TIC Council Position in trade negotiations

July 2020

Introduction

The TIC Council members are facilitators of market access for manufactured goods, contributors to effective supply chain management, and partners to governments in meeting regulatory objectives. To this end, trade agreements affect our license to operate, affect our ability to make business-based decisions on where and how to establish operations, and affect our ability to compete on a fair and equitable basis in the market.

TIC Council recommendations

The TIC Council recommends that trade negotiations include comprehensive, high-standard and market-opening language for all industries. We recommend to:

Establish ambitious horizontal provisions in the Technical Barriers to Trade chapter

The Technical Barriers to Trade (TBT) chapter should serve as the overarching approach and framework for technical regulations, standards, and conformity assessment-related matters across all disciplines.

Reduce duplicative regulatory burdens through national treatment

With national treatment, conformity assessment bodies (CABs) located in the territory of the other party (non-domestic) should be treated no less favourable than CABs located in the territory of the domestic party. This approach:

- allows manufacturers to use the CAB that can provide the services they need, creating efficiencies while reducing costs and time to market
- provides regulators with greater confidence that requirements are met because regulators approve CABs directly.

Preserve the neutrality of conformity assessment methods

Trade agreements should not prescribe or evaluate the method of conformity assessment. Regulators should have the prerogative and flexibility to decide on the appropriate method of assessing conformity according to their risk assessment, policy objectives, market characteristics, and confidence needs.

Ensure that conformity assessment procedures are accepted by the other Party only when they are deemed equivalent

Only products that have been subject to a conformity assessment method that is deemed at least equivalent by the other party should be allowed access to the other party's territory without further conformity assessment.

This ensures that the protection of health, safety and the environment is not reduced or undermined, and that public policy objectives and confidence needs are addressed.

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Promote good regulatory practices and regulatory cooperation

Good Regulatory Practices (GRP) foster an open, transparent, and predictable regulatory environment and provide the foundation for regulatory cooperation, reducing cost and time to market that benefits manufacturers, CABs, and consumers.

Promote the protection of intellectual property

Enhanced dialogue and collaboration are necessary to protect intellectual property and combat trade in both counterfeit goods and counterfeit certificates and marks.

Promote fair competition

Free and fair competition, regardless of physical location of business and service providers, foster a pro-competitive and market-driven environment that benefits all stakeholders.

TIC sector's contribution to international trade

Independent third-party conformity assessment supports improvements that drive quality, performance, safety and sustainability, and it is a tool that provides a cost-effective path for demonstrating compliance.

Independent third-party conformity assessment services may include: safety evaluation of sourcing materials, definition of test protocols, supplier validation, factory audits, raw materials checks, testing from the design to final production phases, inspections, container loading supervision, surveillance, correction plans, social auditing, and others.

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TIC Council is a global association representing over 90 international independent third-party testing, inspection, certification and verification organizations. The industry represents an estimated one million employees across the world with annual sales of approximately USD 200 billion.

ANNEX: Providing further details on our position paper

The value of third-party conformity assessment for international trade

While international trade is critical to growth, prosperity, and employment, value creation chains are becoming ever more complex, facing significant variations in safety and regulatory regimes between regions. Products that are sold worldwide must meet the relevant legal requirements and standards in the market in which they are being sold: they must be compliant. Independent third-party conformity assessment bodies have demonstrated their impartiality, neutrality, and objectivity in carrying out their activities of testing, inspection and certification through multiple accreditations. This provides manufacturers, trading partners, governmental bodies, and consumers the basis for confidence and trust in the conformity of products, process and services.

Trade does not rely solely on products conforming to quality, safety and environment standards. It also relies on supply chain compliance with international standards and laws for sustainability and human rights[1]. Thus, the conformity of the suppliers with Sustainability and Human Rights standards becomes critical for trade. The scope applies to environment, safety and social rights. Independent third-party conformity assessment companies perform audits to assess the supply chain conformity with these standards and laws, which contribute to protecting the reputation of industry clients.

Third-party conformity assessment supports improvements to drive quality, performance, safety and sustainability, and it is a tool[2] that provides a cost-effective path for demonstrating compliance. Third-party conformity assessment services may include: safety evaluation of sourcing materials, definition of test protocols, supplier validation, factory audits, raw materials checks, testing from the design to final production phases, inspections, container loading supervision, surveillance, correction plans, social auditing, and others.

