



NSAI
Standards

Standard Recommendation
S.R. CEN/TR 16410:2012

Construction products - Assessment of release of dangerous substances - Barriers to use - Extension to CEN/TR 15855 Barriers to trade

S.R. CEN/TR 16410:2012

Incorporating amendments/corrigenda/National Annexes issued since publication:

The National Standards Authority of Ireland (NSAI) produces the following categories of formal documents:

I.S. xxx: Irish Standard – national specification based on the consensus of an expert panel and subject to public consultation.

S.R. xxx: Standard Recommendation - recommendation based on the consensus of an expert panel and subject to public consultation.

SWIFT xxx: A rapidly developed recommendatory document based on the consensus of the participants of an NSAI workshop.

This document replaces:

This document is based on:
CEN/TR 16410:2012

Published:
24 October, 2012

This document was published
under the authority of the NSAI
and comes into effect on:
24 October, 2012

ICS number:
91.010.10

NSAI
1 Swift Square,
Northwood, Santry
Dublin 9

T +353 1 807 3800
F +353 1 807 3838
E standards@nsai.ie
W NSAI.ie

Sales:
T +353 1 857 6730
F +353 1 857 6729
W standards.ie

Údarás um Chaighdeáin Náisiúnta na hÉireann

ICS 91.010.10

English Version

**Construction products - Assessment of release of dangerous
substances - Barriers to use - Extension to CEN/TR 15855
Barriers to trade**

Produits de construction - Evaluation de l'émission de
substances dangereuses - Barrières à l'utilisation -
Extension du CEN/TR 15855 Barrières aux échanges

Bauprodukte - Bewertung der Freisetzung von gefährlichen
Stoffen - Nutzungsbarrieren - Erweiterung von CEN/TR
15855 zu Handelsbarrieren

This Technical Report was approved by CEN on 13 August 2012. It has been drawn up by the Technical Committee CEN/TC 351.

CEN members are the national standards bodies of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and United Kingdom.



EUROPEAN COMMITTEE FOR STANDARDIZATION
COMITÉ EUROPÉEN DE NORMALISATION
EUROPÄISCHES KOMITEE FÜR NORMUNG

Management Centre: Avenue Marnix 17, B-1000 Brussels

Contents

Foreword	3
Executive summary	4
1 Introduction	4
2 The Wider Perspective on Barriers to Trade	7
2.1 General	7
2.2 Examples of Non-Tariff Barriers	8
2.3 Barriers to trade within the European Union	9
2.4 Barriers to Trade – A Question of Safety?	10
3 The State of the European Union Single Market	12
4 Barriers Created by National Legislative Approaches	14
4.1 The national approach to legislation – a comparison of three countries	14
4.2 National Building Regulations and the Effectiveness of the CPD	23
5 Controls on Market Legislation	24
5.1 Technical Standards and Regulations Directive 98/34 EC	24
5.2 The Official Perspective	24
5.3 Does TRIS (and the 98/34 procedure) Work?	25
6 Barriers Resulting from Policy Instruments or Schemes	25
6.1 Public procurement	25
6.2 Sustainable Timber	27
7 Examples of the restrictions on use of materials	28
7.1 Barriers to use	28
7.2 UK – Collateral Warranties and deleterious Materials clauses	28
7.3 Green product or building labelling – The Eco-label	32
7.4 Dutch Environmental Certification Label	34
7.5 European Schemes for labelling of emissions to air	34
7.6 Green Building labelling schemes	37
7.7 Swedish BASTA (online) Scheme	37
8 The Industry Perspective	38
9 Can Standardisation Eliminate Barriers to Use?	38
10 Conclusions	39
Annex A (informative) German System for derivation of OELs	41
Annex B (informative) The World Trade Organisation	43
B.1 General information about the Technical Barriers to Trade (TBT) Agreement	43
B.2 National Activities to Support the TBT Agreement	43
B.3 Other information sources	43
Annex C (informative) European Commission Process for Setting Green Public Procurement (GPP) Criteria	44
Bibliography	45

Foreword

This document (CEN/TR 16410:2012) has been prepared by Technical Committee CEN/TC 351 “Construction products - Assessment of release of dangerous substances”, the secretariat of which is held by NEN.

Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights. CEN [and/or CENELEC] shall not be held responsible for identifying any or all such patent rights.

Executive summary

CEN Technical Report 15855 examined the concept and realities of barriers to trade in construction products within the European Union insofar as the products were affected by regulations relating to Essential Requirement 3 (ER3) of the Construction Products Directive (89/106/EEC).

Within the body of CEN/TR 15855, the topic of barriers to use was investigated briefly and it was concluded that these could be at least as significant as technical barriers to trade. The European Commission, in noting these findings, asked that the report be extended to further examine the reasons for and scope of barriers to use of construction products in the European Union (insofar as they related to ER3) of the Construction Products Directive (CPD) [2].

This report further examines the types of barriers and the fundamental reasons behind their creation and continued existence, such as the laudable aim to protect health.

Like the earlier report, this report considers barriers resulting from legislation and examines the approaches to national legislation in three countries: the UK, Germany and The Netherlands. The latter two were considered especially because they appeared to have the largest number of regulatory requirements or were cited by respondents to the original report as being the cause of barriers to use of construction products.

This report also examines European and national initiatives such as Green Public Procurement and a number of voluntary schemes, especially related to health and safety or environmental labelling issues – particularly product or building labelling and, of course, eco-labelling schemes which are far from harmonised around the world.

Specific examples of barriers to use are reviewed in detail including the use of “collateral warranties” in the United Kingdom, green product labelling, the Dutch Environmental Certification label and indoor air emission labelling schemes such as AgBB in Germany and AFSSET in France.

An industry perspective, previously identified in TR 15855, is also presented. From this point of view, not all barriers to use are seen in a negative way, but this is highly dependent upon the industry concerned and their scale of operations.

The conclusion of the report is that standardisation can only do so much to help provide the framework for prevention of barriers to use of construction products; and the harmonised test methods of CEN/TC 351 will provide some of that framework insofar as the barriers are of a technical nature and regulatory. Standardisation can provide tools but cannot prevent or eliminate voluntary measures or controls that create barriers to use.

1 Introduction

“Barriers to trade” is an emotive subject that polarises opinion amongst regulators and manufacturers alike.

For regulators, there are those who believe in setting minimum performance targets but allowing manufacturers the freedom on how these are achieved, and those who believe that the level of control, through legislation, should be very high and prescriptive to afford maximum protection to health and the environment.

Amongst manufacturing industry, views are influenced partly by national custom (and legislative background) and also by size of the enterprise – the latter, however, is not a consistent measure. Broadly, there are three groups from manufacturing whose opinions can be summarised as follows:

- those who believe that almost every piece of national legislation, and every measure and control applied to products is a barrier to them trading that product on the market;

- those who take their responsibilities for meeting legislation very seriously and fulfil their obligations under the legislation as the law demands or as they perceive society or the market demands for their product;
- those who support strong controls, high standards and levels of certification, not just to fulfil their responsibilities as they understand them but also to protect the product image (and performance) and to protect the market from cheap imports or cost cutting.

The original report on Barriers to Trade, prepared in response to Mandate M/366 given to CEN/TC 351 by the European Commission, and published as CEN/TR 15855 [1], identified that some of these barriers were truly technical or legal “barriers to trade” which can usually be overcome or minimised by technical harmonisation work. However, others were found to be quite legally in place, sometimes voluntary, but nonetheless still seen as a barrier to the use of certain products in a free market place.

This report is a further examination of these concepts in more detail and an attempt to identify the reasons behind the presence of barriers to use and to present specific examples in more detail. The information has also been provided at the request of the European Commission to support their activities in this field and to examine whether the standardisation work in CEN/TC 351 can influence or eliminate barriers to use for construction products in the field of dangerous substances (ER3 of the Construction Products Directive [2]). CEN Technical Report 15855 [1] examined the concept and realities of barriers to trade in construction products within the European Union insofar as the products were affected by regulations relating to Essential Requirement 3 (ER3) of the Construction Products Directive (89/106/EEC) [2]. ER3 relates to hygiene, health and environmental requirements for the “works” and how they may affect the choice and use of products.

