

WORLD TRADE ORGANIZATION

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Negotiating Group on Market Access

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NON-TARIFF BARRIERS BUILDING CODES AND THE WOOD PRODUCTS SECTOR SOME SUGGESTED NEGOTIATING OPPORTUNITIES

Communication from New Zealand and the United States

The following communication, dated 28 January 2005, has been received from the Delegations of New Zealand and the United States.

I. THE GLOBAL FOREST PRODUCTS INDUSTRY

1. The forest products industry, with sales of US\$950 billion, is one of the world's largest industrial sectors and an important contributor to the living standards of developing and developed nations alike. Forest products are derived from one of the world's few renewable resources, and supply the base material for a significant number of other key world industries. World trade in forest products is valued at more than \$200 billion, and has quadrupled over the last three decades.

2. For wood products, the specific product focus of this proposal, world exports increased 15 per cent from 2001-2002. Traditionally, developed countries have been the major producers and exporters within the global wood products industry. However, global exports in wood products from developed countries decreased by almost \$1 billion dollars each year from 1999-2001.

3. Meanwhile, developing countries have been increasing their position in the global trade of wood products. Developing countries represent 12 of the world's top 20 exporters of wood products. Their dominant position in the trade of a number of specific product categories makes them well-placed to capitalize on new opportunities (see Attachment A). In some cases, the wood products sector is among the largest earners of foreign exchange. Consider the following (based on 2002 data);

- Brazil along with Indonesia, Malaysia, and China are four of the top five exporters of wood-based panel products.
- Malaysia is the world's third largest exporter of logs.
- Indonesia is the second largest exporter of molding and millwork.
- South Africa has steadily increased its world exports of wood products and realized an average growth rate of 8 per cent from 1999-2002.
- China is now the fifth largest importer of all wood products and the largest importer of logs and tropical wood products.

4. Many WTO members have expressed interest in the wood products industry, from either a producer, consumer or exporter perspective.

II. NTBS RELATING TO BUILDING CODES ARE A PROBLEM FOR THIS INDUSTRY

5. International trade in wood products is adversely affected by non-tariff barriers (NTBs). This proposal focuses in particular on certain aspects of building codes (described below) that can restrict the use of wood products in building and construction, even where such wood products can be demonstrated to be safe and effective. Such non-tariff barriers can severely hinder trade and erode the benefits of tariff elimination. These barriers result in increased costs to industry and in some cases effectively ban wood products from certain segments of the market. Removing such unwarranted barriers to the broader use of wood products in building and construction will help stimulate economic activity in a range of associated industries. Consequently, we believe that a focus on these types of NTBs will boost global welfare, benefiting both developing and developed economies by increasing the sector's contribution to employment and economic growth.

6. The thrust of this proposal is to use the NAMA negotiation process to begin a dialogue to identify and address unwarranted barriers to the use of wood products that exist within the ambit of building codes. This will make it easier for businesses to handle the multiple and variety of standards, technical regulations and conformity assessment procedures that exist, and which currently can unnecessarily increase costs and prevent market access. In proposing this, it is recognized that the NAMA negotiating group, and the WTO, are not standards-setting bodies, and that there already exist a wide range of international standard setting bodies. The United States and New Zealand emphasize the importance of consensus-based processes in setting standards in such organizations.

III. SPECIFIC ASPECTS OF BUILDING CODES THAT CAN CREATE BARRIERS TO WOOD PRODUCTS

7. Authorities incorporate and reference technical regulations, standards, and related conformity assessment procedures into their mandatory building codes to help ensure that each individual material, product, or system used in building or construction can be relied on to have certain properties or to behave in an expected manner.¹ But those technical regulations, standards, and related procedures can also create NTBs. There are several specific areas suggested for focus.

(i) *Technical regulations and standards that create an inappropriate incentive for use of limited types of products*

Trade barriers can arise where technical regulations and standards used in or referred to in building codes do not conform to basic WTO rules, such as those found in the Agreement on Technical Barriers to Trade (TBT), or international standards do not meet TBT Committee principles regarding transparency, openness, consensus and impartiality, for example by raising costs and establishing criteria that favor domestic producers.

¹ Definitions for terms such as technical regulations, standards and conformity assessment procedures can be found in Annex 1 of the WTO Agreement on Technical Barriers to Trade.

(ii) *Differing technical regulations and standards in different jurisdictions create market segmentation*

Differences in technical regulations, standards and conformity assessment procedures between Members can impede trade by narrowing the range of markets in which a particular product can be sold.

(iii) *Exclusive reliance on nationality or geographic location of conformity assessment bodies, rather than criteria of technical competency*

Conformity assessment systems can also become NTBs, for example where a country only allows its own organizations to provide such assurances. Such arbitrary requirements can greatly increase the costs of imported products and result in the arbitrary exclusion of imports.

