



Standards Council of Canada

Conseil canadien des normes

Canada

Incorporation of Standards by Reference in Canada: Considerations for Trade

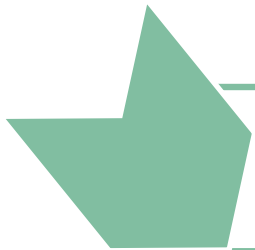
November 12, 2019



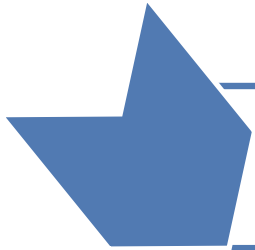
Presentation Overview



Voluntary Standardization in Canada



Incorporation by Reference



Trade policy considerations



Voluntary Standardization in Canada



The Standards Council of Canada



Canada's national standards and accreditation body

As a Crown corporation, SCC reports to the Federal Government through the Minister of Innovation, Science and Economic Development (ISED)

SCC:

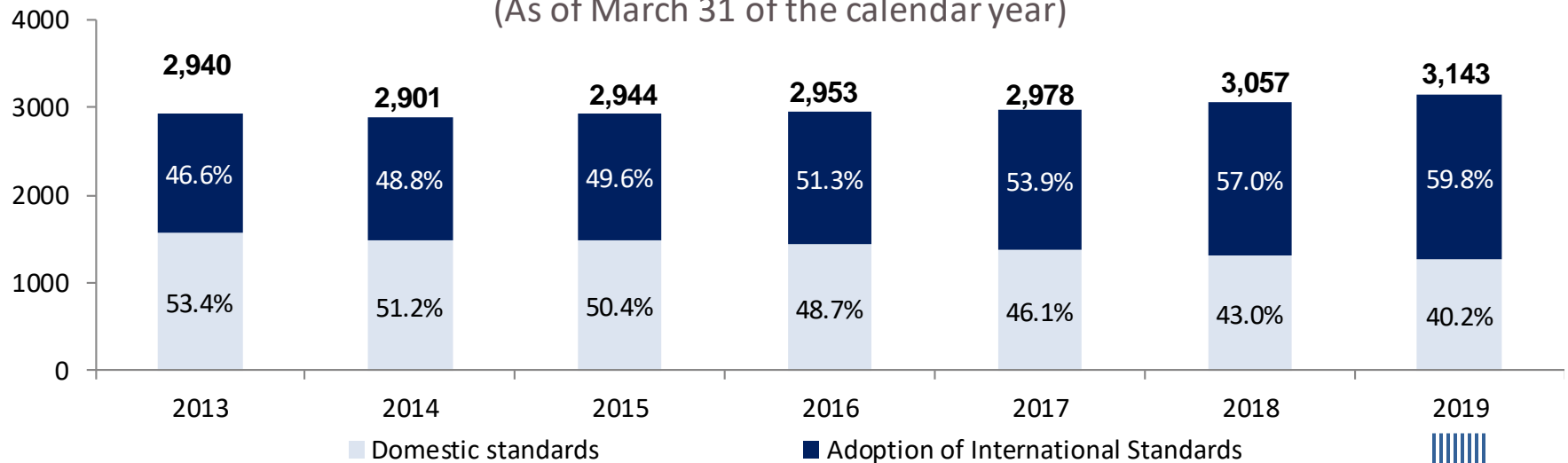
- *Coordinates* standardization activities in Canada
- *Accredits* Standards Development Organizations & Conformity Assessment Bodies
- *Advises* federal and provincial governments
- *Supports* strategic priorities of industry and governments
- *Represents* Canada in international and regional forums



Standards in Canada

As of March 31, 2019, there were **3,143** active standards published under SCC accreditation.

Number of active Canadian standards under SCC oversight
(As of March 31 of the calendar year)

