

~~agreement of the parties. However, if one of the parties requests to proceed to Stage II of these procedures, the other party shall accord sympathetic consideration to that request.~~

9.10. The parties shall promptly notify any decision to proceed to Stage II procedures to the relevant WTO Committee, which shall circulate the notification to all Members.

~~10.11. Any other Member may submit a written request to the parties, within [10] days of notification under paragraph 10 that it be permitted to participate in these Stage II procedures as a third party. Such other Member may participate in these procedures if both the parties so agree and on the terms agreed to by the parties.~~

11 bis. Once initiated Stage II shall be terminated upon request of either party. The requesting or responding Member may terminate Stage II of these procedures at any time. The party terminating Stage II shall notify the termination to the relevant WTO Committee, which shall circulate the notification to all Members.

#### *Appointment of a Facilitator*

~~11.12. Upon their agreement~~ If the parties agree to initiate Stage II of these procedures, the parties may request that the Chairperson of the relevant WTO Committee (or if it is unclear which agreement is most closely related, the Chairperson of the Council for Trade in Goods), or one of the Vice Chairpersons, serve as facilitator. Alternatively, the parties may request that a Friend of the Chair agreed upon by the parties serve as facilitator. If the parties cannot agree on the appointment of a facilitator within [15 30] days of the initiation of Stage II of these procedures, and if one of the parties so requests, the [Chairperson of the Council for Trade in Goods] shall appoint the facilitator within an additional [10 30] days of receiving the request for the appointment of a facilitator and after consulting the parties. The selection of facilitator shall take place in accordance with Annex 2 of this Decision.

#### *Seeking Mutually Agreed Solutions Resolutions*

~~12.13. The facilitator, in consultation with the parties, shall have full flexibility discretion in organizing and conducting the deliberations under these procedures, which normally should take place at the WTO Headquarters, unless the parties agree on any other place of mutual convenience, taking. In assisting the parties, the facilitator shall take into account possible capacity constraints of developing country parties. Meetings normally should take place on WTO premises, unless the parties agree on another site. The facilitator and the parties may rely on existing working procedures of any WTO Committee concerned the relevant WTO Committee to the extent they are relevant suitable for the prompt resolution of the NTB in question. Video concerns regarding the measure. The parties may agree to use video conferencing and other telecommunication facilities may be utilized if considered suitable and agreed to between the parties.~~

13.14. Either party may present to the facilitator and the other party any information that it deems relevant. Confidential information which is provided shall not be revealed without formal authorization from the individual, body, or authorities of the Member providing the information.

14.15. In assisting the parties, in an impartial and transparent manner, in bringing clarity to the NTB measure concerned and its possible trade-related impact effects, the facilitator may:

- (a) offer advice and propose possible solutions for the parties' consideration suggestions with respect to the requesting party's concerns regarding the measure and its effect on trade, taking into account the information presented by the parties; provided that any such opinion shall not pertain to the WTO consistency of the NTB measure, the parties' rights and obligations under

the WTO Agreement, or to any possible legitimate objectives for the maintenance of the measure the measure's objective or rationale;

- (b) organize meetings between, and meet individually or jointly with, the parties, in order to facilitate discussions on the NTB measure and to assist in reaching mutually agreed solutions;
- (c) on joint request of the parties, seek assistance of the WTO Secretariat ~~and after consulting with the parties, consult with relevant experts and stakeholders~~; and
- (d) provide any additional support requested by the parties

~~15.16.~~ All meetings and information (whether provided in oral or written form) acquired pursuant to paragraphs ~~13, 14, 15~~ and 16 15 of these procedures shall be confidential and without prejudice to the rights of any party or other WTO Member in any dispute settlement proceeding under the DSU.

~~16.17.~~ The parties shall endeavour to reach a mutually an agreed solution with ~~[60] days from the appointment of resolution [not inconsistent with the WTO Agreement] with [90] days after the date the facilitator.~~ Pending final resolution of the NTB the parties may consider possible interim solutions, especially if the NTB relates to perishable goods. is appointed.

#### *Outcome and Implementation*

~~17.18.~~ Upon termination If, after appointment of the facilitator, a party terminates Stage II of these procedures by a party or in the event that the parties reach a mutually an agreed resolution, the facilitator shall issue provide the parties, in writing, a draft factual report, providing limited to a brief summary of statement describing (1) the NTB measure at issue in these procedures; (2) the procedures followed procedural steps the facilitator and parties took to address the requesting Member's concerns; and (3) a non-confidential description of any mutually agreed resolution reached as the final outcome of these procedures, including possible interim solutions. The facilitator shall provide the parties ~~[15 21] days, at minimum,~~ to comment on the draft report. After considering the parties' comments ~~of the parties,~~ the facilitator shall submit, ~~in writing a the~~ final factual report to the parties and to the relevant WTO Committee.

~~18.19.~~ If the parties reach a mutually agreed solution, such solution shall be implemented in conformity with the WTO Agreement. If the parties reach an agreed resolution, each party shall notify it to the relevant WTO Committee within 14 days after the resolution is concluded.

#### **FINAL OTHER PROVISIONS**

##### *Transparency*

~~19.~~ Notifications pursuant to this Decision and the facilitators' final factual reports shall constitute regular items on the agenda of the relevant WTO Committees. Adequate opportunity shall be provided for an exchange of views amongst Members in the relevant WTO Committee.

~~20.~~ For the purpose of transparency, the Chairpersons of the relevant WTO Committees ~~[or when applicable the Council for Trade in Goods]~~ shall provide to members, on an annual basis, a status report of notified requests and responses and of ongoing and recently completed procedures, together with a list of any reports from facilitators.

20. If a party so requests, the Chairperson of the relevant WTO Committee shall provide an opportunity for Members to exchange views during a meeting of the Committee on a notification made pursuant to this Decision and any final factual report that a facilitator has submitted.

21. For purposes of transparency, the Chairperson of a relevant WTO Committees shall provide Members, on an annual basis, a status report listing notifications during the preceding year of requests for information, responses to requests for information, agreements to proceed to Stage II procedures and agreed resolutions, together with any reports that a facilitator has submitted to the Committee during the year.

#### *Technical Assistance*

~~21.22. Developing country Members and in particular least-developed country Members may request technical assistance from the WTO Secretariat to promote their understanding of the use and functioning of how these procedures. Technical assistance required by least developed country Members will may be made available through the used and operate. The Technical Assistance Programmes of the WTO may provide technical assistance required by least developed country Members. Developed country Members are encouraged to provide technical assistance, *inter alia*, to share with developing that least developed country Members their require by, *inter alia*, sharing experience for effective participation to enable them to participate more effectively in these procedures.~~

#### *Application and Review*

23. The Council for Trade in Goods and the relevant Committees<sup>†</sup> WTO Committees shall apply this Decision and implement it within the framework of their work from the date of the adoption of this Decision. The Council for Trade in Goods and each Committee to which this Decision applies may decide, by consensus, to modify certain procedural aspects of this Decision. Any modifications shall apply only within the Council or Committee that has adopted the modifications and only to procedures initiated after the date of effectiveness of the decision on the modifications.

