

**DECISION OF THE COMMITTEE ON PRINCIPLES FOR THE DEVELOPMENT
OF INTERNATIONAL STANDARDS, GUIDES AND RECOMMENDATIONS
WITH RELATION TO ARTICLES 2, 5 AND ANNEX 3 OF THE AGREEMENT
(G/TBT/1/REV.9 ANNEX B): THE EXPERIENCE OF THE UNITED STATES**

Submission by the United States

The following communication, dated 12 March 2009, is being circulated at the request of the delegation of the United States.

I. INTRODUCTION

1. The WTO Agreement on Technical Barriers to Trade ("TBT Agreement" or the "Agreement") recognizes the important contribution that international standards, guides, and recommendations can make in facilitating trade. Worldwide use of an international standard facilitates trade by enabling economies of scale in production, allowing low-cost global sourcing of inputs, and permitting greater product acceptance across countries. The Agreement also cites the contribution international standards can make to greater efficiency of production and to the transfer of technology. International standards that are responsive to global market and regulatory needs, embody technical merit, and embrace technological innovation can promote greater economic efficiency, which can lead to higher rates of economic growth.

2. To realize these potential gains, the Agreement encourages the development and use of international standards, including as a basis for technical regulations and conformity assessment procedures and through greater participation in international standardization activities. In the First Triennial Review, Members discussed the difficulties and problems that they encountered related to the use of international standards and participation in their development. In the Second Triennial Review, Members sought to improve the quality of standards and the effective application of the Agreement through a Committee Decision comprising six principles.¹ These six principles are: 1) *openness*, 2) *transparency*, 3) *impartiality and consensus*, 4) *relevance and effectiveness*, 5) *coherence*, and 6) *the development dimension*. These principles were designed to clarify the concept of international standards and advance the objectives of the Agreement.

3. In adopting the Committee Decision, the Committee noted in G/TBT/9 that the dissemination of its principles by Members, as well as by standardizing bodies in their territories, would encourage the various international bodies to clarify and strengthen their rules and procedures on the development of standards. The Committee also noted the importance of standards bodies

¹ Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev.9, Annex B (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement).

implementing procedures aimed at identifying and reviewing existing standards, to ensure their continued fitness for use. The Committee invited regular updates from its standardizing body observers on their activities, including on ways in which they were seeking to ensure effective participation of Members in international standards development, particularly of developing countries.

II. OBSERVATIONS ON THE COMMITTEE DECISION

4. The United States strongly supports the shared vision of WTO Members on the role of international standards development in international trade reflected in the TBT Agreement and the Committee Decision. Particularly given the prominent role of international standards in Articles 2.4 and 2.5 of the TBT Agreement, the Committee has an ongoing interest in matters relating to the preparation, adoption, and application of international standards in promoting achievement of the Agreement's objectives.

5. Nine years on, what has been the influence of the Committee Decision and how has it helped to achieve the shared vision of WTO Members on the role of international standards outlined above? The United States would like to share several observations on our experience for consideration by the Committee. We are interested in the experiences of other Members on these matters.

A. PROMOTING HARMONIZATION AND INNOVATION

6. In 1999, an OECD study referenced an estimate that 80 percent of trade is affected by standards or associated technical regulations.² Product-related environmental and safety requirements have expanded markedly since that study, and the global economy has become increasingly more integrated. The percentage of trade in goods affected by standards and conformity assessment requirements is now very likely much higher than the 1999 estimate, as is the average number of standards and conformity assessment requirements used throughout the value chain to produce a final product. In shaping policies to promote the development and use of relevant international standards, WTO Members interested in advancing the objectives of the TBT Agreement should take into account the sheer number and variety of standards in use in global commerce and regulation, their highly technical nature, and the speed with which they must adapt to technical innovation. More than ever, *"international standards need to be relevant and to effectively respond to regulatory and market needs as well as scientific and technological developments in various countries"* (G/TBT/9, Annex 4, paragraph 10).

7. Not surprisingly, U.S. stakeholders are extremely active in international standards development – in international intergovernmental organizations such as the International Telecommunication Union and Codex Alimentarius, and in private sector international standards bodies with national standards body based representation such as International Organization for Standardization ("ISO") and International Electrotechnical Commission ("IEC"). U.S. technical experts also are directly represented in the work programs of other private sector international standards developing organizations, as well as in the growing number of other international forums, some of which are producing globally-relevant consensus standards in highly technical, sector-specific areas. In all of these, we believe the principles contained in the Committee Decision provide a model to which all standardizing activity should follow in order to be globally relevant.

