

Test procedures: Article 5.3

In some cases, test results of sampled goods provide a different finding from the imported goods declaration and may not be acceptable to the importer.

Article 5.3 outlines obligations for WTO Members to re-test samples on the request of traders in a transparent and trade-facilitative manner. A second test would ensure or challenge the consistency of the first test and highlight any discrepancy that might have occurred between the first test and the declaration of goods for importation.

Provide, upon request, an opportunity for a confirmatory test in case of discrepancy between the first test and the declaration of goods for importation.

The measure

ARTICLE 5	OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY
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3	Test Procedures
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3.1	A Member may, upon request, grant an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding.
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3.2	A Member shall either publish, in a non-discriminatory and easily accessible manner, the name and address of any laboratory where the test can be carried out or provide this information to the importer when it is granted the opportunity provided under paragraph 3.1.
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3.3	A Member shall consider the result of the second test, if any, conducted under paragraph 3.1, for the release and clearance of goods and, if appropriate, may accept the results of such test.
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Understanding the measure

What is covered?

Core obligation

The measure is applicable only when the results of the first test are different to the declaration of the goods at the time of import, described as an 'adverse finding' in the provision. The WTO Members may provide an opportunity to conduct a second confirmatory test, if requested by the importer or their authorized agent.

The expression 'may grant' means that it is not mandatory to grant a second confirmatory test and that this decision is left to the discretion of the member country, on a case by case basis.

Publish in a non-discriminatory manner

If granting a second test, WTO Members must make public the name and address of any laboratory where the second test can be conducted in an open, transparent and non-discriminatory manner. Members are requested to provide this information directly to the importer.

Consider test results

Members must take into consideration the results of the second test for the release or clearance of goods and, if appropriate, accept the result. However, the measure does not oblige the member country to accept the results of the second test.

What is not covered?

The measure does not provide any obligation to carry out the second test in accredited laboratories and there is no obligation to undertake the second test in a different laboratory than the one where the first test was conducted.

Benefits and opportunities for stakeholders

The option to request a second confirmatory test – and the granting of such test by the member country – can be helpful in addressing an adverse finding in the first test. The obligation to make information about testing laboratories public in an easily accessible manner also ensures transparency and certainty when a trader is granted a second confirmatory test and needs access to a laboratory for testing. Publishing names and addresses of laboratories will reduce public authorities' time spent responding to inquiries from traders.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- There is a national implementation framework in place which provides opportunities to traders to request a second test.
- Contact information of any laboratory where the second test can be done is published and easily accessible.
- The findings of confirmatory tests are taken into consideration for the release and clearance of goods.
- If appropriate, findings of the confirmatory test may be accepted.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan:

Implementation sequence	Actions suggested
	Preparatory phase
	Determine legal, procedural and technical needs for creating/improving current testing procedures systems.
	Identify the border agencies predisposed to request for samples and tests.
	Set-up phase
	Establish or improve the legal, technical and institutional basis for an efficient system of publishing information about testing procedures, including contact information about laboratories.
	Set up mechanisms for inter-agency cooperation when more than one ministry or agency are involved with testing procedures.
	Establish guidelines/criteria/regulations for conducting second tests.
	Link the system with risk analysis (or to an existing risk management system), to evaluate future risks.
	Management and follow-up phase
Set up a mechanism for monitoring and evaluating results of testing procedures to improve the import testing process.	
Average time for implementation	Between one and a half to two years.

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Leading implementation agency	Customs is most commonly chosen as the leading implementation agency, with the ministry of trade.

Key challenges

Existing laws, regulations and procedures may need to be amended to allow second tests. Government institutions may not have the required ICT capacity to ensure that information is published on the internet.

Key factors for success

An enabling legal/administrative framework is crucial to ensure that second tests are granted to traders, as well as an efficient, reliable testing system put in place.