

CODE OF GOOD PRACTICE FOR NON-GOVERNMENTAL STANDARDIZING BODIES

Proposal by the European Economic Community

Introduction

The Agreement on Technical Barriers to Trade imposes direct legal obligations only on central government bodies. The standardization, testing and certification activities of local government bodies and of non-governmental bodies (whether on a local, national or regional level) are covered only indirectly, if at all, through the obligation of Parties to "take such reasonable measures as may be available to them" to ensure that those other bodies follow certain provisions of the Agreement to which reference is made. This has been called a "best effort" or "second level" type of obligation for Parties.

Bodies other than central government bodies are, therefore, not addressed directly, and too few of them know that they are already to some extent covered by the Agreement. Even if they are aware of this, it is difficult for them to deduce from the Agreement what precise operational rules they are supposed to follow. Nor will obligations for central government bodies always be of such a nature as to be applicable to or relevant for other bodies. In addition, the Agreement neither contains a mechanism for information on those bodies' activities and of the degree to which they observe certain principles, nor a mechanism for monitoring whether Parties comply with their obligation to take reasonable measures.

As a result, the "best effort" obligations of the Agreement have by and large remained a dead letter. This has worked to the disadvantage of Parties where central government bodies have an important role in standardization, testing and certification and to the advantage of Parties where other actors play an important role. It has also limited the relevance of the Agreement in preventing or eliminating technical barriers to trade. By covering other bodies than central government bodies, the Agreement implicitly recognizes that those other bodies can, and in practice sometimes do, create problems for imported products.

To improve this situation the EC has in the past submitted a proposal for a code of good practice for non-governmental bodies and a proposal for extending the major obligations of the Agreement to local government bodies. The US has submitted a proposal for improved transparency for regional standards activities, which includes a code of conduct for such bodies. Other relevant proposals are the Indian proposals on establishing a method of ensuring compatibility of standards issued by recognized national bodies

and other standardization bodies within Parties, and, to some extent, on languages for exchange of documents. Both the EC proposal on local governments and the US proposal on regional bodies have tried to change "best effort" obligations for Parties into directly binding legal obligations for Parties, but have faced the problem that Parties cannot always, legally or factually, "ensure" the behaviour of local government bodies and regional bodies.

The EC now considers that a "code of good practice" approach would be the most realistic and logical way of dealing with important "best effort" level obligations such as those concerning the standardization, testing and certification activities of non-governmental bodies (whether on a local, national or regional level) and of local government bodies. The advantage of a code is that it directly addresses the actors concerned and stipulates a number of clear, practical and relevant principles of good practice for them to follow. Those principles themselves might, of course, differ depending on the type of body and nature of the activity concerned. Certain key principles would, however, be the use of and contribution to international standards, the avoidance of duplication of work, transparency in a body's activities through information, the right to make comments on a body's draft work, and the right to have consultations on complaints.

While adherence to a code would be voluntary, a stimulus would exist in the prestige attached to adherence. A code would also be self-reinforcing, by denying certain benefits to non-parties. It would be self-policing, by granting other parties the right to comment and lodge complaints. On a central government level, Parties would be obliged to take such reasonable measures as may be available to them to ensure that bodies accept and comply with a code, while a mechanism would be created under the Agreement to monitor the degree to which Parties have succeeded in achieving effective participation and compliance.

The EC herewith submits a first element in its intended coverage of standardization, testing and certification activities of non-governmental bodies and local government bodies. This first element is a code of good practice for non-governmental standardizing bodies, whether on a regional, national or local level. While discussion of the current proposal should not be delayed, the EC emphasizes the link with the other two elements to follow, namely local government bodies and testing and certification activities. Any definitive evaluation should, therefore, be made on the basis of all three elements together.

Amendment to the Agreement on Technical Barriers to Trade

Article 4 is to be replaced by the following:

Preparation, adoption and application of standards by non-governmental bodies

4.1 Parties shall take such reasonable measures as may be available to them to ensure that non-governmental standardizing

bodies within their territory as well as non-governmental regional standardizing bodies of which one or more of their non-governmental standardizing bodies are member, accept and comply with the code of good practice for non-governmental standardizing bodies in annex 4 to this Agreement. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging non-governmental standardizing bodies to act in a manner inconsistent with the code of good practice in annex 4.

4.2 As soon as possible after a non-governmental standardizing body within their territory or a non-governmental regional standardizing body of which one or more of their non-governmental standardizing bodies are member, has accepted or withdrawn from the code of good practice in annex 4, Parties shall notify other Parties through the GATT secretariat of this fact, except to the extent that the non-governmental regional standardizing body has fulfilled this obligation. The notification shall include the name and address of the body concerned and the products covered by its current and expected standardization activities.

Decision of the Committee on Technical Barriers to Trade

Article 13.1 of the Agreement provides that the Committee on Technical Barriers to Trade shall meet no less than once a year for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. Without prejudice to the dispute settlement procedures of the Agreement, in particular Article 14.24 thereof, the Committee decides that, in conformity with Article 13.1, it shall at least once a year review a list, drawn up by the GATT secretariat and sub-divided into separate sections for each Party, of the non-governmental standardizing bodies that have accepted the code of good practice in annex 4, for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of that code.

Recommendation of the Committee on Technical Barriers to Trade

The Committee recommends the establishment under ISONET of a system through which all ISONET member bodies shall transmit to the ISO Information Centre in Geneva the information referred to in paragraphs F and G of the code of good practice for non-governmental standardizing bodies in annex 4 to the GATT Agreement on Technical Barriers to Trade, in the manner indicated there, and through which the ISO Information Centre in Geneva shall in turn promptly transmit the information received from one of its member bodies to all other member bodies.

