

## EQUIVALENCY OF STANDARDS: AN INTERIM MEASURE TO FACILITATE TRADE IN THE ABSENCE OF RELEVANT INTERNATIONAL STANDARDS

### Note from New Zealand

#### I. INTRODUCTION

1. The WTO TBT Agreement includes a requirement that positive consideration be given to acceptance of equivalency of technical regulations. Article 2.7 states that:

"Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations".

However, currently, the WTO TBT Code of Good Practice for the Preparation, Adoption and Application of Standards does not impose any similar requirements on bodies developing voluntary standards.<sup>1</sup>

2. In the course of the First Triennial Review of the Operation and Implementation of the Agreement conducted in 1997, some Members submitted that the WTO TBT Code of Good Practice for Standards should also contain a similar provision to that of Article 2.7 of the TBT Agreement. It was noted that while the TBT Agreement differentiates quite rightly between technical regulations (mandatory in their nature) and standards (voluntary in their nature), that in practice standards could create unnecessary obstacles to trade. The Committee has recently received submissions of national experience papers highlighting some of the difficulties that arise in this regard.<sup>2</sup>

3. During the Triennial Review Discussions, the TBT Committee recognized that divergent national standards serving similar objectives existed in different Member economies. In particular, this occurred where international standards did not exist in a particular area. The Committee agreed, *inter alia*, that Members should exchange views on:

- the reasons why no international standards exist in these circumstances;
- experiences in the implementation of Article 2.7 of the TBT Agreement relating to equivalency of technical regulations; and
- whether and how the concept of equivalency might apply in relation to voluntary standards.

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<sup>1</sup>At the beginning of this year, 97 bodies responsible for voluntary standards had notified the WTO of their acceptance of this Code.

<sup>2</sup>G/TBT/W/60 submitted by Colombia and G/TBT/W/61 submitted by Canada refer.

4. This paper is contributed as part of the follow up process to the Triennial Review. It seeks to prompt an exchange of views on these matters, and makes suggestions for ways in which individual and cooperative actions could facilitate removal of technical barriers to trade through the recognition of equivalency of national voluntary standards.

## **II. WHY DO INTERNATIONAL STANDARDS NOT EXIST?**

5. While the TBT Agreement requires international standards to be followed at the national level, international standards do not always exist to provide national standardizing bodies with appropriate guidance. Where there are no international standards, but instead divergent national standards serving similar objectives, this can be explained by a variety of factors, including the following:

- limits to the resources of the central secretariats of the international standards bodies;
- limits to the resources of the national standards bodies and national committees contributing to international standards processes;
- insufficient weighting given to the significance of trade when prioritising new international standards development projects;
- the time-lag between the identification of need for a new international standard and the agreed outcome;
- the difficulty in achieving agreement on common solutions where differing national standards are well-established; and there are significant cost implications in aligning with a common solution (in our view this is probably the most significant reason).

6. One important step in overcoming these difficulties would be to seek to ensure, to the extent possible, that in developing standards within international standardizing bodies, the primary focus should be placed on seeking common agreement on the performance objectives (rather than detailed descriptive or design matters). Indeed Paragraph I of the Code of Good Practice for the Preparation, Adoption and Application of Standards advocates performance rather than design or descriptive approaches to be used by national standardizing bodies in standards formulation. The requirements of this code are near identical to the principles of standardization espoused by the international standardizing bodies. With performance as the main focus for the agreement on international standards, faster development would likely be facilitated.

7. By extension, Paragraph I of the Code of Good Practice, by requiring that, whenever possible, national standards should focus on performance rather than specify design or descriptive characteristics, supports the concept of equivalency by recognizing that the same performance outcome might be achieved in different ways.