8. Full application of the six principles of the Committee Decision promotes the development of standards that should be considered "international." In the United States, where the majority of international standards development is housed in private sector organizations, the Committee Decision principles have provided an important incentive to further "internationalize" standardizing activities, including extensive outreach to broaden participation by stakeholders from developing

² OECD, *Regulatory Reform and International Standardization*, TD/TC/WP (98) 36, January 1999.

economies. These international outreach efforts have been guided largely by intentions to demonstrate conformance to the principles of the Committee Decision and to ensure their standards' continuing relevance and effectiveness. We believe these efforts carry global benefits, particularly with respect to promoting the achievement of the objectives of the Agreement. We would welcome similar efforts towards greater attention to the six principles in the standards development processes of our trading partners.

9. Greater international engagement by these standards developing organizations, particularly with stakeholders in developing economies, carries the potential to increase diffusion of knowledge and build technical capacity, including in emerging sectors or areas of interest. More widespread adherence to the Committee Decision principles -- such as openness, effectiveness and development -- by standardizing bodies can also promote trade facilitation (through harmonization to globally-relevant standards) and productive efficiency (through greater innovation and technical excellence). Adherence to the principles of openness, transparency and consensus by these standardizing bodies also enables regulators to find the most relevant and effective solutions to today's regulatory needs.

10. Lastly, with regard to contributing to the objectives of the TBT Agreement, we question national laws and policies of some WTO Members that explicitly favor domestic or regional standards over international standards. We further question policies that limit a standard's use based on the location or nationality of the standards developing organization particularly in cases where a globally relevant and effective standard has been developed within a process that meets the principles of the Committee Decision. We note that a 2007 OECD study³ found that risks of divergence from TBT principles can occur when parties in regional trade arrangements are called to elaborate or harmonize towards regional regulations, standards and conformity assessment procedures, rather than international. We note also that researchers at the World Bank reached similar conclusions in their examination of the use of regional standards on African exports.⁴ Would greater consistency with the principles of the Committee Decision in regional harmonization efforts better promote achievement of Members' shared objectives? We are interested in others' experiences and views on these issues.

B. "SAFE HAVEN" AFFORDED BY THE AGREEMENT

11. The qualified "safe haven" provided by the rebuttable presumption of compliance outlined in Article 2.5 of the TBT Agreement provides an important incentive for regulators to participate in the development and use of international standards, thereby promoting greater alignment in the technical requirements that underpin regulations. The United States strongly supports this. However, we would like to bring to the Committee's attention certain trends which may have a bearing on achieving our shared objectives.

12. First, the United States is of the view that Article 2.5 reflects our common understanding that relevant international standards can provide the technical underpinning for regulatory action that both meets the Member's legitimate objective and facilitates trade. We question, therefore, efforts in international standardizing bodies that seek to embed broad regulatory, social and public policy and principles in standards -- including policies and principles on which international consensus has been elusive in international intergovernmental bodies and treaty organizations. Are international standardizing bodies suitably structured to be able to properly weigh competing policy and social claims among members with disparate political structures? What implications might the resulting standards carry for the operation of the TBT Agreement? We are interested in others' views on the

³ OECD. *Do Bilateral And Regional Approaches For Reducing Technical Barriers To Trade Converge Towards The Multilateral Trading System?* TAD/TC/WP(2007)12/FINAL, October 2007.

⁴ The World Bank Development Research Group. *Help or Hindrance? The Impact of Harmonized Standards on African Exports*, Trade Team Policy Research Working Paper (WPS 4400), November 2007.

potential misuse of such standards, including with respect to Articles 2.5 and 2.9. Do the Committee Decision principles, particularly those relating to consensus and relevance, provide useful guidance in this regard?

13. We would also note our concerns regarding inaccurate claims made by certain standardizing bodies that technical regulations based on standards developed by such bodies will be automatically WTO TBT consistent or necessarily qualify for the Article 2.5 qualified safe haven. The TBT Agreement does not imply or convey automatic WTO compliance to a Member's technical regulation when an international standard from a specific body is used, nor does the Agreement afford automatic coverage of that technical regulation under Article 2.5's qualified safe haven. Article 2.4 states that Members shall base technical regulations on "relevant" international standards, except when use of international standards would be ineffective and inappropriate to achieving the legitimate objectives pursued.

