

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Framework for Industry-specific NTB Proposals

Communication from the European Union and India

Negotiating Text

The following negotiating text, dated 3 December 2009, pursuant to paragraph 24 (c) of the draft modalities for non-agricultural market access as published in TN/MA/W/103/Rev.3 of 6 December 2008 is being circulated at the request of the delegations of the European Union and India.

Framework Understanding on Non-Tariff Barriers

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;

Desiring to further the expansion of production and trade so as to promote growth and employment;

Convinced that reduction and, as appropriate, elimination of obstacles to trade caused by divergent, duplicative and burdensome national standards, technical regulations and conformity assessment procedures will be to the benefit of all Members, taking into account the importance of trade for developing countries and of the global nature of many industries;

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

Noting that the reduction and, as appropriate, elimination of non-tariff barriers does not prevent Members from taking measures consistent with the TBT Agreement that are necessary to, *inter alia*, protect human, animal, or plant life or health or the environment; or to prevent deceptive practices; or to protect essential security interests;

Hereby *agree* as follows:

Article 1

This Understanding applies to standards, technical regulations, and conformity assessment procedures and other administrative procedures applying to all products. The industry specific Annexes [A-Z] of this Understanding apply to certain products as specified therein.

Article 2

The terms used in this Understanding shall have the same meaning as in the Agreement on Technical Barriers to Trade, unless otherwise stated in this Understanding.

GENERAL PART

Strengthening International Standard-Setting

Article 3

International Standard-Setting Bodies

1. For the purpose of applying Articles 2.4, 5.4 and point F of Annex 3 of the TBT Agreement, the International Organization for Standards (ISO), International Electrotechnical Commission (IEC) and the International Telecommunication Union (ITU) shall be considered relevant international standard-setting bodies.
2. The Annexes to this Understanding may stipulate that international standard-setting bodies or standards issued by such bodies other than the ones listed under paragraph 1 are relevant with respect to certain products, procedures and specified risks and their intended use for the purpose of applying Articles 2.4, 5.4 and point F of Annex 3 of the TBT Agreement.
3. Increased use of international standards, in particular by developing countries, can be best achieved by strengthening the existing international standard-setting organisations and by proactive and meaningful implementation of technical assistance and special and differential treatment provisions in Articles 11 and 12 of the Agreement on Technical Barriers to Trade, as further strengthened by the provisions of this Understanding

Article 4

Convergence to International Standards and Harmonisation

1. Full harmonization of regulations and regulatory practices is the first best solution to overcoming regulatory fragmentation. Where harmonization has not been achieved or is not yet practicable, efforts of Members shall be directed to identifying solutions that strive to build on the concepts of convergence of regulations to international standards and regulatory practices to the greatest extent possible.
2. Without prejudice to Art. 2.3 of the TBT Agreement, Members shall review at regular intervals technical regulations with a view to increasing their convergence with applicable international standards. In undertaking this review, Members shall take into account whether any existing technical regulations need to be reviewed based on new standards mentioned in any work programme published pursuant to point J of Annex 3 of the TBT Agreement. When reviewing their

existing technical regulations, Members shall consider whether the circumstances that have given rise to any divergence from any relevant international standard continues to exist.

Developed country Members shall undertake this review at least once every five years. Developing country Members are encouraged to apply the provisions of this Article. Members shall convey the frequency established for such reviews to the Committee on Technical barriers to Trade.

3. In this review, Members should refer to international standards as a means to confer a presumption of conformity with requirements of their domestic technical regulations to products complying with the specifications of international standards. This is without prejudice to Article 2.4 of the TBT Agreement.

Article 5

Development of International Standards

1. For international standards to make a maximum contribution to the achievement of trade facilitation for the products under this Understanding, Member confirm the importance they attach to the principles set out in Annex B of the Document G/TBT/1/Rev.9 dated 8 September 2008 (*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*) on the development of international standards. Members also note that the international standard-setting organisations included in Article 3.1 and in the Annexes to this Understanding in accordance with Article 3.2 follow these principles.

Article 6

Improving Regulatory Practice

1. Where a Member prepares or proposes to adopt a technical regulation or conformity assessment procedure and a relevant international standard or a relevant guide or recommendation issued by an international standardising body does not exist, it shall:

- (1) consider, *inter alia*, the 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 fulfill the Member's legitimate objective in accordance with Article 2.2 of the TBT Agreement.

2. Members shall use the review established in Article 4.2 to review those technical regulations and conformity assessment procedures which have been established in cases where international standards do not yet exist. In reviewing such 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.

