

Les consommateurs et la normalisation : des intentions à l'action

Rapport final du projet de recherche
présenté au Bureau de la consommation
d'Industrie Canada

par



l'union
des consommateurs

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des consommateurs

6226 rue Saint-Hubert, 3^e étage
Montréal (Québec) H2S 2M2

Téléphone : 514-521-6820
Sans frais : 1 888 521-6820
Télécopieur : 514-521-0736

union@consommateur.qc.ca
www.consommateur.qc.ca/union

Membres de l'Union des consommateurs

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L'Union des consommateurs est membre de l'Organisation internationale des consommateurs (OI), une fédération regroupant 234 membres en provenance de 113 pays.

Rédaction du rapport

- Charles Tanguay
- Bruce J. Farquhar

Direction de rédaction

- Me Marcel Boucher

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Pour faciliter la lecture du texte et éviter la redondance systématique, nous avons choisi d'utiliser le masculin générique pour désigner les deux genres.

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L'UNION DES CONSOMMATEURS, la force d'un réseau

L'Union des consommateurs est un organisme à but non lucratif qui regroupe plusieurs Associations coopératives d'économie familiale (ACEF), l'Association des consommateurs pour la qualité dans la construction (ACQC) ainsi que des membres individuels.

La mission de l'Union des consommateurs est de représenter et défendre les droits des consommateurs, en prenant en compte de façon particulière les intérêts des ménages à revenu modeste. Les interventions de l'Union des consommateurs s'articulent autour des valeurs chères à ses membres : la solidarité, l'équité et la justice sociale, ainsi que l'amélioration des conditions de vie des consommateurs aux plans économique, social, politique et environnemental.

La structure de l'Union des consommateurs lui permet de maintenir une vision large des enjeux de consommation tout en développant une expertise pointue dans certains secteurs d'intervention, notamment par ses travaux de recherche sur les nouvelles problématiques auxquelles les consommateurs doivent faire face ; ses actions, de portée nationale, sont alimentées et légitimées par le travail terrain et l'enracinement des associations membres dans leur communauté.

L'Union des consommateurs agit principalement sur la scène nationale, en représentant les intérêts des consommateurs auprès de diverses instances politiques, réglementaires ou judiciaires et sur la place publique. Parmi ses dossiers privilégiés de recherche, d'action et de représentation, mentionnons le budget familial et l'endettement, l'énergie, les questions liées à la téléphonie, la radiodiffusion, la télédistribution et l'inforoute, la santé, l'alimentation et les biotechnologies, les produits et services financiers, les pratiques commerciales, ainsi que les politiques sociales et fiscales.

Finalement, dans le contexte de la globalisation des marchés, l'Union des consommateurs travaille en collaboration avec plusieurs groupes de consommateurs du Canada anglais et de l'étranger. Elle est membre de l'*Organisation internationale des consommateurs* (OI), organisme reconnu notamment par les Nations Unies.

INTRODUCTION

L'Union des consommateurs s'est penchée l'an dernier sur la question de la participation des consommateurs aux processus de normalisation et a publié un rapport de recherche intitulé «*Pour une plus grande participation des consommateurs aux processus de normalisation*».

Ce rapport traite des enjeux entourant la participation des consommateurs aux processus de normalisation et dresse l'état de la situation au Canada, aux États-Unis, en Europe et sur la scène internationale, en tentant d'identifier les éléments qui freinent la participation des consommateurs et les moyens de favoriser une meilleure participation.

L'Union des consommateurs a également participé à un projet de coopération internationale sur le même thème, sous l'égide du Bureau régional des Caraïbes et de l'Amérique du sud (ROLAC) de Consumers International, ce qui a permis de comparer l'état de la situation de la participation des consommateurs aux processus de normalisation dans une perspective panaméricaine.

Ces constats étant faits, le présent projet visait à faire la synthèse des enjeux et à analyser le contexte des réformes réglementaires en cours au Canada, en vue de mieux cerner les défis propres à ce contexte, pour la normalisation d'une part et pour les groupes de consommateurs d'autre part.

Un spécialiste de ces questions a été mandaté pour faire la synthèse des constats faits ces dernières années autour des problèmes liés à une trop faible participation des consommateurs dans les sphères de la normalisation, synthèse qui reprend en grande partie les observations faites par l'Union des consommateurs dans le rapport de l'année précédente. Nous avons placé en annexe 1 cette portion du travail.

Ce même spécialiste s'est également livré à une analyse du contexte politique actuel au Canada en lien avec la normalisation, en particulier de la démarche entreprise par le Comité consultatif externe sur la réglementation intelligente (CCERI) qui, après d'importantes consultations, a produit un rapport sur les réformes réglementaires attendues au Canada. L'analyste traite de la place de la normalisation dans les recommandations du CCERI et dresse un portrait des enjeux et des étapes à venir, alors que le rapport du CCERI sera, en tout ou en partie, mis en application. Il examine, en particulier les réformes réglementaires en cours susceptibles de faire une place plus importante à la normalisation et qui devraient interpeller davantage les groupes de consommateurs, comme le Renouveau législatif entrepris par Santé Canada ou encore, les nouvelles exigences gouvernementales en matière de sécurité des produits.

Le présent rapport rend compte de l'état des réflexions de l'Union des consommateurs sur ces enjeux ainsi que de diverses initiatives liées à la normalisation auxquelles a participé l'Union des consommateurs au cours des derniers mois et tente de tirer des conclusions sur le positionnement stratégique souhaitable des associations de consommateurs dans les années à venir en ce qui a trait à la place de la normalisation dans la réglementation, ainsi que la place des organisations de consommateurs aux tables qui traitent de ces questions.

I- RÉFORME RÉGLEMENTAIRE ET NORMALISATION : SYNTHÈSE DES ENJEUX¹

L'Organisation de coopération et de développement économiques (OCDE) se trouve à l'avant plan des efforts intergouvernementaux en vue de la promotion de réformes réglementaires. L'OCDE réfère à la réforme réglementaire en ces termes :

L'expression réforme de la réglementation renvoie, dans les documents de l'OCDE, aux modifications tendant à améliorer la qualité de la réglementation, c'est-à-dire à améliorer les résultats des réglementations et des formalités administratives connexes ou leur efficacité par rapport à leurs coûts. La réforme peut consister en la révision d'une seule réglementation, en le démantèlement et la reconstruction d'un régime réglementaire tout entier et de ses institutions ou en l'amélioration des procédures d'élaboration des réglementations et de gestion de la réforme. La déréglementation qui consiste à supprimer complètement ou partiellement la réglementation d'un secteur donné, est un volet de la réforme de la réglementation.²

L'OCDE reconnaît le rôle spécifique de la normalisation à titre de support pour une réforme réglementaire.³ Plusieurs juridictions à travers le monde ont porté une attention spéciale au rôle des normes et des codes dans la promotion d'un environnement réglementaire plus efficient.

A) Expériences dans d'autres juridictions

Australie

Les autorités réglementaires doivent soumettre des évaluations d'impact (Regulatory impact assessments (RIA)) au bureau désigné à cette fin (Office of Regulatory Review (ORR)). Le guide de l'ORR⁴ prévoit des lignes directrices spécifiques quant à la considération à apporter aux codes et aux normes, les instances réglementaires devant justifier dans leurs rapports pourquoi elles n'ont pas adopté de normes volontaires.

La législation australienne comprend plusieurs lois qui font référence explicitement à l'utilisation de normes. La Loi sur la concurrence (Trade Practices Act 1974) peut imposer des normes de sécurité⁵ et peut rendre obligatoire le respect des codes de conduite de l'industrie.

¹ Le chapitre qui suit est la traduction de larges extraits d'un rapport préparé par notre consultant, rapport qui nous a servi à orienter nos réflexions. L'intégralité du rapport du consultant se retrouve en annexe.

² OCDE (1997) Rapport de l'OCDE sur la réforme réglementaire, p. 5 . Disponible sur le site Internet de l'Organisation de coopération et de développement économiques. [En ligne] au : <http://www.oecd.org/dataoecd/21/54/34980637.pdf> (document consulté le 21 janvier 2006).

³ OCDE, Groupe de travail du Comité des échanges : Réforme de la réglementation et normalisation internationale, 15 février 1999. [En ligne] <http://www.oecd.org/dataoecd/33/20/1955317.pdf> (document consulté le 22 janvier 2006).

⁴ Office of Regulation Review; A Guide to regulation second Edition December 1998; Document disponible en ligne sur le site Web du gouvernement de l'Australie, Productivity Commission, [En ligne] <http://www.pc.gov.au/orr/reports/guide/reguide2/reguide2.pdf> (document consulté le 21 janvier 2006).

⁵ Trade Practices Act 1974, Section 65E

Union européenne

L'établissement d'un marché commun entre les États membres de l'Union européenne a amené cette dernière à adopter une approche législative souple qui a grandement favorisé l'usage de normes volontaires.

La nouvelle approche de l'UE vise à atteindre un accord politique sur les exigences de sécurité essentielles, abandonnant les détails techniques à des normes européennes volontaires à être élaborées. Cette approche a été élargie afin d'inclure tous les produits de consommation qui ne sont pas autrement visés par des législations spécifiques, par le biais de référence à des normes dans la Directive relative à la sécurité générale des produits.

*Article 3.2 : Un produit est présumé sûr, pour les risques et les catégories de risque couverts par les normes nationales concernées, quand il est conforme aux normes nationales non obligatoires transposant des normes européennes dont la Commission a publié les références au Journal officiel des Communautés européennes en application de l'article 4. Les États membres publient les références de ces normes nationales.*⁶

Les autorités publiques européennes insistent sur le droit des partenaires économiques et sociaux, incluant les représentants des consommateurs, de participer à chaque niveau et à chaque stade du processus de normalisation⁷. Elles financent d'ailleurs l'Association européenne pour la coordination de la représentation des consommateurs dans la normalisation (ANEC), «le porte parole des consommateurs européens dans la normalisation»⁸, à près de 2 000 000 \$ CA par année. La tâche de l'ANEC consiste à coordonner le travail des représentants nationaux des consommateurs et à participer directement dans les processus de normalisation européens.

Royaume-Uni

Le Royaume-Uni a été à l'avant garde des réformes réglementaires par le biais des activités du Better Regulation Task Force. Un des buts premiers du Regulatory Reform Act 2001⁹ est de permettre une réforme de la législation par le biais de Regulatory Reform Orders (RRO).

En plus des lois de l'Union européenne auxquelles il a l'obligation de se conformer, le Royaume-Uni a entrepris plusieurs initiatives qui réfèrent à l'usage de normes et de codes.

Le Directeur général de l'Office of Fair trading (OFT) a pour tâche d'encourager les associations professionnelles ou commerciales à élaborer des normes et des codes de pratique et d'en répandre l'usage parmi leurs membres¹⁰. Avec le temps, l'OFT en est arrivé à endosser formellement certains de ces codes.

⁶ Directive 2001/95/CE du Parlement européen et du Conseil du 3 décembre 2001 relative à la sécurité générale des produits. [En ligne] http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=fr&numdoc=32001L0095&model=quichett (page consultée le 17 février 2006).

⁷ Commission Communication on Standardization in the European Economy. OJ C96. 15 April 1992

⁸ ANEC, page d'accueil du site Web. [En ligne] <http://www.anec.org/anec.asp?lang=fr&ref=00-00> (page consultée le 30 janvier 2006).

⁹ Regulatory Reform Act 2001, 2001 Chapter 6; Disponible en ligne sur le site Web de Office of Public Sector Information. [En ligne] <http://www.opsi.gov.uk/acts/acts2001/20010006.htm> (page consultée le 17 mars 2006).

¹⁰ Section 124(3) of the Fair Trading Act 1973; voir Howells, G. University of Sheffield - CONSUMER PROVISIONS IN THE ENTERPRISE BILL- PAST, PRESENT AND FUTURE REGULATION OF FAIR TRADING; Draft of paper to

Dans un effort pour combattre la vague de plaintes et la méconnaissance des codes par les consommateurs, l'OFT a lancé une nouvelle approche en deux temps pour le développement des codes. La première étape consiste en un accord sur des critères de base¹¹, qui peuvent être élaborés en collaboration avec divers intervenants, comme les consommateurs et les autorités. La deuxième étape consiste en une mise à l'essai sur le terrain du code élaboré sur ces bases.

États-Unis

On exige aux États-Unis que les agences et départements fédéraux participent activement aux activités de développement des normes. Le National Institute of Technology and Standards (NIST) doit soumettre annuellement à l'Office of Management of the Budget (OMB) un rapport sur les progrès qu'ont réalisés les agences et départements vers un plus grand usage des normes volontaires, par opposition aux normes issues uniquement du gouvernement¹². Quelques lois font aussi référence à l'usage de normes volontaires. Le Consumer Product Safety Act, par exemple, requiert que la Consumer Product Safety Commission (CPSC) se reporte à des normes volontaires là où cela peut être en accord avec la mission de l'agence¹³. La CPSC doit prendre en considération non seulement si la norme volontaire rencontre des objectifs légitimes de politique publique mais aussi le degré de conformité que cette norme rencontre dans les entreprises qui œuvrent sur ce marché¹⁴.

Sommaire

On peut constater que plusieurs juridictions ont développé des cadres et des mécanismes en vue d'assurer que les normes volontaires sont utilisées systématiquement à l'appui de la réglementation. Les préoccupations qu'entraîne pour les consommateurs l'usage systématique des normes et des codes portent sur la pertinence de ces codes et normes, sur l'ouverture et la transparence dans leur élaboration et sur le degré de conformité de l'industrie à ces normes et codes. Plusieurs juridictions ont développé des procédures et des politiques en vue de répondre à ces importantes préoccupations.

be presented at CLT conference on New Enterprise Bill 29 November 2002, New Connaught Rooms, London; disponible sur le site Web de L'Association Internationale de Droit de la Consommation. [En ligne] <http://www.iacl.ca/word/enterprisebill.doc> (document consulté le 19 février 2006).

¹¹ Consumer Codes Approval Scheme; Core Criteria and Guidance March 2004 (OFT390). Disponible en ligne sur le site Web de l'Office of Fair Tradinf. [En ligne] <http://www.offt.gov.uk/NR/rdonlyres/629F3587-953C-4609-AF90-51A144B859AE/0/oft390.pdf> (document consulté le 15 décembre 2005).

¹² Office of Management and Budget (OMB) Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities. Disponible en ligne sur le site Web de la Maison blanche. [En ligne] <http://www.whitehouse.gov/omb/circulars/a119/a119.html> (document consulté le 11 décembre 2005).

¹³ Consumer Product Safety Act 1972, Sec 7(1)

¹⁴ Ibid. Sec 7(1)(a)

B) Comparaison de la situation au Canada face aux meilleures pratiques observées

L'utilisation des normes et des codes au Canada est essentiellement affaire de cas par cas. Les instances réglementaires sont sensées prendre en compte les solutions de rechange que représentent les codes et les normes et de faire rapport de cette prise en compte dans leurs évaluations d'impact¹⁵. Toutefois, les recherches démontrent que ces considérations sont en pratique assez discrètes¹⁶. L'examen du système réglementaire canadien a été entrepris dans le cadre du travail continu de l'OCDE sur la réforme réglementaire¹⁷. Une des options recommandées par le rapport de l'OCDE portait sur le besoin de réviser l'exigence de prendre en compte telles solutions de rechange. L'OCDE recommandait au gouvernement canadien de pousser plus loin ses efforts dans les instructions à donner aux instances réglementaires quant aux moyens d'explorer plus à fond les alternatives, en vue d'atteindre les objectifs de sa politique.

4. Améliorer le contrôle de la qualité des REIR et formuler des directives claires à appliquer par les organismes de réglementation lors de l'élaboration des règlements favorables aux échanges et aux investissements.

*(...) Il faudrait en outre expliquer clairement aux organismes de réglementation comment ils peuvent rédiger des règlements en des termes favorables aux échanges, notamment en s'inspirant de normes, et les encourager à concevoir des alternatives novatrices et viables aux réglementations.*¹⁸

¹⁵ RÉIR - Guide de rédaction; Résumé de l'étude d'impact de la réglementation. Établi par Conseils et vérification Canada, octobre 1992. Disponible en ligne sur le site Web du Bureau du Conseil privé. [En ligne] http://www.pco-bcp.gc.ca/raoics-srdc/default.asp?Language=F&page=publications&doc=riawritersguide/riawritersguide_f.htm (page consultée le 8 janvier 2006).

¹⁶ Assessing the Contribution of Regulatory Impact Analysis on Decision Making and the Development of Regulations, 31st August 2000. The Regulatory Consulting Group Inc. The Delphi Group

¹⁷ OCDE (2002), Améliorer l'ouverture des marchés grâce à la réforme de la réglementation - Examen de l'OCDE sur la réforme de la réglementation; la réforme de la réglementation au Canada. Disponible sur le site Web de l'OCDE. [En ligne] <http://www.oecd.org/dataoecd/48/27/1960554.pdf> (document consulté le 21 janvier 2006).

¹⁸ id. p. 71.

C) La réglementation intelligente au Canada : Le Comité consultatif externe

Contexte - Mandat du Comité consultatif externe

Comme le proposait le Discours du trône en 2002¹⁹, un Comité consultatif externe sur la réglementation intelligente (CCERI) a été mis sur pied par le gouvernement canadien en mai 2003, en réponse au rapport de l'OCDE sur la réforme de la réglementation au Canada. Le rapport constatait en effet certaines améliorations potentielles à la réforme entreprise par le Canada, notamment en ce qui a trait à la considération à apporter aux alternatives à la réglementation.

Le Comité a reçu le mandat de déterminer dans quels domaines et de quelle façon le gouvernement devrait repenser son approche réglementaire afin de mieux répondre aux besoins des Canadiens et du Canada. Le mandat du CCERI comportait trois volets:

- 1) *élaborer une stratégie réglementaire pour le XXI^e siècle qui soutient le Canada en tant que nation commerçante souveraine offrant une haute qualité de vie à ses citoyens;*
- 2) *recenser les secteurs et les domaines où une réforme de la réglementation s'impose pour assurer un avantage stratégique au Canada;*
- 3) *examiner les défis actuels recensés par les ministères et les parties concernées et fournir un point de vue externe sur ces questions.*²⁰

Définition de la réglementation intelligente par le CCERI

Le CCERI a dès le départ, défini la réglementation intelligente comme une réglementation qui vise à assurer la protection de la santé, de la sécurité et de la durabilité tout en créant des conditions propices en vue de les promouvoir, en plus de contribuer à la croissance économique et de réduire le fardeau des entreprises. La réglementation intelligente aurait ainsi pour but de protéger les citoyens, les consommateurs et l'environnement tout en contribuant à l'innovation, pour le bénéfice social et économique des Canadiens.

Dans son rapport final, le comité a déterminé ce qu'il considérait être les trois caractéristiques fondamentales de la réglementation intelligente :

- La réglementation intelligente assure la protection et crée des conditions propices.
- La réglementation intelligente est une réglementation davantage adaptée aux réalités.
- La réglementation intelligente consiste à gouverner de façon coopérative dans l'intérêt public.²¹

Vision, principes et thèmes

Le CCERI a tout d'abord entrepris d'élaborer une vision et de définir les principes qui allaient guider ses travaux. La vision générale du comité était que : «Les gouvernements, les citoyens et les entreprises collaboreront à la mise en place d'un système national de réglementation qui

¹⁹ « Le Canada que nous voulons » (Discours du Trône ouvrant la deuxième session de la 37^e Législature du Canada, le 30 septembre 2002)

²⁰ Document d'information - Le CCERI et son mandat, disponible sur le site Internet du gouvernement canadien. [En ligne] <http://www.pco-bcp.gc.ca/smartreg-regint/fr/01/b-01.html> (document consulté le 25 janvier 2006).

²¹ Comité consultatif externe sur la réglementation intelligente; La réglementation intelligente -une stratégie réglementaire pour le Canada (2004); disponible sur le site Internet Bibliothèque et Archives Canada. [En ligne] http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/committees/smart_regulation-ef/2006-10-11/www.pco-bcp.gc.ca/smartreg-regint/fr/08/rpt_fnl.pdf (document consulté le 21 novembre 2006).

maximise les avantages de la réglementation pour tous les Canadiens, qui leur permet de mettre à profit les nouvelles connaissances et qui favorise la participation du Canada à l'économie internationale.» Cette vision s'appuyait à son tour sur trois composantes: confiance, innovation, protection.

Les principes adoptés par le CCERI étaient:

1. Efficacité
2. Efficience
3. Rapidité d'action
4. Transparence
5. Imputabilité et performance

Outre la vision et les principes développés pour encadrer ses efforts, le CCERI a décidé de concentrer sa recherche sur six thèmes particulièrement urgents, six éléments jugés essentiels à la stratégie réglementaire du Canada pour le XXI^e siècle, à partir desquels devait être analysée une approche canadienne de la réglementation intelligente:

- Coopération internationale en matière de réglementation;
- Coopération fédérale-provinciale-territoriale en matière de réglementation;
- Efficacité du processus;
- Gestion du risque;
- Choix des instruments d'action²²;
- Définition de l'intérêt public.

Le CCERI a déterminé que le niveau d'utilisation d'instruments non juridiques, comme les codes volontaires, l'autoréglementation, les instruments normatifs et économiques, quoique en hausse au gouvernement fédéral, demeurerait trop faible au Canada et que la prise en considération de l'éventail complet des divers instruments qui sont à la disposition du gouvernement dans son rôle de réglementation n'était pas systématique²³. De l'avis du comité, le Canada ne profitait donc pas au maximum des avantages que pouvaient offrir ces mesures.

Les préoccupations des consommateurs (PIAC et ICC)

Outre la présence de la directrice d'Option Consommateurs sur le CCERI, le Bureau de la consommation a financé plusieurs projets de recherche sur la réglementation intelligente entrepris par le Public Interest Advocacy Centre (PIAC), qui a aussi soumis, en juillet 2003²⁴ et en décembre 2003²⁵, des réponses au document de consultation déposé par le CCERI.

²² C'est avec les termes suivants: « **Instrument Choice**. How do we implement a proactive government-wide approach to choosing the most effective instrument mix for achieving policy and regulatory objectives? » que le président du Comité définissait cette priorité, nommée ailleurs : Instruments d'action gouvernementale. Voir Public Policy Forum Dinner - Smart Regulation: Promoting Canada's Competitive Advantage ; Toronto, September 16, 2003. [En ligne] <http://64.233.161.104/search?q=cache:Fb-5eA00sdYJ:www.ppforum.ca/ow/lussier.pdf+external+advisory+committee+on+smart+regulation+%22%E2%80%A2+Defining+the+Public+Interest%22&hl=fr&gl=ca&ct=clnk&cd=3> (document consulté le 14 octobre 2006).

²³ EACSR briefing on Instruments for Government Action

²⁴ Smart Regulation for Canada; A Preliminary Response to the EACSR Consultation Document by the Canadian Consumer Initiative, Michael Janigan, Executive Director and General Counsel, Public Interest Advocacy Centre, Ottawa, ON

²⁵ Smart regulation: The Consumer Interest Public Interest Advocacy Centre, December 2003

Le PIAC a identifié dans ses réponses au document de consultation plusieurs des préoccupations que soulève la soi-disant réglementation intelligente auprès des consommateurs²⁶, dont les principales portent sur la réglementation des services publics. Le PIAC soulevait l'importance de la transparence et de l'imputabilité dans le système réglementaire et le besoin d'une compétence réglementaire accrue. Le PIAC baptisait «Auto-réglementation en laisse» le fait de permettre aux entreprises de se réglementer elles-mêmes sous le regard de la réglementation. Quant à l'usage des codes volontaires, le PIAC se déclarait d'avis que, pour assurer la meilleure protection des consommateurs, une approche alternative acceptable doit aussi veiller à la mise en place de remèdes possibles dans les cas où l'intérêt public ne serait pas servi par le mécanisme choisi. Le PIAC a attiré l'attention sur certaines lignes directrices souhaitables, les éléments appropriés pour l'élaboration et l'adoption de tels codes ayant été déjà tracés par la littérature issue du gouvernement aussi bien que des groupes de consommateurs. Le PIAC a insisté sur le fait que le succès de la mise en vigueur de ces codes dépend de plusieurs éléments: des systèmes de vérification aussi rigoureux que ceux de la réglementation que ces codes visent à remplacer, des mécanismes infaillibles de suivi et de surveillance, qui risquent de ne pas plaire aux groupes visés. Le PIAC commentait finalement que les risques associés à un tel processus pouvaient fort bien peser plus lourd que les avantages recherchés et que les gouvernements devraient éviter à tout prix de considérer un instrument semblable comme une panacée universelle.

L'Initiative canadienne des consommateurs²⁷ (ICC) a elle aussi déposé ses observations, en juillet 2004²⁸, indiquant que sa préoccupation principale ne résidait pas, quant à l'usage plus répandu d'un instrument alternatif, dans la flexibilité que l'on attribuait à cet instrument, mais dans le fait qu'il fallait s'assurer que le choix d'instruments alternatifs ne se fasse pas en l'absence d'une analyse qui pèserait soigneusement les avantages recherchés et les possibles inconvénients de l'adoption de mesures volontaires. L'ICC a insisté sur la nécessité de mesures d'imputabilité et a soumis certaines recommandations portant sur les considérations qui devraient recevoir préséance sur tout désir de modification de la réglementation :

1. Un effort de classification devrait être entrepris, qui se penche sur la forme aussi bien que sur le contenu et un continuum d'exigences ou de principes devrait être établi, qui s'appliquerait à l'exécution des responsabilités en matière de réglementation. Une telle classification pourrait certes diminuer la clarté du message général d'une réforme réglementaire mais elle aiderait par contre à écarter les craintes que ce coup de balai visant à abolir des règles insignifiantes ou inutiles n'emporte aussi l'élimination d'importantes protections mises en place dans l'intérêt public.
2. La réglementation intelligente devrait être un processus qui entraîne des avantages pour toutes les parties concernées, ce qui peut être possible si les principes d'imputabilité, de transparence, d'indépendance, de capacité et de consultation et de participation publiques sont appliqués uniformément, en vue d'atteindre des objectifs réglementaires valables plutôt que la simple accélération d'un processus.

²⁶ *Ibid.*

²⁷ L'Initiative canadienne des consommateurs est une coalition formée de l'Association pour la protection des automobilistes (APA), du Consumers Council of Canada, d'Option consommateurs, du PIAC et de l'Union des consommateurs. Le Alberta Council on aging s'est joint par la suite à cette coalition.

²⁸ Smart regulation for Canada: A Preliminary Response to the EACSR Consultation Document by the Canadian Consumer Initiative

3. Une approche uniforme, standardisée, compromettra l'objectif ultime de la réglementation intelligente au profit d'une simple vision. De pair avec une délimitation plus soignée du milieu réglementaire et les objectifs prévus à la première recommandation, il est recommandé que des approches sectorielles spécifiques soient initiées conformément aux principes identifiés comme indispensables à la réglementation intelligente.

Mémoire du Conseil canadien des normes

Le Conseil canadien des normes (CCN) s'est penché dans ses représentations sur le rôle que pouvait jouer le système national de normalisation dans la promotion d'une réglementation intelligente. Le CCN a soumis quelques recommandations, dont :

1. Encourager la révision de l'étude d'impact de la réglementation du gouvernement du Canada (RIAS) afin d'y inclure une obligation de considérer dans chaque secteur de réglementation la possibilité d'un renvoi à des normes et à des procédures d'évaluation de conformité;
2. Encourager l'application rigoureuse de la RIAS par les départements et agences fédéraux et plus spécifiquement le développement et la mise en place d'une obligation de rapport (et le maintien de données ou de dossiers exacts) relativement à la prise en compte de normes et à des procédures d'évaluation de conformité;
3. Utiliser les principes définis dans l'annexe 4 du Report of the Second Triennial Review of the WTO/TBT Agreement en vue de détermination de l'usage possible de normes internationales²⁹.
4. Encourager une plus grande participation des agents de réglementation fédéraux dans le développement de normes nationales et internationales et des procédures d'évaluation de conformité.

Mémoire d'Industrie Canada sur les questions touchant les normes

Industrie Canada a soumis des observations détaillées portant sur l'utilisation systématique des normes au soutien de la réglementation³⁰. Industrie Canada y compare les meilleures pratiques dans l'utilisation des normes à l'appui des objectifs de politique publique dans l'Union européenne et aux États-Unis avec la situation actuelle au Canada en vue de souligner le contraste. Suite à ses observations, Industrie Canada en arrive à la conclusion que le Canada se compare défavorablement sur plusieurs points, notamment sur l'absence de considération systématique de l'utilisation des normes à titre de soutien à la réglementation. Le rapport présente plusieurs recommandations :

1. Engagement stratégique à utiliser les normes et les codes volontaires à l'appui de la législation;
2. Élaboration d'une Loi sur les textes réglementaires;
3. Élaboration d'une politique de réglementation;
4. Élaboration d'une lettre d'intention (Memorandum of Understanding (MOU)) entre le gouvernement fédéral et le Système des normes canadien (National Standards System);
5. Introduction d'une obligation de rapports;
6. Établissement d'un forum de discussion stratégique pour la mise en place d'une politique de réglementation et l'usage d'instruments alternatifs;

²⁹ Ces principes incluent: transparence, ouverture, impartialité et consensus, efficacité et pertinence, cohérence et réponse aux préoccupations des pays en développement.

³⁰ Towards the Systematic Use of Standards and Voluntary Codes in Support of Public Policy

7. Révision de la Stratégie canadienne de normalisation.

Rapport final du Comité consultatif externe

Le 23 septembre 2004, le Comité publiait dans un rapport ses conclusions et ses recommandations³¹, déterminant que la réglementation intelligente possédait trois caractéristiques déterminantes :

- *La réglementation intelligente assure la protection et crée des conditions propices.*
- *La réglementation intelligente est une réglementation davantage adaptée aux réalités.*
- *La réglementation intelligente consiste à gouverner de façon coopérative dans l'intérêt public.*

Le Comité proposait donc une stratégie réglementaire pour le 21^e siècle dans une série de recommandations portant sur sept composantes principales :

- • coopération internationale en matière de réglementation;
- • coopération fédérale-provinciale-territoriale en matière de réglementation;
- • coopération fédérale en matière de réglementation;
- • gestion du risque;
- • instruments d'action gouvernementale;
- • réforme du processus réglementaire;
- • moyens d'action du gouvernement.

Les recommandations portant sur la prise en considération d'instruments alternatifs pour l'action gouvernementale présentent un intérêt particulier dans le cadre de la présente recherche.

Recommandations portant sur la prise en compte d'instruments alternatifs pour l'action gouvernementale

Le Comité a considéré qu'il n'existe présentement aucun cadre en vue d'assister les décideurs dans leur analyse des politiques et leur prise en considération de divers instruments alternatifs. En même temps, le Comité a reconnu que le choix des instruments ne devait pas se faire sans une recherche des instruments les mieux adaptés. Le comité a formulé des recommandations explicites en vue de promouvoir une meilleure prise en considération des alternatives réglementaires. Parmi ces recommandations :

Recommandation 22: *Le gouvernement devrait élaborer un cadre de travail pour la conception et l'utilisation d'une combinaison d'instruments, comprenant des stratégies de contrôle et d'application. Il devrait aussi mettre en place des mécanismes faisant en sorte que les décisions relatives au choix des instruments soient débattues de façon plus exhaustive tout au long du processus d'élaboration des politiques, et notamment exiger que la fonction de remise en question du Bureau du Conseil privé soit exercée plus tôt dans le processus.*

³¹ Comité consultatif externe sur la réglementation intelligente; La réglementation intelligente -une stratégie réglementaire pour le Canada (2004); disponible sur le site Internet Bibliothèque et Archives Canada. [En ligne] http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/committees/smart_regulation-ef/2006-10-11/www.pco-bcp.gc.ca/smartreg-regint/fr/08/rpt_fnl.pdf (document consulté le 21 novembre 2006).

Recommandation 23: *Le gouvernement fédéral devrait intensifier ses efforts pour sensibiliser la collectivité de la réglementation aux divers instruments disponibles et aux avantages d'utiliser une combinaison d'outils pour répondre aux préoccupations en matière de politiques.*

Recommandation 24: *Il faudrait éliminer les obstacles législatifs à la création de combinaisons d'instruments d'intervention et à l'utilisation de règlements axés sur le rendement.*

Le Comité a aussi exprimé l'avis que le gouvernement devrait établir une politique uniforme sur l'incorporation par renvoi de normes et de codes dans la réglementation, tels qu'amendés de temps à autres par des organismes externes ou d'autres juridictions, et obtenir une autorisation législative claire en ce sens.