## **III. NEW ZEALAND EXPERIENCES IN THE IMPLEMENTATION OF ARTICLE 2.7 OF THE TBT AGREEMENT**

8. New Zealand seeks to keep regulation to a minimum, and to follow the principles of good regulatory design and practice outlined in the paper submitted to the 1997 Triennial Review on the preparation, adoption and review of technical regulations.<sup>3</sup> In addition, increasingly in recent years there has been growing cooperation with Australia, our closest trading partner, to remove regulatory barriers to trade and economic integration. This approach has been facilitated by our shared

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<sup>3</sup>G/TBT/W/44 submitted by New Zealand

commitment to ensuring good regulatory design and by the similar conditions that exist in both economies. Below are three different ways in which New Zealand has sought to pursue implementation of its obligations under Article 2.7:

TTMRA: The most striking example of the Australia/New Zealand cooperative approach is the Trans Tasman Mutual Recognition Arrangement (TTMRA), concluded in 1996. The key principle of this arrangement is that a good which can be legally sold in one country may be legally sold in the other, without having to meet further sales-related regulatory requirements. In effect, differing Australian requirements relating to sale are recognized as equivalent to meet New Zealand objectives, and vice-versa. This arrangement has real benefits for countries that trade both with Australia and New Zealand, as the net effect in the various areas covered by the agreement is in many cases to replace two separate sets of national regulatory requirements for sale with one.

This flexible approach helps avoid the potential for over regulation arising from harmonization efforts where divergent objectives and approaches can lead to more trade restrictive outcomes than necessary. TTMRA was developed in recognition of the fact that trade and commercial transactions could be better facilitated by an equivalency approach. However, at the same time the arrangement takes account of the fact that equivalency may not always be a possible solution where the circumstances applicable in one country in relation to a product are not materially similar to those in another.

Mutual Recognition Agreements: Another cooperative approach New Zealand has used is the negotiation of bilateral mutual recognition agreements with trading partners further afield, for example the New Zealand/European Union MRA on conformity assessment. Article 6.3 of the TBT Agreement encourages these types of arrangements. However the costs in terms of the negotiation and implementation of such arrangements need to be taken into account. In addition, it should be remembered that Article 2.7 of the TBT Agreement reinforces the notion of unilateral recognition of equivalency, rather than the need for reciprocal bilateral agreements.

Referencing other countries national standards in New Zealand regulations: In New Zealand, equivalency has also been provided in some cases by referencing a national standard as well as several national standards from other countries as means of compliance for regulations. As an example in New Zealand, several standards for infant seats in motor vehicles have been deemed to all provide an acceptable level of safety. In effect this represents a recognition of equivalency because, in order to aid compliance, these overseas regulations themselves refer back to the relevant national standards.

#### **IV. APPLICATION OF THE CONCEPT OF EQUIVALENCY TO VOLUNTARY STANDARDS**

9. In many cases, relevant international standards will be available to provide a basis for national standards. However, for the reasons indicated in paragraph 5, this will not always be so. Even where the need for an international standard is acknowledged, experience shows that they can take at least five years to develop. In the meantime, what options are available to facilitate trade between countries whose different national standards appear to be underpinned by very similar objectives?

10. In New Zealand's view, in many instances an arrangement for recognition of equivalency of national standards should be relatively straight forward. It would also provide a useful interim solution for the facilitation of trade until an international standard is available. Furthermore, if agreement on an international standard proves difficult to achieve, an equivalency arrangement will tend to focus the developers of national standards on resolving the differences. This would be particularly effective if, as suggested above, the international standards initially brought together collective agreement on just the performance objectives.

11. New Zealand does not consider that the development and application of an equivalency concept to national standards runs in any way counter to efforts to strengthen the role of international standards. Equivalency arrangements are in fact likely to be useful building blocks to the achievement and adoption of new international standards. The development of a concept of equivalency for application to voluntary standards would represent an acknowledgement of the significant role that standards play in determining the nature of trade, and the practical compliance difficulties that they can create when an unduly prescriptive approach to standards development is taken.

12. If national standards organizations were to address equivalency with foreign standards at the same time of developing their own national standards, there would subsequently be no need for governments to additionally cite foreign standards in regulations in implementing Article 2.7 of the TBT Agreement. In effect, the foreign standards would already have been taken into account in the specific equivalency arrangements recognized in the single national standard referred to in national compliance requirements. The consensus and public consultation processes employed by national standards bodies would ensure industry and community acceptance of these regulatory solutions.

