



17 December 2008

Mutual Recognition Review
Productivity Commission
LB2 Collins Street East
Melbourne
VIC 8003

**Productivity Commission Review of Mutual Recognition Schemes
Draft research report**

Submission by Standards New Zealand and Standards Australia

Introduction

Standards New Zealand (SNZ) and Standards Australia (SA) welcome the opportunity to provide this submission to the draft report of the Review of Mutual Recognition Schemes which was released for comment on 14 November 2008.

The relationship between SNZ and SA and standards development that has evolved between the two countries is unique in the world. The development of joint standards assists the governments of both countries in the creation of a single economic market.

The relationship is supported by a Memorandum of Understanding (MoU) between the two organisations (most recently revised in November 2007). The MoU is a high level document outlining the general agreement in working jointly on standards development.

Our chief objective in this submission is to ensure that the Commission is aware of how standards and regulation operate for the benefit of the consumers and business without providing burdensome compliance.

Standards developed by either SNZ or SA are readily accessible, consensus-based, voluntary documents with which compliance is not mandatory unless the standard is incorporated into law or called up in contractual arrangements.

If a standard is called up in regulation it becomes part of the law of the land. Many Australian and New Zealand standards are direct adoptions or adaptations of international standards. We base our standards on international standards to the maximum extent feasible.

Standards are produced by technical committees composed of expert nominees with support from the national standards body staff. Hundreds of organisations – from business, academia, research bodies, consumer groups, and government – nominate committee members. These committees consult widely with stakeholders and they look for consensus within the committee.

We would draw the Commission's attention to the following points:

Economic impacts of mutual recognition

- Box 4 (page XXV) includes the statement, 'However, when the standards are far apart initially, the costs of negotiating a set of aligned standards may be high. Moreover, the harmonised standards may be more burdensome than the pre-existing ones for some stakeholders, an outcome which has been termed 'gold plating of standards.'

SNZ and SA consider this statement implies that standards set unnecessary levels of compliance that are difficult to reach. This statement should be qualified with some examples.

- Box 4 (page XXV) also states, 'Uniformity removes any doubt stakeholders may have regarding the quality of goods or practitioners from other jurisdictions...however, achieving this model can involve high costs and the risk of a 'hold out' by a jurisdiction.'

SNZ and SA consider that uniformity of standards is most likely to be achieved when international standards are adopted. International standards by definition cannot be regarded as technical barriers to trade and their use is a goal of APEC and WTO members.

The Agreement on Technical Barriers to Trade (TBT) - sometimes referred to as the Standards Code - is one of the legal texts of the WTO Agreement which obliges WTO Members to ensure that technical regulations, voluntary standards and conformity assessment procedures do not create unnecessary barriers to trade.

- Page 53 includes the statement, 'However, harmonisation in some instances involves 'a race to the top' among states which results in the most onerous and costly regulatory regime being uniformly applied.'

SNZ and SA request that this sentence be amended to clarify if it is referring to the harmonisation of standards or regulation. It is not the intention of standards to impose unnecessary costs or onerous requirements on industry: it is the layer applied over the top of standards (the technical regulation layer) that potentially burdens industry with legal and administration requirements which can be onerous and costly.

- Page 53, 'Further, where joint standards do not replace multiple existing sets of standards, but rather simply add to the overall stock of standards, then this is likely to have the effect of increasing compliance costs for those businesses operating across jurisdictions.'

This sentence currently implies all joint Standards are for existing products or services, and should be qualified to take into account the increase in the volume of joint Standards arising from new technologies and improved risk analysis.

- Page 54, 'The New Zealand Government suggested that these challenges could be overcome by appropriate Australian and New Zealand representation on joint standards development committees, by ensuring that the standards are suitable for use in both countries and the need for country-specific standards is minimised.'

SNZ and SA strongly support the paragraph above. The need for balanced committee participation is paramount but the current economic climate imposes a considerable cost burden on organisations which participate. If the resulting joint standards are to be suitable for use as technical regulation in both countries, and consequently reduce the driver for country specific standards (resulting from regulatory forces not the committee), then a means of encouraging participation in committees needs to be found.

Special Exemptions

- Key points (page XVIII) and draft recommendations 7.1 to 7.5 (pages XXXIX–XL and pages 131, 138, 145, 153, and 157):

SNZ and SA support the third key point on page XVIII that there is scope to narrow the range of goods exempted from mutual recognition: we believe that standards are a practical tool to help achieve this.

Sale of Goods versus Use of Goods

- Draft finding 8.4 (page XLII and page 188):

SNZ and SA support the finding that where standards for the use of goods are accepted in a jurisdiction, any requirements prohibiting the use of those goods need not be complied with insofar as they restrict the sale of those goods.

Conclusion

We look forward to the Commission giving further consideration to, and incorporating these points in, its final report.

Please do not hesitate to contact either of the national standards bodies directly if additional clarification is required.

Regards



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