Autres recommandations pertinentes d'une perspective de consommateurs

Un bon nombre d'autres recommandations méritent d'être relevées du point de vue des consommateurs. Le Comité mentionne par exemple la nécessité d'une approche de l'action réglementaire basée sur la gestion du risque, d'une attention accrue à la conformité et à la mise en application et à l'amélioration de la capacité du gouvernement de considérer la consultation comme un dialogue. Le Comité propose spécifiquement que le gouvernement augmente le support financier apporté aux groupes de consommateurs. Significativement, le Comité propose l'élaboration d'une nouvelle politique fédérale de réglementation.

Recommandation 26: Le gouvernement du Canada devrait accorder la priorité à l'élaboration d'une nouvelle Politique fédérale de réglementation qui:

- refléterait la vision, les principes et la stratégie réglementaire proposés et décrits dans le présent rapport;
- s'appliquerait à d'autres modes d'intervention réglementaire, notamment les lois, les règlements, certains textes quasi législatifs et la négociation des positions internationales;
- ciblerait ou modulerait les exigences procédurales de manière à tenir compte d'aspects tels que le degré de risque ou les effets.

D) Suivi des initiatives de réglementation intelligente au Canada

Stratégie de mise en place

Une stratégie de mise en place formelle a été élaborée et le Bureau du conseil privé en assure le suivi. Certaines initiatives concrètes ont été entreprises, incluant le lancement d'un site Web³², des rapports d'évolution réguliers³³ et l'ébauche d'une Directive gouvernementale sur les activités de réglementation (DGAR).

Directive du gouvernement sur les activités de réglementation³⁴

Le Conseil privé a préparé l'ébauche d'une directive qui vise à «aider le gouvernement du Canada à renforcer son système de gestion de la réglementation en prenant des engagements clairs auprès de la population canadienne concernant la manière dont il édicte ses règlements, ainsi qu'en énonçant clairement les responsabilités des ministères et des organismes en matière d'analyses et de processus à toutes les étapes de la gestion des règlements, y compris l'élaboration, la mise en œuvre, l'évaluation et la révision.» La première ébauche a été rendue publique à l'automne 2005 pour commentaires publics. Une stratégie de consultation a été dessinée et des ateliers publics tenus dans ce cadre à travers le pays en novembre et décembre 2005³⁵. En plus de ces consultations, un Groupe de référence sur les activités de réglementation (GRAR) a été mis sur pied, composé de parties intéressées.

Apport des consommateurs

Le directeur du PIAC est membre du Groupe de référence sur les activités de réglementation (GRAR), qui a tenu trois rencontres en vue de discuter de l'ébauche de directive. Option consommateurs (OC) a aussi déposé des commentaires écrits sur la directive³⁶, dans laquelle elle exprime ses préoccupations sur certains aspects du processus de consultation, dont la très courte durée de l'exercice et l'absence de consultation entre le dépôt de la seconde ébauche et la publication de la directive finale. OC a aussi exprimé ses inquiétudes quant à l'absence de procédures visant à assurer le respect de la Directive gouvernementale sur les activités de réglementation (DGAR). Rappelant le rapport du Comité, OC a insisté sur le fait que le choix de l'approche réglementaire représentait une des clés de son succès et sur la nécessité de conseils plus élaborés sur l'identification du meilleur outil pour une situation donnée.

Autres préoccupations des consommateurs

On soulignera la distinction faite, au Canada, entre législation et réglementation. La directive gouvernementale se concentre uniquement sur la législation secondaire et non sur le cadre

³² Gouvernement du Canada; Reglementation.gc.ca. [En ligne] <http://www.regulation.gc.ca> (document consulté le 11 novembre 2006).

³³ Rapports sur les initiatives et les projets. Le gouvernement s'est engagé à rendre compte deux fois l'an de la mise en œuvre de la réglementation intelligente. Le dernier rapport disponible date de l'automne 2005. Réglementation intelligente : rapport sur les initiatives et les projets, mars 2005 et automne 2005, disponibles sur le site Reglementation.gc.ca du gouvernement du Canada. [En ligne] <http://www.regulation.gc.ca/default.asp@language=f&page=report.htm>. (documents consulté le 21 novembre 2006).

³⁴ Gouvernement du Canada; Directive du gouvernement sur les activités de réglementation, disponible sur le site Reglementation.gc.ca du gouvernement du Canada. [En ligne] http://www.regulation.gc.ca/docs/smartregint/gdrfinalv4_f.pdf (document consulté le 20 novembre 2006).

³⁵ Les rapports des ateliers sont disponibles sur le site Reglementation.gc.ca du gouvernement du Canada. [En ligne] http://www.regulation.gc.ca/default.asp@language=f&page=smartregint&doc=publicwshops_f.htm (documents consultés le 19 novembre 2006).

³⁶ Lettre datée du 21 juin 2005.

législatif de la réglementation. La réglementation, à l'extérieur du Canada, est considérée dans un contexte plus large, incluant la législation primaire. Au Royaume-Uni, par exemple, Better Regulation est interprété comme une meilleure élaboration de la législation et le Regulatory Reform Act couvre aussi un spectre plus large. Pour ce qui est des normes, on voit que l'ébauche de directive ne va pas assez loin dans l'identification des conditions dans lesquelles les normes sont susceptibles de jouer un rôle de complément à la réglementation. C'est ce que souligne aussi le Conseil canadien des normes, dont nous parlons plus bas.

Commentaires du Conseil canadien des normes sur l'ébauche de directive

Le Conseil canadien des normes (CCN) a identifié six points sur lesquels la quatrième ébauche de directive se faisait discrète quant au traitement des normes comme outil de réglementation alternatif :

1. La directive ne s'applique que lorsque sont touchés «les échanges commerciaux».
2. La directive s'applique uniquement aux normes internationales.
3. La directive comprend une large «clause d'exemption» qui permet de justifier le non-recours à une norme existante.
4. L'utilisation de normes volontaires ne fait l'objet d'aucune exigence de déclaration.
5. La directive ne traite pas de l'utilisation de l'évaluation de la conformité au sein même des règlements.
6. La directive ne mentionne pas explicitement tous les accords importants touchant la normalisation en vertu desquels le Canada a contracté des obligations.³⁷

Le CCN a proposé la formulation suivante pour l'utilisation des normes: «*En ce qui concerne les règlements techniques, les organismes fédéraux de réglementation doivent utiliser les normes consensuelles volontaires existantes, à moins qu'elles ne soient manifestement incompatibles avec la loi applicable, peu pratiques ou qu'elles ne servent pas l'objectif de la réglementation...*» Le CCN propose aussi d'imposer «à tous les organismes fédéraux l'obligation de faire rapport annuellement de tous les cas où, au cours de l'année précédente, alors qu'il existait une norme consensuelle volontaire ou une procédure d'évaluation de la conformité reconnue internationalement, ils ont choisi d'utiliser une norme propre au gouvernement au lieu de la norme consensuelle volontaire, et d'expliquer pourquoi ils ont pris cette décision.»

L'ébauche actuellement disponible sur le site Internet du gouvernement semble avoir tenu compte partiellement des points 2, 5 et 6³⁸. Il n'y a par contre, significativement, aucune nouvelle exigence de rapport.

Autres documents qui pourraient être visé par la Directive

Le Conseil privé envisage la possibilité que la Directive gouvernementale sur les activités de réglementation (DGR) vise d'autres documents. Il existe présentement des documents qui portent sur l'étude d'impact de la réglementation³⁹, la consultation⁴⁰, la gestion du risque⁴¹ et

³⁷ Conseil canadien des normes; *Réponses du CCN concernant la DGR – Document final 2*. Disponible sur le site Internet du gouvernement canadien. [En ligne] http://www.regulation.gc.ca/docs/smartregint/subfeds/scc_f.pdf (document consulté le 9 novembre 2006).

³⁸ Draft GD-R - v5.2 (for RGR).doc. [En ligne] <http://www.regulations.gc.ca> (page consultée le 13 février 2006).

³⁹ RIAS Writers Guide 1998

⁴⁰ Guidelines for Effective Regulatory Consultations, Regulatory Affairs Division, Privy Council Office, 2005

⁴¹ Integrated Risk Management Framework Treasury Board Secretariat April 2001

l'application du principe de précaution⁴². La normalisation ne fait pas l'objet d'un document distinct. Industrie Canada a produit un guide informel expliquant le système de normalisation aux responsables de la réglementation⁴³. Le Conseil canadien des normes a aussi produit l'ébauche d'un document expliquant les renvois aux normes dans la législation⁴⁴. Le Conseil privé a fait des présentations au Groupe de référence sur les activités de réglementation (GRAR) relativement à de nouveaux documents. Il doit d'abord y avoir une nouvelle ébauche de cadre pour la réglementation de la gestion du risque⁴⁵, puis une révision du Guide sur l'étude d'impact de la réglementation⁴⁶, et une proposition a été soumise pour l'ébauche d'un cadre sur la Coopération internationale en matière de réglementation⁴⁷. Le besoin de révision d'environ dix guides et manuels présentement en vigueur a été soulevé de même que celui d'ébaucher de nouveaux guides sur le réglementation intelligente et des cadres traitant, par exemple, du choix des instruments, de la priorisation des propositions de réglementation⁴⁸, ainsi que des propositions en vue de l'élaboration d'un *Cadre général de gestion et de responsabilisation axé sur les résultats*, d'un Cadre d'élaboration de stratégies et de plans intégrés de conformité, d'un *Guide pour des consultations efficaces en matière de réglementation* (Regulatory Learning and Community Building Strategy) pour l'examen de la réglementation⁴⁹.

Groupe de consultation sur la réglementation

Il a aussi été proposé de créer en 2006 un groupe de consultation sur la réglementation qui offrirait un forum permanent pour la participation des parties impliquées dans la gestion de la réglementation ainsi qu'un regard extérieur sur les avancées du gouvernement dans la transformation de son système de réglementation⁵⁰.

Activités des tables thématiques

Cinq tables thématiques ont été établies au printemps 2005 en vue d'aider à la mise en oeuvre de la réglementation intelligente :

- Canada en santé;
- Viabilité de l'environnement;
- Sûreté et sécurité;
- Innovation, productivité et contexte d'affaires;
- Prospérité pour les Autochtones et pour le Nord.

⁴² A framework for the application of precaution in science-based decision making about risk, government of Canada, 2002

⁴³ Standards systems a guide for Canadian Regulators, Industry Canada, 2004

⁴⁴ NSS Guide: Key Considerations in the Development and Use of Standards in Legislative Instruments: Understanding the Partnership of the Regulatory and Voluntary Standards Systems ACS/N99 Advisory Committee on Standards (ACS)

⁴⁵ Draft Regulatory Risk Management Framework; Reference Group on Regulating Meeting 3 - January 18, 2006, disponible sur le site [Reglementation.gc.ca](http://www.regulation.gc.ca) du gouvernement du Canada. [En ligne] http://www.regulation.gc.ca/docs/smartregint/rgriskman_v4_e.pdf (document consulté le 21 novembre 2006).

⁴⁶ Understanding the RIAS - its Purpose and Importance; Reference Group on Regulating Meeting 3 - January 18, disponible sur le site [Reglementation.gc.ca](http://www.regulation.gc.ca) du gouvernement du Canada. [En ligne] http://www.regulation.gc.ca/docs/smartregint/rgrias3_e.pdf (document consulté le 20 novembre 2006).

⁴⁷ Smart Regulation: Draft Framework on International Regulatory Cooperation; REFERENCE GROUP ON REGULATING - JANUARY 18, 2006 ; disponible sur le site [Reglementation.gc.ca](http://www.regulation.gc.ca) du gouvernement du Canada. [En ligne] http://www.regulation.gc.ca/docs/smartregint/rqirc_v3_e.pdf (document consulté le 20 novembre 2006).

⁴⁸ Understanding the RIAS , *Op. cit.* 46

⁴⁹ Rapports sur les initiatives et les projets. Rapport automne 2005. *Op. cit.* 33.

⁵⁰ *Ibid.*

Le mandat de ces tables est :

- de définir, d'examiner et de coordonner les initiatives qui s'inscrivent dans l'esprit de la réglementation intelligente;
- de produire des plans de travail et de définir des résultats précis à atteindre;
- de susciter de l'intérêt pour la réglementation intelligente, de mobiliser l'expertise, de développer des compétences et de favoriser la collaboration;
- de soutenir l'amélioration continue en mettant en commun les pratiques exemplaires, les réussites et les défis de tous les ministères et organismes en matière de politique de réglementation;
- de fournir un mécanisme d'intervention des parties intéressées sur les questions trans sectorielles qui influent sur la solidité et la continuité du système de réglementation du Canada, afin que ces questions puissent être résolues grâce à un dialogue ouvert, à la collaboration et à l'action.

L'apport prévu des consommateurs sur ces tables n'a pas été spécifié. Il a été entendu que le directeur de Pollution Probe participerait à la table sur la Viabilité de l'environnement.

E) Éléments clés pour tout futur renvoi à des normes et codes dans le cadre réglementaire, du point de vue des consommateurs.

Plusieurs éléments clés peuvent être identifiés du point de vue des consommateurs, qui devraient être pris en compte dans tout futur renvoi à des normes ou des codes dans le cadre réglementaire :

- Ouverture et transparence quant aux prises de décision sur l'utilisation des normes ou codes dans des instances spécifiques;
- Ouverture et transparence dans l'élaboration de normes sur lesquelles reposeront les réglementations visant des objectifs de politique publique;
- Mise à la disposition des représentants des consommateurs des ressources suffisantes pour une participation adéquate aux consultations sur la réglementation et dans les processus d'élaboration des normes et des codes;
- Respect du besoin d'un haut niveau de protection du consommateur;
- Application du principe de précaution;
- Maintien du pouvoir des instances réglementaires de régler sur tout sujet spécifique.

Ouverture et transparence dans la prise de décision

Nous avons vu que certaines juridictions ont mis en place des procédures plus rigoureuses relativement au respect des principes d'ouverture et de transparence dans la prise de décision quant aux renvois aux normes et codes. Le Canada devrait considérer l'établissement d'une politique ou d'un cadre réglementaire pour ce qui est de l'usage des codes et des normes dans des contextes spécifiques. Cela peut se faire à un niveau supérieur, comme dans le New Approach de l'Union européenne, ou selon une approche sectorielle comme c'est le cas dans le plan du Office of Fair trading du Royaume-Uni. Du même coup, des dispositions pourraient prévoir une meilleure mise en place des exigences d'études d'impact de la réglementation. En ce moment, la publication des études d'impact arrive relativement tard dans le processus et il a été démontré qu'elles font souvent défaut d'évaluer adéquatement les alternatives réglementaires. Un meilleur encadrement des études d'impact et de meilleures politiques d'application pourraient permettre d'amener une plus grande transparence. On pourrait aussi envisager d'imposer aux autorités de réglementation canadiennes certaines exigences en vue de rapports plus formels expliquant pourquoi les normes et codes pertinents sont ou ne sont pas appliqués. Une procédure semblable serait de nature à favoriser à long terme la transparence et entraînerait une plus grande sensibilisation aux modes alternatifs de réglementation.

Ouverture et transparence dans l'élaboration de normes

Certaines préoccupations ont été soulevées quant aux possibles arrangements visant à favoriser la participation des consommateurs dans les processus de normalisation. L'Union des consommateurs a d'ailleurs soumis en 2005 un rapport de recherche sur le sujet⁵¹. Il suffira de dire que ce problème devra être réglé si les groupes de consommateurs doivent être rassurés sur le fait que les normes et les codes élaborés dans le cadre du système national de normalisation s'attardent adéquatement sur les préoccupations légitimes des consommateurs.

⁵¹ Union des consommateurs. Pour une plus grande participation des consommateurs aux processus de normalisation. Août 2005, révisé Janvier 2006.

Ressources suffisantes pour une participation adéquate des représentants des consommateurs aux consultations sur la réglementation et dans les processus d'élaboration des normes et des codes

La question des ressources est primordiale dans les discussions qui portent sur les moyens d'améliorer la participation des groupes de consommateurs dans l'élaboration des normes et des codes. L'accès à des ressources adéquates pour leur permettre de participer aux consultations portant sur la réglementation est tout aussi important. Le comité consultatif lui-même a recommandé la mise à la disposition des groupes de consommateurs d'un support financier plus important, mais le plan de mise en œuvre ne semble pas avoir tenu compte de cette recommandation.

Différents ministères ont mis sur pied leur propre initiative liée à la participation du public. Par exemple, Environnement Canada finance le Réseau canadien de l'environnement. Santé Canada a pour sa part mis en place un Bureau de la participation des consommateurs et du public. Ce dernier, cependant, n'offre aucun soutien financier aux groupes qui représentent l'intérêt public ou l'intérêt des consommateurs.

Il importe d'accroître la capacité des groupes de consommateurs de répondre aux consultations afin qu'ils puissent prioriser les consultations auxquelles ils participent et qu'ils disposent des ressources nécessaires pour ce faire.

Respect du besoin d'un haut niveau de protection du consommateur

La pierre d'angle de tout encadrement réglementaire doit être un haut niveau de protection du consommateur. Nous devons garder à l'esprit que ce degré de protection peut être évolutif. On a vu par exemple une prise de conscience grandissante des consommateurs dans la protection de l'environnement et dans les questions relatives à la vie privée qu'a soulevée la croissance du commerce électronique. Le gouvernement et les groupes de consommateurs devront être en mesure de cerner les préoccupations émergentes des consommateurs canadiens et de les prendre en compte de façon satisfaisante. On se doit de féliciter une proposition d'approche réglementaire basée sur la gestion du risque; des ressources suffisantes doivent toutefois être allouées à une mise en place adéquate dans la pratique. Les groupes de consommateurs auront aussi besoin de ressources suffisantes pour assurer une participation adéquate à un régime de gestion du risque plus ouvert et plus transparent.

Application du principe de précaution

Le gouvernement a déjà élaboré un cadre pour l'application du principe de précaution qui complète l'application de l'approche réglementaire basée sur la gestion du risque. L'application en pratique devra évidemment se faire aussi en tenant compte du choix et du contenu de l'instrument réglementaire approprié. Il sera impérieux de veiller à ne pas confondre l'absence de preuve de dommage et l'absence de données sur d'éventuels dommages qui pourrait résulter d'un défaut de surveillance. Pour mettre en place un système réglementaire susceptible de s'attaquer aux véritables problèmes, le gouvernement doit avoir les moyens d'identifier les problématiques nouvelles et émergentes. Cela implique nécessairement une collecte de données qui pourra prendre plusieurs formes et qui portera, par exemple, aussi bien sur des données factuelles qu'économiques.

Maintien du pouvoir des instances réglementaires de réglementer sur tout sujet spécifique

L'instance réglementaire doit en bout de ligne se réserver le droit de réglementer dans l'intérêt public sur toute question spécifique. Il est important, toutefois, que cette réserve ne soit pas perçue comme une menace creuse en vue d'assurer que les instruments de réglementation alternatifs proposés reflètent un haut niveau de protection du consommateur et qu'ils sont largement respectés en pratique.

F) Synthèse des enjeux: Priorités pour les groupes de consommateurs

Un survol des éléments clés mentionnés plus haut pointe clairement vers quelques priorités évidentes qui devront faire l'objet d'une attention particulière des groupes de consommateurs, dont la participation au Groupe de consultation sur la réglementation, qui s'occupe de la Directive générale sur la réglementation. Les consommateurs désireront en fait participer à quelque groupe de consultation sur la réglementation qui pourra être mis sur pied. Les groupes de consommateurs devront aussi envisager la participation à quelques-unes au moins des cinq tables thématiques qui ont été mises en place en vue d'aider à la mise en oeuvre de la réglementation intelligente.

Les groupes de consommateurs désireront aussi participer à l'élaboration des nombreux documents ayant trait au cadre visant la gestion du risque, les révisions des règlements, le choix des instruments, les études d'impact et la coopération réglementaire internationale. Les groupes de consommateurs voudront de plus surveiller les seuils qui seront appliqués pour les nouveaux cadres applicables à la priorisation des soumissions réglementaires, l'importance de l'étude d'impact nécessaire devant tenir compte de l'importance relative des propositions réglementaires.

Les groupes de consommateurs voudront de même faire connaître leurs préoccupations à l'effet que, malgré la hâte exprimée à mettre en place la réglementation intelligente, des consultations efficaces doivent tout de même avoir lieu auprès des parties intéressées. Les groupes de consommateurs ont déjà exprimé leurs préoccupations quant au processus de consultation suivi pour l'ébauche de la Directive gouvernementale sur la réglementation. Il appert de plus que l'élaboration de plusieurs des documents mentionnés plus haut ait lieu sans aucun apport des consommateurs.

Les groupes de consommateurs voudront probablement inciter le gouvernement à s'attaquer directement à la question de l'utilisation des normes dans la réglementation, par le biais d'une politique sur l'utilisation des normes et d'une entente de collaboration entre le Système de normes national (SNN) et le gouvernement afin d'assurer que les normes élaborées par le SNN rencontrent des objectifs de politique légitime de manière ouverte et transparente.

Finalement, les groupes de consommateurs pourront vouloir pousser la recommandation du Comité portant sur le besoin de mettre à la disposition des groupes de consommateurs un support financier plus important. Cette recommandation, qui n'a pas été reprise, risque d'être complètement abandonnée, tout comme les initiatives issues de l'Initiative sur le secteur bénévole et communautaire qui promettaient l'établissement de nouvelles relations entre les ONG et le gouvernement⁵².

⁵² Guide de l'amélioration des pratiques de financement, Treasury Board Secretariat, 31 janvier 2002 et Code de bonnes pratiques de financement: Pour donner suite à l'Accord entre le gouvernement du Canada et le secteur bénévole et communautaire, Octobre 2002

G) Autres propositions législatives procédant par renvoi aux normes et codes

Le gouvernement a entrepris une série d'initiatives de réglementation intelligente, certaines procédant à des renvois à des normes ou codes. La plupart de ces initiatives sont identifiées dans le Rapport sur les initiatives et les projets – Réglementation intelligente auquel nous référerions plus haut⁵³. Deux des initiatives qui comptent parmi les plus importantes du point de vue des consommateurs consistent en un encadrement réglementaire basé sur des normes pour les cellules, tissus et organes et des normes de certification de produits biologiques. La proposition qui va le plus loin consiste en un processus de renouveau législatif entrepris par Santé Canada depuis déjà un certain nombre d'années.

Le renouveau législatif de Santé Canada

Contexte

Les lois fédérales visant la protection de la santé ont été développées à la pièce sur une période de plusieurs années, ce qui a entraîné une législation en forme de patchwork, certaines parties ayant dramatiquement mal vieilli lorsque comparées aux approches législatives plus modernes adoptées par d'autres juridictions. Santé Canada a entrepris en 1998 des consultations sur une nouvelle approche⁵⁴ et le processus est toujours en cours.

Proposition

La proposition principale porte sur une nouvelle Loi canadienne en matière de protection de la santé, qui remplacerait certaines lois existantes, dont la Loi sur les aliments et drogues (1953), la Loi sur les produits dangereux (1969), la Loi sur la quarantaine (1872) et la Loi sur les dispositifs émettant des radiations (1970). D'autres lois existantes, comme la Loi sur le tabac et la Loi sur les produits antiparasitaires, resteraient en vigueur tout en étant intégrées dans le nouveau cadre.

Ce nouveau cadre se fonderait sur les règles fondamentales suivantes:

- primauté de la santé et de la sécurité :
- ouverture;
- imputabilité.

Certains principes directeurs sous-tendraient, au coeur de l'encadrement, les décisions impliquant le risque :

- évaluation du risque en fonction de la science;
- équilibre entre le niveau de risques et les avantages éventuels;
- concept de précaution;
- choix éclairé de la part du consommateur;
- prise en considération des déterminants de la santé;
- développement durable.⁵⁵

⁵³ Rapports sur les initiatives et les projets. Rapport automne 2005. *Op. cit.* 33.

⁵⁴ Shared Responsibilities, Shared Vision, Renewing the Federal Health Protection Legislation, A Discussion paper, Health Canada July 1998 and Health Protection for the 21st century renewing the Federal Health Protection Program, A discussion paper, Health Canada July 1998

⁵⁵ Voir site Web de Santé Canada [en ligne] http://www.hc-sc.gc.ca/ahc-asc/activit/legren/index_e.html (page consultée le 11 mars 2006)

La proposition la plus importante qui soit liée aux normes concerne l'introduction d'une obligation de sécurité générale. Nous avons vu plus tôt qu'une obligation de sécurité générale (OSG) sous-tend l'usage systématique des normes prôné par l'Union européenne, qui a adopté une Directive relative à la sécurité générale des produits.

Une OSG donnerait à Santé Canada le pouvoir de prendre action quant aux produits dangereux, alors que ce pouvoir lui manque présentement en dehors des normes spécifiques adoptées par Santé Canada ou quand le ministre aurait décrété une interdiction ou pris quelque autre action qui ne serait pas respectée.

Une OSG n'empêcherait pas Santé Canada d'établir ses propres normes spécifiques. Par l'adoption d'une OSG, Santé Canada pourrait par contre établir l'autorité réglementaire dans laquelle les normes seraient incorporées par renvoi ou quelque autre mécanisme permettant de gérer l'usage de normes externes, comme c'est le cas dans l'UE. L'OSG et cette autorité réglementaire complèteraient le pouvoir de Santé Canada d'imposer des normes spécifiques.

Le rapport de la première consultation rapportait une opinion selon laquelle «Santé Canada devrait examiner l'Exigence générale de sécurité que l'on retrouve dans les lois européennes dans le but d'adapter une règle semblable au Canada. (En vertu de l'Exigence générale de sécurité, il incombe aux fabricants et aux distributeurs d'assurer la sécurité de tous les produits vendus au public.)»⁵⁶.

Préoccupations importantes des consommateurs quant à l'application d'une OSG

Les meilleures pratiques internationales nous indiquent un consensus émergent entre l'Union européenne et les États-Unis sur un modèle déterminé. Les éléments principaux du modèle sont :

- Une obligation de sécurité générale, exprimée implicitement comme dans l'UE ou explicitement comme aux É-U;
- Obligation de notification de la part des entreprises quant à la crainte qu'un produit soit dangereux ou sur les actions correctrices volontaires;
- Pouvoir des autorités d'ordonner un rappel ou toute autre action correctrice;
- Déférence de la première instance envers les normes volontaires consensuelles pour autant que le respect de ces normes rencontre les objectifs légitimes de politique publique;
- Réserve du droit de réglementer quant à certains produits spécifiques;
- Possibilité d'aviser les instances des organismes d'élaboration des normes des déficiences observées;
- Efforts de surveillance des accidents et blessures en vue d'identifier les actions prioritaires.

⁵⁶ Consultations nationales rapport sommaire - Renouvellement de la législation fédérale en matière de protection de la santé, Santé Canada 1999. Disponible sur le site Internet de Santé Canada. [En ligne] http://www.hc-sc.gc.ca/ahc-asc/pubs/legren/1998-legislation_f.html (page consultée le 18 novembre 2006).

Actions à entreprendre au Canada

Un certain nombre d'actions devraient être entreprises au Canada afin de mettre en place une OSG qui respecte le modèle des meilleures pratiques, notamment :

- La mise en place d'une série de pouvoirs d'exécution est indispensable comme complément à l'application d'une OSG. Ces pouvoirs incluent le pouvoir de rappel de produits, des exigences de notification à Santé Canada par les entreprises des craintes qu'un produit soit dangereux ou sur les actions correctrices volontaires entreprises;
- Santé Canada devrait avoir accès à un mécanisme qui lui permette de dénoncer les déficiences d'une norme donnée et de requérir ou d'influencer un amendement subséquent;
- Un meilleur lien doit être établi entre les instances réglementaires, les groupes de consommateurs et les groupes voués à la sécurité et à la prévention des accidents pour l'élaboration de normes volontaires, si elles doivent établir la base sur laquelle reposera la démonstration du respect de l'OSG;
- Des données représentatives à l'échelle nationale sur la surveillance des préjudices, accidents et blessures seront nécessaires pour guider Santé Canada dans ses interventions.

Addendum Vision et principes proposés par le Comité consultatif externe sur la réglementation intelligente

VISION ET PRINCIPES

Le Comité consultatif externe sur la réglementation intelligente propose que la stratégie de réglementation intelligente du Canada repose sur la vision et les principes qui suivent.

Vision

Les gouvernements, les citoyens et les entreprises collaboreront à la mise en place d'un système national de réglementation qui maximise les avantages de la réglementation pour tous les Canadiens, qui leur permet de mettre à profit les nouvelles connaissances et qui favorise la participation du Canada à l'économie internationale. Cette vision comporte trois composantes :

1. **CONFIANCE** - Le système réglementaire doit, tant au pays qu'à l'étranger, être crédible et susciter la confiance à l'endroit des produits et services, des marchés et des institutions gouvernementales.
2. **INNOVATION** - Le système réglementaire doit rehausser la performance des marchés et faciliter l'innovation, la compétitivité, l'esprit d'entreprise et l'investissement dans l'économie canadienne.
3. **PROTECTION** - Le système réglementaire doit démontrer aux citoyens que l'intérêt public, par exemple en ce qui a trait à la santé et à la sécurité des personnes et à la protection de l'environnement, sera protégé au sein de marchés mondiaux dynamiques.

Principes

On peut concrétiser cette vision en faisant en sorte que notre système réglementaire, depuis la conception de la réglementation jusqu'à son application et son exécution, se conforme aux principes suivants:

1. **EFFICACITÉ** - La réglementation doit atteindre les objectifs des politiques ayant présidé à sa mise en place et doit soutenir les priorités nationales. Elle devrait reposer principalement sur des normes et des objectifs de rendement plutôt que sur les façons d'atteindre ces objectifs, ce qui permettrait une plus grande flexibilité sans nuire à la poursuite de l'intérêt public. La réglementation devrait être appuyée sur des éléments probants et tenir compte des connaissances les plus récentes. Les mesures réglementaires doivent être régulièrement et systématiquement examinées, et supprimées ou modifiées au besoin; de nouvelles mesures doivent être créées pour tenir compte de l'évolution des préférences et des attentes des consommateurs, des progrès scientifiques et technologiques et des changements dans l'environnement commercial.
2. **EFFICIENCE** - Les exigences en matière d'analyse, les mesures et l'application réglementaires devraient être proportionnelles aux problèmes et aux risques en cause. Le gouvernement devrait concevoir et mettre en oeuvre la combinaison d'outils appropriée de la manière la moins coûteuse possible en vue d'atteindre les objectifs stratégiques visés. On devrait prévoir des guichets uniques entre les ministères et entre les gouvernements. Il faut que les organismes de réglementation comprennent l'impact cumulatif de la réglementation et tentent d'éviter les chevauchements, les doublons, les incohérences et les conséquences non voulues.
3. **RAPIDITÉ D'ACTION** - Les décisions réglementaires et les services gouvernementaux doivent être rendus de manière à refléter le rythme auquel les nouvelles connaissances se développent, les besoins des consommateurs évoluent et les entreprises exercent

- maintenant leurs activités. Des échéanciers et des normes devraient être élaborés et mis en oeuvre pour la prise de décisions.
4. **TRANSPARENCE** - L'accessibilité et la transparence du système réglementaire doivent être maximisées pour promouvoir l'apprentissage et la mise en commun de l'information, et pour renforcer la confiance du public envers la qualité de la réglementation canadienne et l'intégrité du processus, et ce, aussi bien au pays qu'à l'étranger. Les objectifs des politiques devraient être clairement définis. Les organismes de réglementation doivent exposer leurs priorités, expliquer leurs décisions, montrer en quoi elles sont conformes à l'intérêt public et se soumettre à l'examen du public. L'information sur les programmes réglementaires et les exigences de conformité devrait être disponible facilement, en version imprimée aussi bien qu'électronique. Le système réglementaire devrait être davantage prévisible afin d'offrir une certaine certitude à ceux qui y sont assujettis. Il devrait faciliter la participation des citoyens et des entreprises au moyen de consultations et d'engagements actifs.
 5. **IMPUTABILITÉ ET PERFORMANCE** - Les organismes de réglementation doivent rendre compte des résultats de leurs activités. Ils doivent annoncer les résultats qu'ils prévoient obtenir et rendre compte des progrès accomplis en vue de les obtenir. La performance devrait faire l'objet d'une surveillance et être mesurée. Elle devrait aussi faire l'objet de rapports publics. Les résultats devraient être utilisés pour modifier les programmes réglementaires et être systématiquement mis à la disposition du public. Il faut que les systèmes réglementaires soient équitables et cohérents. Des procédures de dépôt de plaintes et d'appel devraient aussi être mises en place et être accessibles, équitables, efficaces et bien connues du public.

