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Technical Barriers to Trade

Part 4: Conformity Assessment

There is a growing trend amongst importers, purchasers and manufacturers purchasing components, parts or materials, to require certification from an independent third party that the goods comply with relevant standards. Regulatory authorities normally also require that domestic and imported products that are regulated by technical regulations be inspected, tested and certified by recognized institutions or Government bodies, for compliance with the requirements of the regulations.

The WTO Agreement on TBT defines conformity assessment as any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled. Conformity assessment procedures include, inter alia, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations.

Preparation of procedures and methods used nationally and internationally for conformity assessment is essentially a standards development activity, and therefore the rules for standards preparation and adoption also apply.

The term “conformity assessment” is not a particularly “user-friendly” expression. It is only in quite recent years that it has been used to cover the traditional tools used by manufacturers, purchasers and regulators to evaluate whether or not a product meets the different requirements of interested parties.

Inspection and testing, either in a laboratory or in the field, are the oldest forms of product acceptance methods. Product certification has existed since the 1850s and system standards were introduced soon after the Second World War. Certification to such standards began in the 1980s.

While there is clear separation between these activities, at least in concept, they are all inter-related and dependent on the others for their proper functioning.

Generally, exporters bear the cost, if any, of these procedures. Non-transparent and discriminatory conformity assessment procedures can become effective protectionist tools.

Provisions of Article 5 of TBT Agreement include:

- ◆ WTO members need to ensure that suppliers of products from another WTO member country have access to conformity assessment procedures under conditions no less favourable than those accorded to domestic suppliers of like products or suppliers from any other member country. This means that there should be no discrimination between imported and domestic products.
- ◆ Members have to undertake conformity assessment procedures and complete them as quickly as possible for foreign products, in the same manner as for domestic products. The standard processing period for each conformity assessment procedure has to be published and information provided to applicants during the processing period, upon request.
- ◆ The fees for conducting conformity assessment must be the same for both imported and domestic products, except for communication, transportation and other costs due to the difference in location of the facilities of the applicant and the conformity assessment body.
- ◆ The sitting (location) of facilities for conformity assessment and the selection of samples must not cause unnecessary inconvenience to applicants or their agents.
- ◆ Members have to establish a procedure to review complaints concerning the operation of the conformity assessment procedure and to take corrective action when they are justified.

Technical regulations in accordance with relevant international standards are reputedly presumed “not to create an unnecessary obstacle to international trade”. Similar provisions apply to conformity assessment procedures: international guides or recommendations issued by international standardizing bodies, or the relevant parts of them, are to be used for national procedures for conformity assessment unless they are “inappropriate for the Members concerned for, inter alia, such reasons as national security requirements, prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or protection of the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems” (Article 5.4).

If conformity assessment procedures are not based on international standards, guides or recommendations, and they can have a significant effect on trade, they should be notified to other WTO Members and information about these procedures provided upon request. In case of urgent problems of safety, health, environmental protection or national security, which require immediate attention, WTO Members may introduce such measures forthwith, provided that the rationale for doing so is notified and clarified to other Members through the Secretariat.

Conformity assessment may be performed in one of the ways detailed below:

First-party Assessment: This is the technical term used when conformity assessment to a standard, a specification or a regulation is carried out by the supplier’s organization itself. Usually it is in the form of a supplier’s declaration of conformity or self-assessment and is widely used in commercial transactions. This type of assessment generally proves to be efficient, in terms of time and cost, and does not require a producer to disclose information considered as commercially sensitive.

Second-party assessment: This indicates that conformity assessment is carried out by a customer or by his appointed inspectors/auditors on the supplier. This assessment provides a more reliable indication, particularly in technically complex areas, of a product being manufactured in accordance with the customer’s specified requirements, e.g. an automobile manufacturer carrying out assessment of its components’ suppliers.

Third-party assessment: In this case, conformity as-

essment is performed by a body that is independent of both supplier and customer e.g. ISO 9000 certification where an organization’s quality management system is assessed by an independent certification or registration body against the requirements of ISO 9001. Another example is third party product certification. Such third party assessment may be required in certain industry sectors by governmental regulations such as compulsory certification of certain products involving human health and safety.

The reliability of the conformity assessment information depends on many factors such as the impartiality and competence of the assessment body; the types of assessment activities included in the scheme; and the adequacy and appropriateness of the standards against which the product is evaluated.