

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Answers by the United States to Questions from Singapore on the “Agreement on Non-Tariff Barriers Pertaining to the Electrical Safety and Electromagnetic Compatibility (EMC) of Electronic Goods”

Communication from the United States

The following communication, dated 21 May 2009, is being circulated at the request of the delegation of the United States.

I. AGREEMENT ON NON-TARIFF BARRIERS PERTAINING TO THE ELECTRICAL SAFETY AND ELECTROMAGNETIC COMPATIBILITY (EMC) OF ELECTRONIC GOODS

1. **QUESTION:** Paragraph 1 – We understand that the standards, technical regulations and conformity assessment procedures for E/E products covers not only electrical safety or EMC, but also includes energy efficiency, WEEE etc. Why is the NT proposal limited to only electrical safety or EMC? Are those principles in the US proposal not applicable to energy efficiency and other regulations on E/E products, for example?

ANSWER: Two main reasons: our proposal was a response to the EC proposal, which was limited to electrical safety and EMC, and these were also the regulatory areas in which our industry was requesting action. Certainly, transparency and good regulatory practice are also applicable to environmental regulations and would study any proposal Singapore might provide to address environmental regulations and energy efficiency for electronics goods.

2. **QUESTION:** Paragraph II.B – Does the proposal apply only to Central Government bodies? Or also to state or local government bodies? We note that the WTO TBT Agreement applies to the Central Government Bodies, local government bodies and non-governmental bodies.

ANSWER: The United States regulates electrical safety and EMC at the Federal level; hence we drafted the text to apply to the Federal level only. However, several Members have suggested that we broaden the disciplines of our initiative to the sub-Federal level, noting that some Members regulate electrical safety and EMC at the sub-Federal level. Some possible options for doing this might include the following: (a) Members could schedule the regulatory bodies to which its commitments under this initiative apply (including if applicable sub-Federal entities); or (b) the proposal could include language that tracks the language of TBT Articles 3.1 and 7.1 which state that “Members shall take such reasonable measures as may be available to them to ensure compliance by [sub-Federal bodies] ...” We would be interested in Members’ views on this issue.

3. **QUESTION:** Paragraph III.C – How are the transparency provisions different from those in the WTO TBT Agreement?

ANSWER: Under our proposal, all the transparency provisions of the TBT Agreement continue to apply, with the addition of seven main requirements: (1) a Member must notify all proposed standards, technical regulations or conformity assessment procedures that may have a significant effect on trade, not just those that are not based on relevant international standards; (2) a Member must identify up front in its WTO notice the parts of the proposed measure that in substance deviate from relevant international standards, guides or recommendations (rather than provide such information subsequently upon request) (3) a Member must consider comments from interested persons, not just Members, on the proposed standard, technical regulation or conformity assessment procedure; (4) a Member must allow as a “reasonable time” for the submission of comments from Members on a proposed measure normally not less than 60 days; (5) a Member must publish (in print or electronically) the proposed standard, technical regulation or conformity assessment procedure (rather than simply a notice thereof); (6) a Member must be prepared to provide particulars upon request concerning the standard, technical regulation or conformity assessment procedure including how it took into account the costs of complying with the proposed technical regulation or conformity assessment procedures; and (7) Members must publish or otherwise make available to the public comments it receives on the proposed standard, technical regulation or conformity assessment procedure as well as its responses to significant and relevant issues raised in those comments.

4. **QUESTION:** Paragraph III.F – On what basis are the products to be included in Annex II determined?

ANSWER: We are currently considering the best way to characterize the products for listing in the relevant Annexes of the proposal, given that regulators do not regulate by HS code. We would welcome suggestions.

5. **QUESTION:** Paragraph III.H – For products in Annex III, can Members choose not to accept SDoC but use other assurances of conformity such as the Certification of Conformity (CoC) as required in the other Member’s domestic regulation? On what basis are the products to be included in Annex III determined?

ANSWER: Members self-select the products to include in Annexes III (SDoC) and IV (Third-Party Certification) from the list in Annex I. Our intent is that for each product listed in Annex I for which a Member requires an assurance of conformity, the Member would indicate whether it accepts SDoC (by listing it in Annex III) or third-party certification (Annex IV). We would need more information on the Certification of Conformity to answer this question fully (e.g., is it a self-certification or a third-party certification?).
