



Project funded by the European Union

“EU-Georgia Business Council” (EUGBC)

Gradual Harmonization of Technical Regulations and Standards with EU Standards

Nino Chokheli (Capacity Strengthening Component Lead, USAID Project Governing G4G)

Kakha Gogolashvili (Director of the Centre of EU Studies at Georgian Foundation for Strategic and International Studies (GFSIS))

What are technical barriers to trade?

Technical barriers to trade (TBT) represent the unity of standards and regulations determining the requirements on product characteristics (such as size, shape, design, functions), as well as production process, method, labeling and packaging. TBT also includes conformity assessment procedure (testing, checking, inspection and certification) which verifies the compatibility of the product with the requirements of standards and regulations. As a rule, the above-mentioned system serves the protection of human, plant and animal life and health, environmental protection and the avoidance of consumer offences.

How does international community deals with technical barriers?

Along with the improved standard of life globally, technical regulations are becoming increasingly important, which in its turn creates barriers to international trade. Traditional tariff barriers have gradually become irrelevant having been replaced by non-tariff, among them, technical barriers. As a result, an “Agreement on Technical Barriers to Trade” has been developed (1993) within the framework of WTO, which has defined the principles of technical regulations and conformity assessment and established the mechanisms regarding harmonization or equivalence of these systems with the aim to minimize unreasonable technical barriers to trade. By creating a single market, which has almost fully narrowed the gap between technical barriers in certain countries, EU has achieved the greatest progress in terms of harmonization of regulatory norms.

How is the issue of reduction of technical barriers being managed by EU-Georgian Agreement?

EU provides support to its trade partners regarding harmonization, equivalence recognition and the application of mutual recognition mechanisms. DCFTA envisages approximation of Georgian legislation and institutional arrangement in the sphere of TBT with the correspondent EU approaches (DCFTA, Chapter 3). According to DCFTA, Georgia is committed to gradually approximate its legislation to the relevant Union acquis. This implies the reflection of new and global approach EU directives in the sectoral legislation of Georgia, as well as arrangement of horizontal legislation –standards, technical regulations, metrology, market surveillance, accreditation and conformity assessment systems and introduction of general principles and functioning mechanisms. Once the European Union has verified that the relevant Georgian horizontal and sectoral legislation, institutions and standards have been fully approximated to those of the Union, the parties may agree to add an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA). The above Agreement may cover one or several sectors. ACAA will ensure to establish the same trade regime between Parties, which is used for the trade in similar goods between the Member States of European Union.

How does the existing legislation of Georgia deal with technical barriers?

The reform of TBT legislation and institutional arrangement of Georgia in accordance to WTO and EU principles started in 2005. Generally, it should be mentioned that Georgia's trade regime is quite liberal. We recognize technical regulations and conformity systems of 37 states (EU and OECD member countries) and the imported goods from these countries are admitted to Georgian market without any additional procedures. Georgia has all necessary components of this system for gradual approximation to EU standards.

National Agency for Standards and Metrology (GEOSTM) is currently functioning in Georgia. In the sphere of standardization, GEOSTM is responsible for the elaboration of national standards, standard registration and promulgation. Presently, about 4500 international (ISO) and regional (European- EN standards) standards are registered as Georgian standards. In order to acquire the necessary standard, an interested person can apply to the Agency. As for metrology, the GEOSTM Georgian Metrology Institute has mass, electrical and temperature measuring laboratories equipped with modern technologies. After being recognized by the regional metrology organization –GOOMET in February 2013, all three laboratories got international recognition within the framework of BIPM – International Metrology Organization. Other laboratories are also being equipped with EU support.

Accreditation in Georgia is carried out by a Unified National Body of Accreditation- Accreditation Centre. Its function is to verify the competence of Conformity Assessment Bodies officially. Presently the Accreditation Centre has granted the accreditation to 400 entities. These are laboratories, certification and inspection bodies.

With the purpose of gaining international recognition, the Accreditation Centre has been collaborating with regional accreditation organization of Europe –EA since 2009. It became an associated member of EA in 2011. And the first steps on the way to recognition were made in 2015, when self-assessment and the first assessment by European colleagues were made. As a

result, the EA assessors recommended that the Accreditation Center implemented the next stage in concluding the Agreement on Recognition between the Accreditation Center and EA.

“Product Safety and Free Movement Code” provides the legal framework of TBT, which defines the basics of adoption of technical regulations and procedures, the principles of quality infrastructure functioning of the country (accreditation, standardization, metrology), institutional arrangement and market surveillance. The above Code also reflects two horizontal EU directives on general product safety (2001/95/EC) and liabilities for defective products (85/374/EEC). Since 2011, the Government of Georgia has also been adopting new and global approaches of EU directives as national technical regulations. Namely, presently 6 technical regulations of the this type have been adopted on cable way installations, lifts, boiler plants, simple pressure vessel, pressure equipment, recreational flotation devices.

How is the enforcement of adopted regulations and laws controlled?

LEPL- Technical and Constructions Supervision Agency, has been in charge of market surveillance since July 2012. Government of Georgia develops market surveillance system on industrial goods in stages in conformity with European and international best practices. The above system is aimed at ensuring the placement of safe products on the market.

The main sphere of the Agency’s activities is the control and supervision of the state buildings with increased technical danger and building permit for the particularly important buildings (including radiation /nuclear power structures/stations) on the territory of Georgia, as well as control of the fulfillment of Building Permit Conditions. The Code identifies about 25 high-risk facilities (mine, pit, quarry, etc.), to which the Agency mandate applies. The Agency functions also incorporate supervision of the objects defined by new approach technical regulations (cableway installations, lifts, boiler plants, simple pressure vessel, pressure equipment).