~~24. In light of experience gained from the operation of these procedures, the [Council for Trade in Goods] will undertake a review of the effectiveness of the procedures under this This Decision no later than [5] year after the shall expire on the fifth anniversary of its adoption of this Decision. Based on this review, unless Members may decide on whether agree by consensus to extend these procedures to other matters falling under the WTO Agreement or otherwise modify these procedures renew it.~~

ANNEX 1

These procedures shall cover all NTBs measures affecting trade in goods and falling under the ~~remit~~ auspices of the Council for Trade in Goods, except any issue arising under:

- ~~Any measure regulated by the Agreement on Agriculture;~~
- ~~Countervailing measures adopted pursuant to Part V of the Agreement on Subsidies and Countervailing Measures;~~
- ~~Antidumping measures within the meaning of Article 1 of the Agreement on Implementation of Article VI of the GATT 1994; and~~
- ~~Safeguard measures within the meaning of Article 1 of The Agreement on Safeguards; and~~
- the Agreement on the Application of Sanitary and Phytosanitary Measures.

ANNEX 2

~~In so far as~~ If the facilitator agreed ~~up~~ on by the parties or appointed by the Chairperson of the Council for Trade in Goods in accordance with paragraph 12 of this Decision is not the Chairperson of the relevant WTO Committee or one of the Vice Chairpersons:

~~1. — the~~ Facilitator shall:

1. be a well-qualified governmental or non-governmental individuals
  2. ~~Facilitator shall~~ serve in ~~their~~ his or her individual capacity, and not as government representatives, nor as ~~representatives~~ a representative of any organization.
  3. ~~Facilitator shall~~ not be ~~citizens~~ a citizen of ~~Members whose governments are parties to these procedures~~ a party, unless the parties agree otherwise. If a customs union or common market is a party, the Facilitator shall not be a citizen of any member state of the customs union or common market.
  4. The Facilitator's expenses, including travel and subsistence allowance, shall be met from the WTO budget in accordance with the criteria adopted for panellists under Article 8.11 of the DSU.
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# WORLD TRADE ORGANIZATION

TN/MA/W/106/Rev.1  
3 February 2010

(10-0573)

Negotiating Group on Market Access

Original: English

## MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

### MINISTERIAL DECISION ON PROCEDURES FOR THE FACILITATION OF SOLUTIONS TO NON-TARIFF BARRIERS

*Communication from the African Group, Canada, European Union, LDC Group, NAMA-11,  
Group of Developing Countries, New Zealand, Norway, Pakistan and Switzerland*

#### Revision

The following communication, dated 3 February 2010, is being circulated at the request of the delegations of the African Group, Canada, European Union, LDC Group, NAMA-11, Group of Developing Countries, New Zealand, Norway, Pakistan and Switzerland.

### MINISTERIAL DECISION ON PROCEDURES FOR THE FACILITATION OF SOLUTIONS TO NON-TARIFF BARRIERS

*Ministers,*

*Recalling* that in paragraph 16 of the Doha Ministerial Declaration, Annex B of the Framework Agreement and paragraph 22 of the Hong Kong Ministerial Declaration, Members agreed to negotiations on, *inter alia*, reduction or as appropriate elimination of non-tariff barriers, in particular on products of export interest to developing countries,

*Conscious* of the fact that non-tariff measures vary significantly in form, effects and objectives, and that non-tariff measures can serve legitimate and important purposes pursued by Members, whilst non-tariff measures may also constitute barriers that affect market access opportunities for other WTO Members and potentially impair benefits sought to be achieved from the reduction or elimination of tariffs,

*Recognizing* that flexible and expeditious procedures of a conciliatory and non-adjudicatory nature, involving a facilitator, may promote mutually acceptable solutions to Members' concerns regarding non-tariff barriers that aid exporters and importers, while respecting the legitimate objectives of the Members maintaining the measures,

*Recognizing* that these procedures neither alter nor address the rights and obligations of Members under the WTO Agreement,

*Recognizing* that these procedures build upon and further the objectives of existing procedures in WTO bodies,

*Emphasizing* that the procedures under this Decision are not intended to replace or otherwise affect the Understanding on Rules and Procedures Governing the Settlement of Disputes, and Members' rights and obligations thereunder,

*Decide* as follows:

#### GENERAL PROVISIONS

1. Pursuant to this Decision, any Member may seek to address through recourse to the procedures set out below its concerns regarding any non-tariff barrier ('NTB'), as specified in Annex 1 of this Decision, which it believes adversely affects its trade.
2. These procedures shall neither enforce any rights or obligations under the WTO Agreement nor add to or diminish the rights and obligations of Members, and shall be without prejudice to Members' rights and obligations under the Understanding on Rules and Procedures concerning the Settlement of Disputes ("DSU"). **They are not intended to serve as a basis for the interpretation or the enforcement of specific obligations under the WTO Agreement or for dispute settlement procedures, or to impose new policy commitments on Members.**
3. These procedures shall be applied in the context of relevant WTO Committees<sup>1</sup>.
4. Any time limit referred to in this Decision may be modified by mutual agreement between the Members involved in these procedures.
5. At all stages of these procedures, the special situation of least-developed country Members involved in these procedures shall be given particular consideration. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member and solutions explored shall take into consideration the specific situation of the least-developed country Member involved, if any.

#### PROCEDURES FOR ADDRESSING CONCERNS REGARDING NTBS

##### *Stage I: Request and Response on a Specific NTB*

6. Any Member (the 'requesting Member') may, individually or jointly with other Members, initiate Stage I of these procedures by submitting in writing to another Member (the 'responding Member') a request for information regarding a non-tariff barrier. The request shall identify and describe the specific measure at issue and provide a detailed description of the requesting Member's concerns regarding the measure's impact on trade.
7. The responding Member shall provide, within [20] days, to the extent practicable, a written response containing its comments on the information contained in the request. Where the responding Member considers that a response within [20] days is not practicable, it shall inform the requesting Member of the reasons for the delay, together with an estimate of the period within which it will provide its response.
8. Upon submission, the requesting Member shall notify its request to the relevant WTO Committee<sup>2</sup>, which shall circulate it to all Members. The responding Member shall equally notify its

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<sup>1</sup> The relevant WTO Committee is the one overseeing the operation of the WTO agreement most closely related to the measure at issue. If there is no such Committee for a particular measure, the request shall be notified to the Council for Trade in Goods.

response to the relevant WTO Committee, which shall circulate it to all Members. Following the receipt of these notifications, upon the request of either the requesting or the responding Member (hereinafter referred to as "the parties"), the Chairperson or one of the Vice Chairpersons of the relevant WTO Committee shall convene a meeting with the parties to *inter alia* address any outstanding issues and explore possible next steps.

### ***Stage II: Resolution Procedures***

9. Following this initial information exchange under Stage I, the parties shall decide on whether to proceed to Stage II of these procedures. Stage II of these procedures may only be initiated by mutual agreement of the parties. However, if one of the parties requests to proceed to Stage II of these procedures, the other party shall accord sympathetic consideration to that request.

10. The parties shall notify any decision to proceed to Stage II to the relevant WTO Committee, **which shall circulate it to all Members.**

11. Any other Member may submit a written request to the parties, within [10] days of notification under paragraph 10, that it be permitted to participate in these procedures as a third party. Such other Member may participate in these procedures if both parties so agree and on the terms agreed to by the parties.

