

Reducing Technical Barriers to Trade: Regulatory Convergence and Harmonization The Case of the Telecommunications Industry

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1 Introduction

The telecommunications sector is today truly global. Products are being designed and manufactured with a global market in mind. However, for aspects of a product that are subject to “regulatory approval” there are considerable differences in the regulatory requirements, both technical and administrative, of the major economies. This poses technical barriers to trade, resulting in considerable extra costs for manufacturers and delays in getting products on the markets.

In order to improve the situation, active discussions and actions are needed on alternative and streamlined methods for product approval. This paper describes some elements forming possibilities for such a change in the approvals of Information and Communications Technology (ICT) products. It suggests a possible way forward to depart from bureaucratic systems, and arrive at systems built on trust and on applying recognised regulatory objectives as a basis for ICT products to be traded globally.

Such arrangement has been suggested by the United Nations Economic Commission for Europe (UNECE) in their Telecom Initiative. This can provide the necessary trust building towards a common international agreement for ICT products, if possible endorsed within the framework of the WTO Information Technology Agreement (ITA).

2 Technical Barriers to Trade in the Approvals of Telecommunications Products

The present product approval procedures for a particular market normally consists of a number of requirements. These can be classified into two groups:

- Technical requirements
- Administrative requirements

To a large extent these still differ between markets, although there is little (if any) need for such differences, as discussed below.

2.1 Technical requirements

Within the telecommunications sector there are a number of policy objectives that products have to meet in the course of approval. In most cases these are related to

- Safety of persons;
- Avoidance of radio disturbance;
- Spectrum efficiency in case of radio application;
- Attachment to a telecom network in case of terminal equipment.

In recent years there has been an increasing use of international standards, although in certain cases still with some national deviations, to define the technical requirements that reflect the policy objectives. This positive trend is continuing. There will be less national or regional deviations from international standards in the future. The benefits of global standards are more clearly and insistently voiced by industry and other stakeholders. National regulatory bodies are more inclined to find a common understanding regarding which policy objectives need to be covered by “mandatory standards”, and favour the use of standards that are transposed from international standards to meet these objectives.

The link between standards and policy objectives is kept since the standardisation process is influenced by regulatory bodies especially when the standardisation work is a question of standards intended for regulatory purposes.

2.2 Administrative requirements

Administrative requirements in technical regulations are usually the major cause for trade barriers, or will at least have the effect of posing de-facto barriers for a supplier wishing to enter different markets. This is particularly the case for small and medium sized enterprises (SMEs) where the costs for gaining multiple approvals may become overly onerous.

There are a wide range of administrative requirements related to product approvals:

- The conformity assessment method required may involve mandatory use of 3rd party for testing and/or approval. Often only national 3rd party test houses are allowed to perform these tasks. This adds considerably to costs and time delays in getting approvals. The need for such rigid requirement can be questioned since in the end it is always the supplier that has the responsibility for the product's compliance with technical regulations irrespective of whether a 3rd party test house has been used or not.
- Technical information required to be supplied in the course of approvals can be excessive. Often this has to be translated – to satisfy regulatory/approval bodies – into their national languages, which further adds to cost and time delays.
- Labelling requirements differ, since these are usually intended for the market in which the product has been approved. Normally the labels have to be on the product itself, which adds to the costs. Recently increased attention is being paid to the trade-restrictive aspects of labelling, notably in OECD¹. More discussions are called for in order to come to relevant solutions, notably to avoid excessive regulatory labels and to permit these to be in the documentation rather than on the product itself.

¹ See OECD document TD/TC/WP(2002)40/FINAL, dated 13 November 2003: “Analysis of non-tariff measures – The case of labelling: Overview and analysis of WTO data”.

3 The role of Mutual Recognition Agreements/Arrangements

A number of Mutual Recognition Agreements/Arrangements (MRAs) have now been concluded between countries and regions. The establishment of these MRAs have had some useful effects, mainly beyond their intended purpose as described below.

3.1 Highlighting differences between regulatory systems

MRAs allow the approval procedures to take place in the exporting country's territory, using local approval bodies. The agreements do not as such require any harmonisation or changes of rules. However, one of the most important aspect with the MRAs is that the regulatory procedures and technical requirements of the parties are fully exposed (so as to enable them to be applied by the other party). This exposure has the effect of highlighting the existing differences between the participants' systems and inevitably raising the question why they differ.

It can be presumed that the reason for the countries to apply the requirements is to safeguard one or more public interest objectives, but why is one party satisfied that this can be done with less bureaucracy and/or requirements than the other? Is it possible to facilitate increased trade between countries by reconsidering the existing approvals requirements towards a less burdensome regime? These questions can be resolved via discussions between regulators.

