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Resolution on Technical Barriers to Trade (TBTs) in the Transatlantic Trade and Investment Partnership

Introduction

A key aim of the Transatlantic Trade and Investment Partnership (TTIP) is to bring rules and regulations on both sides of the Atlantic in line with one another to achieve regulatory "compatibility and coherence". With tariffs between the two economic blocs at historic lows, the negotiations are focusing on dismantling other 'barriers to trade'[1]. Unfortunately, this has the potential to make a significant impact on consumer protection measures that are currently in place in both the EU and US[2], and even future measures.

One particular aspect of this aspired "regulatory coherence" is the reduction of non-tariff barriers to trade, or Technical Barriers to Trade. The stated objective is to build on key principles and disciplines of the WTO Agreement on Technical Barriers to Trade (TBT) to achieve meaningful market access, and establish ongoing mechanisms for improved dialogue and cooperation on TBT issues[3].

TBTs are technical regulations and standards, as well as testing and certification procedures, which are considered by some to create unnecessary obstacles to trade[4].

Although the EU and US share the aim of a high level of consumer (and other public interest) protection, they have different regulatory systems intended to achieve this aim. Hence there are divergences in approach and these have tended to lead to different standards models and conformity assessment systems. The US and EU also have very distinct processes and procedures for developing standards and use of conformity assessment modules. From a consumer perspective, achieving a greater coherence of legislation and deeper convergence of standards is acceptable only if requirements that provide consumers the highest levels of protection and welfare are agreed upon and adopted. This covers not only the content of legislation and standards, but also the processes through which they are elaborated.

While TBTs can be considered as impediments to free trade, they are the natural and inevitable results of the US and the EU taking different approaches at different times to ensuring consumer protection (and other public interests). In Europe, standardisation, conformity assessment, accreditation and market surveillance contribute to the systems used to ensure that products on the market are safe and comply with relevant legal requirements in the framework of the Internal Market. A similar situation exists in the US.

The WTO Agreement recognises that contracting parties have the right to establish protection at levels they consider appropriate, for human, animal or plant life or health or the environment (as examples), and should not be prevented from taking measures necessary to ensure those levels of protection are met. The agreement therefore encourages international coherence but it does not require parties to change their levels of protection.

The EU and US standardisation models, and the product safety and conformity assessment legislation, are different for historical reasons. Therefore checks and balances are also different and special care should be taken when considering to modify single elements, such as the use of conformity assessment or standards.

[1] http://ec.europa.eu/trade/policy/in-focus/ttip/
[2] http://tacd.org/ttip-overview/
[3] http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151627.pdf
[4] WTO Agreement on Technical Barriers to Trade (https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)

Based on the scarce updated information available on the TBTs negotiations, TACD presents, through this resolution, its general ideas as guiding principles for the EU and US negotiators to follow. Should more detailed and updated information become available at a later stage, we reserve the right to revisit our positions as well as to align them with other elements of the negotiation, such as the Regulatory Cooperation chapter.

TACD Recommendations to the TTIP negotiators concerning TBT:

In TACD's opinion, increasing the sharing of information on standardisation, conformity assessment and technical regulations is desirable. But the leaked TTIP chapter on TBTs[5], beyond what is already foreseen in the WTO TBT Agreement which both parties have ratified, is not designed to maintain or strengthen consumer protection. In summary:

> TACD is against the mutual recognition, and recognition of equivalence, of technical regulation and standards in TTIP as it is not at all clear whether or how equivalence can be determined, nor how agreement is to be reached on mutual acceptability. While there are TTIP provisions to deal with the institutional framework needed to address the implementation of the agreement as well as future issues, TACD believes that the main impact of this proposal will be to force changes in one or both side's domestic regulatory process. TACD does not support this goal and strongly recommends that there be no mechanisms in TTIP for the mutual recognition, and recognition of equivalence, of technical regulations and standards.