## **V. MEANS OF APPLYING THE ARTICLE 2.7 CONCEPT OF EQUIVALENCY TO VOLUNTARY STANDARDS**

13. There appear to be two main avenues that would be available to encourage and facilitate the application of the Article 2.7 concept of standards equivalency. The first centres on the individual action of National Standardizing Bodies. The second relates to scope for cooperative actions between international and national standardizing bodies and networks. For discussion purposes, we suggest some ways in which both individual and cooperation action could be taken.

### **A. EQUIVALENCY - INDIVIDUAL ACTION BY A NATIONAL STANDARDS BODY**

14. The implementation of the equivalency requirements for regulations in Article 2.7 of the WTO TBT Agreement relies on responsible individual action by the signatory economies. The most explicit and consistent way to incorporate the concept of standards equivalence in the TBT Agreement would be to add a similar commitment to Article 2.7 as part of the Code of Good Practice for the Preparation, Adoption and Application of Standards. A provision of this sort would provide a strong incentive in cases where no relevant international standards exists for national standardizing bodies to cooperate more closely with their counterparts within other WTO member-States to exchange information on their respective standards objectives. It would lessen the tendency for national standards to be construed "in a vacuum", without regard to the potential implications that they might have on trade.

15. In effect, an additional provision on equivalency to the Code of Good Practice should not be seen as a revolutionary development, but rather as a natural one. Some national standardizing bodies are already actively engaged in addressing equivalency issues. This is very much the case between Australia and New Zealand, the two national standardizing bodies of which have developed an "umbrella standard" concept. The most notable example is the Australian/New Zealand Standard AS/NZS 1200:1994 - Pressure equipment. There are currently no international standards for primary application to the design, manufacture and inspection of boilers and pressure vessels. However, US (ANSI/ASME) and European (BS/EN) standards have world-wide recognition, and Australian Standards have particular relevance to New Zealand.

16. A copy of a page from AS/NZS 1200 is attached as Annex A. This is a voluntary standard that lists a number of applicable standards that provide equivalent and acceptable performance for the New Zealand environment. AS/NZS 1200 provides a means of compliance with New Zealand regulations that is also compatible with the intent of the WTO TBT Agreement. It provides the

New Zealand regulatory body responsible for safety of boilers and pressure vessels with a means of achieving the requirements of TBT Article 2.7. It also provides a means of using recognized consensus processes to determine equivalence, rather than the less rigorous processes normally employed by a regulatory body.

17. AS/NZS 1200 has been very well received in New Zealand, and has proved effective in minimizing technical barriers to trade. We have used the same approach in developing the New Zealand Standard for gas appliance safety (NZS 5262)

## **B. EQUIVALENCY – COOPERATIVE ACTIONS**

18. The TBT Committee may also wish to discuss whether it would be desirable to coordinate equivalency arrangements on a regional or international basis. It would be much easier to do this in areas of voluntary standards than for technical regulations, primarily because of the existence of international and regional coordinating bodies and networks (ISO, IEC, PASC etc). A sensible first step would be the encouragement of information exchange between the various bodies to explore strategies for the implementation of equivalency concepts in relation to the national standards of others.

19. International and regional standardization bodies and networks could feasibly coordinate the recognition of equivalency actions by national standards bodies by seeking collective agreement on priority areas for voluntary action by individual standards bodies. They could also facilitate collective agreement on which national standards provide for acceptable levels of performance in each of these priority areas.

20. For example, smoke alarms might be identified and agreed upon as a focus area. The acceptability of, and performance comparisons for, national standards for smoke alarms such as ANSI/UL, AS, BS and ULC could be considered, and a list of commonly acceptable equivalents agreed upon by members of the international/regional coordinating group. The group might decide to recommend that member standardization bodies recognize and notify the equivalence of the agreed list of standards.