11*bis*. Once initiated, Stage II shall be terminated upon request of either party.

### ***Appointment of a Facilitator***

12. Upon their agreement to initiate Stage II of these procedures, the parties may request that the Chairperson of the relevant WTO Committee, (or if it is unclear which agreement is most closely related, the Chairperson of the Council for Trade in Goods), or one of the Vice Chairpersons, serve as facilitator. Alternatively, the parties may request that a Friend of the Chair agreed upon by the parties serve as facilitator. If the parties cannot agree on the appointment of a facilitator within [15] days of the initiation of Stage II of these procedures, and if one of the parties so requests, the [Chairperson of the Council for Trade in Goods] shall appoint the facilitator within an additional [10] days and after consulting the parties. The selection of facilitator shall take place in accordance with Annex 2 of this Decision.

### ***Seeking Mutually Agreed Solutions***

13. The facilitator, in consultation with the parties, shall have full flexibility in organizing and conducting the deliberations under these procedures, which normally should take place at the WTO headquarters, unless the parties agree on any other place of mutual convenience, taking into account possible capacity constraints of developing country parties. The facilitator and the parties may rely on existing working procedures of any WTO Committee concerned, to the extent they are relevant for the prompt resolution of the NTB in question. Video conferencing and other telecommunication facilities may be utilized, if considered suitable and agreed to between the parties.

14. Either party may present to the facilitator and the other party any information that it deems relevant.

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<sup>2</sup> If the Committee to which these communications were notified considers itself not to be the relevant Committee, it shall forward the notifications to the Committee overseeing the operation of the WTO agreement most closely related to the measure at issue, or if it is unclear which WTO agreement is most closely related, to the Council for Trade in Goods.



15. In assisting the parties, in an impartial and transparent manner, in bringing clarity to the NTB concerned and its possible trade-related impact, the facilitator may:

- (a) offer advice and propose possible solutions for the parties' consideration, taking into account the information presented by the parties; *provided* any such opinion shall not pertain to the WTO consistency of the NTB, the parties' rights and obligations under the WTO Agreement, or to any possible legitimate objectives for the maintenance of the measure;
- (b) organize meetings between, and meet individually or jointly with, the parties, in order to facilitate discussions on the NTB and to assist in reaching mutually agreed solutions;
- (c) seek assistance of the WTO Secretariat and, after consulting with the parties, consult with relevant experts and stakeholders; and
- (d) provide any additional support requested by the parties.

16. The parties shall endeavour to reach a mutually agreed solution within [60] days from the appointment of the facilitator. Pending final resolution of the NTB, the parties may consider possible interim solutions, especially if the NTB relates to perishable goods.

#### *Confidentiality*

17. All meetings and information (whether provided in oral or written form) acquired pursuant to paragraphs 14, 15 and 16 of these procedures shall be confidential and without prejudice to the rights of any party or other WTO Member in any dispute settlement proceeding under the DSU. **The obligation of confidentiality does not extend to factual information already existing in the public domain.**

**17bis. Nothing in this Decision shall require Members to disclose confidential information, which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.**

**17ter. Any third party admitted to the procedures under paragraph 11 shall be bound by the confidentiality requirements pursuant to these procedures.**

#### *Outcome and Implementation*

18. Upon termination of Stage II of these procedures by a party or in the event that the parties reach a mutually agreed solution, the facilitator shall issue to the parties, in writing, a draft factual report, providing a brief summary of (1) the NTB at issue in these procedures; (2) the procedures followed; and (3) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions. The facilitator shall provide the parties [15] days to comment on the draft report. After considering the comments of the parties **submitted within the period**, the facilitator shall submit, in writing, a final factual report to the relevant WTO Committee **within [15] days of receiving the comments. The factual report shall not provide any interpretation of the WTO Agreement regardless of any prior reports of the panels or the Appellate Body of the DSU.**

19. If the parties reach a mutually agreed solution, such solution shall be implemented in conformity with the WTO Agreement.

## FINAL PROVISIONS

### *Transparency*

20. Notifications pursuant to this Decision and the facilitators' final factual reports **submitted to the relevant WTO Committees pursuant to this Decision** shall constitute regular items on the agenda of the relevant WTO Committees. Adequate opportunity shall be provided for an exchange of views amongst Members in the relevant WTO Committee.

21. For the purpose of transparency, the Chairpersons of the relevant WTO Committees or, when applicable, the Council for Trade in Goods shall provide to Members, on an annual basis, a status report of notified requests and responses and of ongoing and recently completed procedures, together with a list of any reports from facilitators.

### *Technical Assistance*

22. Developing country Members and in particular least-developed country Members may request assistance from the WTO Secretariat to promote their understanding of the use and functioning of these procedures. Technical assistance required by least-developed country Members will be made available through the Technical Assistance Programmes of the WTO. Developed country Members are encouraged to provide technical assistance, *inter alia*, to share with developing country Members their experience for effective participation in these procedures.

### *Application and Review*

23. The Council for Trade in Goods and the relevant Committees<sup>15</sup> shall apply this Decision and implement it within the framework of their work from the date of the adoption of this Decision. The Council for Trade in Goods and each Committee to which this Decision applies may decide, by consensus, to modify certain procedural aspects of this Decision. Any modifications shall apply only within the Council or Committee that has adopted the modifications and only to procedures initiated after the date of effectiveness of the decision on the modifications.

24. In light of experience gained from the operation of these procedures, the [Council for Trade in Goods] will undertake a review of the effectiveness of the procedures under this Decision no later than [5] years after the adoption of this Decision. Based on this review, Members may decide on whether to extend these procedures to other matters falling under the WTO Agreement or otherwise modify these procedures.

### Annex 1

These procedures shall cover all NTBs affecting trade in goods and falling under the remit of the Council for Trade in Goods, except:

- Any measure regulated by the Agreement on Agriculture;
- Countervailing measures adopted pursuant to Part V of the Agreement on Subsidies and Countervailing Measures;
- Antidumping measures within the meaning of Article 1 of the Agreement on Implementation of Article VI of the GATT 1994; and
- Safeguard measures within the meaning of Article 1 of the Agreement on Safeguards.

Annex 2

In so far as the facilitator agreed upon by the parties or appointed by the Chairperson of the Council for Trade in Goods in accordance with paragraph 12 of this Decision is not the Chairperson of the relevant WTO Committee, or one of the Vice Chairpersons:

1. Facilitator shall be well-qualified governmental or non-governmental individuals.
  2. Facilitator shall serve in their individual capacity and not as government representatives, nor as representatives of any organization.
  3. Facilitator shall not be citizens of Members whose governments are parties to these procedures, unless the parties agree otherwise.
  4. Facilitator's expenses, including travel and subsistence allowance, shall be met from the WTO budget in accordance with the criteria adopted for panellists under Article 8.11 of the DSU.
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附件4

NTBS ON ELECTRONICS

Working Document

Title

Preamble

Scope

International Standards

Conformity Assessment

Transparency

Technical Regulations

Further to Article 2.9 of the TBT Agreement the following additional disciplines apply:

Members shall comply with the obligations set out in Article 2.9 of the TBT Agreement regardless of whether a relevant international standards exists or the technical content of the proposed technical regulation is in accordance with relevant international standard (US, C);

