Standardization and the TTIP with the USA
Opportunities and risks

Non-tariff barriers to trade - Differing standards result in additional costs

Two examples

In Germany, emergency shutdown buttons for grinding machines must be mounted at a height of 1.10 to 1.30 metres, while in the US this height is specified as 0.90 to 1.10 metres. For globally active manufacturers such as Alfred H. Schütte GmbH in Cologne, this and other standards which vary from continent to continent result in an increase in costs of 4 % to 5 %.

Refrigerators, car seats, LED spotlights - all of these need ventilators like the ones manufactured by the small German company, ebmpabst. Before they can be sold on the European market, all products need to be certified and labelled with the European CE mark. Unfortunately, the USA - an important market for European manufacturers - requires certification to other standards. As a result, ebmpabst employs 15 engineers just for obtaining US certification. The CEO hopes that with the TTIP agreement, one test will soon suffice for all markets, even those in other countries: "We would rather put a lot of money into the development of new products, which would secure jobs in this country and strengthen our position on the American market." [1]

What has led to this divergence of standards?

In Europe: Uniformity, consistency and a direct line to standardization

European national standards organizations are members of the central European standards bodies CEN and CENELEC, while at the same time being members of the international standards bodies ISO and IEC. In accordance with the WTO criteria regarding non-tariff trade barriers[2], international standardization is given priority over standardization at European level. International Standards are often adopted as European Standards and are incorporated in this form - or via direct adoption - into national standards collections, with similar national standards being withdrawn.[3] This process is an important factor influencing the **competitiveness** of European companies on international markets. Other economic regions, such as Asia, are going in a similar direction and are adopting International Standards.

The **uniformity and consistency** of the body of European Standards is ensured through the underlying principle of "one standard, one test - accepted throughout Europe". This gives businesses investment and financial security. **Legal security** is provided by the policy for the European internal market known as the *New Legislative Framework*. According to this framework, when a harmonized European Standard is applied, it can be presumed that the essential requirements of the relevant European Directives have been met ("presumption of conformity"). The European standardization system is founded on a sophisticated structure formed by the rules and procedures of the national standards organizations, and is governed by the overlying rules laid down in *EU Regulation 1025/2012.* The democratic management structures of the standards organizations ensure that all interest groups have an equal influence on standards. The national delegation principle gives stakeholders a direct line to standardization.

The USA: Multiple channels - Competition among standards

The American system of setting standards is very different from that in Europe. For one thing, it is highly decentralized, with over 600 organizations who develop standards. There are three main types of standards setter in the US: 1. Governmental agencies and authorities at both Federal and state level. These develop standards for regulatory purposes and for public tendering[4]. 2. Standards Developing Organizations (SDOs). These are companies whose core business is to develop and sell standards[5], as well as trade associations[6], professional organizations[7] and scientific societies.

[1] Examples taken from the journal "Wirtschaftswoche" dated 28.05.2014
http://www.wiwo.de/politik/ausland/ttip-abkommen-europa-braucht-das-freihandelsabkommen/9938052.html
[2] http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm#annexIII
[3] This applies to 30 % of all European Standards.
[4] Mainly the Department of Defense.
[5] Example: American Society for Testing and Materials (ASTM)

Roughly 400 of these SDOs are accredited by the American National Standards Institute (ANSI). Although ANSI is the US member body of ISO, it does not carry out technical standards work itself. 3. Fora and consortia. These are mostly formed in the ITC sector on an ad hoc basis with the express purpose of developing specific standards.

The US system is characterized by its **commercial** nature, strong fragmentation, and a high level of internal **competition**. For a single application, there can be several different - and even contradictory - standards. Diverging standards **cost** the US economy annually 20 to 40 billion dollars.[8] Standards are largely seen as instruments for gaining competitive advantages. Although American stakeholders are active in ISO and IEC, there is still no structure for systematically adopting International Standards as US national standards. Furthermore, some US standards setters consider themselves to be international because stakeholders from outside the US participate in their work. Rather than mandating standards work to support legislation, US legislators prefer to choose from existing (and possibly competing) standards themselves. The Americans call this the "multi-channel approach".

