

**TRANSATLANTIC CONSUMER DIALOGUE**  
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**TACD RECOMMENDATIONS ON TRADE**  
**AND**  
**EUROPEAN COMMISSION SERVICES' RESPONSES**

The European Commission Services welcome the input from the TACD Trade Working Group. While not agreeing with all the points raised, the recommendations provide a basis for continued co-operation and discussions in the future.

The topics raised by the TACD Trade Working Group concern three main issues - labelling, principles for the international harmonisation of standards, and vehicle safety concerns. In addition, there are clear trade implications for the recommendations coming out of all the other TACD working groups, with issues including the impact of WTO Agreements on food labelling, electronic commerce and access to medicines in developing countries. This illustrates the depth and breadth of consumer interests in the field of trade.

Before setting out the detailed replies to the recommendations, the Commission Services would like to underline the importance attached to consumer interests when addressing issues related to trade. Against the background of globalisation, ensuring that these interests are effectively taken on board is more important than ever.

#### **TACD RECOMMENDATION ON PRINCIPLES FOR INTERNATIONAL HARMONIZATION**

- 1) Standards that do not have a health and safety component should be the primary candidates for international harmonization. We must distinguish between standards and procedures that do not directly involve health and safety concerns (i.e. the size of a floppy disk, credit card, or customs and accounting procedures) and those that impact health and safety (i.e. auto standards, medical device standards, and allowable pesticide residues in food.). Many standards, like pesticide residues, are impacted by factors such as cultural norms, dietary intake which make a "one size fits all" standard hard to achieve.**
- 2) Some issues must remain outside the scope of international commercial rules altogether. We reject the movement fostered in the WTO to turn basic necessities or elements of life (like genetic materials) into commodities. Rather they should be recognized as common goods and precious resources for government to protect, distribute and regulate. For example, we reject the commodification of bulk water, and the patenting of life forms and seeds.**
- 3) TACD favors international standards being used as a floor rather than a ceiling. The harmonization mechanisms in the TBT and SPS Agreements encourage the challenge of higher domestic standards but not the challenge of lower standards. The current mechanism can only result in a ratcheting down of standards. At a minimum, the harmonization provisions of the SPS and TBT agreements need to be rewritten to ensure that the role of democratically-achieved international standards is not to discourage cutting-edge domestic innovations geared toward solving some of our most pressing problems.**

- 4) TACD is concerned about current WTO use of international standards in deciding disputes regarding health, safety and the environment. TACD believes that international standards, while helpful in some contexts, should be voluntary and that the WTO SPS and TBT Agreements' current elevation of all such standards, regardless of the forum in which they are set or the level of protection provide, is inappropriate. For instance, international standards should not be used to undermine non-discriminatory domestic standards merely because those domestic standards provide a higher level of health, safety or environmental protection. TACD is particularly concerned at the practical application of international standards in the dispute resolution procedure. Not enough emphasis is being placed on the exception which allows nation states to adopt higher standards or requirements. This is compounded by the inability to challenge international standards themselves for not embodying a sufficiently high level of consumer protection.
- 5) The Precautionary Principle should be incorporated more broadly in the international standards setting process. Ironically, while the U.S. government challenges the EU beef hormone and genetically modified organisms (GMO) policies at the WTO, it undercuts the underlying basis for regulatory policy in the U.S. For example, the FDA's pharmaceutical safety rules, the burden of proof is on the producer to show a drug is safe. Until there is scientific evidence to make that showing, the drug is kept off the market. If a precautionary approach had been systematically applied, it might have prevented some of the recent and deadly food safety crises in Europe.

Bringing such a principle to life is merely a matter of setting the right rules. The obvious test as to a standard's trade effect - and the one that would have safeguarded the beef hormone policy - is whether the measure is discriminatory as between domestic and foreign goods. The rule we demand is that standards based on the Precautionary Principle and applied equally to domestic and foreign producers are inherently permissible.
- 6) Governments should only recognize or be involved in harmonization activities negotiated in open, accountable democratic fora, with clear avenues for public input and transparent methods of rulemaking and record keeping. Non-transparent private industry groups for example, are not the place to be setting WTO-presumptively legal standards which impact public health, consumer safety or the environment. If differing regional and international standards are to be harmonized then this should take place within an open and transparent framework. This framework must allow for participation by consumer representatives at all levels and all stages of the standards-writing process. Greater co-operation between government officials is also required to agree on essential safety requirements, which should be applied to international standards.

Provision should also be made for public and/or government review and possible challenge of the right of a particular international standard to give any presumption of compliance with legal requirements. Other, quasi-governmental organizations like the Codex Alimentarius must also be reformed to give consumers and equal voice with industry in the process.