<i>Note</i>	What to notify: This proposal means that Members must notify <i>all</i> proposed technical regulations that may have a significant effect on trade, not just those that are not based on relevant international standards (as set out in Article 2.9 of the TBT Agreement ).
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With a view to providing meaningful opportunity for comment, Members shall:

publish, in print or electronically, the proposed technical regulation 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> (US, C1)

<i>Note</i>	On what to publish: Under the proposal, a Member would be required to publish the actual proposed technical regulation rather than simply a notice that the Member proposes to introduce a measure with a subsequent commitment to provide Members a copy of the proposed measure upon request, as set out in Article 2.9.1 of the TBT Agreement.  For whom: This above text refers to "interested parties" while the TBT Agreement (2.9.1) refers to "interested parties in other Members".
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<sup>1</sup> When a Member publishes a proposed technical regulation in accordance with this subparagraph, it shall be deemed to have satisfied the obligation in Article 2.9.1 of the TBT Agreement, as the case may be, to publish a notice of the proposed technical regulation.

to the extent applicable, identify in any notification it makes pursuant to Article 2.9.2 of the TBT Agreement any provisions of the proposed technical regulation procedure that deviate in substance from relevant international standards (US, C2);

<i>Note</i>	This would mean that a Member must identify up front in its WTO notice the parts of the proposed measure that in substance deviate from relevant international standards (rather than provide such information subsequently upon request whenever possible as set out in Article 2.9.3 of the TBT Agreement).
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upon request from another Member, provide particulars concerning how it took or plans to take into account the costs of complying with the proposed technical regulation (US, C3 and A);

<i>Note</i>	A Member must be prepared to provide particulars upon request concerning the technical regulation, including how it took into account the costs of complying with the proposed technical regulation.
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normally allow not less than 60 days for Members to comment in writing on the proposed technical regulation (US, C4);

allow reasonable time for interested parties to comment in writing on the proposed technical regulation, which normally shall not be less than 60 days;<sup>2</sup> and take into account any such comments the Member receives in finalizing the technical regulation (US, C5);

<i>Note</i>	<p>On the timing: This would mean that a Member must allow as a "reasonable time" for the submission of comments normally not less than 60 days. The TBT Agreement does not explicitly state the number of days; however, the Committee has agreed that the normal time for comments should be 60 days (G/TBT/1/Rev.9, p.18).</p> <p>Comments from whom? This proposal would mean that a Member must consider comments from interested parties<sup>3</sup>, not just from other Members (as set out in Article 2.9.4 of the TBT Agreement), on the proposed technical regulation.</p>
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publish, in print or electronically, any written comments received from Members or interested parties on the proposed technical regulation (US, C6);

<i>Note</i>	This would mean that a Member must publish, or otherwise make available to the public, comments received on the proposed technical regulation as well as its responses to significant and relevant issues raised in those comments.
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publish or otherwise make available the public responses to significant comments by other Members or interested parties at the same time as the adoption of the technical regulation. (EU, 15b)

<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.

<sup>3</sup> The US defines "interested persons" as anyone, anywhere in the world, including legal entities and private individuals that have an interest of any nature in the technical regulation or conformity assessment procedure".

facilitate, upon request, consultations with any interested party and provide to interested parties information on the assessment of risks and the impact of any proposed technical regulation;(EU, 15a)

Further to Article 2.10 of the TBT Agreement the following additional disciplines apply:

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 00 as it finds necessary, provided that the Member, upon finalizing the technical regulation, shall:

to the extent applicable, identify in any notification it makes pursuant to Article 2.10.1 of the TBT Agreement any provisions of the technical regulation that deviate in substance from relevant international standards; (US. D1)

upon request, provide other Members particulars concerning how it took or plans to take into account the costs of complying with the technical regulation; (US. D2 and A);

allow interested parties to submit comments in writing on the technical regulation; and take these comments into account in deciding whether to modify the technical regulation. (US, D3)

*Note* This proposal sets out requirements that Members need to take upon finalizing the technical regulation. The TBT Agreement, in Article 2.10, sets out what Members need to do upon adoption of a technical a regulation.

Further to Article 2.11 of the TBT Agreement the following additional disciplines apply.

*Note* The TBT Agreement requires, in Article 2.11, that all technical regulations which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties in other Members to become acquainted with them.

Members shall ensure that all technical regulations that are in force are publicly available and easily accessible to interested parties. (EU. 16)

When publishing a technical regulation, or if paragraphs 0 applies, as soon as possible after publication of the final technical regulation, each Member shall publish, in print or electronically (US, F):

its responses to any significant and relevant issues raised in comments it received from Members or interested parties during the comment period;<sup>4</sup> and (US. F1)

the objective and rationale for preparing or adopting the particular technical regulation. (US, F2)

<sup>4</sup> For greater certainty, if a Member or an interested party submits comments during the comment period that raise questions or concerns regarding why the technical regulation deviates from relevant international standards or how the Member took into account the costs of complying with the technical regulation, the Member shall publish its responses to such comments.

*Conformity Assessment Procedures*

Further to Article 5.6 of the TBT Agreement the following additional disciplines apply:

Members shall comply with the obligations set out in Article 5.6 of the TBT Agreement regardless of whether a relevant guide or recommendation issued by an international standardizing body exists or the technical content of the proposed conformity assessment procedure is in accordance with relevant guides and recommendations issued by international standardizing bodies (US, C);

<i>Note</i>	What to notify: This proposal means that Members must notify <i>all</i> proposed conformity assessment procedures that may have a significant effect on trade, not just those that are not based on relevant guides and recommendations issued by international standardizing bodies (as set out in Article 5.6 of the TBT Agreement).
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With a view to providing meaningful opportunity for comment, Members shall:

publish, in print or electronically, the proposed 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>5</sup> (US, C1)

<i>Note</i>	On what to publish: Under the proposal, a Member would be required to publish the actual proposed conformity assessment procedure rather than simply a notice that the Member proposes to introduce a measure with a subsequent commitment to provide Members a copy of the proposed measure upon request, as set out in Article 5.6.1 of the TBT Agreement.  For whom: The above text refers to "interested parties" while the TBT Agreement (5.6.1) refers to "interested parties in other Members".
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to the extent applicable, identify in any notification it makes pursuant to Article 5.6.2 of the TBT Agreement any provisions of the proposed conformity assessment procedure that deviate in substance from relevant guides or recommendations issued by international standardizing bodies; (US, C2)

<i>Note</i>	This would mean that a Member must identify up front in its WTO notice the parts of the proposed measure that in substance deviate from relevant guides and recommendations issued by international standardizing bodies (rather than provide such information subsequently upon request whenever possible as set out in Article 5.6.3 of the TBT Agreement).
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upon request from another Member, provide particulars concerning how it took or plans to take into account the costs of complying with the proposed conformity assessment procedures (US, C3 and A);

<i>Note</i>	A Member must be prepared to provide particulars upon request concerning the conformity assessment procedure, including how it took into account the costs of complying with the proposed conformity assessment procedure.
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<sup>5</sup> When a Member publishes a proposed conformity assessment procedure in accordance with this subparagraph, it shall be deemed to have satisfied the obligation in 5.6.1 of the TBT Agreement, as the case may be, to publish a notice of the proposed conformity assessment procedure.