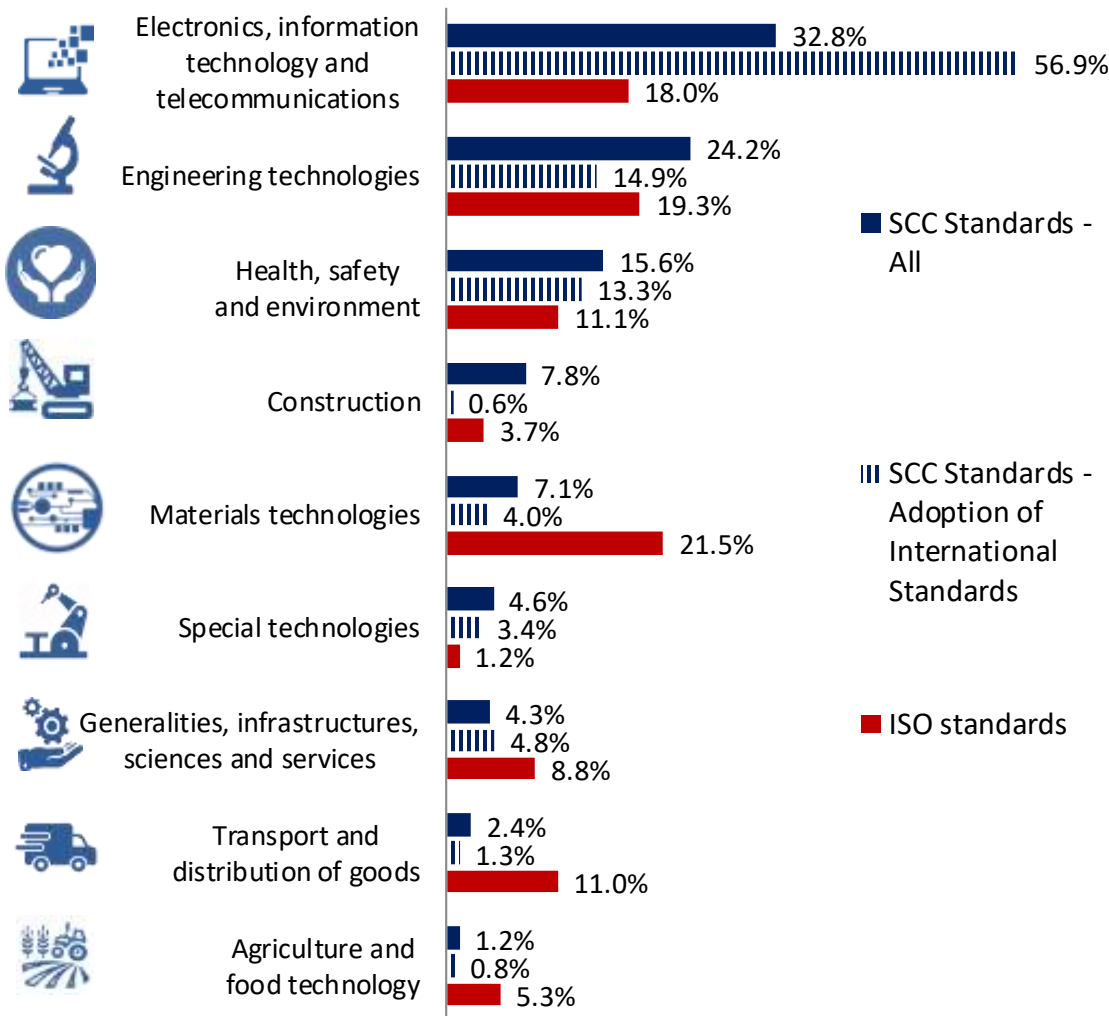


In FY 2018-2019, **2,550 (81.1%)** active standards under SCC accreditation were **National Standards of Canada (NSCs)**.





SCC and ISO Standards by ICS Sector



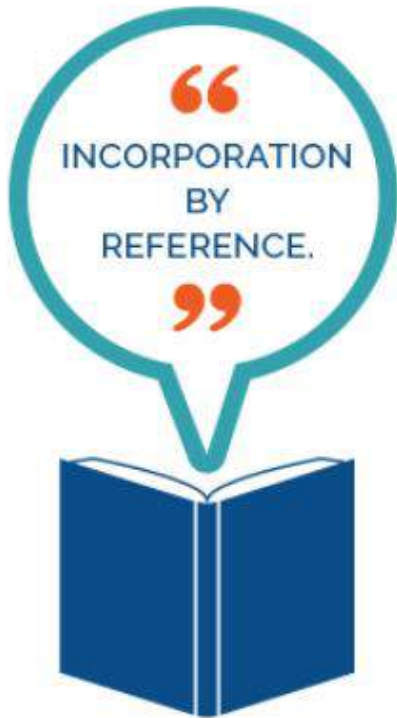
Note: The distribution of standards across ICS sectors is based on the total number of ICS codes assigned to each standard. Since a standard can have multiple ICS codes, the number of standards that could be derived from the distribution presented in this chart, will equal the total number of ICS codes associated with standards in the Canadian and ISO catalogues, *not* the total number of standards.



Incorporation by Reference



Incorporation by Reference (IBR)



- IBR is a drafting technique used to include a document, such as a standard, within a legislative text as if it were reproduced word for word
- Documents incorporated by reference have the same binding effect as the regulation in which it is incorporated
- Canadian federal regulators, as well as all of the provinces and territories, incorporate standards by reference in regulation



Examples of Incorporation by Reference (IBR)

Static reference: when a standard is incorporated by reference as of a specific date, and that subsequent revisions to the standards are not automatically incorporated into the regulation.

Example:

Floor coverings must meet the Canadian General Standards Board standard CAN/CGSB-4.2 No. 27.6, Textile test methods – Flame resistance — Methenamine tablet test for textile floor coverings, published in September 2015.

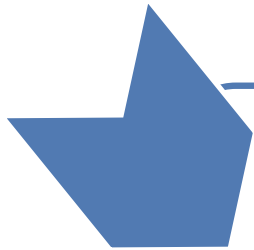


Examples of Incorporation by Reference (IBR)

Ambulatory reference: when a standard is incorporated by reference with no mention of a date of issue or specific version. For additional clarity, ambulatory references should include phrases such as “latest edition of” or “as amended from time to time.”

Example:

The requirements must conform to **the latest edition of ASTM D6866, Standard Test Methods for Determining the Bio-based Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis.**