The original Technical Report 15855, commissioned under Mandate M/366 from the European Commission to CEN/TC 351, was required to establish the degree to which “technical barriers to trade” already existed and, if they did, whether the harmonisation process under Mandate M/366 could, or would, eliminate any or all of the observed or perceived technical barriers.

CEN/TR 15855 stated that:

“Although the principle emphasis of the Mandate and the report was ‘technical’ barriers to trade, discussions outside of the TG meetings with the Commission DG Enterprise, established that the Commission was interested in all barriers to trade including barriers to ‘use’ although it was acknowledged that such barriers could be beyond the scope of CEN harmonisation activities. The Commission also confirmed that the presence of a single national requirement and test method was sufficient grounds for commencing harmonisation procedures since the presence of an existing requirement and test method may create a future barrier to trade scenario – see later.

“As well as establishing the presence of any true ‘technical’ barriers to trade, TG1 therefore also considered that other barriers to trade may exist which may not be under the usual definition of a ‘technical barrier’. In particular, TG1 thought it necessary to investigate indirect technical requirements or barriers to trade that may impact construction products one way or another, especially if due to de facto regulations or national requirements. It was therefore considered relevant and useful to include in the report some examples of the various types of barrier to trade where they may directly impact the ‘use’ of a construction product in one or more Member States compared to the rest of Europe.”

It also referred to the differences between Barriers to Trade (BTT) and Barriers to Use (BTU):

“Initial concepts of the different types of barriers in the market place were considered and some examples were provided to consultees to assist in their understanding of the issues and hence their responses. These included voluntary market measures and specific national requirements, whether notified regulations or recommendations. Market measures can become de-facto barriers.

“Opinions on what constitutes a barrier to trade vary but national regulatory ‘barriers’ can be created within the European legal framework. Some regulations, such as the new REACH Regulation for health protection, provide common European levels of protection but the CPD defines Essential Requirements that are open to interpretation by Member States. Under Article 95 of the EU Treaty, the grounds for derogation from a harmonised level are strict, but greater freedom is afforded to countries when they implement non-harmonised levels of protection for health or environment in construction works. According to case law in the European

Court of Justice, a measure should be proportional and reasonable, and it can take precedence over other regulations such as Public Procurement. A Member State may have a legitimate health and safety requirement based upon their perception of risk which is different to that usually accepted in most other Member States. The Member State then notifies this proposed regulation and provided no justifiable and sustained objections are received from other Member States the regulation is adopted and then cannot be regarded as a legal barrier to trade, although it can create a distortion in the market place and possibly result in the creation of different products for each market area. It may also result in different certification requirements for a similar end use in different countries.

“The Notification process (98/34 procedure) is seen as being complex for industry and in many cases is not understood. Failure of industry to ask their member state authority to raise objections (either due to lack of knowledge of the proposal, or due to lack of understanding) can result in ‘approval’ of the new regulation. When in force the industry only then sees the problem and encounters barriers to the use of their products. Even if objections are registered they may not be considered sufficient to stop the implementation.

“Alternatively, it has also been suggested that a similar type of Member State requirement, purported to be needed for health and safety reasons, and based upon a stated demand for a higher level of protection than that generally accepted in the EU, is actually a market protection measure to make the sale of cheaper imported products more difficult². Such measures can be very difficult to identify and the health or environmental grounds for requiring levels of performance higher than those adopted for CE Marking in other countries may not be clear, but they would have the impact of raising the market price for affected products in the Member State by restricting free trade or use of products carrying CE Marking. This type of barrier has been justified in certain markets as a necessity to ensure that sufficiently high levels of quality are achieved. This questions a possible conflict between the meeting of CE Marking requirements – conformity with ER3 and minimum national legislation – and what is perceived by others as a ‘minimum practicable level of quality’. The latter implies that unless a certain (higher) quality standard, or a certain level of conformity assessment (including third party factory control), is achieved, then long term product performance or safety will not be guaranteed. However this still effectively constitutes a barrier to trade.”