- 7) a. We reject the notion of functional equivalence. In Europe, equivalency decisions have been a conspicuous failure that has eventually resulted in the writing of over 5,000 new European standards with some 8,000 more on the way. Standards provide a bright line test whereby precise comparisons can be made. The very notion of equivalence allows for imprecise, subjective comparisons that are not appropriate when dealing with issues as important as public health and safety. However, given that equivalency decision between nations are moving forward with increasing frequency, we must develop strict rules for making equivalence determinations. A standard or a regulatory system should be determined equivalent only if it provides the same or greater level of substantive protection for health, safety or the environment. Criteria for determining equivalency should be clearly outlined and equivalency proposals should have substantive public input before they reached. (Thus, the NAFTA equivalence finding on Canadian beef that did not even review, much less compare, the varying regulatory systems and numerous standards, is unacceptable.)
- 7) b. Any equivalence decision or MRA must ensure that the procedural safeguards of the countries involved are equally strong -- meaning there is a democratic process that assures consumer input and redress and government enforcement. To this end we recommend readiness criteria under which potential MRA and equivalency agreement must be reviewed. We urge nations to adopt strong freedom of information provisions, on-the-record rulemaking procedures, laws providing for open meetings of governmental agencies and balance on advisory committees among other reform measures to encourage citizen input into trade-related and standards-related proceedings.
- 8) Harmonization activities including MRAs and equivalency agreements are only ever appropriate if they enhance the well-being of the people of the nations involved. If these agreements are not negotiated with the input of the citizenry and if there is not a clearly defined public benefit, there is no reason for governments to spend public resources to accomplish harmonization. The cost of harmonization which only benefits industry should be shifted back to the private sector to execute voluntary standards. (For example, the FDA estimates that the 1998 U.S.-EU MRA will cost them over \$10 million and 125 full-time employees to implement.)
- 9) We oppose the TABD's call for increased reliance on "suppliers declaration of conformity," especially in sensitive areas including: public health, food, product and worker safety and the environment. Conformity assessment procedures are only one component of the framework which ensures that products actually comply with the appropriate standards. This framework includes the product liability regime and market surveillance in particular. The role that each of these components will play can legitimately differ from one jurisdiction to another. There is a danger that focussing on only one aspect i.e. conformity assessment will upset the balance of the whole framework. Some equivalency decisions and MRAs (i.e., 1998 U.S.-EU MRA) are leading to situations where one country is handing over federal regulatory authority to private entities in a second country. TACD believes it is entirely inappropriate to privatize key public safety functions via MRAs and equivalency decisions, even if national governments retain ultimate responsibility for the safety of products.

## EUROPEAN COMMISSION SERVICES' RESPONSE

### Introductory comments

The European Commission Services' welcome the detailed input from the TACD. The points raised will be taken into account in internal and external policy debate in the area of international harmonisation and standards. While not agreeing with all the recommendations, the issues raised provide a good basis for continued co-operation and discussions in the future.

In addressing the TACD recommendations, Commission Services would first underline the key and vital role that regulation has in promoting public policy objectives, including promoting consumer interests. At the same time, the question of the impact of regulation on economic activity and trade is an inescapable one. Legitimate regulatory requirements can and do hamper trade. This is unavoidable and has become increasingly apparent as "traditional" trade barriers, such as tariffs and quotas, diminish and trade flows multiply.

There are a number of tools that can facilitate trade by addressing these differences in regulations while ensuring that public policy objectives are fully maintained. Harmonisation is one such tool. In Europe, this approach has been used to great effect in the establishment of the Single Market.

Harmonisation, by definition, means that technical regulations and standards change. The key is to ensure that this is not downwards towards the lowest common denominator. From experience in Europe, this can be achieved provided that there is a common understanding, accountability and transparency in the standard-setting procedures. At the international level this is a bigger challenge, and even more so is to create a system that encourages parties to raise standards. Public and consumer opinion has a particularly important role to play in this context, as it has done in the EU Single Market. The EU would not sign up to any international standard that risked undermining domestic public policy objectives.

When discussing "harmonisation" it is also essential to make a clear distinction between regulations, which are mandatory, and standards, which are voluntary in application. Depending on how a regulation makes use of a standard (e.g. incorporation, direct reference, indirect reference), the voluntary nature of a standard can be made mandatory to a range of degrees.

### Points 1 and 2 - international harmonisation of standards

In looking at the potential for the international harmonisation of standards, the EU does not in general distinguish between those standards that have a health and safety component and those that do not. The key is to ensure that internationally harmonised standards fulfil domestic public policy objectives, thus ensuring health, safety and other interests are not undermined.

With regard to the TACD's recommendations that some issues must remain outside the scope of international commercial rules, it should be noted that rules are in fact often required to ensure that trade in certain sensitive commodities and basic necessities is regulated in a way that ensures public policy objectives can be met. Without such rules, the risk is that such objectives will be undermined. Moreover, distinguishing the "threatening" nature of certain

risks can raise difficulties. Some are obvious (e.g. drugs), others less so: for instance, international standards that would not protect e-commerce or banking transactions could lead to such financial losses for individuals that their livelihood could be threatened.

With regard to the patenting of life-forms, the EU Directive 98/44/EEC on the Legal protection of biotechnological inventions sets the limits for the patentability of living organisms. According to this directive inventions which are new, involve an inventive step and which are susceptible of industrial application shall be patentable even if they concern a product consisting of or containing biological material. Therefore, Commission Services cannot support the TACD recommendation stating that "patents on life-form" should be forbidden.

With regard to the commodification of bulk water, Commission Services would be grateful for a clarification of the TACD recommendation. In the Commission's amended proposal for a European Parliament and Council Directive establishing a framework for Community action in the field of water policy (COM 97(49) final), the Commission proposes that water is protected as an environmental and a social good, regardless of property ownership.