Reliance on third-party conformity assessments is a proven cost-effective method for governments, manufacturers, retailers, trading partners and consumers as it:

- Prevents market distortions from false claims of fulfilment of requirements;
- Addresses risks of non-compliance with the relevant rules and regulations;
- Increases buyer confidence by providing details of the characteristics and/or performance of a product while also supporting advertising and labelling claims;
- Helps manufacturers reduce in-house compliance costs and gain global market access;
- Helps protect consumers and users by lowering the risks of unsafe products being placed in the marketplace; and

[1] For instance, as it is defined in the duty of care European regulation since 2017

[2] See IFIA White Paper on "Considerations in Selecting Methods of Conformity as part of Regulatory Scheme Framework: methods: http://www.ifia-federation.org/content/wp-content/uploads/IFIA_DRAFT_Paper_Considerations_Conformity_Assessment_June2018.pdf

- Helps government agencies improve efficiencies and economize resources by leveraging private sector capabilities to fulfil their regulatory mandate to protect health, safety and the environment.

Third-party conformity assessment helps government leverage resources. Governments across the globe increasingly rely on private-sector conformity assessment to fulfill their mission to protect health, safety and the environment. That allows governments to save taxpayer resources by leveraging the capabilities and expertise of a vibrant private sector that can provide all types of conformity assessment in a more cost-effective approach.

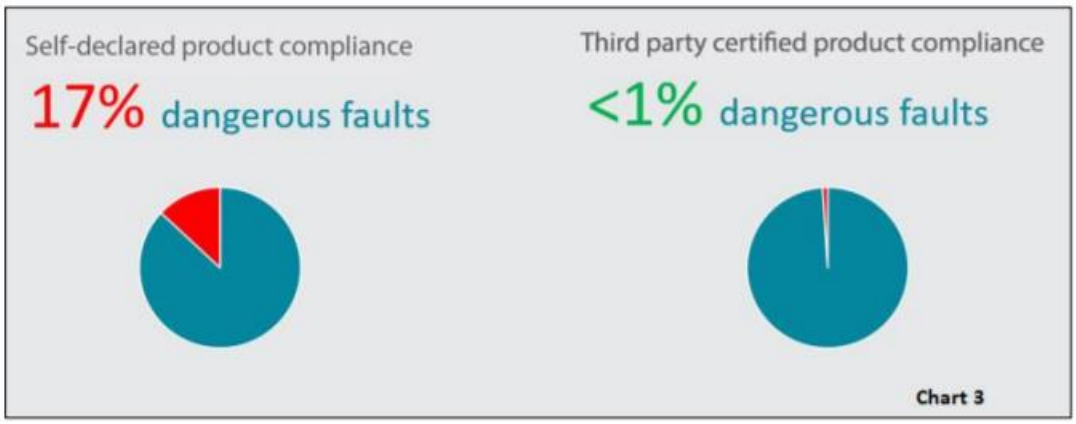
Regulators of consumer and industrial products rely on third-party testing or certification to reduce the need for a fully-funded market surveillance, which when properly implemented requires significant taxpayer resources. For example, in 2008, the U.S. Occupational Safety and Health Administration (OSHA), a division of the US Department of Labor, estimated that implementing a first-party system (i.e. Suppliers Declaration of Conformity (SDoC), in lieu of the use of accredited third parties, would cost the Agency approximately $360 million annually (about $440 million in 2020), compared to $1 million annually (about $1.22 million in 2020) required to operate the third-party Nationally Recognized Testing Laboratory (NRTL) program[3].

The U.S. Environmental Protection Agency (EPA) Energy Star program is an example of a voluntary public-private partnership that relies on independent third-party certification to help ensure ongoing compliance and the integrity of the Energy Star label. Third-party requirements were introduced after high levels of non-compliance were identified by an investigation from the U.S. Government Accountability Office (GAO). Reliance on third-party certification helps maintain consumer trust in the Energy Star designation and improve oversight of the program while allowing the agency to leverage resources because the evaluation and market surveillance is performed by the private sector.

Additionally, the number of non-compliant products in the market is lower when independent third-party conformity assessment is in place. According to the data released by the European Commission; “32% of toys, 58% of electronics, 47% of construction products or 40% of personal protective equipment inspected do not meet the requirements for safety or consumer information foreseen in EU legislation.”[4]

[3] https://www.regulations.gov/document?D=OSHA-2008-0032-0099
[4] Safe products in the EU Single Market: Commission acts to reinforce trust https://europa.eu/rapid/press-release_IP-17-5301_en.htm

In addition to that, market surveys[5] shows that 17% of products with self-declaration of conformity (SDoC) presented safety-critical failures, resulting in a high risk of fire or permanent injury. This compares to less than 1% for products with third-party certification:[6]



Where non-compliant products with third-party certification are identified, it is, in general, based on experience by those conformity assessment bodies that have investigated the non-compliances, not a result of the product being improperly tested or certified. It is most often a result of the products in the market not being identical to the originally tested and certified product due to problems or alterations in the production process without appropriately notifying the Conformity Assessment Body (CAB; e.g. testing, inspection, certification bodies).