Trade policy considerations



Coordinating the Canadian Standardization System

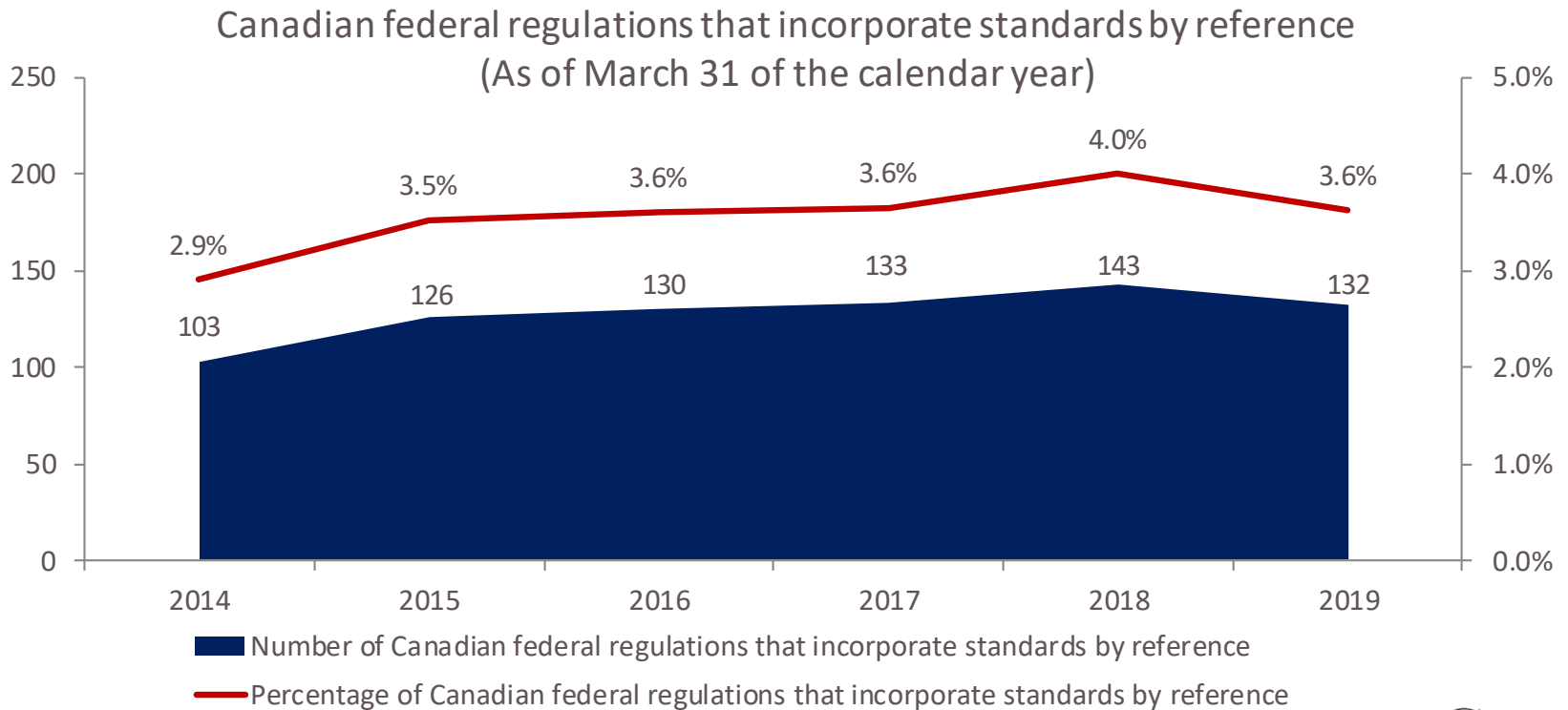
SCC works to better understand the economic impact of incorporating standards in regulations.

SCC's Monitoring Standards in Regulation project provides federal, provincial and territorial governments with reports detailing which standards they have incorporated by reference as well as the status of those standards.



Standards in Regulations

In FY2018-2019, SCC identified **1,409** references to standards in **132** Canadian Federal regulations.

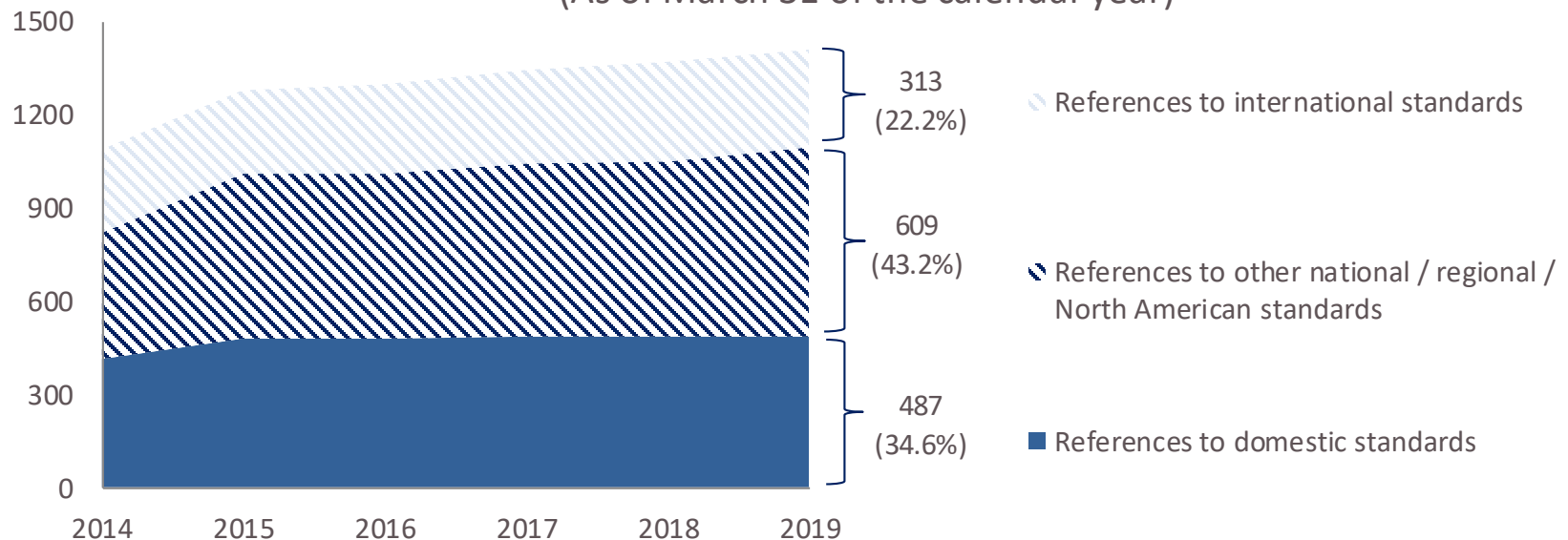




Standards in Regulations

When referencing standards in regulations, Canadian regulators may consider whether domestic, other national/regional or international standards would best meet their regulatory objectives.