## WTO OMC

Page 6

normally allow not less than 60 days for Members to comment in writing on the proposed conformity assessment procedure (US, C4);

allow reasonable time for interested parties to comment in writing on the proposed conformity assessment procedure, which normally shall not be less than 60 days;<sup>6</sup> and take into account any such comments the Member receives in finalizing the conformity assessment procedure (US, C5);

<i>Note</i>	<p>On the timing: This would mean that a Member must allow as a "reasonable time" for the submission of comments normally not less than 60 days. The TBT Agreement does not explicitly state the number of days; however, the Committee has agreed that the normal time for comments should be 60 days (G/TBT/1/Rev.9, p.18).</p> <p>Comments from whom? This proposal would mean that a Member must consider comments from interested parties<sup>7</sup>, not just from other Members (as set out in Article 5.6.4 of the TBT Agreement), on the proposed conformity assessment procedure.</p>
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publish, in print or electronically, any written comments received from Members or interested parties on the proposed conformity assessment procedure (US, C6);

<i>Note</i>	<p>This would mean that a Member must publish, or otherwise make available to the public, comments it receives on the proposed conformity assessment procedure as well as its responses to significant and relevant issues raised in those comments.</p>
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publish or otherwise make available the public responses to significant comments by other Members or interested parties at the same time as the adoption of the conformity assessment procedure (EU, 15b);

facilitate, upon request, consultations with any interested party and provide to interested parties information on the assessment of risks and the impact of any proposed conformity assessment procedure (EU, 15a);

Further to Article 5.7 of the TBT Agreement, the following additional disciplines apply:

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 00 as it finds necessary, provided that the Member, upon finalizing the conformity assessment procedure, shall:

to the extent applicable, identify in any notification it makes pursuant to Article 5.7.1 of the TBT Agreement any provisions of the conformity assessment procedure that deviates in substance from relevant guides or recommendations issued by an international standardizing body; (US, D1)

<sup>6</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.

<sup>7</sup> The US defines "interested persons" as anyone, anywhere in the world, including legal entities and private individuals that have an interest of any nature in the technical regulation or conformity assessment procedure".



upon request, provide other Members particulars concerning how it took or plans to take into account the costs of complying with the conformity assessment procedure; (US, D2 and A);

allow interested parties to submit comments in writing on the conformity assessment procedure; and take these comments into account in deciding whether to modify the conformity assessment procedure. (US, D3)

<i>Note</i>	This proposal sets out requirements that Members need to take <u>upon finalizing</u> the technical regulation. The TBT Agreement, in Article 5.7, sets out what Members need to do <u>upon adoption</u> of a technical a regulation.
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Further to Article 5.8 of the TBT Agreement, the following additional disciplines apply:

<i>Note</i>	The TBT Agreement requires, in Article 5.8, that all conformity assessment procedures which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties in other Members to become acquainted with them.
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Members shall ensure that all conformity assessment procedures that are in force are publicly available and easily accessible to interested parties. (EU, 16)

When publishing conformity assessment procedure, or if paragraphs 0 above applies, as soon as possible after publication of the final conformity assessment procedure, each Member shall publish, in print or electronically (US, F):

its responses to any significant and relevant issues raised in comments it received from Members or interested parties during the comment period;<sup>8</sup> and (US, F1)

the objective and rationale for preparing or adopting the particular conformity assessment procedure. (US, F2)

### *Standards*

Further to Article 4.1 of the TBT Agreement and the provisions contained in the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the TBT Agreement) the following additional provisions apply to standards developed by central governmental bodies.

<i>Note</i>	Under the TBT Agreement, the substantive provisions of the Code of Good Practice ("the Code") apply to standardizing bodies. WTO Members (governments) have the obligation to ensure that standardizing bodies accept and comply with the Code (as stated in Article 4.1 of the TBT Agreement). This proposal would only impose obligations on standards developed by central governmental bodies (see para. II.B of the US proposal, W/105/Rev.2).
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Where a Member proposes to prepare or adopt a standard, with a view to providing meaningful opportunity for comment, Members shall (US, E):

<sup>8</sup> For greater certainty, if a Member or an interested party submits comments during the comment period that raise questions or concerns regarding why the conformity assessment procedure deviates from relevant guides, or recommendations issued by international standardizing bodies or how the Member took into account the costs of complying with the conformity assessment procedure, the Member shall publish its responses to such comments.

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. (US, E)

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; (US, E1)

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; (US, E2)

<i>Note</i>	<p>What to publish: The Code states in para. J: "At least once every six months, the standardizing body shall publish a work programme containing its name and address, the standards it is currently preparing and the standards which it has adopted in the preceding period. ..." (emphasis added).</p> <p>Who submits comments: The Code states in para. L: "Before adopting a standard, the standardizing body shall allow a period of at least 60 days for the submission of comments on the draft standard by interested parties within the territory of a Member of the WTO. ..." (emphasis added).</p> <p>What to put in the notice: The Code states in para L: "No later than at the start of the comment period, the standardizing body shall publish a notice announcing the period for commenting in the publication referred to in paragraph J. Such notification shall include, as far as practicable, whether the draft standard deviates from relevant international standards" (emphasis added).</p>
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upon request from another Member, provide particulars concerning the proposed standard; (US, E3)

<i>Note</i>	<p>What to provide: The Code states in para. M: "On the request of any interested party within the territory of a Member of the WTO, the standardizing body shall promptly provide, or arrange to provide, a copy of a draft standard which it has submitted for comments. ..."</p>
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upon request, discuss written comments it receives from Members and take the results of those discussions into account in finalizing the proposed standard; and (US, E4)

<i>Note</i>	<p>What to take into account: The Code states in para. N: "The standardizing body shall take into account, in the further processing of the standard, the comments received during the period for commenting. ..."</p>
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publish, in print or electronically, any written comments it received from Members or interested parties on the proposed standard. (US, E5)

As soon as possible after publication of the final standard, each Member shall publish, in print or electronically (US, F):

its responses to any significant and relevant issues raised in comments it received from Members or interested parties during the comment period;<sup>9</sup> and (US, F1)

the objective and rationale for preparing or adopting the particular standard. (US, F2)

Further to Article 4.1 of the TBT Agreement and the provisions contained in the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the TBT Agreement) the following additional provisions apply.

Before amending an existing or adopting a new standard that is not in accordance with a relevant international standard, Members shall:

facilitate, upon request, consultations with any interested party and provide to interested parties information on the assessment of risks and the impact of any proposed standard (EU, 15a);

publish or otherwise make available the public responses to significant comments by other Members or interested parties at the same time as the adoption of the standard (EU, 15b);

Members shall ensure that all standards that have been adopted are publicly available and easily accessible to interested parties. (EU, 16)

<i>Note</i>	The TBT Agreement's Code of Good Practice states that once the standard has been adopted, it shall be promptly published (Para. O) and that: "On the request of any interested party within the territory of a Member of the WTO, the standardizing body shall promptly provide, or arrange to provide, a copy of its most recent work programme or of a standard which it produced. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties." (Para. P.) (emphasis added).
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**Monitoring and Review**

**Dispute Settlement**

**Technical Assistance**

**Transparency**

**Monitoring / Review (institutional)**

**Dispute Settlement**

<sup>9</sup> For greater certainty, if a Member or an interested party submits comments during the comment period that raise questions or concerns regarding why the standard deviates from relevant international standards, the Member shall publish its responses to such comments.

