.⁷ In this normative legal research, what is studied is library material or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials.⁸

The data used in this research is mainly related to trade, especially regarding the application of fair trade certification to coffee commodities in the UK, by looking at the regulations in the TBT Agreement as well as the principles of Most Favored Nation (MFN) and National Treatment

³ John H. Jackson, *Legal Problems of International Economic Relations*, St. Paul, Min: West Publishing Co, 1995, pp. 368

⁴ Syukri Hidayatullah, "A Legal Comparison of Standardization Arrangements According to the TBT Agreement and Law No. 7/2014 on Trade", *Arena Hukum* 9, no.2, 2016, p.274.

⁵ Patrick F. J. Macrory, Arthur Edmond Appleton, Michael G. Plummer, *The World Trade Organization: legal, economic, political analysis Volume 2*, New York: Springer Science+Business, 2005, p. 394-395.

⁶ Zainuddin Ali, *Metode Penelitian Hukum*, Jakarta: Sinar Grafika, 2015, p.24

⁷ *Ibid*, p. 25-26

⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI-Press, 2007, p.52

regarding the application of a certification or standardization by NGOs to an export and import commodity, which has the potential to cause trade barriers.

III. DISCUSSION AND RESULT

A. Standard in Interneational Trade

There are three main concepts contained in the TBT Agreement, namely technical regulations, standards, and conformity assessment procedures and apply to all products.⁹The products referred to here are all products, both industrial products and agricultural products as well as products related to the environment, preservation of natural resources. However, there are some exceptions, namely products related to:

1. Sanitary and Physical (SPS measures)
2. Service-related products
3. Government procurement

TBT Agreement itself also has technical barriers that it is justified to impose:

1. Protect human, animal and plant life or health.
2. Protection of environmental sustainability
3. National security interests
4. Prevention of unfair trade practices by trading partners
5. Other consumer interests

The TBT Agreement defines technical regulations, standards, and conformity assessment procedures as follows:

Technical regulation, a document governing the nature of the product or process and associated production methods, including applicable administrative rules where compliance is mandatory. Technical regulations may also include or relate specifically to terminology, symbols, packing, marking or labeling requirements applied to a product, process or method of production. This form of technical regulation has the greatest potential to restrict international trade.¹⁰ According to Arthur Appleton, with the application of technical regulations to a commodity, when the commodity to be traded does not meet the requirements of the technical regulation application, it will be prohibited from being sold.¹¹ Standard, a document issued by an official body, which, for general and repeated use, provides rules, guidelines, or properties for a product or process and related production methods whose compliance is neither mandatory nor voluntary. Standards may also include or relate specifically to terminology, packing symbols, marking or labeling requirements applied to a product, process or production method.¹²

Conformity assessment procedure, a procedure used directly or indirectly to establish that the relevant requirements in a technical regulation or standard have been met.¹³ This assessment is generally carried out in three ways:¹⁴

⁹ Michael J Trebilock and Robert Howse, *The Regulation of International Trade Second Edition*, London: Routledge, 1999, p. 135

¹⁰Patrick F. J. Macrory, Arthur Edmond Appleton, Michael G. Plummer, "The World Trade Organization: legal, economic, political analysis Volume 2", New York: Springer Science+Business, 2005, p. 391.

¹¹ Arthur Appleton, "The World Trade Organization: Legal, Economic and Political Vol.1", New York: Springer Science+Business, 2005, p. 377.

¹²Patrick F. J. Macrory, Arthur Edmond Appleton, Michael G. Plummer, *loc.cit.*

¹³ *Ibid*

¹⁴Michaels Koebele, "Max Planck Commentaries on World Trade Law Volume 3", Leiden: Koninklijke Brill NV, 2007. p 190.

1. A single-party assessment, conducted by way of a unilateral supplier declaration. Conformance is based on self-assessment and self-control.
2. Second-party assessments are conducted by buyers or importers or inspection or testing agencies.
3. A third-party assessment, conducted independently by an organization either appointed by the supplier or the buyer.

In relation to the application of fair trade certification requirements by the United Kingdom, where the fair trade certification recognized for use by the United Kingdom is issued by FLOCERT part of FAIRTRADE INTERNATIONAL. Therefore, fair trade certification falls under standardization, which is a document issued by an official body that, for general and repeated use, provides rules, guidelines, or characteristics for a product or related processes and production methods whose fulfillment is neither mandatory nor voluntary. Standardization may also include or relate specifically to terminology, packing symbols, marking or labeling requirements applied to a product, process or production method.¹⁵ Standardization is voluntary, if a product is not certified or fails to meet the standard then it is still allowed to enter the domestic market, but fails to gain significant market share. In another sense, standardization practices become mandatory for a product to access a wider market.