#### Points 3 and 4 – potential conflicts between domestic and international standards

WTO provisions promoting the use of international standards do not undermine domestic policy objectives. WTO Members are not bound by international standards – they are free to reject international standards as a basis for their technical regulations if they are inappropriate to achieve prescribed policy objectives. The objective of the WTO, in this context, is to ensure that health and environmental rules are not used as a pretext for unjustified trade restrictions.

The WTO Agreement on Sanitary and Phytosanitary Measures illustrates this. It begins:

“Reaffirming that no Member should be prevented from adopting or reinforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination...or a disguised restriction on international trade”.

The WTO Agreement on Technical Barriers to Trade recognises in article 2.4 that:

“Members shall use [international standards], or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued...”.

If a domestic technical regulation is adopted that provides a higher level of protection than the relevant international standard, the international standard can still be a basis for the domestic regulation - it may simply have to be adapted to meet the higher level of protection. International standards will also often offer different options that address different climatic, technical or geographical conditions.

While WTO rules promote the use of international standards, they do not encourage the challenge of national regulations that differ from international standards. Furthermore, the

SPS and TBT Agreements do not discourage cutting-edge domestic innovations. The opposite is in fact true. By promoting transparency, these Agreements ensure that domestic regulators are better informed of innovative regulatory approaches being used by their counterparts in other countries, and are thus in a better position to use similar approaches if appropriate.

#### Point 5 – precautionary principle

The use of the precautionary principle is compatible with international trade rules. At the same time, there is scope to clarify the basis for action in this area in order to help ensure public policy objectives, such as protection of health and the environment, are fulfilled.

The Commission has been foremost in promoting understanding of the precautionary principle. This concept, which is reflected in the EC treaty itself as a guiding principle that must be taken into account when developing environmental policy (Article 174) shall also, through the integration process (Article 6), be taken into account in the definition and implementation of other Community policies.

The Commission's position is described in its recent Communication on the subject (ref: COM(2000)1). This document recognises that the issue of when and how to use the precautionary principle, both within the EU and internationally, is giving rise to much debate, and to mixed and sometimes contradictory views. The Communication established Commission guidelines for applying the principle and aims to build a common understanding of how to assess, appraise, manage and communicate risks that science is not yet able to evaluate fully, and avoid unwarranted recourse to the principle as a disguised form of protectionism.

#### Point 6 – international standardisation process

Fundamental principles of standards work undertaken by bodies such as the International Organisation for Standardisation (ISO), the International Electrotechnical Commission (IEC) and the International Telecommunication Union (ITU), and their European corresponding organisations, such as the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) and the European Telecommunications Standards Institute (ETSI), include openness and transparency for all interested parties, as well as consensus among these. Participation in standards work is open to all interested parties through a number of channels, e.g. directly in technical committees, via national standards bodies or associated organisations, or via national co-ordination groups. In addition, the consensus building process foresees a number of opportunities for public enquiries before a standard is finally adopted.

At the same time, it is true that some groups, such as consumers, may encounter difficulties in participating effectively in standards work due to lack of resources. However, they are in no way excluded. The wide participation of all interested parties in standards work is something that must be taken very seriously, not only in policy statements but also in action. Similar concerns arise as to the effective participation of developing countries in the work of these bodies.

The EU has recognised CEN, CENELEC and ETSI as the European standards bodies that draft and adopt standards in support of Community policy and legislation. This is done on the

basis of a framework and conditions (e.g. that the organisations must respect principles such as legitimacy, accountability, openness and transparency) set by the Community institutions.

There are ongoing discussions in the WTO Committee on Technical Barriers to Trade on what criteria should apply to be considered an “international standards body”. The EU has in its contributions always highlighted and is continuing to maintain that these criteria must include transparency, openness, impartiality, effectiveness, relevancy and international status.

### **Mutual recognition agreements.**

#### **Points 7 a. and b. – functional equivalence and mutual recognition agreements**

The Commission services note that the notion of functional equivalence has not been the basis for the creation of the single market for goods.

In the EC internal market, the principle is that Member States shall not impede the free movement of goods lawfully produced or marketed in another Member State. However, a product lawfully produced or marketed in another Member State but which does not comply with the rules of the Member State of destination may be refused free movement if it actually jeopardizes a general interest which is mentioned in the Treaty (such as the protection of human health), or recognized in the case law of the EC Court of Justice (such as the protection of consumers or the protection of the environment), and which is safeguarded by the rules of the Member State of destination.

Where appropriate, harmonising measures have been taken at EC level in order to ensure that the free movement of goods takes place on the basis of a high level of protection of the general interest at stake. This has been pursued either through detailed technical harmonisation in certain areas - the so-called “Old Approach” ( this remains the case in areas such as pharmaceuticals) or in other areas, through the definition of common essential health and safety requirements and the harmonisation of conformity assessment procedures - the so-called “New Approach”. Products meeting the above described legislation circulate freely in the Internal Market. An essential part of the above legislation is represented by the presumption of conformity with the applicable essential requirements when the product meets the specifications of European harmonised standards. The Community has mandated European standards bodies (CEN, CENELEC and ETSI) to develop appropriate standards that will assist manufacturers in meeting the essential requirements. The standards remain, however, totally voluntary.

