

ITED MARKET ACCESS COMMENTS ON THE ICASA DRAFT CONFORMITY ASSESSMENT FRAMEWORK FOR EQUIPMENT AUTHORIZATION

The Market Access Unit of the International Trade and Economic Development Division of **the dti** welcomes the opportunity to provide some comments on the Draft Conformity Assessment Framework for Equipment Authorization of the Independent Communications Authority of South Africa.

It is appreciated that the WTO Agreement on Technical Barriers to Trade is recognized in the framework and therefore, **the dti** welcomes ICASA's understanding that conformity assessment procedures, should avoid the creation of unnecessary obstacles to international trade. As stated in Article 6.1.2 of the TBT Agreement; "conformity assessment procedures shall not be more strict or be applied more strictly than is necessary to give the importing Member adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create".

Furthermore, it is also appreciated that in the framework, ICASA, recognizes the use of relevant guides or recommendations issued by international standardizing bodies for conformity assessment procedures, in particular the ISO/IEC standards referred to.

The Market Access Unit of **the dti's** International Trade and Economic Development Division, feels that the comments it should provide should focus on some of the important WTO TBT Agreement provisions which should be taken into account when ICASA is developing the Equipment Authorization conformity assessment procedures.

In 2000, the TBT Committee developed an indicative list describing different approaches to facilitate acceptance of results of conformity assessment. This list is contained in Annex 1. However, it is important that the decision on which conformity assessment procedure should be used and what conformity assessment results should be accepted, are underpinned with an appropriate and supportive legislative framework, that will ensure public safety, quality products and compliance with the applicable technical regulations.

The purpose of a conformity assessment procedure is 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.

It is therefore, important that any conformity assessment procedure for Equipment Authorization refers to the specific technical regulation, or compulsory specification, to which the procedure applies.

Under item 2.4 of the Draft Conformity Assessment Framework for Equipment Authorization dealing with Challenges with the Approval Framework, it is stated; “Neither does it have in place risk profiles for different products to develop and implement different mechanisms of conformity assessment”. The TBT Committee discussed the factors that influence the choice and design of conformity assessment procedures. The different types of conformity assessment procedures depend on the levels of risk associated with products (low, medium and high risk). Risk assessment is a crucial factor for the choice and design of appropriate conformity assessment procedures.

At the Seventh Triennial Review of the TBT Agreement Members agreed to dedicate the 13 June 2017 thematic session to the topic of risk assessment. The presentations is summarized in WTO document G/TBT/GEN/226 of 19 June 2017 of which a copy is attached.

Under the Introduction of the Draft Conformity Assessment Framework for Equipment Authorization it is stated; “However, as South Africa is a signatory to the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (“TBT Agreement”), it is required, through the Secretariat, to give notice of any deviations from technical Regulations and conformity assessment procedures. This is to allow other WTO Members to be aware of new product requirements and to make comments prior to the finalization of technical requirements and standards as well as where there is non-compliance with the TBT Agreement.”

Article 5.6 of the TBT Agreement provides that Members have an obligation to notify a proposed conformity assessment procedure whenever a relevant international guide or recommendation issued by international standardizing bodies does not exist or the technical content of the proposed conformity assessment procedure is not in accordance with relevant international guides or recommendations issued by international standardizing bodies and if the conformity assessment procedure may have a significant effect on trade of other Members.

It is important to note that even when a conformity assessment procedure is based on a relevant international guide or recommendation issued by international standardizing bodies or the technical content of the proposed conformity assessment procedure is in accordance with relevant international guides or recommendations issued by international standardizing bodies. There is still an obligation on WTO Members, including South Africa, to notify draft conformity assessment procedures when such procedures may have a significant effect on trade of other Members.

For the purposes of Articles 2.9 and 5.6, of the WTO TBT Agreement, the WTO TBT Committee decided that the concept of "significant effect on trade of other Members" may refer to the effect on trade:

- of one technical regulation or procedure for assessment of conformity only, or of various technical regulations or procedures for assessment of conformity in combination;
- in a specific product, group of products or products in general; and
- between two or more Members;

For the purpose of enhancing predictability and transparency in situations where it is difficult to establish or foresee whether a draft technical regulation or conformity assessment procedure may have a "significant effect on trade of other Members", the TBT Committee encourages Members to notify such measures.

In accordance with Article 5.6.2 and 7.2 (in relation to Article 5.6.2), a notification should be made when a draft with the complete text of a proposed procedures for assessment of conformity is available and when amendments can still be introduced and taken into account.

