

EU-Ukraine Free Trade Agreement Negotiations Stakeholder Briefing Note 4

Technical Regulations

Technical regulations and standards are applied to a range of products to ensure human health, for the protection of the environment or to meet other consumer interests. Technical regulations and standards define specific product characteristics, such as size, shape, design, functions, performance, labelling or packaging, as well as related process and production standards. Under World Trade Organization (WTO) rules, governments have a right to apply technical regulations and standards so long as the regulations, standards, testing and certification procedures do not create unnecessary obstacles to trade. However, although all countries generally apply these measures in accordance with WTO rules, the resulting product standards and requirements differ, meaning that exporters must comply not only with their own national standards and procedures, but also with those of its export market(s). A free trade agreement (FTA) can be used to align the legislation, standards and measurement procedures of both parties in order to facilitate and ease exports.

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CURRENT SITUATION FOR UKRAINE

National

As part of its WTO accession process, Ukraine had to comply with the Technical Barriers to Trade (TBT) Agreement to ensure standards, technical regulations, certification and conformity assessment procedures were not used as a barrier to trade in Ukraine. In order to comply, Ukraine enacted a number of laws to develop a WTO compatible legal framework including:

- Standards, Technical Regulations and Conformity Assessment Procedures;
- Standardisation;
- Conformity Assessment;
- Accreditation of Conformity Assessment Bodies;
- Metrology and Metrology Activity;
- Protection of Consumer Rights;
- State Regulation of Imports of Agricultural Products;
- Labour Protection;
- Quality and Safety of Foodstuffs and Raw Food.

In 2006, more than 11,000¹ standards were applied in Ukraine, of which, more than 3,100 were identical to or based largely on international standards.

The State Committee of Ukraine for Technical Regulation and Consumer Policy (Derzhspozhyvstandart) is responsible for policy, standardisation, technical regulations, and conformity assessment.

EU-Ukraine Agreements

The Partnership and Cooperation Agreement (PCA) between the EU and Ukraine agrees to "the approximation of laws [...] in particular: [...] technical rules and standards" and; "to promote the use of EU technical regulations and the application of European standards."

The EU-Ukraine Action Plan specifies precisely the actions to be undertaken in Ukraine to "Continue the alignment of Ukraine with the EU and international regulatory and administrative practices and prepare for Ukraine's participation in the EU internal market in selected priority industrial sectors:

- Jointly identify priority sectors for alignment with EU and international regulatory practices [...];
- harmonise the necessary framework and sectoral legislation with the EU technical regulations in the priority sectors;
- continue the revision of existing Ukrainian standards, providing for harmonisation with international and European standards and for voluntary application;
- reinforce institutional capacity on standardisation, accreditation, conformity assessment, metrology and market surveillance,

¹ WTO (2008) Ukraine Working Party Report

integrating the Ukrainian institutions, to the extent possible, into the European and international structures;

approximate legislation on liability for defective products and general product safety;

gradually simplify procedures of conformity assessment of industrial products, in accordance with the requirements of the Technical Regulations (EU Directives), and with the objectives of avoiding compulsory certification of non-risk products and multiple testing of products;

consolidate and develop the market surveillance capacities of the Ukrainian institutions based on best practice of EU Member States”.

WTO Commitments

All of Ukraine's existing legislation relating to technical regulations, standards and conformity assessment comply with the Technical Barriers Agreement. All national and regional standards are voluntary, except those referred to in technical regulations intended to protect national security interests, prevent deceptive practices, protect the life and health of people, animals or plants, as well as protect the environment.

Ukraine also committed to:

gradually basing all its technical regulations on the international standards by 30th December 2011;

bringing Ukraine’s technical regulation on shelf-life for fish into conformity with the CODEX Alimentarius guidelines;

reducing the number of products subject to mandatory third party certification (Ukraine will notify the revised list to the WTO by 31st January 2012).

Other Agreements

Ukraine has concluded 40 bilateral agreements² on co-operation and mutual recognition of conformity assessment with 28 countries. In addition, Ukraine is a member of the following international bodies which set standards:

International Organization for Standardization (ISO);

International Electrotechnical Commission (IEC);

System for recognition of testing results of electrotechnical equipment for conformity with electric safety standard (IECEE-CB scheme).

International Organization of Legal Metrology (OIML);

Organization of the state metrological institutions of the Central and Eastern countries (COOMET);

International Collaboration in Measurement Standards (EUROMET);

Conférence Générale des Poids et Mesures (GCPM).