Standardisation is an important instrument of economic integration. Approximately 35% of the standards developed by CEN, CENELEC and ETSI are related to Community legislation, while the majority are market driven. Furthermore, in the EU, purely national standards work has almost disappeared and well over 90% of the standards catalogues of the national standards bodies in the EU is based on European and international standards.

As to the notion of functional equivalence, this has no place in the Internal Market mechanism. It has been often used by regulators, however, as a means of facilitating trade while ensuring public policy objectives are fully met. Equivalence is most often a unilateral tool (a domestic regulator examines foreign requirements and sometimes accepts them as equivalent to domestic ones). It can also be applied, however, on a bilateral and regional basis. There are a number of conditions that need to be met if functional equivalence is to be

determined. The main condition is that foreign standards give the same assurances as domestic ones in terms of the fulfilment of the objective of the domestic regulation. In other words, if a domestic standard is prescribed in order to achieve a given level of safety, or consumer protection, the foreign standard must be capable of assuring the same level of safety or quality for that product. Therefore, any agreement based on the concept of functional equivalence would not affect the existing level of consumer protection in either party provided that equivalence has been determined on the basis of objective criteria related to the purpose of these regulations.

Functional equivalence can be part of a mutual recognition agreement (MRA) aiming to address regulatory differences. This approach can be useful when harmonisation is impossible or is only a distant prospect. It can also be useful when harmonisation has almost been achieved through voluntary international standards and equivalence would then step in to close the remaining gap, which is often rooted in the peculiarities of a country's administrative and legal structure, rather than in any objective difference on what needs to be regulated and how. In this scenario, manufacturers on both sides would be able to respect exclusively their domestic requirements. They would be able to export to the other party if they met these requirements.

The EU and US are exploring such an agreement in the context of the Transatlantic Economic Partnership, notably in the area of marine equipment. If such an agreement goes ahead, it would mean that European manufacturers would be able to produce products, such as lifejackets, to European standards and sell them in the US. In exploring this possibility, Commission Services are all too aware of the importance of ensuring that any such agreement does not undermine safety standards.

As for the TACD recommendations on transparency and accountability, the issues relate not only to the field of MRAs, but to the political and legislative process in general.

#### Point 8 – functional equivalence and mutual recognition agreements

MRAs are not harmonisation activities. The MRAs concluded by the EU to date, including that with the US, are based on a common principle. This is the recognition by each party of the capability by conformity assessment organisations of the other party to perform the required certification procedures. These so-called MRAs on conformity assessment procedures do not change the standards or regulations applicable to any product in either party to the agreement. The change is that certification can take place in the exporting country, prior to exportation, this certification being on the basis of the requirements of the importing country.

The TACD recommendations raise questions about representative democracy more generally. Clearly, any MRA involving the Community must be agreed through the democratic processes of the EU. Furthermore, the views of all interested parties, including the input from the TACD, are taken into account by Commission Services in negotiating and implementing MRAs.

## Point 9 – conformity assessment procedures and product liability

The Commission services have set out their views on the TABD Recommendations in their 'Progress Report on the TABD Recommendations of Berlin, November 1999', published in May 2000.

The Commission Services support the use of the least trade-restrictive procedures for international trade, provided that they are compatible with the fulfilment of the legitimate public policy objectives set by the domestic legislative and regulatory process. In this context, attention shall be given also to identify the most appropriate conformity assessment procedures - including the use of supplier's declaration of conformity - taking into consideration the particularity of the sector, the relevant product risks, as well as health, consumer safety and environment issues. An appropriate legislative framework, including safeguards against non-compliant or dangerous products is the necessary complement to the use of appropriate conformity assessment procedures. The Community has made extensive use of the supplier's declaration of conformity in certain areas, but it has always been adamant that its use cannot be generalised indiscriminately. Thus, Community law employs the whole range of conformity assessment methods possible, including third party certification (of final products and / or of manufacturers' quality assurance systems) and public authority certification.

Finally, with regard to the TACD concerns over the transfer of regulatory authority under MRAs, the key issue is not who carries out conformity assessment, but the technical competence, integrity, independence and impartiality of the responsible body. It should also be noted that it is ultimately the manufacturer that is responsible for the safety of its products. National authorities are responsible to ensure that this is actually the case. The Community believes that the MRAs it has concluded give Community authorities the possibility to verify that the assessment of compliance with Community requirements is carried out by foreign entities (whether public or private) in at least as competent and reliable a manner as it is done in the Community. Furthermore, the MRAs give the parties sufficient safeguards against abuses by individual conformity assessment bodies.

