ANSI Response to CEN CENELEC White Paper

Risks of mutual recognition of voluntary industry standards within the context of a future EU-US trade agreement (TTIP) and alternative approaches[1]

As coordinator of the U.S. standardization system, the American National Standards Institute (ANSI) read with great interest a white paper published by CEN CENELEC in June 2015: "Risks of mutual recognition of voluntary industry standards within the context of a future EU-US trade agreement (TTIP) and alternative approaches."

The paper raised a number of alarming issues that ANSI and the broader U.S. standardization community strongly felt could benefit from further clarification.

The CEN CENELEC white paper posits that recognizing non-European standards as meeting the technical requirements of EU legislation poses four risks. Below, we summarize each risk in blue and present some points from the U.S. perspective for consideration.

#1: Accepting more than one standard as a means of compliance with a European regulation would breach the fundamental principle that industry need only use one standard to trade across all member countries. It would also open the door to arguments that national standards should similarly be recognized, rather than withdrawn.

In our view, it is quite possible that more than one standard can meet or even exceed the level of safety required. For example, the system already accepts more than one standard to claim the CE mark.

The single market does not necessarily translate to single standard. And recognizing a range of standards that could meet a regulatory objective would actually facilitate trade, not hinder it. When a single standard is mandated, it means that other standards that meet the same safety requirements are disallowed. This reduces competition, increases costs, and inhibits consumer choice.

Mutual recognition provides benefits to regulators, companies, and consumers. Consider this point, raised by the U.S. Chamber of Commerce in a July 2015 article[2]:

> …Commercial airplanes made by Airbus and Boeing rely on thousands of different standards. Only a limited number of them are held in common in the design and construction of their respective airplanes. However, U.S. and EU regulators haven't let those differences over

[1] The document is available on the CEN-CENELEC website and was posted on June 23, 2015. See http://www.cencenelec.eu/News/Policy_Opinions/PolicyOpinions/TTIP__std_mutual_recognition.pdf

[2] See https://www.uschamber.com/issue-brief/ttip-and-flawed-policies-standards-don-t-mix

standards stand in the way of using mutual recognition as a tool. If the EU safety regulator certifies an Airbus plane as airworthy, that is good enough for the U.S. regulator -- and vice-versa. Even though aircraft are built to specifications that rely on different standards, the regulator's concern as to whether the plane will operate safely is satisfied by both sets of standards.

Here is another aviation example. When a passenger flies, he or she can only take on board 100 ml (in Europe) or 3 ounces (in the U.S.). These units of measurement are in fact standards; the standards aren't identical volumes of liquid. However, from an aviation security standpoint, they are equivalent in providing the level of regulatory certainty sought by U.S. and EU regulators alike.

In both of these examples, Europe is essentially accepting multiple standards in the European market, as is the United States. In both cases, the acceptance of multiple standards facilitates the movement of goods and people across borders, eliminating unnecessary frictions to trade in goods and services. Through TTIP, we should be doing more of this, not less.

#2: Mutual recognition of U.S. standards would increase costs for industry and other stakeholders, as they would need to be involved in more than one standards development process. It would also be more difficult for EU stakeholders to access U.S. processes than those of the ESOs.

While we can appreciate the thinking behind these concerns, in practice these increased costs wouldn't actually come into play. Mutual recognition means that U.S. standards that meet an EU regulator's objective would be recognized alongside EU standards. If the EU standard is still acceptable, there aren't multiple standard-setting processes in which a stakeholder needs to be involved. The same is true for U.S. stakeholders: if the U.S. standard is accepted, then they don't have the need to be involved in another standards setting process.

With respect to the second point about accessing U.S. processes, we disagree that it is somehow more difficult for EU stakeholders to access the U.S. process than it is for U.S. stakeholder to access the European process. In fact, U.S. stakeholders have found the opposite to be true: EU stakeholders can participate with U.S. SDOs quite easily (as can stakeholders from other countries, such as China, for example), but U.S. attempts at engagement in EU SDO activities have been, by and large, unsuccessful.

ANSI has voluntary published a publicly accessible list of all ANSI-accredited SDOs in the U.S. with their contact information[3]. For more information, please refer to answer 7 from our recent, mutual Q&A documents[4], which reads:

[3] See http://www.ansi.org/asd

[4] See http://www.ansi.org/news_publications/news_story.aspx?menuid=7&articleid=0af9c087-7597-4320-a446-1d4f578b0007

ANSI engages all standards developers that are interested in the work of the Institute. Please see ANSI's collaboratives as examples (www.ansi.org/panels). As well, public input and engagement is sought from all stakeholders. Some consortia, like OASIS, are also ANSI-Accredited Standards Developers.

#3: A standard developed outside the governance requirements of European Regulation 1025/2012 would need to demonstrate that it had met the obligations placed on the European system to provide privileged access for European consumers, SMEs and other societal stakeholders in the standardization process.