If, however, the EU and US governments decide to proceed with such a chapter, TACD recommends:

1. Technical Regulations: Because technical regulations can be laws dealing with important public interests such as consumer safety and health protection, TACD repeats its position on regulatory cooperation in TTIP. Co-operation activities between the Parties shall aim at maintaining or/and improving - and not reducing, undermining or otherwise compromising - the level of protection in public policy areas such consumers' personal health and safety, public health, and the protection of the environment, as considered appropriate by either Party.

To the extent that it addresses regulatory process, regulatory cooperation in TBT provisions should be limited to an outline of good practice principles, including in particular the need for public comment and meaningful ongoing stakeholder involvement. Each party must be free to determine how these principles are to be implemented in their own jurisdictions, adapted and compatible to their own established regulatory processes.

2. Conformity Assessment: While divergences between the means of determining conformity are claimed to be unjustified, technical barriers to trade and Mutual Recognition Agreements (MRAs)[6] are offered as a suitable tool to address the problem from a trade perspective, conformity assessment is only one piece of a complex system to protect consumers. More importantly, the different levels of protection required in each standard are at the core of the TBT issue. Previous attempts (1995) at MRAs between the EU and US have been unsuccessful, as the advantages gained in terms of market access have been offset by the costs and complicated structures needed to justify the mutual recognition, and the little impact MRAs have on regulatory differences and requirements.

TACD recommends the EU and US co-operate on their conformity assessment procedures while maintaining or increasing the level of consumer protection offered by their systems. They should also

[5] On 2 May 2016, Greenpeace Netherlands leaked 13 chapters of the proposed TTIP, including the chapters TBTs, with text proposed both by the US Trade Representative (USTR) and European Commission (EC) negotiating teams. The documents probably represent the state of negotiations as of April 2015.

[6] Mutual Recognition Agreements (MRAs) aim to eliminate costs arising from duplication of certification requirements while, with recognition of equivalence of technical regulations and standards, a country accepts that imported products that meet the applicable technical requirements of the exporting country are placed on its market as if they meet its own applicable technical requirements.

co-operate on the enforcement aspects linked to market surveillance. TACD proposes that the EU and US better collaborate on a safety-dangers alert system to inform consumers about unsafe products and injury databases to collect injury reports caused by consumer products.

3. Standardisation: The concept of mutual recognition/recognition of equivalence of European standards and standards developed in the US has been proposed as an option to address perceived barriers to trade in certain sectors on the assumption that public interest standards and regulations are comparable and equivalent. Because of the substantial differences between the EU and US standardisation models, especially in terms of stakeholder involvement and inclusiveness, TACD does not support the proposition that standards developed in the US be accorded a presumption of conformity or equivalence with EU regulatory requirements and vice versa.

Finally, TACD demands that consumer representation in standardisation on both sides of the Atlantic be strengthened at a national, regional and international levels - and sufficient financial support be ensured for the consumer voice to be sustainable and effective in defending consumers' interests in free trade agreements and standardisation.

Background

A. Technical Regulations

A technical regulation is a document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method[7].

Technical regulations can be laws dealing with important public interests such as consumer and health protection. According to WTO TBT Agreement provisions, Members shall ensure that technical regulations are not prepared, adopted or applied with a view to creating unnecessary obstacles to international trade. Technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks that non-conformance would create.

A notification system of draft technical regulations is put in place through which each WTO member commits to notify its draft technical regulations and examine the comments received by other countries. However, not all WTO countries implement these provisions in the same way and notably there are significant differences between the EU and US.

It therefore seems strange that one of the TTIP aims is to go beyond the WTO provisions by stipulating additional obligations about the evaluation of significant issues raised in comments received from persons of the Parties.

Recommendation 1:

Because technical regulations can be laws dealing with important public interests such as consumer safety and health protection, TACD repeats its position on regulatory cooperation in TTIP[8].