14. Given the many complex issues facing regulators, including "fundamental climactic or geographical factors or fundamental technological problems", no single standardizing body is able to produce the international standard that is relevant, appropriate, and effective in every case. Claims regarding automatic WTO compliance or benefits under the safe haven may lead regulators to choose a standard that is not in fact relevant or international, which may diminish transparency and harmonization and result in technical regulations that neither best serve the Member's legitimate objective or facilitate trade.

15. Lastly, the United States underscores the importance of the third principle of the Committee Decision, "*Impartiality and Consensus*" to the operation of the safe haven of Article 2.5 — and emphasizes that standard development process should not give privilege to, or favor the interests of, a particular supplier/s, country/ies, or region/s. We believe it is in the interest of all WTO Members to work to ensure that all standards developing organizations are vigilant to misuses of consensus requirements at the technical level.

C. COOPERATIVE EFFORTS ON BUILDING TECHNICAL INFRASTRUCTURE

16. During the Second Triennial Review, the Committee made the following thoughtful suggestions to encourage greater participation in international standardization activities by developing country stakeholders (G/TBT/9, paragraph 25), in accordance with the provisions in the TBT Agreement:

- Using national consultations to assess products/sectors of priority interest for international standardization and targeting resources accordingly;
- Increasing opportunities for leadership positions in technical committees;
- Greater use of information technologies to ease financial constraints;
- Improving national coordination among stakeholders with specific trade interests to strengthen financial and human resources of national standardization bodies; and
- Contributing to more efficient and effective use of resources through regional cooperation.

17. As suggested by these observations, "participation in standardization activities" encompasses a wide range of activities that contribute to the larger process of building the appropriate technical infrastructure in developing economies. One element in that process is the participation by national stakeholders in the technical committees of standards developing organizations.

18. It is our view that stakeholder participation in technical committees can be most effective when it is:

- Fully grounded in a thorough national consultation process -- including outreach to sector and technical experts to build national technical and mirror committees -- that is conducted in a consistent, inclusive, and transparent manner;
- Complemented by a range of activities to address the relevant technical infrastructure (metrology, legal metrology, testing capacity, etc.) that supports the application of specific technical standards (*i.e.*, activities to ensure that the relevant technical infrastructure is either sufficiently well developed domestically, or is available through regional structures, or is accessible for use in other countries (*e.g.*, testing laboratories)); and,
- Conducted alongside partnerships between national specialists and regional/international technical organizations that can provide ongoing information exchange and expertise.

19. The United States welcomes the ongoing multilateral and bilateral donor assistance efforts related to standardization activities. U.S. bilateral assistance programs often encompass these important activities as well. Regarding such assistance, it is our view that the principles of the OECD Paris Declaration on Aid Effectiveness⁵ – *ownership, alignment, harmonisation, managing for results, and mutual accountability* – are highly relevant to these activities. To have lasting impact, assistance must be demand-driven, formulated within the context of sector-specific national priorities, and compatible with the existing level of technical infrastructure development.

20. While appropriate donor assistance can play an important role, our experience indicates that long-term cooperative efforts and information exchange among specialists offers a critical venue for helping developing country experts to build the domestic knowledge base needed to evaluate and prioritize their country's own needs. When assistance or training is conducted under the auspices of relevant and reputable regional and international technical organizations, national specialists have access to a variety of viewpoints and independent technical assessments in an environment of professional exchange among experts. These cooperative professional forums offer important and durable vehicles in the effort to build and strengthen technical infrastructure in developing economies.

III. CONCLUSION

21. The United States believes that international standardization activities can play a vital role in promoting the shared vision of WTO Members as reflected in the TBT Agreement and the Committee Decision. The Committee's discussions in the Second Triennial Review and its resulting Decision offer enduring insights into our efforts to ensure that such activities do not result in the creation of unnecessary obstacles to trade. On the occasion of the Fifth Triennial Review and the TBT Committee's Workshop on the role of International Standards in Economic Development, the United States appreciates this opportunity to share our experience with the Committee Decision, and we welcome others' experiences and views.

⁵ http://www.oecd.org/document/18/0,2340,en_2649_3236398_35401554_1_1_1_1,00.html