Standardization in the international trading system is known in 2 (two) types of certification on safety and qualification. First, certification that is part of a country's policy and has been recognized for its application by the WTO. Second, certification that is socialized and issued by private certification bodies and recognized by international businesses.

Based on the agreement of countries in the WTO, international trade standardization policies are regulated in the TBT Agreements. These agreements respect the rights of members to use certain standards of conformity to protect human, animal, plant, health, environmental, and consumer interests. However, the TBT Agreements encourage member states to refer to international standards in developing their national policies, without compromising the level of protection provided. Thus, from the perspective of international law, safety and quality certification applied by each country is permissible as long as it does not become an obstacle to market access.

According to WTO agreements, TBT Agreements require member countries to mutually recognize the standardization testing procedures applied in each country, so that before the goods are exported, the product is in accordance with the standards applied in the importing country. In order to help smooth business actors in export-import activities, each member country must provide accurate information to the WTO regarding applicable standardization regulations. Thus, the initial purpose of standardization policy is for consumer protection and to facilitate trade in domestic products by not discriminating against imported products. Fair Trade is a trading partnership based on dialogue, transparency, and respect to build greater fairness in international trade. Dialogue is the process of communication between producers and organizations or intermediary traders (in some cases) together with consumers to create agreement on fair trade guidelines and criteria and forms of cooperation. This development resulted in a new organization tasked with auditing, accrediting and labelling products based on agreed fairtrade guidelines called the Fairtrade Labelling Organisation (FLO).

B. Fair Trade developments in the UK

An important event that started the development of Fair Trade was the publication of the book "Max Havelaar" in 1860. The content of the book explained the injustice that occurred in the coffee

¹⁵Patrick F. J. Macrory, Arthur Edmond Appleton, Michael G. Plummer, *loc.cit.*

trade between Indonesia and the Netherlands.¹⁶ After that, there was no significant development of the idea of fair trade that was active until the 1950s. Fair trade began to grow in continental Europe, with Oxfam UK being the first to sell handicrafts made by Chinese refugees in Oxfam-owned shops. In 1964, Oxfam then established the first Fair Trade organization in the UK.

It should also be noted that the word used at the beginning of this movement was not "fair" but "alternative". This is because the movement's principle was to provide alternatives to trade in terms of distribution channels and labor.¹⁷ However, the word alternative was unpopular in many countries and received negative associations. So the Fairtrade Foundation (FtF) was formed in the 1990s, since then "fair trade" has replaced the term "alternative trade".

Between 1970 and 1990 this period of development was called the "solidarity era", with market development based on "goodwill selling". Alternative Trade Organizations (ATOs) such as Oxfam and Traidcraft, non-governmental or business organizations with a political or religious base and goals aligned with fair trade, facilitated producers in developing countries to gain access to developed markets such as Western Europe and North America.¹⁸ In this era, the main commodity traded was handicrafts. The operational model used was to meet the needs of producers and not the needs of consumers, guaranteeing fair trade based solely on the credibility of trade organizations that had an interest in connecting farming communities and handicraft makers directly with consumers.

In 1988 fair trade entered a period of commercialization marked by the marketing of products with fair trade labels such as coffee. Access to fair trade products became easier. Another development was the review of the production chain of products entering fairtrade shops conducted by the British Association of Fair Trade Shops and Suppliers (BAFTS) and International. Both organizations ensure the flow of information between producers and retailers. During this time, fair trade organizations developed guidelines for producers who wanted to join fair trade. On the other hand, national-based organizations began to emerge. Ftf UK is an independent non-profit organization founded in 1992 by CAFOD, Christian Aid, Oxfam, Traidcraft, World Development Movement, and the National Federation of Women's Institute to license the use of the Fair Trade Mark on products in the UK in accordance with internationally agreed Fairtrade standards.¹⁹ This development led to the formation of the Fairtrade Labelling Organization (FLO) to audit, accredit, and label products using an agreed set of Fairtrade guidelines.²⁰

The next era was characterized by the emergence of more and more fairtrade-branded companies such as Sainsbury's, Tesco and Nestle. Licensing supermarkets, food processors and multinational companies to use the fair trade²¹ label was a big step up from the early fair trade principles that the ATO worked primarily with such as Cafedirect, Equal Exchange Trading, Traidcraft, Oxfam, Twin Trading and Divine Chocolate.²² This was due to the fact that the fairtrade authority did not control multinational companies and the suspicion of the interests of large supermarkets in relation to the development of fairtrade.

