

IMPROVED TRANSPARENCY IN REGIONAL STANDARDS ACTIVITIES
IN THE GATT AGREEMENT ON TECHNICAL BARRIERS TO TRADE

Proposal by the United States

INTRODUCTION

Many Parties to the GATT Agreement on Technical Barriers to Trade (TBT Agreement) belong to a variety of governmental and non-governmental regional standards development organizations. Frequently, these regional organizations have procedures that prevent non-members from fully participating in the regional organizations' development of standards or related activities. If regional bodies allow non-members to comment on proposed standards or certification systems, it is often at a point when consensus among the members has been previously achieved, and there is no guarantee that these comments will be seriously considered and taken into account. As a result, the following disadvantages exist for suppliers in non-member countries:

- (1) the opportunity for interested individuals to comment on proposed regional standards or certification systems is severely restricted; there is no assurance that comments provided will be taken into account;
- (2) the closed nature of regional organizations provides producers in these countries with a time advantage in adapting to new standards, as they have advance knowledge of standards under development;
- (3) even if regional organizations base their work on international standards (which may be classified as the lowest common denominator), the resulting standards are biased towards technologies used by industry in their member countries; and,
- (4) participation in regional activities can undermine the international standards-setting process through (a) "bloc voting" by regional members in international meetings, or (b) the circumvention of international standardization in the development of regional standards.

The United States maintains that increased transparency by regional standards organizations would improve the functioning of the GATT TBT Agreement and further its objectives.

Discussion of issue to date

In the past, the TBT Committee has discussed the issue of the lack of transparency in regional standards activities. As early as 1981, the United States expressed its concern in the TBT Committee that United States suppliers were being denied the opportunity to comment on draft European Community standards developed by regional standardizing organizations, rather than the Commission itself. This expression included the concern that a concentration by Europeans on the development of "European" - rather than international - standards would undermine the international standardization work of such bodies as the ISO (International Organization for Standardization) and the IEC (International Electrotechnical Commission).

The discussion of activities of regional bodies, and the desire for a further understanding of their activities, led the United States to initiate a proposal in the first "Three-Year Review" of the TBT Agreement that representatives of regional bodies make presentations to the TBT Committee on their procedures and how they related to those embodied in the Agreement. The proposal was adopted and presentations were made by NORDTEST (Nordic Co-operation Body for Technical Testing), CENELEC, PASC (Pacific Area Standards Congress), and CEPT (European Conference of Postal and Telecommunications Administrations). Mr. Donald Peyton, President of the American National Standards Institute, speaking on behalf of PASC (which does not write standards or certify products) at a 1984 TBT Committee meeting stated that:

"The challenge to GATT is in continuing to monitor and study the ISO and IEC systems, as well as those of regional organizations, to assure itself that the standards being produced are truly international and not merely manifestations of powerful regional blocks working in close consort within international bodies."

Information on a number of regional bodies was compiled by the GATT secretariat in response to an agreed set of questions developed by the TBT Committee.

In the TBT Agreement's second "Three-Year Review", the United States circulated a proposal that "Parties be required to ensure that regional standardizing bodies of which they are members adopt transparency provisions consistent with their obligations as Parties to the Agreement". There was no consensus on this proposal; however, it was suggested that this issue be addressed in the Uruguay Round.

Discussion in TBT Committee meetings and in bilaterals revealed a difference in views concerning the activities of such bodies. On the one

hand, the development of standards by regional bodies can be viewed as trade liberalizing to the extent that requirements are harmonized among their members. Some Parties view the development of regional standards where no international standards exist as a step toward the development of an international standard. On the other hand, the development of standards by regional bodies where no international standard exists, or where the regional standard differs significantly from an existing international standard, can be viewed as protectionist or trade-inhibiting.

Effectiveness of existing coverage under the TBT Agreement

As defined in the Agreement, a regional body or system is one whose membership is open to the relevant bodies of only some of the Parties. Presently, Parties are bound only to "take such reasonable measures as may be available to them" to ensure that regional bodies of which they are members comply with the appropriate transparency provisions of the Agreement.

Articles 2.9, 2.10 and 9 of the TBT Agreement were drafted to deal with the possibility that non-members would be denied their right to equal treatment under the Agreement as a result of regional activities. These articles require all signatory governments that are members of regional standardization and certification bodies to ensure that such bodies comply with the procedural requirements of the Agreement; and, in cases of non-compliance, signatory governments are obligated to not utilize the standards or certification systems of such bodies. Article 2.9 requires signatories to use their "best efforts" to ensure that regional standardizing bodies conduct their activities using open procedures. Article 2.10 states that if such procedures have not been used by a regional body, a signatory adopting a regional standard must itself use open procedures. Article 9.3 requires signatory governments to ensure that regional certification bodies provide access to certification systems - the ability to obtain certification and receive the certification mark with non-discriminatory treatment. In addition, provisions of Article 10 require the inquiry points established by the Agreement to be able to respond (or make appropriate referrals) to inquiries regarding the activities of regional standardizing or certification bodies in which bodies in a signatory country participate.

It is clear that regional bodies are not subject to the TBT Agreement's provisions; only signatories that are members of such bodies must comply with the Agreement. It is the view of the United States that the "best efforts" language does not adequately cover the procedures that regional bodies have for notification, publication, submission of comments, discussion and taking comments into account. The issue of coverage is linked to an analysis of the relationship between regional bodies and Parties to the Agreement, particularly where a contractual arrangement exists.