EU and US consumer groups are supportive of regulatory co-operation as a way to promote and exchange best practice. Nevertheless, this support is conditional on such co-operation having the purpose to improve the health, safety and economic well-being of people on both sides of the Atlantic, as well as protect the environment and other fundamental rights, in the most effective way.

[7] Annex I, WTO Agreement on Technical Barriers to Trade (https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)
[8] TACD resolution on Regulatory Cooperation (pdf), 2015.

However, the substantial differences in regulatory processes on both sides of the Atlantic cause us serious doubt that such goals can be achieved under present conditions. Until they are described in a more effective way than the WTO Agreement, they should not be included in TTIP.

To the extent that it addresses regulatory process, regulatory cooperation in TBTs provisions should be limited to an outline of good practice principles, including in particular the need for public comment and meaningful stakeholder involvement. Each party must be free to determine how these principles are to be implemented in their own jurisdictions, adapted and compatible to their own established regulatory processes.

B. Conformity Assessment

"Conformity assessment" is any activity to determine, directly or indirectly, that a process, product or service meets relevant standards and fulfils relevant requirements[9].

There are several conformity assessment models. The choice of model used in technical regulations should depend upon the balance between the degree of risk presented by the product or service and the cost implications. At the ends of the spectrum, there are voluntary, self-assessment schemes for lower-risk scenarios, and mandatory audit and certification schemes for higher-risk scenarios. A range of combinations exists between these extremes.

Conformity assessment can result in a product or service bearing a mark (i.e. a 'certification mark'). These marks are intended to be a source of information for consumers on safety, quality or performance aspects--and they must be reliable.

In addition, specific rules exist on the way conformity assessment should be carried out, who should be doing it (public or private body) and under which conditions (e.g. accreditation).

The **EU** does not require third-party certification as a general rule and allows manufacturers to self-declare the conformity of their products to relevant legislation (Suppliers' Declaration of Conformity or SDoC) and affix CE Marking where appropriate. However, CE Marking offers no assurance to consumers that a product is safe, or that it is compliant with other legal requirements. CE Marking is no more than a claim from the manufacturer that the product meets European legislation and is meant for market surveillance authorities, not consumers. Not only that, the manufacturer does not have to provide an independent confirmation of the claim in most cases. Consumer organisations in Europe have long expressed concerns about CE Marking and still advocate strongly that it not put on the product or the product packaging[10].

This system of self-declaration for placing a wide range of products on the Internal Market is complemented by rules on ex-post market surveillance checks, accreditation of conformity assessment bodies and on the requirements for the notification of Conformity Assessment Bodies (CABs)[11]. It is the result of political, legislative and economic choices made over the years, aimed at the creation of the European Single Market.

In the **US** domestic market, the vast majority of products sold that are covered by a standard are manufactured in accordance with industry voluntary standards. In addition to specifying performance requirements for the product, such standards also spell out the methods to be followed to demonstrate conformance with the standard and the manner in which such conformance should be manifest on the product and its packaging. Independent third-party testing is an often preferred method to meet these requirements.

Since conformance with these standards is undertaken on a voluntary basis, there are no government sanctions for non-conformance and no federal rules banning the import of such products. However,

[9] ISO/IEC Guide 2: 2004, EN ISO/IEC 17000:2004.
[10] ANEC Position Paper on CE Marking "Caveat Emptor - Buyer Beware" 2012
[11] Regulation (EC) 765/2008 on accreditation and the market surveillance of products.

the term “voluntary” can be misleading because in many product categories there are effective strategies used to stimulate conformance:

- Certification marks signifying conformance with industry standards, visible at the point of sale, encourage consumer/user preference and purchase, including among institutional buyers.
- Action by state and local authorities can make conformance to certain voluntary standards a local requirement.
- The potential threat of product liability lawsuits is heightened when injuries involve products not in conformance to established industry standards.