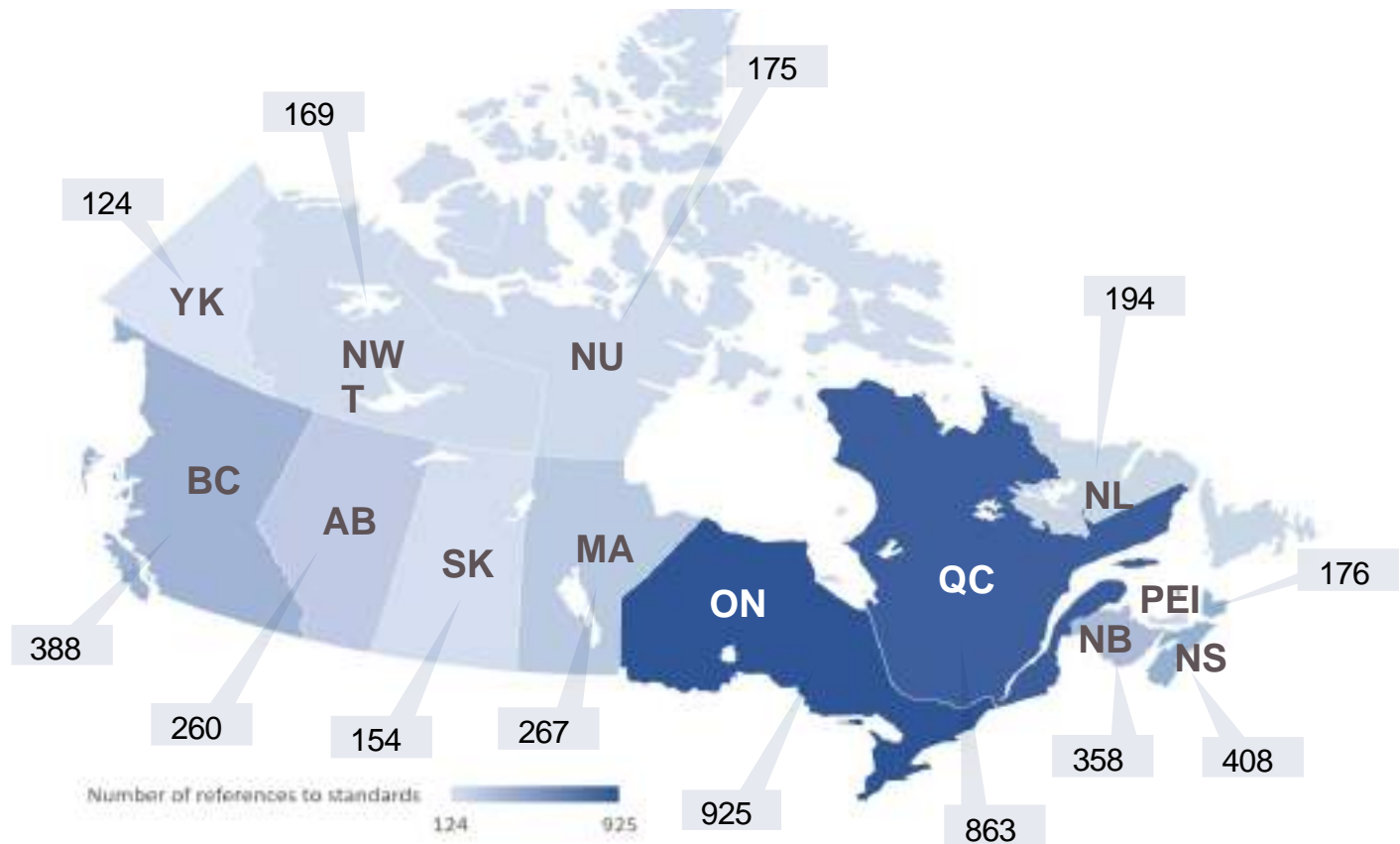
Number of References to standards in Canadian federal regulations
(As of March 31 of the calendar year)





Standards in Regulations

Number of References to Standards in Provincial and Territorial Regulations (As of March 31, 2019)





Work to align Standards Incorporated by Reference

Over time, provincial and territorial governments have incorporated different standards, or different versions of the same standard, in regulations across Canada.

This has led to the creation of technical barriers to trade within the country.

SCC works with key stakeholders to identify standards referenced in regulations that impact trade and to analyze the economic impact of technical barriers to trade.



Policy Considerations for Incorporation by Reference

Need for increased awareness on standards nomenclature and maintenance cycle

Request for guidance on policy considerations for incorporating standards by reference in regulation

Guidelines on IBR developed with input from Department of Justice and Treasury Board of Canada Secretariat published in 2018



Benefits of Standards as a Regulatory Tool

Incorporating standards by reference in regulation

- Allows regulators to make use of the expertise in Canada's standardization system to efficiently advance regulatory objectives
- Supports a regulatory system that fosters innovation and ensures needs of industry and the latest scientific trends / technologies are reflected
- Supports global supply chains and reduces technical barriers to trade and trade irritants
- Supports market access for Canadian products and services and reduces compliance costs
- Balances the interests of diverse stakeholders



Standards Council of Canada
Conseil canadien des normes



Thank you

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Canada 



JUSTICE

Incorporation by Reference in Canadian (Federal) Regulations

**Presentation: Thematic Session - Incorporating Standards by
Reference**

November 12, 2019

Patricia Pledge, Department of Justice, Canada





Overview: Activities

- 1 Use of Incorporation by Reference
- 2 Standing Joint Committee for the Scrutiny of Regulations
- 3 External Activities and Working with Partners



Types of Material Incorporated by Reference

- Legislation – Federal, Provincial and Foreign
- Standards – Canadian, American and International
- International Agreements, Conventions and Protocols
- Other Documents produced outside of Government
- Documents produced by the Department that is responsible for the regulations



Implications for Regulators

- Documents incorporated by reference must be accessible
- Over 2600 different documents are incorporated by reference with as many as 3000 references
- Standards may have a cost or may only be available in one official language
- Ambulatory incorporation by reference creates a fluidity with new editions being incorporated, title changes, content to be monitored



Incorporation by Reference in Regulations Act (amendments to the *Statutory Instruments Act*)

18.3 (1) The regulation-making authority shall ensure that a document, index, rate or number that is incorporated by reference is accessible.

18.3 (1) L'autorité réglementaire veille à ce que le document, l'indice, le taux ou le nombre incorporé par renvoi soit accessible.



Standing Joint Committee for the Scrutiny of Regulations (SJCSR)

2017

SJCSR Report No. 90 - Accessibility of Documents Incorporated by Reference in Federal Regulations (March 2017)

- Position on meaning of “accessible” in the *Statutory Instruments Act*, recommendations to constrain use and listing of documents.

