

WORLD TRADE ORGANIZATION

RESTRICTED

G/IT/SPEC/Q2/4

19 March 2001

(01-1315)

**Committee of Participants on the Expansion of Trade in
Information Technology Products**

Original: English

SUBMISSION FOR THE NON-TARIFF MEASURES WORK PROGRAMME

Communication from the European Community

The following communication, dated 12 March 2001, has been received from the Permanent Delegation of the European Community.

Attached is the EC contribution to Phase I (inventory) of the ITA/NTMs work programme, a brief presentation of which was made by our delegate at the last Committee of Participants on 27 February 2001.

I would be grateful if you would circulate this document to all ITA Participants.

We reserve the right to supplement this contribution before the next meeting of the CP-ITA on 10 April 2001 should we receive any additional input from our industry and/or Member States.

The European Community (EC) contribution to the inventory of non-tariff measures (NTM) related to ITA products is split up in the following parts:

- A. Regulatory environment and level of regulation.
- B. Disparity of national standards, non-use of international standards and non-harmonised radio spectrum use.
- C. Conformity Assessment and testing requirements.
- D. Customs procedures and related requirements

A separate paper on each of these is attached following the inventory guidelines from the WTO Secretariat.

These are among the main NTMs facing ITA products that the EC has identified in consultation with interested parties. They are also among the obstacles that the Commission and the EC Member States faced in creating the Single Market. The EC has therefore gained considerable experience in dealing with the issues at hand in an "international environment" with differing traditions, languages, administrative cultures etc. As part of its contribution to this phase of the NTM work program, the EC wishes to share this experience hoping that it can assist in the ensuing analysis and discussion.

Without prejudice to Phase II and III of the work program, the EC considers the following general issues would need to be considered (if necessary supported by studies):

- Appropriate and proportionate level of technical regulations for ITA products, including defining what risks are basic in terms of public imperatives.
- Transparency, coherence and predictability in the transposition of international standards.
- Reliance on product liability and market surveillance, as well as voluntary international structures related to conformity assessment and industry fora.
- Appropriateness and proportionality of customs procedures and related requirements.

A. Regulatory environment and level of regulation.

1. Specify what the NTM is.

Regulatory systems and requirements that:

- are not proportionate to risks involved;
- are not based on or supported by international standards;
- are not limited to protecting public imperatives, but also regulate functionality and quality of products;
- lay down detailed technical requirements
- hinder innovation.

2. Which ITA products are affected (provide HS number(s) if possible).

All ITA products, but in particular information technology and communication equipment.

3. How it impedes trade in IT products and the specific details of the trade distorting impact of the NTM (e.g. undue delays at the border, difficulties in getting the necessary licences).

Excessive regulatory requirements (e.g. not proportionate to risks involved and regulate functionality and quality) relating to both product and conformity assessment requirements lead to costs and delays to market which do not add any value to protecting public imperatives or furthering consumer interests. For countries with limited markets, regulatory compliance costs can lead to that products, in particular the most innovative, are not marketed there. More specifically, costs can pertain to: redesign due to different technical requirements, direct costs related to government and/or third party approvals, difficulties related to acquiring regulatory requirements and understanding them, delay to market introduction etc.

Excessive regulatory requirements can also be seen as leading to unnecessary regulatory costs and loss in regulatory efficiency. Innovation and development of ITA products takes place at such a pace, as well as their increased complexity, that regulatory systems that are very detailed in nature and rely heavily on public intervention have considerable difficulties to constantly adjust to this. In view of the risks involved with ITA products (mainly electrical safety and EMC, spectrum compatibility for radio equipment) this does not seem a reasonable approach from a regulatory point of view.

4. Additional detailed information can be provided in Annexes, or with links to web sites.

EC experience in regulating ITA products

In creating the Single Market, the European Union has developed substantial experience in addressing concerns which sometimes could be seen as conflicting, such as protecting public interests and at the same time promoting trade and industrial competitiveness. The EC needed to overcome diverging technical rules, conformity assessment procedures and administrative practices, whilst recognising the diversity of languages, traditions and the legal systems of its Member States and at the same time respecting the principle of subsidiarity. The regulatory experience of the EC has evolved from one based on differing national regulations to harmonised legislation at the EC level based on detailed mandatory technical specifications and third party conformity assessment procedures (with a number of national requirement) to the present system based on limiting regulatory intervention to what is absolutely essential to protecting public interests. Experience has also shown that this has not been an easy process and that it has taken time. However, it has been considered “inevitable” and

necessary with the fast pace of technological development, but at the same time recognising the need of protecting clearly defined public imperatives.