Source : Comité consultatif externe sur la réglementation intelligente; La réglementation intelligente -une stratégie réglementaire pour le Canada (2004); disponible sur le site Internet Bibliothèque et Archives Canada, au : http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/committees/smart_regulation-ef/2006-10-11/www.pco-bcp.gc.ca/smartreg-regint/fr/08/rpt_fnl.pdf (document consulté le 21 novembre 2006).

II. PARTICIPATION À DES TRAVAUX DE NORMALISATION OU SUR LA NORMALISATION

La participation à des travaux concrets de normalisation ou à des tables qui traitent de normalisation constitue un élément essentiel d'apprentissage et d'évaluation pour toute organisation de consommateurs qui songe à investir davantage ce champ d'intervention. Avant de réclamer une plus grande participation des consommateurs aux processus liés à la normalisation et de songer à établir les modalités d'une telle participation, un bilan s'impose sur les expériences de participation de l'Union des consommateurs à ce type de travaux, sur les ressources nécessaires pour y participer et sur les choix de priorités.

A) Certification des sacs de plastique

L'utilisation par les consommateurs de sacs de plastique pour l'épicerie ou d'autres emplettes pose un problème environnemental de taille.⁵⁷

La mise en marché de sacs biodégradables est envisagée comme une solution de rechange intéressante au plan écologique, d'autant qu'au cours des prochaines années, bon nombre de municipalités au Québec organiseront la cueillette sélective des matières putrescibles pour faire du compost et que la disponibilité de sacs compostables pourrait s'avérer fort utile, les citoyens pouvant les réutiliser pour recueillir leurs déchets compostables et en disposer par le système municipal de collecte.

On voit déjà depuis un certain temps des commerçants, petits ou gros, redorer leur image corporative en proposant à leurs clients des sacs biodégradables. Or, certains prétendent que, dans le cas de sacs oxo-dégradables, l'utilisation en compost pose problème et qu'il serait trompeur de prétendre qu'il s'agisse véritablement de sacs compostables ou biodégradables.

Dans le but de clarifier la situation, le Bureau de normalisation du Québec (BNQ), à la demande de Recyc-Québec, a lancé en 2006 une initiative visant à élaborer un processus de certification des sacs de plastique compostable.

L'Union des consommateurs, qui s'intéressait depuis déjà quelques mois à cette controverse, a demandé à participer au comité consultatif chargé d'orienter le BNQ dans l'établissement du processus de certification et a été admise à une table qui comptait également des représentants de Recyc-Québec, du monde municipal, des détaillants, de l'industrie du compostage ainsi que de l'industrie du plastique et de celle des sacs biodégradables.

Il s'agissait d'un comité fonctionnant sur le modèle d'un comité d'élaboration de norme, avec une représentation relativement équilibrée entre les intérêts commerciaux, l'intérêt des utilisateurs et l'intérêt général. Tout comme lors de l'élaboration d'une nouvelle norme, les représentants de l'organisme de normalisation, ici le BNQ, dirigent les discussions et agissent comme conciliateurs. À la différence d'un comité d'élaboration de norme, toutefois, ce type de comité ne cherche pas nécessairement à atteindre des niveaux de consensus raisonnables et les travaux ne doivent pas conduire à des décisions mais plutôt à des orientations, qui pourront ou non être prises en compte par le BNQ. En effet, puisqu'il ne s'agit pas d'établir une norme sur les sacs «compostables», mais bien de mettre en place un processus visant à certifier que tel ou tel sac répond aux exigences de normes déjà établies, l'organisme certificateur, qui prend la responsabilité de certifier, se réserve le droit de décider lui-même de la façon dont il entend le faire.

L'Union des consommateurs était familière avec le processus d'élaboration d'une norme, sans toutefois connaître cette nuance concernant l'élaboration d'un processus de certification. La précision a été apportée aux membres du comité dès le début des travaux et n'a pas été sans causer un certain malaise, d'autant que la composition du comité et l'orientation choisie dans

⁵⁷ Selon Recyc-Québec, chaque année, environ 2 milliards de sacs en plastique sont utilisés au Québec seulement, pour satisfaire les besoins des consommateurs, ce qui représente 10 sacs par famille, par semaine. Les sacs R2, pour l'environnement ! – Recyc-Québec. [En ligne] <http://www.recyc-quebec.gouv.qc.ca/client/fr/rubriques/Nouvelles.asp?id=348> (page consultée le 19 novembre 2006)

certain documents de travail pouvaient laisser croire qu'il existait un parti-pris en faveur de l'inclusion des sacs oxo-dégradables dans la certification «compostable».

Le comité s'est réuni à quatre reprises et, à la date de rédaction du présent rapport, les travaux tirent à leur fin.

Notre participation nous aura permis de constater qu'un débat de ce type, même sur un sujet aussi circonscrit que la «compostabilité» des sacs de plastique, peut en fait receler des enjeux complexes autour desquels il n'est pas nécessairement facile de situer le meilleur intérêt des consommateurs. Alors que la controverse alimentée par les médias laissait croire qu'une certaine industrie trompait les consommateurs en qualifiant ses sacs de biodégradable, le fait d'assister à un débat d'experts et de prendre connaissance de la documentation sur le sujet nous amène à conclure que les enjeux sont plus complexes qu'il n'y paraît et que la vérité n'est pas toujours si facile à débusquer.

Bien que l'issue de ce dossier ne soit pas encore connue, nous tirons de l'expérience un bilan positif et croyons que la présence d'un représentant de l'Union des consommateurs aura été pertinente à la fois pour l'organisme et le comité et qu'elle aura contribué aux travaux. Nous constatons également que même un mandat unique, qui semblait à première vue assez circonscrit, aura accaparé, contre toute attente, des ressources considérables et exigé une somme de travail importante. Notre implication dans ce dossier, en plus de représenter une expérience terrain non négligeable, nous a donc de plus fourni ample matière à réflexion quant à la réelle capacité, pour une organisation de consommateurs, de participer de front à plusieurs délégations ou travaux liés à la normalisation.

B) Comité consultatif sur COPOLCO

COPOLCO est le Comité pour la politique en matière de consommation de l'Organisation internationale de normalisation (ISO). C'est l'instance internationale toute désignée pour les questions qui touchent à la participation des consommateurs, puisque l'un de ses mandats se lit comme suit: Étudier les moyens susceptibles d'aider les consommateurs à bénéficier de la normalisation et les moyens susceptibles d'améliorer leur participation aux travaux de normalisation nationale et internationale.⁵⁸

La contribution du Canada aux travaux de COPOLCO est assurée par le Conseil canadien des normes (CCN), sous les recommandations de son Comité sur les intérêts des consommateurs et du public (CICP) et plus particulièrement de l'un de ses sous-comités, le Comité consultatif canadien sur COPOLCO (CAC-COPOLCO).

Un représentant de l'Union des consommateurs a été invité à se joindre au CAC-COPOLCO en avril 2005, quelques semaines avant la réunion annuelle de COPOLCO, qui avait lieu à Toronto en mai. La participation directe de l'Union des consommateurs aux échanges a consisté en deux réunions et une conférence téléphonique.

La rencontre COPOLCO de Toronto a été l'occasion de prendre connaissance du fonctionnement d'une rencontre internationale d'intervenants en normalisation et des sujets qui y sont abordés. Une délégation sud-américaine de représentants d'associations de consommateurs ayant participé au projet du Bureau régional des Caraïbes et de l'Amérique du sud (ROLAC) de Consumers International s'est jointe à la rencontre, à l'invitation des organisateurs canadiens. Le coordonnateur du projet a pu présenter aux délégués les résultats préliminaires du projet ROLAC.

Lors des travaux, le représentant de l'Union des consommateurs devait se contenter du statut d'observateur, ce qui fut néanmoins des plus instructifs.

La rencontre a également été l'occasion de nombreux échanges informels, lors, notamment, d'une rencontre entre la délégation française et les différents intervenants francophones du Canada, où il a entre autres été question de la place du français dans le monde de la normalisation.

Finalement, la réunion annuelle de COPOLCO a permis de tenir une journée d'ateliers de formation, dont le thème principal était la participation des consommateurs dans la normalisation. Le représentant de l'Union des consommateurs a agi comme animateur à l'une des tables de discussion.

⁵⁸ Site web de ISO, [En ligne] <http://www.iso.org/iso/fr/stdsdevelopment/tc/otherbodies/TechnicalCommitteeDetailPage.TechnicalCommitteeDetail?COMMID=4677> (page consultée le 11 octobre 2006)

Parmi les résolutions et les suivis à cette rencontre annuelle, mentionnons les éléments suivants :

- Élaboration d'un plan de mise en œuvre découlant du plan stratégique 2005-2010 d'ISO;
- Suivi des travaux du comité *Consumer protection in the global marketplace*;
- Suivi des travaux de comité sur la gestion de conformité, sur la sécurité des produits et sur le rappel de produits;
- Mise à jour des réflexions sur l'opportunité de recommander une nouvelle norme ISO sur le commerce électronique;
- Élaboration d'une brochure à l'intention des consommateurs sur les différents symboles graphiques utilisés sur les produits;
- Poursuite des travaux sur le commerce de produits usagés et des préoccupations liées à la santé, la sécurité et l'environnement;
- Suivi des travaux de comités sur les services financiers et sur les normes en matière de tourisme;
- Suivi des travaux d'élaboration d'un guide sur les normes de services;
- Suivi des travaux du comité sur la participation des consommateurs, et en particulier, des rapports à produire sur l'évaluation de la participation et sur les mécanismes de financement;
- Suivi des travaux d'élaboration des normes sur les codes de conduite (ISO 10001), la résolution des plaintes (ISO 10002) et des modes externes de résolution des litiges (ISO 10003);
- Élaboration d'un document d'orientation sur les guides ayant une dimension de protection du consommateur;
- Intervention auprès de certaines instances d'ISO pour que les travaux de normalisation portant sur la sécurité puissent intégrer davantage les préoccupations liées à la protection de la vie privée.

Le comité a par la suite préparé la participation canadienne à la réunion annuelle de 2006, qui a eu lieu en Malaisie en mai. Outre les sujets précités, le Comité a abordé certains thèmes d'intérêt pour les consommateurs ou qui font partie du plan de travail de COPOLCO pour 2007 :

- le suivi des travaux sur la responsabilité sociale des entreprises;
- les labels de produits écologiques;
- les ressources pour financer une plus grande participation des consommateurs;
- l'élaboration d'une norme pour le commerce équitable;
- la place des normes en réglementation.

Au-delà de la participation aux rencontres, la participation aux travaux du CAC-COPOLCO s'est avérée, pour l'Union des consommateurs, exigeante à plusieurs égards. Plus d'une centaine de courriels traitant de quelques dizaines de documents postés sur un Intranet du CCN ont été échangés au cours de l'année. Il est bon d'ajouter que les autres membres du Comité sont en place depuis quelques années, la majorité travaillant à plein temps en normalisation; l'utilisation d'un langage d'initié, souvent hermétique, parsemé d'acronymes, est donc la règle, ce qui rend pour un non initié plus difficile encore la tâche que constitue la prise de connaissance et la compréhension des documents et des échanges. Ajoutons aussi que tous les travaux se déroulent uniquement en anglais. Finalement, les sujets abordés au sein de COPOLCO se sont révélés plus vastes et plus complexes que ce que l'Union des consommateurs aurait pu le penser à priori.

En conclusion, cette première année de participation aux travaux de COPOLCO constitue un début d'immersion qui aura tout juste permis à l'Union des consommateurs de s'adapter au discours et aux thèmes et surtout, de constater l'ampleur de la tâche et l'importance stratégique, pour les consommateurs, des sujets qui sont abordés au COPOLCO et, de ce fait, l'importance pour les représentants des consommateurs de disposer des ressources nécessaires, en temps et en personnel qualifié, pour établir une stratégie claire et efficace et se donner les moyens de faire entendre leurs voix de façon éclairée. Les travaux qui touchent la participation des consommateurs aux processus de normalisation, qui se poursuivent, se révéleront essentiels et, de ce fait, ne manqueront pas de nous intéresser.

C) Groupe de travail sur la participation des consommateurs

Le Conseil canadien des normes (CCN) a créé en 1999 le Comité sur les intérêts des consommateurs et du public (CICP), un comité consultatif chargé de fournir au CCN des orientations sur les questions qui touchent les consommateurs.

En juillet 2005, suivant une priorité identifiée dans la mise à jour 2005-2008 de la Stratégie canadienne de normalisation (SCN), soit de «faciliter la participation des consommateurs aux forums nationaux, régionaux et internationaux de normalisation»⁵⁹, un groupe de travail du CICP a été formé avec pour tâche de traiter exclusivement de la représentation des consommateurs dans les processus de normalisation, tant au plan national qu'international. Un représentant de l'Union des consommateurs a été invité à se joindre à ce groupe. Au sein du groupe de travail, ce représentant compte parmi les deux seules personnes issues d'une association de consommateurs, la seconde étant une représentante d'Option consommateurs.

Le groupe de travail s'est donné les objectifs suivants :

- Proposer une définition de la représentation des intérêts des consommateurs et du public;
- Faire l'inventaire des politiques pertinentes sur la représentation des intérêts des consommateurs et du public;
- Identifier les meilleures pratiques de représentation des intérêts des consommateurs et du public au plan régional, national et international, ainsi que les méthodes d'évaluation de la participation effective;
- Évaluer l'efficacité des activités de représentation des intérêts des consommateurs et du public dans le cadre de la SCN pour en identifier les faiblesses et les façons de les améliorer;
- Évaluer les critères de recrutement des représentants de l'intérêt des consommateurs et du public et les responsabilités de ces représentants;
- Faire l'inventaire des sources de financement disponibles pour les représentants des consommateurs canadiens aux plans national et international;
- Recommander au CICP des solutions de rechanges et de nouvelles approches pour améliorer la participation des consommateurs et des critères pour en mesurer l'impact.

Onze conférences téléphoniques ont eu lieu depuis la création du Groupe de travail. Un questionnaire sur la représentation des consommateurs a été élaboré à l'intention des organismes d'élaboration de normes (OEN) qui, au moment d'écrire ces lignes, étaient en phase de compiler la cueillette d'information. Un travail d'inventaire des sources de financement disponibles est également en bonne voie d'être terminé. Plus d'une vingtaine de documents, en provenance du Canada et de l'étranger, ont été postés sur l'Intranet à titre de documents de références. L'un d'eux a d'ailleurs été soumis par l'Union des consommateurs, qui porte sur les politiques en vigueur en Australie en vue d'encadrer l'attribution du statut de représentant des consommateurs⁶⁰, une question importante liée à la représentativité de ces représentants.

⁵⁹ Stratégie canadienne de normalisation : Mise à jour 2005-2008, Conseil canadien des normes [En ligne] http://www.scc.ca/Asset/iu_files/CSS_update_f.pdf, page 10 (document consulté le 12 octobre 2006)

⁶⁰ Treasury of the Australian government, Principles for the Appointment of Consumer Representatives - Final Paper - 2005 [En ligne] <http://www.treasury.gov.au/contentitem.asp?pagelD=&ContentID=994> (page consultée le 8 octobre 2006)

Constatant que la tâche serait trop imposante pour que son mandat puisse être réalisé par le biais de la seule implication de ses membres, le Groupe de travail s'est récemment adressé au CCN pour obtenir le financement nécessaire pour lui permettre d'attribuer à un contractuel le mandat de rassembler les informations et de produire un premier projet de rapport. Cette tâche devrait être complétée en février 2007; les travaux du Groupe de travail se poursuivront donc au moins jusqu'au printemps 2007.

Les résultats de ces travaux devraient représenter une pierre angulaire dans la réflexion stratégique que doivent mener les associations de consommateurs en regard des questions de normalisation. En outre, les conclusions du Groupe de travail jouiront d'une grande crédibilité et d'une influence certaine au sein du CCN et des autres parties intéressées.

D) Comité consultatif québécois pour les consommateurs du BNQ

Le Bureau de normalisation du Québec (BNQ) a créé, en 2003, le Comité consultatif québécois pour les consommateurs (CCQC) qui a pour mandat de faire valoir au sein du BNQ les intérêts des consommateurs en matière de normalisation et d'identifier les difficultés reliées à la participation des consommateurs aux processus de normalisation.

Outre des membres du personnel du BNQ, le Comité est composé de représentants de groupes de consommateurs, de l'Office de la protection du consommateur ainsi que d'universitaires intéressés au domaine de la consommation. Le Comité se réunit une à deux fois par année.

Jusqu'à présent, l'existence du CCQC aura surtout permis à certains groupes moins familiers avec les réalités de la normalisation de se mettre à jour en ce qui concerne l'information sur les processus de normalisation, les acteurs, les initiatives d'élaboration de normes en cours ainsi que sur les différents travaux portant sur la participation des consommateurs. Par sa participation à ce Comité, l'Union des consommateurs a, jusqu'à maintenant, apporté davantage d'informations nouvelles à la table qu'elle n'en a elle-même obtenu.

Le CCQC ne s'est par ailleurs, jamais penché sur une définition plus précise de son mandat, ni n'a élaboré de plan de travail. À cet égard, le responsable du BNQ a exprimé le souhait d'organiser une rencontre avec l'Union des consommateurs et l'Office de la protection du consommateur en vue de préciser les attentes mutuelles quant à l'élaboration d'un plan de travail pour le CCQC. Cette rencontre, malgré les tentatives, n'a toujours pas eu lieu.

Il est probable qu'en 2007, le CCQC se penche finalement sur l'élaboration d'un plan de travail précis et en arrive à traiter de questions plus fouillées en matière de participation des consommateurs en normalisation.

E) Projet ROLAC

En avril 2006, l'Union des consommateurs a été invitée à participer à une rencontre internationale à Sao Paolo (Brésil), rencontre qui menait à terme le projet de coopération internationale sur la participation des consommateurs en normalisation mené sous l'égide du Bureau régional des Caraïbes et de l'Amérique du sud (ROLAC) de Consumers International (CI).

La rencontre visait à mettre en commun les différents constats que révélait le projet qui consistait, rappelons-le, à dresser, pour chaque pays participants, un état de la situation de la participation des consommateurs aux processus de normalisation et à organiser, pour les pays d'Amérique du sud, des tests de produits afin d'évaluer leur conformité avec les normes en vigueur.

Outre les présentations des participants des pays concernés, nous avons pu assister à une présentation de la responsable des questions de normalisation du bureau principal de CI à Londres qui a entretenu les participants sur les initiatives en cours au sein de ISO et de COPOLCO, ainsi que sur les règles particulières entourant la participation des consommateurs, favorisant une participation plus large, qui ont été adoptées dans le cadre de l'élaboration d'une norme ISO sur la responsabilité sociale des entreprises (RSE).

Le représentant de l'Union des consommateurs a pour sa part présenté les résultats du projet de recherche déposé l'année précédente⁶¹.

Les comptes rendus de cette rencontre n'ont pu être étudiés en détail à ce jour, puisqu'ils ne sont disponibles pour l'instant qu'en Espagnol. Le rapport final du projet ROLAC est joint en annexe⁶². Consumers International a exprimé son intention de produire un rapport sommaire qui combinerait les travaux de l'Union des consommateurs avec ceux du ROLAC et qui tracerait un aperçu panaméricain de la participation des consommateurs en normalisation, en plus d'aborder la question de la participation au plan international. Les participants ont aussi évoqué la possibilité de maintenir et de développer un réseau d'échanges sur la normalisation entre associations de consommateurs des Amériques.

⁶¹ Union des consommateurs, Pour une plus grande participation des consommateurs aux processus de normalisation. Août 2005, révisé en janvier 2006.

⁶² Voir le rapport final du projet ROLAC.

BILAN DES EXPÉRIENCES DE PARTICIPATION EN LIEN AVEC LES ENJEUX STRATÉGIQUES

Au sein de l'Union des consommateurs, les associations membres ont eu l'occasion, par le biais du rapport «*Pour une plus grande participation des consommateurs aux processus de normalisation*», de s'initier au monde relativement hermétique et fort mal connu de la normalisation. La recherche a de plus été présentée à l'occasion d'un Conseil général. Les associations membres n'ont cependant pas, à ce jour, participé à des travaux en lien avec la normalisation, sauf l'une d'entre elles⁶³, et n'ont pu suivre les différentes expériences en normalisation de l'Union des consommateurs que par le biais des compte-rendus qu'ont pu leur en faire leurs représentants sur les instances de l'organisme, à qui ont été communiqués les rapports d'activités.

Nos diverses expériences de participation aux initiatives en cours liées à la normalisation nous aurons tout de même permis de tirer certains constats au sujet de la normalisation.

- La normalisation constitue un champ d'expertise spécifique, qui comporte ses propres modes de fonctionnement, voire même son propre langage;
- Les travaux ne peuvent être suivis que par des personnes qui soient parfaitement à l'aise avec la langue anglaise;
- Au sein des groupes de travail et des Comités qui réfléchissent à divers aspects de la normalisation, tels le CIPC, le CAC-COPOLCO ou COPOLCO, on continue de noter une sous-représentation marquée des consommateurs et ce, alors même que l'objet du comité ou du groupe de travail porte justement sur la représentation des consommateurs. On constate aussi, par contre, une forte représentation des organismes d'élaboration de normes ou d'autres spécialistes de la normalisation.
- Notre participation nous a laissé avec la perception que notre participation souffrait d'un décalage causé par une carence dans l'appropriation d'un discours propre à la normalisation que les autres participants maîtrisent plus aisément;
- Le travail en comité d'élaboration de norme ou en comité conseil sur un mode de certification est pour sa part très spécifique au sujet abordé, qui peut être très pointu (ex.: certification des sacs de plastique compostable) et demande donc une expertise particulière ou à tout le moins, un important investissement en temps en vue de comprendre les enjeux de manière suffisamment approfondie;
- N'eût été de la contribution du Bureau de la consommation (BC) par le biais du présent projet, ces initiatives n'auraient été appuyées d'aucun apport financier particulier pour l'organisme. Il faut souligner qu'à notre connaissance, il n'existe pas d'enveloppe de

⁶³ L'Association des consommateurs pour la qualité dans la construction (ACQC) a participé, en 2000, à un comité d'élaboration d'une norme du Bureau de normalisation du Québec sur la caractérisation de la pierre de remblai utilisée en construction résidentielle.

subvention réservée à la participation des associations de consommateurs à des travaux de normalisation. Ainsi, le choix d'une association de consommateurs de demander une contribution au BC. à même l'enveloppe globale de son programme, pour des travaux liés à la normalisation implique, pour cette association, un plus grand risque de voir diminuer sa part de financement dévolue à d'autres travaux.

Nos expériences nous ont donc amené à réaliser à quel point une plus grande participation aux processus de normalisation est susceptible de poser d'importants problèmes de ressources et de choix de priorités au sein même de l'Union des consommateurs. Cette préoccupation, qui a d'ailleurs été exprimée tout aussi clairement par les associations de consommateurs d'Amérique du sud, vaut tout autant pour le mouvement de consommateurs au Canada ou au plan international. Au vu de ces expériences, il apparaît clairement qu'il serait illusoire de prétendre vouloir s'impliquer dans des processus de normalisation simplement en ajoutant ce champ d'intervention à tous ceux qu'investissent déjà les associations de consommateurs et en espérant trouver les ressources pour le faire en faisant simplement financer ici et là quelques-unes des activités entreprises dans le cadre de certaines initiatives de normalisation.

Dans ce contexte, il apparaît primordial d'attendre l'aboutissement des travaux et des réflexions en cours sur la participation des consommateurs et sur les ressources nécessaires à cette participation au sein même des structures nationales et internationales de normalisation: le CCN et le CIPC au Canada, et COPOLCO au sein d'ISO avant de pousser plus loin quelque initiative visant l'investissement des processus de normalisation par les associations de consommateurs. Des représentants des consommateurs ont suivi ces travaux et ont eu l'occasion d'y contribuer. Le mouvement des consommateurs serait maintenant en droit de prétendre que «la balle est dans le camp de la normalisation». Il est à espérer que les résultats de ces initiatives offrent des pistes de solution aux problèmes qui posent à la participation des groupes de consommateurs des obstacles à ce jour insurmontables.

Avant la fin de ces travaux et sans les pistes de solutions qui devraient en découler, la mise en commun par les associations de consommateurs de leurs réflexions sur les enjeux et la recherche de pistes d'action communes semble à tout le moins prématurée.

Cela dit, il faut bien réaliser que la recherche de solution face au problème de manque de ressources paraît d'autant plus pressante que, comme nous l'avons vu plus haut, les thèmes qui s'accumulent sur les tables nationales et internationales de normalisation interpellent au plus haut point les consommateurs: sécurité des produits, protection de la vie privée, protection des consommateurs dans le commerce électronique, traitement des plaintes, résolution des litiges, responsabilité sociale des entreprises, commerce équitable, notamment, sont des sujets où la normalisation ne peut pas se passer d'une participation pleine et entière des consommateurs.

De plus, en tenant compte des conclusions du Comité consultatif externe sur la réglementation intelligente, il devient évident que l'amélioration effective de la participation des consommateurs dans les processus de normalisation devient une condition préalable essentielle, pour le gouvernement du Canada, aux réformes réglementaires qu'il s'appête à lancer. Encore une fois, comme nous l'avons constaté, l'une des premières recommandations du Comité qui semble avoir été mise de côté est la nécessité de mieux soutenir financièrement les associations de consommateurs.

Pourtant, il apparaît clairement, pour l'Union des consommateurs, qu'il est absolument nécessaire que les associations de consommateurs suivent de près et participent aussi activement que possible à plusieurs des chantiers de réformes réglementaires décrits dans le présent rapport, notamment ceux qui portent sur l'exigence générale en matière de sécurité et sur la Loi sur la protection de la Santé. Cette participation essentielle sera-t-elle possible sans des ressources additionnelles?

CONCLUSION : RÉFLEXIONS STRATÉGIQUES DES ASSOCIATIONS DE CONSOMMATEURS SUR LA NORMALISATION ET LA RÉGLEMENTATION

Avant d'entreprendre des échanges avec les partenaires et les ONG sur le bilan de ses recherches et de ses expériences et sur son analyse des enjeux, l'Union des consommateurs estime qu'il est indispensable d'attendre les résultats des travaux en cours qui portent sur la possible participation des groupes de consommateurs aux processus de normalisation. L'Union des consommateurs juge en effet qu'il sera nécessaire, lorsqu'ils seront disponibles, d'étudier attentivement les résultats de ces travaux et de procéder à une réflexion stratégique, au sein même de sa propre structure fédérative, c'est-à-dire parmi les associations de consommateurs membres de l'Union des consommateurs, sur la normalisation et sur le degré de participation qu'elle entend y investir et sur l'appui qu'elle compte apporter à l'ensemble du processus.

En effet, l'ampleur des expériences, constats et enjeux décrits dans le présent rapport et le fait que des travaux fondamentaux en lien avec la participation des consommateurs et les ressources nécessaires à cette participation soient en voie d'être complétés ont fait en sorte que la réflexion en cours au sein de l'Union des consommateurs n'a pu être achevée.

Il nous semble indispensable, dans un premier temps, d'établir et de partager une base de connaissances sur les différents enjeux. Le temps requis pour cette appropriation est important, tout comme l'est la réflexion stratégique qui doit suivre. Et, comme nous l'avons souligné, les associations membres doivent intégrer ces réflexions à l'ensemble de leurs autres préoccupations dans un contexte de rareté des ressources.

Il n'en demeure pas moins que le présent rapport et les enjeux qui y sont décrits ne peuvent qu'interpeller fortement les associations de consommateurs. En outre, certains débats sur les pièges de la normalisation dans un contexte de déréglementation et du désengagement de l'État de certaines de ses responsabilités à l'égard de la régulation des marchés, de la sécurité, de la santé ou de l'environnement, ont déjà été abordés au sein de l'Union des consommateurs ainsi qu'avec ses partenaires sans que les groupes n'aient pu en arriver à une conclusion définitive sur ces sujets. Les enjeux entourant la modernisation des lois et règlements portant sur la protection de la santé et les exigences de sécurité des produits, par exemple, ont été perçus comme étant particulièrement importants. Ces sujets restent à étudier, à comprendre et à suivre attentivement.

Les membres de l'Union des consommateurs ont exprimé un intérêt certain pour continuer à suivre de près les enjeux entourant la participation des consommateurs aux processus de normalisation. Les questions touchant les ressources financières nécessaires pour assurer une participation efficiente ont évidemment été considérées comme primordiales. On constate à quel point la participation actuelle à certains travaux en cours est accaparante; nous en sommes arrivés à la conclusion que cette participation à elle seule pouvait aisément nécessiter l'équivalent en ressources d'une personne à plein temps.

L'Union des consommateurs se montre également intéressée par plusieurs des initiatives de normalisation en cours, comme la responsabilité sociale des entreprises, le commerce électronique ou la protection de la vie privée.

Les instances de l'Union des consommateurs ont tenté d'évaluer l'opportunité de créer avec les autres associations de consommateurs du Québec ou du Canada un espace de discussion sur les questions touchant la normalisation. Comme nous le mentionnions plus haut, il a été jugé prématuré d'élargir immédiatement les consultations, trop d'éléments complémentaires à la réflexion étant attendus dans les prochains mois, qui nécessiteront à leur tour, au sein même de l'Union des consommateurs, des évaluations et des discussions plus poussées.

L'Union des consommateurs s'est engagée, suite à son assemblée générale annuelle de 2006, dans une démarche de révision de son plan stratégique, qui devrait conduire à l'élaboration d'un nouveau plan stratégique pour 2007-2010. Cette démarche constituera certainement une occasion d'approfondir la réflexion sur la normalisation et de préciser un plan d'action sur le sujet.

Entre-temps, il apparaît primordial de poursuivre notre participation aux travaux en cours, de suivre de près les chantiers de modernisation réglementaire décrits dans le présent rapport et de faire pression pour que soit reconnue la nécessité d'un meilleur soutien financier des groupes de consommateurs.

RECOMMANDATIONS

Considérant les enjeux stratégiques de première importance décrits dans le présent rapport et qui touchent la modernisation réglementaire en cours au Canada, la participation des consommateurs aux processus de normalisation et les moyens à mettre en œuvre pour que soient financés adéquatement les groupes de consommateurs;

Considérant que des travaux importants devraient s'achever au cours des prochains mois au sein de groupes de travail canadien et international;

Considérant l'élaboration en cours du plan stratégique 2007-2010 de l'Union des consommateurs;

Considérant qu'il importe pour l'Union des consommateurs de poursuivre et d'approfondir sa réflexion sur ces questions et de se donner un plan d'action clair qui tiendra compte des conclusions des travaux en cours, avant d'élargir la réflexion et le dialogue à d'autres partenaires stratégiques;

Nous recommandons :

- Que l'Union des consommateurs poursuive sa participation aux initiatives en cours sur la normalisation;
- Que l'Union des consommateurs exerce une veille sur les initiatives de modernisation réglementaire et qu'elle maintienne sa participation ou initie de nouvelles participations à certaines d'entre elles, notamment celles portant sur une exigence générale de sécurité des produits et celle portant sur le Renouveau législatif en lien avec la protection de la Santé;
- Que l'Union des consommateurs tente de remettre à l'agenda politique des réformes réglementaires en cours la conclusion du Comité consultatif externe sur la réglementation intelligente portant sur la nécessité d'un meilleur financement des groupes de consommateurs;
- Que l'Union des consommateurs intègre les différents enjeux décrits au présent rapport à sa réflexion dans le cadre de l'élaboration du plan stratégique 2007-2010.

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**ANNEXE 1 A MODEL FOR CONSUMER REPRESENTATION IN
STANDARDISATION IN CANADA**

**A model for consumer
representation in
standardisation in
Canada**

**A briefing paper by
Union des Consommateurs**

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1. Introduction

The following report examines existing models for consumer representation in standardisation with the aim of developing an appropriate model that could be applied in Canada to improve the current state of consumer NGO involvement in standardisation. The report is intended to inform discussion amongst consumer NGOs. It has to be stressed that this report is written from the perspective of a consumer NGO. Consumer NGO priorities with respect to their participation may not be the same as SDO priorities for soliciting consumer input. Accordingly SDOs may have to facilitate consumer input from other sources or using other mechanisms to meet their obligations under the principles guiding consensus in Canada. Any model for consumer representation in standardisation that is to be adopted in Canada has to respect the right of the Consumer NGOs to participate in standards work on their terms and the need for the standards system to identify the consumer interest across potentially a larger number of standards projects than consumer NGOs may be willing or able to participate in directly or even indirectly. Lastly whilst this report has been written from a consumer NGO perspective the report is also relevant to a broader discussion of consumer and public interest representation in standardisation.