21. Any collective agreements for cooperative actions of this nature would appear to be best focused on a few areas of particular significance to regional or international trade. These actions should only be undertaken in areas where international standards do not exist and are not likely to be available within the short term (say, five years).

22. It should be noted that the Pacific Area Standards Congress (PASC) is currently investigating areas in which Asia-Pacific standards bodies could voluntarily cooperate to implement recognition of equivalence.

## **VI. CONCLUSION AND RECOMMENDATIONS**

23. In conclusion, the concept of standards equivalency has merit as a means of avoiding and further reducing unnecessary obstacles to trade. It is emphasized that it should only be applied where international standards do not exist, and then only as an interim measure until suitable international standards are made available. Arrangements for recognition of equivalency can provide a useful starting-point for agreement on content of future international standards.

24. In view of the benefits that recognition and application of a concept of equivalency could have in context of voluntary standard, the Committee could further consider the following draft recommendations:

- (a) Endorsing the inclusion in the Code of Good Practice of the following additional paragraph:

*"The standardizing body shall give positive consideration to accepting as equivalent, standards originating from other Members of the WTO, even if these standards differ from their own, provided they are satisfied that these standards adequately fulfil the objectives of their own standards".*

- (b) Requesting international and regional standardizing bodies to encourage an exchange of information from the standardizing bodies that make up their membership on the actions they have taken to implement equivalency in relation to national standards of other members.
- (c) Encouraging international and regional standardizing bodies to coordinate and prioritise actions for recognition of equivalency by their membership.

## ANNEX A

### SECTION 3 SPECIFIC NEW ZEALAND REQUIREMENTS

3.1 GENERAL Design, materials, manufacture, testing, supply, installation, inspection, commissioning, operation, maintenance, repair, alteration and disposal of pressure equipment shall comply with the applicable Standards referenced in the listing below.

For compliance with the New Zealand Hazardous Equipment Regulations made under the provisions of the Health and Safety in Employment Act 1992, pressure equipment covered by this Standard (see Appendix A) shall comply with the Primary Applicable Standards in the listing below.

Where a Primary Applicable Standard is used, all its referenced normative Standards shall be applied in their entirety (except as permitted by this document).

Alternative ISO, CEN, USA, British and Australian pressure equipment Standards, giving equivalent safety requirements to those listed below, may be used as substitutes, provided they are applied in their entirety and are acceptable to all parties concerned.

If no applicable Standard is listed below, the Standard applied shall be agreed upon between the parties concerned.

#### Primary Applicable Standards

BS 806	ANSI/ASMB B31-3
BS 853	AS 1210
BS 855	AS 1210      Supp No.1
BS 1113	AS 1228
BS 2790	AS 1797
BS 3970 Parts 1 to 5	AS 2593 <sup>‡</sup>
BS 5169	AS 3901/NZS 9001/ISO 9001
BS 5500	AS 3902/NZS 9002/ISO 9002
BS/EN 286 Part 1	AS 3509
NZS 5351	SAA HB18, 39
NZS 5418	IMDG Code
ANSI/ASME Section I (Water Tube Boilers only)*	Other prime requirements
ANSI/ASME Section VIII Div, 1* and 2 <sup>†</sup>	New Zealand Boiler Code, Part II
ANSI/ASME B31.1	

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\*Quality assurance certification, marking and materials shall satisfy the requirements of the New Zealand regulatory authority.

<sup>†</sup>For Division 2 applications, total compliance with Division 2 is required including Code Stampings.

<sup>‡</sup>As permitted within the scope of the New Zealand draft code of practice for the design and safe operation, maintenance and servicing of boilers.

### 3.2 Design Verification

3.2.1 Application. All pressure equipment (except that excluded in Paragraph A4) shall be subjected to independent design verification and a design verification certificate shall be provided to the owner. Design verifiers and design verifying bodies shall be registered with the New Zealand regulatory authority in accordance with the requirements of the New Zealand Hazardous Equipment Regulations.

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