Government Response (July 2017)

- Maintains position and commits to policy development as part of *Cabinet Directive on Regulation*

6





Standing Joint Committee for the Scrutiny of Regulations

Fall 2017

- SJCSR demand for list of all documents incorporated by reference
- May 2018 Justice Appearance before the SJCSR and long/short lists

Spring 2018

SJCSR Report No. 92 - Accessibility of Documents Incorporated by Reference in Federal Regulations – Reply to the Government Response to Report No. 90 (May 2018)

- Extensive Recommendations



Standing Joint Committee for the Scrutiny of Regulations

Spring 2018

Government Response (July 2018)

- Maintain position and policy commitments

2018 – 2019

- List of Documents Incorporated by Reference (under development)
- Treasury Board of Canada Secretariat and Justice – Guide on Incorporation by Reference (pending) and SJCSR Appearance



Other Activities

Standards Council of Canada

Guidelines for Incorporating Standards by Reference to Support Public Policy Objectives

Canada School of the Public Service

Artificial Intelligence for Insights into Regulations



Other Activities

Treasury Board of Canada Secretariat – Regulatory Affairs Sector

- *Cabinet Directive on Regulation, Policy on Regulatory Development, (Pending) Guide on Incorporation by Reference*
- Regulatory Reviews, *Canada Gazette* Notice – International Standards
- Regulatory Cooperation and Harmonization

Litigation

- *P.S. Knight Co. Ltd., et al. v. Canadian Standards Association, 2018 FCA 222* (leave to appeal to the SCC dismissed).
- *Keatley Surveying Ltd. v. Teranet Inc. 2019 SCC 43*



References

Standing Joint Committee for the Scrutiny of Regulations

- 2007 SJCSR Report: *Report No. 80 (Incorporation By Reference)*
https://www.ourcommons.ca/Content/Committee/392/REGS/Reports/RP3204106/392_REGGS_Rpt02/392_REGGS_Rpt02.pdf
- 2008 Government Response
<http://www.parl.ca/DocumentViewer/en/39-2/REGS/report-2/response-8512-392-38>
- 2017 SJCSR: *Report No. 90 - Accessibility of Documents Incorporated by Reference in Federal Regulations*
<http://www.parl.ca/Content/Committee/421/REGS/Reports/RP8554402/regsrp02/regsrp02-e.pdf>



- 2017 Government Response

https://www.parl.ca/content/Committee/421/REGS/GovResponse/RP9072716/421_REGS_Rpt02_GR/421_REGS_Rpt02_GR-e.pdf

- 2018 SJCSR Report No. 92 – Accessibility of Documents Incorporated by Reference in Federal Regulations – Reply to Government Response

https://www.parl.ca/content/Committee/421/REGS/Reports/RP9878911/421_REGS_Rpt04_PDF/421_REGS_Rpt04-e.pdf

- 2018 Government Response

https://www.parl.ca/content/Committee/421/REGS/GovResponse/RP10003510/421_REGS_Rpt04_GR/421_REGS_Rpt04_GR-e.pdf



Statute

Statutory Instruments Act, S.C. 33, 2015

https://laws-lois.justice.gc.ca/PDF/2015_33.pdf

Litigation

P.S. Knight Co. Ltd., et al. v. Canadian Standards Association, 2018 FCA 222

<https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/351477/1/document.do>

Keatley Surveying Ltd. v. Teranet Inc. 2019 SCC 43

https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17918/index.do?site_preference=normal



Treasury Board of Canada Secretariat

Regulatory Affairs Sector

<https://www.canada.ca/en/treasury-board-secretariat/corporate/organization.html#ras>

Regulatory Cooperation

<https://www.canada.ca/en/treasury-board-secretariat/services/regulatory-cooperation/learn-about-regulatory-cooperation.html>

Cabinet Directive on Regulation

<https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/cabinet-directive-regulation.html>

Policy on Regulatory Development

http://publications.gc.ca/collections/collection_2018/sct-tbs/BT53-32-2018-eng.pdf



Canada Gazette, Part I, Volume 153, Number 26: GOVERNMENT NOTICES

<http://gazette.gc.ca/rp-pr/p1/2019/2019-06-29/html/notice-avis-eng.html>

Canada School of Public Service

Artificial Intelligence for Insights into Regulations

<https://www.csps-efpc.gc.ca/events/ais/index-eng.aspx>

Standards Council of Canada

Guidelines for Incorporating Standards by Reference to Support Public Policy Objectives

http://www.scc.ca/en/system/files/publications/SCC_IBR-Guidelines-v1_2018-09-05_EN.pdf

Best Practice from UNECE

Standards-based, risk-based rule-making

Ms. Lorenza Jachia

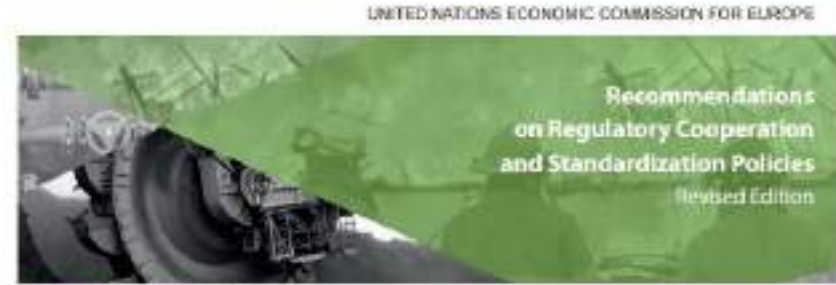
Secretary, Working Party on Regulatory Cooperation and Standardization Policies (WP.6)

United Nations Economic Commission for Europe (UNECE)



Why reference standards in regulations:

1. To prevent and eliminate technical barriers to trade
2. To increase transparency & accountability of legislative and regulatory work
3. To promote innovation and transfer of technology
4. For regulatory authorities to take full advantage of the knowledge and expertise contained in standards



D Reference to Standards¹

The Working Party on Regulatory Cooperation and Standardization Policies,

Recognizing the important advantages offered by the use of the method of 'reference to standards', including that it:

- (a) Contributes to preventing or eliminating unnecessary technical barriers to trade by facilitating regional and international harmonization of technical regulations and standards;
- (b) Increases transparency and accountability of legislative and regulatory work;
- (c) Facilitates the review of technical regulations to take into account effectively technological progress and changes in societal and consumer expectations;
- (d) Allows authorities to take advantage of the knowledge and expertise incorporated in the results of the work of standardization bodies.

