

**MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS**

Compendium from the United States containing the most recent NTB's text on an Agreement on Non-Tariff Barriers Pertaining to Standards, Technical Regulations and Conformity Assessment Procedures for Automotive Products, as well as the history of questions and answers related to this proposal

*Communication from the United States*

The following communication, dated 2 December 2009, is being circulated at the request of the delegation of the United States.

**Agreement on Non-Tariff Barriers Pertaining to Standards, Technical Regulations, and Conformity Assessment Procedures for Automotive Products**

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 important contribution of automotive products to global economic growth and development;

*Desiring* to ensure that technical regulations, standards, and conformity assessment procedures do not create unnecessary obstacles to international trade in automotive products;

*Affirming* their existing rights and obligations under the WTO Agreement, including the Agreement on Technical Barriers to Trade (TBT Agreement);

*Recognizing* that no Member should be prevented from taking measures that are necessary for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, and are otherwise in accordance with the provisions of this Agreement;

*Recognizing* that no country should be prevented from taking measures necessary for the protection of its essential security interests; and

*Seeking to supplement and elaborate on the TBT Agreement with respect to standards, technical regulations, and conformity assessment procedures pertaining to automotive products;*

Agree as follows:

## DEFINITIONS

For purposes of this Agreement:

Appropriate international standardizing body means a body that when preparing a standard applies the principles set out in the *Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev.8, 23 May 2002, Section IX (Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement) (Committee Decision)* issued by the WTO Committee on Technical Barriers to Trade (TBT Committee), including paragraph 11 of the *Committee Decision* as elaborated in paragraph III.A, and observes the principle of openness set out in paragraph 6 of the *Committee Decision*;

Automotive product includes any product classifiable under the Harmonized System subheadings specified in Annex I of this Agreement;

Central government body means a central government body as defined in Annex 1 of the TBT Agreement;

Standard, technical regulation, or conformity assessment procedure means respectively a standard, technical regulation, or conformity assessment procedure as defined in Annex 1 of the TBT Agreement that pertains to an automotive product; and

Supplier means any party that supplies the product and may include a manufacturer, distributor, or importer.

## II. SCOPE AND COVERAGE

A. This Agreement shall apply with respect to any automotive product.

B. Members assume obligations under this Agreement only with respect to standards, technical regulations, and conformity assessment procedures of central government bodies.

C. This Agreement shall not apply to purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies.

D. Any reference in this Agreement to standards, technical regulations, or conformity assessment procedures shall be construed to include any amendment thereto and any additions to product coverage or other provisions thereof, except amendments and additions of an insignificant nature, to the extent such amendment or addition pertains to an automotive product.

### III. STANDARDS, TECHNICAL REGULATIONS, AND CONFORMITY ASSESSMENT PROCEDURES

#### *International Standards*

A. In determining whether an international standard, guide or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists pertaining to automotive products, each Member shall base its determination on the principles set out in the *Committee Decision*, including whether the standardizing body takes into account relevant regulatory or market needs and scientific and technological developments as set out in paragraph 11 of the *Committee Decision* when preparing a standard, guide or recommendation. “Relevant regulatory or market needs and scientific and technological developments” shall include the technical and economic feasibility of alternative approaches to the standard under development, the relative benefits and cost-effectiveness of alternative approaches, and the best available technology.

#### *Good Regulatory Practice*

B. Where a Member prepares or proposes to adopt a technical regulation or conformity assessment procedure, it shall:

- (1) consider, *inter alia*, costs of complying with the proposed technical regulation or conformity assessment procedure; and
- (2) assess the available regulatory and non-regulatory alternatives to the proposed technical regulation or conformity assessment procedure that may fulfil the Member’s legitimate objective, such as market incentives or other voluntary mechanisms, or considering a product to meet the Member’s requirements if it conforms with a relevant alternative international standard.

Question from Singapore: Will the United States please elaborate on how this paragraph would operate, and explain in detail what “market incentives or other voluntary mechanisms” are, and how they would feature in this particular context? (JOB(09)/22)

- U.S. Answer: In many instances it is preferable to incentivize manufacturers to act voluntarily rather than mandate specific actions through regulation. For example, the main automotive regulator in the United States, the National Highway and Transportation Safety Administration (NHTSA), not only maintains crash standards (front impact, side impact, etc.), but it also issues “stars” to auto companies for crash test performance of their vehicles. Market forces will push consumers who seek safer vehicles towards these models without actually mandating a level of performance that some other manufacturers might find uneconomical to meet.