Annex 4

Code of good practice for non-governmental standardizing bodies¹

- A. Where standards are required and international standards exist or their completion is imminent, non-governmental standardizing bodies shall use them, or the relevant parts of them, as a basis for the standards they develop, except where such international standards or relevant parts are inappropriate for inter alia such reasons as the prevention of deceptive practices; protection for human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological problems.
- B. With a view to harmonizing standards on as wide a basis as possible, non-governmental standardizing bodies shall, in an appropriate way, play a full part within the limits of their resources in the preparation by appropriate international standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, standards. For non-governmental standardizing bodies on a national or local level, participation in a particular international standardization activity shall, whenever possible, take place through one delegation representing all non-governmental standardizing bodies in the national territory that have adopted, or expect to adopt, standards for the products to which the international standardization activity relates.
- C. Non-governmental standardizing bodies shall make every effort towards the establishment of, and their association with, a member body of ISONET on the national territory or the regional level and towards the acquisition by this member body of the most advanced membership type possible.
- D. Non-governmental standardizing bodies on a local or national level shall make every effort to avoid duplication of or overlap with the work of other non-governmental standardizing bodies on the national territory or with the work of non-governmental regional standardizing bodies which covers the national territory. They shall also make every effort to achieve a national consensus on the standards they develop and on the comments they make under paragraph 1.

1: For the purpose of this code the definitions of the GATT Agreement on Technical Barriers to Trade apply. The code applies to all non-governmental standardizing bodies, whether operating at a regional, national or local level. All references to standards shall be construed to include any amendments and additions thereto, except where such amendments or additions are of an insignificant nature.

- E. Wherever appropriate, non-governmental standardizing bodies shall specify standards in terms of performance rather than design or descriptive characteristics.
- F. Each year, non-governmental standardizing bodies shall publish a work programme. After six months, this work programme shall be updated. Both the annual work programme and the update shall be published in a national or, as the case may be, regional publication of standardization activities. If the text of the publication is not in English, French or Spanish, an identical version in one of those languages shall be added. The publication shall include an indication that all interested parties in Parties to the GATT Agreement on Technical Barriers to Trade may request that a copy of the text of any individual draft standard in the annual work programme or, as the case may be, the update be sent to them at the start of the public enquiry for that standard. No later than the time of publication of the annual work programme or update, non-governmental standardizing bodies on a national or local level shall transmit the same information to ISONET via the national member body of ISONET. Non-governmental standardizing bodies on a regional level shall transmit this information to ISONET either via an international affiliate of ISONET or via one or more national member bodies of ISONET.
- G. Before adopting a standard, non-governmental standardizing bodies shall hold a public enquiry of at least 60 days on the draft standard. No later than the start of this public enquiry, non-governmental standardizing bodies shall publish a notice announcing the period of the public enquiry on the draft standard concerned in a national or, as the case may be, regional publication of standardization activities. If the text of the notice is not in English, French or Spanish, an identical version in one of those languages shall be added. The notice shall include an indication that all interested parties in Parties to the GATT Agreement on Technical Barriers to Trade may request that a copy of the draft standard be sent to them. No later than the time of publication of the notice, non-governmental standardizing bodies on a national or local level shall transmit the same information to ISONET via the national member body of ISONET. Non-governmental standardizing bodies on a regional level shall transmit this information to ISONET either via an international affiliate of ISONET or via one or more national member bodies of ISONET.
- H. Any interested party in a Party to the GATT Agreement on Technical Barriers to Trade is entitled to receive the text which it has requested of a draft standard submitted to public enquiry. Copies of such drafts will be sent by airmail or other speedy means of delivery at the start of the public enquiry or, if the request has been received after the start but before the end of the public enquiry, as promptly as possible. For this service a reasonable fee may be charged, which shall, apart from the real costs of delivery, be the same for domestic and foreign parties.

- I. Non-governmental standardizing bodies shall take comments on their draft standards into account whenever those comments have been received during the period of public enquiry, and originate from non-governmental standardizing bodies that have accepted this code of good practice. Such comments shall be replied to as promptly as possible. Non-governmental standardizing bodies shall make an objective effort to resolve dissenting viewpoints. Where such a comment contests a proposed deviation from an international standard, it is up to the non-governmental standardizing body that has prepared the draft standard to explain why that deviation is necessary for a legitimate objective such as mentioned in paragraph A.
- J. Once the standard has been adopted, it shall be promptly published.
- K. When a request is received from an interested party in a Party to the GATT Agreement on Technical Barriers to Trade for a copy of a standard which they produced, non-governmental standardizing bodies on a national or local level shall promptly provide that copy. Non-governmental standardizing bodies on a regional level shall promptly provide the requested copy or information as to where it can be obtained. A reasonable fee may be charged for copies, which shall, apart from the real costs of delivery, be the same for foreign and domestic parties.
- L. Non-governmental standardizing bodies shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding complaints with respect to any of the good practices in this code whenever those complaints originate from non-governmental standardizing bodies that have accepted this code of good practice. They shall make an objective effort to resolve such complaints.
- M. Non-governmental standardizing bodies shall notify their central government authorities or, in the case of a regional body, those of their members, as soon as possible of the fact that they have accepted or withdrawn from this code of good practice. The notification shall include the name and address of the body concerned and the products covered by its current and expected standardization activities. Non-governmental regional standardizing bodies may alternatively make this notification to all Parties of the GATT Agreement on Technical Barriers to Trade via the GATT secretariat.