¹⁶N.J Gould, *Fair Trade and the consumer interest: A personal account*, International Journal of Consumer Studies 27 (4), 2003, p. 341-345

¹⁷A. Nicholls and C. Opal, *"Fair Trade: Market-driven Ethical Consumption"*, London: Sage Publications. 2005, p. 188

¹⁸*Ibid.*

¹⁹Fairtrade Foundation, <https://www.fairtrade.org.ukdocuments202012.pdf>, accessed on April 5, 2023 at 13.44.

²⁰FLOCERT, *Biaya Sertifikasi Produsen FLOCERT*, <http://www.flo-cert.net>, accessed on April 5, 2023 13.49

²¹A. Nicholls, *Fair Trade: Towards an economic of virtue*, Journal of Business Ethics 92(2), 2010, p. 241-255.

²²I.A Davies, *The eras and participants of fair trade: An industry structure/stakeholder perspective on the growth of the fair trade industry*, *Corporate Governance: The International Journal of Business in Society* 7(4), 2007, p. 455-470.

The next stage in the development of fair trade is the cooperation between stakeholders in fair trade products and self-labeled products.²³ This development represents a shift in marketing strategy from specialized marketing to mass marketing of trade products, known as mainstreaming strategy.²⁴ The main reason for fairtrade's mainstreaming strategy is to achieve rapid market share growth and place fair trade products in the conventional market.²⁵

From the description that has been explained, the application of fair trade certification policies on coffee commodities to enter the United Kingdom market if based on the TBT Agreement must not cause an undesirable trade barrier because the main purpose of the creation of the TBT Agreement in the Uruguay Round, to ensure that member countries in conducting their international trade do not make technical regulations, standardization and assessment that allow trade barriers to arise.

First, Article 2.2 of the TBT Agreement:²⁶

"Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; the protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, inter alia: available scientific and technical information, related processing technology or intended end-uses of products."

This article explains that members must ensure that in preparing, adopting or implementing a regulation does not create an undesirable new obstacle to international trade, but there are some exceptions if the regulation is made in the interests of national security requirements, preventing deceptive practices, protection of human health or safety, animal or plant life or health, or the environment.

Currently, in the UK, fair trade certification is not a requirement written into specific regulations, so compliance is not mandatory, but must meet the requirements set by the fair trade organization to be able to label fair trade products on the packaging. The UK is currently working with the UK-based Fairtrade International organization to develop new regulations to ensure consumer protection, particularly in relation to the quality of products sold in the UK market and as one of the longest established fair trade organizations. These regulations are being formed to adapt existing laws in the UK to the concept of sustainability, making it urgent to start certifying products that want to be marketed in the UK.

Second, Article 4.1 of the TBT Agreement:²⁷

"Members shall ensure that their central government standardizing bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to this Agreement (referred to in this Agreement as the "Code of Good Practice"). They shall take such reasonable measures as may be available to them to ensure that local government and non-governmental standardizing bodies within their territories, as well as regional standardizing bodies of which they or one or more bodies within their territories are members,

²³ A. Nicholls and C. Opal, *loc.cit*

²⁴ B. Doherty, I.A. Davies, S. Tranchell, "Where now for fairtrade", *Business History* 55(2), 2013. p. 161-189.

²⁵ Fred A. Yamoah, "Fairtrade UK in Retrospect: From the Niche Genesis to the Revelatory Mainstreaming Marketing Strategy Era (Late 1950s- Late 2000s)", *International Review of Management and Marketing*, 2019, p. 111-112.

²⁶ Article 2.2 Technical Barriers to Trade Agreement

²⁷ Article 4.1 Technical Barriers to Trade Agreement

accept and comply with this Code of Good Practice. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner inconsistent with the Code of Good Practice. The obligations of Members with respect to compliance of standardizing bodies with the provisions of the Code of Good Practice shall apply irrespective of whether or not a standardizing body has accepted the Code of Good Practice."