The globalisation of the economy now raises the same or at least similar issues at the global level and the experiences of the European Union can contribute to discussions in the ITA to address them.

Basic concepts

In its process of integration the Union developed a basic approach (the so-called “new and global approach”) to technical regulations, conformity assessment and the role of standardisation for industrial products. This approach is applied in a large number of sectors, including the Information Technology and Telecommunications sectors. The basic philosophy underlying this approach is the assertion that products, considered safe to citizens in one Member State are presumed to be safe for citizens in other Member States.

The proportionality principle was applied to limit product requirements to **essential requirements** serving the public interest with **conformity assessment procedures** proportional to the risk being regulated. In this process many requirements, previously existing in national regulations were found to be incompatible with such principles and were removed. Notably requirements regulating the functionality and quality of products are now generally seen as not essential and not requiring technical regulations. Market forces sufficiently ensure interoperability and fitness for purpose to require regulatory oversight.

Product regulations in the Community are formulated in legal terms, without specifying their technical translation for individual product types. Rather than putting technical parameters in law, the translation of the generic principles into technical requirements is delegated to standardisation, where all interested parties agree on standards giving presumption of conformity with the regulations. This can however only be done under the condition that standardisation is accountable, transparent and ensures a coherent set of standards.

Application in the Information Technology and Telecommunication area

There is an understanding that products in these sectors are in general posing only minor safety problems. By virtue of the fact they use electricity or (for radio equipment) use the radio spectrum, there is a regulatory requirement to ensure they don't cause interference to other equipment. With minor exceptions (notably related to equipment used in rescue situations) the essential requirements for products are limited to electrical safety, electromagnetic and spectrum compatibility. Since these products pose little safety risks for consumers, the lightest form of conformity assessment (manufacturers declaration of conformity, sometimes referred to as SDoC) is applied. Any remaining market problems can effectively be tackled with a relatively light weight enforcement (market surveillance) system.

Experience has shown that the system, of which the electrical safety part has been in operation since 25 years, the EMC part almost 10 years and the spectrum part since one year is effective.

Some WTO members have arrived at conclusions similar to those of the European Union. It however is felt that many approval regimes still unnecessarily rely on third party or government involvement in the conformity assessment and that requirements do not always limit themselves to public interest requirements and in many cases are not fully transparent.

B. Disparity of national standards, non-use of international standards and non-harmonised radio spectrum use.

1. Specify what the NTM is.

- Regulatory standards that go beyond basic protection requirements. International standards not used to support national regulations.
- National deviations from international standards that are not directly related to protecting public imperatives.
- Non-harmonised radio frequency allocations.
- Non transposition of international standards as national standards and withdrawal of conflicting national standards.
- International standards that offer different and many times incompatible technical options.
- Lack of transparency in the transposition of international standards.
- Market access restrictions resulting from “voluntary” but de facto requirements/standards which many times have a quasi-regulatory status or government or legislative sponsorship.

2. Which ITA products are affected (provide HS number(s) if possible).

All ITA products.

3. How it impedes trade in IT products and the specific details of the trade distorting impact of the NTM (e.g. undue delays at the border, difficulties in getting the necessary licences).

Differing national technical regulation/standards and frequency allocation lead to increased costs to manufacturers which must redesign products, carry out testing and certification against multiple standards, prolongs time to market, uncertainty as to what standards, national deviations etc. apply.

4. Additional detailed information can be provided in Annexes, or with links to web sites.

EC experience in using standards for regulatory purposes

The EC has since 1985 gained considerable experience in using voluntary standards for regulatory purposes in a wide variety of sectors (telecommunications equipment, medical devices, machinery, explosives, pressure vessels, toys etc.). The general conclusion from this experience is that this has been a successful and effective regulatory approach. Standards have provided a mechanism for both economic integration and upholding a high level of health, safety and environmental protection among the EC's Member States.

It is important to point out that in its approach to relying on voluntary standards in relation to regulations, the EC has set out a number of conditions that standards bodies must meet in order to demonstrate the necessary level of accountability and legitimacy in relation to public authorities. The conditions are based on the following principles: transparency, openness, impartiality, effectiveness, technical coherence and constitution.

Standards for basic technical requirements

For ITA products, electrical safety, EMC (Electromagnetic Compatibility) and spectrum compatibility are the most prominent examples for basic technical requirements. Standards that relate to such requirements reflect pure and sometime elementary physics and related measurement

techniques. If these standards are developed with all parties concerned, by a due process which leads to the standards' legitimisation, such standards are supposed to reflect sound science and should therefore be qualified for being referenced in technical regulations. A typical example is IEC 60950 on Electrical Safety of Information Technology Equipment. Although the technical content of IEC 60950 is widely recognised, it is still not applied without national deviations.