2. Growing importance of standardisation

Product standards have always played a role in ensuring the safety of consumer products. Increasingly however product standards are addressing other aspects of consumer interest such as environmental aspects, performance and ease of use by the elderly and disabled. Standards themselves are being developed not only for products but also for management systems, services and most recently Governments around the world pursuing an agenda with priorities such as the liberalisation of trade, reduction of trade barriers and regulatory reform are increasing turning to standards as a means to achieve their objectives. By virtue of their reference in the WTO Technical Barriers to Trade agreement standards form the basis for dispute resolution under the WTO. In the European Union and in the United States policies are in place that requires regulators to systematically defer to standards where the use of such standards is consistent with the attainment of their legitimate regulatory objectives.

3. Consumer participation in decision-making processes

The right to be heard is one of the four consumer rights elaborated by US President Kennedy⁶⁴. Kennedy's declaration has gone on to form the basis of consumer policy around the world. The United Nations adopted Guidelines for consumer protection expanding on Kennedy's declaration in 1985. The UN recognised as a legitimate need of consumers the freedom to form consumer and other relevant groups and organisations and the opportunity for such organisations to present their views in decision-making processes affecting them⁶⁵. http://www.jfklibrary.org/fa_pof.htm In the last two decades in particular governments around the world have devoted more attention to public consultation during the regulatory process. Interestingly there is growing consensus on the need for consumer representatives to be reimbursed for their time as well as for their travelling and other related expenses⁶⁶.

⁶⁴ Special message to Congress on protecting consumer interest 3/15/62

⁶⁵ United Nations Guidelines for Consumer Protection (as expanded in 1999) United Nations Department of Economic and Social Affairs 2003

⁶⁶ Australian Commonwealth Consumer Affairs Advisory Council, Principles for the Appointment of Consumer Representatives: A process for Governments and Industry, Final paper, June 2005

4. Core Values for the Practice of Public Participation

The International Association for Public Participation IAP2, an international leader in public participation, has developed its own "IAP2 Core Values for Public Participation" for use in the development and implementation of public participation processes. These are reproduced in the box below.

IAP2 Core Values for Public Participation

1. The public should have a say in decisions about actions that could affect their lives.
2. Public participation includes the promise that the public's contribution will influence the decision.
3. Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.
4. Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
5. Public participation seeks input from participants in designing how they participate.
6. Public participation provides participants with the information they need to participate in a meaningful way.
7. Public participation communicates to participants how their input affected the decision.

Source: IAP2 web-site accessed 30th January 2006

Of particular relevance in our discussion are point 4 which advocates the active identification of stakeholders and the facilitation of their input and point 5 which proposes that input should be sought from stakeholders in designing how they participate.

⁶⁷ New Zealand Ministry of Consumer Affairs, Guidelines for Consumer Representation, March 2003

5. Recognition of the value of consumer representation in standardisation and policy frameworks for consumer representation

Voluntary standards development is a process of consensus which implies the full and active participation of all the concerned stakeholders. Consumers are an important stakeholder group with respect to many voluntary standards. Standards can impact for example on health and safety, consumer welfare and environmental protection.

International level

Under ISO rules national standards bodies have a responsibility to organize their national input in an efficient and timely manner, taking account of all relevant interests at their national level⁶⁸. The ISO/IEC Directives go on to require technical committees and subcommittees to “seek the full and if possible formal backing of the organisations having liaison status for each and every document in which the latter is interested.”⁶⁹

Regardless of the simple need to reflect all stakeholder interests to have true consensus consumer representatives in particular have a valuable contribution to make to standards development. Consumer representatives bring unique experience of how products and services are actually used in real life. Consumer representatives also have a broader perspective than many representatives in standards committees and have no vested interest to protect.

Respect for the value of consumer representation at the international level goes back to a 1964 ISO Council Resolution stating their desire to promote consumer participation in standards work in recognition of: “the wish for consumers at national and international level for greater involvement in the framing of decisions affecting their interests”⁷⁰. ISO founded its own consumer policy committee in 1978, COPOLCO. COPOLCO reports to the ISO Council. ISO funds the full-time secretariat of COPOLCO. ISO and IEC went on to jointly agree guidelines for their membership in 1979 recognising the basic principle that all interests should be taken into account in the international standardisation process including that of consumers⁷¹. These statements have been reinforced in ISO’s code of ethics that commits ISO members to take appropriate measures to facilitate the participation of consumers and other affected parties from civil society, SMEs and public authorities⁷². The current ISO strategy 2005-2010 also identifies the need to take action to better ensure the participation of stakeholders and specifically proposes to “investigate funding to support the participation of under-represented groups (e.g. consumers)”⁷³.

European Union

In the European Union, where perhaps most consideration has been given to consumer representation in standardisation, there is a raft of political declarations extolling the value of consumer representation in European and international standardisation⁷⁴. The European Union

⁶⁸ ISO/IEC Directives Part 1, Fifth Edition 2004 Clause 1.7.1

⁶⁹ ISO/IEC Directives Part 1, Fifth edition 2004 1.17 Liaison with other organisations

⁷⁰ ISO Council Resolution 48/1964

⁷¹ ISO/IEC Statement on consumer participation in standards work, November 2001

⁷² ISO Code of Ethics 2004

⁷³ ISO Strategic Plan 2005-2010

⁷⁴ List of references to Consumer representation in Standardisation in Official European and International documents, May 2004

has recognised the need for consumer representatives to be able to participate directly in standards work, that consumer representatives should have adequate resources to allow them to do so without loss of earnings and that they must be able to set their own priorities for their participation⁷⁵. The European Commission has gone as far as to say that, in the case of the social partners, direct participation at every stage of the standardization process and at every level of the standardization body concerned - from working group to General Assembly - is a political precondition for the acceptability and further development of European standardization⁷⁶. As a result of the political importance attached to stakeholder involvement the European standards bodies have opened up their structures to allow direct participation by interest groups organised at the European level. The European committee for standardisation, CEN, by far the largest of the three European standards bodies, has an associate membership program that is open to such groups and guarantees access to technical bodies, technical management bodies and to policy and management bodies such as its own administrative council and general assembly. At present European organisations representing consumers⁷⁷, environmental groups⁷⁸, small and medium-sized enterprises⁷⁹, trade unions⁸⁰ and a number of industry sectors are associate members⁸¹. The other two European standards organisations CENELEC and ETSI have their own equivalent arrangements that permit stakeholder participation. For its part the European Union funds the European organisations representing the social partners. ANEC, the European consumer voice in standardisation has a budget for 2006 of €1,409 741 (CA\$1,957,588). It receives 95% of that from the European Commission and 5% from the European Free Trade Association (EFTA). The EU has established a legal basis for the funding so that it can continue without interruption on the basis of annual subventions.

Canada

The value placed on consumer representation is evident in Canada in the documents setting out the fundamental values of the Canadian national standards system.

The SDOs are required to abide by the Procedural documents promulgated by the SCC. These include CAN-P-1D, *Accreditation for Standards Development Organizations*, which stipulates inter alia that:

“The accreditation of SDOs is contingent upon the SDO providing a consensus process. The principles used in Canada governing the consensus process are:

1. Equal access and effective participation by concerned interests (this entails sufficient resources, equal access to information, and understanding of the process by all parties). In order to ensure effective participation, resources (money, training, staff expertise, etc.) shall be identified for member participation.

.....

⁷⁵ OJ L23/26. 28 January 1988 “Commission Recommendation of 10 December 1987 on the involvement and improvement of consumer participation in standardization (88/41/EEC).”

⁷⁶ Commission Communication on Standardization in the European Economy. OJ C96. 15 April 1992

⁷⁷ ANEC the European consumer voice in standardisation

⁷⁸ ECOS, European Environmental Citizens Organisation for Standardisation

⁷⁹ NORMAPME, European Office of Crafts, Trades and Small and Medium-sized Enterprises for Standardisation

⁸⁰ ETUI-REHS European Trade Union Institute for Research, Education and Health and Safety, Health and Safety Department.

⁸¹ European Chemical Industry Council, (CEFIC), European Construction Industry Federation, (FIEC), European Medical Technology Industry Association (EUCOMED) European Committee for Co-operation of the Machine Tool Industries (CECIMO)

Note: access by all parties poses particular challenges to finding the resources to permit participation by SMES, academics, and consumers.⁸²

CAN-P-2E, *Criteria and Procedures for the Preparation and Approval of National Standards of Canada*, specifies that any standard developed by an SDO must meet certain precise criteria in order to be recognized as a National Standard of Canada, including Criterion 1 below:

“The significance, timeliness and suitability of a standard as a National Standard of Canada shall be determined on the basis of a reasonable agreement among the views of a number of capable individuals whose collective interests provide a balanced representation of producers, consumers and others with relevant interests, as may be appropriate to the subject in hand.”⁸³

Most recently the Canadian national Standards Strategy has recognised the need to acknowledge groups that currently are under-represented in the system and explore ways to correct these imbalances. Non-governmental organizations have been identified as a group that possibly could benefit from greater levels of engagement.⁸⁴ The strategy acknowledges that the development of a more robust stakeholder base will result in a more representative system with applicable and acceptable standardization products. The strategy specifically proposes to facilitate consumer input into national, regional and international standardization for a by Examining and making recommendations on alternative methods and approaches to facilitate consumer input into standardization activities at the national, regional, and international levels.

NGO Priority versus the need for consumer input to ensure the quality of consensus

Consumer NGOs do accord importance to participation in standards development work. In Europe it has been consumer groups that have identified the need for direct participation in European standardisation and the need to coordinate national consumer representatives. Consumers International has developed its own standards programme at the international level as part of the implementation of its overall priorities. However Europe has also shown the way in demanding that the standards system and/or public authorities need to fund consumer participation in standards work. We have seen ANEC receives nearly CA\$2,000,000 but large sums are also available at the national level. For example in 2000 in the UK funding amounted to £440,000 (CA\$892,877) and in Germany €716,000 (CA\$994,249).

The question of external funding for the work of consumer representatives reflects the fact that consumer involvement lends enormous value to the quality of the overall consensus embodied in the standards development process. This is reflected in many of the expressions of policy we have examined in the last section, both in Canada and abroad. This means that we have to consider the issue of consumer representation in standardisation not only from the perspective of the consumer NGOs who may wish to participate but also from the perspective of the standards development organisations themselves who have a vested interest in having the voice of the consumer heard and contribute to the quality of their consensus processes. In particular in many countries where the consumer NGO sector lacks resources, it could well be the case that the priority that the SDOs will place on having consumer involvement in a specific standards project may in fact exceed the priority the consumer NGOs may be willing to place on

⁸² Standards Council for Canada, CAN-P-1D, Accreditation for Standards Development Organizations, December 1999, Section 1,

⁸³ Standards Council of Canada, CAN-P-2E, Criteria and Procedures for the Preparation and Approval of National Standards of Canada, January 1992, p. 3.

⁸⁴ Canadian Standards Strategy Update 2005-2008, Standards Council of Canada, January 2005 section 1.2(b)

such participation given the competing demands for their limited resources. This fact has implications not only for funding but for how consumer representation may need to be structured to meet the needs of both the consumer NGOs and of the SDOs.

6. Brief overview of the current structures in Canada

In order to describe the structures in place at the moment we need to have a look at the Standards Council of Canada, the SDOs and any relevant structures outside the national standards system.

Standards Council of Canada

The SCC operates its own Consumer and Public Interest Committee (CPIC). CPIC's mandate is to advise council on consumer and public interest related issues. Its mandate does not contain any reference to its being a representative body of consumer and public interests nor having any specific coordination role. The composition of CPIC conforms to a balanced matrix that identifies the following categories, consumer representatives, environment representatives, labour representative, academics, federal government, occupational health and safety, industry and SDOs/consumer professionals. CPIC also oversees the Canadian Advisory Committee to COPOLCO, the consumer policy committee of the International Organisation for Standardisation, ISO.

The membership of the Standards Council is laid down in legislation.⁸⁵ There is to be one Federal government representative, the chairperson and vice-chairperson of the Provincial-Territorial Advisory Committee established under the Act, the chairperson and vice-chairperson of the Standards Development Organisations Advisory Committee, also established under the Act, and not more than eleven other persons to represent the private sector, including non-governmental organisations. The Standards Council does not appear to have developed a balanced matrix to be applied to these nine members.

Canadian Standards Association

CSA operates a consumer program that dates back at least to the eighties. CSA provides generous support through dedicated staff resources, training and expenses for travel. The program relies extensively on volunteer members of the public as consumer representatives. Some consumer organisations do participate in specific CSA projects. Whilst the program is held in high regard internationally one issue that has been identified in a research study is the need to strengthen links with NGOs⁸⁶. There are ad hoc coordination networks but no single body with any management or oversight role with respect to the program. CSA has consumer representation on its board. There is no formal balanced matrix applied to the composition of the board but the nominating committee is charged with ensuring diversity in the membership and there have been consumer representatives on the board for at least the last two decades. CSA does apply a balanced matrix to its standards policy board. There are representatives from four groups namely, producers, general interest, users and government.

Bureau de Normalisation du Quebec

⁸⁵ Standards Council of Canada Act R.S. 1985, c. S-16, at section 3

⁸⁶ Consumer Involvement in CSA's Standards Work for Energy Efficiency, A report for the Office of Energy Efficiency of Natural Resources Canada and the Consumer Services Program of the Canadian Standards Association, Bruce J. Farquhar June 30 2003

BNQ relatively recently formed a consumer advisory committee. Unlike CPIC the composition of the committee is entirely made up of NGO representatives and consumer experts for example from academia. Whilst this forms a good representative group of consumer interests in Quebec BNQ does not at present provide any funding for consumer representatives so there is no program of representation activity for the committee to oversee such as there is under the CSA consumer program. BNQ does not have a board.

Underwriters Laboratory of Canada

ULC has no specific program for consumer representatives. ULC appears to have very limited funds to reimburse the expenses of consumer representatives that participate in its work. ULC does not have consumer representation on its board.

Canadian General Standards Board

CGSB has no specific program for consumer representatives and appears to have very limited funds to reimburse the expenses of consumer representatives that participate in its work. The CGSB does not have any board of directors being in essence a government department. It does have an advisory committee for its conformity assessment activities, its Management Systems Committee. There is as yet no advisory committee for its standards operations.

Canadian Consumer Initiative

The CCI is an initiative of the Office of Consumer Affairs of Industry Canada. The objective is to encourage greater co-operation amongst the consumer representatives to make more effective use of their limited resources and to provide a forum within which the federal government can raise issues for discussion amongst the consumer NGOs. There are five consumer organisations that participate in CCI. They are in alphabetical order, the Automobile Protection Association, the Consumers Council of Canada, Option Consommateurs, the Public Interest Advocacy Centre ("PIAC") and Union des Consommateurs. To date CCI has not considered the issue of consumer representation in standardisation.

Canadian Environmental Network

CEN is a coordination structure for nominating representatives from environmental organisations to consultation processes. CEN is responsible for selection criteria for representatives, coordinating support for representatives through caucuses and requirements on representatives to report back. CEN has a budget of over CA\$1,000,000 is funded through a grant of over CA\$600,000 from Environment Canada and from fees it charges organisations that wish to locate a representative from an environmental organisation. CEN maintains a secretariat of eleven staff. CEN does not appear to have been engaged in voluntary standards development work.

Ongoing initiatives in Canada

CPIC has established a task force on consumer representation (CPIC-TF-CR) to help identify solutions to implement the undertakings contained in the Canadian National Standards Strategy. CSA is also pursuing the implementation of the recommendations of its research report in particular with outreach to NGOs around the country.

7. Experience from other jurisdictions

Experience from Australia

Consumer representation in standardisation in Australia is coordinated by the Consumers Federation of Australia (CFA), an umbrella organisation with 99 member associations. CFA has been involved in standards development for over twenty years. The project has been managed on behalf of CFA since 1999 by the Consumer Law Centre of Victoria (CLCV) which employs a part-time standards coordinator. As of August 2005 there were 40 representatives sitting on 65 committees. Funding for the CFA Standards project is provided by Standards Australia. This funding covers coordination of consumer representatives as well as travel expenses for participating in meetings. Funding is not at present available for physical networking or training. It can be assumed that the relative size of Australia and the widespread distribution of its population in a number of conurbations around the country makes physical meetings of consumer representatives a particular challenge. Standards Australia has developed its own policy document SG-020-1 - Participation by End-use Consumers in Standardization. The policy document lays out the provisions of the project and also includes conditions for the reimbursement of travel expenses incurred by consumer representatives who are not affiliated to the CFA project. The standards project has developed a policy framework for its activities. This includes consumer representative selection criteria and a consumer representative agreement that requires inter alia written reports to be submitted to the standards coordinator. The well-resourced Australian Consumers Association, which is not a member of CFA, is a member of Standards Australia and also participates directly in standards work. There is no representation on the relatively small board of Standards Australia. Standards Australia has also been holding public forums to galvanise interest and support for new standards projects. One of the first of these held in 2004 dealt with women's clothes sizes that has resulted in the creation of a special working group.

Australia is an interesting example as CFA effectively runs a consumer program on behalf of SA. This is a little like ANEC in Europe where ANEC is independent of the European Standards Organisations but the funding is provided in Australia by Standards Australia whereas in Europe it is provided by the public authorities. CFA takes on the responsibility for having in place procedures for selecting representatives, ensuring their accountability, the proper financial management of the project and reimbursement of expenses. Where resources in the SDO are limited this may be an interesting model to follow. Especially where there are perhaps more than one SDO that can contribute to the funding. The model applied in Australia also allows for a diversity of consumer involvement with consumer representatives being reimbursed through the project or independently by Standards Australia and through the holding of public forums.

Experience from Europe

Europe has probably the longest experience of dealing with consumer representation in standardisation. A French law of 1941 refers to the need for consumer participation in standards development⁸⁷. The Woman's Advisory committee of the British Standards institute, BSI, was the forerunner of the current consumer policy committee and was formed in 1951. The consumer council of DIN, the German standards institute was established in 1964. In all some eleven European countries have structures that deal exclusively with standards issues⁸⁸. There are also consumer representatives on the boards of ten national standards bodies. Many of the coordination structures are exceedingly well-resourced and financed. BSI-CPC has approximately six staff, coordinates the activities of approximately 75 volunteer consumer

⁸⁷ Article 5 of the decree of 24 May 1941

⁸⁸ ANEC, Consumer Participation in Standardisation, National Arrangements in the EU and EFTA, May 2001

representatives and receives funding in the order of £440,000 (CA\$892,877). BSI provides a comprehensive package of support of its volunteer representatives that includes being equipped with computers, access to high speed internet, reimbursement of travelling and other associate expenses, training, and staff support. The DIN Consumer Council in Germany has six professional staff, coordinates the activities of 60 representatives and receives around €716,000 (CA\$994,249). These high levels of support are justified by the central role that standards have assumed in the establishment of the internal market in the European Union. Product safety regulation makes systematic use of European standards as a base. Standards are also being increasingly used in pursuit of other public policy objectives such as environmental protection, health, protection of consumers' economic welfare, and liberalisation of the service sector.

These initiatives at the European level and the transfer of standardisation activity from the national to European level have also increased the need for national consumer representatives to coordinate their activities at the European level. National standards bodies in the majority of cases now prepare national delegation positions to be represented at the European level. National consumer representatives have a vested interest in lobbying their colleagues in other countries to try to ensure that all national delegations take account of the consumer viewpoint. The first calls for coordination at the European level date back to the early eighties when a small pilot project, SECO, was launched in 1983. This eventually led to the establishment of a new European consumer organisation, ANEC, whose sole mandate is to represent the consumer interest in European standardisation. ANEC is financed for 95% out of the budget of the European Parliament and for 5% by the European Free Trade Association (EFTA). ANEC has a budget of €1,409 741 (CA\$1,957,588)⁸⁹ and nine professional staff⁹⁰.

In accordance with the political declarations of the European public authorities, ANEC is represented at all levels and stages of the European standardisation process. It has access to all technical bodies and also technical management and policy committees tight up to and including management boards. ANEC has no voting rights on draft standards but can lobby national consumer representatives to influence their national delegation position. ANEC representatives receive a wide variety of support. They have their travelling expenses reimbursed. They are supported by the professional ANEC secretariat and the coordination groups they operate. ANEC also has a budget line for research and testing projects to provide support to consumer positions on technical bodies. ANEC also in a limited number of domains, where it is very difficult to identify volunteer consumer representatives, employs paid consultants to represent the consumer interest.

Experience in the United States

Whilst some consumer groups such as the Consumers Federation of America and the Consumers League have participated in standards development there appears to be a lack of sustained interest from some very significant groups such as Consumers Union and Public Citizen that needs to be explained. In part this may be due to a lack of resources with both organisations reluctant to accept any government funding or funding from private standards development organisations. On the part of Public Citizen at least there is some ideological opposition to the role of private standards developers in government regulation. However we

⁸⁹ Minutes of the meeting of the Advisory Committee for Community actions in support of consumer policy, Brussels, 29 of November 2005

⁹⁰ ANEC Web-site accessed 31st January 2005

also have to have regard to the way standards are used by Federal agencies in regulations. US Federal agencies are required to defer to voluntary standards where this is consistent with their legitimate regulatory objectives⁹¹. This requirement is more serious than any commitment contained in the Canadian regulatory policy as the federal agencies are subjected to scrutiny by the office of management of the budget to whom they must report every year on their voluntary standards activities⁹². They are also required to justify why they have chosen to promulgate their own standard rather than use an existing voluntary standard. Canadian RIAS requirements have been found lacking in their treatment of regulatory alternatives such as standards⁹³. The notice and comment rulemaking procedure that the US federal agencies are obligated to follow also provides greater openness and transparency about the use of voluntary standards and the federal agencies themselves are obligated to evaluate the efficacy of any voluntary standards they wish to rely on in regulation. This is a more rigorous approach than that in the European Union where using a European standards confers a presumption of conformity with the appropriate legal standards. Deficient standards are open to challenge and this presumption of conformity can be removed. European standards however are not subjected to the same individual scrutiny before publication as is the case in the US.

Notwithstanding the foregoing comments there is considerable consumer representation in standardisation in the US. ANSI runs a Consumer Interest Forum. The chair of the ANSI Consumer Interest Forum is a member of the ANSI board of governors⁹⁴. The chair of the ANSI consumer interest forum is by right a member of the ANSI Board of Directors⁹⁵. The SDOs accredited by ANSI also have some initiatives in place to support consumer representation. By virtue of their accreditation they are required to have a balance of interests and to ensure there is a lack of dominance by any single interest category in the process.⁹⁶ ASTM has a vice-chair for consumer participation in its F-15 Committee on consumer products and provides reimbursement of travelling expenses for some consumer representatives. UL actively recruits consumer representatives for its Standards Technical Panels. UL has a very impressive consumer program which provides representatives with training, staff support, reimbursement of travelling expenses, laptops, an honorarium, high speed internet access, networking opportunities and other benefits. They also operate a Consumer Advisory Council that meets annually. There is also a Public Safety and Consumer Affairs Committee and the UL Board of Trustees includes two consumer representatives.

Audits carried out under the accreditation process operated by ANSI examine whether identified interest categories on specific projects have adequate representation and if not examines what measures have been made to attract additional members⁹⁷.

The recently revised American National Standards Strategy also highlights the need to improve the responsiveness of the standards system to the views and needs of consumers⁹⁸.

⁹¹ National Technology Transfer and Advancement Act (NTTAA) Public Law (P.L.) 104-113)

⁹² Office of Management and Budget (OMB) Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities

⁹³ Assessing the Contribution of Regulatory Impact Analysis on Decision Making and the Development of Regulations, 31st August 2000, The Regulatory Consulting Group Inc. The Delphi Group

⁹⁴ ANSI Constitution and By-laws January 2005 Section 3.02

⁹⁵ Section 3.02, American National Standards Institute, Constitution and by-laws approved January 2005

⁹⁶ ANSI Essential Requirements: Due process requirements for American National Standards January 2006

⁹⁷ Clause 8.1.3 ANSI Auditing Policy and Procedures, January 2005

⁹⁸ United States Standards Strategy, December 8 2005 Article V.3

8. Developing a model

If we examine the case studies we have briefly presented we can see that a model for consumer representation comprises a number of different elements. There is the policy framework which governs a number of different aspects relevant to consumer European in standardisation. This can include the treatment of consumer representatives in the rules and procedures, rules for funding, selection criteria for representatives, and guidelines for consumer representatives. Taken all together these documents create the framework for the participation of consumer representatives in standardisation. There are then the structures that are in place to facilitate the implementation of the policy framework. Lastly there are other initiatives that support consumer representation in standardisation. Underpinning all of these elements is the question of resources.

In examining the best practice that we can derive from our models need to have regard to certain basic issues that are critical to the success of consumer representation in standardisation.

Important issues to address with respect to consumer representation in standards work

A number of research projects have identified important issues to address with respect to consumer representation both in Canada⁹⁹ and abroad¹⁰⁰. Reflecting also on the policy frameworks we see in place we can discern key issues that need to be addressed.

These issues include

- Participation at all stages and all levels of the standards development process
- Funding
- Priority setting
- Accountability
- Coordination
- Support
- Access to expertise

Participation at all stages and all levels of the standards development process

In addition to participating directly in standards development work consumer representatives need to be able to influence the priorities set by the SDOs to ensure that they reflect consumer priorities. At the end of the development consumer representatives also need to be able to participate for example in any dispute resolution process that may be required to resolve difficulties encountered in achieving consensus on a specific issue. Participation is also required higher up in the SDOs in technical management and policy committees. Consumer representatives have an interest in the openness and transparency of the policies and procedures in place and their effective application in practice. The work of these committees also greatly influences the work of the individual technical bodies and in some instances it may be easier for consumer representative to affect change in the first instance at a higher level. Horizontal issues may be more efficiently dealt with in the first instance with the issuing of

⁹⁹ Consumer Involvement in CSA's Standards Work for Energy Efficiency, A report for the Office of Energy Efficiency of Natural Resources Canada and the Consumer Services Program of the Canadian Standards Association, Bruce J. Farquhar June 30 2003

¹⁰⁰ Involving Consumers, Everyone Benefits, UK National Consumer Council, September 2002 and unpublished research from BSI-CPC into barriers to consumer representation, March 2005

advice or guidance documents that all technical bodies need to follow. Issues such as meeting the needs of seniors and persons with disabilities, environmental aspects of product standards, product information and warnings, and child safety are all issues that need to be addressed across a wide variety of technical bodies and consumer representatives have a vested interest in ensuring that they are tackled in a consistent and coherent manner.

Funding

We have seen from the best practice examples that dedicated sustainable funding is the key to successful consumer representation in standardisation. Such funding should not only reimburse consumer representative costs incurred as a result of their participation in standards work but should also provide resources for supporting their activities through coordination, networking, access to expertise and other necessary forms of support.

Of course SDOs, government and industry may wish to fund consumer representatives on specific projects or solicit consumer input in some other way. There is nothing contradictory in that but this has to be seen as part of the mosaic of ensuring consumer voice is heard in standards work and is not necessarily directly relevant to NGO participation. There is no doubt that more efficient NGO participation demands dedicated, sustainable funding.

Priority setting

Obviously consumer representatives will want to influence the priorities of the SDOs. Consumer representatives however will also want to prioritise their own activities deciding as much as possible themselves where they commit the resources that are available to them for participating in standards work. We need to recall the IAP2 core values for public participation which clearly identifies that participants should have some input as to how they participate. It should be stressed that this is written obviously from the NGO perspective. In meeting their requirements for consensus SDOs may feel the need when NGOs are not interested to engage in a particular piece of work to identify consumer representatives on their own or to try to identify the consumer issues in a specific piece of work.

Accountability

Consumer representatives have some responsibility to be accountable for their actions in standards committees. Depending on the circumstances of their participation they may need to be representative of the NGO that has nominated them or accountable to a broader NGO community or even representative of the general consumer interest. This will depend largely in the mandate they have received for their representation. Where an NGO commits to participate then obviously its representative should be accountable to faithfully representing the views of that NGO. Where a representative was nominated on behalf of a group of NGOs then obviously the representative would need to be accountable for the views of that group. Lastly when a representative is nominated with the specific purpose of representing the general consumer interest then they are accountable to that larger group. We should be careful not to require more accountability from consumer representatives than we would from representatives from other stakeholder groups. An industry representative from one company does not have the same mandate or accountability as the representative from an industry association. That should also be the case with consumer representation. There is nothing contradictory about having a diversity of opinion within the consumer NGO community. We do however have to be clear that consumer representatives have to be held accountable for what they can reasonably be

responsible for. There should be clear procedures and mechanism in place to ensure the accountability of their actions. This can be affected through reporting back

Coordination

The coordination of the activities of consumer representatives serves in the first instance to avoid the unnecessary duplication of effort. Consumer NGOs can identify the priorities that matter to them and concentrate on participating on them whilst sharing information with a broader group of consumer representatives. A coordination structure can also go a long way to addressing issues of accountability by bringing consumer representatives into contact with as broad a group of consumer interest as possible. Consumer representatives can use the coordination structure for reporting and networking purposes canvassing views on issues they are engaged on. The exchange of information promoted through such arrangements also aids in the identification of horizontal issues that may need to be addressed higher up in the standardisation system.

Support

Consumer representatives obviously need reimbursement of the costs associated with their participation in standards development work. There is some discussion that this needs not only to address travelling expenses but other out of pocket expenses such as elder care and childminding, in particular if the demographic profile of consumer representatives is to be as broad as possible. The standards system has also become very dependant on information technology with consumer representatives needing access to computers and high speed internet. There are of course costs associated with these IT demands. In addition to reimbursement of costs there are also many other forms of support that are necessary for efficient and effective consumer representation. We have dealt with some of these in our discussion of coordination and accountability. Standards development however is also a complicated procedure with its own rules of procedure and jargon. It is vitally important for consumer representatives to understand how the system operates and when to time their input and how to structure it for maximum effect. Consumer representatives also may require training to address the committee skills that are needed to participate effectively in a consensus-based environment.

Access to expertise

Very often the issues being dealt with in standards development, especially in the traditional product sectors, are technical and consumer representatives may need assistance to understand the consequences of proposals that are being made or may need technical assistance in drafting proposals of their own or articulating consumer demands in this technical environment.

9. Analysis of the current situation in Canada

To then develop new models for Canada we need to reflect on the comparison of the current situation in Canada with what can be observed in other jurisdictions.

Policy framework

The policy framework in place in Canada respects the notion that consumers should have access to the standards development process at the technical level. There are however no provisions to ensure that consumer representatives are systematically involved in the

management processes such as balanced matrices for governing boards. Furthermore the ISO/IEC statement clearly states with respect to finance that “If consumers are not able to finance their participation in the standardization process themselves, the national body should enable consumers to participate in priority areas of consumer interest. It should be recalled that consumers form an integral part of the consensus-building process.” The ISO Code of Ethics adopted in 2004 confirms that ISO members are committed to “taking appropriate measures to facilitate the participation of consumers.....” As we have seen these ISO recommendations are reflected in Canadian Procedural Documents¹⁰¹, which requires SDOs who wish to be accredited to provide a consensus process. The principles that the consensus process must respect include “Equal access and effective participation by concerned interests (this entails sufficient resources, equal access to information, and understanding of the process by all parties). In order to ensure effective participation, resources (money, training, staff expertise, etc.) shall be identified for member participation.” Given the variance in the arrangements in place in Canada and previous reports that have identified difficulties in obtaining support for consumer representatives it is not clear what minimum requirements are in place interpreting the requirement for “sufficient resources” contained in the principles guiding consensus in Canada.

Structures

None of the structures in place claims to be a representative body. Whilst there is then a priority-setting exercise in CPIC, for example, this can not be said to be entirely representative of the consumer NGO community. Furthermore CPIC does not have a discretionary budget of its own to enable it to undertake initiatives to implement its priority program. With the exception of the CSA consumer program which coordinates the activities of its volunteer consumer representatives none of the other structures in place has a specific mandate to coordinate consumer representation in standards work. To have effective coordination involving the NGOs any structure would have to be representative of the consumer NGOs and have the necessary resources to carry out priority-setting, fund consumer representatives directly where no other funding was available and coordinate the representatives activities.