In relation to this article, any organization engaged in standardization must comply with the Code of Good Practice which is further regulated in Annex 3 of the TBT Agreement and registered with ISO/IEC. Fairtrade International standardizes in accordance with the ISEAL Code of Good Practice in Standard Setting, of which ISEAL is a member of ISO/IEC. All procedures carried out by Fairtrade International are in accordance with ISEAL's Code of Good Practice for Setting Social and Environmental Standards (Standards Setting Code) v6.0. Fairtrade International has fulfilled 3 points contained in ISEAL's Code of Good Practice, which has a main focus on the sustainability system:²⁸

1. The ISEAL Standard-setting Code defines how a standard should be developed, drafted and improved over time. The code addresses consultation and decision-making by various stakeholders, and ensures that the standard contains clear requirements that can be measured and assessed.
2. The ISEAL Assurance Code provides a framework for assessing compliance with standards, so consumers, supply chain partners, investors and other stakeholders know they can trust the assessment results. The code promotes rigorous and accessible assurance, providing accurate and transparent results.
3. The ISEAL Impacts Code supports robust monitoring and evaluation that helps systems to understand how effective their standards are in achieving what they have set out to do. The code provides a roadmap for standards to measure progress against sustainability goals and improve practices over time.

Third, Article 12.3:²⁹

"Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing country Members, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Members."

This article explains that in formulating and implementing technical regulations, standards, and conformity assessment procedures, it must take into account the circumstances of developing countries, with the aim of ensuring that the technical regulations, standards and conformity assessment procedures to be implemented do not pose an unnecessary obstacle to exports from developing countries.

TBT Agreement which has the principle of non-discrimination by applying the WTO principles of Most Favored Nation and National Treatment, this principle emphasizes that a technical regulation and standard for a good must be applied equally to similar goods regardless of where the goods come from. Goods from developing countries and developed countries must get the same treatment and must not be differentiated. In this case, coffee from Indonesia is a promising commodity from Indonesia,

²⁸ISEAL, *ISEAL Codes of Good Practice*, https://www.isealalliance.org/defining-credible-practice/iseal-codes-good-practice?gclid=CjwKCAjw-IWkBhBTEiwA2exyOyt5o9FkXX4GbQB0_L4T8g0N_Xrn5m5A54I5rTJ9tNEBCMhKMhQ14xoCsPkQAvD_BwE, accessed on June 26, 2023 at 16:42 WIB

²⁹Article 12.3 Technical Barriers to Trade Agreement

which is a developing country, to be able to compete in international trade. The quality of Indonesian coffee has been recognized by the international market, but barriers related to certification make it difficult for Indonesian coffee to compete with coffee from developed countries such as countries in Latin America that are more advanced in knowledge and easy access to certification in special markets in the UK.

The creation of certification in international trade generally aims to help developing countries to get equal or greater results in international trade conducted with developed countries. Fairtrade certification itself has 10 main principles that must be met to obtain certification, namely:³⁰

- a) Opportunities for Disadvantaged Producers, the organization supports marginalized small producers, whether independent family businesses or grouped in associations or cooperatives. Many Indonesian coffee farmers are still classified as small producers, this is because coffee plantations in Indonesia are still dominated by smallholder plantations. Therefore, cooperatives or companies that house coffee farmers promote the quality of Indonesian coffee to buyers through fair trade, thus increasing the quantity of orders and income that can be received by farmers.
- b) Transparency and Accountability, organizations must be transparent and have good communication between members. Cooperatives or certain companies that house coffee farmers must be able to provide transparency to farmers regarding the selling price and purchase price obtained by farmers and how the distribution of profits obtained from coffee sales. In addition, cooperatives are active in communicating with farmers regarding the conditions that farmers need to fulfill.
- c) Fair Trade Practices, the organization is professionally responsible for fulfilling its commitments and responsibilities. The cooperative or company that houses the coffee farmers works professionally and has the commitment and responsibility to implement fair trade requirements and fair trade practices. Ensure that every business process undertaken conforms to the demands of fair trade in its entirety.
- d) Fair Payment, the organization is required to ensure that its members get a decent wage and in accordance with their work. The cooperative or company must ensure that coffee farmers who are members of the farmer group it oversees get wages that are in accordance with the results and work that has been done.
- e) No Child Labour, No Forced Labour, organizations need to ensure that there is no forced or child labour. Cooperatives or companies that house coffee farmers must ensure that there is no child labor and no forced labor in the implementation of activities.
- f) No Discrimination; Gender Equity; Freedom of Association, the organization should not discriminate in recruitment, training, etc. based on race, religion, caste, and others. Related to gender equity in Indonesia, there have been many women coffee farmers' cooperatives, one of which is the Gayo Women's Coffee Cooperative, which is well-known in Southeast Asia. Related to this principle, cooperatives or companies that house coffee farmers must provide training or recruitment regardless of gender, race, caste and others, each individual must get the same treatment.
- g) Good Working Conditions, organizations are required to provide and ensure a safe and healthy working environment for employees or members. Organizations or companies must be able to ensure that the working environment for coffee farmers must be decent, healthy, safe, and comfortable.

