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Standards in the EU-US Transatlantic Trade and Investment Partnership (TTIP)

KEY MESSAGES

- 1** Standards can play a key role in tackling regulatory divergences between the EU and the US and therefore constitute an important element of the TTIP negotiations. The overall goal of European business is to achieve global market access on the basis of 'one standard, one test, accepted everywhere'. In an ideal world this would mean having fully transposed international standards that are applied globally.
- 2** Although there are differences between the European and US standardisation systems, it is essential to develop efficient and consistent mechanisms to facilitate transatlantic cooperation on standards-related matters.
- 3** There is a strong need to facilitate technical cooperation in subjects and sectors where industry on both sides is willing to engage in joint work. Also, more transparency is needed with regard to how legislation and standards interact, especially on the US side.
- 4** There is a necessity to work towards ensuring that conformity assessment practices favoured on both sides of the Atlantic do not create distortion in market access opportunities.



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BUSINESSEUROPE'S VIEWS ON STANDARDS IN THE TTIP NEGOTIATIONS

INTRODUCTION

Tackling regulatory divergences between the EU and the US will benefit businesses of all sizes and increase transatlantic trade flows, spurring economic growth and job creation, thereby contributing to closer economic integration¹.

Standards are one of the instruments currently on the table in the aim to tackle regulatory divergences between the two sides, because at both ends they are referred to by regulations to provide technical detail to legal requirements for products and services. In this context, standards fall under the TTIP TBT Chapter.

The overall goal of European business is to achieve global market access on the basis of 'one standard, one test, accepted everywhere'. In an ideal world this would mean having fully transposed international standards, without regional or national deviations, that are applied globally.

However, the EU and the US have different standardisation systems which can lead to certain barriers. This paper aims to provide an overview of the standardisation systems on both sides, the challenges that are currently faced and recommendations in view of the ongoing TTIP negotiations. The paper mainly focuses on those standards that are used to support regulation.

WHAT DO WE MEAN BY STANDARDS?

A standard is a document that provides requirements, specifications, guidelines or characteristics that can be used consistently to ensure that materials, products, processes and services are fit for their purpose². Standards result from a voluntary cooperation between all stakeholders including industry and public authorities collaborating within a system founded on openness, transparency and consensus (a full list of such criteria has been agreed by the WTO).

Standardisation is the process to create and maintain a standard, and includes all the supporting activities that ensure the proper functioning of the system such as the infrastructure to gather the experts (as stakeholder representatives), who create, approve and update standards.

¹<http://www.business europe.eu/content/default.asp?PageID=568&DocID=32393>

² This is the International Standards Organisation (ISO) definition
<http://www.iso.org/iso/home/standards.htm>

As well as supporting the regulatory framework, standards provide benefits to the wider economy and are an important tool to facilitate the interoperability of networks and systems.

Transatlantic cooperation on standards already takes place. In particular, in areas such as Intelligent Transport Systems and smart grids there has recently been extensive and fairly successful cooperation while in other industrial sectors the current degree of cooperation is sometimes not sufficient.

THE EUROPEAN STANDARDISATION SYSTEM

In Europe, standardisation has been a central element in the delivery of a prosperous single market. It has supported the regulatory framework by providing presumption of conformity with Directives in major industrial areas under the 'New Approach' policy. Of the many types of European standards, about 20% are cited in the Official Journal of the European Union to give presumption of conformity to regulatory requirements.

EU Regulation 1025/2012 recognises three European Standardisation Organisations (ESOs): CEN³, CENELEC⁴ and ETSI⁵, which are responsible for general, electro-technical and telecommunication standards respectively. EU Regulation 1025/2012 also provides for the identification of global ICT specifications developed by other organisations (such as fora and consortia) so that these specifications can directly be referenced in public procurement.

The three ESOs adhere to the founding principles of standardisation recognised by the World Trade Organisation (WTO), namely coherence, transparency, openness, consensus, voluntary application, independence from special interests and efficiency.

Whereas CEN and CENELEC's only members are the National Standards Organisations (NSO), direct membership to ETSI is also open to industry. Direct participation in the technical work of the 3 ESOs is open to all stakeholders in Europe, whether headquartered abroad or not. Likewise all stakeholders that are active in Europe can have their voices heard in the formal voting process, without discrimination, through the standards committees at Member State level.

When a European standard (EN) is approved at European level in CEN, CENELEC or ETSI, it is systematically adopted in 33 countries (i.e. the EU Member States and the EFTA countries, plus Turkey and the former Yugoslav Republic of Macedonia) and any national standard that conflicts with the newly approved EN is withdrawn. This ensures the good functioning of the Single Market by precluding any Member State from using diverging standards covering the same product or service and thus creating a barrier to trade. 95% of costs related to the development of European standards are borne by the private sector, demonstrating their value for market stakeholders.