## **TACD RECOMMENDATION ON ETHICAL LABELLING**

**TACD welcomes EU and US government support for fair trade labelling. We propose to work in a constructive way with the government in making fair trade labelling schemes more effective, more compatible and free of WTO challenge.**

**Consumers are becoming more and more interested in the way goods are produced. Ethical labelling schemes, such as eco-labelling and animal welfare labelling give consumers the opportunity to choose products which meet their own ethical standards. Business can choose to sell and consumers can choose to select products which are produced and traded in a way that ensures good employment or environmental standards and extra benefits to the producers.**

**The creation of such a market can make it commercially feasible for companies to develop special added value products which consumers recognize as generating additional benefits to "third world" producers and strengthening their position. Such products are commonly described as fair trade products, though this term can be misleading in some languages and alternative terms are used. The marks only apply to standards in the country of origin, do not imply that non-certified products are unfair and do not support managed trade. Traders, suppliers and consumers should decide for themselves whether to participate. The labelling does and should operate in a free market.**

**In order to assure consumers that such products are indeed produced and traded in a way that ensures good employment standards in the third world and additional producer benefits, independent certification is required including independent monitoring in cooperation with human rights, labor, religious and other NGOs who have knowledge of local conditions and trust of workers. Such certification covers both the supplier organization and the terms of trade.**

**It should ensure that the benefits of the trade are shared with the primary producers and that the supplier meets independent standards for producer welfare, the environment and working conditions. The quality of marked agricultural produce also needs to be high.**

## **EUROPEAN COMMISSION SERVICES' RESPONSE**

The Commission services agree that, where appropriate, clear and accurate labelling will help the consumer to make an informed choice whether or not to select a particular product. The labelling must be informative, it must not be misleading, and it must be compatible with WTO rules.

In the framework of WTO, there is little relevant case law and so it is difficult at present to judge whether or not a specific approach is likely to be compatible with WTO. The Commission would welcome a continuing dialogue on this issue with interested parties.

It is clear that ethical labelling is not a precondition for selling a product in the EU and that the establishment or running of any schemes for independent certification or monitoring connected with ethical labelling should take place without any involvement by Government.

## **TACD RECOMMENDATION ON VEHICLE SAFETY CONCERNS**

### **Standard child seat mounting interface**

**One of the most important safety issues with respect to child restraints in cars is the problem of misuse. The performance of the child restraint in a crash is compromised by its not being fitted properly. In many cases it is extremely difficult, if not impossible, to actually fit the child restraint properly due to incompatibility problems between the restraint and the car seat belts which the restraint relies on at the moment. Considerable importance has been attached to the development of a universal mounting system for child restraints. One that would not rely on the adult seat belts in the car but on dedicated anchorage points. After some controversy and considerable delay during the development of such a system in ISO, the international standards body, a final notice of rule-making has been issued by the US NHTSA. This is in respect of a system, which will utilise two rigid anchorage points and one top tether. This appears to be the best compromise performance versus usability, and as such should be placed on the agenda for global harmonisation. Attention will need to be given in particular on the usability issues, as the discussions so far have tended to focus on the engineering specifications of spacing and strength. With the US having announced their final rule now, there is an obvious opportunity to demonstrate to the consumer the value of global harmonisation through a practical application in this new field. A standard harmonised Universal mounting system for child restraints should therefore be amongst the list of items tackled early in the global agreement.**

### **Frontal impact protection**

**The main issues are more refined criteria to control intrusion, more stringent injury criteria and further reduction of the risk of injury, together with efforts to improve compatibility between different classes within the vehicle fleet. Consumer groups have campaigned for a long time for an improvement in protection for vehicle occupants involved in frontal impacts and for this to be brought about through more realistic whole vehicle crash tests to be applied in the type approval regulations. More specifically consumers also want to see the question of intrusion addressed by a more realistic test that is introduced as this accounts for a large percentage of the serious injuries incurred by victims. The EU Frontal Impact Directive offers useful progress in this area, but it is up for review itself shortly and this would be a good time to review the test speed, the injury limits, and the need for additional criteria to minimise risk of occupant injury.**

**The US safety standard is also under active consideration and consumer groups are concerned about the possibility of the 30 mph crash test speed being lowered. One specific area of concern where progress can be made is that of the impact of passive restraint systems on different types of occupants i.e. the problematic interaction between airbags and children/small adults (particularly females) in low speed crashes. Future regulation should seek to encourage the use of innovative technologies to provide effective solutions to improve occupant safety. Consideration should also be given to standardising steering wheel adjustability and pedal adjusters in order to protect smaller persons. Small drivers find overwhelmingly that to adjust their seat for pedal use they are too close to the steering wheel.**

### **Side impact protection**

**There is a need to consider the best way forward for a new side impact test dummy, already the subject of international co-operative work. Further consideration of the best barrier face characteristics, mode of test, and limits for risks of injury is also needed.**

### **Additional head protection for side impacts and rollovers (FMVSS 201)**

**The US FMVSS 201 has a pole test that could be useful in assessing head protecting systems designed for use in side impacts. There is no equivalent EU directive-based test for head protection. The possible implementation of FMVSS 201 like-test for the car interior is currently under discussion in Europe.**

### **Rear impact protection**

**There is need for improved regulation concerning head restraint and seat design to reduce the instance of neck strain in rear impact and the provision of head restraints in rear seating positions. The European head restraint requirements are considerably more demanding than those in the US in terms of height requirements. There is a growing body of evidence that dynamic testing of the seat and head restraint combination is necessary in both Europe and the United States to optimise injury reduction.**