When the voluntary system is unable or unwilling to correct a serious safety or health risk, and a solution is available that is both technically and economically feasible, federal safety agencies in the US have the authority and the mandate granted by Congress to take action to protect the public. Such standards have the force of law, and compliance is mandatory—it is illegal to sell non-conforming products in domestic commerce. Civil and criminal penalties can be levied against those selling non-conforming products. Moreover, the import of non-conforming products for the purpose of selling in the US market is also prohibited.

Recommendation 2:

While divergences between the means of determining conformity are claimed to be unjustified technical barriers to trade, and Mutual Recognition Agreements (MRAs)[12] may be thought by some as a suitable tool to address the problem from a trade perspective, conformity assessment is only one piece of a complex system to protect consumers. The standard itself is critically important.

Previous attempts (1995) at MRAs between the EU and US have been unsuccessful as the advantages gained in terms of market access have been offset by the costs and complicated structures needed for the mutual recognition, and the little impact MRAs have on regulatory differences and requirements.

The outcome of any certification system based upon compliance with a standard is only as good as the standard it is based on. A standard with weak or poor requirements will result in a certification process (with or without a mark) that does not provide a high level of consumer protection. This of course is further justification for consumer participation being deemed essential in ensuring that standards and conformance systems ensure a high level of consumer protection.

Given that market surveillance and enforcement activities, together with conformity assessment, are essential components in realising consumer protection and welfare, TACD firmly believes that the impartiality, independence from vested interests and technical competence of the Conformity Assessment Bodies (CABs) must be ensured in TTIP.

The global supply chain - where components come from one part of the world, are assembled in another and then sold on the European and US markets - requires all actors in the supply chain to fulfil their roles. TACD believes that free, open, and safe markets require consumer confidence in order to succeed and such confidence relies on rigorous oversight to ensure that products bought in the domestic market are safe and compliant with applicable standards and regulations.

TACD recommends the EU and US co-operate on their conformity assessment procedures while maintaining or increasing the level of consumer protection offered by their systems. They should also

[12] Mutual Recognition Agreements (MRAs) are agreements on the mutual recognition of the conformity assessment of regulated products. Through an MRA, each country is given the authority to test and certify products against the regulatory requirements of the other country, in its own territory and prior to export. However each country maintains its own technical regulations and standards. MRAs imply that each party must have comparable system of certification, accreditation and market surveillance. Impartiality, independence from vested interests and technical competence of the Conformity Assessment Bodies (CABs) must be ensured.

co-operate on the enforcement aspects linked to market surveillance. TACD proposes that the EU and US better collaborate on a safety-dangers alert system to inform consumers about unsafe products and injury databases to collect injury reports caused by consumer products[13].

C. Standardisation

The European and US standardisation models differ greatly.

Standards are technical documents which define technical or quality requirements for products, production processes, services, or test-methods, prepared by interested parties (companies, consumers, workers, public authorities, independent experts) on the basis of a number of principles (e.g., stakeholder balance, adequacy, technical and economic feasibility, openness and transparency).

In the **EU**, technical standards developed by the European Standards Organisations (ESOs)[14] are used to help implement legislation and public policies. This legislative technique – the New Approach[15] - was introduced in 1985 to create the Internal Market, an area in which products and services freely circulate. The principles of the New Approach have since been carried forward in the New Legislative Framework[16]. By allowing private interests to lead in the development of European Standards, through which a presumption of conformity to the legislative requirements can be achieved, many technical barriers to trade among European and EEA countries have been removed in the past 30 years. This co-regulative approach, and need to ensure representation of societal interests in the standards development process, has provided the rationale for the financial support given by the EU to the participation of consumers (and other societal stakeholders) in standardisation since the 1990s.