The second part of the paragraph asks that a Member consider available regulatory or non-regulatory alternatives that may fulfill a Member’s legitimate objective. This could take several forms. Some countries allow compliance with more than one standard to demonstrate conformity with the relevant requirements. In the United States, our regulators consider existing regulations in other WTO Members when developing new regulations and, if they are found acceptable, those regulations may be incorporated into the U.S. requirements. An obligation to consider what other regulators are doing before regulating would be a useful tool for minimizing unnecessarily regulatory divergences worldwide, steering regulators towards regulatory approaches that have been proven effective, cutting costs for regulators (who may not have to develop new requirements from scratch), and cutting costs for manufacturers who,

with fewer regulatory approaches to comply with worldwide, will be able to recognize greater economies of scale.

Members are also encouraged to ensure that their technical regulations and conformity assessment procedures are based on the principles of “good regulation” set out in the *OECD Guiding Principles for Regulatory Quality and Performance (2005)*.

#### *Harmonizing Technical Regulations and Conformity Assessment Procedures*

C. With a view to harmonizing technical regulations and conformity assessment procedures on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of international standards, guides and recommendations pertaining to automotive products.

D. Where a technical regulation or conformity assessment procedure is required and a relevant international standard, guide or recommendation does not exist or its completion is not imminent or it would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, a Member shall consider using, as a basis for its technical regulation or conformity assessment procedure, another Member’s technical regulation or conformity assessment procedure, or the relevant parts of it, that is not inconsistent with the WTO Agreement [*Note: need to reference this agreement and other DDA agreements as well, with the precise name of those agreements to be determined later*] and has been developed in accordance with paragraphs E and G.

#### *Transparency*

E. Further to Articles 2.9 and 5.6 of the TBT Agreement, where a Member prepares or proposes to adopt a technical regulation or conformity assessment procedure that may have a significant effect on trade of other Members, the Member shall, with a view to providing meaningful opportunity for comment and without discrimination among Members or interested parties:

- (1) publish, in print or electronically, the proposed technical regulation or conformity assessment procedure at the earliest appropriate stage, in such a manner as to enable interested parties to become acquainted with it and to submit written comments before the Member finalizes it;<sup>1</sup>
- (2) to the extent applicable, identify in any notification it makes pursuant to Article 2.9.2 or 5.6.2 of the TBT Agreement any provisions of the proposed technical regulation or conformity assessment procedure that deviate in substance from relevant international standards, guides, or recommendations;
- (3) upon request from another Member, provide particulars with respect to the proposed technical regulation or conformity assessment procedure concerning:
  - (i) how the Member took or plans to take into account the elements set out in paragraph B;

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<sup>1</sup> When a Member publishes a proposed technical regulation or conformity assessment procedure in accordance with this subparagraph, it shall be deemed to have satisfied the pertinent obligation in Articles 2.9.1 and 5.6.1 of the TBT Agreement to publish a notice of the proposed technical regulation or conformity assessment procedure.

- (ii) where applicable, the Member's reasons for determining that relevant international standards, guides or recommendations do not exist or are not imminent or that using relevant international standards, recommendations, or guides as a basis for its measure would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued; and
  - (iii) any provisions of the measure that are based on another Member's standard, technical regulation, or conformity assessment procedure and, if the Member based its measure on two or more Members' standards, technical regulations, or conformity assessment procedures, the Member's reasons therefore.
- (4) upon request from an interested party, provide copies of and particulars concerning the proposed technical regulation or conformity assessment procedure, including with respect to the elements described in subparagraph (3)(i)-(iii):
  - (4) normally allow not less than 60 days for Members to comment in writing on the proposed technical regulation or conformity assessment procedure;
  - (5) (i) allow reasonable time for interested parties to comment in writing on the proposed technical regulations or conformity assessment procedure, which normally shall not be less than 60 days,<sup>2</sup> and (ii) take into account any such comments; and
  - (6) publish, in print or electronically, any written comments it receives from Members or interested parties on the proposed technical regulation or conformity assessment procedure.