### **Under-run guards on trucks**

**These are a major consumer demand. The introduction of front under-run guards is needed to allow the benefits of improved car design to be realised in car to truck accidents. Without such a measure, the increasingly sophisticated car restraint systems will continue to be defeated by the gross under-run and passenger compartment intrusion associated with truck collisions at present. There is an existing UN-ECE regulation on front under-run guards and this should be included in mandatory legislation. In addition an effort should be made to substantially improve rear under-run guard requirements.**

### **Pedestrian Protection and other vulnerable road users**

**The main issue is to introduce measures to make cars less aggressive with respect to pedestrians and other unprotected road users. Technical solutions and design changes, if taken together, can meet all the different test procedures and reduce the often life-threatening or disabling injuries suffered by pedestrians in collisions. A complete set of tests has been drafted by the EEVC, but has not yet been introduced via legislation. These tests are used by the EuroNCAP consortium to provide consumer information on this aspect of car design. There is thus a growing body of technical information within the public domain that illustrates how little the car industry has contributed to pedestrian protection so far, and the suitability of the test methods for legislative use. Further fine-tuning of the test methods have recently been suggested by the EEVC.**

### **Seat strength**

**Seat back and track failures continue to plague occupants. This is an unacceptable situation.**

**Existing standards need to be upgraded in both the US and EU in order for occupants to receive a reasonable amount of protection during collisions. In addition the UN-ECE**

has developed a test method aimed at keeping additional loading from luggage off occupants in frontal impacts. Consumers International, which initiated the call for such requirements, has criticised the rigour of these tests adopted by the UN-ECE. In their current form they do not acknowledge that cars differ in their ability to carry luggage, and the regulation has performance criteria for rear seat deflection that are not in line with the space requirements of restrained children in the rear seat. Criteria should be further improved.

#### **Safety belts - characteristics**

Recent changes in ECE seat belt regulations have allowed the introduction of load limiting seat belts. Such designs are intended to reduce the incidence of belt induced injury to the chest. The reduced belt loads assume that there will be better load spreading achieved over the chest in vehicles equipped with airbags. Consumers International has pointed out that there needs to be some objective test evidence that the airbag and seat belt in a given car actually act together in this way. They have cited EuroNCAP test results that show that in some vehicles the airbags never load the chest at all. There is thus a fundamental assumption that needs to be checked out before belts that limit loads belts to very low levels are given legislative approval.

#### **Safety belts - elimination of lap belt only restraints from the new vehicle fleet**

Lap belt only restraints such as those found in centre-rear seating positions in the car fleet do not give optimum protection. They are associated with lumbar spine and abdominal injuries. There is no technical reason why three point seat belts could not be mandated in the car fleet as is evidenced by the growing number of manufacturers who already provide such restraint systems in the centre-rear positions in their cars.

#### **Provision of restraints in buses and coaches**

The consumer groups in Europe have lead the way in demanding high quality restraints in coaches and smaller passenger vehicles (minibuses). US consumer groups agree major progress needs to be made in this area.

#### **Airbag warning labels on cars and child restraints**

The US has led the way in mandating clear attention grabbing labels to warn of the fatal hazards associated with frontal protection airbags. Consumer groups are currently attempting to get harmonised legislation introduced in Europe on this issue. A harmonised approach has been adopted for the labelling of child restraints, and discussions are still under way for the clear labelling of vehicles. This is an obvious candidate for global harmonisation, with the proviso that the text warning must be provided in at least one language of the country in which the vehicle is sold.

#### **Timescale**

A list of consumer concerns for upward standard improvement will favour measures that demonstrably improve consumer safety.

#### ***Technically achievable (2-3 years)***

- **Standard child seat mounting interface. [Based on existing US requirements for rigid anchorage with improved usability requirements]**

- **Side impact protection (Pole test) [Based on existing US requirement]**
- **Additional head protection for side impacts and rollovers [Based on existing FMVSS 201 requirements]**
- **Rear impact protection (head restraint height requirements based on EC Directive)**
- **Under-run guards on trucks [Based on existing UN ECE requirements and EC Directive]**
- **Seat strength [Based on upgraded UN ECE regulation]**
- **Safety belts - characteristics [based on existing ECE regulation]**
- **Safety belts - elimination of lap belt only restraints from the new vehicle fleet. [Based on recent amendment to EC Directive]**
- **Provision of restraints in buses and coaches [Based on existing EC Directive]**
- **Airbag warning labels on cars and child restraints [Based on existing US and ECE requirements for child restraints and small amendment to US vehicle labelling requirements]**

*Technically achievable (2-5 years)*

- **Frontal impact protection [ Based on upgrade of EC Directive]**
- **Pedestrian Protection [ Based on updated EC draft directive]**
- **Rear impact protection (Dynamic requirements)**

*Technically achievable (5 years+)*

- **Side impact protection (Harmonised dummy, barrier, etc.)**

**EUROPEAN COMMISSION SERVICES' RESPONSE**

Introduction and background

TACD indicates in the introduction of its paper that the decision process within WP 29 does not respect democratic values. The example of the draft frontal and side impact test regulations is then mentioned, stating that these failed to meet public policy objectives and were eventually amended by the European Parliament, and that these amendments were made in a non-transparent decision-process that favours the industrial lobby.