The text of footnote 2 in CEN/TR 15855 stated: *Note: This explanation is not universally accepted by Member States. An alternative opinion is that although Member States may be tempted to argue for restrictions allegedly based on health or environmental grounds to protect their home industry from imports, but such measures could also make it more difficult for the home industry to export their products abroad. Therefore, it is argued that disguised restrictions cannot generally be regarded as an attractive policy instrument.*

Within the body of CEN/TR 15855, the topic of barriers to use was investigated briefly with the following conclusions:

“5.2.4 Barriers to Use

“Many bodies cited examples where their products were manufactured to be in accordance with harmonised CEN specifications, or in some cases with European standards, but to use the product in a certain country or in a certain region additional tests or certification hurdles had to be overcome. Hence although CE Marking was available, and the product could be “placed on the market”, it did not offer any guarantee that it would be specified or used. These barriers to use may be through the presence of national quality marks, “voluntary” environmental marks or other measures which are imposed or “requested” by third parties.

“A barrier to use may even be a system agreed within the industry to raise the overall performance standard for a type of product where the industry did not feel that existing European levels of control (such as attestation of conformity) were sufficient to ensure adequate safety in use against inferior products entering the market. Any producer not part of the agreement could then find it difficult to achieve acceptance of their products on the market unless they adopt the more stringent requirements and possibly certification.”

Furthermore, the distinctions between the different concepts of barriers to use of construction products was summarised:

“5.2.5 Summary and Definitions of Barriers

“The definitions and the boundaries of different forms of “barriers” has been the subject of considerable debate and confusion. There are no universally adopted definitions that specifically apply to this area of work although some international definitions, such as the OECD, do provide a starting point for explaining conventional forms of barriers. It has been concluded by the Task Group that within the scope of the CPD and construction product’s markets there is a hierarchy of barriers affecting construction products and CPD ER3 as follows:

“a) Technical Barriers to Trade – Non-harmonised technical regulations, minimum standards and/or certification systems for health, safety and environmental protection, which result in the erection of barriers to inter-state trade. Technical Barriers to Trade may prevent a product being legally placed on the Market. They may result from the imposition or use of legally adopted national regulations.

“b) De-facto Barriers to Trade – National or local requirements, minimum standards, or approvals, over and above those demanded and harmonised at the European level, that relate to the application or the use of products when placed on the Market. De-facto barriers to trade do not prohibit the legal placing of products on the Market but may result in them not being used or specified.

“c) Barriers to Use – National, local, or industry initiatives, schemes or recommendations, which are not mandatory, but which become accepted or demanded as a minimum requirement for products being placed on the local market. Barriers to Use are often based upon voluntary certification or approval schemes, labelling or information requirements.”

2 The Wider Perspective on Barriers to Trade

2.1 General

Further to the discussions in the earlier CEN/TR 15855, www.BusinessDictionary.com [3] gives the following definition of barriers to trade:

“Economic, procedural, regulatory, or technological factors that obstruct or restrict entry of new firms into an industry or market. Such barriers may take the form of

- (1) clear product differentiation, necessitating heavy advertising expenditure to introduce new products,*
- (2) economies of scale, necessitating heavy investment in large plants to achieve competitive pricing,*
- (3) restricted access to distribution channels,*
- (4) collusion on pricing and other restrictive trade practices (such as full-line forcing) by the producers or suppliers,*
- (5) well established brands, or*
- (6) fierce competition.*

Barriers to exit, paradoxically, also serve as barriers to entry because they make it difficult to cut one's losses and run. Also called barriers to competition, entry barriers, or market entry barriers.”

It is clear that the boundary between various types of “barriers to trade” and “barriers to use” can overlap or even be difficult to define in isolation. It is nevertheless also important to remember that the creation of tools and systems (through standardisation) for the removal of purely technical barriers to trade – for example the barriers caused by having to test the same property several times for different countries – can also be linked to financial barriers and to market protectionism. Barriers to use are much more complex than technical barriers. It may be simpler to drop the distinction of “trade” or “use” and refer, instead, to technical barriers, fiscal barriers and non-mandatory barriers to the use of products since they are all one form or another of barriers to trade.

This is a free preview. Purchase the entire publication at the link below:

[Product Page](#)

-
- Looking for additional Standards? Visit Intertek Inform Infostore
 - Learn about LexConnect, All Jurisdictions, Standards referenced in Australian legislation
-