³⁰WFTO, <https://wfto.com/fair-trade/10-principles-fair-trade>, accessed on April 8, 2023 at 12:57 pm

- h) Capacity Building, the organization helps members or small producers to increase the impact of positive development. Cooperatives or companies can provide training in management, finance, marketing, etc. to farmers so that they are able to move independently in the future.
- i) Promote Fair Trade, the organization is required to develop good marketing to members and buyers. Cooperatives or companies promote products from farmers to buyers around the world and can also participate in events related to product promotion at the national and international levels.
- j) Respect for the Environment, organizations are required to always preserve the environmental balance in every business process carried out by its members. Cooperatives or companies must be able to ensure that the land used by farmers is land that does have a designation for plantations so as to maintain the balance of nature, besides that in carrying out agricultural activities coffee farmers use materials that do not damage the environment.

The principles above explain that fair trade was formed to be an alternative trade for developing countries such as Indonesia, but in its implementation in Indonesia itself, coffee farmers who have carried out fair trade certification are very few and are still focused on the Sumatra region alone, while Indonesian coffee plantations are almost spread throughout Indonesia with their respective uniqueness which in quality is not inferior to Gayo Coffee which is already famous and has fair trade certification.

The reasons for the small number of certified farmers are the difficulty in accessing certification for small-scale farmers, who still dominate compared to large-scale or structured farmers, the quality and quantity of coffee produced by Indonesian farmers still fluctuates due to many seasonal farmers and coffee plantations mixed with other crop plantations, and finally, although the certified coffee market has increased, access to this market is still very difficult and the uncertainty of the premium price offered.

Although Indonesia's coffee export activities to the UK still experience ups and downs every year, the UK is still a promising market for Indonesian coffee commodities. Indonesian coffee is already quite famous in the UK, especially Gayo Coffee, besides that Indonesian coffee is also known for its distinctive aroma, making coffee lovers love coffee from Indonesia. For exporters to export coffee commodities to other countries, there are several general documents that need to be made, namely:³¹

1. Certificate of Origin (CoO), which can also be called SKA Form International Coffee Organization (SKA Form ICO).

The definition of SKA or CoO is that the certification states that the exported goods or commodities originate from the exporting region or country. From this it can be concluded that the function of the SKA is to certify that the exported coffee commodity originates from Indonesia. There are several provisions for the issuance of the latest SKA Form ICO, including:

- a) The new coffee year starts on October 1, 2021, so the numbering of SKA Form ICO must start with "0001" starting from that date and the numbering continues sequentially until September 30, 2022, in accordance with the ICO provisions in the International Coffee Agreement (ICA) which applies from ICA 1962 to ICA 2022.
 - b) SKA Form ICO size becomes A4
 - c) In Box 15, exporters can include information on the quality of the coffee, the special characteristics of the coffee, the relevant HS code, and the FOB value.
2. Documents from relevant Ministry or Agency regulations
 3. Conditions of each export destination country.

³¹ GAEKI, "Export Regulations", <https://gaeki.or.id/ketentuan-ekspor-kopi/> accessed on May 16, 2023 at 16.15 WIB

In relation to the supervision of coffee exports, several documents are required from the relevant Ministries or Institutions, for example, by the Food and Drug Supervisory Agency (BPOM) a document called an Export Certificate (SKE) is required which is regulated in the Food and Drug Supervisory Agency Regulation Number 10 of 2021 concerning Business Activity and Product Standards in the Implementation of Risk-Based Business Licensing in the Food and Drug Sector. Business actors who export finished products, raw materials for drugs and food, and food packaging can fulfill the SKE standard requirements, including:

- a) Certificate of Free Sale
- b) Health Certificate
- c) To Whom it May Concern
- d) Export Notification for Food Packaging

And for the coffee processing industry, businesses are required to implement Good Manufacturing Practices (GMP), which are regulated by the Ministry of Agriculture. For provisions related to customs will deal with the Ministry of Finance, whose licensing documents can be taken care of through the Indonesia National Single Window (INSW) system which has been integrated with the system of Ministries or Institutions related to foreign trade activities.