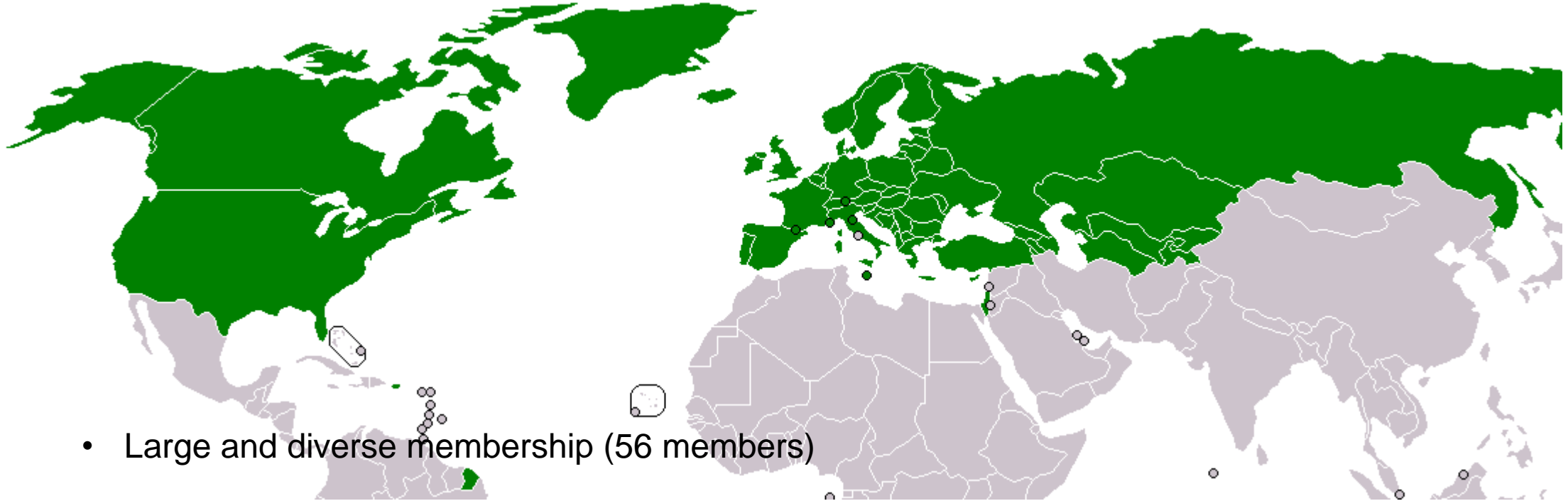
Noting, however, that to successfully implement the method of 'reference to standards', due consideration should be given to different national legislative frameworks.

Recommends that:

- D.1 Regulatory authorities should, in conformity with the principles enshrined in the World Trade Organisation (WTO) Agreement on Technical Barriers to Trade and observing the relevant decisions by the WTO Committee on Technical Barriers to Trade, whenever possible make use of international, regional and national standards in regulatory work.
- D.2 Regulatory authorities should endeavour to apply "reference to standards" methods that respect their voluntary nature, such as:
 - Indicative reference, which retains the voluntary application of the standard.
 - Only when indicative reference is considered unsuitable, regulatory authorities should make use of exclusive reference, which renders the standard or parts of the standard mandatory.
- D.3 When choosing among the various methods of 'reference to standards', regulatory authorities should ideally adopt a method that would allow them to make optimal use of standardization work.
- D.4 In regulatory, surveillance and legislative work, regulatory authorities should observe principles 1 to 9 of ISO/IEC code of principles "reference to standards" (ISO/IEC Guide 75:1977) and take note of international best practice on using and referencing international standards for technical regulations.

¹ Recommendation adopted in 1974, revised in 1990, 1994, 1995, 1995 and 2013.

UNECE: United Nations Economic Commission for Europe



- Large and diverse membership (56 members)
- Large mandate encompassing Trade, Environment, Transport, Sustainable Energy, Forestry, Housing and Land Management, Statistics, etc.
- UNECE helps implement the Sustainable Development Goals by translating global goals into norms, standards and conventions, building capacity and engaging in partnerships with the private sector, the academia, and civil society
- UNECE has a global mandate in many of the areas it works on



Working Party on Reg Cooperation and Standardization Policies (WP.6)

- Intergovernmental body
- Forum for authorities, regional & int'l organizations, standards-setting bodies, business, certification bodies, test houses, civil society

Mandate

- Standardization
- Risk Management in Regulatory Frameworks
- Conformity Assessment
- Accreditation
- Metrology
- Market Surveillance
- Education on standards and standards related issues
- Regulatory Cooperation
- Gender responsive Standards

Activities

- Develop and share info & best practice
- Capacity-building (training and awareness-raising events)
- Develop and maintain a set of recommendations
- Implement a set of initiatives on specific industrial sectors



T Standards and Regulations for Sustainable Development!