Other initiatives

There is no formal flow of information between consumer representatives and other groups who may also represent their interests at part in least for example Federal and Provincial officials. This was one issue identified in the CSA study of energy efficiency standardisation¹⁰². NRCAN has a number of staff members who participate directly in standards work but other than encountering consumer representatives at meetings there is no formal exchange of information. NRCAN possesses a considerable amount of research material that could be useful for consumer representatives and has the resources perhaps to undertake research in support of consumer priorities. This contrasts with the situation in the US where the Consumer Product Safety Commission is publicising the positions its staff is taking on voluntary standards on its web-site and inviting all stakeholders to contribute. In Europe many government or quasi-government officials participate in the ANEC working groups. We have also seen that in Europe there is dedicated funding available for research projects. ANEC has a budget heading for research projects in support of consumer positions on standards committees.

¹⁰¹ CAN-P-1D, *Accreditation for Standards Development Organizations*

¹⁰² *supra*

Comparison of treatment of important issues under current situation in Canada and internationally

Participation at all stages and all levels of the standards development process

ANEC and many national consumer representatives in Europe have access to all stages and all levels of the European and respective national standards processes. This includes in many cases direct participation on managing boards. In the US and Australia there is consumer representation at a high level. In Canada the Standards Council does not apply a balanced matrix to the composition of the Council nor does the chair of CPIC serve on the council. There is at present no consumer representative. CSA is alone amongst the SDOs in having a consumer representative on its board. CSA does not apply any balanced matrix to the composition of its board but there is an effort to ensure diversity amongst its members and there has been a consumer representative for over twenty years. CPIC is able to nominate representatives to other advisory committees of Standards Council. There is some consumer representation on advisory committees and also on the Standards Board of CSA.

Funding

We have seen the substantial dedicated funding that is made available elsewhere particularly in Europe. In Canada there is no dedicated central funding pot that allows consumer NGOs to send representatives to standards committees of their choosing. Consumer NGOs can participate in the CSA program; they can also submit proposals for specific projects to OCA, in competition with other non-standards related projects. Limited funding for consumer representatives appears to be available from the other SDOs. The SCC does make some funding available for consumer representatives to attend international meetings but there is no dedicated budget for this and applications from all stakeholders are dealt with on a case by case basis until the travel budget is exhausted. It should be noted that the travel budget has declined considerably in recent years from a historical high of over \$800,000 to today where it stands at nearer \$200,000. Unfortunately this decline has taken place over a period of time that has seen an almost exponential rise in the relative importance of international standards development.

Priority setting

The most effective national programs, ANEC and CI all operate their own priority-setting exercises and have varying sizes of discretionary budgets at their disposal to pursue these objectives. COPOLCO also carries out a priority-setting exercise but is dependant on its member's resources to pursue the objectives. In Canada CPIC, CAC-COPOLCO and the CSA program all carry out priority-setting exercises. CPIC and CAC-COPOLCO due to their membership matrices are not representative of NGOs. Furthermore they do not have discretionary budgets to implement their priority programmes. CSA has a budget to implement its priorities. Research has shown that CSA needs to strengthen its links with NGOs something it is addressing today¹⁰³. There is no priority-setting exercise undertaken by the NGO community. Individual NGOs obviously set their own priorities for their participation but are hampered by the lack of resources and competing priorities from non-standards related issues.

Accountability

A number of consumer representatives report to CPIC. However it has recently been acknowledged that there has been no formal priority-setting exercise to determine which

¹⁰³ supra

committees CPIC receives reports from. The CSA consumer program also has a reporting mechanism for its members. Again the need to have closer ties to the NGO community has been identified.

Coordination

The principle of coordination is very well-established in especially Europe and Australia. In Canada the CSA consumer program tries to coordinate the activities of its consumer representatives. There is not however a coordination platform for consumer NGOs to coordinate their activities in standards development. The closest models we have seen in Canada being CCI that coordinates the five consumer organisations activities on consumer issues but to date has not touched on voluntary standards and CEN that coordinates representatives in consultation processes on behalf of environmental NGOs.

Support

SCC has a member training program as do some of the other SDOs. CSA puts on training events specifically targeted at its consumer representatives. Representatives from consumer NGOs can benefit from the training initiatives to the extent that they participate in the SCC or other SDOs and are able to access such training. The SCC reimburses travel for many of the NGO and consumer expert participants on CPIC and for some consumer representatives. The CSA consumer program reimburses travel for its consumer representatives. CSA comes closest in Canada to the "gold standard" for support to consumer representatives established by ANEC, BSI-CPC, DIN and UL.

Access to expertise

ANEC, CI and national consumer programs have access to research budgets or the results of applicable research. CPIC in the past has identified research needs but has been hampered by the lack of a discretionary budget of its own. The SCC has contributed to a number of relevant research projects on an ad hoc basis in the past. The OCA contributions program has also supported research projects addressing either specific standards projects or more generally the issue of improving consumer representation in standardisation.

10. A potetial model for Canada

The different models we have observed all have their own merits and shortcomings. Models such as ANEC, BSI-CPC and DIN Consumer Council are excellent but require investment of an order that may be hard to achieve in Canada. Some of the programs in the United States and the situation in Australia probably serve as the most interesting models for Canada. The UL program in the US for example is very similar to the CSA program and could be regarded as a gold standard for SDOs. As we cannot realistically expect all the SDOs to aspire to such a standard the Australian model also holds some promise for arrangements to complement the better SDO programs such as CSA. Australia is a smaller country but has found the resources to establish an independent NGO-run project to ensure NGO participation in its activities. At the same time it provides for a diversity of opinion through accommodating consumer representatives not affiliated with the program and Standards Australia runs other initiatives such as public forums to gather multi-stakeholder input.

Basic Principles

There are some basic principles that we can identify that any model applied in Canada should endeavour to respect

- The model should provide for consumer representation at all levels and all stages of the standardisation process including higher policy and technical management bodies
- Consumer representatives should be able to participate in standards work without loss of earnings
- Consumer representatives should have reimbursed all reasonable expenses associated with their participation in standards work
- The model needs to encompass both direct consumer NGO involvement and other forms of consumer representation
- The model should allow consumer NGOs some flexibility about how and where they choose to participate in standards development.
- NGOs should be able to determine their own priorities for participation.
- The model should provide for diversity in the opinions expressed by consumer representatives
- The model should permit SDOs to meet or exceed their obligation to implement the principles governing consensus in Canada and other criteria laid down in respect of their accreditation by the SCC
- The model needs to address the issue of dedicated sustainable funding for consumer representation in standardisation to ensure consumer representatives have access to adequate resources as required by the principles governing consensus
- The funding model should be flexible enough to allow for the possibility of a variety of funding sources for different activities
- The model should provide for improved information flow between the standards system and consumer NGOs

Key elements of the model

- The creation of a central focus point designed to help increase capacity amongst consumer NGOs to participate in standards development to complement the existing and future efforts by the SCC and the SDOs
- A revised policy framework that establishes a minimum standard that SDOs and the SCC would have to conform to in terms of the resources they make available for

consumer representatives and requires consumer representation at higher levels in the standards system

- There should be a dedicated funding source for consumer NGOs to draw on to undertake activities on their own initiative in addition to any other funding sources that may be available

A design for an appropriate model for Canada

It is suggested that to achieve the aims expressed above the following actions need to be undertaken

Policy Framework

- Establishment of minimum criteria for the provision of resources by SDOs and the SCC
- Requirement to have consumer representatives at higher levels in the SDOs and the SCC
- Development of policy guidance

Structures

- Establishment of new consumer NGO structure for consumer representation in standardisation

Other initiatives

- Improve information flow between consumer NGOs and potential strategic partners in the national standards system
- Improve links with research community

Detailed proposals

Minimum criteria for the provision of resources

The policy framework would need to be revised so there are minimum criteria for the SDOs to meet with respect to their obligations not only to permit consumer representatives to participate in their work but to actively facilitate that with respect to resources as per ISO/IEC recommendations and the CAN-P documents.

CAN-P-1 requires that accreditation is contingent upon the SDO providing a consensus process. The principles guiding consensus in Canada require equal access and effective participation by concerned interests. This entails amongst other things sufficient resources. In order to ensure effective participation SDOs are required to identify resources (money, training, staff expertise, etc.) for member participation. Furthermore the criteria note that "access by all parties poses particular challenges to finding the resources to permit participation by SMES, academics, and consumers." This needs to be interpreted as requiring special efforts by the SDOs to address the needs of these groups.

Criteria should be developed for what resources and efforts the SDOs should provide at a minimum to meet this definition of consensus. Obviously the gold standard of the UL program in the US or the CSA program in Canada should not be used as a basis for the minimum. There must however be certain actions and financial commitments that are required at a minimum to meet these requirements. It could be that these could be expressed in such a way as to leave the door open for the SDOs to sub-contract some of these actions to an independent consumer platform as is the case in Australia. SCC should also develop its own policy with respect to consumer representation that respects its commitments as an ISO member. Again the ISO/IEC recommendations and the ISO Code of Ethics make it clear that ISO members have to take a pro-active approach to securing resources for consumer representatives.

Requirement to have consumer representatives at higher levels

SDOs could also be required to have consumer representatives in their higher management structures. With respect to the SCC it is required by statute to have representatives from the Federal government, PTAC and SDOAC. The statute however appears to leave the composition of the other nine members up to the Standards Council. The Council seems to be free to apply a balanced matrix at this level as well or at a minimum to include the chair of CPIC on Council.

Development of policy guidance

The policy framework could also be enhanced by the development of rules concerning the reimbursement of consumer representatives and other forms of support. This is not necessarily to standardise such forms of support across different SDOs and the SCC but to ensure the establishment of a minimum standard which of course the SCC and the SDOs would be free to exceed. As noted below any standards project established by the consumer NGOs would also have to develop its own policy with respect to the selection of consumer representatives and their accountability.

Ensuring the implementation of the policy framework

Consideration also has to be given to how to verify that the policy framework is actually implemented. Benchmarking and the monitoring of specific performance indicators would provide much needed openness and transparency as to whether the SCC and the SDOs were respecting their own rules. Consideration is currently being given in ISO to the need for monitoring the composition of national delegations and other tracking other relevant performance indicators. Some effort should be made to compile statistics that should be available from SDOs and the SCC on the composition of committees respecting the balanced matrix principle and on the funding and other resources they provide to consumer representatives. The compilation of these statistics could be linked to the SCC audit process. Other proposed elements of the policy framework should be assessed as a part of the regular SCC audit process.

Structures

There appears to be a need for a coordination structure for consumer NGOs. This consumer NGO project could act as a focal point for consumer NGOs and the SDOs and the SCC in linking the national standards system and the consumer NGO community and ensuring open lines of communication. Open lines of communication will help ensure that consumer NGOs are aware of the priorities of the SDOs and the SCC and vice-versa. The project would be able to act as an interface between the consumer NGO community and the national standards system. The consumer NGO project should have access to in-house expertise to ensure it is able to

advise consumer NGOs on the appropriate opportunities to participate in the standards process to the greatest effect. The project could also develop capacity to comment on strategic and policy issues in the standards system and in the government that make reference to the use of standards.

For the project to be able to operate effectively it would have to have access to a dedicated sustainable funding source. At a minimum this should provide for some staff or consultant resource for the project to beginning functioning and carrying out its coordination and information channelling tasks. The next level of sophistication would see the project having a discretionary budget for reimbursing consumer representatives attendance at standards meetings. This would be additional to any other sources of funding available through the SCC or any programs maintained by the SDOs. With this funding would come the need for more accountability with the project having to develop policies for the determination of priorities, the selection of consumer representatives, the reimbursement of consumer representatives expenses and requirements for reporting back and consensus-building – to the extent that was possible.

Any project should respect the existing structures in Canada and could for example use the OCA's Canadian Consumer Initiative as a reference group in the first instance.

The consumer NGO project should complement the efforts of individual SDOs and the SCC by more closely implicating the consumer NGOs in their work and providing a clear communication channel. The consumer NGO project should not be viewed as competing with any initiatives the SDOs undertake.

Other initiatives

Improve information flow between consumer NGOs and potential strategic partners in the national standards system

There are other participants in the national standards system who could be expected to find common ground on some issues with consumer NGOs. These include other consumer representatives, government representatives, and representatives of other groups with potentially similar interests as consumer NGOs such as environmental groups, safety advocates, universities and independent research institutes. The consumer NGO standards project could provide a focus for raising the awareness of these other groups of representatives from the consumer NGOs and of the consumer NGO priorities.

Improve links with research community

If there is sufficient funding available then consumer NGOs could have access to funding to support their activities on standards committees. Failing that and to ensure the most efficient and effective use of existing research funding there should be improved links with the research community to help ensure standards related priorities for research are addressed. The consumer NGO project could undertake some outreach to effect this and OCA's own initiatives to link with the research community could also provide a platform for information exchange.

11. How to proceed

Funding

All the SDOs should have a responsibility to provide some funding to meet minimum criteria for their accreditation. This in no way limits them to the minimum amount and they are of course free to spend more on their own programs. The SCC also has a responsibility to provide some funding to meet its obligations as an ISO member. We should recall that in addition to being the guardian of the national standards system the SCC also operates itself a very significant number of Canadian advisory committees to international standards committees where consumer representation may be required.

Similarly government departments who promote the use of standards such as Industry Canada, NRCAN, Environment Canada, Health Canada, Agriculture and Agri-Food Canada and the Department of Finance all have a vested interest in an active consumer representation in standardisation in part to help meet their own consultation requirements. If incorporating standards by reference in regulation government departments can be more assured of a smooth running consultation process on the regulation if consumer representatives have been actively involved in the development of the standard.

The example of the Canadian Environment Network demonstrates the type of longer term funding arrangement that the government can enter into. Furthermore the issue of sustainable funding has been addressed in the follow-up to the Voluntary Sector Initiative. The Treasury Board Secretariat has published guidance to government departments on how to improve their funding practices when dealing with the voluntary sector. The guidance highlights the need for sustainable funding for NGOs and their activities. Providing sustainable funding for a consumer NGO standards project would of course be consistent with the TBS guidance.

Pilot project

In the first instance there could be a pilot project. The most relevant model for this is probably the Australian situation where there is funding for a part-time coordinator. As identified above the first tasks would be to establish the lines of communication between the consumer NGOs and the national standards system. Further tasks would include the establishment of consumer NGO priorities, commenting on strategic and policy issues of consumer interest and outreach. If there was sufficient funding for the project to reimburse consumer representatives then policy would have to be developed with respect to the selection of consumer representatives, their obligations and practical mechanisms for the coordination of the activities. In the first instance at least the CCI could serve as a reference group and provide a mandate for the project.

Consumer versus consumer and public interest

There may also be value in considering a broader approach. In particular depending on the role that the coordination structure plays it might be possible to enlarge the scope of the platform to include consumer and public interest. This would be most appropriate if the platform did not overtly seek to establish consensus amongst the NGOs. A diversity of opinion should be encouraged from the consumer and public interest communities and there should be no greater requirement placed on them to reach consensus than would be placed on say industry. ANEC adopts a policy of agreeing where agreement can be reached and permitting national representatives to represent their own views in respect of aspects where consensus cannot be reached. This principle could be adopted by the platform.

Annex

List of abbreviations used in this report

ACA – Australian Consumers Association
ANEC – European Consumer Voice in Standardisation
ANSI – American National Standards Institute
ASTM – American Society for the Testing of Materials

BNQ – Bureau du Normalisation du Quebec
BSI – British Standards Institute
BSI-CPC – Consumer Policy Committee of BSI

CCI – Canadian Consumer Initiative
CEN – European committee for standardisation, also Canadian Environment Network
CENELEC – European Committee for electro-technical standardisation
CAN-P – Canadian Procedural document
CFA – Consumers Federation of Australia, also Consumer federation of America
CGSB – Canadian General Standards Board
CI – Consumers International
CLCV – Consumer Law Center of Victoria
COPOLCO – Consumer Policy Committee of ISO
CPIC – Consumer and Public Interest Committee of the SCC
CPIC-TF-CR – CPIC Task Force on consumer representation
CSA – Canadian Standards Association
CU – Consumers Union

DIN – German Standards Institute

ECOS – European environmental citizens' organisations for standardisation
EFTA – European Free Trade Association
ETSI – European Telecommunications Standards Institute
ETUI-REHS - European Trade Union Institute for Research, Education and Health and Safety
EU – European Union

HC – Health Canada

IAP2 - The International Association for Public Participation
IEC – International Electro technical Commission
ISO – International organisation for standardisation

NCC – National Consumers Council in the UK
NGO – Non-Governmental Organisation
NORMPAME - European Office of Crafts, Trades and Small and Medium-sized Enterprises for Standardisation
NRCAN – Natural Resources Canada

OCA – Office of Consumer Affairs of Industry Canada

OJ – Official Journal of the European Communities

PIAC - Public Interest Advocacy Centre

PTAC – Provincial Territorial Advisory Committee of the SCC

RIAS – Regulatory Impact Assessment Statement

SA – Standards Australia

SCC Standards Council of Canada

SDO – Standards development organisation

SDOAC – Standards development organisation advisory committee of the SCC

SME – small and medium sized enterprise

UL – Underwriters Laboratory

ULC – Underwriters Laboratory of Canada

UN – United Nations

WTO – World Trade Organisation

**ANNEXE 2 SMART REGULATION AND OTHER LEGISLATIVE PROPOSALS
MAKING REFERENCE TO STANDARDS AND CODES**

**Smart regulation and
other legislative
proposals making
reference to standards
and codes**

**A briefing paper by
Union des Consommateurs**

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Introduction

The following paper examines some current proposals before the Government of Canada that seek to make greater use of standards and codes in support of public policy objectives. This report assesses from a consumer perspective what needs to be done to ensure a high level of consumer protection if standards and codes are to assume a more important role in the regulatory landscape.

Regulatory reform and the use of standards

The Organisation for Economic Cooperation and Development (OECD) has been at the forefront of inter-governmental efforts to promote regulatory reform. Regulatory reform is used in the OECD to “refer to changes that improve regulatory quality, that is, enhance the performance, cost-effectiveness, or legal quality of regulations and related government formalities. Reform can mean revision of a single regulation, the scrapping and rebuilding of an entire regulatory regime and its institutions, or improvement of processes for making regulations and managing reform. Deregulation is a subset of regulatory reform and refers to complete or partial elimination of regulation in a sector to improve economic performance”¹⁰⁴. The specific role of standards in supporting regulatory reform efforts has been acknowledged by the OECD¹⁰⁵. Many jurisdictions around the world have played special attention to the role of standards and codes in promoting a more efficient regulatory environment.

Experience from other Jurisdictions

Before going on to consider in greater depth the proposals in Canada let us examine some of the relevant experience from other jurisdictions that may serve to provide us with examples of best practice that could be applied here.

Australia

Australia has taken a very pro-active approach to regulatory reform. Regulatory authorities have to submit regulatory impact assessments (RIA) to the office of Regulatory Review (ORR)¹⁰⁶. RIA are published on government web-sites and the ORR Guide to regulations contains very specific guidelines relating to the completion of RIA that in part focuses on the active consideration of standards and codes. Regulators have to specifically explain why they have not adopted a relevant voluntary standard. The Council of Australian governments has also produced a set of principles for standard-setting¹⁰⁷. Within Australian legislation there are also a number of acts that make specific reference to the use of standards. Under the Trade Practices Act 1974 safety standards can be prescribed¹⁰⁸ and industry codes of conduct can be made enforceable.

¹⁰⁴ OECD (1997), The OECD Report on Regulatory Reform: Synthesis, Paris

¹⁰⁵ Regulatory reform and international standardisation, Working Party of the Committee on Trade, TD/TC/WP(98)36/Final 28 January 1999

¹⁰⁶ Office of Regulation Review A Guide to regulation second Edition December 1998

¹⁰⁷ Principles and guidelines for National Standard Setting and regulatory Action by Ministerial Councils and Standard-Setting Bodies Endorsed by COAG April 1995, amended November 1997 and June 2004, Council of Australian Governments

¹⁰⁸ Section 65E Trade Practices Act 1974

The use of standards and codes is also underpinned by a policy framework for the use of codes of conduct established by the Australian government¹⁰⁹ and guidance for preparing codes¹¹⁰. Industry Codes of Conduct are also enforceable under the Trade Practices Act¹¹¹ Guidelines have been prepared on making codes of practice enforceable under the Trade practices Act¹¹².

At the time of drafting this paper the Australian Productivity Commission had announced its intention to undertake a review of Standards Australia and the government relationship with standards development activities and conformity assessment¹¹³.

European Union

The establishment of a common market between the member states of the European Union has prompted the EU to adopt a flexible legislative approach that has greatly elevated the importance of voluntary standards. The enormous difficulty of reaching political agreement on technical issues forced the EU to seek another solution when harmonising different technical requirements for products. Under the so-called new Approach the EU seeks to achieve political agreement on the essential safety requirements but leaves the technical detail to be elaborated in voluntary European standards¹¹⁴. There are new approach directives covering a number of product groups including toys, gas appliances, medical devices and recreational craft. The approach contained in the new approach has now been broadened to include all consumer products not addressed in specific legislation through the application of a reference to standards in the General Product safety Directive. The GPSD is a catch-all directive that is the primary source of regulating a variety of consumer products such as juvenile products and playground equipment. Under the New Approach and the general Product safety Directive when European standards are duly adopted according to the procedures agreed by the European public authorities and the European standards bodies the reference to the standard is published in the Official Journal of the European Communities. Once the reference is published the European standard gives a presumption of conformity with the legal requirements and the product may be shipped anywhere in Europe. This presumption of conformity can be challenged by the public authorities and the reference to the OJ removed. There are other checks and balances in the system to try to ensure that the standards in the first instance respect issues such as consumer protection. The European public authorities insist on the right of economic and social partners such as consumer representatives to be able to participate at every level and stage of the standardisation process¹¹⁵. The European public authorities finance a European consumer association, ANEC, the European consumer voice in standardisation, to the tune of nearly CA\$2,000,000 every year. ANEC's task is to coordinate national consumer representatives and

¹⁰⁹ Minister for Customs and Consumer Affairs (1998); *Codes of Conduct: PolicyFramework*, Industry, Science, Tourism and Consumer Affairs, Canberra, March.

¹¹⁰ Fair Trading Codes of Conduct: Why have them, how to prepare them – A guide which was released by the Ministerial Council on consumer affairs in October 1996

¹¹¹ Part IVB Trade Practices Act 1974

¹¹² Prescribed codes of conduct policy guidelines on making industry codes of conduct enforceable under the trade practices act 1974 May 1999

¹¹³ Joint Press Release Treasurer & Minister For Industry, Tourism And Resources Productivity Commission To Examine Australia's Standards And Laboratory Accreditation Bodies 2 February 2006

¹¹⁴ Council Resolution of 7 May 1985 on a new approach to technical harmonisation and standards (OJ C136 of 1985-08-04)

¹¹⁵ Commission Communication on Standardization in the European Economy. OJ C96. 15 April 1992

to participate directly in European standardisation itself. The European public authorities also employ consultants who assess whether draft European standards conform to the essential safety requirements identified in the directives.

United Kingdom

The UK government has been at the forefront of regulatory reform in Europe through the activities of its Better Regulation Task Force. The Regulatory Reform Act 2001 received Royal Assent on Tuesday 10 April 2001. The main provision of the Act is to allow the reform of primary legislation by Regulatory Reform Order (RRO).

The UK has to implement European Union legislation so the pieces of European legislative discussed above are also in force in the UK. The UK however also have a number of home grown initiatives that make reference to the use of standards and codes.

The Director General of the Office of Fair trading has a duty to encourage the use of voluntary codes of practice by trade and professional associations¹¹⁶. Over time the OFT has gone beyond simply encouraging and has formally endorsed certain codes of practice. It has become clear over time however that the theoretical benefits of self-regulation were not being achieved with numbers of complaints running high and a low consumer awareness of codes. In a bid to combat this the OFT has launched following a period of consultation new two-stage approach to the development of codes. The first stage is the agreement of core criteria¹¹⁷. This is to be done in conjunction with affected stakeholders such as consumers and enforcement authorities. The second stage is field testing of the code.

United States

Regulation in the United States is overseen by the Office of Management of the Budget (OMB). The office for regulatory affairs of the OMB (OIRA) has a duty to review rules proposed by federal agencies. The National Technology Transfer and Advancement Act (NTTAA)¹¹⁸ require federal agencies and departments to defer to voluntary consensus-based technical standards whose widespread application would result in achievement of the regulatory objective being pursued. The use of any other standard must be justified in writing to the OMB.

Federal agencies and departments are furthermore required to actively participate in voluntary standards development activities. The National Institute of Technology and Standards (NIST) is required to report annually to the OMB on the progress agencies and departments are making towards the use of voluntary standards rather than government-unique standards¹¹⁹. Some statutes also make reference to the use of voluntary standards. The Consumer Product Safety Act for example requires Consumer Product Safety Commission to defer to voluntary standards where this is consistent with the mission of the agency¹²⁰. CPSC is obliged to take into account not only whether voluntary standard meets legitimate public policy objectives but what level of compliance with the voluntary standard is found in the marketplace¹²¹. Recently the CPSC has

¹¹⁶ Section 124(3) of the Fair Trading Act 1973

¹¹⁷ Consumer Codes Approval Scheme Core Criteria and guidance March 2004 (OFT390)

¹¹⁸ Public Law (P.L.) 104-113

¹¹⁹ Office of Management and Budget (OMB) Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities

¹²⁰ Sec 7(1) Consumer Product Safety Act 1972

¹²¹ Sec 7(1)(a) Consumer Product Safety Act 1972

sought to shed some light on its voluntary standards development activities through the publication of draft technical reports on its web-site¹²².

Summary

We can see that many jurisdictions have evolved frameworks and mechanisms to ensure that voluntary standards are systematically used in support of regulations. Consumer concerns with the systematic use of standards and codes revolve around the suitability of the standards and codes used, openness and transparency in the development of such standards and codes and the degree of compliance with them. Many of the different jurisdictions have developed procedures and policies to deal with these important issues.

Comparison of Best Practice observed with situation in Canada

The use of standards and codes in Canada is very much on an ad hoc basis. Regulators are supposed to take into account regulatory alternatives such as standards and codes and report on such in their regulatory impact assessment statements¹²³. However research has shown that consideration of regulatory alternatives in RIAS in practice is lacking¹²⁴. A report on the Canadian regulatory system was carried out in the framework of the OECD's ongoing work on regulatory reform¹²⁵. The OECD report recommended a number of policy options for future considerations. One of these was the need to review the requirements to assess regulatory alternatives. The OECD noted that the Canadian government had invested substantial time and effort in advising departments on how to fully explore alternative ways to meet policy objectives but its own research suggested that further efforts in this regard are needed.

Smart Regulation in Canada

Background

An external advisory committee on smart regulation (EACSR) as proposed in the Speech from the throne in 2002¹²⁶. The initiative was partly in response to the OECD Report on regulatory reform in Canada referred to above that was carried out at the request of the Canadian government in 2002. The report found that while generally there was much to applaud in Canada's regulatory reform efforts there was still potential for further improvement in a number of areas. As noted these included the consideration of regulatory alternatives. The external advisory committee was formerly constituted established in May 2003. Among its members was the executive director of Option Consommateurs.

Terms of reference of the external advisory committee

The committee was given the following broad terms of reference.

1. Develop a regulatory strategy designed for the 21st century, supporting Canada as a sovereign trading nation offering a high quality of life to its citizens.
2. Identify priority sectors and areas requiring regulatory reform in order for Canada to have a strategic advantage.

¹²² <http://www.cpsc.gov/volstd/standards.html> accessed 14 February 2006

¹²³ RIAS Writer's Guide, Treasury Board Secretariat, August 1992

¹²⁴ Assessing the Contribution of Regulatory Impact Analysis on Decision Making and the Development of Regulations, 31st August 2000, The Regulatory Consulting Group Inc. The Delphi Group

¹²⁵ Government capacity to assure high quality regulation OECD Reviews of regulatory reform Regulatory Reform in Canada OECD 2002

¹²⁶ The Canada we want, Throne Speech 2002

3. Review and provide an external perspective on current regulatory issues identified by departments and stakeholders.

Definition of smart regulation

The committee defined smart regulation at the outset as having “both protecting and enabling characteristics with the goals of promoting health, safety and sustainability, contributing to economic growth and reducing the administrative burden on business. Smart regulation protects citizens, consumers and the environment at the same time that it contributes to innovation for the social and economic benefit of Canadians.”

Vision and principles

The committee began by elaborating a vision and a set of principles for its work. The overall vision was that “Governments, citizens and businesses will work together to build a national regulatory system that maximizes the benefits of regulation for all Canadians, enables them to take advantage of new knowledge and supports Canada’s participation in an international economy.” The committee identified and further elaborated on three components within this vision, Trust; Innovation and Protection.

The principles espoused by the committee were

6. Effectiveness
7. Cost-efficiency
8. Timeliness
9. Transparency
10. Accountability and performance

A copy of the entire vision statement and principles are annexed to this paper.

Next the committee invited representations from interested parties to comment on a draft report.

Issues

The EACSR has identified six (6) headings under which to examine Canadian approaches to smart regulation. These were

- International Cooperation,
- Federal/Provincial/Territorial Cooperation,
- Process Efficiency,
- Risk Management,
- Instruments for Government Action, and
- Defining the Public Interest.

Use of alternative instruments

The EACSR identified that while the use of non-legal instruments including voluntary codes and standards has recently been increasing at the federal level, consideration of the full array of policy instruments in the course of policy making is still not being done on a systematic basis¹²⁷. In the committee’s opinion this means that Canada unfortunately does not reap the full benefits associated with these measures.

Consumer Input to EACSR

¹²⁷ EACSR briefing on Instruments for Government Action

In addition to the presence of the executive director of Option Consommateurs on the committee itself the Office of Consumer Affairs funded three successive projects by the Public Interest Advocacy Centre. The most recent project PIAC is operating under is in cooperation with Option Consommateurs from Quebec and the two organisations are acting nominally on behalf of Industry Canada's Consumer Initiative which brings together the five largest consumer organisations in Canada. They are in alphabetical order, the Automobile Protection Association, the Consumers Council of Canada, Option Consommateurs, the Public Interest Advocacy Centre ("PIAC") and Union des Consommateurs. PIAC produced written briefs in July 2003¹²⁸ and December 2003¹²⁹.

Consumer concerns

PIAC identified a number of consumer concerns in its submission to ESCAR¹³⁰. The comments made primarily addressed public utility regulation. With respect to the regulatory system PIAC highlighted the need to make the regulatory system more transparent, more accountable more independent and introduce more competence to the regulatory system. PIAC also addressed what it termed "Self-regulation on a leash" PIAC defined that as allowing regulated companies to self-regulate but with regulatory oversight. With respect to the use of voluntary codes PIAC stated that "consumers believe that effective alternate approaches must address potential remedies in the event that the public interest has not been served by the mechanism chosen". PIAC drew attention to the existing guidance available noting that the considerations appropriate to the consideration and adoption of such codes have been well canvassed in government and consumer literature. PIAC stressed that any successful implementation requires a number of elements. There should be a set of checks and balances in place that may be as rigorous as the regulation they replaced. Secondly ironclad mechanisms for monitoring and policing have to be established which may not be to the satisfaction of the regulated community. Lastly PIAC commented that the potential decrements in the form of risks associated with such a process may well outweigh any potential benefits and governments should be loath to prescribe such an instrument as a standard one-size- fits- all approach.

PIAC went on to make a second submission in July 2004 on behalf of the Canadian Consumer Initiative¹³¹. CCI indicated in this second paper that their main concern with the wider use of alternative instruments was not with the concept of flexibility, but to insure that alternate instruments are not preferred in the absence of an analysis that carefully weighs the benefits against the potential drawbacks of adopting measures such as voluntary codes etc. CCI stressed the need for accountability measurements alluded to be applied to the non-traditional regulatory approaches that are developed. CCI went on to make a number of process recommendations that in their opinion should take precedence over an identification of specific regulatory changes.

