

EU-Japan Business Dialogue Round Table
Tokyo Meeting 17-18 July, 2000
Working Party "International Standardisation"
EU Position Paper

I - Standards

Stakes

The harmonisation of voluntary standards constitutes a major objective for all the economic players, both public and private, professionals, consumers and citizens. The alignment of the national and regional standards with the international standards which reflect technological progress and provide assurance of security and good performance to the different users is one of the key factors of a modern economy which demands the integration of technical progress, cost saving and fair exchanges.

Problems

Voluntary standards cannot be conflicting with technical regulations, whether international, regional, national, even local. A rapprochement between the different authorities in order to reduce the disparities between these different regulations can only but facilitate the role of the private standards bodies, so that they provide coherent documents.

Furthermore, under the same term of "standards" is included a whole series of documents drawn up by various kinds of bodies that work according to varied, even badly defined, processes and which are proliferating at an increasing rate. A large number of professionals and users throughout the world are complaining about this confusing and costly situation and are praying for a simplification. Without possessing any precise statistics, there are approximately 2 000 bodies that produce standards, some with a general international vocation (ISO-IEC-ITU), others restricted to extremely narrow fields, sometimes just a few documents).

Likewise, the number of documents which today, here and there, are qualified as standards can be evaluated at several hundred thousand (92 000 in America).

It is therefore imperative to undertake the urgent and extensive rationalisation, simplification and qualification of those documents that are truly useful for international trade.

To simplify matters, it can be said that two opposite approaches exist :

- "standards" which stem from bodies that are qualified according to their nature and the procedures they observe,
- "standards" which are effectively used by the economic players, irrespective of their method of preparation.

Recommendation

The world cannot remain in this situation which hampers exchanges, complicates the life of the professionals, embarrasses the WTO and does not facilitate the mutual recognition agreements (MRA).

A rapprochement of the positions between Europe and Japan would be likely to make headway with a rationalisation at international level.

It seems difficult to escape from a "qualification" of these numerous documents/standards. This essential task, which would enable to solve a lot of current problems, but also and especially to provide policy guidelines for the future, cannot be carried out by analysing the standards one by one, nor by reviving the debate concerning the existing structures. The Working Party 3 would neither have the competence, nor the time.

On the other hand, since there is an agreement between both parties – widely shared at international level and retranscribed in the TBT agreement – concerning the basic principles of a good international standardisation, namely:

- transparency,
- openness,
- impartiality,
- response to market needs;

The Working Party 3 could initiate a reflection aimed at specifying the content of these principles (which are accepted, but which henceforth do not have the same meaning within all the circles, through standards, on account of their very general nature) in order to single out the profound signification and the concrete operational procedures that could be obtained from them.

Leaving aside issues which can become heated (or commercial), it would be possible to draw up, on the basis of these accepted and clarified principles, "classification" criteria for existing or future documents in a more objective manner, the documents being more useful, therefore better accepted.

A big step would be accomplished at international level which would subsequently allow to advance more serenely and efficiently towards reducing both diversity and complexity and to also pave the way for a "reorganisation" of the standards drafting bodies which are costly for all professions.

II – Industrial property - Patents

Stakes

They have been clearly defined. Within the new and rapidly evolving technologies, the issue of industrial (patent rights) and intellectual property, linked to patents, is quite critical. Innovation, creativity, a sign of the modern world, must be protected and cannot be compromised or polluted by persistent threats concerning these issues.

Problems

Knowing first of all to whom these patent rights belong and who can lay claim to the documents.

Two approaches are currently encountered : the rights belong to the first person to have filed a patent (first to file), the rights belong to the first person who lays claim to the invention (first to invent).

Lawsuits are under way today; they will become more and more numerous, particularly between America, supporter of the "first to invent" principle, Europe and other parts of the world which recognise the "first to file" principle.

The problem exists and goes beyond standardisation issues. It concerns specialised bodies at international level, WIPO and its national and regional network, but also intergovernmental regional authorities (the Brussels Commission), courts of justice, jurists, lawyers, companies...

The best place for dealing with this important matter, which requires both competent specialists and appointed authorities and which must be tackled generally and not as an isolated case (beware of becoming infected) does not appear to be the Working Party 3.

Recommendation

Set up a new specific group within the framework of the E-U Japan Business Dialogue, comprising representatives who are concerned and who have a perfect knowledge of these matters, of the judicial practices, and, if possible, who are connected with or attached to the bodies already dealing with this matter.

III – Mutual Recognition Agreements (MRA)

Stakes

They are those defined by the Working Party 4 and the importance of MRAs for international exchanges no longer requires proof, even if the facts seem to indicate that the implementation will be long and even if certain experts have reserves about the generalisation of such agreements.

Problems

It is necessary to differentiate, on the one hand, the MRAs which wish to be passed within the framework of regulatory conformity assessments from, on the other hand, the MRAs within the voluntary and private sector.

However, in both cases, the reference documents according to which the conformity assessments are carried out are quite often either mixes of regulations and standards (if only for certain test methods) or exclusively standards (except for the definition of the standard).

Also in both cases, the procedures, the processes for assessing these conformities, rely on ISO/IEC international standards or guides in particular.

Finally, more and more private bodies, accredited according to international standards, are conducting assessment inspections and tests both for the authorities and for private players, this within a deregulation and decentralisation approach towards private bodies which is speeding up throughout the world (In Japan, as of April 1, 2000, 6 private certification bodies and 35 private test laboratories have been accredited by the MIT/JISC).

Recommendation

The Working Party 3 and the Working Party 4 together in order to ensure a better liaison and to obtain greater efficacy concerning the proposals which could be made, in the interests of the industrialists.

If a specific group was set up, the workload of this grouping would be reduced with regard to matters pertaining to industrial property (patent rights) and patents.

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EU Policy Statement

The participants strongly reaffirmed their will to harmonise the national and regional standards with the international ones in order to encourage and reinforce international trade and the development of new technologies.

Europe and Japan confirmed their intention to draw closer to one another and to develop their efforts so that international standards compatible with current international legislation and regulations are drawn up in a climate of transparency, openness and impartiality and judiciously meet the needs of the market.

Both parties attach great importance to these four principles of transparency, openness, impartiality and response to market needs, but they consider that the latter require to be clarified and thoroughly studied. They are indeed very general principles that are likely to be interpreted in numerous manners and therefore to lead to implementation deadlocks.

Clearly defined, they would enable, on the one hand, to provide a common basis for a worldwide standardisation strategy and, on the other hand, to propose concrete discrimination criteria between the different voluntary technical specifications which are proposed today to the different market players. A classification of the documents, as a function of their recognition, could thus be envisaged on the basis of these fundamental criteria.

The working group has therefore decided to initiate such a reflection for examination at its next meeting.

The working group notes that these clarifications will also be able to be extremely useful for the Working Party 6 which deals with the WTO.

Moreover, the Working Party 3 expressed the wish that the Working Party 4, which deals with the MRAs, be merged with the Working Party 3 on account of the close relations that exist between the reference documents used, whether public or private, for the drawing up of conformity assessment systems (reference documents concerning either the fitness for use of the products and services or the issuing processes which often call upon standards). The efficiency of the two working parties would thus be reinforced.

Finally, the Working Party 2 considered that these issues of industrial property (patent rights) and of patents, which are only indirectly connected with standardisation, but whose importance greatly exceeds the scope of one sector and which are furthermore legally complex and studied by specialised national, regional and international bodies, necessitated the creation of a new specific working party.