(iv) *Duplicative and/or discriminatory testing requirements*

An important aspect of testing is which test methods are used, and whether the results from the test method chosen can be compared meaningfully with the results of other tests. If a test method is not well described, or even more fundamentally, if there is disagreement over which test method to use, or whether there is comparability in the results produced by test methods, then it can be difficult for manufacturers to conclusively establish that their products meet the requirements of a technical regulation. In some situations, results from accepted test methods for similarly constructed specimens are not recognized unless the product is retested, which is expensive and unnecessary.

(v) *Overly restrictive limits on use of wood products in national building codes*

Many national building codes prescriptively limit or prohibit the use of wood structural materials or contain onerous testing requirements that pertain only to wood. These restrictions can significantly and artificially dampen the demand for high-quality wood construction materials that have a record of performance equal to or better than that of other building materials. Appropriate reliance on performance-based rather than design-restrictive or prescriptive requirements could be a way to overcome such problems.

(vi) *Problems with counterfeiting and lack of enforcement of technical regulations*

Counterfeit and mislabeled products crowd out the market available to genuine product. Similarly, lax enforcement of building codes can result in the use of products that do not meet the level of performance specified and can be a problem. Both can pose safety and quality issues that reduce consumer confidence and thus reduce the overall market for all wood products of that type.

IV. HOW NAMA COULD HELP REDUCE OR ELIMINATE NTBS TO WOOD PRODUCTS IN BUILDING CODES

8. Clearly, most of the NTB issues identified above center around technical barriers to trade and reflect the inability, unwillingness, or simple lack of opportunity of Members to pursue avenues for reducing the barriers caused by differences in the standards and conformity assessment procedures that underpin national building codes. Consequently, Members interested in reducing the market segmentation that these barriers create can take the opportunity of this dialogue to explore options for addressing them. Discussions toward this end can be conducted in the WTO/NAMA context, and will need to adequately reflect the views of relevant regulatory authorities and other stakeholders, including industry and relevant standard-setting bodies.

9. Because the above-described problems tend to be interrelated, the options for solving the problems may relate to one or more of the problems. Briefly speaking, interesting avenues for consideration could include:

- Processes for increasing acceptance of alternative consensus standards for identifying wood products that satisfy established performance requirements at the level participants consider appropriate, for example a framework through which to identify test methods and standards that provide equivalent performance;
 - Options for increasing the transparency and opportunity for meaningful, non-discriminatory participation in the standards development process;
 - A framework to make it easier for all competent and qualified laboratories and conformity assessment bodies to verify that the requirements of standards and technical regulations are being met;
 - Options for revising test requirements to eliminate redundancy and ensure more equality in test requirements for competing materials; e.g., working to ensure that successful test results apply to all similarly constructed specimens;
 - Modify building codes and underlying standards to place greater reliance on true performance criteria that all construction materials would be equally eligible to meet and eliminate prescriptive provisions that exclude materials or products which are not of specific characteristics (for example, those not manufactured from certain species);
 - Encourage acceptance of alternative means through which the objectives of building codes can be met (i.e., use of “alternative compliance mechanisms”) to enable the widest possible use of appropriate materials, products and processes; and
 - Encourage the proper specification and installation where these are required to meet a regulated level of performance, and encourage enforcement to combat the use of falsely labeled or other counterfeit products in building applications.
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ATTACHMENT A

Leading Wood Importers 2002 (U.S. Dollars)	
	Imports from the World
United States	15,723,989,035
European Union (25)**	14,773,126,229
Japan	9,235,326,000
China	4,143,010,543
Canada	2,152,881,023
South Korea	1,826,476,547
Hong Kong	1,136,046,597
Mexico	950,384,708
Chinese Taipei	903,626,976
Norway	805,507,583
Switzerland	799,194,002
Australia	579,959,625
Egypt	551,992,414
Thailand	437,525,412
India	413,133,810
Israel	269,613,000
Malaysia	261,557,348
Turkey	229,751,418
Singapore	225,735,321
Philippines	186,022,451
Croatia	152,697,651
Romania	144,163,980
South Africa	139,612,729
Indonesia	120,548,867
Tunisia	115,828,820

Leading Wood Exporters 2002 (U.S. Dollars)	
	Exports to the World
European Union (25)**	12,142,129,619
Canada	12,102,294,203
United States	5,100,131,436
Indonesia	3,278,138,582
Malaysia	2,953,977,432
China	2,830,459,187
Brazil	1,765,358,177
New Zealand	1,177,119,461
Chile	1,124,624,217
Hong Kong	1,001,336,021
Thailand	674,968,276
Australia	644,899,388
South Africa	360,957,245
Mexico	358,569,298
Norway	343,022,073
Chinese Taipei	286,056,935
Cameroon	272,458,048
Honduras	249,081,273
Croatia	221,868,893
Singapore	200,032,435
Philippines	143,870,708
Argentina	139,068,676
Turkey	115,060,901
Bulgaria	105,237,569
Papua New Guinea	104,979,258

Source: World Trade Atlas (2002)

** for purposes of this analysis import and export data was calculated on the 25 EU members.