Members shall comply with the obligations set out in this paragraph and Articles 2.9 and 5.6 of the TBT Agreement regardless of whether relevant international standards, guides, or recommendations exist or the technical content of the proposed technical regulation or conformity assessment procedure is in accordance with relevant international standards, guides, or recommendations.

**F.** Where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise for a Member, the Member may omit such steps enumerated in paragraph E as it finds necessary, provided that the Member shall without discrimination among Members or interested parties:

- (1) to the extent applicable, identify in any notification it makes pursuant to Article 2.10.1 or 5.7.1 of the TBT Agreement any provisions of the technical regulation or conformity assessment procedure that deviate in substance from relevant international standards, guides or recommendations;
- (2) upon request, provide other Members particulars concerning the elements described in paragraph E(3)(i)-(iii) with respect to the technical regulation or conformity assessment procedure;
- (3) upon request, provide interested parties copies of and particulars concerning the technical regulation or conformity assessment procedure, including with respect to the elements described in paragraph E(3)(i)-(iii);

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<sup>2</sup> Each Member shall publish a notice, in print or electronically, specifying the comment period and give favourable consideration to reasonable requests from interested parties to extend it.

- (4) (i) allow interested parties to submit comments in writing on the technical regulation, or conformity assessment procedure; and (ii) take these comments into account in deciding whether to modify the technical regulation or conformity assessment procedure.

**G.** Further to Article 4.1 and Annex 3 of the TBT Agreement, where a Member proposes to prepare or adopt a standard, it shall, with a view to providing meaningful opportunity for comment and without discrimination among Members or interested parties:

- (1) publish, in print or electronically, the proposed standard at the earliest appropriate stage, in such a manner as to enable interested parties to become acquainted with it and to submit written comments before the Member finalizes it;
- (2) notify other Members through the Secretariat of the proposed standard at the earliest appropriate stage, including the products the proposed standard covers, together with a brief indication of its objective and rationale and, to the extent applicable, any provisions of the standard that deviate in substance from relevant international standards, guides, or recommendations;
- (3) upon request from another Member or interested party, provide particulars concerning the proposed standard, including with respect to the elements described in paragraph E(3)(ii)-(iii);
- (4) upon request, discuss written comments it receives from Members and take the results of those discussions into account in finalizing the proposed standard; and
- (5) publish, in print or electronically, any written comments it received from Members or interested parties on the proposed standard.

Each Member shall provide for standardizing bodies within its territory to apply paragraphs L and M of Annex 3 to other Members as well as to interested parties within the territory of a Member of the WTO.

**H.** When publishing a standard, technical regulation, or conformity assessment procedure that it has adopted, or if paragraph F applies, as soon as possible after publication of the adopted standard, technical regulation or conformity assessment procedure, each Member shall publish, in print or electronically:

- (1) its responses to any significant issues raised in comments it received from Members or interested parties during the comment period;<sup>3</sup> and

Question from Singapore: Will the US please clarify the reference to “subparagraphs 3(i)-(iii)” referred to in the footnote? Are the subparagraphs referring to those under paragraph E [now paragraph H in the rev 2 text]? (JOB(09)/22)

- U.S. Answer: Yes, this footnote is referring to subparagraphs 3(i)-(iii) of paragraph E [now paragraph H in the rev 2 text].

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<sup>3</sup> For greater certainty, if a Member or an interested party submits comments during the comment period that concern the elements described in subparagraphs 3(i)-(iii), the Member shall publish its response to such comments.

- (2) **the objective and rationale for preparing or adopting the standard, technical regulation, or conformity assessment procedure.**

**I. Each Member shall ensure that its proposed and final standards, technical regulations and conformity assessment procedures, as well as any relevant penalties, are published in a single official journal of national circulation, and shall encourage their distribution through additional outlets.**

Question from Singapore: How frequent does the United States expect the “single official journal of national circulation” to be published? Does the United States currently have such a practice and what are the estimated production and distribution costs incurred for each single official journal? Would the objective behind such a provision be achieved through electronic publication? (JOB(09)/22)

- U.S. Answer: The United States accomplishes this through daily publication of the Federal Register, which is available in both hard copy and electronically. The objective of this section could easily be met with electronic publication – the more frequent the better. The idea is to increase transparency, which increases the potential for harmonization towards well-crafted regulatory approaches, and inform interested parties of new information at the same time. All parties must know where to look and have easy access to the information. In some ways, electronic publication is preferable to printed text as it can be made available instantly to all parties globally, and can generally be more readily searched and examined.