3.2 Regulators entering into discussions

The MRAs have triggered regulators in different countries and regions to engage in regulatory discussions, not only on the MRAs, but on general matters related to technical trade barriers. This has become a very valuable side effect of the MRAs. However, the MRAs do not include provisions for initiating regulatory reforms, so any simplification of regulatory requirements will be initiated by a party on its own initiative.

The WTO Technical Barriers to Trade (TBT) Agreement² does contain some general principles on the content and trade implications of national technical regulations, but any discussions in WTO on these matters merely takes the form of information exchange between Members, rather than taking actions to simplify approvals to enable trade.

3.3 Industry cooperation due to MRA

In order to give the telecom industries' views of the MRA that was being negotiated between EU and US, special industry task forces on both sides of the Atlantic were established in 1996. When the MRA was negotiated between EU and Japan, similar industry cooperation was established. This cooperation made it possible to explore the benefits and drawbacks of each regions' regulatory systems and as a result agree on a joint industry paper describing the ICT sector's views on conformity assessment ("Green Paper on a Global Product Conformity Assessment for the Future").

Since the ICT sector is de-facto global, with products that from a technical point of view are suitable for use in different regions without alterations, there is much to be gained from regulatory convergence and regulatory simplifications so as to minimise the regulatory burdens for products intended for a global market.

² The WTO Agreement on Technical Barriers to Trade, see http://www.wto.org/english/docs_e/legal_e/17-tbt.pdf

4 Opportunities for change through WTO processes

The best way to reduce trade barriers is to deregulate as much as possible, relying more on general competition and consumer protection laws. This is of course a one-sided action only but the effect is generally very positive³, and it encourages the trading partners to do the same. Thus as a general rule, deregulation should always be looked at as a first option when reviewing existing legislation.

Meanwhile, the WTO TBT Agreement sets the limits for “maximum” regulation. It also provides for possibilities to reduce unnecessary trade barriers. However the full potential of the agreement as a “trade enabler” has not yet been seen. Some of its elements are open to interpretation. For example, the meaning of the concept “least trade restrictive” is rather vague, and can be interpreted quite differently. Hence, it is possible to have widely diverging measures while still formally being compliant with the principles in the WTO TBT Agreement.

There are some developments in WTO TBT Committee however. Trade obstacles for the ICT sector is being actively discussed:

- A work programme⁴ on non-tariff measures under the “Ministerial Declaration on Trade in Information Technology Products” (ITA) umbrella was established in 2000;
- A learning event on labelling was held in October 2003;
- A symposium on non-tariff barriers (among other things) for IT products will be held in October 2004;
- A conference on the use of Suppliers’ Declaration of Conformity (part of conformity assessment procedures) will be held in March 2005.

OECD has also done some studies on non-tariff measures in the ICT sector. Two papers were prepared^{5,6} during 2001, identifying opportunities for harmonisation. However work is needed to reach some more conclusive results. OECD has also done an analysis of data on labelling⁷, a subject that merits much further attention.

The recent APEC-OECD co-operative initiative on regulatory reform⁸ is an interesting step towards guidance for simplification of regulatory procedures for the participating countries. The “Integrated Checklist on Regulatory Reform” that is being developed would provide a good description of important aspects to consider in regulation, by addressing issues not only related to regulatory policies, but also how regulatory policies impact on competition and market openness.

³ As an example, with its radio and terminal equipment directive (“R&TTE directive”) 1999/5/EC the European Union removed all specific regulatory requirements for terminal attachment to public networks and reduced the regulatory requirements for radio equipment. This has led to a large increase in availability of innovative ICT products on the European markets.

⁴ WTO Committee of Participants on the Expansion of Trade in Information Technology Products: “Non-Tariff Measures Work Programme”, dated 13 November 2000:
http://www.wto.org/english/tratop_e/inftec_e/19.doc

⁵ OECD Working Party of the Trade Committee: “Standards-Related Barriers and Trade Liberalisation: Telecommunications Sector”, TD/TC/WP(2001)11/FINAL, dated 07 March 2002:
[http://www.oalis.oecd.org/oalis/2001doc.nsf/linkto/td-tc-wp\(2001\)11-final](http://www.oalis.oecd.org/oalis/2001doc.nsf/linkto/td-tc-wp(2001)11-final)

⁶ OECD Working Party of the Trade Committee: “Non-Tariff Measures in the ICT Sector: A Survey”, TD/TC/WP(2001)44/FINAL, dated 11 September 2002:
[http://www.oalis.oecd.org/oalis/2001doc.nsf/linkto/td-tc-wp\(2001\)44-final](http://www.oalis.oecd.org/oalis/2001doc.nsf/linkto/td-tc-wp(2001)44-final)

⁷ OECD: “Analysis of Non-Tariff Measures – The Case of Labelling: Overview and Analysis of WTO Data”, TD/TC/WP(2002)40/FINAL, dated 13 November 2003:
[http://www.oalis.oecd.org/oalis/2002doc.nsf/linkto/td-tc-wp\(2002\)40-final](http://www.oalis.oecd.org/oalis/2002doc.nsf/linkto/td-tc-wp(2002)40-final)

⁸ See e.g. the “general information and draft agenda” for the APEC-OECD sixth workshop on regulatory reform, available via http://www.apecsec.org.sg/apec/highlights/sixth_workshop_of.html

It is recognised that within the existing platform of WTO there will not be much progress that would result in concrete global measures to reduce technical barriers to trade. Members are likely to simplify their regulatory measures based on discussions being held in WTO and other fora, or as a result of a general opening up of their markets and stimulating trade, and this will take place at different speed. An agreement in WTO is therefore not likely until sufficient confidence in a market access system based on minimum bureaucracy and common technical requirement is gained.