Recommendations

[5] IFIA market survey: http://www.ifia-federation.org/content/wp-content/uploads/IFIA_CIPC_239_2014-2016_Market_survey_report.pdf

[6] A product that was self-declared means that the manufacturer or supplier demonstrates that the product fulfills specified requirements. A product that was third-party certified means that an independent certification body conducted extensive review of a product's manufacturing process and determined that the product complies with the applicable legislation. The conformity assessment process includes periodic testing, inspection, market surveillance and factory auditing by the independent conformity assessment body. It provides assurance of ongoing compliance throughout the entire production process with corrective actions in place if non-conformities or issues are identified during the process.

Trade agreements should focus on improving market access for all industries, including the TIC industry. This can be achieved by easing market access through use of national treatment and facilitating regulatory cooperation, regulatory good practices (i.e. regulatory coherence) and sectoral cooperation to reduce or eliminate regulatory differences, resulting in reduced costs and time-to-market for conformity assessment service providers, manufacturers and consumers. The following are specific recommendations on how this can be achieved.

❖ Establish ambitious horizontal provisions in the technical barriers to trade (TBT) chapter

Recommendation: Any provisions on technical regulations, standards, and conformity assessment-related matters (testing, inspection, certification, auditing, surveillance, etc.) should be included within the technical barriers to trade chapter in the individual agreement which governs these topics.

The objective and the scope of the TBT Chapter in all trade agreements should promote convergence in regulatory approaches by reducing or eliminating conflicting technical and conformity assessment requirements while not reducing, undermining or otherwise compromising the level of protection in public policy areas such as the protection of workers and consumers' health, safety, and the environment.

Rationale: The inclusion of TBT-like provisions outside of the TBT chapter, that are weaker than the overarching TBT obligations, undermines the strength of the TBT chapter as a whole. A strong horizontal TBT chapter provides the most clear and comprehensive framework for setting fair and transparent rules for standards, conformity assessment requirements, and new regulations.

❖ Reduce duplicative regulatory burdens through national treatment

Recommendation: Allow CABs the ability to provide services on a national treatment basis where "Each Party shall accord to conformity assessment bodies located in the territory of another Party treatment no less favourable than that it accords to conformity assessment bodies located in its own territory or in the territory of any other Party[7]." In other words, non-domestic (or foreign) CABs are treated the same as domestic (or national) CABs and should be authorized to test, inspect and certify certain products, processes and services in accordance with the legal and technical (standard-based) requirements that apply in the importing country.

Rational:

[7] Trans-Pacific Partnership (TPP) Technical Barriers to Trade Chapter: https://ustr.gov/sites/default/files/TPP-Final-Text-Technical-Barriers-to-Trade.pdf

- National Treatment for CABs is an important tool to facilitate trade, reduce cost, and time to market for manufacturers. With national treatment, products undergo testing to the relevant requirements of the destination market, and where it is most appropriate for manufacturers and CABs. This allows for testing to be carried out in a single location and is therefore more efficient for the supply chain. As required, CABs would be approved by the relevant regulator and accreditation body. Therefore, national treatment gives regulators greater confidence that requirements are met because regulators would approve CABs and/or Accreditation Bodies **directly** instead of through other less effective approaches. Without national treatment, manufacturers would have to select from restricted lists of CABs located in the destination markets which is inefficient and ineffective.
- The efficacy of mutual recognition instruments is limited in removing existing barriers to trade because they are established in scenarios where standards, methods of conformity and accreditation requirements differ, making it difficult to establish trust. Therefore, past MRAs have had limited [8] success facilitating trade due to the lack of trust in the trading partner's quality infrastructure.
- MRAs, in some instances, have also established a non-level playing field for the testing, inspection and certification industry by adding unnecessary, costly, and burdensome administrative procedures.
- Accreditation is an important element of creating mutual trust in the tasks of CABs. It is the internationally recognized method of ensuring competence in delivering conformity assessment activities. Accreditation enables a uniform level of competence and fair competition among accredited TIC companies on a global market and should be applied uniformly for CABs within a national/geographic market as the principle of national treatment.

❖ Preserve neutrality of conformity assessment methods

Recommendation: Preserve the flexibility and **neutrality** of conformity assessment methods that allow regulators to choose the appropriate method of demonstrating conformity according to their risk assessment, policy objectives, market characteristics, and confidence needs. Negotiating parties should refrain from characterizing specific conformity assessment methods negatively.