3. With a view to better meet the obligations in Article 2.2 of the TBT Agreement, further to Articles 2.9, 2.10, 5.6 and 5.7 of the TBT Agreement, before amending an existing or adopting a new standard, technical regulation or conformity assessment procedure that is not in accordance with relevant standards, guides or recommendations issued by international standard-setting bodies, and in

case the standard, technical regulation or the conformity assessment procedure may have a significant effect on trade, Members shall also facilitate, upon request, consultations with any interested party and provide to interested parties information on the impact of any proposed standard, technical regulation or conformity assessment procedure, including the assessment of risks, the cost of compliance and the expected trade impact. Members shall take into consideration the specific situation of developing countries.

4. For the purpose of enabling interested parties to become acquainted with proposed standards, technical regulations or conformity assessment procedures, in accordance with Article 2.11 of the TBT Agreement, Members shall ensure that any standard, technical regulation or conformity assessment procedure under preparation is publicly available and easily accessible to interested parties. Members shall make available, upon request, the public responses to significant comments by other Members or interested parties at the same time as the adoption of the standard, technical regulation or conformity assessment procedure.

Article 7

Ensuring Transparency and Due Process

1. In order to facilitate trade in particular for small and medium enterprises, electronic repositories of the technical regulations and conformity assessment procedures with which compliance of specific products or product groups required at the importation and at the moment of putting it on its market shall be accessible through a dedicated WTO portal. The WTO secretariat shall provide the technical infrastructure for establishing and managing these repositories. Members shall be responsible for making available and accessible the applicable technical regulations.

2. Members shall provide a translation of its technical regulations and conformity assessment procedures referred to in paragraph 1 in at least in one official language of the WTO.

3. 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 design or technology, a reasonable period of time shall usually be not less than 6 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 design or technology.

4. Each Member shall make available transparent and impartial judicial or quasi-judicial review of final administrative decisions relating to technical regulations and conformity assessment procedures that follows due process. Each Member shall ensure that any entity entrusted with such review does not have any substantial interest in the outcome of the matter.

Article 8

Assuring Conformity with Regulatory Requirements

1. For the purpose of applying Article 5.1.2 of the TBT Agreement, where a Member requires positive assurance of conformity with its applicable technical regulations or standards for accepting a product on its market, the Member shall ensure that the required assurance of conformity is

proportionate to the risk that non compliance would entail with regard to the public policy objective pursued.

2. In cases of specific products and in regard to specific, well-described risks, Members shall endeavour to include a supplier's declaration of conformity as assurance of conformity with applicable standards or technical regulations among the options. The Annexes to this Understanding may identify such products and risks.

3. In cases where supplier's declarations of conformity are not used by Members, in accordance with Article 6.1 of the TBT Agreement, Members are invited to create, if not yet existing, or to join, if already existing, any functioning arrangements for mutual recognition of conformity assessments with a view to increasing its membership to all WTO Members. The Annexes to this Agreement shall specify such arrangements and any conditions related to the use of these arrangements for the purposes of enhancing trade within the multilateral trading system.

4. Members shall encourage their conformity assessment bodies to participate in international accreditation systems and to become signatories of international accreditation schemes. If Members require that conformity assessment bodies comply with requirements related to carrying out conformity assessment procedures for specific regulations, it shall do so on the basis of the international accreditation systems and in particular the multilateral agreements of the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF).

Article 9

Providing Technical Assistance and Cooperation

1. As provided for by Article 11 of the TBT Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions with developing and least-developed country Members, technical cooperation in the implementation of the commitments under this Understanding. This should also include technical cooperation on post-market surveillance by developed country Members as far as required for the implementation of systems based on supplier's declaration in developing and least-developed country Members.

Article 10

Respecting Confidentiality and Business Secrets

Nothing in this Understanding shall be construed to require a Member to furnish or allow access to confidential information or business secrets, 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 economic operators, public or private.

Article 11

Management and Oversight on Implementation

1. The TBT Committee shall oversee the operation and implementation of this Understanding.

2. Working Parties are hereby established for the Annexes to this Understanding. In these cases, the Working Party shall oversee the operation and implementation of that Annex.

3. On a triennial basis following the entry into force of this Understanding, the TBT Committee together with the Working Parties shall examine the implementation of this Understanding with the aim of gradually expanding the coverage of the Annexes.

Article 12

Final Provisions

1. The Annexes and Appendices to this Understanding constitute an integral part thereof. In the event of a conflict between the provisions of the Annexes and of this Understanding, the provisions of the Annexes and Appendices shall prevail.

2. [*Procedure to add new Annexes to be developed*]

INDUSTRY SPECIFIC PART

Annex A – Textiles

(As agreed in the ongoing negotiations)

Annex B – Electronics

(As agreed in the ongoing negotiations)

Annex C – Automotives

(As agreed in the ongoing negotiations)

Annex D – Other Industry Specific Annexes

(As agreed in the ongoing negotiations or according to the procedure to be developed under Article 12.2)