February 3, 2010

Non-paper

**Korea's Conformity Assessment Procedures for Safety of Electrical Equipment and EMC**

*Communication from the Republic of Korea*

During the discussion in the small group meeting hosted by the NAMA Chair in the December 2009 NAMA Week, the Chair invited Members to provide information on their regulatory approach on safety of electrical equipment and Electromagnetic compatibility (EMC). In this connection, Korea would like to present this non-paper to brief its conformity assessment procedure. This non-paper also includes roadmap for forthcoming change of regulatory framework in accordance with the Free Trade Agreement (FTA) between Korea and the EU.

**I. Conformity Assessment Procedures under Current System**

Korea has maintained the third-party certification system for safety of electrical equipment and EMC since 1974. Under this system, in order to put electrical equipments in the market, the manufacturer or importers need certification issued by the government-designated certification bodies which perform product testing and factory inspection. Recently 'Safety Self-confirmation Registration' system was introduced for the safety of electrical equipment posing less safety concerns. The electrical equipments under the above-mentioned registration could be exempted from factory inspection performed by certification bodies.

**1. In order to apply for a safety certification of electrical equipment:**

- A manufacturer (or applicant) submits the following documents to one of the government-designated safety certification bodies:
  - ✓ product descriptions (including instructions for use);
  - ✓ circuit diagram;
  - ✓ list of critical components and materials, and
  - ✓ letter of authorization (If a manufacturer (or applicant) resides outside of Korea, he/she can delegate authority to their Korea-based authorized agents to apply for the safety certification.)
- Upon receipt of above-mentioned documents and application, safety certification

body will conduct factory inspection and product testing.

- ✓ During product testing, IEC-consistent safety standards are applied.
- ✓ With regard to product testing, valid CB Test Certificates in accordance with the rules and procedures of the IECEE CB Scheme are also acceptable.
- ✓ The certification body will perform factory inspection to verify whether manufacturing facilities and systems are in accordance with relevant procedure before issuing certification.
- If a product passes the product testing and factory inspection, the certification body will issues a safety certification

2. In order to apply for the safety self-confirmation registration

- A manufacturer (or applicant) submits the following documents to a safety certification body and request for safety self-confirmation registration:
  - ✓ product descriptions (including instructions for use);
  - ✓ circuit diagram;
  - ✓ test report issued by a certification body in Korea;
  - ✓ list of critical components and materials, and
  - ✓ letter of authorization (If a manufacturer (or applicant) resides outside of Korea, he/she can delegate authority to their Korea-based authorized agents to apply for the safety certification.)
- Based on submitted documents including the test report, certification body will issue a notification, which will include a range of the notified products and notification number.

3. For EMC (Electromagnetic Compatibility) for electronics equipment

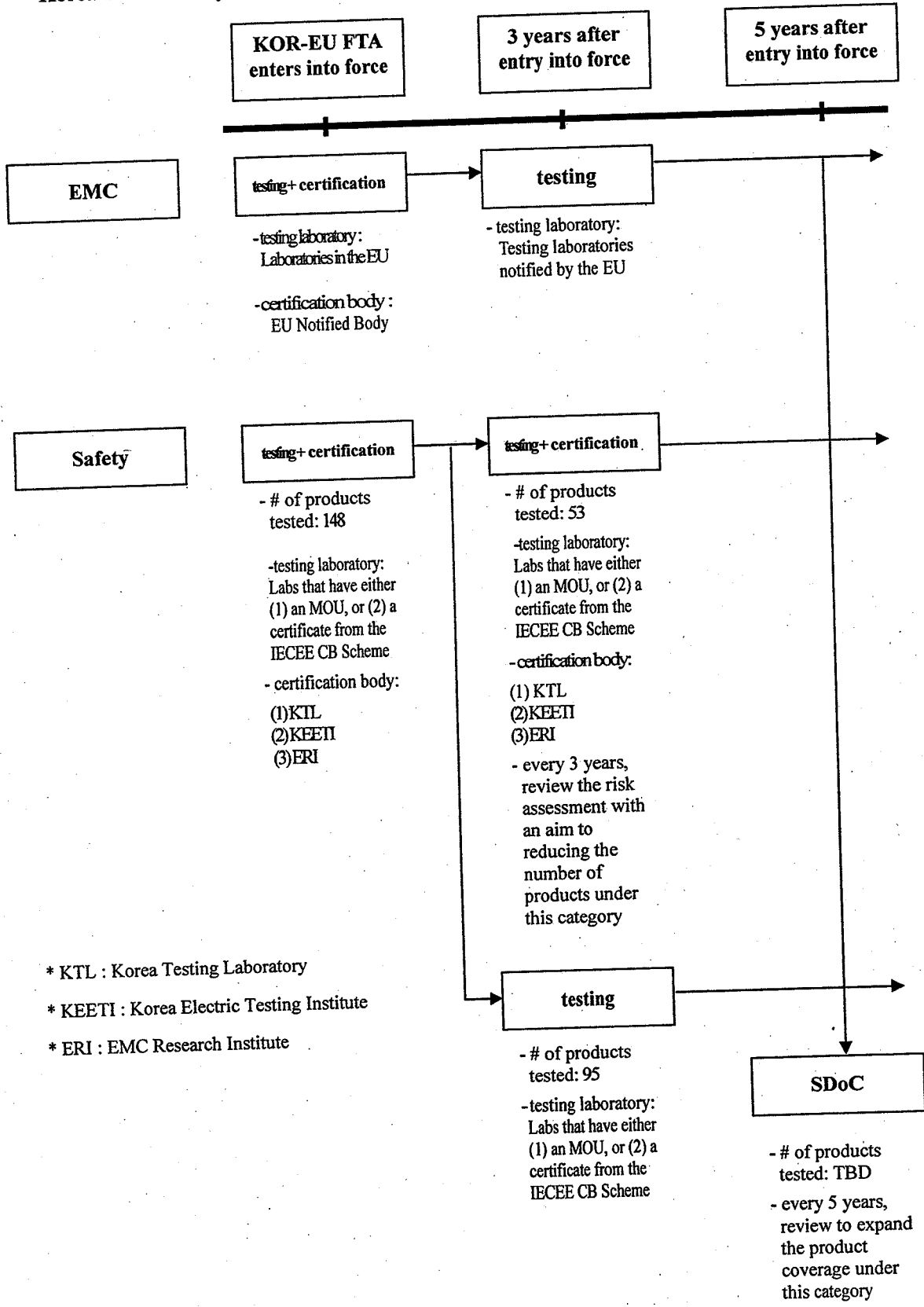
- A manufacturer (or applicant) submits the following documents to one of the government-designated safety certification bodies:
  - ✓ Sample of finished product
  - ✓ test standards (i.e. IEC standards, KS standards, etc);
  - ✓ choice of test method (i.e. for own analysis, presentation and delivery);
  - ✓ manual (contents, technical specification, operation and installation method),
  - ✓ business registration certificate, and
  - ✓ EMC test fee
- Upon receipt of the above mentioned items and application, EMC team of safety certification body will perform EMC test and review the EMC test report.
- If the EMC team approves the review results, it will issue test report.