ECONOMIC IMPACT (COST-BENEFIT)

² Derzhspozhivstandart (2005)

The adoption of different technical regulations and standards, together with changes in conformity assessment procedures, will have a number of economic effects in Ukraine:

Approximation of technical regulations and introduction of European standards will enable Ukrainian exports in those sectors to enter the EU more easily. If this is combined with mutual recognition of conformity assessment, Ukrainian bodies will be able to provide certification of regulations to ease exports and reduce costs leading to increased exports. Equally EU producers will find it easier to export to Ukraine;

For those sectors which approximate with EU technical regulations and standards, there will be a cost to all companies in that sector (not just those exporting) in terms of upgrading/changing production to comply with new standards;

Increased investment to comply with new regulations and standards may lead to increased costs in Ukraine.

The extent of these effects will depend on the sub-sector involved and how close current standards are to EU norms.

A number of recent studies on the EU-Ukraine FTA have examined some of the likely impacts, but most simply discuss the theoretical impact of harmonising technical regulation, standards and conformity assessment. However, a few more specific impacts are presented:

the short run costs³ of passing legislation, implementing and monitoring the harmonised standards are very high and should not be underestimated. However, these one-time short run costs are easily outweighed by the significantly strong and positive long run effects of harmonisation of norms;

increases in competition and reduction of companies' costs related to passing conformity assessment procedures⁴ would most strongly apply to the aviation industry (production of aircraft) and the machinery and electronics sector;

Approximation of norms⁵ will lead to reduction in the current costs of compliance with the EU norms, which is estimated to be 13.9 per cent of total production costs in Ukraine. The sectors which will benefit most from this reduction are those where compliance costs are high and where prospects for export are highest especially agriculture (where costs are estimated to fall by 7 per cent as a result of harmonisation), manufacturing of textiles and wearing apparel (22 per cent cost reduction), motor vehicles (8 per cent cost reduction), machinery and electronics (7 per cent cost reduction) and food production (5 per cent of costs);

[for the energy sector alone] the cost of developing⁶ a single state standard from scratch averages UAH 40,000, while harmonizing to a single international standard is only UAH 10,000. The expense of developing the 50 highest-priority standards will be about UAH 2

³ ECORYS (2008): Trade Sustainability Impact Assessment for the FTA between the EU and Ukraine within the Enhanced Agreement

⁴ Ibid.

⁵ Ibid.

⁶ ICPS (2007): Free Trade between Ukraine and the EU: An impact assessment

million, while instituting all the international standards required by the EU will be UAH 7 million.

EU APPROACH IN OTHER AGREEMENTS

Provisions relating to standards, technical regulations and conformity assessment procedures in EU free trade agreements (FTAs) with other countries have become progressively more precise (also this may reflect geographical proximity to the EU). The EU FTA with Chile⁷ simply agrees to “encourage” measures:

- bridging the gaps in conformity assessment and standardisation;
- improving convergence and compatibility between the respective systems and;
- planning and implementation of projects.

Many Euro-Med Association Agreements⁸ move away from just encouraging actions to:

“upgrading the level of Egyptian conformity assessment bodies, with a view to the establishment, in due time, of mutual recognition agreements in the area of conformity assessment.”

The Stabilisation and Association Agreements in the Western Balkans⁹ go further still in concrete actions to adopt EU norms and systems:

- take the necessary measures in order to gradually achieve conformity with EU technical regulations and European standardisation, metrology, accreditation and conformity assessment procedures;
- promote the use of EU technical regulations and European standards, tests and conformity assessment procedures;
- conclude, where appropriate, European Conformity Assessment Protocols.

ISSUES FOR UKRAINE

What does this mean for stakeholders and negotiators in Ukraine:–

Implications: The EU-Ukraine Action Plan is very specific in terms of harmonisation with the EU of legislation, standards and procedures for conformity for priority sectors:

What level of harmonisation (equivalence, mutual recognition or full integration of systems)?

What product/sector coverage should be included?

What timeframes for harmonisation?

Next Steps: Stakeholders need to engage with government negotiators in a positive way to agree the level, coverage and timeframe for harmonisation of technical regulations, standards and conformity assessment:

⁷ Article 18, EU-Chile Free Trade Agreement (2003)

⁸ Article 47, EU-Egypt Association Agreement (2004)

⁹ Article 73, EU-Croatia Stabilisation and Association Agreement (2004)

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Representatives of producers should assess the potential for exporting to the EU, the cost of compliance with EU norms and the ability of the entire sector to comply. Based on this some firms will be in favour of deep harmonisation and others opposed. Others will agree with harmonisation but with reservations by sector and timing. Each group should articulate their positions based on data, facts and figures and present this to Ukrainian negotiators;

Government agencies responsible for introducing technical standards and standards and conformity assessment procedures should make an assessment on the practicality and costs of harmonisation (including equivalence, mutual recognition or full integration) and determine the extent and timing for harmonisation. The relative positions should be articulated to Ukrainian negotiators with facts and costings;

Ukrainian negotiators should then discuss with stakeholders the scope and coverage of technical regulations, standards and conformity assessment harmonisation over time with the aim of agreeing a common position for the negotiations.