These are:

¹²⁸ Smart Regulation for Canada; A Preliminary Response to the EACSR Consultation Document by the Canadian Consumer Initiative, Michael Janigan, Executive Director and General Counsel, Public Interest Advocacy Centre, Ottawa, ON

¹²⁹ Smart regulation: The Consumer Interest Public Interest Advocacy Centre, December 2003

¹³⁰ Smart regulation: The Consumer Interest, Public Advocacy Centre December 2003

¹³¹ Smart regulation for Canada: A Preliminary Response to the EACSR Consultation Document by the Canadian Consumer Initiative

1. There should be an effort to classify the different forms of regulation, both with respect to form and to content, and the description of a continuum of requirements or principles that should apply to the execution of regulatory responsibilities. While such a classification system may diminish the clarity of the overall message of regulatory reform, it would help to eliminate the fear that sweeping rules used to abolish petty or needless red tape cause the elimination of important public interest protections.
2. Smart Regulation should be a process that generates favourable outcomes for all stakeholders. This can be possible if the principles of accountability, transparency, independence, capacity and public consultation and participation are evenly applied with a view to attaining the regulatory objective, not simply the goal of a speedier process.
3. Uniform, one-size fits all approach will compromise the ultimate objective of Smart Regulation for the sake of optics. In tandem with a more careful delineation of the regulatory milieu and the objectives as set out in Recommendation 1, it is recommended that sector specific approaches be initiated in conformance with the principles identified as being components of Smart Regulation.

Submission from the Standards Council of Canada

The SCC addressed the role that the national standards system could play in promoting smart regulation in its paper. The SCC paper made a number of policy recommendations. These included

5. Encouraging the revision of the current Government of Canada Regulatory Impact Assessment Statement (RIAS) to include an obligation to consider referencing documentary standards and conformity assessment procedures in all areas of regulation.
6. Encouraging the rigorous application of the RIAS by GoC regulatory departments and agencies, specifically the development and implementation of a reporting requirement (and the maintenance of accurate records and/or data) for the consideration of documentary standards and conformity assessment procedures.
7. Employ the principles outlined in Annex 4 of the Report of the Second Triennial Review of the WTO/TBT Agreement when considering the use of international standards¹³².
8. Encouraging greater involvement of GoC regulatory officials in the development of national and international standards and conformity assessment procedures.

Industry Canada submission addressing standards related issues

Industry Canada submitted an extensive paper addressing the systematic use of standards in support of government regulation¹³³. The Industry Canada paper compared and contrasted best practice in the use of standards in support of public policy objectives in the European Union and the USA with the current situation in Canada. The paper found Canada wanting in a number of regards. In particular there was a lack of a systematic consideration of standards as a support to regulation. The report made a number of recommendations. These were

¹³² These include transparency, openness, impartiality and consensus, effectiveness and relevance, coherence, and addressing the concerns of developing countries

¹³³ Towards the Systematic Use of Standards and Voluntary Codes in Support of Public Policy

8. Strategic commitment to the use of standards and voluntary codes in support of legislation
9. Development of a Regulatory Act
10. Development of a Regulatory Policy
11. Development of a Memorandum of Understanding (MOU) between the federal government and the National Standards System
12. Introduction of reporting requirements
13. Provision of a forum for strategic level discussion of the implementation of the regulatory policy and use of alternative instruments
14. Revision of the Canadian Standards Strategy

Final report

On September 23, 2004, the Committee released its findings and recommendations in a report¹³⁴. In the final report the committee expressed its view that smart regulation had three key characteristics namely that smart regulation is both protecting and enabling; more responsive regulation and governing cooperatively for the public interest. The committee proposed a regulatory strategy for the 21st century in a series of recommendations addressing seven key issues. These were

- International regulatory co-operation
- Federal-Provincial-Territorial Regulatory Cooperation
- Federal regulatory Cooperation
- Risk Management
- Instruments for government action
- The regulatory process and
- Government capacity

Of particular relevance to our discussion in this paper are recommendations made in respect of the consideration of alternative instruments for government action.

The consideration of alternative instruments for government action

The committee considered that there was currently no framework available to assist decision makers in their policy analysis and their consideration of various instruments. At the same time the committee acknowledged that the selection of instruments was not a task that could be performed using a "one size fits all" tool. The committee made a number of explicit recommendations to promote better consideration of regulatory alternatives. These included

Recommendation 22: The government should develop a framework for the design and use of a mix of instruments, including compliance and enforcement strategies. It should also establish mechanisms to ensure that instrument decisions are more strongly debated throughout the policy development cycle, notably by requiring that the Privy Council Office's challenge function be exercised earlier in the process.

Recommendation 23: The federal government should accelerate efforts to make the regulatory community aware of the various instruments available and the benefits of using a combination of tools to solve policy issues.

¹³⁴ Smart regulation A Regulatory Strategy for Canada Report to the Government of Canada, External Advisory Committee on Smart regulation, September 2004

Recommendation 24: Legislative constraints on creating mixes of policy instruments and using performance-based regulations should be eliminated.

The Committee also expressed its view in the text of the report that government should establish a uniform policy on, and seek clear legislative authority for, incorporation by reference in regulations of standards and codes, as they are amended from time to time by external organizations or other jurisdictions.

Other relevant recommendations from the consumer perspective

From the consumer perspective there are a number of other relevant recommendations. The committee for example addressed the need for a risk-based approach to regulatory action, for more attention to be given to compliance and enforcement and improving government capacity to approach consultation as a dialogue. The committee specifically proposes that the government should increase financial support to consumer groups. Most significantly the committee proposes the development of a new federal regulatory policy.

Recommendation 26: The Government of Canada should give priority to developing a new federal Regulatory Policy that would:

- reflect the Committee’s vision, principles and proposed regulatory strategy as outlined in this report;
- apply to broader aspects of regulatory intervention, including statutes, regulations, specified quasi-legislation and the negotiation of international positions;
- target or “tier” the procedural requirements to accommodate such matters as level of risk and impacts.

Follow-up of the Smart regulation Initiative in Canada

Implementation strategy

A formal implementation strategy has been drawn up and is being followed through by a secretariat in the Privy Council Office. A number of concrete initiatives have been undertaken. These include launching a web-site¹³⁵, regular progress reports¹³⁶ and the preparation of a draft Government Directive on Regulating (GDoR).

Draft Government Directive on Regulating

The draft directive is being prepared by Privy Council Office (PCO). The first draft was released for public comment in the fall of 2005. A consultation strategy was drawn up and as a part of this strategy public workshops were held around the country during November and December of 2005¹³⁷. In addition to these consultations there is also a Reference Group on Regulating (RGR) composed of affected stakeholders.

¹³⁵ <http://www.regulation.gc.ca>

¹³⁶ Smart regulation report on Plans and Actions, March 2005 and Fall 2005 update

¹³⁷ Reports of the meetings are available at http://www.regulation.gc.ca/default.asp?language=E&Page=smartregint&doc=publicwshops_e.htm

Consumer input

The executive director of PIAC is a member of the RGR that has now met three times to discuss the draft directive. Option consommateurs have also tabled written comments on the GDoR¹³⁸. Option expresses concern over aspects of the consultation process including the very short timescale foreseen for consultation and the lack of any consultation between the posting of the second consultation draft and the publication of the final directive. Option also expresses concern over the lack of procedures to ensure compliance with the GDoR. Option also draws attention to the lack of procedures to ensure compliance with the GDoR. Option also identifies that RIAS has not fulfilled its role in Canada. Clearer guidance is needed with respect to the identification of the best regulatory tool for a given situation. Option also reiterates the findings of EACSR that the choice of regulatory approach is also a key factor in determining the success of the intervention.

Other consumer issues

We can also note that a distinction is made in Canada between legislation and regulation. The focus of the government directive will be only secondary legislation and not the legislative framework establishing regulation. Regulating outside Canada is often taken as a broader context including primary legislation. Better Regulation in the UK for example is interpreted as better law-making and the regulatory Reform Act has a correspondingly wider scope. With specific respect to standards we can see that the draft directive does not go far enough in identifying the conditions under which standards can play a role in support of regulation. This comment is borne out by the submission from the Standards Council of Canada discussed below.

SCC comments on draft directive

The standards council of Canada identified six issues with the reference to the treatment of standards as regulatory alternatives that were not addressed in the fourth draft.

1. Restricted solely to where it "affects trade"
2. Restricted solely to international standards
3. Large 'escape-clause' is available to justify the non-use of an available standard
4. No reporting requirement regarding the use of voluntary standards
5. Does not address the utilization of conformity assessment within regulations
6. Does not explicitly mention all of the important agreements relating to standardization to which Canada has obligations

The SCC proposed the following new wording for the use of standards "For technical regulations, federal regulatory authorities must, unless they are demonstrably inconsistent with applicable law, impractical or fail to meet the regulatory objective, use available voluntary consensus standards" The SCC also proposed introducing a reporting requirement whereby departments must report to a central point instances in the previous year where they preferred to promulgate their own standard as opposed to using an existing relevant voluntary standard and justify why they did this.

The draft currently available on the government's web-site addresses in part points 2, 5 and 6¹³⁹. There is however significantly no new reporting requirement other than the existing RIAS.

¹³⁸ Letter dated 21st of June 2005

¹³⁹ Draft GD-R - v5.2 (for RGR).doc Accessed 13th of February 2006 on www.regulations.gc.ca

Other documents foreseen under directive on regulating

PCO also envisages a raft of other documents falling under the GDoR. At present there are documents addressing RIAS¹⁴⁰, consultation¹⁴¹, risk management¹⁴² and the application of the precautionary principle¹⁴³. Standardisation is not the subject of a separate policy paper. Industry Canada has produced an informal guidance document explaining the standards system to regulators¹⁴⁴. The Standards Council of Canada has also produced a draft document giving guidance on how standards are referenced in legislation¹⁴⁵. The PCO has made presentations to the RGR on new policy documents. Firstly there is to be a new draft regulatory risk management framework¹⁴⁶, then there is to be a revision of the existing RAIS Guide¹⁴⁷, and there is a proposal for a draft framework on International Regulatory Cooperation¹⁴⁸. There is also reference to the need to revise approximately ten guides and manuals currently in force and to draft other new Smart Regulation guides and frameworks dealing, for example, with Instrument Choice, the Triage of Regulatory Submissions¹⁴⁹, and proposals for an Umbrella Results-based Management and Accountability Framework (RMAF), a Framework for developing Integrated Compliance Strategies and Plans, a Regulatory Learning and Community Building Strategy and Regulatory Review¹⁵⁰.

Regulation Advisory Board

Lastly there is a proposal to create in 2006 a Regulation Advisory Board to provide an ongoing forum for stakeholder participation in regulatory management and external oversight of the Government's progress in transforming the regulatory system¹⁵¹.

Theme Table Activities

Five theme tables have been established in the spring of 2005 to aid in the implementation of Smart Regulation.

They are

- Healthy Canada
- Environmental Sustainability
- Safety and Security
- Innovation, Productivity, Business Environment
- Aboriginal Prosperity and Northern Development

¹⁴⁰ RIAS Writers Guide 1998

¹⁴¹ Guidelines for Effective Regulatory Consultations, Regulatory Affairs Division, Privy Council Office, 2005

¹⁴² Integrated Risk Management Framework Treasury Board Secretariat April 2001

¹⁴³ A framework for the application of precaution in science-based decision making about risk, government of Canada, 2002

¹⁴⁴ Standards systems a guide for Canadian Regulators, Industry Canada, 2004

¹⁴⁵ NSS Guide: Key Considerations in the Development and Use of Standards in Legislative Instruments: Understanding the Partnership of the Regulatory and Voluntary Standards Systems ACS/N99 Advisory Committee on Standards (ACS)

¹⁴⁶ rgRiskman_v4_e.pdf accessed 13th of February 2006 on www.regulations.gc.ca

¹⁴⁷ rgRIAS3_e.pdf accessed 13th of February 2006 on www.regulations.gc.ca

¹⁴⁸ rgIRC_v3_e.pdf accessed 13th of February 2006 on www.regulations.gc.ca

¹⁴⁹ rgRIAS3_e.pdf accessed 13th of February 2006 on www.regulations.gc.ca

¹⁵⁰ Smart regulation report on Plans and Actions, Fall 2005 update

¹⁵¹ Smart regulation report on Plans and Actions, Fall 2005 update

The role of Smart Regulation theme tables is as follows:

- Identifying, reviewing, and coordinating initiatives to support Smart Regulation's agenda.
- Producing work plans and identifying specific deliverables.
- Generating interest in Smart Regulation, mobilizing expertise, building capacity, and fostering co-operation.
- Sharing best practices, successes and challenges on regulatory policy issues across departments and agencies to support continuous improvement.
- Providing a mechanism whereby stakeholder input on crosscutting issues affecting the strength and continuity of Canada's regulatory system is addressed through open discussion, co-operation, and action.

It is not clear whether there is any consumer input into any of these theme tables. It is understood that the Executive Director of Pollution Probe participates in the Environmental Sustainability Theme Table.

Key elements of any future reference to standards and codes in the regulatory framework from the consumer perspective

There are a number of key issues that we can identify from the consumer perspective that would have to be addressed in any future reference to standards and codes in the regulatory framework. These include

- Openness and transparency with respect to decision-making about the use of standards and codes in specific instances
- Openness and transparency in the development of standards and codes that are to be relied upon to support of public policy objectives
- Adequate resources being made available for consumer representatives to participate in regulatory consultations and standards and code development
- Respect for the need for a high level of consumer protection
- Application of the precautionary principle
- Regulator always retains right to regulate on specific issues

Openness and Transparency in decision-making

We have seen that in other jurisdictions there are more rigorous procedures in place with respect to openness and transparency about the decision to defer to standards or codes. Consideration could be given in Canada for the need to establish policy or legislative frameworks for the use of codes and standards in specific contexts. This can be at a high level as is the case with the New Approach in the European Union or in a more sector specific approach such as the OFT scheme in the UK. At the same time better provisions could be made for the implementation of RIAS requirements. At present the publication of the RIAS in Canada comes fairly late in the process and it has been demonstrated often fails to address adequately regulatory alternatives. Better RIAS guidance and better policing of the application of RIAS would provide much needed transparency. Consideration could also be given to a more formal reporting requirement to be placed on regulatory authorities in Canada to report instances where they do not apply relevant standards and codes. Such a procedure would aid transparency in the longer term and promote more awareness of regulatory alternatives amongst government officials.

Openness and transparency in the development of standards and codes

Concerns have been expressed about the existing arrangements for especially consumer NGO involvement in standardisation and this is the subject of a separate paper from Union des Consommateurs. Suffice it to say here that this issue would have to be tackled for consumer groups to have greater assurance that standards and codes developed within the National Standards System did address adequately legitimate consumer concerns.

Adequate resources for consumer representatives to participate in regulatory consultations and standards and codes development

The question of resources is uppermost in the discussion of how to improve consumer NGO involvement in standards and codes development. Access to adequate resources to enable consumer NGOs to participate in regulatory consultation is also an issue. The EACSR itself recommended that increased financial support be made available to consumer groups but this recommendation does not appear to have been addressed in the implementation plan. Different government departments have their own initiatives, Health Canada has its Office of Consumer and Public Involvement for its health products and food branch and Environment Canada finance the Canadian Environmental Network. The capacity of consumer NGOs to respond to consultation and to be able to prioritise themselves what consultations they participate in needs to be increased.

Respect for the need for a high level of consumer protection

The cornerstone of any regulatory framework has to be a high level of consumer protection. We need to bear in mind that this may evolve over time. We have seen for example growing consumer awareness of environmental protection and issues around privacy as a result of the growth of electronic commerce. The government and consumer groups will have to be in a position to understand emerging consumer concerns and how to address these in a way satisfactory to Canadian consumers. The proposal for a risk based approach to regulation is to be welcomed but needs adequate resources to be able to be implemented in practice. Consumer groups will also need to have the resources to be able to participate in a more open and transparent risk management regime.

Application of the precautionary principle

The government has already developed a framework for the application of precaution that complements the application of a risk-based approach to regulating. This obviously needs to be applied in practice with respect to the consideration of the choice and content of the appropriate regulatory instrument as well. In particular care has to be taken in not confusing the absence of evidence from harm with a lack of surveillance data. In order to have a regulatory system that is capable of responding to real problems the government has to have a means of identifying new and emerging issues. This requires the collection of data which may take many forms including accident data from hospital admissions or economic data and affect consumers health and economic well-being.

Regulator always retains right to regulate on specific issues

At the end of the day the regulator has to retain the right to regulate in the public interest on a specific issue. It is important however that this is not perceived as a an empty threat so as to ensure that any alternative regulatory instruments that are proposed reflect a high level of consumer protection and are largely complied with in practice.

Priorities for consumer groups

In seeking to pursue the key elements outlined above there are a number of obvious priorities for consumer groups to pursue. These include participation in the Reference Group on Regulating which is dealing with the General Directive on Regulating. Consumers however would also want to seek representation on any Regulation Advisory Board that is to be established. Consumer groups would also want to consider pursuing participation on at least some of the five theme tables that have been established to aid the implementation of smart regulation across the government.

Consumer groups will also want to participate in the drafting of several key documents dealing with the risk management framework, regulatory review, instrument choice, RIAS and international regulatory cooperation. Consumer groups would also want to monitor the thresholds to be applied in the case of the new framework for the Triage for Regulatory Submissions which is designed to assist departments to decide what level of RIAS to undertake based on the relative significance of regulatory proposals.

Consumer groups will also want to express their concerns that in the apparent haste to implement Smart Regulation effective consultation must still take place amongst the concerned stakeholders. Consumer groups have already expressed their concern about the consultation process that is being followed in respect of drafting of the Government Directive on regulating. It also appears that many of the other documents referred to earlier appear to be being developed with no consumer input.

Consumer groups may also want to press the government to directly address the use of standards in regulation through the development of a policy on the use of standards and a cooperation agreement between the National Standards System and the government to help ensure that the NSS delivers standards that met legitimate public policy objectives in an open and transparent manner.

Lastly consumer groups may wish to pursue the EACSR's recommendation that more financial support needs to be made to consumer groups. At present this recommendation does not appear to be being actively pursued and is in danger of falling by the wayside much like the initiatives that came out of the voluntary sector initiative that promised a new relationship between NGOs and the government¹⁵².

Other legislative proposals making reference to standards and codes

The government is also engaged on a number of smart regulation legislative initiatives some of which make reference to standards and codes. Most of these initiatives are identified in the Smart Regulation Report on Actions and Plans referred to earlier. Two of the most important of these initiatives from the consumer perspective are the Standards-based Regulatory Framework for Cells, Tissues, and Organs (CTOs), and organic product certification standards. The most

¹⁵² Guide to Improving Funding Practices between the Government of Canada and the voluntary sector, Treasury Board Secretariat, January 31 2002 and A Code of Good Practice on Funding: Building on an Accord between the Government of Canada and the Voluntary Sector, October 2002

far-reaching proposal is the legislative renewal process that Health Canada has been engaged in for a number of years now.

Health Canada Legislative Renewal

Background

Federal health protection statutes have been developed over many years taking a piecemeal approach. This has resulted in a patchwork of legislation some seriously dated when compared with more recent legislative approaches adopted in other jurisdictions. Health Canada began consulting on a new approach in 1998¹⁵³. The process has been ongoing ever since.

Proposal

The main proposal is for a new Canada Health protection Act. This act would replace the existing Food and Drugs Act (1953), the Hazardous Products Act (1969), the Quarantine Act (1872), and the Radiation Emitting Devices Act (1970). Other existing health protection statutes, such as the Tobacco Act and the Pest Control Products Act would remain in effect but be integrated into the new framework.

The new framework would be founded on the following fundamental values –

- Primacy of health and safety,
- Openness and
- Accountability

Certain guiding principles would underpin the risk decision making at the core of the framework

- Assessing risk based on science
- Weighing risk against advantages
- The concept of precaution
- Allowing for informed choices by consumers
- Considering health determinants and
- Sustainable development.

The most important standards related proposal is for the introduction of a general safety requirement. We have seen in our earlier review of the use of standards in the European Union that a GSR underpins the systematic use of standards that the EU makes in its new approach and in the general product safety directive.

The GSR would provide a basis for Health Canada to take action in respect of dangerous products which it lacks at present unless there are specific standards adopted by Health Canada or the minister has issued a ban or taken other action which is then defied.

A GSR would not prevent Health Canada from establishing its own specific standards. In adopting the GSR Health Canada could however establish the regulatory authority whereby standards could be incorporated by reference or another mechanism for managing the use of external standards could be introduced as is the case in the European Union. The GSR and this

¹⁵³ Shared Responsibilities, Shared Vision, Renewing the Federal Health Protection Legislation, A Discussion paper, Health Canada July 1998 and Health Protection for the 21st century renewing the Federal Health Protection Program, A discussion paper, Health Canada July 1998

regulatory authority would then complement the power of Health Canada to issue specific standards.

The report on the first consultation noted the view expressed that “Health Canada should examine the General Safety Requirement found in European statutes with the goal of adopting a similar rule in Canada”¹⁵⁴.

Important consumer issues with the application of a GSR

If we look at the international best practice we can see a consensus model emerging between the European Union and the United States.

The main elements of this model are

- General safety requirement whether expressed implicitly as in the EU or explicitly as in the USA.
- Notification requirement placed on business in respect of suspected dangerous products or voluntary corrective action.
- Power of authorities to order recall or other corrective action.
- Deference in the first instance to voluntary consensus standards so long as compliance with them meets legitimate public policy objectives
- Retention of the right to regulate in respect of specific products
- Ability to communicate to the standards development organisations instances of where their standards are deficient
- Injury surveillance efforts to identify priorities for action

Action required in Canada

A number of actions would be required in Canada to implement the GSR respecting the best practice model. These include

- Introduction of a suite of enforcement powers is needed to complement the application of the GSR these include power to recall products, requirement on business to notify suspected dangerous products or any voluntary corrective action to Health Canada
- Health Canada would need a mechanism whereby it can make it clear that a certain standard is deficient and require or influence its subsequent amendment.
- Need to further improve link between regulators, consumer groups and injury control advocates with voluntary standards development if they are to form the basis for demonstrating compliance with the GSR
- Nationally representative Injury surveillance data is needed to guide Health Canada's interventions.

¹⁵⁴ National consultations summary report, renewal of the federal health protection legislation, Health Canada 1999

Annex – Vision and Principles proposed by the External Advisory Committee on Smart Regulation

VISION AND PRINCIPLES

The Committee proposes the following vision and principles to guide a Smart Regulation strategy for Canada.

Vision

Governments, citizens and businesses will work together to build a national regulatory system that maximizes the benefits of regulation for all Canadians, enables them to take advantage of new knowledge and supports Canada's participation in an international economy. Within this vision are three components:

TRUST – The regulatory system must instil trust, confidence and credibility at home and abroad in Canadian products and services, markets and government institutions.

INNOVATION – The regulatory system must enhance market performance and support innovation, competitiveness, entrepreneurship and investment in the Canadian economy.

PROTECTION – The regulatory system must demonstrate to citizens that the public interest, which includes such issues as human health and safety and environmental protection, will be safeguarded within dynamic global markets.

Principles

This vision can be achieved by having our regulatory system, from the design stage to compliance and enforcement, adhere to the following principles:

1. EFFECTIVENESS – Regulation must achieve its intended policy objectives and must advance national priorities. It should be based primarily on standards and performance targets, rather than on how those targets are achieved, in order to provide flexibility while serving the public interest. Regulation should be supported by evidence and should reflect the latest knowledge. Regulatory measures must be regularly and systematically reviewed and, where necessary, eliminated or modified; and new measures must be created to take into account changing consumer preferences and expectations, scientific and technological advances and changing business environments.

2. COST-EFFICIENCY – Regulatory analytical requirements, measures and enforcement should be commensurate with the risks and problems involved. The appropriate instrument mix should be designed and implemented in the least costly manner possible to achieve the desired policy objectives. Single windows between departments and between jurisdictions should be offered. Regulators must understand the cumulative impact of regulation and seek to avoid overlap, duplication, inconsistency and unintended consequences.

3. TIMELINESS – Regulatory decisions and government services must be provided in a manner that reflects the pace at which new knowledge develops, consumer needs evolve and business now operates. Timeframes and standards for decision making should be developed and enforced.

4. TRANSPARENCY – The accessibility and transparency of the regulatory system must be maximized to promote learning and information sharing and to build public trust at home and abroad in the quality of Canadian regulation and the integrity of the process. Policy objectives should be clearly defined. Regulators must explain their priorities and decisions, show why and how these decisions are in the public interest, and be subject to public scrutiny. Information on regulatory programs and compliance requirements should be readily available in print and electronic formats. The regulatory system should be more predictable to provide certainty to those being regulated. Citizens and business should participate through active consultation and engagement.

5. ACCOUNTABILITY AND PERFORMANCE – Regulators must account for their performance. They need to announce their intended results and demonstrate their progress in achieving them. Performance should be monitored, measured and reported on publicly. Results should be used to modify regulatory programs and should be systematically reported to the public. Regulatory systems must be fair and consistent. Complaints and appeals procedures should also be established, well publicized, accessible, fair and effective.

Source: SMART REGULATION A Regulatory Strategy for Canada Report to the Government of Canada External Advisory Committee on Smart Regulation September 2004

ANNEXE 3 STRENGTHENING THE PARTICIPATION OF CONSUMER ORGANIZATIONS IN LATIN AMERICA AND THE CARIBBEAN IN THE STANDARDIZATION PROCESS



Office for Latin America and the Caribbean
Consumers International

PROJECT
STRENGTHENING THE PARTICIPATION OF CONSUMER
ORGANIZATIONS IN LATIN AMERICA AND THE CARIBBEAN IN THE
STANDARDIZATION PROCESS

REGIONAL REPORT

Consumer Participation in Standardization Processes

Santiago, January, 2005

Strengthening the Participation of Consumer Organizations in the Standardization Process

This report forms part of the project “Strengthening the Participation of Consumer Organizations in Latin America and the Caribbean in the Standardization Process,” which was carried out by Consumers International’s Office for Latin America and the Caribbean with the financial support of the International Development Research Centre (IDRC) of Canada.

The main purpose of this regional project is to achieve an appropriate understanding and training of consumers with respect to the materiality of standardization, together with an active participation of consumers, through their organizations, in said process in cooperation with National Standards Bureaus (NSB) in each country in the region.

According to the text of the project itself, one of its objectives is:

“...to investigate and distribute information and knowledge to consumer organizations in the region. In order to meet this goal, we will engage in a study of the standardization process in a sample of eight countries in order to develop an objective comparative overview of the processes and mechanisms that are used to design and apply standards. We will also carry out a comparative study of standardization in Latin America and Canada.”

As the above paragraph suggests, we researched consumer participation in standardization processes between September and December of 2004. The purpose of this process was to analyze the current situation and develop actions that could be implemented in order to strengthen said participation. Each country’s NSB was also analyzed, and information on the NSBs’ activity in the past year and examples of the development of technical standards were collected.

These activities were completed by consumer organizations in eight countries in the region and served as the basis of the project. The lead researchers are:

- María Claudia Torres, ASPEC (Peru)
- Lorena Contreras, IDEC (Brazil)
- Angélica Armijo, ODECU (Chile)
- Isabel Muñoz, Tribuna Ecuatoriana de Consumidores (Ecuador)
- Leonardo Assaf, ADELCO (Argentina)
- Ideliza Rivas, FUNDECOM (Dominican Republic)
- Pedro Acosta, UNCUREPA (Panama)
- Luis Fernando Mejía, COCO (Colombia)

Each of these organizations worked with a questionnaire generated by CI and developed a narrative report. The country reports were reviewed and edited by the project leaders, and the results were used to generate the regional report.

The following four research areas were considered in the regional report:

- Standards bureaus
- The process by which the standards are developed
- Consumer participation
- Aspects that influence said participation

The regional report is structured around these points and also includes an analysis of the relationship between technical standards and international commerce and a summary of the research activities that were undertaken by each participating consumer organization.

The project leaders and the researchers who participated in this effort are grateful for the support, contributions and comments that they received from the NSBs in each country, as well as the support that the Pan American Technical Standards Commission (*Comisión Panamericana de Normas Técnicas*, COPANT) and the International Standardization Organization (ISO) provided for this project. Last, they are grateful to the IDRC for having trusted in consumers and provided an indispensable source of momentum for the topic of standardization and consumer protection.

Report generated by Guillermo Zucal. Part Four of this report was written by Cristian Candia Rodriguez. Edited and corrected by Guillermo Zucal and Antonino Serra Cambaceres.

GLOSSARY

CI	Consumers International
NSB	National Standards Bureau
IRAM	Argentine Institute for Standardization (<i>Instituto Argentino de Normalización</i>)
ABNT	Brazilian Association for Technical Standards (<i>Associação Brasileira de Normas Técnicas</i>)
ICONTEC	Colombian Institute for Technical Standards and Certification (<i>Instituto Colombiano de Normas Técnicas y Certificación</i>)
INEN	Ecuadorian Standardization Institute (<i>Instituto Ecuatoriano de Normalización</i>)
INN	Chilean National Institute for Standardization (<i>Instituto Nacional de Normalización de Chile</i>)
DIGENOR	General Directorate for Standards and Quality Control Systems (<i>Dirección General de Normas y Sistemas de Calidad</i>) (Dominican Republic)
INDECOPI	National Institute for the Defense of Competition and Industrial Property (<i>Instituto Nacional de Defensa de la Competencia y la Propiedad Industrial</i>) (Peru)
DGNTI	General Directorate for Standards and Industrial Technology (<i>Dirección General de Normas y Tecnología Industrial</i>) (Panama)
COPANIT	Panamanian Commission for Technical Standards (<i>Comisión Panameña de Normas Técnicas</i>)
COPANT	Pan-American Commission for Technical Standards (<i>Comisión Panamericana de Normas Técnicas</i>)
ISO	International Standardization Organization
COPOLCO	Consumer Policy Committee (<i>Comité de Políticas del Consumidor</i>)
IEC	International Electrotechnical Committee
ADELCO	Consumer Action (<i>Acción del Consumidor</i>) (Argentina)
IDEC	Brazilian Institute for Consumer Defense (<i>Instituto Brasileiro de Defesa do Consumidor</i>)
COCO	Consumers Colombia (<i>Consumidores Colombia</i>)
ODECU	Organization of Consumers and Users of Chile (<i>Organización de Consumidores y Usuarios de Chile</i>)
TRIBUNA	Ecuadorian Consumers Tribunal (<i>Tribuna Ecuatoriana de Consumidores</i>)
ASPEC	Peruvian Consumers Association (<i>Asociación Peruana de Consumidores</i>)
UNCUREPA	Panamanian Consumers Union (<i>Unión de Consumidores de Panamá</i>)
FUNDECOM	Dominican Consumers Foundation (<i>Fundación del Consumidor de República Dominicana</i>)

Part One

National Standards Bureaus

Background

The first standards bureaus that are addressed in this project were founded in the 1930's. They are the *Instituto Argentino de Normalización*, IRAM (1935) and the *Associação Brasileira de Normas Técnicas*, ABNT (1940), which were pioneers in this area.

The governments of several other countries followed suit, either establishing or officially recognizing NSBs. Early examples are the *Instituto Colombiano de Normas Técnicas y Certificación*, ICONTEC (Colombia) in 1963; *Instituto Ecuatoriano de Normalización*, INEN (Ecuador) in 1970; *Instituto Nacional de Normalización*, INN (Chile) in 1973; *Dirección General de Normas y Sistemas de Calidad* (Dominican Republic), DIGENOR in 1977; *Instituto Nacional de Defensa de la Competencia* (Peru), INDECOPI in 1993; and the *Dirección General de Normas y Tecnología Industrial* (Panama), DGNTI in 1997.

All of these NSBs are currently members of ISO and COPANT. This is highly important given that being an ISO member implies having accepted specific guidelines or rules for the bureau's structure and procedures.

Affiliation and Organization

IRAM, ABNT and ICONTEC are private not-for-profit entities that have been officially recognized as NSBs in their respective countries through specific legislation. The INN was established as a private legal foundation by an agency of the Chilean government's Development Promotion Corporation (*Corporación de Fomento*, CORFO), an autonomous bureau that falls under the auspices of the Ministry of the Economy.

The rest of the bureaus form part of the government structures in their respective countries. This is the case of INEN (which is part of the Ministry of Foreign Trade, Industry, Fishing and Competitiveness), DIGENOR (State Secretariat for Industry and Trade), the Commission for Technical and Commercial Regulations (INDECOPI) and DGNTI (Ministry of Trade and Industry).

The information gathered suggests that private entities' policies are defined by a Board of Directors whose members are elected during a general meeting, while the bureaus that form part of the government are directly dependent on a superior body, as is the case in Panama and the Dominican Republic. The cases of Ecuador, Chile and Peru are different in that those institutions (INEN, INN and INDECOPI), which were created by the respective governments, are technically autonomous but structurally and economically dependent on the State. In the case of Chile, however, this is complemented by self-generated funds that come from the bureau's work in developing standards (it is hired for this purpose by the private sector) and the accreditation work that it carries out. A large percentage of the INEN's funds are self-generated through laboratory, metrology, training, product quality certification, personal systems, compliance

authorization certificates and the sale of standardization documents. This self-management process began in 1980 and has gradually progressed.