Rationale: The appropriate conformity assessment method is determined by many factors, such as the legal system, risk assessment (severity/likelihood of harm), a society's tolerance to risk, likelihood of non-compliance, industry's track record, consumer awareness, agencies resources and capabilities and the general philosophy of premarket conformity assessment versus a fully funded post

[8] International Regulatory Co-operation and Trade - Understanding the Trade Costs of Regulatory Divergence and the Remedies. http://www.keepeek.com/Digital-Asset-Management/oecd/governance/international-regulatory-co-operation-and-trade_9789264275942-en#page38

market surveillance system.[9] As such, conformity assessment is not "one-size fits all" and different conformity assessment tools may be selected to address different policy needs. Policymakers of both parties should preserve their prerogative and flexibility to choose the appropriate method of assessing conformity that meets their needs.

❖ Preserve acceptance of conformity assessment methods

Recommendation: Ensure that conformity assessment methods are only required to be accepted by the other Party when they are deemed equivalent both in terms of procedure, technical requirements against which products are tested/certified, and in terms of the level of accreditation required of any (first or third-party) conformity assessment body and that the appropriate mechanisms for determining the equivalence of requirements are established.

Rationale: For both parties to accept each other's conformity assessment results, it is necessary to use equivalent conformity assessment methods and technical requirements as well as similar accreditation requirements and procedures. Otherwise it is difficult to ensure that the level of protection to workers and consumers' health, safety and the environment is not lowered or undermined. When only one of the parties requires the use of third-party conformity assessment, for example, regulators or acceptance authorities cannot be obliged to accept first-party conformity assessment declarations of compliance (SDoC) to satisfy the requirement for the use of independent third parties. There is no equivalent level of safety between third-party conformity assessment and self-declaration of conformity. As noted in the section above on the Value of Third-Party Conformity Assessment, studies have shown that the number of non-compliance products placed on the market are much higher with SDoC.

Equivalence of conformity assessment requirements, technical requirements, and level of accreditation required ensures that regulators or acceptance authorities can have confidence that those products have the same or similar levels of compliance with established regulatory requirements and that the level of protection to consumers' health, safety and the environment is not lowered or undermined and that public policy objectives and confidence needs of regulators are continuing to be met.

❖ Promote good regulatory practices and regulatory cooperation

Recommendation: Reduce or eliminate unnecessary regulatory differences through: (1) Good Regulatory Practices (i.e. regulatory coherence) with provisions for transparency, stakeholder participation, accountability, impact assessment, impartiality and due process and (2) Regulatory Cooperation, which must be open, transparent and focus on harmonizing standards while respecting the different methods of conformity assessment.

[9] Please see IFIA paper: CONSIDERATIONS IN SELECTING METHODS OF CONFORMITY AS PART OF REGULATORY SCHEME FRAMEWORK http://www.ifia-federation.org/content/wp-content/uploads/IFIA_DRAFT_Paper_Considerations_Conformity_Assessment_June2018.pdf

Rationale: Good regulatory practices foster an open, fair, and predictable regulatory environment and provide the foundation for regulatory cooperation while reducing cost and time to market that benefits manufacturers, CABs and consumers

❖ Promote intellectual property protection

Recommendation: Promote efforts to effectively combat trade in counterfeit goods, including training provided to customs officials, ongoing dialogue between Customs authorities and cooperation with relevant stakeholders involved in the enforcement of intellectual property rights. Text of agreements should reflect current practices in global trademarks, particularly for certification marks, to implement transparent, streamlined trademark registration and opposition procedures.

Rationale: Higher levels of enforcement, better protection against counterfeit goods and ensured value of third-party marks. CABs can provide valuable support to enforcement authorities by sharing data and trends from their own surveillance efforts.

❖ Promote fair competition

Recommendation: Strive for strong provisions for fair, transparent and non-discriminatory competition policy subject to dispute settlement, with commitments that State-Owned Enterprises (SOEs) make decisions based on commercial considerations and do not enjoy unfair advantages.

Rationale: These provisions will ensure that businesses, regardless of ownership, compete fairly through enforceable rules; fostering a pro-competitive and market-driven environment and ensuring a level playing field and equivalent market access.

Conclusion

Trade agreements should improve the market access for all industries, including the TIC industry. This can be achieved by the recommendations outlined in this paper.

These recommendations will result in reduced costs and time-to-market for manufacturers, consumers/users and conformity assessment service providers. In addition, the level of protection for health, safety and the environment is ensured and not lowered or undermined.