The United States proposes that where trade interests are affected, third countries (i.e., non-members of regional bodies or systems that are Parties to the TBT Agreement) should (1) be involved in the activities of regional standards bodies or systems; and, (2) be given non-discriminatory treatment vis-à-vis members and third parties.

TEXT OF PROPOSAL

The following proposal prepared by the United States concerns regional standardization and certification bodies or systems that develop standards or rules of certification systems. The proposal is separated into two parts: part one contains an additional obligation for parties to the TBT Agreement; part two contains a draft "Code of Conduct" that obligates the regional bodies and systems themselves.

I. Amendment to the TBT Agreement regarding regional standardization and certification activities:

In order to facilitate the conduct of international trade, Parties shall ensure that standards or rules of certification systems previously agreed in international bodies or systems shall not be amended as a result of regional activities in such a way as to have the effect of creating unnecessary obstacles to international trade.

II. Draft Code of Conduct on transparency in regional standardization and certification activities:

Note one: The draft Code of Conduct applies to those bodies or systems in which at least three or more members come from at least some of the Parties to the TBT Agreement.

Note two: The above provisions do not negate the responsibilities of parties to fulfill their existing obligations under the TBT Agreement (see, inter alia, Articles 2.9, 2.10, 9.1, 9.2, 9.3 and 9.4.)

Definitions

(1) The use of the word "Parties" in the text of the draft Code of Conduct refers to governments that have signed and ratified the TBT Agreement.

(2) The use of the word "members" in the text of the draft Code of Conduct refers to bodies that participate in the activities of regional bodies or systems.

Regional bodies or systems that engage in standardization and certification agree to the following provisions:

1. Companies established or incorporated in the territories of Parties shall be accorded the right of participation in regional bodies or systems in the same manner as it is accorded to any other companies participating in those bodies or systems.
2. With a view to harmonizing standards and rules on as wide a basis as possible, regional bodies or systems shall share information on their current and imminent activities with suppliers in Parties and with relevant international standardization and certification bodies or systems.

3. Regional bodies or systems shall publish a notice in an official publication at the earliest possible date that they propose to develop standards or rules.

4. When the first draft of a complete text of a proposed standard or rule is made available to members of regional bodies or systems and while amendments can still be introduced and taken into account, and if the draft may have a significant effect on trade, regional bodies or systems shall:

4.1 notify other Parties through the GATT secretariat of the products to be covered by the proposals, together with a brief indication of their objective and rationale and a list of the Parties that are members of the regional activities;

4.2 provide, upon request, to interested parties within the territories of Parties, copies of the proposed standards or rules and explanations of the parts of the proposals that deviate from relevant international standards or rules; and,

4.3 allow at least 60 days for interested parties within the territories of Parties to make comments in writing, discuss them and have these comments and the results of these discussions taken into account.

5. Regional bodies or systems shall ensure that all standards and rules on which work has been completed are published promptly so as to enable interested parties in the territories of Parties to become acquainted with them.

Inquiry point

6. Regional bodies or systems shall have an inquiry point to answer all reasonable inquiries from interested parties in the territories of Parties regarding proposed or adopted standards or rules of certification systems and the location of notices published pursuant to this Code of Conduct.

7. Where copies of documents are requested in accordance with the provisions of this Code, they will be supplied at the same price (if any) as to the members of the regional bodies or systems concerned.

Consultation

8. If any Party considers that the attainment of any objective of this Code of Conduct is being impeded by another Party or Parties as a result of regional standardization and/or certification, and that its trade interests are significantly affected, the Party may make written representations or proposals to the relevant regional body or system.

9. Regional bodies or systems shall give sympathetic consideration to the representations or proposals made to them, with a view to reaching a satisfactory resolution of the matter.

ATTACHMENT

Examples of regional standardizing and certifying bodies

African Regional Standards Organization (ARSO)
Arab Organization for Standardization and Metrology (ASMO)
Caribbean Common Market Standards Council (CCMSC)
Genelec Electronic Components Committee (CECC)
Committee for European Construction Equipment (CECE)
Community Bureau of Reference (BCR)
Council for Mutual Economic Assistance (CMEA)
Economic Commission for Europe (UN/ECE)
Euro-International Committee for Concrete (CEB)
European Caravan Federation (ECF)
European Cement Association (CEMBUREAU)
European Committee for Electrotechnical Standardization (CENELEC)
European Committee of Pump Manufacturers (EUROPUMP)
European Committee for Standardization (CEN)
European Confederation of Woodworking Industries (CEI-BOIS)
European Federation of Corrugated Board Manufacturers (FEFCO)
European Federation of Lifting, Conveying and Handling Equipment
Manufacturers (FEM)
European Free Trade Association (EFTA)
European Furniture Manufacturers Federation (UEA)
European Liaison Committee for Sewing Machine Industries (CELIMAC)
European and Mediterranean Plant Protection Organization (EPPO)
European Oil-Hydraulic and Pneumatic Committee (CETOP)
European Telecommunications Standards Institute (ETSI)
European Tea Committee (ETC)
European Tyre and Rim Technical Organization (ETRTO)
International Commission for Conformity Certification of Electrical
Equipment (CEE/ARNHEM)
Liaison Committee for Mediterranean Citrus Fruit Culture (CLAM)
Nordic Certification System for Conformity with Harmonized Nordic Standards
(INSTA)
Nordic Committee on Food Analysis (NMKL)
Nordic Co-operation Body for Technical Testing (Nordtest)
Pan American Standards Commission (COPANT)