**J. Except in those urgent circumstances referred to in paragraph F, Members shall allow a reasonable period of time between the publication of a technical regulation or conformity assessment procedure and the date(s) on which compliance with the technical regulation or conformity assessment procedure becomes mandatory to allow time for producers in exporting Members, and particularly in developing country Members, to adapt to the requirements of the importing Member. Where conformity with a technical regulation would require a substantial change in automobile design or technology, a reasonable period of time shall usually be not less than 18 months after the date of publication. A Member shall consider reasonable requests from a Member or interested party to extend the period between publication and the date(s) on which compliance with the technical regulation or conformity assessment procedure becomes mandatory, particularly in circumstances where conformity with the technical regulation would require a substantial change in automobile design or technology.**

Question from Canada - Transparency: Reasonable Interval

- The decision of the TBT Committee on the concept of a “*reasonable interval*” between the publication of a technical regulation or conformity assessment procedure and its entry into force, as provided for by Articles 2.12 and 5.9 of the WTO TBT Agreement, indicates that the period of a “*reasonable interval*” should be no less than 6 months.
- Why does the U.S. seek to provide for a period of time of 18 months between the publication of a technical regulation or conformity assessment procedure that requires a substantial change in automobile design or technology and its entry into force?
- What are the implications for the decision of the TBT Committee on the period of a “*reasonable interval*”? (JOB(09)/31+Corr.1)

- U.S. answer: In the auto sector where models generally change no more frequently than once a year, it takes manufacturers a significant amount of time – and longer than six months – to retool and redesign vehicles to meet new regulations. For this sector, we believe no less than 18 months is a reasonable interval. We do not believe this has any implications for the decision of the TBT Committee – it is simply a clarification to reflect the realities of the global automotive manufacturing process and to ensure that automakers have sufficient time

to incorporate into new automobiles any technical regulations or conformity assessment procedures that require a substantial change in automotive design or technology. This question is a good illustration of why the United States has pursued a sectoral approach to TBT-related NTB proposals – what is a reasonable interval for the automotive industry may be different from a reasonable interval for the textile or electronics industry, where models and designs change much more frequently. (JOB(09)/157)

**K. Each Member shall publish, on an annual basis, a regulatory agenda which includes any standard, technical regulation, or conformity assessment procedure that it reasonably expects to issue in proposed or final form within no less than the following 12 month period.**

#### *Testing*

**L. If a Member requires test results (alone or in conjunction with other assurances of conformity) or other assurances of conformity that are based on test results as an assurance that an automotive product conforms with a standard or technical regulation, it shall not require the testing to be performed in a testing facility within its territory and shall accept the test results if the testing is performed in another Member's territory by a facility that the importing Member deems competent or approves for that purpose. Each Member shall permit a testing facility in another Member's territory to demonstrate that it meets any requirements to be deemed competent or otherwise approved by the Member. If the importing Member requires the testing facility to comply with requirements concerning the testing of automotive products for conformity with the standard or technical regulations or requires the body that accredits the testing facility to comply with requirements concerning that accreditation, it shall ensure that such requirements are based on:**

- (1) a relevant international standard, guide or recommendation that has been developed in accordance with the TBT Agreement and the *Committee Decision*; or**
- (2) a conformity assessment procedure that the Member has adopted and published in accordance with the provisions of paragraphs E and H.**

**M. If a Member determines that:**

- (1) test results or other information that a supplier of an automotive product has submitted to the Member to demonstrate that the product conforms to the Member's technical regulations fails to demonstrate such conformity; or**
- (2) a testing facility in the territory of another Member does not meet the Member's requirements to be deemed competent or otherwise approved,**

**it shall immediately notify, in the case of subparagraph (1), the supplier of the automotive product and, in the case of subparagraph (2), the testing facility the reasons for its determination and indicate the corrective action that if taken would remedy the deficiency.**

Question from Singapore: Which testing facilities outside of the US have been “deemed competent or otherwise approved” by the US? (JOB(09)/22)

- U.S. Answer: The United States operates under a self-certification system with respect to automotive safety standards, so that auto manufacturers conduct their own tests in their own labs or other labs of their choosing all over the world. Therefore, our regulators do not need to deem competent any foreign or domestic testing facilities. Our intent in this section was to lay out the obligations of Members with regard to testing of automotive products where



testing is required. For example some Members use a type-approval system in which all testing is performed in government or government accredited laboratories. These Members should allow or accredit labs outside their own borders to conduct tests, if they are deemed competent.