The Working Party on Regulatory Cooperation and Standardization policies,
Taking special note of how the 2030 Agenda for Sustainable Development now represents a cornerstone for the United Nations in all sectors of its activity,
Wishing to enhance the contribution of voluntary standards to realization of the 2030 Agenda,
Wishing to further strengthen cooperation between regulatory authorities and agencies of the member States and standards development bodies and the United Nations in the implementation of the 2030 Agenda,
Wishing to further broaden the application of risk management tools by regulatory authorities (in building regulatory frameworks),
Affirms that:

- A systematic management of the risks inherent to the 2030 Agenda is a pre-requisite for achieving the Sustainable Development Goals;
- A standards-based approach constitutes a solid basis for regulating in view of the realization of the 2030 Agenda;

Taking into account that:

- The social, economic and environmental dimensions of the Sustainable Development Goals and targets are currently covered by a very broad range of legislative and regulatory systems and jurisdictions;
- In order to contribute to the achievement of the Sustainable Development Goals and targets, a broad range of risks shall be effectively and efficiently managed within regulatory frameworks, as described in Recommendation R;
- Many standards, UN agreements and conventions, as well as other regulatory frameworks that are already in use are relevant to achieving Sustainable Development Goals;
- Implementation of the Sustainable Development Goals requires developing regulatory processes and building risk-based regulatory systems that would be proportionate to risks that are relevant to the Sustainable Development Goals' targets in terms of regulatory requirements, conformity assessment and surveillance processes;

Reference to standards: UNECE work



- Recommendation D adopted in 1974, revised in 1980, 1984, 1988, 1995 and 2013
- Only tool adopted by an intergovernmental body to recommend that policy makers «whenever possible make use of international, regional and national standards in regulatory work»
- Used by several countries as the basis for their laws on stds (i.e. Russian Federation)
- Successful event held with ISO and IEC in November 2015 at Palais des Nations

<https://www.unece.org/tradewelcome/tradewp6/recommendations.html>

Reference standards in regulations: how to

Regulatory authorities should endeavour to apply “references to standards” methods that respect their voluntary nature, such as:

- Indicative reference, which retains the voluntary application of the standard.
- Only when indicative reference is considered unsuitable, regulatory authorities should make use of exclusive reference, which renders the standard or parts of the standard mandatory.

When choosing among the various methods of “reference to standards”, regulatory authorities should ideally adopt a method that would allow them to make optimal use of standardization work.

In regulatory, surveillance and legislative work, regulatory authorities should observe code of good practice



Standards-based rulemaking requires cooperation

Authorities should:

- (a) request information from national standardization bodies related to potentially relevant standards at international, regional or national level;
- (b) participate in standards development;
- (c) discuss with standardization bodies ways to facilitate the use of standards as reference in legislation (i.e. separately identified sections in a standard) .
- (d) agree on ways to ensure that referenced standards are made available to all potentially interested foreign and domestic parties



(a frame from the video: on the «Standards for the SDGs» event held on 26/9/2018
<https://www.youtube.com/watch?v=qsZlg75bzyo>)

Promoting Standards-based policies

Make standards relevant to policymakers by:

1. Showcasing how standards help reach policy objectives
2. Zoom into standards as mission-critical to manage societal risks
3. Making standards inclusive by design
4. Needs identification, capacity-building & education



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UNECE Portal on Standards for the SDGs

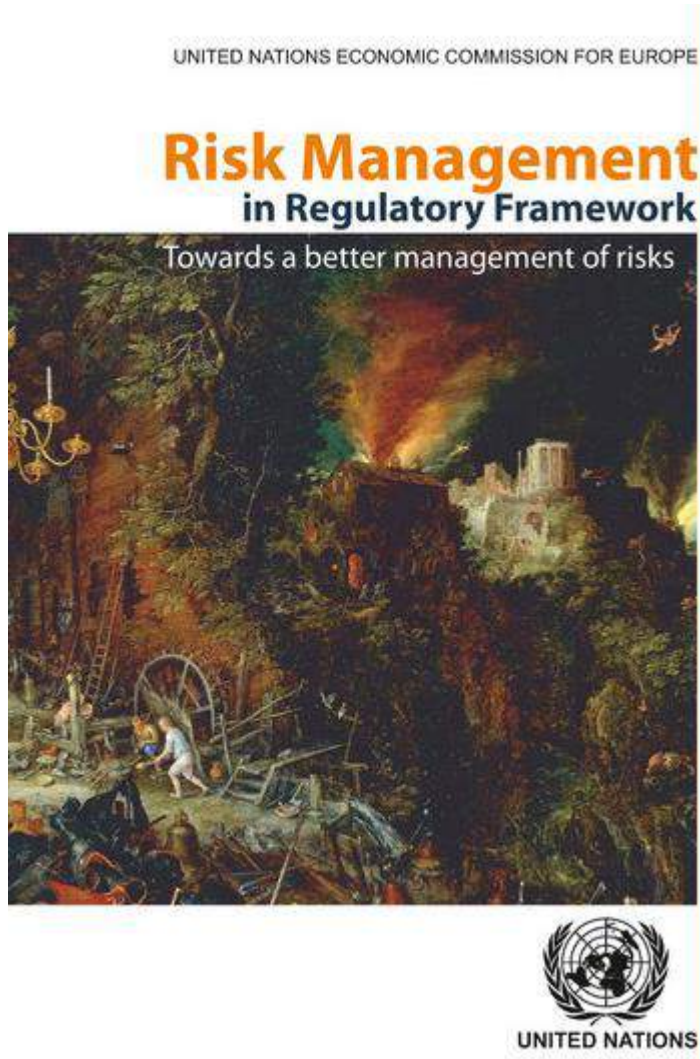
Search by

Welcome to the UNECE Portal on Standards for the SDGs

This portal offers users a tool to identify standards that help to realise Sustainable Development Goals and Targets; a collection of case studies of countries, cities and regions that have successfully used standards for sustainability, as well as supporting online training materials.

We hope you will make good use of this portal and contribute to its further development.

UNECE Risk-based policymaking



Work carried out in UNECE since 2009 aimed at reinforcing the proportionality between risks and regulatory action at all levels:

- defining regulatory requirements on the basis of risk classes
- increased stringency of mechanisms for assessing the conformity of products to these requirements based on risk assessment
- use of RM best practice in carrying out market surveillance actions to remove from the market dangerous/non-compliant products

<http://www.unece.org/trade/wp6/riskmanagement.html>

Declaration for Gender-Responsive Standards and Standards Development

The Declaration calls on all standards bodies to:

- more gender-balanced standards development process,
- make the standards they develop gender responsive
- 60+ standards bodies are currently signatories including:
 - international standards bodies (such as ISO, ITU, IEC, ASTM International),
 - regional standards bodies (covering Africa, Europe and South Asia), and
 - national standards bodies from all world regions (including Britain, India, Thailand, Canada, Germany, Spain, Mexico, Senegal, Morocco).