Under the New Approach and New Legislative Framework, voluntary European standards[17] (ENs) provide a presumption of conformity to the legal requirements. If the manufacturers choose not to apply the harmonised standards, they need to prove through independent testing that the product meets relevant European law. But using harmonised standards is the easiest and most cost-efficient way to comply with the legislation. And the law is just the same for a manufacturer in Europe as it is for one in China, or in the US if they want to sell in the Internal Market. In order to lower barriers to global trade, it should be noted that many European standards are identical to ISO or IEC standards and coordination mechanisms exist between the European Standards Organisations, CEN and CENELEC, and their international counterparts.

But the use of standards to provide presumption of conformity with the legislation is based on a European Standardisation System, alongside the traditional levels of national and international standardisation. A system whereby the participation of national interests has been facilitated through the national delegation principle and standards are adopted on a vote of the European countries. A system that has always aided the involvement of the weaker stakeholders – such as consumers – through their participation directly at European level, and has now strengthened that participation through the European Standardisation Regulation. A system that delivers a unique EN standard, published as an identical national standard in 33 countries, with withdrawal of pre-existing national standards in conflict. In summary, ***all*** ENs are the result of a single system and the result of a common process.

In the EU, interested stakeholders are informed about standards needed by the European Commission through the Annual Union Work Programme for European Standardisation [18] and individual

[13] In the EU, the RAPEX system for non-food dangerous products facilitates the rapid exchange of information between national authorities of 31 countries and the European Commission on dangerous products found on the market. In the US the Consumer Product Safety Commission is in charge of notifying products recalls and other safety issues to the public and of the National Electronic Injury Surveillance System (NEISS). There is no equivalent system in Europe.

[14] CEN, CENELEC, ETSI.

[15] http://tinyurl.com/3kwrvgh

[16] http://tinyurl.com/cl3uhk8

[17] The exception is the Construction Products Regulation, Regulation (EU) 305/2011, where the use of ENs is effectively mandatory. However, this Regulation does not impact the consumer directly and needs no further consideration here.

[18] http://goo.gl/zGnL4e

standardisation requests, both of which are published in draft form with an opportunity for any stakeholder to comment.

By comparison, the landscape of standards development in the **US** does not reflect such a tightly controlled system. It is discrete and compartmentalised or fragmented. For example, in the US, there is no overall coordination or funding of consumer representation in the many hundreds of Standards Development Organisations (SDOs), with some 275 SDOs accredited by ANSI, the American National Standards Institute.

Nevertheless, and very significantly, the US model also features *mandatory safety standards* developed by the US government (as noted before). These standards, set by agencies charged by Congress to protect consumers, receive a lot of scrutiny, ranging from Congressional oversight to judicial review by the courts. Most importantly, the degree of industry control is far less than that exerted in the voluntary consensus system. Mandatory standards are based on objective data from a variety of sources and are subject to "Notice and Comment" rulemaking, where the agency must publicly address concerns raised by consumers, producers, and other stakeholders.

Implications and considerations

The process differences between the US and Europe for developing standards--e.g., mandatory vs voluntary, organised consumer input vs weak, fragmented consumer input, etc.--coupled with regional differences in the approach to risk tolerance and risk management, undoubtedly account for many of the differences in standards covering the same products and even the same risks. The major question is whether these differences are significant in terms of consumer safety and whether and/or how to resolve these differences for the purpose of minimising their impact on trade without diminishing public safety and health. This question is at the core of the TACD's position on whether it should oppose or support proposals to reduce the effects of TBTs. To proceed further, the distinction between voluntary standards and mandatory standards needs to be considered.

First, there are no legal restrictions in the US regarding the import or sale of unregulated products (i.e. products that are not subject to a mandatory government rule or standard[19]). Thus, there is no basis for associating a TBT with the cross-border sale of this wide range of product categories. The TBT issue therefore lies only with the relatively small number of regulated products and the matter of TBTs and their impact on trade between the US and the EU.