## II. Conformity assessment procedures under the Korea-EU FTA

In terms of conformity assessment procedure, Korea and EU agreed that Korea will gradually de-regulate its framework of third party certification system while the EU maintains its regulatory framework of SDoC for safety of electrical equipment and EMC.

- During the transitional period of three years from the entry into force of the FTA, Korea may require to accept electrical products on its market:
  - ✓ a certificate issued by a conformity assessment body in the EU that has been designated as a "Notified Body" according to the legislation of the EU, or
  - ✓ a certificate to its technical regulations issued by a conformity assessment body that has been designated according to the procedures of Korea. Korea shall accept such certificates based on a test report issued by :
    - (i) any testing laboratory in the EC that has concluded voluntary arrangements for mutual acceptance of test reports with one or more conformity assessment bodies designated by Korea; or
    - (ii) an EU CB Test Laboratory of the other Party under the IECCEB Scheme, and accompanied by valid CB Test Certificate, in accordance with the rules and procedures of the IECCEB Scheme and the commitments by EC and Korea hereunder.
- After expiry of transitional period, Korea will not require a certificate to its technical regulations issued by conformity assessment body. However, with respect to safety of 53 electrical equipments, Korea may continue to require positive assurance of conformity with its technical regulation. The scope of such products will be reviewed every three years.
- No later than five years from the entry into force of the FTA, Korea shall introduce supplier's declarations of conformity(SDoC) within the scope of some products in the Annex attached to the Agreement :
  - ✓ Every 5 years following the introduction of SDoC, the Parties shall review the possibility of gradually eliminating technical and administrative requirements including mandatory third party testing, through expanding SDoC and developing effective market surveillance for the proper functioning of such a system.

<Korea's conformity assessment procedures for safety of electrical equipment or EMC>



- \* KTL : Korea Testing Laboratory
- \* KEETI : Korea Electric Testing Institute
- \* ERI : EMC Research Institute

**Drafting Illustration of Transparency Provisions for Consideration  
as part of Understandings on Automotive, Electronics and Textiles  
NTB Proposals Building and Elaborating Upon the WTO TBT  
Agreement**

Further to Articles 2.9, 2.10, 5.6 and 5.7 of the TBT Agreement, Members shall:

- (1) notify their proposed technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides, or recommendations and may have a significant effect on trade;
- (2) with a view to provide a meaningful opportunity for comment, include as part of the notification the full text of the technical regulation or conformity assessment procedure<sup>1</sup> and an indication, to the extent applicable, of the parts which in substance deviate from relevant international standards, guides, or recommendations;
- (3) without discrimination, allow interested parties in other Members to make comments in writing and take these written comments into account;
- (4) upon request of another Member, provide information or particulars explaining how the Member took into account the elements set out in paragraphs [insert reference to articles on good regulatory practices];
- (5) for those notifications made under Articles 2.9.2 or 5.6.2, allow no less than 60 days for Members and interested parties therein to submit comments in writing and give favourable consideration to reasonable requests to extend the comment period; and
- (6) publish or otherwise make publicly available, in print or electronically, written comments or a summary thereof they received from Members or interested parties during the comment period, and their responses or a summary thereof to significant issues raised in such comments no later than the date they publish the final technical regulation or conformity assessment procedure.

For the purpose of applying Articles 2.11 and 5.8 of the TBT Agreement, Members shall ensure that all technical regulations and conformity assessment procedures, and any relevant provisions related to penalties, are published in an official journal.

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<sup>1</sup> Members' may provide the full texts in the language of their choice, which may or may not be an official WTO language.





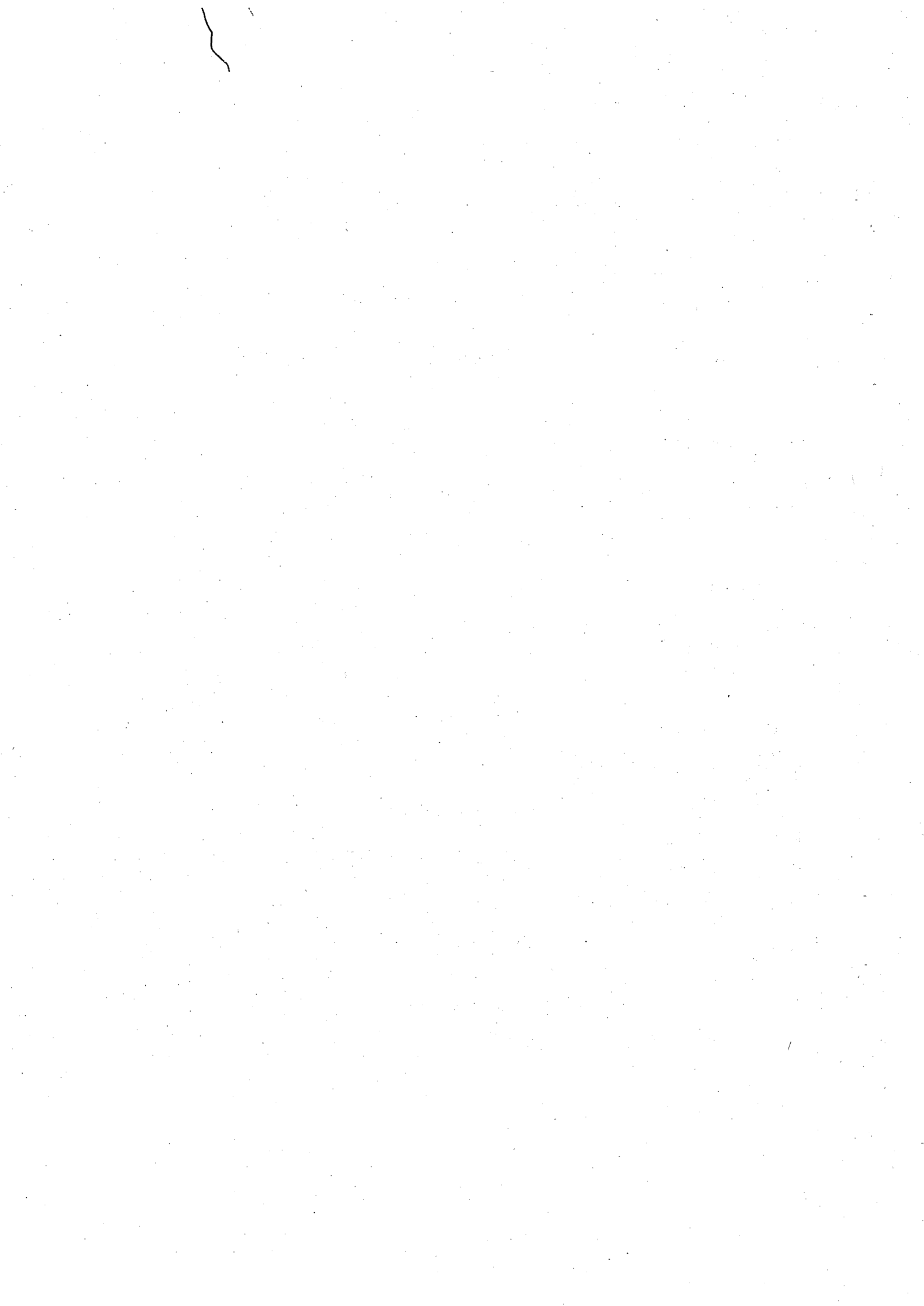
February 3, 2010

## PROPOSED REMANUFACTURING WORK PROGRAM

**Part 1:** Dedicated discussion about trade in remanufactured goods two times per year in the Council for Trade in Goods. Members can raise and discuss specific trade concerns related to the areas of import licensing, import prohibitions, pre-shipment inspection, technical regulations, and conformity assessment procedures, among other areas covered by the CTG.

