

**MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS**

Compendium, prepared by Japan, Switzerland, and the United States, containing the most recent NTBs text on a Ministerial Decision on Trade in Remanufactured Goods as well as the history of questions and answers related to this proposal

*Communication from Japan, Switzerland and the United States*

The following communication, dated 2 December 2009, is being circulated at the request of the delegations of Japan, Switzerland and the United States.

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**Ministerial Decision on Trade in Remanufactured Goods**

**Members,**

***Recalling* that pursuant to paragraph 16 of the Doha Ministerial Declaration, Members agreed to negotiations aimed at reducing or as appropriate eliminating tariffs and non-tariff barriers on non-agricultural products;**

***Recognizing* the objectives of protecting and preserving the environment, promoting sustainable development by preventing unnecessary waste and conserving energy and raw materials, raising standards of living, and expanding the production of and trade in goods;**

***Noting* the development of remanufacturing as an important new field in manufacturing;**

***Noting* that business enterprises are using remanufacturing across an expanding range of products, such as earthmoving equipment, automotive parts, medical devices, information and communication technology products, industrial machinery, precision instruments, and office equipment;**

***Considering* the benefits to the environment and to consumers of the production of and trade in remanufactured goods;**

***Recognizing* that remanufacturing takes place in developed and developing countries alike, creating jobs and facilitating economic growth;**

***Desiring* to enhance opportunities for trade in remanufactured products by reducing or, as appropriate, eliminating non-tariff barriers in respect of those goods;**

***Mindful* of Members' right to adopt measures for the protection of human, animal or plant life or health, or of the environment, consistent with the WTO Agreement;**

*Decide as follows:*

1. Each Member's trade regime should evolve in a manner that enhances market access opportunities for remanufactured goods.<sup>1</sup>
2. Members should review their non-tariff measures with a view to ensuring that they do not impose prohibitions or restrictions on the importation of remanufactured goods that are proscribed by the Multilateral Agreements on Trade in Goods.
3. Members shall meet every six months under the auspices of the Council on Trade in Goods to discuss Members' progress in reducing or, as appropriate, eliminating non-tariff barriers in respect of remanufactured goods. The discussions shall be conducted using procedures that take fully into account the special needs and interests of developing and least-developed country participants.
4. Members shall afford sympathetic consideration to any request for consultation from other Members concerning their non-tariff measures affecting remanufactured goods. Such consultations shall be without prejudice to a Member's rights and obligations under the WTO Agreement.
5. For purposes of this Decision, *remanufactured good* means [a non-agricultural good that (1) is entirely or partially comprised of parts (i) that have been obtained from the disassembly of used goods; and (ii) that have been processed, cleaned, inspected, or tested to the extent necessary to ensure they are in original working condition; and (2) has a warranty.]

*[NB: Definition subject to further discussion.]*

Question from Singapore: Paragraph 5 - Why is the definition in the proposal substantially different from those seen in the US' free trade agreements? The difference could be found in product scope and the criteria of life expectancy, performance standards, and warranty. (JOB(09)/22)

- Co-sponsors' answer: The definition of a remanufactured good proposed by the co-sponsors (which is in brackets) does contain language on warranty. However, we believe that life expectancy and performance standards are not relevant characteristics in this proposal's non-binding definition.

In U.S. free trade agreements, the definition of a remanufactured good is linked to the definition of a recovered good in a binding rules-of-origin chapter of the agreement. This proposal does not address recovered goods, nor can it address rules of origin, and so must be substantially different from the relevant provisions in U.S. free trade agreements. The only binding obligation in our proposal is for Members to meet every six months to discuss barriers to trade in remanufactured goods. There is no requirement for Members to implement the definition of remanufactured good into their own domestic legislation or regulation. (TN/MA/W/117)

Question from Korea: With regard to the scope of the products concerned, do the proponents plan to identify certain ranges of remanufactured goods to be subject to the proposal or will they make this proposal applicable to any remanufactured good? (JOB(09)/26)

- Co-sponsors' answer: The primary objective of the proposal is to meet every six months, after the DDA concludes, under the auspices of the Council for Trade in Goods to discuss

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<sup>1</sup> This paragraph does not require a Member to reduce or eliminate tariffs on remanufactured goods.

Members' progress in reducing or, as appropriate, eliminating non-tariff barriers in respect of remanufactured goods, as defined in paragraph 5 of the text. This proposal concerns any good that meets this specific definition, and the proponents do not plan to identify a more specific or narrower range of remanufactured goods within that definition.