The following table demonstrates each NSB's dependence on other organizations or institutions.

<i>Country</i>	<i>Standards Bureau</i>		<i>Dependence</i>	<i>Created or Recognized as a NSB by</i>
Argentina	IRAM (1935)	Instituto Argentino de Normalización	Private, not-for-profit	Decree 1474 of 1994
Brazil	ABNT (1940)	Associação Brasileira de Normas Técnicas	Private, not-for-profit	CONMETRO Resolution N° 7, 1992.
Colombia	ICONTEC (1963)	Instituto Colombiano de Normas Técnicas y Certificación	Private, not-for-profit	Decree 2746 of 1984, ratified by Decree 2269 of 1993.
Chile	INN (1973)	Instituto Nacional de Normalización	Private legal foundation	Created by decree of CORFO (State agency), July, 1973
Dominican Republic	DIGENOR (1977)	Dirección General de Normas y Sistemas de Calidad	State Secretary of Industry and Trade	Law 602, 1977
Ecuador	INEN (1970)	Instituto Ecuatoriano de Normalización	Legal status as private foundation attached to the Ministry of Foreign Trade, Industrialization, Fishing and Competitiveness	Supreme Decree 357 of 1970, Official Registry N° 54.
Panama	DGNTI (1997)	Dirección General de Normas y Tecnología Industrial	Ministry of Trade and Industry	Law 23 from 1997, Title II, Art. 93
Peru	CRTC (1993)	Comisión de Reglamentos Técnicos y Comerciales	INDECOPI (Instituto Nacional de Defensa de la Competencia)	Legal Decree 25868, 1993

Only the agencies that have been private since their establishment (IRAM, ABNT and ICONTEC) exercise full power over the creation of their directive structure through general meetings.

In those three cases, the agencies were recognized as NSBs by their respective governments through decrees or resolutions that created national quality control systems for each country (in Argentina, Decree N° 1474/94; in Brazil, CONMETRO Resolution N° 07/92; and in Colombia, Decree 2269/93).

The fact that these agencies were made official by the governments implies that they should act within the sphere of the National Standardization Councils, which are designed to oversee standardization. However, these councils have yet to be established in Argentina and Colombia.

Activities

The following table presents a list of the tasks and functions of each NSB in accordance with whether or not it is charged with standardization, certification, accreditation, the establishment of regulations and/or oversight:

Bureau	Standardizes	Certifies	Accredits	Makes Regulations	Oversees
IRAM	X	X			
ABNT	X	X			
INN	X		X		
INEN (MIyC)	X	X		Makes recommendations	X
ICONTEC	X	X			
DIGENOR (CNNySC-SEIyC)	X	X		X	X
CRTyC (INDECOPI-PCM)	X		X	Makes recommendations	
DGNTI-COPANIT (DNDE-MCI)	X	X			

All of the bureaus included in this report develop actives apart from standardization, which are more profitable. These generally consist of certification.

This generates another space for consumer participation in that the respective ISO Guides stipulate that certification agencies should have a Certification Council that includes members from all sectors, including consumers.

Chile's INN and Peru's INDECOPI engage in accreditation activities for Certification Agencies and laboratories through the CTRC.

Both INEN and the Dominican Republic's DIGENOR carry out oversight activities aimed at verifying products' compliance with respective national standards.

Participation in COPOLCO

COPOLCO is the ISO's consumer public policy committee.

It is a forum for discussing the standards that deserve priority treatment in terms of consumer representation and the development of recommendations regarding consumer interest that are to be addressed by ISO.

Assemblies' participation in COPOLCO or in the Committee's efforts is effected through national ISO member organizations.

Of the bureaus reviewed in this report, only IRAM has participated at the assembly level, which it did in representation of the institution that oversees ADELCO.

COCO has also participated in some ISO-COPOLCO events.

However, greater co-penetration of group work in these areas among NSBs and consumer organizations would be beneficial.

Part Two

The Standards Development Process

The research demonstrated that the countries use similar procedures to develop standards, though some differences were observed.

This section summarizes the classic standardization procedure. Reference is made to the particularities of each bureau's procedures when they are of interest.

a) Identification of the Standard to Be Developed

The proposal for the study of a standard may be developed by an interested sector (industry, consumer or government) or by the NSB itself. The proposal should be accompanied by a justification and should identify the sectors that may be interested in the standard. In the case of Chile, proposals for hiring the INN to develop standards should also be justified.

Once the proposal has been submitted, the NSB proceeds to study its viability, in some cases in collaboration with other public agencies. If it is approved, a Technical Committee is formed.

b) Formation of Technical Committee

Depending on the specific characteristics of the standard to be developed, the NSB invites the sectors or entities that it feels should participate in the Technical Committee.

There are no uniform criteria for the format of this invitation, and in general the Committee Coordinator appointed by the NSB carries out this part of the process. The first observation that arises is whether or not one must be a member of NSB to participate in Committee discussions. Based on the studies carried out, we infer that this is the case in private bureaus and that this depends on the invitation in bureaus that are that form part of the government.

The Committee Secretary is appointed during the first meeting.

c) Draft Standard

The NSB then develops the draft on the basis of which the Committee will work. This can be based on an international standard, involve the development of an original draft standard or be based on drafts developed by external consultants or, in one of the variations of the INN system, be researched and prepared by an agency that is linked to this institution with the technical support of INN.

d) Committee Discussions

Depending on the importance of the standard under discussion, the Committee will develop a plan of action in which it lists the deadlines, tasks to be carried out, meeting agenda, incorporation of other sectors in the Committee, etc.

e) Public Discussion

Once this stage is complete and a draft of the finished standard has been developed the document is submitted for public discussion. The length and characteristics of these discussions vary from country to country.

Public Discussion

Given the importance of this stage as a key instance for participation in the standard development process, the procedures that are used in each country under study are listed below. These statements have been extracted from the bureaus' Websites or developed on the basis of the research that has been carried out by the respective COs.

IRAM

The document is sent for public discussion for a period of 30 to 180 days... Public discussion is a period of broad discussion during which the draft is sent to entities and individuals with interest in the topic, who are asked to submit their observations.

ABNT

ABNT publishes draft standards, which are available for review for National Discussion at www.abntnet.com.br/consultanacional. ABNT associate members may submit suggestions with no additional cost. Other interested parties may also participate in the National Discussion but must pay a fee. All relevant instructions are presented on the Website listed above.

We note that the deadlines for the presentation of suggestions must be respected, and that these documents will only be available on the Website during the National Discussion period. In view of the importance of National Standardization for Brazil's development, the suggestions presented contribute a great deal to the perfecting of Brazilian Standards. The suggestions that represent technical objections to the standard's approval, which should be properly founded, will be examined by the ABNT Research Commission.

The information provided by IDEC makes mention of a minimum duration of 20 days for public consultation; however, ABNT officials state that this period actually lasted 60 days.

INDECOPI

INDECOPI issues an invitation to those who are interested in formulating observations and proposals regarding Peruvian Technical Standards Projects through the Commission for Technical and Commercial Regulations. Each document must include technical arguments.

These projects will be made available for review by all interested parties in the INDECOPI Information and Documentation Center from 8:30 a.m. to 4:30 p.m. for a period of () 30 and (**) 60 calendar days from the date of publication of the notice.*

INN

Each draft standard is submitted to all interested parties for public discussion for a period of 30 days, during which time they may review and generate the observations that they believe to be pertinent. (Information from INN Website.) Draft standards are published the second Tuesday of each month on the INN Website and in the El Mercurio newspaper.

DGNTI

Invitations for public discussion are issued for periods of 60 days.

DIGENOR

The draft approved by the Technical Committee is submitted for public review for a period of 30 days from the date it is sent by the Directorate of Technical Standards and Quality Control Systems. Should observations be received, a second consultation regarding the same norm is carried out for a period of 20 days.

INEN

Once it receives a report from the National Standardization Directorate the INEN's General Directorship begins the public discussion process through a publication in the Official INEN Newsletter, which contains descriptions of standards projects and the progress that has been made towards developing them in the different stages. The Official INEN Newsletter is a quarterly publication. The period of public discussion is equal to that of the standardization process (from the time the sub-committees or technical committees are formed until the process ends) and is directed by all sub-committee members (standards) or technical committees (technical regulations). In order to participate, an interested party must submit a request, at which point it may be included in any stage of the process.

No information was available from ICONTEC.

Agreement on Technical Obstacles to Commerce

However, Paragraph L of Appendix 3 of the OMC Agreement on Technical Obstacles to Commerce "Code of Good Conduct for the Development, Adoption and Application of Standards" states:

Before a standard is adopted the standardization institution will concede a minimum period of 60 days so that interested parties within the territory of a WTO member state may present observations regarding the draft standard. This period may be reduced in the case of standards involving urgent issues or those that involve security, health or the environment.

The standardization institute must publish the deadline for presenting observations in a national or regional standardization publication when said period begins.

f) Observation Period

Once the public discussion period has ended, properly founded observations are analyzed by the Committee. The individuals or institutions that made the observations may participate in this instance.

The mechanisms for resolving differences among members vary from country to country. In Peru disputes are resolved through a vote (by simple majority) in which each sector interested in the specific area of work will have one vote; in Chile the standard is sent to the Council with arguments from the parties in conflict at which point the Council makes the final decision.

In Brazil lack of consensus is overcome through a vote, and if there is a tie the Committee President has the authority to develop a new way for handling the conflict or make a decision him or herself.

In Ecuador the Technical Subcommittee on Standardization, which forms part of the INEN's Internal Committee, is charged with resolving these disputes.

g) Presenting and Passing the Standard

Once a consensus has been achieved in Committee, the steps to be taken to approve the project as a standard vary from country to country.

There are two very different approaches: in one case the bill is presented to a Standardization Council made up of qualified individuals who do not form part of the NSB. The Council establishes the procedure to be followed and decides whether or not to accept the standard as proposed, as is the case of IRAM in Argentina. In other cases the bill is brought to the respective agencies, such as the General Directorate of Standards and Quality Control Systems in the Dominican Republic or the INEN General Directorate in Ecuador.

Last, with these recommendations of the Councils or Committees the Leadership Committees of the various NSBs approve the standard.

h) Making the Standard Official

In some countries the process of developing a standard ends when a State agency officially recognizes it. Ecuador does so through an agreement with the Ministry of Exterior Commerce, Industrialization, Fishing and Competitiveness; in Chile it is sent to the Ministry that has competence in the area to which the standard applies in order to be officially recognized and published in the Official Newspaper.

In the Dominican Republic the National Standards Commission dictates the corresponding resolution and makes the standard official once the project has been approved.

Part Three

Consumer Participation in the Process of Developing Standards

ISO Recommendations

The following are some of the recommendations made to member states in the ISO publication on the process of and standards for consumer participation in standards development, which is based on ISO/IEC Guide 59 published in March, 2003:

- Member states should support ISO and IEC initiatives aimed at strengthening consumer representation in standardization.
- Member states should promote consumer participation at the national level upon initiating and planning national and international standardization work programs as well as policies that are important for consumers.
- Consumers should be invited to participate in all technical committees that present proposals for the development of standards that affect consumer interests.
- If consumers cannot finance their participation in standardization processes, the member state should offer them the opportunity to participate in priority areas of interest. Consumers should form part of the consensus process.
- Given the complexity of the work of standardization, members should help consumer representatives by guiding them through procedures and technical aspects in order to ensure that their contribution will be effective and that they are truly aware of their opportunities for participation.
- Members should ensure effective communication with consumer groups regarding their work in the area of standards.
- Member states should study the composition and structure of consumer committees in other member states and consider whether or not it would be appropriate to effect some changes in their own.

It also mentions some key points at which consumer participation should be highlighted when resources are limited:

- In the establishment of standardization programs.
- In the selection of priority work areas. In some cases it may only be necessary that they be informed.
- When proposing the standard for their review and before generating a draft standard.
- During committee work when a decision that affects the standard's objective is considered.
- When international efforts are made to strengthen national participation.
- When a draft with observations is circulated for review.
- When a vote is taken.

Aspects Related to Participation

The results of this study show that consumer organizations feel that participation is marked by the following characteristics:

- Scant participation in directive bodies of standards bureaus
- Acceptable outreach by NSBs for participating in the process
- Participation limited to those committees for which trained personnel may be appointed (mainly those involving food products)

a) Scant participation in directive bodies of standards bureaus

Only IRAM establishes that various sectors, including consumer interests, be represented during the election of members of the Board of Directors. Board members are elected during a meeting of the organization's members.

In the case of INEN a consumer representative is guaranteed the right to participate in its Board of Directors, but said representative is currently appointed by the Ministry of Industry and Consumer Affairs.

In 2004 the Peruvian Ministry of Production issued a Ministerial Resolution by which it created the National Standardization Committee to develop and facilitate the implementation of the National Standardization Plan (Ministerial Resolution 163/2004) in which an ASPEC representative is appointed.

In the case of Chile's INN, most of its Board Members (6 out of 7) are from government agencies, and the consumer sector is not guaranteed representation.

In Brazil, Panama and the Dominican Republic consumer organizations are represented at the external level by NSBs themselves in various commissions with different levels of functions (UNCUREPA is, by Executive Decree, a member of COPANIT in Panama, IDEC is a member of the Permanent Consumers Commission in Brazil, and FUNDECOM is a member of the Dominican Republic's National Standards Commission).

Colombia has instituted a National Quality Control System, but it does not function properly. As a result, consumer participation is not effective, and consumers do not participate in standardization policy development or implementation. The law (Decree 2269/93) does establish that one third of the ICONTEC Board of Directors should be made up of members of the government sector.

It is important to analyze the implications of these situations and the substantial differences that may exist among those that have consumer representation in the Board and those that do not.

Consumer participation at decisive levels in regard to the NSB's policy allows them to have a larger level of incidence in the decisions made by said bureau, which also facilitates increased interaction with the various levels of that bureau at the institutional level. In this sense it is important to note that this could contribute to improving the definition of the bureau's policies and give them a broader perspective.

b) Acceptable outreach by NSBs for participating in the process

In all of these cases it is mentioned that NSBs invite consumer organizations to participate in their work. However, this invitation is not always institutional, and may depend on the Committee or Commission coordinator's familiarity with the various consumer organizations.

None of the countries under study has proposed the development of a Consumer Council within the NSBs, nor has mention been made of a specific interlocutor who would monitor the various committees' work and serve as a point of contact with COs. We do, however, feel that there is a sufficient level of contact.

One way of improving consumer participation would be to establish regular and institutionalized communication channels between the associations and the NSBs. It is also important to note that in many countries there are various consumer associations, many of which work seriously and have specialists in various areas. This leads us to believe that it would be possible to consider splitting the work (for example, by topic) among those groups in order to achieve both increased participation and better preparation and specialization of experts.

c) Participation limited to those committees for which trained personnel may be appointed (mainly those involving food products)

The following table summarizes the participation of COs in standardization committees over the past six months:

TRIBUNA	COCO	UNCUREPA	ADELCO	ASPEC	IDEC
Soft drinks Tea Aromatic herbs Potable water Labeling of processed, canned and packaged foods Labeling of products in general Items for household use for producing cold	Milk and dairy products Fresh fruits and vegetables Vegetable oils and fats Various food products Nutritional labeling Aqueduct tubes Standardization service process Mill products Quality management Pasteurized milk Bottled water	Cylindrical gas regulators Pre-packaged foods Eggs for human consumption	Complementary lighting equipment Strategic Electric Standardization Committee Energy efficiency Life Cycles	Wine Production Committee Electrical security Food labeling Petroleum derivatives and liquid fuels Leather and footwear Irradiated foods Special diets Bio-security of live animals Modified bodywork Phosphorous.	Food refrigeration equipment (cold and frozen)

According to the information provided by ODECU in Chile and FUNDECOS in the Dominican Republic, these agencies have not participated in any such process in the past six months.

As the table demonstrates, most of the committees in which COs participate deal with foods or are food-related. This is presumably due to capacity building in these areas within the organizations either through CI programs or their own initiatives given that food safety is without a doubt one of the topics that arouses the most concern at the regional level.

However, it is important to note their participation in earlier processes, which leads us to think about the existence of an interesting potential for regional capacity building by COs, which would strengthen the work of various NSBs in regard to opportunities for distributing the tasks among various consumer organizations.

Consumer organizations have also participated in committees on the following topics:

Panama: technical regulations on standing bovine livestock (terminology and classification), bovine channels, types of bovine livestock, cylinders for liquid petroleum gas, connection systems for liquid gas (LPG) recipients of 25 pounds, hulled and whole grain rice, bottled water.

Brazil: male condoms, cribs, electrical sockets, equipment for public playgrounds.

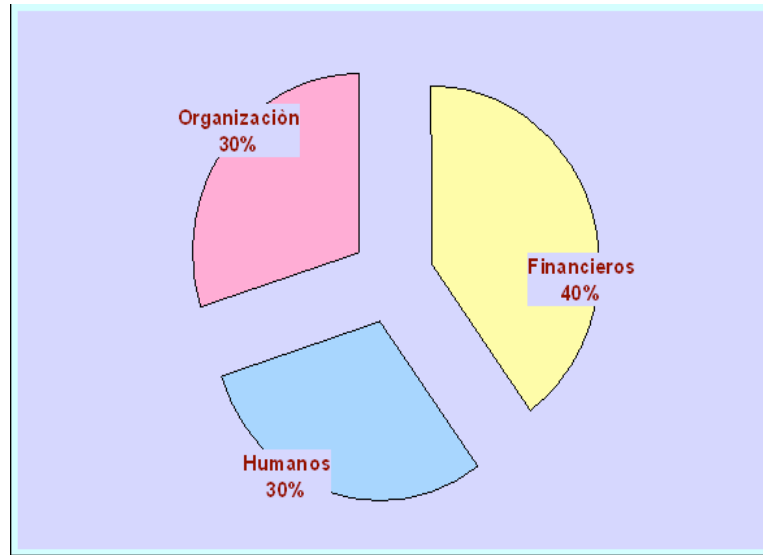
Argentina: lighters, electrical specifications and outlets, energy labeling, condoms.

Peru: drafting of regulations on potassium bromide, regulation project on child nutrition, regulation project on the functioning of restaurants and similar businesses, regulation project on the microbiological quality of foods and beverages, and the food labeling committee.

Dominican Republic: systems for inspecting and certifying imported and exported food items, domestic economy, sports and leisure, food and dairy products, food hygiene, meat and meat products, food additives and contaminants, nutrition and food for special diets, electrical engineering, metallurgy.

Factors that Limit Participation

The research suggests that the factors that limit participation can be divided into three groups: financial, human and organizational (internal).



- Scant financial resources for developing tasks
- Limited availability of trained personnel for attending meetings and meeting commitments
- Limited participation in or difficulties accessing the same
- Difficulties achieving adequate programming

a) Scant financial resources for developing tasks

None of the countries under study reported that there was a source of permanent funding for this activity in that both the governments and NSBs have been unable to provide it and COs have been unable to obtain international cooperation for direct participation.

b) Limited trained personnel for attending meetings and meeting commitments

Most organizations lack personnel that is specifically assigned to the work of standardization, and this activity is complemented by others that are inherent in the institution's work and, as we have demonstrated, that are very much related to the area of food in regard to structure.

ASPEC, COCO and FUNDECOM mention that they had developed an internal structure in the area of standardization, while IDEC has created a team of experts in different areas and TRIBUNA is developing a multidisciplinary professional team.

The other organizations have limited personnel with training in specific areas, which restricts their sphere of action and only allows them to take on work in some committees.

c) Limited participation in or difficulties accessing the same

In general there is a good relationship with NSBs, which facilitates access to good opportunities to receive training in various standardization-related aspects.

However, the main problem is the cost that this represents to consumer organizations in that in most situations the NSB has to cover the related costs (either for acquiring a standard or for participating in a course or seminar) in order for consumer organizations to access any type of service offered by said bureau.

In this regard, in the regulations for the functioning of the INDECOPI Technical Committees the Commission is responsible for “developing training activities for Technical Committee members.”

d) Difficulties achieving adequate programming

It is notable that it was sometimes difficult for COs to obtain a copy of the NSB’s annual plan for work on standards. In some cases there are bureaucratic reasons and in others the plans were being drafted.

Adequate programming for standards work allows the organization to use its resources in an appropriate manner.

The code of conduct for the development, adoption and application of standards mentioned above establishes that NSBs should present a work plan every six months. Said plan should list the standards that it will address during that period and provide a list of the standards that were approved during the previous period. It also mentions that said plan should be made available to all of those who request it and should be presented in a national publication.

CONCLUSIONS

The various consumer organizations that participated in this project showed a high level of interest in and dedicated a significant amount of their limited resources to achieving effective participation in these processes.

It is clear that each of the organizations has generated an environment in which it can be invited to participate in the standardization process and from which it can contribute to ensuring that said process reflects consumer interests.

However, due to the lack of resources this has been achieved in a very limited manner and while in some cases the NSB has accepted and in some cases promoted this participation, adequate channels for promoting the same have yet to be developed.

The following table presents some aspects to be improved in order to strengthen the participation of consumer organizations in the standardization process.

Mention is also made of the actors who could collaborate in the development of these aspects without excluding others or the interaction among those that are not mentioned herein. They are only mentioned as references in order to help the reader visualize where immediate actions could be developed.

ASPECT TO BE IMPROVED	POSSIBLE ACTOR OF INFLUENCE			
	SA	CO	CI	GOV
Financial	X		X	X
Promotion and Publicity	X	X	X	X
Technical Strengthening	X	X	X	X
Adequate and Free Information	X			X
Information in Spanish	X			X
Communication Networks	X	X		X
Internal Organization			X	
Professional Training	X		X	
Alliances	X	X		
Research	X	X		X
Vigilance Processes		X		X
Adequate Legislation				X
Mandatory TLC Participation				X

SA: Standards Bureau
CO: Consumer Organization

CI: Consumers International
GOV: Government

Part Four

International Trade and Standards SPM and TOT Agreements: Developing Countries' Perspective*

Cristián Candia Rodríguez**

International trade has grown significantly over the past fifty years,¹⁵⁵ reflecting an ever growing globalization process. There is, however, a strong degree of concern regarding the participation of Developing Countries (DC) in international trade¹⁵⁶ and particularly that of Less Advanced Countries (LAC), whose global participation dropped from 1.46% in 1970 to 0.25% in 2001. The following are some of the explanations for this drop in participation:

- The loss of relative participation of basic products in global trade.¹⁵⁷
- The difficulties that DCs and LACs have encountered in regard to increasing their exportable offer of goods and services with higher added value, which is a result of a lack of resources for investing in new technologies.
- New obstacles to international trade that increase the number of difficulties that DC exporters must face and the costs that they must cover.¹⁵⁸

These aspects demonstrate that there is still a great deal of work to be done in the area of capacity building and the implementation of programs for supporting DCs. In the logic of globalization, the levels of well-being of citizens and consumers mainly depend on a balanced integration into the international economy, but it is also necessary to ensure that the goods that are handled in the global market do not constitute a risk to consumers. This relationship has created a sort of trade-off between access to markets and standards and regulations, which have a strong impact on DCs and LACs.

From the beginning of the multilateral trade system there has been a consensus that the administration of global trade based on rules is a basic prerequisite for guaranteeing the participation of all member states in the global market. It is for this reason that at the end of the

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** Coordinator of the Consumers International Office of Latin America and the Caribbean Special Mission to Central America and the Spanish Caribbean.

¹⁵⁵ UNCTAD and other multilateral organizations agree that it is important to note that the growth of trade has generally been superior to that of production.

¹⁵⁶ With the exception of developing economies known as Newly Industrialized Economies.

¹⁵⁷ Between 1990 and 2000 total world exports increased at a rate of 6.1% while the average annual rate of exports of basic products increased by just 3.1%.

¹⁵⁸ Center for International Trade (CIT) evaluations from 2001 indicate that 40% of the exports from LACs are subject to non-tariff-related obstacles, as compared to only 15% in the case of developed countries and developing countries (International Trade Forum, February 2001). The CIT is a technical cooperation agency of the United Nations Conference on Commerce and Development (UNCTAD) and the World Trade Organization (WTO) for technical aspects and issues related to companies in trade promotion.

Uruguay meeting of the former GATT, today the World Trade Organization (WTO), the members agreed to standardize global food trade on the basis of the establishment of an Agreement on Sanitary and Phytosanitary Measures (ASPM)¹⁵⁹, which aim to protect human, animal and vegetable life and an Agreement on Technical Obstacles to Trade (TOT)¹⁶⁰ designed to ensure that member states would not unnecessarily limit access to imported goods on the basis of Sanitary and Phytosanitary Measures (SPM) and technical regulations that are not based on "international standards." In both agreements the member states recognize that there is a need to unify standards.

However, given the existence of disparities and asymmetries, unification is a difficult problem to solve given that the criteria of developed countries involve more and more demanding standards, which results in a substantial increase in the costs that DCs and LACs must cover and regarding which no consensus has been developed. UNCTAD has commented on this, stating that: "The difficulties of market access are aggravated by problems derived from their structure and from technical standards and regulations, Sanitary and Phytosanitary Measures (SPM) and standards of complex and diverse origins. The measures and requirements established by the private sector and voluntary standards are even more important. For example, there is a growing tendency among international supermarket chains to unify private sector standards, which makes the fulfillment of those standards a requirement for entering the markets. One priority is ensuring that these standards and measures are developed in a transparent manner and with the participation of developing countries and that they are applied in a manner that is not discriminatory."¹⁶¹ This represents a major challenge given that production processes become more and more complex and information on those processes is often protected by intellectual property rights agreements, which does not allow for the achievement of true transparency in the standardization process.

All governments are obligated to take steps to reduce sanitary risks to consumers as much as possible,¹⁶² particularly in view of the fact that the globalization process is occurring with the speed that we noted at the beginning of this section. The search for agreements for establishing standards and rules that move in the direction of promoting the reduction of risks to consumers is therefore very important.

All of this notwithstanding, when it comes time for evaluations it is clear that from the beginning of the liberalization of world food trade, many companies responded to the new challenges by

¹⁵⁹ The WTO SPM Agreement covers all sanitary and phytosanitary measures that could directly or indirectly affect international trade. Sanitary measures include human or animal health, while phytosanitary measures cover vegetable health. This includes the protection of fish and wild animals, forests and flora but does not include the protection of the environment or wellbeing of animal species.

¹⁶⁰ The WTO TOT Agreement includes mandatory technical regulations on the characteristics of products or related processes as well as non-mandatory standards on rules, orientations and characteristics that are applicable for products or processes and related production methods.

¹⁶¹ UNCTAD, Aumento de la participación de los países en desarrollo en los sectores nuevos y dinámicos del comercio mundial: Tendencias, cuestiones y políticas; Nota de antecedentes de la secretaria de la UNCTAD, 17 May 2004; p. 25.

¹⁶² They have strengthened their capacity for incidence in government agencies in the past few years.

incorporating stricter standards for production processes.¹⁶³ As a result, exporters from less developed countries have fewer opportunities to adjust and are still at a significant deficit.

According to an ECLAC study, this deficit is expressed in both the private sector and the institutional realm, and Latin American and Caribbean countries made scant contributions during the activation period of the SPM Agreement as compared to more developed countries.¹⁶⁴

As we have noted, the main concern of LACs is extending access for their agricultural products in developed countries' markets. Recent studies indicate that the problems that LAC exporters face are that importing countries tend to "impose the stricter SPM restrictions than the national standard"¹⁶⁵ while in other cases national standards tend to be stricter than those applied in many other countries, which imposes difficulties for their application at the national level.¹⁶⁶ As an example they highlight the requirements of the European Union (EU) regarding bovine meat processing plants that export to European countries, which continue to be strict in spite of the fact that *encefalopatía espongiforme bovina* (known as "mad cow disease") developed in Europe as the result of a sanitary practice allowed in European meat producing countries. This is also the case of access to markets based on technical regulations that are ever more demanding.

In some cases the costs of the prohibitions that are based on SPM tend to be very high for LACs, as is the case of EU and Bangladesh. In 1997 the EU prohibited the importation of shrimp from that country because it questioned exporters' compliance with Hazardous Analysis and Critical Control Point (HACCP) standards and the trustworthiness and efficiency of government inspectors. Exporters managed to redirect part of their production to two other markets in developed countries, though this action did result in a loss of US\$15 million in a five month period.¹⁶⁷

It is, however, important to note that LACs are particularly concerned about SPMs. One example is Chile, which has rigorous standards and regulations that have allowed it to remain an important fruit and bovine meat exporter thanks to the careful control of the fruit fly epidemic and strict sanitary measures for controlling foot and mouth disease.

In some cases LACs develop significant and innovative efforts to overcome the restrictions imposed by SPM or TOT when they represent a threat to the economic growth of one specific sector. This was the case of Jamaica's exportation of ackee and other fresh products to the

¹⁶³ It is, however, important to note that in the area of subsidies and internal support producers in developed countries continue to have significant State support in contrast to that which occurs in developing countries, which have practically no access to those types of instruments as they could be found in violation of TOT agreements.

¹⁶⁴ Larach, María Angélica; El Acuerdo sobre la Aplicación de Medidas Sanitarias y Fitosanitarias: Contenido y Alcance para América Latina y el Caribe; CEPAL, Serie Comercio Internacional N° 39; Santiago de Chile, December 2003; p. 16

¹⁶⁵ Shyam K. Gujadhur; Asistencia Técnica para las MSF: La protección sanitaria; available online at <http://www.forumdecomercio.org>.

¹⁶⁶ Larach, María Angélica; El Acuerdo sobre la Aplicación de Medidas Sanitarias y Fitosanitarias: Contenido y Alcance para América Latina y el Caribe; CEPAL, Serie Comercio Internacional N° 39; Santiago de Chile, December 2003; p. 15.

¹⁶⁷ Briefing Paper N°7/2002 from the Centre for International Trade, Economics and Environment (CITEE).

United States.¹⁶⁸ This is an interesting model for allowing for capacity building for DCs in this area.

DCs and LACs state that the multilateral trade system should recognize that technical standards constitute an additional weight on exporters from those countries. It is therefore urgent that the process involve the provision of Sustainable Technical Assistance that recognizes the asymmetries and costs that presenting complaints to the TOT Dispute Resolution system represents to DCs.

When considering the challenges for DCs in matters of market access it is particularly important to identify the main problems that these nations face. A study developed by the International Trade Center (ITC) identified a series of aspects that work against DCs' ability to comply with agreements, particularly SPMs. These are:

- DCs in general and LACs in particular have limited financial and human resources for meeting the requirements associated with agreements and standards for access to markets in developed countries and policy formulation. As a result their ability to fully exercise their rights in SPM agreements is reduced.
- This produces doubts regarding whether or not the consideration of the particularities of each nation is fully incorporated into the development of international standards.
- Developed countries are tempted to create conditions that are stricter than current international standards in order to restrict access to their markets. Said modifications become an additional obstacle to LAC exporters. In many cases these standards tend to be stricter than national standards.
- The administrative structure and legislative systems of DCs often become obstacles to complying with international agreements, particularly those related to SPM.¹⁶⁹

It is extremely urgent that these problems be addressed in order to ensure that the benefits of international trade reach all members of system. To this end various technical assistance programs have been developed by national and multilateral development agencies for LACs and DCs in order to create infrastructures related to SPMs and the TOT. However, the evaluations that have been conducted by the ITC indicate that said aid "has been fragmentary and has not been effectively integrated into national activities."¹⁷⁰ The authors cite the use of pest control programs in some African and Pacific nations, an exercise that consisted of training specialists to control pests but later found that the course did not provide countries with resources for implementing the programs, which demonstrates the need to formulate aid programs with a more integrated perspective.

DC and LAC exporters could face new obstacles to accessing the market in developed nations as the latter "move forward in the application of new technologies in production processes and food product standards aimed at increasing the rigorousness in the requirement of access to

¹⁶⁸ In this case Jamaican authorities applied a system approved by the United States to regulate the certification of fruit purveyors. This was originally financed by the United States Agency for International Development. The program is currently financed through the fee that is charged for each case of fruit exported.

¹⁶⁹ Shyam K. Gujadhur; Asistencia Técnica para las MSF: La protección sanitaria; available online at <http://www.forumdecomercio.org>.

