



TO: Clients and Friends of the Firm
FR: Frishberg & Partners
RE: Certification of Goods and Services

In the West, most producers of goods and services voluntarily certify the quality and safety of their products through independent, non-governmental organizations. The concept is simple: most companies want their customers to have faith in their product and, therefore, they guarantee the quality and safety of their products themselves because the sale of poor quality and unsafe products can lead to a loss of goodwill, reputation and extensive legal expenses.

In Ukraine, however, most goods and services must go through a mandatory certification process that involves two state entities: the Ministry of Health and the *DerzhStandart* (the State Committee for Standardization, Certification and Metrology). This certification process is expensive and lengthy, which adds to the price of the goods and services offered by the producers. For instance, a company must receive a so-called “hygienic conclusion” from the Ministry of Health with the corresponding certification of the goods and services from *Derzhstandart*.

Likewise, any Ukrainian company that wishes to utilize European technology in Ukraine must present the equipment/machinery to the laboratory of *DerzhStandart* in order to receive a certificate for its use. Although this certification means absolutely nothing in Europe, it raises the price of the goods to be produced because literally every nook and cranny must be checked and certified. Not surprisingly, this cumbersome barrier to entry does not sit favorably with foreign companies.

Furthermore, *DerzhStandart* establishes the size of packages and the storage term for products. Therefore, if a company wishes to produce, for example, three and a half liter bottles for a soft drink and such bottle size is not provided for by *DerzhStandart*, then the company does not have the right to produce such bottles. Additionally, *DerzhStandart* can establish a storage term for the soft drink at 15-20 months while the corresponding certificate will be valid for only 6 months.

If taken literally, this means that every six months the company must re-certify the soft drink, which will be done at the same cost as the first certification. Officially, the cost for certification can run between 1,000 and 1,500 Ukrainian Hryvnia each time certification becomes necessary. Taking all of these costs into consideration, the price of goods and services can increase by as much as 10-15% of the actual cost. Ultimately, this cost increase negatively affects the buying power of the customer.

Importantly, the Presidential Decree No. 817/98 “On Certain Measures for the De-regulation of Entrepreneurial Activity,” dated July 23, 1998 (as lastly amended on May 25, 2004), exempts products (except food products) whose quality is confirmed by certificate issued outside of Ukraine in accordance with the international standard ISO or other international standards, from having to go through repeat certification in Ukraine. Likewise, goods imported into Ukraine must go through the accreditation process in a Ukrainian laboratory if Ukrainian accreditation is not accepted in the country of origin. Again, this affects the price for which goods will be sold on the market. Note, however, that since Ukraine is still not a member of the European Co-operation for Accreditation (“EA”), the accreditation of goods in a Ukrainian laboratory for their subsequent export is *not* accepted by most member states of the EA (i.e., the goods must be examined in a European laboratory).

In a related matter, on December 1, 1999, the Parliament issued Resolution No. 1258-XIV “On the Draft Law ‘On Liability of Suppliers for the Manufacture and Sale of Poor Quality and Dangerous Products.’” The draft law was prepared by the *Derzhstandart*, and resulted in the Law of Ukraine No. 1393 “On Extraction From Circulation, Processing, Utilization, Destruction or Further Use of Poor Quality and Dangerous Products,” dated January 14, 2000 (as lastly amended May 15, 2003), which satisfies one of the requirements for joining the European Union, namely the quality maintenance of sanitary and ecological norms in accordance with international standards. Among other clauses, it levies disciplinary, administrative, civil and/or criminal liability for supplying poor quality or dangerous products and failing to comply with the provisions of the law.

For years, certification has been a thorn in the side for foreign companies. However, a light at the end of the tunnel has recently appeared. Through the efforts of such organizations as the European Business Association and various delegations from the European Union, the Ukrainian government is attempting to bring its certification requirements up to European standards with the aim of someday joining the EA, the World Trade Organization and, perhaps eventually, the European Union.