Moreover, there needs to be better understanding of what is meant by "Technical." Within the standards world, differences in form are often referred to as "technical" differences. As a simple example, if one country's standard uses the metric system and another country's standard uses the imperial system of measurement to specify similar dimensions, it is a difference in form. That difference should never become an actual barrier to trade because that difference can be removed easily without requiring use of an international trade agreement and an arbitration system to force a resolution. All that is needed is one engineer from each side of the Atlantic to meet and convert the numbers to demonstrate whether or not the requirements are equivalent.

Indeed, the parties can, based on their analysis, petition the relevant government agency or standards organisation to amend the standard(s) to accommodate such small differences. If partners want to trade these products, they need not let such a simple, fixable problem get in the way. Of course, it does take time and it does have a cost—but that cost would be the same with or without formal harmonisation requirements written into TTIP. Harmonisation outside TTIP would be the best approach. If partners really want to harmonise, they can do it easily and voluntarily. It is a decision under their control.

[19] In a small number of cases, regulatory agencies in the US will defer to an existing voluntary standard if it is found adequate to address the hazard and there is widespread compliance. In such cases, a new mandatory standard is unnecessary. However, both the manufacture and the import of non-conforming products for sale in domestic commerce is prohibited.

On the other hand, if the difference between two national standards appears to be a matter of substance, the core of the controversy is reached. Trying to verify the impacts of substantive differences between two standards is a very difficult process—one that is not amenable to the use of shorthand fixes such as mutual recognition agreements and a predetermined recognition of equivalence. Balancing the business needs of producers and sellers with the safety, health, environmental and fraud protection needs of consumers is a very complex process, one where the societal values for risk tolerance can vary from country to country, region to region.

Indeed, the great difficulties in achieving a closer alignment among the CEN, ISO and ASTM standards for toys was confirmed by ANEC in its position paper of 2010[20] which followed a technical study the year before. Moreover, differences in the requirements of the standards were exacerbated by differences in national and regulatory requirements around the world. The conclusion of the ANEC study was that it is easier to avoid future divergence than fix divergences that have already occurred.

Furthermore, by harmonising "upwards" and making weaker standards stronger, businesses will complain about added costs and red tape; by harmonising "downwards" and weakening standards, consumer organisations will be outraged at the greater risks to which consumers are exposed. Work is this area is complex and requires in-depth analyses of technical issues as well economic and environmental impacts—all performed on a case-by-case basis. This level of complexity does not lend itself to general agreements whose default position is that there is a recognition of equivalence, and the efforts required may not be proportionate to the expected gains.

The paramount principle to be employed in resolving conflicting safety standards is to avoid weakening hard–fought protections for consumers in one country simply to make it possible for producers—both foreign and domestic—to flood the market with products that are likely to be less safe. On both sides of the Atlantic, consumer stakeholders are very cautious about the loss of accountability to an agreement that does not honour societal values and goals set by legislative bodies to protect consumers.

Recommendation 3:

The concept of mutual recognition/recognition of equivalence of European standards and standards developed in the US has been proposed as an option to address perceived barriers to trade in certain sectors on the assumption that public interest standards and regulations are comparable and equivalent.

Because of the substantial differences between the EU and US standardisation models, especially in terms of stakeholder involvement and inclusiveness, TACD does not support the use of standards developed in the US to provide a presumption of conformity or equivalence with EU regulatory requirements and vice versa.

This is not because of a perceived underlying lack of rigour in the US or EU standards, but rather because in the US there is no certainty of the process, as with the European Standardisation System, of including participation of consumers in consumer-relevant standards, and there is no certainty in determining whether or not the EU and US standards are comparable or equivalent.

While the Single Market places the EU in a position to pursue a more outward-looking trade policy, it should not overlook or put at risk the EU's consolidated approach to standards (the "unique" standards model) which would be in direct conflict with the principle of mutual recognition of EU-US standards. From a trade view, Europe already has an open market for many products, whereas, by contrast, the US has state-to-state barriers for certain products, even for its own manufacturers.