#### *National Treatment of Conformity Assessment Bodies*

**N. Each Member shall accord to conformity assessment bodies in the territory of any other Member treatment no less favourable than that it accords to conformity assessment bodies in its own territory with respect to the procedures, criteria, and other conditions with which conformity assessment bodies must comply in order for the Member to accredit or otherwise approve them as competent to test or certify that an automotive product conforms with the Member's standard or technical regulation.**

#### *Procedures for Review*

**O.**

- (1) Each Member shall establish or maintain judicial, quasi-judicial, or administrative tribunals and procedures for the purpose of the prompt review and, where warranted, correction of its final administrative actions relating to technical regulations and conformity assessment procedures. Each Member shall ensure that such tribunals are impartial and independent of the office or authority entrusted with administrative enforcement and do not have any substantial interest in the outcome of the matter, and that proceedings before such tribunals are transparent and comply with due process of law.**
- (2) Each Member shall establish or maintain procedures for it to review, at regularly-scheduled intervals, its technical regulations and conformity assessment procedures to determine whether such measures should be modified or eliminated so as to make the Member's regulatory program more effective in achieving the legitimate objective(s) pursued. In reviewing its technical regulations and conformity assessment procedures to determine whether such measures should be modified or eliminated, relevant elements of consideration include whether such technical regulations and conformity assessment procedures have become unnecessary or outdated by reason of changed circumstances, such as fundamental changes in technology.**

#### **IV. INFORMATION**

Nothing in this Agreement shall be construed to require a Member to furnish or allow access to confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

#### **V. MONITORING AND OVERSIGHT**

A Subcommittee on Automotive Products (Subcommittee) is hereby established as a subcommittee to the TBT Committee to oversee the operation and implementation of this Agreement and further its objectives and to provide a forum for discussions on any matter related to this Agreement. The Subcommittee shall:

- (1) comprise representatives of each Member;**

- (2) elect its own Chairman and apply the TBT Committee working procedures;
- (3) meet to review the implementation and operation of this Agreement (a) at least every six months during the first 30 months after the date this Agreement enters into force, and (b) thereafter at least once every 12 months; and
- (4) report to the TBT Committee with a view to complementing and not duplicating the work of that Committee, and to this end, communicate to the TBT Committee the results of its review conducted pursuant to subparagraph (3).

## **VI. DISPUTE SETTLEMENT**

Article 14 of the TBT Agreement shall apply *mutatis mutandis* to this Agreement.

*[Note: need to further consider relationship with Dispute Settlement Understanding]*

## **VII. FINAL PROVISIONS**

*[Note: Need to consider A final provisions@ to be included in this Agreement, such as entry into force, withdrawal, amendment, WTO Secretariat to service Agreement, deposit etc. B items included, for example, in the various UR WTO agreements]*

Annex I

<b>Harmonized System Subheadings</b>			
<b>Vehicles</b>	<b>Parts</b>	<b>Parts</b>	<b>Parts</b>
870120	381900	842123	854430
870210	382000	842131	870710
870290	400950	842139	870790
870322	401010	842549	870810
870323	401110	842691	870821
870324	401120	843110	870829
870331	401210	848210	870831
870332	401220	848220	870839
870333	401310	848240	870840
870390	401593	848250	870850
870421	401693	848310	870860
870422	401699	850132	870870
870423	681310	850710	870880
870431	681390	850730	870891
870432	700711	850790	870892
870490	700721	851110	870893
870600	700910	851120	870894
	731816	851130	870899
	732010	851140	871690
	732020	851150	871899
	830120	851180	902910
	830210	851190	902920
	830230	851220	902990
	840734	851230	910400
	840820	851240	940120
	840990	851290	940190
	840991	851991	940340
	840999	851993	940350
	841330	852520	940390
	841391	852721	980200
	841430	852729	
	841459	853180	
	841520	853641	
	841583	853910	
	841590	853921	

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