If it is recognised that the market for ITA products is global, than it must be supported by international standards. This is something that has been recognised at the regional level, not only in the EC but for example in the context of ASEM and APEC, where concrete activities are being pursued in relation to alignment to international standards.

Improving the international standardisation process

Although there exist a number of basic standards related to ITA products, many of them contain different, and sometimes incompatible, technical options. Furthermore, many countries transpose them with national deviations (e.g. due to regulatory requirements or special national conditions) or do not withdraw conflicting national standards.

In order to overcome this, there is a clear need of better transparency in what happens to international standards once adopted by the international standards bodies. Even if national deviations can be questioned for basic generic standards, they might be necessary to protect essential public interests. However, if the nature or reasons for deviations are not known, it will be difficult to address such issues. Here the international standards bodies have an important role to play.

C. Conformity Assessment Procedures and Testing Requirements.

1. Specify what the NTM is.

- Regulatory conformity assessment procedures and test requirements that are not proportionate to the risks involved. Unnecessary reliance on third party testing and certification.
- Testing standards not based on international standards.
- Non acceptance of foreign test reports and certificates.
- Non acceptance of foreign accreditation certificates.

2. Which ITA products are affected (provide HS number(s) if possible).

All ITA products.

3. How it impedes trade in IT products and the specific details of the trade distorting impact of the NTM (e.g. undue delays at the border, difficulties in getting the necessary licences).

Increased costs due to duplicative/multiple testing and certification, prolonged time to market, uncertainty and unpredictability related to contacting approval authorities, certification bodies or laboratories in another country.

4. Additional detailed information can be provided in Annexes, or with links to web sites.

As with other regulatory requirements, the conformity assessment procedures imposed must also be proportionate to the risks involved and not place undue burden on economic operators. In this respect the following factors need to be borne in mind:

- The main risks related to ITA products are minor (mainly electrical safety, EMC and spectrum compatibility for radio equipment).
- Fast pace of technological development.
- Increased complexity of ITA products and that their behaviour is largely dependent of the software controlling the product.
- Dealing with “grey products” which do not comply with regulations although they are on the market.
- The ultimate responsibility of a supplier for its products.
- The ability of market forces to ensure interoperability and fitness for purpose.
- Availability of international or regional standards with technical specifications that address regulatory requirements.

These considerations have led the EC to base its conformity assessment requirements on “self-certification”, i.e. the supplier taking on all actions needed in order to demonstrate compliance, as sufficient for upholding a high level of consumer and user safety and spectrum integrity. This needs to be coupled with market surveillance and product liability legislation. In particular market surveillance is essential for an effective enforcement since it is only through this means that problems related to non-compliant products and/or “grey products” could be addressed.

If a country considers that testing and certification by a third party is required, then reliance should be placed on the international metrology and accreditation instruments in place. In recent years considerable development have taken place in such organisations as BIPM (International Bureau for Weights and Measures), ILAC (International Laboratory Accreditation Co-operation), IAF (International Accreditation Forum) and the IEC CB scheme to ensure confidence in certificates

issued by members of these organisations. To this should of course be added the industry for a that work towards common technical solutions (e.g. GCF, Blue Tooth, 3GPP).

D. Customs procedures and related requirements

1. Specify what the NTM is.

Cumbersome, non-transparent and overly bureaucratic procedures related to obtaining customs clearance and/or marketing authorisation. Examples of this are:

- Need to present lengthy compliance documents as part of customs documentation.
- Requirements on “certificates of quality” or other like official documents.
- Requirements on a formal certificates of origin instead of relying on other documents such as invoices.
- Need of “legalisation” of documents before acceptance by customs.
- Pre-shipment inspections which add cumbersome procedures.
- Import licences and/or requirement to register products before importation or marketing.
- Local establishment requirements linked to import licensing.

2. Which ITA products are affected (provide HS number(s) if possible).

All ITA products.

3. How it impedes trade in IT products and the specific details of the trade distorting impact of the NTM (e.g. undue delays at the border, difficulties in getting the necessary licences).

Increased costs directly related to obtaining the necessary documentation, including indirect costs related to time and resources required ascertain what the requirements and procedures are (these can change considerably in a short space of time). Undue delays at the border. Costs related to increased uncertainty and unpredictability in what customs and licensing requirements and procedures are and how they will be applied.

4. Additional detailed information can be provided in Annexes, or with links to web sites.