If more cooperation has to take place on standards and/or standardisation in TTIP, there is a critical need for effective consumer participation in standardisation to be put in place on both sides of the Atlantic. The "openness" of the standardisation system, whereby all parties actually participate and

[20] http://goo.gl/nGjKM4

comment in a balanced manner in the actual drafting of standards, has to become reliably included as part of the system, whereby positive and concrete measures are put in place to ensure that consumer participation is existing and effective at the national, regional and international levels.

TACD demands that consumer representation be strengthened at the national, regional and international levels on both sides of the Atlantic and sufficient financial support be ensured for the consumer voice to be sustainable and effective in defending consumers' interests in free trade agreements and standardisation.

Annex I: Consumer Participation in Standardisation

ANEC was created in 1995 by national consumer associations and public authorities in the EEC (pre-**EU**) and EFTA[21] countries to promote and defend the consumer interest in European and international standardisation. It is supported financially by the EU and EFTA while national consumer organisations contribute in kind. Consumer representatives from ANEC contribute to the work of the standards committees of the European Standards Organisations (CEN/CENELEC/ETSI) and the International Standards Organisations (ISO/IEC), as well as UNECE (in collaboration with Consumers International).

The European Standardisation Regulation[22] confirms the importance of the consumer voice in standardisation as it recognises the need for the effective participation of consumers, and other societal stakeholders, in European standardisation. However, it should be noted that there is an increasing lack of consumer participation at a national level in many EU countries, exacerbated by the complexity of standards work arising from the convergence of technologies. This background highlights the need for the centralised approach taken by ANEC.

There is no financially supported and dedicated organisation in the **US** that helps place consumers in a meaningful participatory role in the vast number of ongoing standards development activities. As a result, whether the standard is developed by a federal, state, or local government agency, an industry trade association, a professional organisation, or a standards developing organisation (SDO), adequate consumer input to the development of standards is rare and, in many cases, simply non-existent.

Many voluntary standards bodies enunciate the principle of including balanced inputs from a range of stakeholders: producers (manufacturers, trade associations, importer, and sellers), consumers, and general interest (testing organisations, university researchers, professional societies, government experts, etc.). Some organisations offer to pay out-of-pocket travel expenses to help facilitate consumer participation, but usually not an honorarium for the substantial amount of time spent in service to accomplish the committee's goals. Within this system, there are examples of ongoing consumer participation—but not on a balanced basis.

Other instances where the consumer voice has played a meaningful, though unbalanced, role have been achieved when consumer organisations in the US focus their resources on participating in a particular standard that it deems essential. But those resources are limited and can only go so far.

Far and away, the largest and most active participation in US standards activities comes from those with a significant commercial stake in the standard's provisions, whereas the smallest and least active participation comes from consumers. It is extremely difficult to find consumers with the relevant expertise and experience who can volunteer the time—which can be intensive at times and measured in years—required to participate in a meaningful way. Hence, committee composition is almost always heavily skewed in favour of producers. This is a topsy-turvy state of affairs, especially when the standard affects the health, safety, and environment of consumers. While many standards can be categorised as "commercial" standards, (e.g. those dealing with the properties of cement, how to measure the strength of welds, the technical properties of magnetic tape etc.), others deal directly with the health and safety of consumers who use a product or a service. In these settings, where the level of acceptable risk to the consumer is analysed, debated, and resolved, the absence of the consumer voice is completely unacceptable.

Government agencies, which are mandated by Congress to intervene on behalf of consumer safety, set safety standards that adequately protect the public from unreasonable risks that the industry voluntary standards model was unable or unwilling to address. Such agencies are therefore understandably loath to allow hard-fought protections to be weakened or compromised to meet a non-safety goal.

[21] European Free Trade Association (Iceland, Liechtenstein, Norway, Switzerland)
[22] Regulation (EU) 1025/2012. See http://goo.gl/c2JpDx