This research will discuss in particular the requirements for entering the UK market, so there are important things to know, namely:³²

- a) On certain products goods can only enter through designated entry points, document checks must be carried out and sampling and analysis or inspection may be required before the product can be marketed.
- b) Importing through a suitable Port, most food products can enter through any Port, but importers should ensure that the Port has the necessary facilities to handle the imported products. For this importers should contact the Port itself or the local authority where the Port is located. Importers should also be aware that some products from certain countries are subject to emergency controls and can only enter the UK through designated control posts.
- c) Under Regulation 178/2002 food must not be unsafe this means:
 - (1) Harm to health
 - (2) Unfit for human consumption
 - (3) Foods containing animal products include meat, poultry, fish, eggs, dairy products, and honey.
 - (4) Foods that do not contain animal products include fruits, vegetables, cereals, certain bakery products, herbs, spices, mineral water and fruit juices.

In addition to this regulation is Regulation 2019/1793 which implements official controls on the import of certain feed and food of non-animal origin.

- d) To import trade samples of products of non-animal origin for the purpose of test marketing, research, development or quality assurance can enter freely, unless there are applicable restrictions. If the product is for research purposes e.g. laboratory tests or for commercial approval and will not be consumed, it cannot be considered subject to this rule. If the sample is for taste testing, it must be edible and free from contamination. Even if samples are provided, they are likely to be inspected under food law as there is an expanded definition of sale in the Food Safety 1990. The UK provides laboratories to test whether food samples meet food safety requirements to ensure that their goods are safe and legal before they are purchased from manufacturers and imported into the UK.

³²Food Standards Agency, "Importing products of non-animal origin", <https://www.food.gov.uk/business-guidance/importing-products-of-non-animal-origin> accessed on May 16, 2023 at 4:20 pm.

Since the UK's exit from the European Union, the UK has been in the process of making new laws on due diligence policies for products produced from forest land conversion. In other words, the UK wants products entering the UK market to be legal and sustainable. The British public itself has understood the importance of buying products that have certifications that are in line with sustainability principles, examples of certifications are ISO, HACCP (Hazard Analysis Critical Point), health, halal, organic, fair trade, and RSPO (Roundtable on Sustainable Palm Oil) specifically for palm oil. This year, the number of coffee lovers who are certified, especially fair trade, is up to 25% of all coffee lovers in the UK. Indonesia has a high amount of coffee production, but the amount of certified coffee only touches 7% of the total coffee production.³³

Based on the explanation of the articles and principles of the TBT Agreement and the principles of fair trade. The application of fair trade certification to Indonesian coffee commodities in entering the United Kingdom, fairtrade certification is an item that is very suitable for developing countries. By providing trade alternatives that prioritize moral values and pay attention to the needs of developing countries, this certification is very suitable for developing countries to be able to improve the quality of the products produced and help developing countries to be able to help small producers to improve the quality of life. However, in practice, especially for Indonesian farmers, this certification is still difficult to access and the cost of certification is burdensome for smallholder farmers in Indonesia.

The TBT Agreement seeks that any technical regulations, standardization and assessment procedures to be implemented by member countries do not create barriers to international trade. Although Fairtrade International and FLOCERT have met the requirements of the TBT Agreement as outlined in article 4.1 of the TBT Agreement that each standardization body must meet the Code of Good Practices through ISEAL which has been registered with ISO/IEC. If this certification is applied in the trade of Indonesian coffee commodities to the UK coffee market, it is still an obstacle for coffee farmers to be able to enter and expand the market to the certified coffee market, which in this certified coffee market allows coffee farmers to get higher prices and more consumers.

For developed countries, certifying a product has become a fairly easy activity to do because there are many organizations that conduct counseling so that even for small farmers, access to certification is easier to do. Meanwhile, for developing countries like Indonesia, accessing the necessary requirements to be able to carry out certification is not easy to do, making producers feel that certification is not a necessary thing to do even though the current international trade situation emphasizes sustainable values as evidenced by certifications.

The cost of self-certification is not cheap because it involves a third party. To be able to gain access to third parties, at least the producers have been registered as part of the third party, usually in the form of a cooperative or business entity, while in Indonesia there are still many small farmers who are engaged on their own.

In dealing with barriers that arise, the TBT Agreement provides a way that members who feel an obstacle to international trade can do so, as outlined in Article 14 Consultation and Dispute Settlement. In accordance with Article 14.1,³⁴

"Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall take place under the auspices of the Dispute Settlement Body and shall

³³ Ibnu, M., Offermans, A., Glasbergen, P., & Ismono, H., "Competing Explanations for Indonesian Smallholder Participations in Sustainability Coffee Certifications", *Journal of economics and sustainable development*, 7(24), 2016, pp. 123-136.

³⁴ Article 14.1 *Technical Barriers to Trade Agreement*

follow, *mutatis mutandis*, the provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding."