There is a confusion here about the role of various institutions and organisations, and the conclusion is illogic and not supported by facts.

WP 29 is set up under the UN-ECE, and member countries include inter alia the EU member states on an individual basis, most Central and East Europe Countries, Russia, Japan, and the USA. WP 29 is a forum for technical harmonisation, and compromise is necessary to achieve any harmonisation. Of course, higher standards are always possible in theory, but if some member countries oppose them and would then not adhere to them, there is no real harmonisation at all, and this status would not be preferable. Therefore any harmonisation agreed within the WP 29 should be regarded with this background in mind.

TACD mentions as an example the frontal and side impact test regulations agreed within WP 29, and the fact that at a later stage the European Parliament made amendments. But in this latter case, the process is no more within the UN-ECE WP 29 framework, but within the EU.

TACD should be aware that within the EU, the set up is quite different from the one of WP 29:

1. the member countries are different and the EU may well have different objectives from the UN-ECE WP 29. It is unclear why TACD put them together in this case;
2. the EU may well wish to go beyond what has been achieved within WP 29;
3. the European Parliament plays a decisive role before any EU Directive is passed and it is its privilege to suggest amendments;
4. it is difficult to understand the remark on non-transparent decision-making process within the EU: any directive takes on board the concerns of all interested parties at its early stage; it is then discussed by the Council where the Member States' government are represented, and discussed again by the directly elected European Parliament.

#### *Standard child seat mounting interface*

UN-ECE WP.29 GRSP is currently analysing the ISO proposal for a standard child seat called "ISOFIX". To date, ISO has not taken a final decision concerning the anti-rotating system which will complete the two rigid lower anchorages.

The US initiative to choose the top tether as an anti-rotating system is in general not favoured by most of the delegations in WP.29. EC shares this position, because of the high possibility of misuse that would derive from the adoption of the top tether.

#### *Frontal impact protection*

Work has started on a revision of Directive 96/79/EC, as foreseen in its article 4. This will be based on the report delivered to the EC by EEVC on the possible updating of some prescriptions.

#### *Side impact protection*

Work has started on a revision of Directive 96/27/EC, as foreseen in its article 4. This will be based on the reports delivered to the EC by EEVC on the possible updating of some prescriptions and on the comparison among different types of MDB (Mobile Deformable Barriers).

#### *Additional head protection for side impacts and rollovers*

EEVC WG13 is currently carrying on researches to develop a procedure to assess the head protection in side impacts. A report from test laboratories including test procedures will be finalised soon, in order to allow the feasibility and reliability studies on real scale cars to be performed.

### *Rear impact protection*

Research on whiplash effects is carried out by different bodies (national authorities, test laboratories). At present no test procedure is available.

### *Under-run guards on trucks*

The proposal for a directive integrating UN-ECE Regulation n°93 into EU legislation is currently at the second reading stage at the European Parliament. The formal adoption of the Directive is expected by summer 2000.

### *Pedestrian Protection and other vulnerable road users*

A text covering this issue is at present being finalised by the Commission services. However, no official fine-tuning of the test methods has been suggested by EEVC.

### *Seat strength*

The issue of luggage load in case of accident is currently under discussion in UN-ECE WP.29 GRSP. It has been shown that in very few cases this situation occur in real accidents. Furthermore, no major problems have been detected during tests performed by some national authorities with the new prescriptions under the UN-ECE Regulation.

### *Safety belts*

The characteristics of safety belts are currently under examination by UN-ECE WP.29 GRSP. The new EU Directive 2000/4/EC includes the requirement for 3 point seat belts to be fitted in the rear centre place of cars.

### *Provision of restraints in buses and coaches*

As from 1 October 1999, the EU Member States can only type-approve these vehicles, if all their seats are equipped with safety belts in accordance with Directive 96/36/EC and if the anchoring of all their seats meet the requirements of Directive 96/37/EC.

### *Airbag warning label on cars and child restraints*

This question has been discussed for a long time in UN-ECE WP.29 GRSP. No agreement has been reached until now on a text (initially proposed by "Consumers International - C.I.) to accompany a pictogram. During the next session of GRSP, OICA will table a proposal based on some principles suggested by C.I., but it has to be remembered that for the time being no Contracting Party to UN-ECE Regulation n°94 has expressed support for having a text on the label. Any text will also cause problems with regard to the language of the

destination country, as it is impossible to know this information at the production stage , and a label with a warning text in the 11 official languages of the EU would not be realistic.

### *Timescale*

The European Commission is committed to global harmonisation where possible and to highest possible and realistic safety measures. It will continue to adhere to this commitment in future while taking into account both the industry's and the consumers' concerns, and also technological progress.

Most of the priorities mentioned by TACD are also those of the Commission; the timing however depends also on several external factors, and therefore it is not realistic to set dates in advance.