The WTO TBT Committee agreed that the normal time limit for comments on notifications should be at least 60 days. Any Member which is able to provide a time limit beyond 60 days, such as 90 days, is encouraged to do so to enable developing and least developed countries with limited resources to also provide comment.

The TBT Agreement requires in its Article 5.8 that "Members shall ensure that all conformity assessment procedures which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties in other Members to become acquainted with them". This also requires from Members to notify to other Members the adoption of the conformity assessment procedures.

Article 5.9 of the TBT Agreement requires that "Members shall allow a reasonable interval between the publication of requirements concerning conformity assessment procedures and their entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member".

In 2001, Trade Ministers agreed in the Ministerial Decision on Implementation-related Issues and Concerns, that "Subject to the conditions specified in paragraph 12 of Article 2 of the Agreement on Technical Barriers to Trade, the phrase "reasonable interval" shall be understood to mean normally a period of not less than 6 months, except when this would be ineffective in fulfilling the legitimate objectives pursued. This decision, therefore, only relates to the reasonable interval referred to in Article 2.12 with regard to technical regulations. The TBT Committee has to date not given an interpretation of the reasonable interval contained in Article 5.9, but although a six months period between the adoption of a conformity assessment procedure and its entry into force is not

required, it is still an obligation of Members to allow sufficient time for suppliers and local manufacturers to comply with the conformity assessment procedures.

Therefore, ICASA is kindly requested to ensure that any conformity assessment procedure developed in terms of the to be adopted Conformity Assessment Framework for Equipment Authorization, is promptly notified to the WTO in terms of Article 5.6.2 of the TBT Agreement.

ANNEX 1

INDICATIVE LIST OF APPROACHES TO FACILITATE ACCEPTANCE OF THE RESULTS OF CONFORMITY ASSESSMENT

1. Mutual Recognition Agreements (MRAs) For Conformity Assessment to Specific Regulations

Governments may enter into agreements which will result in the acceptance of the results of conformity assessment originating in the territory of either party.

2. Cooperative (Voluntary) Arrangements Between Domestic And Foreign Conformity Assessment Bodies

This includes arrangements among accreditation bodies as well as arrangements between individual laboratories, between certification bodies, and between inspection bodies. Such arrangements have been common for many years and have been developed for the commercial advantage of the participants. Some of these agreements have been recognized by governments from time to time as the basis for acceptance of test results and certification activities in the mandatory sector.

3. The Use Of Accreditation To Qualify Conformity Assessment Bodies

Accreditation bodies have been working towards harmonization of international practices for accreditation of conformity assessment bodies. This has resulted in the development of global networks to facilitate recognition and acceptance of results of conformity assessment. These networks take the form of multilateral recognition agreements or arrangements (MLAs) whereby each participant undertakes to recognize the accreditation granted or certificates issued by any other party to the agreement or arrangement as being equivalent to that granted by itself and to promote that equivalence throughout its territory of operation. There are international standards and guides for such arrangements.

4. Government Designation

Governments may designate specific conformity assessment bodies, including bodies located outside their territories, to undertake conformity assessment.

5. Unilateral Recognition Of Results Of Foreign Conformity Assessment

A government may unilaterally recognize the results of foreign conformity assessment procedures. In this it may be guided by Article 6.1 of the TBT Agreement. The conformity assessment body may be accredited abroad under recognized regional or international accreditation systems. In the absence of accreditation, the conformity assessment body may prove its competence by other means. On the basis of equivalent competence of the conformity assessment body, foreign test reports and certificates are recognized unilaterally.

6. Manufacturer's / Supplier's Declarations (SDoC)

Manufacturer's/supplier's declaration of conformity is a procedure by which a supplier (as defined in ISO/IEC Guide 22:1996, a supplier is the party that supplies the product, process or service and may be a manufacturer, distributor, importer, assembler, service organization, etc.) provides written assurance of conformity to the specified requirements. The declaration identifies the party responsible for making the declaration of conformity and for the conformity of the product/process/service itself. Under this approach, the manufacturer/supplier, rather than the regulatory authority, takes on the responsibility for ensuring that products entering a market comply with the mandatory technical regulations. Assessment may be undertaken either by the suppliers own internal test facility or by an independent test facility.

This system is often predicated on:

- (a) adequate market surveillance;
- (b) substantial penalties for false or misleading declarations;
- (c) an appropriate regulatory environment; and
- (d) an appropriate product liability regime.