In accordance with the WTO TBT agreement, the U.S. standard setting system assures openness, transparency, balance, and due process. Industry, consumers, and government participate as collaborators and equals – we call this the "public-private partnership." We believe that the resulting standards are highly respected by consumers and regulators because of their quality, relevance, and suitability.[5] In our view, compliance with the WTO TBT agreement is all the proof that's needed to demonstrate that a standard is fair, open, and balanced, and that "consumers, SMEs, and other societal stakeholders" have been able to participate in the process. These requirements have been captured in ANSI's *Essential Requirements*[6], and the 230+ ANSI-accredited standards developers that operate under the *Essential Requirements* are regularly audited to assure their compliance. This should be more than sufficient for any nation – not just the U.S. – to meet the obligations articulated by European Regulation 1025/2012.

For further information, please reference answer 23 from the Q&A document:

> *Is there any policy or guidance including mechanisms to withdraw U.S. standards conflicting with another or conflicting references to standards in regulation?*
>
> Answer: There is no such broad policy or guidance on this matter from ANSI. With respect to American National Standards, the ANSI *Essential Requirements* address possible conflict. The WTO Code of Good Practice (Annex III of the WTO TBT Agreement) and the WTO TBT Committee Decision on international standards both provide that SDOs shall avoid duplication of, and overlap with, the work of other standardizing bodies. ANSI has accepted the Code of Good Practice on behalf of ANSI-accredited SDOs, and the United States is committed to determine whether a standard is international based on whether the standard was developed in accordance with the WTO TBT Committee Decision. For regulations, the USG has policies and mechanisms in place to avoid and address conflicts in regulation. See, e.g., Executive Orders 12866, 13563, and 13610 and the Administrative Procedures Act, section 553(e). Federal agencies and SDOs work together where possible to address such circumstances described above.

[5] See http://www.ansi.org/ansvalue

[6] See http://www.ansi.org/essentialrequirements

#4: In the context of a free trade agreement with the U.S., mutual recognition in Europe of standards developed outside the governance requirements of European Regulation 1025/2012 would advantage U.S. companies importing to Europe without creating any reciprocal benefit for European companies exporting to the U.S., where mutual recognition would make no change to market access requirements.

The TTIP agreement, once completed, will not be a one-sided agreement. Mutual recognition will clearly benefit both the U.S. and EU. Most important, mutual recognition opens up a world of consumer choice, which will greatly benefit the U.S. and EU alike.

Building upon this concern, some may fear that mutual recognition may introduce complexity or conflicting requirements. It is true that there may be some sectors where standards overlap, but from the U.S. perspective, this approach is by design, it is not a flaw of the system. Industry decides which standard is best to be used in practice, which allows for innovation and increase in consumer choice while lowering costs to both the producer and consumer. The objective of the U.S. system is not to dictate or stunt innovation by allowing only a single standard to be used, but rather to foster an economic environment where an increase in standards production can occur as to allow every stakeholder, both domestic and international, to benefit. For further information on this issue, please reference answer 3.e from the Q&A document:

> *Are there any verification / checking procedures in the U.S. for avoiding that two standards cover the same matter or product, thus introducing conflicting requirements in the market? If yes, how it does apply in practice?*
>
> Answer: Yes. Please refer to related procedural requirements contained in the ANSI *Essential Requirements*. Participants in the process raise such issues, which are addressed through the relevant standards developer's procedures and the Essential Requirements. U.S. industry in general values competition in the market place as a means to produce a best quality standard. The U.S. Government (USG) has guidelines and mechanisms to avoid conflicting requirements in regulations (including those that may incorporate standards). See, e.g., Executive Order 12866. The United States has also committed to base standards, technical regulations and conformity assessment procedures on relevant international standards, except where ineffective or in appropriate (see, e.g., WTO TBT Agreement, see also 19 U.S.C. 2532), and committed to determine whether a standard is international based on whether the standard was developed in accordance with the WTO TBT Committee Decision principles on international standards development which include the avoidance of "duplication of, or overlap with, the work of other international standardizing bodies" (see, e.g., United States – Korea Free Trade Agreement).

In summary, the European single market does not necessarily require a single standard for industry to follow. The U.S. and EU systems are different, but these differences do not need to preclude mutual recognition of industry standards. In contrast to European allegations, the United States standards system is market-driven, with its key strength reflected in the diverse participation from domestic and

international experts. The U.S. experience is that this process yields results that better meet the needs of the stakeholders.

Overall, stakeholders on both sides of the Atlantic would benefit from equal access to each other's development process. As noted in the *U.S. Standards Strategy*[7], "global standardization goals are achieved in the United States through sector-specific activities and through alliances and processes provided by companies, associations, standards developing organizations, consortia, and collaborative projects. Increasingly, new standards development challenges (smart grid, healthcare, energy efficiency, nanotechnology, cybersecurity, etc.) require significant cross-sectoral collaboration, and new models are evolving to serve these needs."

The U.S. and EU need to set aside the obvious differences and continue to communicate and evolve so that we are equipped to meet the demands of these new technologies. ANSI has been proud to be part of the U.S.-EU dialogue on standardization for over 25 years. We need to continue to foster productive and innovative discussions with CEN, CENELEC, and ETSI as we move forward in this transatlantic partnership.

[7] See www.us-standards-strategy.org