So how can harmonisation and simplification of regulatory systems be achieved under existing circumstances? Here the United Nations Economic Commission for Europe (UNECE) International Model⁹ for Technical Harmonisation can play a major role.

5 Using UNECE work

5.1 UNECE International Model for Technical Harmonisation

To support the work done in WTO and OECD and to provide a practical tool for reducing technical barriers to trade, the UNECE Working Party on Regulatory Cooperation and Standardization Policies (WP.6¹⁰) has developed Recommendation “L” – the International Model for Technical Harmonisation. Its stated aim is to “provide a voluntary framework which could contribute to facilitating market access through the establishment of sectoral agreements between interested member countries”. Participation is open to all UN Member countries.

The agreements between participating Member countries are written as Common Regulatory Objectives (CROs) that contain the regulatory provisions including conformity assessment procedures and references to relevant (preferably international) standards. The participating Member countries themselves determine the content of the CROs, e.g. the appropriate conformity assessment method and which standards to use.

The CROs would apply in parallel to the existing national regulation and would allow the free circulation of the identified products in all countries agreeing on the CRO(s) in question.

5.2 The Telecom Initiative

The possibility of applying the International Model for products in the ICT sector was suggested during a meeting¹¹ of the UNECE “START” Team¹² in April 2002 where also representatives from the industry were present.

It was agreed to prepare, as a first step and to provide a trust-building opportunity for Members, draft CROs for a selected number of truly global and well-known ICT products, namely

- Personal Computers (PC) and their Peripherals;
- Terminals for attachment to the legacy Public Switched Telecom Network (PSTN);

⁹ UNECE Recommendation “L” – “An International Model for Technical Harmonisation based on Good Regulatory Practice for the Preparation, Adoption and Application of Technical Regulations via the Use of International Standards”, dated 14 June 2002:

http://www.unece.org/trade/tips/docs/wp6_02/wp6-02-07e.pdf

¹⁰For WP.6 activities, see http://www.unece.org/trade/tips/wp6/wp6_h.htm

¹¹See http://www.unece.org/trade/tips/wp6/wp6_tele_bk.htm for details.

¹²Ad hoc Team of Specialists on Standardization And Regulatory Techniques, the team that prepared the International Model.

- Bluetooth products;
- Wireless Local Area Network (WLAN) products;
- GSM products;
- IMT 2000 family products (UMTS, 3G).

Following some meetings draft CROs have been prepared¹³ under this “Telecom Initiative”. Today many products are multifunctional, and therefore one product may contain several of the functionalities mentioned above. Mindful of this fact, it is important that the administrative procedures be kept equal for all of them, and therefore it has been suggested to have one common CRO for the administrative aspects of all the listed ICT products, while separate CROs cover the technical requirements.

The administrative requirements include the reliance on assessment performed by the suppliers themselves, with a Suppliers’ Declaration of Conformity (“SDoC”¹⁴) providing evidence of compliance. This is then complemented by a Market Surveillance function performed in the participating countries by their responsible authorities.

Since international standards are not available in all cases for the selected products, or there are regional differences to the international standard, the technical requirements in the draft CROs in some cases contain references to regional standards. In some cases there are duplications of requirements as a consequences. Hopefully such differences or duplications will disappear through the normal standardisation process in due time, as discussed in point 2.1.

Preferably, in the longer term, CROs should be based on phenomena (EMC, safety etc) rather than on products to provide a more horizontal framework for the ICT sector.

6 Future steps

It is important that discussions on the reduction – and ultimately removal – of technical barriers to trade continue in WTO and other fora. ICT products are vital for a country’s economic development and every effort should be made to facilitate the availability of such products.

The UNECE Telecom Initiative can provide the necessary trust building towards a common international agreement, if possible endorsed within the framework of WTO ITA, which should include non-bureaucratic features, relying on SDoC and the use of international standards. This would provide for open market access for the ICT products covered by the agreement.

¹³ http://www.unece.org/trade/tips/wp6/wp6_tele_cros.htm

¹⁴ For details on the contents of SDoC, see standard ISO/IEC 17050-1:2004 “Conformity assessment – Supplier’s declaration of conformity – Part 1: General requirements”