Further steps/recommendations

Accreditation

Since accreditation represents a serious technical barrier to trade, international recognition by National Accreditation Body is hugely important for the facilitation of exporting Georgian products. The documents issued by conformity assessment bodies (laboratories, certification bodies, etc.), recognized by an international accreditation body, are highly trustworthy, which means that products with such documentation are admitted to different markets without any obstacles and do not require additional testing or certification in the country of importation. Consequently, Georgian Accreditation Center should actively continue working for gaining international recognition within the EA framework. Upon obtaining this status, conformity assessment bodies accredited in Georgia will gain recognition throughout Europe, which will be a serious advantage for the business sector in Georgia.

It is important to note hereby that for full recognition of conformity assessment certificate granted in Georgia, which implies an unimpeded penetration of goods into the EU market, it is necessary to draw up Agreements on Conformity Assessment and Acceptance of Industrial Products (ACAA). These agreements are of sectoral character and allow opening up markets gradually. Since the approximation of conformity assessment practices to EU standards is impossible to achieve in all fields, it is necessary to identify priority spheres, which on the one hand allows to approximate harmonization and practices, and on the other, it has the country's export and generally, market potential.

General product safety directive and its implementation mechanism

Product Safety and Free Movement Code reflects the second horizontal EU directive of this sphere, concerning general product safety. A number of provisions of this directive have been transferred to the Code, such as the definition of a "safe product", certain liabilities of producers and distributors; however, implementation mechanism of these provisions is not clearly worded. The Code does not determine the "competent body", which is liable for market surveillance concerning general product safety, at least when it refers to the commodity belonging to nonregulated sphere. According to the directive, a competent body should have a number of functions, among them market monitoring, sampling and testing, issuing the order to inscribe the product with the indication of risk, requesting information from producers and distributors and finally removal of dangerous products from the market or consumers. Product Safety and Free Movement Code repeatedly reminds producers and distributors of the existence of a "relevant authorized body" and even obliges them to cooperate with it; however, the law does not determine which body is supposed to have this function. It is possible to assign it to Technical and Constructions Supervision Agency and this is widely practiced in several European Union countries. In some European Union countries, supervision on commodities, except for regulated spheres, is the responsibility of consumer protection agencies. It is necessary to identify the competent body timely and endow it with powers, as well as equip with relevant staff and basic infrastructure.

In some EU countries, the function of supervision of nonregulated commodities is assigned to consumer protection agencies, although there are countries, where general product safety supervisory function is the responsibility of other services. These countries are: Austria, Belgium, Bulgaria, Cyprus, Estonia, Hungary, Iceland, Ireland, Latvia, Lithuania, Malta, Poland, Rumania, France, Spain, Sweden, Croatia, Czech Republic, Finland, Germany, Greece, Italy, Lichtenstein, Luxemburg, Holland, Norway, Portugal, Slovakia, Slovenia, Turkey, The United Kingdom.

Market Surveillance

Control of high-risk facilities determined by the Code as well as new and global approach directives are scheduled and implemented at regular periods or are unscheduled (implemented only in the case of threat, force majeure, accidents, or other). Legislation determines the

regularity of planned inspection for all categories of facilities (for instance, lifts are subject to inspection every three years; cable way and attractions - every two years; pit and mine - every 6 months). Supervisory functions of Technical and Constructions Supervision Agency, in case of both, scheduled or unscheduled control, are limited to documentary control. The law delegates technical inspection on site to private inspection bodies given that the latter has necessary accreditation and insurance of responsibility. This mechanism does not operate at full capacity so far and it requires a more detailed study to see if such services will start functioning in the near future.

Customs control zones are an ideal place to avoid importing of goods that are irrelevant to regulations and their placement on the market. Consequently, the first examination of goods should take place during import procedures. At present, the goods at Georgian border are not being examined in terms of conformity with technical regulations. It is necessary to speed up the establishment of control at the Customs checkpoints, which, in its turn will facilitate the implementation of liabilities of market surveillance service. According to EU legislation, the function of control can be assigned to Customs Office, as well as market surveillance body (for instance, phyto-sanitary inspection). Examination can be documentary, as well as physical and laboratory.

In accordance with EU acquis, the Customs has the following liabilities:

- Detain the goods if it appears that the product may pose a risk to human health, safety, environment or other public interest; or if the product fails to meet the requirements concerning documentation or CE marking;
 - If the product is detained, the Customs shall notify the competent body about the above, which is supposed to carry out preliminary investigation within three days and make a decision whether the goods should be detained or released, or else consider the extension of the procedure with the purpose of further examination. The product can be detained for as long as proper examination time will require;
 - If Customs refused entry of goods, the owner shall be allowed to take them back.
- However, there are cases when the goods are subject to seizure or destruction.

System Transparency and Communication

Acceleration of reforms in the above-mentioned spheres depends not only on legal and institutional efforts, but also on the support provided by organizations and interested persons. Approximation with EU standards for the elimination of barriers will have a serious impact on the so-called stakeholders- organizations and persons who are directly affected by changes. They will have to renovate goods and technologies, invest in modernization, renew import policy, develop market segmentation anew, etc.

These costs should be justified by gaining benefits in the future. It is important to provide timely and accurate information on the scope of changes at each stage. In this regard, it is necessary to establish regular mechanism for communication with businesses and other interested actors and fully involve them in the process of reforms, hold consultations on the ways of alleviating the possible impact and any further negative effects caused by these changes.