Needs Identification, capacity building, education

Needs assessment studies

- Based on comprehensive methodology
- Identify bottlenecks in quality infrastructure
- Inform donors as to assistance required

“Recommendation I” (on Education on standardization)

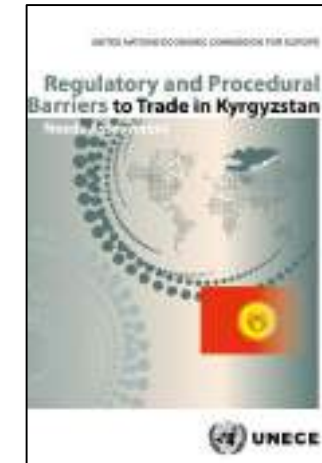
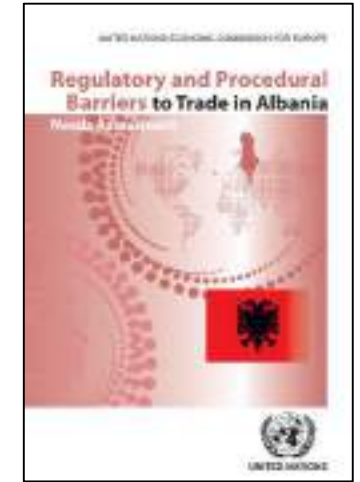
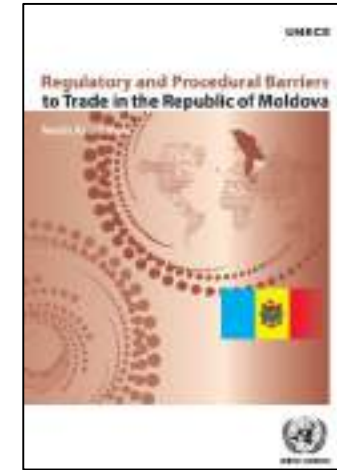
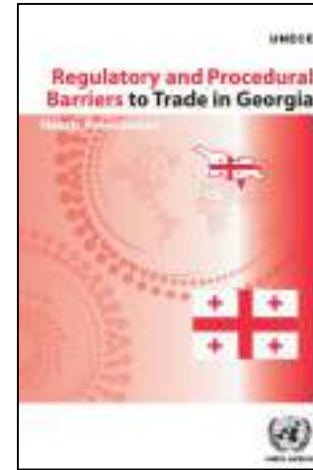
- WP6 adopted [“Recommendation I”](#) (1970) to encourage governments to support education on standardization

Awareness-raising events – coming up

- High-level panel on Education on Standardization on 21/11

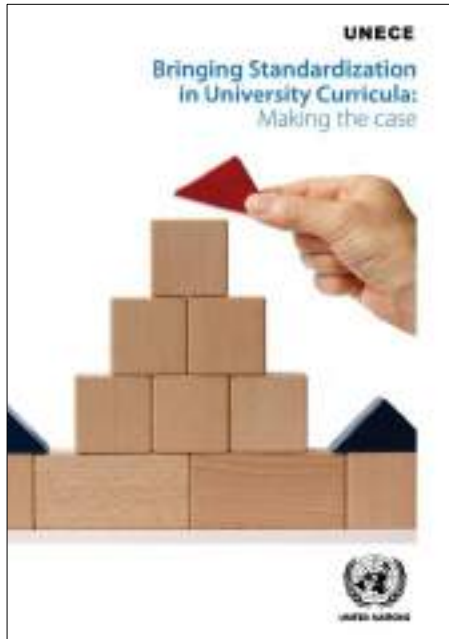
Development of online materials – also suitable for take up in Universities

- Risk management – Conformity assessment – Market Surveillance



Recent publications

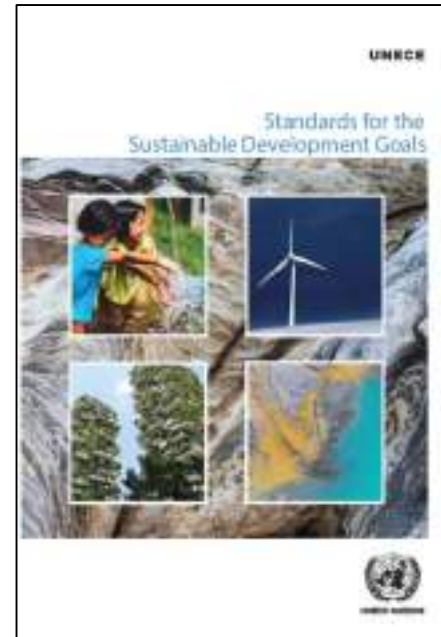
Bringing Standardization in University Curricula: Making the Case
ECE/TRADE/440
July 2018



Training Guide on Regulatory Frameworks and Market Surveillance
ECE/TRADE/441
July 2018



Standards for the Sustainable Development Goals
ECE/TRADE/444
November 2018



Gender Responsive Standards
ECE/TRADE/444
May 2019



Upcoming events & meetings

- Twenty-Ninth Annual Session of the Working Party on Regulatory Cooperation and Standardization Policies (WP.6),
20-22 November 2019, Palais des Nations, Geneva;
- Meetings of the UNECE “START-ed” Group on “Education on standards related issues”,
21 November 2019, Palais des Nations, Geneva
- Meeting of the Gender Responsive Standards Initiative
- *20 November 2019, Palais des Nations, Geneva*



Thank you

Lorenza Jachia

Secretary, Working Party on Regulatory Cooperation and Standardization
Policies (WP6)

United Nations Economic Commission for Europe (UNECE)

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