³ European Committee for Standardisation

⁴ European Committee for Electrotechnical Standardisation

⁵ European Telecommunications Standards Institute

The link between European legislation and European standards is generally clear and predictable. Information on these standards is easily accessible via the websites of the European Commission and the ESOs. Standards intended to provide a presumption of conformity with EU legislation are developed under mandate by the ESOs exclusively.

In addition, CEN and CENELEC structurally prevent duplication of work with the international standards bodies ISO and IEC, via technical cooperation agreements. ISO and IEC have global membership, and the US contributes to the work. No new European standard is developed if an international standard, published by ISO or IEC, meets the requirements of the European market.

ETSI also participates in partnership programmes, for example 3GPP and OneM2M. These provide a platform that is open to all members of ETSI, and the other participating SDOs to create a single set of technical specifications. These are taken by the SDO and turned into standards.

THE AMERICAN STANDARDISATION SYSTEM

The US standardisation system is more decentralised and is supported by a multitude of private sector standards developing organisations (SDOs).

The American National Standards Institute (ANSI) holds the responsibility of bringing together diverse private and public sector interests and accredited and non-accredited standards development organisations. According to the US point of view, this relationship has led to the development of thousands of voluntary consensus standards for the United States, the effective representation of US needs and viewpoints in regional and international standards-setting activities, and the minimisation or elimination of overlap and duplication in standards-setting activities.

Scientific and professional societies like the American Society of Mechanical Engineers (ASME), the Acoustical Society of America (ASA), and the American Society of Safety Engineers (ASSE) are involved in standards development activities that further the work of their respective organisations and the professions that they support.

Trade associations, on the other hand, deal with a particular industry and promote its products or services.

Organisations such as the Institute for Electrical and Electronics Engineers (IEEE) and the Electronic Industries Association (EIA) develop technical standards that cut across many industries. Large umbrella groups such as ASTM International recognise standardisation as its primary focus; yet other organisations develop standards as a complement to their conformity assessment activities of testing and certification.

In the US regulators are directed by both statute (National Technology Transfer and Advancement Act NTTAA) and executive order in OMB circular A-119 to use voluntary consensus standards developed by private standard setting bodies in regulations. Following this guidance US regulators will issue regulations that identify relevant standards that meet the regulator's objective. This approach is known as incorporation by reference. Products and services meeting standards incorporated by reference are given a presumption of conformity and allowed onto the US Market.

Incorporation by reference has many advantages. It allows regulators to meet their desired regulatory objective while reducing costs and generating time savings. Further, circular A-119 directs regulators to look to the best standards globally that are developed by standard setting bodies, not just those developed by US headquartered standard setting bodies.⁶

CHALLENGES

Differences between the US and EU's approach to standards have created unnecessary barriers, raising costs, deterring trade and investment, negatively impacting the competitiveness of European business and our consumers. As traditional barriers like tariffs and duties have decreased, these standards and regulatory issues have emerged as a significant potential impediment to further integration of the world's two largest markets. SMEs still have to face important difficulties to access the US market due to many regulations not commonly known and difficult to identify.

Key challenges are the following:

Different standardisation models

As referred to above, the EU and the US have different standardisation models, which have been shaped over many decades taking into account each side's history, culture and values. The EU's model is country-based and has been successfully deployed by IEC, ISO, CEN and CENELEC for many decades. The US system is a decentralised one that is naturally partitioned into industrial sectors and supported by private sector standards developing organisations many of which use a direct membership model.

'International' standard interpreted differently

EU Regulation 1025/2012 designates ISO, IEC and ITU as the official 'international' standards bodies for regulation. US regulators recognise as 'international' standards the standards developed by more bodies (e.g. ASTM, IEEE, SAE etc) and global fora and consortia. US regulators are committed to the WTO TBT principles to which an organisation engaged in the development of international standards must comply. A difference in the definition of an international standard is not just a terminology issue: it has direct implications when considering that a standard supporting a technical regulation can create or not barriers to trade. This difference in interpretation is mainly affecting sectors where ISO or IEC standards are adopted as EN standards to support European Directives or Regulation while in relevant corresponding US Regulations, the standards being referenced are often domestically developed by organisations seen to be international by the US definition, but in the EU seen as national organisations.

⁶ Circular A-119 is now being updated. Further information on this and other aspects of standards in the US can be found at:

<http://www.whitehouse.gov/sites/default/files/omb/inforeg/revisions-to-a-119-for-public-comments.pdf>

<http://www.nist.gov/standardsgov/>

http://www.standardsportal.org/usa_en/standards_system.aspx

An important aspect is the fact that whereas in the EU one adopted European standard removes 33 conflicting national standards, this is not the case in the US. European companies suffer as a result because even if a European company adheres to a US SDO standard that will not necessarily secure access to all states. This can also be a challenge that US companies face but it has to be borne in mind that a US company only has one EN standard to adhere to for presumption of conformity to EU legislation applicable to the whole EU single market. Although European companies comply with federal standards, it is not necessarily the case with sub federal standards.