¹⁷⁰ Ibid.

agricultural products in their markets.”¹⁷¹ These new measures are a response to the threat of terrorism (and are already being implemented in the United States) and environmental criteria, as the UNCTAD has noted: “New practices have also been produced at the national level in a tendency towards more ‘green consumption’ such as the adoption of more frequent, rigorous and complex environmental and sanitary standards and the related plethora of evaluation and compliance certification standards.” These trends affect developing countries’ opportunities to export.¹⁷² Although the environment is a recent concern in trade negotiations, the topic has garnered significant interest in trade agreements. These challenges are added to those already present in the multilateral trade system and regarding which there is a need to establish a more effective policy so that LACs and DCs really make progress and truly benefit from the globalization process.

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¹⁷¹ Larach, María Angélica; El Acuerdo sobre la Aplicación de Medidas Sanitarias y Fitosanitarias: Contenido y Alcance para América Latina y el Caribe; CEPAL, Serie Comercio Internacional N° 39; Santiago de Chile, Diciembre de 2003; p. 16.

¹⁷² Conferencia de las Naciones Unidas sobre Comercio y Desarrollo UNCTAD. Comercio, Medioambiente y Desarrollo; Nota de antecedentes preparados por la secretaria de la UNCTAD (TD/B/COM.1/63); Diciembre 11 de 2003; p. 6.

Final Recommendations

The ISO has recommended that consumers participate in the development of standards through the organizations that represent them and has communicated this to all of its members.

The following are recommendations for future action:

- Promote joint actions between NSBs, COs and governments in order to search out projects that allow them to finance more activities.
- Carry out dissemination and publicity activities regarding standardization and its importance for consumers in order to generate more awareness regarding this issue.
- **Search out adequate training channels in order to increase opportunities for participation in regard to the variety of standardization committees.**
- Generate adequate communication opportunities in order to facilitate organizations' work given that most of the documentation at the international level is published in English, which limits their opportunity to participate. Also, generate sufficient access to information on both standards and processes.

COs must be able to generate an internal structure in which standardization ranks higher and is not included as an element of a larger program.

Joint work among organizations within countries and between different nations facilitates the promotion of the progress that an organization may have and will allow it to participate in more committees.

NSBs should seek out resources in order to ensure that consumer participation becomes effective, as the ISO has recommended, in the areas of resources, information or training.

ANNEX COUNTRY REPORTS

SUMMARY OF CONTENTS AND MAIN CONCLUSIONS

STANDARDIZATION IN ARGENTINA

The Argentine Institute for Standardization (*Instituto Argentino de Normalización*, IRAM) is a civil, private, not-for-profit association that was created in 1935. The State has broadly recognized its function and mission but it is in no way dependent on the government.

Its Board of Directors is made up of representatives of all sectors: General Interest, Production and Consumption. ADELCO participates as the consumer representative. These sectors are regularly invited to participate on the various Standards Review Commissions.

IRAM has been recognized as an NSB and has celebrated agreements with other institutions in order to elaborate standards in their areas of specialty. These include AADL (*Asociación Argentina de Luminotecnia*, IRAM AADL standards), the *Instituto Argentino del Petróleo y del Gas* (IAPG), the *Asociación para la Normalización Eléctrica*, etc.

IRAM is mainly financed through the sale of standards and certification services.

The study of a specific standard is carried out in response to a request from interested sectors or the standardization bodies' own initiative. If IRAM feels that it is warranted it creates a Technical Committee and invites members of interested sectors to participate. Anyone who is interested in the standard may ask to be included in the process. Procedures are established in the regulations on standards review and the functioning of its technical agencies. Once developed the final document is presented to the General Committee on Standards, which executes a final review before submitting the standard to public discussion. Once these stages are satisfactorily completed, the document is returned to the Board of Directors so that it can be promulgated as an IRAM standard.

The factor that has the greatest influence on the organization's participation is a lack of human resources and training, although IRAM makes available discussion materials and copies of the standards that it has developed and has technical consulting personnel, which allows it to explore the topics under discussion.

ADELCO's participation in IRAM has been considerable and has been limited only by the inability to respond to every technical committee due to a lack of human resources. The most recent committees are complementary lighting equipment, the Strategic Standardization Committee, electricity, energy efficiency, life cycles, etc.

Argentina's National Quality Control System was implemented by Decree 1474/94, in which ADELCO participated as the Argentine Accreditation Agency.

At the international level IRAM forms part of COPANT and the MERCOSUR Standardization Association (MSA), of which it is a founding member, as well as the ISO in Argentina.

STANDARDIZATION IN BRAZIL

The Brazilian Association for Technical Standards (*Associação Brasileira de Normas Técnicas*, ABNT) is a private not-for-profit agency that was created in 1940. It is recognized by law as the National Standardization Forum and is composed of a General Assembly, Review Council, Executive Directorship, Fiscal Council, Technical Council and Technical Commission. It also has 54 technical committees, which are organized by product area, and 4 sectorial standards bureaus.

ABNT is financed through the consulting work that it carries out for private companies, the sale of technical standards, and membership fees.

ABNT is a founding member of the ISO, COPANT and AMN and is the exclusive representative of the IEC in Brazil.

In regard to standards development, any party may submit a formal application to ABNT in which it presents arguments for the need for said standard and mentions companies, entities and individuals that might be interested in its development and application. The purpose of this process is to provide a list of parties that could be invited to take part in the process and form part of the Research Commission. Each application is analyzed by ABNT and those that are considered viable are included in its Sectorial Standardization Program.

At this point a research commission is created or the topic is incorporated into an existing one and the commission generates a draft standard based on a consensus of the participants. If there is a lack of consensus regarding a particular issue it is resolved by vote, and if there is a tie the commission's president has the authority to decide how the problem is to be resolved or simply make a decision.

The project is then presented for public discussion, which lasts for a minimum of 20 days. During this period the interested sectors are invited to participate and the discussion of the standard is officially announced. However, in Brazil there is no public and recognized method for communicating this information.

The suggestions that are developed through public discussion are analyzed by the committee and eventually incorporated into the draft standard. This is then sent for approval as an ABNT Standard.

Brazil has created a government agency called SINMETRO (the National Metrology, Standardization and Industrial Quality System), which is linked to the Ministry of Development, Industry and Foreign Trade, whose normative agency is CONMETRO (National Council on Metrology, Standardization and Industrial Quality). CONMETRO was created by law in 1973 and its function in this sphere is to legislate on standards and verify compliance with them.

In this sense, the agency establishes the products that should be required to meet specific technical regulations and authorizes, accredits and oversees the certification agencies.

Its General Accreditation Coordination body carries out activities related to the accreditation of entities, laboratories or individuals, and consumers participate in some of its committees.

INMETRO has established various mandatory regulations, including those regarding switches, baby bottles, motorcycle helmets, tires, specifications and electrical outlets, circuit breakers, condoms, toys and fire extinguishers.

Compliance with technical regulations is certified by an INMETRO-accredited agency, which affixes a sticker with the INMETRO logo that is recognized by consumers.

INMETRO's activities are financed by the government.

Consumers only participate on the research committees to which the IDEC is regularly invited and able to attend. Its participation depends on the availability of resources (human and financial). In 1995 IDEC signed an information exchange agreement with ABNT and became a permanent associate of said organization.

This situation has led to a decrease in participation. There is mention of having participated previously in the development of standards regarding products such as male condoms (including international participation at the level of ISO research committees); cribs; electrical connections; and equipment for public playgrounds. INMETRO even provided resources for working in the area of regulations, which allowed for IDEC's presence in discussions of specific regulations.

In May of this year CONMETRO created the Permanent Council for Consumers through Resolution 2, passed 20 May 2004. The Resolution determines the ongoing participation of representatives of the National Forum of Civil Consumer Defense Agencies.

The Permanent Consumers Commission is therefore responsible for facilitating the consumer sector's participation. It nominates its representatives and participates in the standardization and technical regulations processes and in their distribution and publication.

Given that IDEC's participation in the standardization process was severely limited by financial constraints and was limited to one research committee (refrigeration equipment for refrigerated and frozen foods), it is expected that the above-mentioned Resolution, in which the participation of a representative from the National Forum of Civil Consumer Defense Agencies is guaranteed by INMETRO, will result in proposals for mechanisms for ensuring the direct participation of consumers in public debates.

If ABNT fails to develop a research plan for standards in advance, or should it not make this public, it will be difficult to program resources for this participation. In any case, the perspective is that through the implementation of the Resolution adequate planning will be achieved. In this sense, IDEC maintains a group of experts on specific topics, who work in universities and specialist or analytical laboratories. This group is extensive to the National Forum of Civil Consumer Defense Agencies. The fact that efforts are being made to achieve adequate planning will allow it to strengthen the group and distribute resources in a more appropriate manner.

STANDARDIZATION IN CHILE

The National Standardization Institute (*Instituto Nacional de Normalización*, INN) is an autonomous public legal agency that was created in July 1973 (decree published in the Official Newspaper on 5 July 1973) by the *Corporación de Fomento de la Producción* (CORFO), a Chilean government agency made up of five ministers, two council members and a vice president, all of whom are appointed by the President of the Republic. The previous agency, the Institute for Technological and Standards Research (*Instituto de Investigaciones Tecnológicas y Normalización*, INDITECNOR) was a private not-for-profit corporation created in 1944 that mainly focused on the study of standards and promotion of standardization. With the creation of the INN accreditation and metrology activities were added to agency's scope.

The INN carried out inspection and certification activities until 1976, especially for the Ministry of Housing. In 1978 the National Rating System for Certification Entities was created in order to act in the areas of sanitary and agro-industrial installations. In 1996 the National Accreditation System was developed. Based on international standards, this body allowed for the accreditation of agencies dedicated to evaluating compliance, at which point certification activities ended.

The INN receives government funding through CORFO, which finances a significant part of its activities. These resources are combined with self-generated income derived from its standardization, training and accreditation activities and other funds.

Chile does not have a framework national standardization law. By decree, the INN represents Chile in specialized agencies and fora at the regional and international levels in the areas of standardization, accreditation and metrology as a standardization and accreditation agency and through its metrology division as a coordination and supervision unit of the National Metrology Service.

The Executive Directorship and five divisions of the INN –Standards, Accreditation, Metrology, Publicity, Information and Training, and Administration and Finance- depend on its Council, which is made up of seven members, two of whom are CORFO officials and four of whom come from government agencies (one is the Director of the National Consumer Service, SERNAC). The remaining member is a representative of a private certification agency.

Once an area to be standardized is identified, any public or private entity or Ministry or Secretariat that is interested in elaborating a standards program in one or more spheres hires the INN and pays a set fee, which is paid upon the provision of the standard to be approved. In general the Ministries identify an international base standard to be used by the INN in generating the Chilean standard. The ministries then develop the technical regulations for officially recognizing the standards and making them mandatory.

The standard is generated on the basis of the procedure that has been established for the INN, which includes the participation and opinion of the various interested sectors. The process may be undertaken by INN, from the development of the proposal until the standard is made official as a Chilean standard before the respective ministry, or the entity that has submitted the

proposal may develop the draft and finance part of the costs associated with developing the standard until it is officially recognized.

The proposed standard is studied by a Technical Committee composed of producers, users, officials, and representatives of laboratories and other sectors that are interested in the topic, who make observations and generate a draft standard, which is sent for public consultation. This period, which lasts 30 days, is designed to offer interested parties an opportunity to study and present observations. These standards projects are published the second Tuesday of every month on the INN Website and in the *El Mercurio* newspaper.

Once the observations are received the Technical Committee is convened to analyze them and the text of the standard until the required consensus is reached. In the case of a lack of consensus in the Technical Committee alternative solutions are sought. If dissention subsists, the standard is sent to the Council with those points as well as the arguments of each of the parties in conflict, and the final decision is made by the Council. If the standard is not approved by the Council it is returned to the Technical Committee so that it can be redesigned. Finally, the Chilean standard is sent to the Ministry with competence in the topic that is standardized in order to be made official and published in the Official Newspaper.

The Technical Committees are developed by the Technical Secretary in accordance with the INN database or through a public invitation that is extended to all related entities. During the process of public discussion interested parties may act as observers or participants, in which case they later form part of the Technical Committee. The Technical Committee cannot be convened without representation of the four sectors mentioned above.

SERNAC has participated as the consumer representative in the formulation of 34 standards that have been issued by the INN. This participation is the result of studies that are oriented towards a massive or institutional impact or an impact on emerging markets. To date consumer organizations have not done so and there is no evidence of proper integration of those entities in SERNAC in order to promote this participation. (This is only true for this aspect, as there are various joint activities between SERNAC and consumer organizations, particularly ODECU).

Technical regulations are generated by the Ministries and Government Secretariats of each sector in a large number of non-food areas, based on technical standards according to a compliance evaluation that is effected by the oversight agencies, which are established by the corresponding ministries and secretariats. The contents and scope of the technical regulations are defined according to technical and policy criteria. They may be under the competence of one or more agencies. Public consultation is not mandatory, and as a result regulations authorities do not consult with consumer organizations, though in some cases they do confer with SERNAC. Compliance with Technical Regulations should be certified by a third party, should the corresponding Ministries and Secretariats establish this in each regulation through which certification agencies are accredited by INN.

In this case consumer organizations and the INN National Accreditation System do not participate in the accreditation process stages or in certifying agencies, nor is there a systematic information program aimed at consumers at the massive level on the part of public agencies.

In the area of accreditation the INN has registered 285 accreditations to date, the majority of which involve applications for the regulation area in which these recognize the accreditations granted by INN through agreements signed with each Ministry or Secretariat.

Standards of interest under study

- Potable water
- Noise and its effects on people
- Toys
- Risk prevention in buildings
- Asbestos-cement
- Installations (tubing for potable water and drainage systems)
- Potable water meters
- Electrical installations in buildings
- Isolated (electrical) cables
- Tourist lodging (3 star, 4 and 5 star, 1 and 2 star hotels, hot springs centers, family-style accommodations or bed and breakfasts)

Standards of interest under public consultation in 2004

- Tourist lodging
- (Hot springs centers - Requirements. Family-style accommodations or bed and breakfasts – Requirements)
- Isolated cables
- Toys

STANDARDIZATION IN COLOMBIA

In Colombia the national standards bureau is the Colombian Institute for Technical Standards and Certification (*Instituto Colombiano de Normas Técnicas y Certificación*, ICONTEC) according to Decree 2746 of 1984, ratified by Decree 2269 of 1993, which granted it these government functions. ICONTEC was founded 10 May 1963 and is a private not-for-profit agency that is made up of representatives of the public sector, producers and consumers.

In addition to being responsible for developing technical standards and providing certification services for products and quality control systems, ICONTEC offers quality assurance and administration services and advises the national government on the design of standardization and quality control policies.

The agency is accredited by the Superintendency of Industry and Commerce as the certification agency for industrial and quality control systems. Its structure and the composition of its directive agencies are strongly influenced by the private and academic sectors and its decisions are autonomous and independent of the national government.

It is mainly financed by the standardization and certification services that it sells to the business sector.

Though there is an established methodology for adopting standards, one could say that in practice it is based on the search for consensus; there are, however, certain common steps or stages in the process:

ICONTEC or a sector or business that is interested in expediting a specific standard proposes the creation of a Technical Standardization Committee (TSC). This stage may or may not be preceded by technical, legal and economic studies, and occasionally environmental impact studies.

Once the proposal has been prepared ICONTEC studies its relevance and the need for the standard. This process may be carried out in collaboration with other private or public agencies. ICONTEC then generates a standard draft, either independently or through external advisors or consultants, in order to propose the standard to the Technical Standardization Committee. The process of organizing a TSC involves a wide range of sectors, which may include businesses (producers, marketing agencies, etc.) and the specific production sector as well as universities and research centers that are familiar with or may contribute to the development of the standard, as well as consumer organizations.

Although the entire process is documented in order to establish the positions held by TSC members, who are often diverse, an effort is made to remedy discrepancies through agreements on minimum bases. The process may and tends to involve fora, public discussions, public consultations and other broad participatory mechanisms.

While businesses and their associations, the academy in its various forms and consumer organizations are generally invited to participate and do participate in the TSCs, in almost all Committees or at least the majority there is a strong presence –not only in terms of numbers but also in technical and professional terms- of companies that are interested in expediting the establishment of the standard. This situation is aggravated by the low technical and numerical representation of consumer organizations, though in some cases the academy makes interesting contributions.

Consumer organizations are absolutely absent from participation in the administration and management of the standards bureau, nor do they form part of any decision-making body at the technical level. Their participation is limited to TSCs and open participation mechanisms that appeal to the general public (fora, public hearings, public consultations, etc.).

In regard to the assignment of priorities, COCO has decided to dedicate its economic and human resources to the treatment of the following issues:

- Milk and milk products
- Fresh fruit and vegetables
- Vegetable oils and fats
- Various food products
- General national labels
- Nutritional labels on canned foods
- The Standardization Service process and the detection of service needs
- Aqueduct tubes
- Mill products
- Quality management
- Pasteurized milk
- Bottled water

One of the fundamental aspects of achieving good participation is the availability of information, and COCO feels that the information service has been designed to help the business sector more than consumers. On a case by case basis it is difficult to access the established programming for 2005 in the first instance either due to ICONTEC's maintaining the information as confidential or a lack of definition in the calendar, which complicates any attempt to plan on the part of an organization with limited resources.

In regard to COCO, the resources that are invested in standardization mainly come from ordinary operating resources and funds left over from other national and international projects. Some issues receive support from institutions, which may reduce COCO's investment. The issue at hand is therefore not one of opportunity, as COCO has permanent access to these and other venues for discussion, but rather technical and financial in nature.

Information regarding specific standards can be acquired by any citizen who pays ICONTEC for the data. Brochures and documents related to general standardization aspects are available free of charge.

STANDARDIZATION IN THE DOMINICAN REPUBLIC

The General Directorate for Standards and Quality Control Systems (Dirección General de Normas y Sistemas de Calidad, DIGENOR) forms part of the Government Secretariat on Industry and Trade and is responsible for approving and promulgating the standards that have been reached by consensus, presented for public survey, and reviewed and accepted by the technical committees. It is also charged with establishing programs and resolutions regarding standardization and quality control policies. It is also authorized to recognize a proposed standard as optional or mandatory.

The Directorate is made up of five government secretariats (Industry and Trade, Health, Public Works, Agriculture and Labor), the governor of the Central Bank, the Technical Secretary to the Presidency, two representatives of the export sector, one industry representative, one business representative, one consumer representative and the Civil Defense director or his or her representatives and the General Standards Director, who has a voice but not a vote.

DIGENOR is dependent on and financed by the Government Secretariat on Industry and Trade.

Law 602 of 20 May 1977 designates DIGENOR as the Executory Entity of the National Commission, with administrative dependence on SElyC. The specific mission of this agency is to develop standards and regulations regarding services and products, ensure that the products that reach the consumer are appropriate in regard to their measurements, weight, volume and quality; advise the industrial sector regarding technical regulations; and oversee the execution of and compliance with regulations, norms and quality control systems issued by the National Commission through its Department of Certification and Quality.

The Standardization Department is responsible for developing the standards proposed by the National Commission or by any interested party who feels that it is necessary to promulgate said standards. There are regulations regarding the approval, publication and dissemination of Dominican standards, which are described in the following paragraphs:

DIGENOR develops draft standards through its Technical Committees, which are called to convene by the Technical Coordinator. The draft standards are developed by the respective committee on the basis of an international standard. The observations are then analyzed. Once a consensus has been reached the standard is sent to be validated and approved as a Dominican Norm by the National Commission.

The discussion committees are made up of members of the following sectors: government, technical, production and consumer. In this regard FUNDECOM has achieved a high level of participation that is supported by Law 602 and its regulations, which facilitate said participation.

FUNDECOM does not receive any type of support for participating in this process, and is subject to the standard fee for procuring all documents and standards.

There are currently more than 630 official standards, 180 of which are mandatory and 61% of which deal with food products.

The Dominican Republic has not yet implemented a National Quality Control System and there is therefore no agency to assume the role of Accreditation Agency. As a result the certification of products as in compliance with a standard is one of DIGENOR's priorities.

STANDARDIZATION IN ECUADOR

The Ecuadorian Standardization Institute (Instituto Ecuatoriano de Normalización, INEN) was created by Supreme Decree 357 on 7 September 1970 and is charged with formulating technical norms. INEN is linked to the Ministry of Foreign Trade, Industrialization and Fishing and is a private agency whose purpose is social and public.

INEN engages in standardization, certification (it administers the Concession System for Quality Certification in Compliance with Standard and Label) and oversight (it verifies the compliance of national and imported products with the requirements established in the Ecuadorian Technical Standards, or ETSS). It is also responsible for implementing the International Unit System, Metrology and Consumer Protection.

INEN represents the Republic of Ecuador before international standardization, certification and metrology agencies, and is a full member of ISO, CONPANT and SIM, as well as a joint member of OIM and point of context for Codex Alimentarius.

In order to develop its activities it has its own analytical verification, physical verification, pressure recipients and packaging and canning laboratories.

INEN has a Directive Council, which is a permanent administrative technical agency. The Council is composed of 7 council members, 4 of whom come from the official sector and 3 of whom come from the private sector. Their terms may be renewed annually (polytechnic institutes and universities, producers and consumers, though in the case of the last the representative is appointed by the Ministry of Industries and Consumption). The INEN General Director acts as the Council Secretary and has a voice but not a vote in its deliberations.

INEN is directly dependent on the Ministry of Foreign Trade, Industrialization, Fishing and Competitiveness in that both its regulations and budget should be approved by that agency and its director is chosen from among a list of candidates presented by the Ministry.

The Director supervises the Technical Committees, which oversee the preparation of technical standards. These committees must feature government, industry and consumer participation.

Once the INEN Council has approved the technical standards presented by the Institute's General Director (with no less than four votes) they are authorized and made official by the Minister of Industries and Trade through an agreement and published in the Official Registry. The agreement must expressly state whether or not the standard is optional or mandatory.

The regulation can establish that the INEN be required to issue compliance certificates with a Seal and Standard to those who meet the established requirements.

The procedures for developing standards are established in the Technical Regulations for Standardization, Executive Decree No. 3497, Official Registry 744, of 14 January 2003.

According to the Operational Plan approved by the INEN Directive Council by a Council resolution, once a draft standard has been developed the General Directorate prepares the proposal (a project for a standardization document formulated by INEN on the basis of its own research or a project presented by a person or legal entity). Once it has been briefed by the National Directorate of Nationalization, the General Directorate offers the draft for public consultation through the Official Newsletter or the INEN as well as other standardization documents and the progress that has been made in each stage.

Once the observations have been received the General Directorate calls a Technical Sub-Committee or Internal Committee for the review and approval of the definitive standard, which is submitted to the General Directorate in order to be processed and considered for official status. Should he or she feel that it is necessary the General Director may return the project to the Technical Sub-Committee or Internal Committee, explaining the reasons for doing so. The new project is then developed by the appropriate body and resubmitted for review and approval.

The General Director then presents the project to the Directive Council for approval and recommends that it be optional or mandatory. If the Council deems it necessary, additional information on the standardization documents presented is attached. The Directive Council holds two consecutive sessions in order to approve or reject the standard and, if necessary, may request additional information or that the public consultation be broadened. The results of those activities are then presented at the second meeting. In the case of the rejection of a standard the case is returned to the sub-committees to be redeveloped and offered for consideration.

The standardization documents that are approved by the Directive Council are sent to the Ministry of Foreign Trade, Industrialization and Fishing in order to be made official as voluntary or mandatory according to the Council's decision, which is presented in a report that is signed by the President and Secretary. The standard enters into force once the ministerial agreement is published in the Official Registry. Once published, the standard cannot be modified or increased without using the procedure established in the regulation. Official standardization

documents are published in the INEN Standards Catalogue, which is published periodically by the institute.

The Technical Sub-Committee is made up of technical representatives of producers and consumers from the public and private sectors and specialized technical personnel who have been invited to participate in the study and in INEN's approval of standardization documents. They become permanent members with regular participation in the meetings that are held.

The presence of at least four members representing the invited sectors is required in order to convene a Technical Sub-Committee. The established procedure implies a series of ordinary meetings that are held every fifteen days, during which technically founded opinions must be presented in writing. Once presented, a consensus is sought. If there is no consensus a technical group is formed to study the issue under discussion and if it cannot reach a consensus the INEN's Internal Committee determines the course of action to be taken.

Consumers and other sectors participate in the standardization process through INEN in various instances in accordance with Supreme Decree 257 and the Technical Standardization Regulations.

One person appointed by the Ministry of Industries and Trade participates in the Directive Council in representation of consumers. According to INEN authorities, this mechanism is maintained because the country does not have a national organization that brings together the interests of consumer organizations and that allows for the election of a "representative," as has occurred with the production sector through the various chambers.

In regard to Technical Committees and Sub-Committees, to date the Tribunal is the only consumer organization that INEN invites, and it does so in the same fashion as it does other participants according to the Technical Standardization Regulation.

In order to develop its capacity for participation the institution identified key and sensitive issues to be addressed and established strategies and actions including:

- The establishment of a professional multidisciplinary team with specialists in specific areas
- Participation on technical committees and sub-committees with professional solvency
- Social control of product quality using quality control standards
- Publication and dissemination of the results of quality control research projects
- Participation in other national and international venues
- Development of strategic alliances, particularly with the Ministry of Health and universities, and alliances according to each specific problem
- Identification of allies within institutions
- Participation in national and international trade spheres

In 2004 the organization participated in the following Technical Standards Sub-Committees: soft drinks, portable water, aromatic herbs and tea. It is currently participating on the following Regulatory Technical Committees: labeling of processed, canned and wrapped foods, domestic artifacts for refrigeration and the General Product Labeling regulation. It is also reviewing the tea standard that was questioned by the Ministry of Health in the Directive Council and returned to the Tea Sub-Committee.

There is no mechanism for financing the participation of organizations. Standards and documents must be purchased. INEN only provides the draft standard or regulation to be studied via email. Each institution is entirely financed by its members' participation. Standards and other documents must be purchased from INEN.

STANDARDIZATION IN PANAMA

The General Directorate for Standards and Industrial Technology (*Dirección General de Normas y Tecnología Industrial*, DGNTI) functions as the National Standards Bureau (Law 23 from 1997) in the sphere of the Ministry of Commerce and Industries as part of the National Directorate for Business Development. It is responsible for standardizing and acting as a certification agency, and is financed by the government.

DGNTI also acts as the COPANIT Technical Secretariat. COPANIT, the Panamanian Industrial and Technical Standards Commission, advises the Ministry of Commerce and Industries in the areas of standardization and quality control, and is inter-institutional in nature. Steps are currently being taken to enact regulations on some standards, though at present only national products (and not imported ones) are required to comply.

In general sectors pressure the government to declare the mandatory compliance with a given standards. There are currently approximately 80 standards.

Efforts are currently being made to design procedures for developing standards within DGNTI, though various sectors are regularly invited to participate. This has allowed UNCUREPA to take on an active role in various sectorial discussion committees. UNCUREPA is a member of COPANIT by Executive Decree.

Although Panama has not officially established a National Quality Control System it recently created the National Accreditation Council, in which UNCUREPA participates in representation of consumers.

When open discussions are held the exchanges are frequently published in the media, which allows UNCUREPA to achieve incidence and exercise pressure in the discussion when arguments regarding consumer interests are supported by technicians from the Commission on Free Competition and Consumer Affairs (CLICAC), who also participate in these processes.

In the past six months UNCUREPA has participated in discussions regarding fuel, chicken eggs for human consumption and the calibration and verification of liquid fuel sorters. In the past two years it has participated in the discussion of technical regulations on standing bovine livestock (terminology and classification), bovine channels, typing of bovine livestock, cylinders for liquid petroleum gas, connection systems for liquid gas (LPG) of 25 pounds, whole grain and hulled rice, and bottled water.

According to the information provided by UNCUREPA, consumer participation has been strengthened a great deal over the years, and there is growing participation in the development of regulations and very good relations are maintained with the standards bureau.

STANDARDIZATION IN PERU

Peru is currently moving away from a system in which regulations based on technical norms were not promulgated and were left to be voluntarily followed by production sectors. Various government sectors currently feel that it is important to regulate certain aspects, most of which have to do with health and safety.

The National Institute of the Defense of Competition and Industrial Property (Instituto Nacional de Defensa de la Competencia y de la Propiedad Intelectual, INDECOPI), which is linked to the Presidency of the Council of Ministers, has been charged with coordinating all standardization processes since 1993. It is a public, decentralized agency with legal status and functional autonomy.

Its structure includes a functional area made up of independent professionals and an administrative area that is under the supervision of government officials.

INDECOPI also includes the Commission on Technical and Commercial Regulations, which is a collegiate body that approves its policies and resolutions, and a Technical Secretariat.

There are currently 6 Commission members, all of whom are elected by the INDECOPI Board of Directors, which finances its activities. The opinion of the Consultation Council is considered in this process. However, there is a fair amount of independence in the decision-making process.

The Commission is designated as a National Standards Bureau and National Accreditation Agency (through Decree 807, which was passed 18 April 1996) whose missions include approving technical standards and providing accreditation services for companies or institutions. To this end it certifies products and evaluates compliance with technical standards through its three areas of action: standardization, accreditation and para-tariff restrictions.

The process of convening a Standardization Technical Committees for the discussion of a given standard involves the submission of a proposal, which may be done by any sector, and its approval by the Commission. The purpose of this process is to ensure that all interested sectors are duly represented, including the consumer sector, through, for example, consumer organizations (Art. 7^a RTN).

However, the status of Committee member is only conferred by the Commission.

The regulations establish that the Commission should develop training activities for Technical Committee members and that the members will have the right to a copy of the standard in question.

ASPEC currently participates on 10 committees:

- wine beverages
- electric safety
- food labeling
- petroleum and its derivatives
- leather and footwear
- irradiated food products

- special diets
- bio-security
- bodywork
- Phosphorous

In addition, the Ministry of Production participates in the Food Section (DIGESA) of CONDEX and on the quinoa subcommittee. A team of 11 people has been formed to develop this activity.

INDECOPI publishes the standards that are under public discussion every 30 to 90 days. National labeling practices, labeling for irradiated food products, labeling of alcoholic beverages, waste management and use of used batteries are currently under discussion.

On 21 October 2004 the National Standardization Committee was created by Ministerial Resolution in order to develop and facilitate the implementation of the National Standardization Plan (Min. Res. 163-2004) in which it designates an ASPEC representative (an ad honorarium position). Article 30, which addresses the regulation of committees, establishes that Committee members should receive specific training. ASPEC was invited to form part of the CERPER Certification Committee.

There are currently 46 regulations of each Ministry with competence on the basis of the regulations approved by INDECOPI, of which mention can be made of the application of standards for :

- Footwear
- Safety Belts
- Fertilizers
- Break Disks
- Labeling and Net Content of Products

ANNEX

Basic Questionnaire

This questionnaire was approved and completed by the consumer organizations that participated in the investigation. The country reports are based on the answers submitted by the various organizations.

- a) Does your country have an agency or organization that oversees technical standards and standardization processes? If so, please state its name.
- b) Please describe the agency's structure, the way it works, the composition of its directive agency, dependence on other entities and financing.
- c) Please list the standards that have been passed by field.
- d) List standards scheduled to be discussed during 2004 and possible discussions for 2005.
- e) What procedures has the standards bureau established for developing standards? Is there a manual of procedures?
- f) How do different sectors participate in the development of technical standards?
- g) Do consumers participate in the work of the standards bureau? What is the nature of their representation at the different levels of said agency? (For example, in the Board of Directors, discussion committees, discussions with interested groups, etc.)
- h) If they do not participate, what are the main obstacles to making that participation effective?
- i) If they do participate, how has your organization developed a capacity for participation and how is it structured within the organization? Has it formed strategic alliances with any sector (university, scientific, etc.) in order to develop this capacity?
- j) Please offer specific examples of participation in the past 6 months.
- k) Is there a mechanism for financing consumer participation in standards bureau activities? Is specific information (technical standards, documentation, etc.) provided free of charge or is there a fee?
- l) Do consumer organizations have relationships with similar agencies in other countries? Has any consumer organization participated in ISO, IEC, COPOLCO or COPANT meetings?

- m) Where should consumer participation be strengthened? (Please refer to standards or groups of standards that you would characterize as priority areas in this regard.)
- n) Has a national quality control system been implemented? Please describe its structure and comment on whether or not consumers participate at some level (accreditation agency, certifications agency, etc.).
- o) Please provide a brief summary of regional agreements regarding the standards applied as technical regulations and mutual recognition systems that currently exist or are under discussion.
- p) Proposals for increasing consumer participation in the standardization process.