Note that Members would not be required to adopt this definition of remanufactured goods into their domestic laws or regulations. Rather it would serve as a basis for the post-DDA discussions. (TN/MA/W/112)

Question from Korea: What will the quality standard of the remanufactured goods be? Will it be the same as for new products in kind, or is a new standard for remanufactured goods necessary? (JOB(09)/26)

- Co-sponsors' answer: First, we need to make a clear distinction between "standards," compliance with which is voluntary, and "technical regulations," compliance with which is mandatory (see Annex 1 of the TBT Agreement). Members are free to regulate remanufactured goods so long as it is done in conformity with WTO rules. With respect to standards, to a large degree these are developed in the private sector and driven by the marketplace. Second, the only binding obligation in our proposal is for Members to meet every six months to discuss alleged barriers to trade in remanufactured goods and there is no requirement for Members to implement the definition of remanufactured good into their own domestic legislation or regulation. This proposal does not intend to address standards. Furthermore, the United States addressed similar issues in its concept paper on trade in remanufactured goods in December 2005 in TN/MA/W/18/Add.11. (TN/MA/W/112)

Question from Malaysia: Paragraph 5 - Needs clarifications on definition and identification of the product coverage. Lack of clarity on definition and product coverage could promote junk yard activities. (JOB(09)/93)

- Co-sponsors' answer: First, we would like refer Malaysia to our answer to Singapore's question on the definition in TN/MA/W/117, particularly concerning the non-binding nature of the definition. Could Malaysia provide further detail on what it means by "junk yard activities"? It would be helpful if Malaysia could provide guidance on how it would want to clarify the definition of a remanufactured good in paragraph 5, beyond the revisions we made in past versions of the text. We would be happy to discuss Malaysia's concerns and ideas on the definition bilaterally.

Second, concerning the product coverage, as noted in the preamble of our revised negotiating text (TN/MA/W/18/Add.16/Rev.3), business enterprises are using remanufacturing across an expanding range of products, such as earthmoving equipment, automotive parts, medical devices, information and communication technology products, industrial machinery, precision instruments, and office equipment although this preamble clause does not have any direct legally operative effect on the definition of "remanufactured good". Additionally, we invite Malaysia to review JOB(07)/224 for an illustrative examples of remanufactured goods. (JOB(09)/155)

Question from Malaysia: On implementation mechanism, how this proposal would able to differentiate between new and remanufactured goods at entry / exit points. (JOB(09)/93)

- Co-sponsors' answer: First, could Malaysia specify what it means by "implementation mechanism"? If Malaysia is referring to the negotiating text itself, undertaking a work program at the Council for Trade in Goods is the only aspect of the proposal from a

procedural perspective requiring implementation. Beyond that, we are not sure what “implementation mechanism” Malaysia is referencing.

Second, this proposal is not prescriptive on Members’ customs policies. As we understand, policies and regulations in this regard vary from Member to Member. Some prefer labelling as a means to identify remanufactured goods. For example, companies selling remanufactured goods in the United States have the obligation to clearly label remanufactured goods as such. We have elaborated on this issue in JOB(07)/60, “Regulation of Remanufactured Goods: Answers to Frequently Asked Questions”. The co-sponsors are happy to discuss this issue further with Malaysia bilaterally. (JOB(09)/155

Question from China: China holds the view that, on one hand, the development of remanufacturing industry is consistent with sustainable development. But on the other, it is too early for developing Members to commit themselves to anything on remanufactured goods because this industry is at its immature stage and the concept of remanufactured goods is still new to its domestic constituency. China thanks the US for clarifying that this proposal does not require Members to adopt this definition of remanufactured goods into their domestic laws or regulations. The only binding obligation in the proposal is for Members to meet every six month to discuss alleged barriers to trade. Bearing the above clarification in mind, China would like to ask the proponents: “do the current Council for Trade in Goods and its subsidiary committees prevent Members from raising their concerns in relation to remanufactured goods?” If yes, please give an example. If no, what is the value added through this proposal? (JOB(09)/60)

- Co-sponsors’ answer: The co-sponsors believe the merits of trade in remanufactured goods for WTO Members require a focused agenda in the Council for Trade in Goods, as many relevant market access issues raised by our industries cut across WTO Committees and subject matter. Nothing prevents Members from raising these issues in WTO Committees now. However, we expect that a work program using our proposed definition of a remanufactured good as a focal point for discussions will produce more value-added discussions and outcomes in the CTG for an industry that is growing in importance and can provide significant economic and environmental benefits for both developed and developing country Members.

The co-sponsors have acknowledged that the topic of trade in remanufactured goods was relatively new for most Members when the United States first raised it in NAMA in 2004 and introduced our concept paper in the fall of 2005. Since then we have presented information to many Members at the WTO, bilaterally, and in other fora on remanufacturing and the issues surrounding trade in remanufactured goods. We believe that Members are now more comfortable with these concepts and understand how they can help the development of their economies.

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