TTIP negotiations
Opportunities for standardizers

Common legal framework
The TTIP negotiations are presenting us with the opportunity to harmonize the legal frameworks for placing products on the market. Privately organized standardization always works within a framework set by legislation. Harmonized legal regulations will therefore facilitate the development of harmonized standards.

International (ISO/IEC) Standards as a basis for removing technical barriers to trade
The application of International Standards published by the international standards organizations, ISO and IEC, should serve as the basis of negotiations on removing technical barriers to trade. This would be in the interest of European industry, which uses these standards when exporting their products and services worldwide. According to the results of surveys carried out by the "German standardization panel", German companies see the adoption and application of ISO Standards on both sides of the Atlantic as being the best solution.[9]

Bilateral standards projects in innovative sectors
Another solution is the development of bilateral standards and specifications in highly innovative sectors for which an established body of standards does not yet exist.
Working in newer areas also makes it possible to harmonize legal frameworks on both sides of the Atlantic at an early stage. Special attention should be given to topics involving several industrial branches. In a second step these work results could be introduced to international standardization at ISO and IEC - at this point they will have been accepted by two large economies, thus encouraging the opening of markets as required by the WTO.

[6] Example: American Petroleum Institute (API)
[7] Examples: American Society of Mechanical Engineers (ASME), Society of Automotive Engineers (SAE) Institute of Electrical and Electronics Engineers (IEEE)
[8] Product Standards in Transatlantic Trade and Investment: Domestic and International Practices and Institutions, 13 AICGS Policy Report
[9] http://projects.inno.tu-berlin.de/DNP/2154461-Ergebnisse-zweite-Umfrage-Normungspanel_2014-05.pdf

Risks facing standardizers
"Mutual recognition" of standards and specifications

The TTIP negotiations have given US standards setters and government representatives the opportunity to renew attempts to introduce US standards to Europe within the *New Legislative Framework*. Their argumentation: Any standard that fulfils the essential requirements of a European Directive must be recognized as being equivalent to a European Standard. The "mutual recognition" of standards and specifications may sound sensible at first, but is actually impractical - even dangerous - for Europe for the following reasons:

- **The beginning of the end of the internal market:** The *New Legislative Framework* for the European internal market is based on a body of uniform, consistent and current standards. European Standards are adopted by the national standards organizations, with national standards on the same subject being withdrawn. Opening up the European system to American standards would open the door to competition among national standards, call into question 30 years of work on the harmonization of technical standards, and thus provoke the end of the internal market.

- **Recognition does not preclude penalties:** The "mutual recognition" of standards must function on both sides of the Atlantic. This would only be possible if the legal frameworks are harmonized and European manufacturers have legal security in the USA as well. Example - Airbags: In Europe wearing a seat belt in passenger cars is legally required, and European airbag technology takes this requirement into consideration. In the US, laws regarding seat belts, and the implementation of these laws, vary from state to state. In some cases, an airbag designed in Europe might not provide sufficient protection for passengers not wearing a seat belt. Thus, European manufacturers would still be liable in a US court despite the "mutual recognition" of technical standards.

- **The same rules for everyone:** The *European Regulation on Standardization* governs the development of technical standards that are used to fulfil the essential requirements of directives according to the *New Legislative Framework*. This regulation requires the participation of all European stakeholders in the standardization process and the involvement of all Member States. If there is to be a "mutual recognition", then these requirements must also apply to American standardization.

- **Involvement of SMEs and societal stakeholders:** In Europe a high value is placed on integrating all stakeholders. The broad participation of everyone is an essential quality characteristic of European standardization and results in a high level of acceptance. Due to the fragmentation of the standardization landscape largely originating from the USA, large companies must already monitor a number of standards organizations, spending a large amount of money to send experts to carry out standards work. Small businesses just cannot afford this.

Demands:

- Set up a harmonized transatlantic legal framework.

- Observe WTO criteria for removing non-tariff barriers to trade: These criteria are based on the national delegation principle and recognize ISO and IEC as the only international standards organizations. ISO and IEC Standards should be adopted at national level.

- Take the demands of industrial sectors into account: Both European and US standards setters must refer to the relevant ISO or IEC Standards.

- No incorporation or "mutual recognition" of standards drawn up by US standards setting organizations in European legislation.