The article explains that consultations and dispute settlement related to issues affecting the implementation of this agreement will be conducted under the auspices of the Dispute Settlement Body and will follow the provisions of Articles XXII and XXIII of the GATT 1994, which contain trade dispute settlement mechanisms among GATT member countries.

Article XXII calls for parties to resolve disputes through bilateral consultations. Parties are required to give "sympathetic consideration" to any dispute on any matter concerning the implementation of the GATT. This article provides that a party may apply for the establishment of a multilateral consultation if bilateral consultations do not produce any meaningful results.³⁵

The WTO has a system for settling international trade disputes as outlined in the WTO Dispute Settlement Understanding (DSU). The main body for dispute settlement in the WTO is the Dispute Settlement Body (DSB). To settle a dispute through the Dispute Settlement Body, there are several stages that need to be passed, namely, consultation, panel process, appeal process, adoption and implementation supervision. The first step of the WTO dispute settlement procedure is to conduct bilateral consultations between the disputing parties on any issues affecting the implementation of the agreement or the provisions of the GATT.³⁶

Consultations are requested by a member state that is accused of violating a WTO provision or of denying or impeding its benefits. The offending country must respond to the request within 10 days, and must begin implementation within 30 days of the request for consultations and must be completed within 60 days of the request for consultations. The purpose of the consultations is to provide the parties with an initial understanding of the factual conditions and legal grounds that will be submitted in a more in-depth and precise manner, and then to seek to avoid continuing the dispute at the stage of amicable dispute settlement using the methods of good offices, mediation, conciliation and arbitration.³⁷

The second step is the establishment of a panel, if the consultation fails to resolve the dispute, then the next step is for the complaining state to apply for the establishment of a panel. The task of the panel is to objectively assess the facts and their application and conformity with the relevant provisions of the WTO agreement. The function of the panel is to assist the DSB with its responsibilities under the Covered Agreement, conduct an objective assessment of the merits of the case including an objective assessment of the facts of the case and its conformity and relevance to the covered agreements, and make findings that will assist the DSB in making recommendations or applying the rules required by the covered agreements. The Panel should always consult with the parties and provide them with appropriate opportunities to develop a solution that is mutually satisfactory to the parties.

The WTO Appellate Body is composed of seven WTO members who are experts in international trade law who are not affiliated with any particular government. In addition, the aspect of representation of the WTO membership is geographically representative of each region, namely America, South America, Asia, North Africa and South Africa.³⁸ The powers of the members are to uphold or affirm, modify or reverse the legal findings and conclusions made by the panel.³⁹ The report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute, unless the DSB by consensus

³⁵ Huala Adolf, *Hukum Penyelesaian Sengketa Dagang dalam World Trade Organization (WTO)*, CV Mandar Maju, Bandung, 2005, p.6

³⁶ Article 22 The General Agreement on Tariffs and Trade 1947

³⁷ Article 5.2 and 5.3 Dispute Settlement Understanding

³⁸ Article 17(3) Dispute Settlement Understanding

³⁹ Article 17(13) Dispute Settlement Understanding

declines to adopt the report within 30 days for circulation to the members and the members shall give their views on the report.

Panel and Appellate Body recommendations, based on Article 19 that either the panel wants the appellate body to conclude that a provision is contrary to the provisions of the WTO or the Covered Agreement, then the panel and AB must recommend the disputing member state to place the rule in line with the agreement, also the panel and AB recommendations can suggest ways for the disputing state to implement its recommendations.⁴⁰

Implementation monitoring, this stage is the final stage of the series of dispute resolution through the DSB, namely monitoring the implementation of recommendations that have been made by the panel or AB. This supervision is a stage to ascertain whether the report or recommendation from the panel or AB is implemented or not by the parties. The commonly applied norm is if the violating country is recommended to adjust its actions to conform to the obligations stipulated in the WTO provisions.⁴¹

As a developing country, here Indonesia gets special attention in the provisions of article 12 paragraph 11 of the DSU, which reminds the panel to pay special attention to developing countries, therefore panel members before submitting their reports, they are required to pay attention to clauses or articles specifically given to developing countries. This article emphasizes the interests of developing countries, especially those that are dealing with developed countries.

Since the Uruguay Round, the dispute settlement arrangements at the WTO have undergone several changes. First, WTO members agreed not to take unilateral action against other parties alleged to have violated trade rules. Secondly, the establishment of a special body in conducting GATT dispute settlement, namely the Dispute Settlement Body, which functions to directly oversee the dispute settlement process in the GATT.⁴² The Uruguay Round requires members to resolve disputes through the existing settlement system and comply with its rules and decisions.

