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## **1 ARTICLE 5**

### **1.1 Text of Article 5**

#### **Article 5**

##### *Procedures for Assessment of Conformity by Central Government Bodies*

5.1 Members shall ensure that, in cases where a positive assurance of conformity with technical regulations or standards is required, their central government bodies apply the following provisions to products originating in the territories of other Members:

- 5.1.1 conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation; access entails suppliers' right to an assessment of conformity under the rules of the procedure, including, when foreseen by this procedure, the possibility to have conformity assessment activities undertaken at the site of facilities and to receive the mark of the system;
- 5.1.2 conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means, *inter alia*, that 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.

5.2 When implementing the provisions of paragraph 1, Members shall ensure that:

- 5.2.1 conformity assessment procedures are undertaken and completed as expeditiously as possible and in a no less favourable order for products originating in the territories of other Members than for like domestic products;
- 5.2.2 the standard processing period of each conformity assessment procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body transmits as soon as possible the results of the assessment in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the conformity assessment if the applicant so requests; and that, upon request, the applicant is informed of the stage of the procedure, with any delay being explained;
- 5.2.3 information requirements are limited to what is necessary to assess conformity and determine fees;
- 5.2.4 the confidentiality of information about products originating in the territories of other Members arising from or supplied in connection with such conformity assessment

procedures is respected in the same way as for domestic products and in such a manner that legitimate commercial interests are protected;

- 5.2.5 any fees imposed for assessing the conformity of products originating in the territories of other Members are equitable in relation to any fees chargeable for assessing the conformity of like products of national origin or originating in any other country, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body;
- 5.2.6 the siting of facilities used in conformity assessment procedures and the selection of samples are not such as to cause unnecessary inconvenience to applicants or their agents;
- 5.2.7 whenever specifications of a product are changed subsequent to the determination of its conformity to the applicable technical regulations or standards, the conformity assessment procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the technical regulations or standards concerned;
- 5.2.8 a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified.

5.3 Nothing in paragraphs 1 and 2 shall prevent Members from carrying out reasonable spot checks within their territories.

5.4 In cases where a positive assurance is required that products conform with technical regulations or standards, and relevant guides or recommendations issued by international standardizing bodies exist or their completion is imminent, Members shall ensure that central government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request, such guides or recommendations or relevant parts are inappropriate for the Members concerned, for, *inter alia*, such reasons as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.

5.5 With a view to harmonizing conformity assessment procedures on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of guides and recommendations for conformity assessment procedures.

5.6 Whenever a relevant guide or recommendation issued by an international standardizing body does not exist or the technical content of a proposed conformity assessment procedure is not in accordance with relevant guides and recommendations issued by international standardizing bodies, and if the conformity assessment procedure may have a significant effect on trade of other Members, Members shall:

- 5.6.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular conformity assessment procedure;
- 5.6.2 notify other Members through the Secretariat of the products to be covered by the proposed conformity assessment procedure, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;
- 5.6.3 upon request, provide to other Members particulars or copies of the proposed procedure and, whenever possible, identify the parts which in substance deviate from relevant guides or recommendations issued by international standardizing bodies;

5.6.4 without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

5.7 Subject to the provisions in the lead-in to paragraph 6, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Member, that Member may omit such of the steps enumerated in paragraph 6 as it finds necessary, provided that the Member, upon adoption of the procedure, shall:

5.7.1 notify immediately other Members through the Secretariat of the particular procedure and the products covered, with a brief indication of the objective and the rationale of the procedure, including the nature of the urgent problems;

5.7.2 upon request, provide other Members with copies of the rules of the procedure;

5.7.3 without discrimination, allow other Members to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

5.8 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.

5.9 Except in those urgent circumstances referred to in paragraph 7, 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.

## **1.2 Related TBT Committee decisions and recommendations**

### **1.2.1 General**

1. In 1996, the TBT Committee agreed to establish a Technical Working Group to study certain ISO/IEC Guides on conformity assessment procedures and how they might contribute to furthering the objectives of Articles 5 and 6 of the TBT Agreement. The Working Group met three times and the Reports are contained in G/TBT/M/7-8 and 10 (1997).<sup>1</sup>

2. In 1997, in order to further the objectives of Articles 5 and 6, including in particular the need to avoid the creation of unnecessary obstacles to international trade due to conformity assessment procedures, and with a view to making recommendations to remove any unnecessary duplication of conformity assessment, the TBT Committee agreed to, *inter alia*, the following:

(i) the Committee will pursue further discussions on ISO/IEC Guides. Members are invited, on a voluntary basis, to continue providing information on their experience in using relevant international guidelines and recommendations on conformity assessment, and the extent to which these guides and recommendations have served as a basis for the recognition of conformity assessment procedures and adopted by bodies in their territories and in regional and international conformity assessment systems, or as a harmonized approach to conformity assessment. In the light of this exercise, the Committee will consider ways and means for better implementation of Articles 5 and 6;

(ii) for transparency purposes and to support the work of the Committee, a list of relevant international guides and recommendations related to conformity assessment procedures will be consolidated, circulated and updated regularly by the Secretariat for the information of Members<sup>2</sup>

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<sup>1</sup> G/TBT/1/Rev.10, footnote 13.

<sup>2</sup> G/TBT/1/Rev.10, p. 8.

3. At its meeting in November 2000, the TBT Committee developed an indicative list describing different approaches to facilitate acceptance of results of conformity assessment.<sup>3</sup> The Committee noted the following in respect of the indicative list:

- (i) the list was not intended to prescribe particular approaches that Members might choose to adopt as it was recognized that the application of different approaches would depend on the situation of Members and the specific sectors involved;
- (ii) governments and non-government bodies might choose to apply different approaches across different sectors, or apply more than one procedure within individual sectors, taking into account variations in procedures in different Members and perceived levels of risks in the acceptance of results in different sectors.<sup>4</sup>

### **1.2.2 Article 5.5 and 5.6**

4. The TBT Committee adopted a decision in respect of the principles to be observed, when international standards, guidelines and recommendations (as mentioned under Articles 2, 5 and Annex 3 of the TBT Agreement) are developed, so as to ensure transparency, openness, impartiality and consensus, effectiveness and relevance, coherence, and to take account of the concerns of developing countries.<sup>5</sup>

### **1.2.3 Article 5.6**

5. With reference to the notification of draft conformity assessment procedures, see the recommendations and decisions adopted by the TBT Committee, as described in the document on Article 2 of the TBT Agreement (Practice).<sup>6</sup> See in particular the recommendation concerning the application of Articles 2.9 and 5.6 (preambular part).<sup>7</sup>

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<sup>3</sup> G/TBT/1/Rev.10, p. 44.

<sup>4</sup> G/TBT/1/Rev.10, p. 9.

<sup>5</sup> G/TBT/1/Rev.10, pp. 46-48.

<sup>6</sup> The text of these recommendations and decisions is contained in G/TBT/1/Rev.10, pp. 18-27.

<sup>7</sup> G/TBT/1/Rev.10, p. 18.