

NCF Briefing Paper

UK/USA TRADE TALKS: STANDARDISATION ISSUES FOR CONSUMERS

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NATIONAL CONSUMER FEDERATION BRIEFING PAPER

ISSUE

In trade talks between the United Kingdom and the United States of America, the idea that UK technical regulations may recognise US standards instead of, or alongside, British Standards brings significant concerns for UK consumers.

Although the UK and US share the aim of a high level of consumer (and other public interest) protection, this is addressed by different regulatory systems. Different approaches have led to different standards models and conformity assessment systems. The US and UK also have very different processes and procedures for developing standards and use of conformity assessment systems.

RECOMMENDATIONS TO UK TRADE NEGOTIATORS

1. It is essential that US Standards are not accepted as being international standards due to the limited consensus processes used in the USA that are very different to the inclusive standards development processes used in the United Kingdom.
2. Further, if US standards were to be accepted as “**international**”, this would give the United States a trade advantage in demanding conformity to their standards rather than the “lower status” British “**national**” standards. This would increase costs for UK businesses and is likely to reduce consumer protection in some sectors, especially in standards for sustainability and the environment.
3. The concept of mutual recognition/recognition of equivalence of British Standards with standards developed in the US should not be used to address perceived barriers to trade in certain sectors on the assumption that public interest standards and regulations are comparable and equivalent.
4. Because of the substantial differences between the UK and US standardisation models, especially in terms of stakeholder involvement and inclusiveness, the NCF does not support the proposition that standards developed in the US be accorded a presumption of conformity or equivalence with UK regulatory requirements.
5. 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 developed.

TIMING

We understand that trade talks are currently in progress and trust that this briefing paper will be considered at the earliest opportunity.

BACKGROUND

Trade Talks

One aim of UK/US trade talks will be to bring rules and regulations of both countries in line with one another to achieve regulatory compatibility and coherence. An aspect of this is the reduction of non-tariff barriers to trade, or Technical Barriers to Trade. There is a need to build on key principles of the WTO Agreement on Technical Barriers to Trade (TBT) to achieve meaningful market access and to establish ongoing mechanisms for improved dialogue and cooperation on these issues. TBTs are technical regulations and standards, as well as testing and certification procedures, which are considered by some to create unnecessary obstacles to trade.

Although the UK and US share the aim of a high level of consumer (and other public interest) protection, this is addressed by different regulatory systems. Different approaches have led to different standards models and conformity assessment systems. The US and UK also have very different processes and procedures for developing standards and use of conformity assessment systems.

TBTs can be considered as impediments to free trade but they are the results of the US and the UK taking different approaches at different times to ensure consumer protection (and other public interests). In the UK, 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. 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 e.g. human, animal or plant life health or the environment 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 UK 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.

The widely different models of UK and US standardisation

In the UK, technical standards developed by the British Standards Institution are used to help implement legislation and public policies. The link between legislation and standards allows private interests to lead in the development of British Standards, through which a presumption of conformity to the legislative requirements can be achieved. This is a co-regulative approach which ensures representation of societal interests in the standards development process. These voluntary British Standards provide a presumption of conformity to the legal requirements. If the

manufacturers choose not to apply these standards, they need to prove through independent testing that the product meets relevant law. The law is the same for a manufacturer in the UK as it is for one in the US if they want to sell in the UK. The system has always aided the involvement and benefit of the weaker stakeholders – such as consumers.

By comparison, standards development in the US does not reflect such a tightly controlled system. 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 the American National Standards Institute (ANSI). However, the US model also features mandatory safety standards developed by the US government. 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 UK's 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.

Hence, there are substantial process differences between the US and UK for developing standards:

- The UK voluntary (BSI) system versus the limited US government mandatory system
- The UK organised consumer input versus weak, fragmented consumer input in the US

There are also regional differences in the approach to risk tolerance and risk management. This undoubtedly accounts 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 in the trade talks these differences can be resolved for the purpose of minimising their impact on trade without diminishing public safety and health.

ARGUMENT

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 developed.

The NCF has particular concerns that many US standards for sustainability and environmental protection are weaker than UK standards and that acceptance of such US standards would not fit with the Government's ambition to be a world leader in this area - it would put the UK behind the curve. The Government's ambition was presented in a speech by the then Brexit Secretary, David Davies, who stated that "Britain will lead the race to the top". Sadly, in our view, the USA has lodged a number of objections to the global steps being taken to address sustainability and reduce carbon emissions - these are all sensible steps that would benefit UK consumers and the country as a whole. In general, UK consumers want the UK to

show leadership in this area and are concerned that adoption of US standards would result in the UK losing our world-leading capabilities and ambitions.

Because many US standards are developed using a transparent and open system, the United States claim them to be “international standards”. The NCF does not accept this definition. It is perhaps similar to the Super Bowl claiming to be the “World Series” when it is fundamentally an American programme of events. For the reasons explained in the Background above, UK consumers could not accept the US standards system to be “international”.

UK consumers are represented at British Standards technical committees and working groups. Through these groups UK consumers are also members of technical committees at regional (CEN, CENELEC) and international levels (ISO, IEC). UK consumers are not represented in US standards committees.

At a meeting in Washington, NCF Chairman, Arnold Pindar, asked the Director of a leading US consumer organisation, whether they took part in US standardisation. His reply was “Standards are for business, not for consumers”. This is of great concern to UK consumers and demonstrates the very different systems and cultures between the UK standardisation system and that in America.

The US standardisation process claims to be ‘open’ and hence, it would in theory be possible for UK consumers to be represented at US standards development meetings. However, there are a number of reasons why it would be unrealistic to expect UK consumers to take part in US standards committee, especially when US consumers do not significantly participate:

- It is very unlikely that UK consumers would be able to attend US Government mandated committees, especially as there is very little or no consumer representation in these committees by US consumers and US industry control is far less than in the British standardisation system.
- It is unrealistic for UK consumers to participate in US standards development, as UK consumers are most unlikely to have the resources to be involved, either to cover travel costs, or to meet participation fees.
- Assuming a UK consumer representative did attend a US standards development committee they would be a lone and foreign voice in the committee that we believe is unlikely to be heard
- The identification of appropriate technical committees to join is also likely to be difficult due to the very large number of Standards Development Organisations developing standards in the US.

Finally, if the US definition of “international” standards was to be accepted in a UK/US trade agreement, it would be the United States that would be setting the benchmarks for safety that the UK Government will recognise for regulatory compliance. This is unacceptable to UK consumers and we believe to the country as a whole. The Brexit debate was about the UK taking back control of our rules and regulations, not ceding them to a foreign power.

For all these reasons, it would be unacceptable to recognise US standards alongside or instead of British Standards.



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