## **TACD RECOMMENDATION ON ECO-LABELLING**

**TACD welcomes EU and US government support for eco-labelling schemes since consumers need product related environmental information to make their contribution on sustainability. It proposes to work in a constructive way with the government on making eco-labelling schemes more effective, more compatible, more accessible to exporters and free of WTO challenge (in this case ISO 14024 is of some help)**

**Ecolabelling schemes are voluntary, market-based schemes used by manufacturers or retailers to help consumers identify products that have a reduced environmental impact. The growing awareness of environmental issues had led to a rapid development of these schemes, most of which are run on a national, public sector basis.**

**Although all ecolabelling schemes aim to empower consumers to make choices about environmentally sustainable consumption, some have been developed in the light of particular national circumstances and environmental concerns which may not apply elsewhere. These differences are reflected in different approaches to ecolabelling from one country to another.**

**Some countries are concerned that publicly funded and/or administered ecolabelling schemes in Europe may create de facto barriers to competitive market access because they display national and common EU environmental preferences for particular processing and production methods. They argue that such methods may be inappropriate or unavailable to exporters. Further, they argue that the use of processing and production methods contravenes trade principles in two ways. First, trade agreements traditionally focus on products, not processes. Second, trade agreements attempt to limit the extra-territorial extension of domestic policy preferences. This group of countries would like to see both public ecolabelling schemes and any discrimination based on processing and production methods brought under the discipline of the World Trade Organization (WTO), so that potential barriers to trade are subject to the obligations of multilateral trade agreements.**

**On the other hand, the position shared by consumer and environmental organizations, is that ecolabelling schemes are not a trade issue. The schemes are voluntary, market access is possible without an ecolabel, and there is no evidence to date of any market access restrictions caused by ecolabelling schemes. The public-sector role is important in supporting the development of these schemes. Further, it is absolutely crucial to achieving environmental sustainability that the award of an ecolabel should be based on processing and production methods. The TACD is against efforts to discipline either the role of public bodies in ecolabelling schemes or the focus on processing and production methods through a trade-oriented framework; we fear that, where there is a clash, environmental sustainability objectives will be subordinated to trade principles.**

**From TACD's viewpoint, sustainable consumption is currently seen as a more important global issue than free trade for its own sake. Given the unfortunate failure of governments to implement the 'polluter pays' principle and thus to internalise environmental costs, information measures like ecolabelling schemes are important. On the other hand, consumer organizations have traditionally supported freer trade because of the benefits - in reduced price, improved quality and increased choice - that**

**competition can bring to consumers. So a full-scale trade dispute over the use of ecolabelling schemes should be avoided, because of the inevitable and potentially significant consumer cost. To reconcile these two positions, consumer organizations should support efforts to reduce trade tensions, while at the same time ensuring that any solution to that problem does not hinder voluntary ecolabelling schemes and their pursuit of environmental sustainability objectives.**

**So what strategies, consistent with the consumer interest, could ease the trade tensions associated with the use of ecolabelling schemes? Since national ecolabelling schemes do not appear to be a real trade issue, there is no need to discipline their use according to trade principles under the General Agreement on Tariffs and Trade/World Trade Organization (GATT/WTO) multilateral trade framework. Nonetheless, consumer organizations might accept, as a compromise, increased independence in criteria-setting in the EU Eco-labelling scheme since it has not been the most effective scheme in any case. The right of governments to fund and publicize a private scheme and to support it with public procurement policies cannot, however, be given up. Instead of undermining the ecolabelling schemes in the WTO, it would be better to enhance the compatibility of national ecolabelling schemes through partial harmonization strategies.**

**Further research needs to be done on finding the most appropriate international institutional arrangement for pursuing environmental sustainability objectives: consumer organizations do not have confidence in the ability of the WTO to make decisions on the balance to be struck between trade and the environment.**

#### **EUROPEAN COMMISSION SERVICES' RESPONSE**

The Commission services welcome the balanced and positive analysis of the TACD, and shares many of the opinions expressed. The EU eco-label has a key role to play in developing sustainable consumption, being one of the few instruments active in this area, and needs to be actively supported and promoted by all stakeholders, in particular by consumer organisations.

As far as international trade is concerned, the Community has consistently taken the view that there is a need to clarify the relationship between WTO rules and eco-labelling schemes based on a life-cycle approach, given that existing WTO rules do not fully preserve the integrity and legitimacy of such schemes. This was one of our trade and environment priorities for Seattle and, despite the failure of Seattle, does remain a priority for us. The Commission services consider that, being voluntary in nature, such schemes do not create trade barriers as such. The very existence of ISO 14024, which the EU scheme conforms with, is a positive development in this respect and should help alleviate trade concerns over the use of such a tool and help contribute to the idea that they are not to be considered as trade barriers.

Nevertheless, as indicated in the TACD analysis, concerns have been expressed about ecolabelling schemes and their use of non-product related PPM requirements. Partly in order to allay such concerns, the on-going revision of the EU eco-label seeks inter alia to reinforce the transparency of the scheme and to reinforce the active participation of interest groups, including that of consumer organisations at national and European level.

Provision is also made to facilitate access to the scheme for enterprises from developing countries by reducing the fees applicable to them, and also by developing the diffusion of information about the scheme on the eco-label web-site (<http://europa.eu.int/ecolabel>).

Finally, and in line with the strategy suggested by the TACD, a series of measures will be put in place to develop the cooperation and coordination between the EU eco-label and national eco-labels. This will also include joint promotion and marketing activities and a more systematic exchange of information on product groups and their criteria.