Last but not least, the use of standards on both sides should be voluntary.

Transparency

Effective transparency in the field of standards in support of public policies is crucial. In Europe the development of European standards supporting legislation has always been an open process, where interested parties can, through any relevant national standardisation organisation, participate. It is in the interest of everybody that all relevant aspects are taken into account.

It is nevertheless important to stress that stakeholders who participate in European standardisation must be committed, have the right expertise and be relevant to the development of the standard in question. It is primarily a question of developing quality and market-relevant standards.

As such, companies headquartered in the US that have an office in the EU can also influence the shaping of European standards developed by CEN or CENELEC through participation in the work of the National Standards Organisation.

The publication of work programmes by the European Commission and the mandating process for standards to be used in public policies enhances transparency of the process because it enables stakeholders to anticipate what is in the pipeline and make conscious decisions about active participation in the standard setting process.

However, in the US the multifaceted nature of the system can make it difficult for European companies, in particular SMEs, to influence the development of standards. In practice this means that European companies would need to spend much more time and effort to continually monitor what is happening where. This also results in the need to purchase standards from more sources which can be more complex and costly. Having said this much of the work is carried out electronically, is open to participants on a global basis and in principle does not require the physical presence of European companies.

Conformity assessment

Differences in the way conformity assessment is carried out on both sides should be taken into account to avoid unnecessary costs and lock-in into certain assessment services. The EU does not require third party certification as a general rule but tends to rely on trade-facilitative solutions to avoid higher compliance and administrative delays and costs. The suppliers' declaration of conformity is heavily relied on in Europe for many products (e.g. including electrical products and machinery). The combination of the two approaches has since contributed to the placing of safe products on the market while avoiding unnecessary costs.

RECOMMENDATIONS

It is essential to reduce unnecessary costs that damage our competitiveness in an increasingly competitive global economy.

Both Europe and the US have rigorous systems in place for ensuring technical compliance with regulatory requirements. This is regardless of the way in which standards have been developed. It is certainly in the interest of business that EU and US standardisers cooperate when developing standards in support of regulation to increase the chance of similar outcomes, whilst accepting that each side has its own system.

Although there are differences between the European and US standardisation systems, it is essential to develop efficient and consistent mechanisms to facilitate transatlantic cooperation on standards-related matters. These will support an expected increase in transatlantic trade flows. Success will come from working on common strengths. BUSINESSEUROPE would like to put forward recommendations for an ambitious yet balanced approach to this issue.

Recommendations:

- The two sides need to be well aware of the differences between both standardisation systems and the technical barriers and burdens that these differences lead to, and take this into account when designing cooperation mechanisms and shared solutions to reduce regulatory barriers.
- The two sides should also implement and enforce effectively standards which they approved in international standards bodies such as IEC and ISO, as well as their WTO TBT commitments.
- There is a strong need to facilitate technical cooperation in subjects and sectors where industry on both sides of the Atlantic is willing to engage in joint work, through a concrete mechanism to identify areas of common interest and to provide adequate structures for this cooperation. A first measure could be to introduce formal and effective mechanisms to share and mutually adopt standards between SDOs, as is now happening between ISO and CEN, IEC and CENELEC and also IEEE and IEC.
- In the spirit of better transparency, there should be a coherent set of bodies that stakeholders can refer to in the area of standardisation and a system detailing how legislation and standards interact, including advanced notifications of future developments. The European Standardisation System largely fulfils this need.
- Ideally, the US would provide a single information source transparently listing all accredited SDOs, their relation to industrial sectors, the use of their published standards for public policies at federal and state level, where to apply for active participation and where to buy their standards. When a standard is considered to support legislation this should be published.



- A next step could be to agree on a scrutiny process with stakeholder consultation on both sides before any new or revised standard gets designated as a (legally or de-facto) binding requirement for market access.
- There is a necessity to work towards ensuring that conformity assessment practices favoured on both sides of the Atlantic do not create distortion in market access opportunities. Both sides do have rigorous systems in place and the TTIP should aim at promoting coordinated methods of risk analysis. BUSINESSEUROPE would encourage both sides to see whether unnecessary burdens implied by requirements for third-party conformity assessment could be further alleviated.
- Greater use of the international arrangements for cooperation and mutual recognition between accreditation bodies (ILAC and IAF) would be useful to facilitate the mutual recognition of accreditation certificates and accredited conformity assessment results.

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