The difficulty that may be experienced by developing countries such as Indonesia in cases dealing with developed countries that are resolved through the WTO Panel mechanism is the difficulty of developing countries to obtain various information needed to support their legal arguments. This inequality in access to information can later lead to defeat for developing countries against developed countries. Implementation monitoring, this stage is the final stage of the series of dispute resolution through the DSB, namely monitoring the implementation of recommendations that have been made by the panel and AB. This supervision is a stage to ensure whether the report or recommendation from the panel or AB is implemented or not by the parties. The commonly applied norm is if the violating country is recommended to adjust its actions to conform to the obligations stipulated in the WTO provisions.

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⁴⁰ Article 20 Dispute Settlement Understanding

⁴¹ Ade Maman Suherman, "DISPUTE SETTLEMENT BODY – WTO DALAM PENYELESAIAN SENGKETA PERDAGANGAN INTERNASIONAL", *Jurnal Hukum & Pembangunan*, Vol 42 No.1, 2012

⁴² Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, Sinar Grafika, Jakarta, 2004, p.139

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1. Negotiation, this method is usually the first way taken by the disputing parties. Negotiation in its implementation has two main forms, namely bilateral and multilateral. Negotiations can be conducted through diplomatic channels at international conferences or in an international institution or organization.⁴³ Negotiations are negotiations held directly by the parties without involving a third party, here Indonesia and the United Kingdom can negotiate related to the application of fair trade certification, the results of which can be set out in a document that gives it legal force for the parties.
2. Mediation, dispute resolution through a third party, hereinafter referred to as a mediator. Indonesia and the United Kingdom can appoint a state, international organization or individual, who will be tasked with actively participating in the negotiation process and providing suggestions for dispute resolution.⁴⁴
3. Conciliation, this method of dispute resolution is similar to mediation but more formalized. Indonesia and the United Kingdom can establish a conciliation commission, either institutionalized or ad hoc, which has the function of setting the terms of settlement accepted by the parties. However, the outcome of the conciliation commission is not binding on the parties.⁴⁵
4. Arbitration, in dispute resolution through arbitration the parties submit the dispute voluntarily to a neutral third party, to issue a final and binding decision. Indonesia and the United Kingdom made a compromise, which is the submission to arbitration of a dispute that has been born or through the creation of an arbitration clause in an agreement, before the dispute was born (clause compromissaire).⁴⁶

IV. CONCLUSIONS

The steps taken by the United Kingdom by implementing fair trade certification requirements for coffee commodities that will enter specialized markets in the United Kingdom are not in accordance with the TBT Agreement, because it has created an unnecessary barrier to international trade. In this case, Indonesian farmers still have difficulties in accessing information about fair trade certification and the high costs that need to be incurred to be able to obtain fair trade certification, these things need to be taken into account by the United Kingdom in the formation of regulations related to labelling of

⁴³ *Ibid*, p. 19-20

⁴⁴ *Ibid*, p. 21-22

⁴⁵ *Ibid*, p. 22-23

⁴⁶ *Ibid*, p. 23-24

imported products from developing countries, even though these regulations are made with the aim of consumer protection

The United Kingdom should pay more attention to the situation of developing countries in making a regulation that would tighten the requirements for other countries, especially developing countries for coffee products that will enter the United Kingdom market. The application of fair trade certification to coffee commodities can be considered as an action that hinders international trade which is not in accordance with the objectives of the TBT Agreement where the making or application of a regulation should not cause obstacles to international trade which may cause harm. For this reason, the United Kingdom can further examine whether the application of fair trade certification can be carried out by developed and developing countries. If the implementation of the certification is known to still pose an obstacle, especially for developing countries, the United Kingdom can provide relief to developing countries by providing easy access to information, assisting in the application of the certification or providing subsidies for farmers in developing countries who want to carry out fair trade certification.

For the Indonesian government, with the development of international trade which currently leads to trade that supports sustainability, it is hoped that the Indonesian government will be more active in socializing related certifications or regulations related to this to producers in Indonesia from small to large scale. Or if necessary, the Indonesian government makes a policy related to this matter, so that the movement is carried out on a national scale, so that it can accommodate all producers in Indonesia.

Indonesia can consult through the WTO with the United Kingdom, to provide relief to Indonesian coffee products entering the United Kingdom market to overcome unnecessary international trade barriers from the application of fair trade certification on coffee commodities that want to enter the United Kingdom special market. In addition, Indonesia and the United Kingdom can also conduct diplomatic dispute settlement through negotiation, mediation, conciliation, and arbitration.

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