**Part 2:** Concurrent workshops:

- *Industry Theme:* Remanufacturing companies from developed and developing countries describe their operations and processes, their experience trading remanufactured goods and any trade barriers faced.
- *Development Theme:* Developing countries' experiences in the development and adoption of remanufacturing technologies; global remanufacturing industry experience in operating in developing countries; investment and job-creation aspects.
- *Environment Theme:* Environmental impact and benefits to the environment of remanufacturing.
- *Regulatory Theme:* Members' regulation of trade in remanufactured goods and alternative approaches to regulation. Topics could include: technical regulations, conformity assessment procedures, standards, and risk assessment. Members' experiences in the exportation and importation of remanufactured goods.
- *Institutional Theme:* Building the appropriate infrastructure and institutions to produce/import/export/regulate remanufactured goods; capacity challenges.



# WORLD TRADE ORGANIZATION

TN/MA/W/135  
4 February 2010

(10-0622)

Negotiating Group on Market Access

Original: English

## MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

### Understanding to facilitate the implementation of the TBT Agreement as applied to trade in the chemical products sector

*Communication from Argentina and Brazil*

The following communication, dated 3 February 2010, is being circulated at the request of the delegations of Argentina and Brazil.

### UNDERSTANDING TO FACILITATE THE IMPLEMENTATION OF THE TBT AGREEMENT AS APPLIED TO TRADE IN THE CHEMICAL PRODUCTS SECTOR<sup>1</sup>

Members,

**Recalling** that, in accordance with paragraph 16 of the Doha Ministerial Declaration and paragraph 22 of the Hong Kong Ministerial Declaration, Members agreed to negotiations aimed at reducing or as appropriate eliminating tariffs and non-tariff barriers on non-agricultural products;

**Recognizing** that the continued existence of non-tariff barriers in the chemical sector acts as a disincentive to participation in international trade, leading to an adverse impact in a sector of importance for small and medium-sized enterprises;

**Emphasizing** the need of addressing specific concerns related to chemical sector, such as registration requirements and laboratory accreditation, in order to ensure that they are not designed, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade;

**Recognizing also** that, some issues which affect trade in chemical sector (such as, good regulatory practices, some conformity assessment procedures and confidentiality) may also have a negative impact on trade of other products, and should be considered and, as appropriated, negotiated at a horizontal level.

**Highlighting** the importance that registration requirements and laboratory accreditation are based on relevant international standards.

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<sup>1</sup> This text proposal is a first draft intended as a work-in-progress and does not prejudice the final position of co-sponsors on this issue.

**Reasserting** that nothing in this Understanding shall be interpreted as preventing Members from taking measures consistent with the TBT Agreement that are necessary to, *inter alia*, protect human, animal or plant life health or the environment; or to prevent deceptive practices; or to protect essential security interests;

Hereby, agree as follows,

## I. SCOPE

This Understanding covers registration requirements and laboratory accreditation related with chemical lines (HS Chapters 28-39), with the exception of those included in an Annex A to be agreed by Members.

## II. REGISTRATION

1. When a Member designs, adopts or applies a technical regulation consisting in a registration of products covered by this Understanding, it shall take into account:

- Cost and benefits to producers and consumers, including those of third parties, as well as its impact on international trade.
- Other available regulatory and non-regulatory alternatives that may fulfil the Member's legitimate objectives and are less trade restrictive.

And ensure that:

- It accords treatment not less favourable to the imported chemical products covered by this Agreement than that granted to domestic products.
- Costs associated with registration are not an unnecessary, unreasonable or disproportional obstacle to access to that Member's market. In particular, the impact of such costs for small and medium companies shall be taken into account.
- Procedures are not excessively complex or constitute an unnecessary, unreasonable or disproportionate obstacle to access to that Member's market.

2. Member's registration requirements shall be proportional to the risk that products covered by this Understanding present for human, animal, plant life or health, or the environment, according to the scientific information available.

2.1 Members shall not require registration of inputs utilized in the manufacture of imported products, unless there is scientific evidence that inputs in those products pose a risk for human, animal, plant life, or the environment.

2.2 Members shall not require registration of substances contained in products when they are not intended to be released, unless there is scientific evidence that those substances in the condition they are present in those products, pose a risk for human, animal, plant life, or the environment.

3. Members shall exempt from registration products that are included in another WTO Member register, when it has the similar level of requirements and fulfils the same legitimate objectives.

3.1 With that purpose, Members shall endeavour to negotiate Mutual Recognition Agreements and participate in international initiatives aimed at harmonizing registration requirements.

### **III. ACCREDITATION OF LABORATORIES**

In order to reduce cost associated to laboratories accreditation Members shall endeavour to negotiate Mutual Recognition Agreements. Relevant sectoral international standards (such as ISO 17025) shall be taken into account.

### **IV. ASSESSMENT**

Before adopting or amending a technical regulation that may have a significant effect on trade of the products covered by this Understanding, Members shall endeavour to conduct an assessment of the expected impact on the exports of other Members. Such assessment shall take into consideration possible regulatory and non-regulatory alternatives. As appropriate, this assessment shall be notified to the TBT Committee well in advance to the adoption of the proposed measure.

### **V. SPECIAL AND DIFFERENTIAL TREATMENT AND TECHNICAL COOPERATION**

Developed Member countries shall provide, upon request and under terms and conditions mutually agreed with developing countries and less developed countries, technical cooperation to ensure compliance with registration and laboratory accreditation requirements.

### **ANNEX A**

(List of products excluded of this Understanding).

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# WORLD TRADE ORGANIZATION

TN/MA/W/15/Add.4/Rev.5<sup>1</sup>  
4 February 2010

(10-0000)

Negotiating Group on Market Access

Original: English

## MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

### Enhanced Transparency on Export Licensing

*Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu;  
Japan; Republic of Korea, Ukraine and the United States*

### Revision

The following communication, dated 7 September, 2009, is being circulated at the request of the delegations of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Japan; Republic of Korea, Ukraine and the United States.

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### **Protocol on Transparency in Export Licensing to the General Agreement on Tariffs and Trade 1994**

*Members,*

*Desiring to ensure that export licensing procedures are not utilized in a manner contrary to the principles and obligations of GATT 1994;*

*Convinced that export licensing should be implemented in a transparent and predictable manner; and;*

*Desiring to bring transparency to the procedures and practices related to export licensing so as to inform traders and Members and facilitate trade in these products;*

*Convinced that access to information on export licensing measures benefits traders in both developed and developing country Members;*

*Recognizing that the obligations set out in this Protocol are without prejudice to a Member's rights and obligations under Article XX of GATT 1994;*

*Hereby agree as follows:*

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<sup>1</sup> The only change introduced to this version of the document in comparison to the previous one is the inclusion of Ukraine as a co-sponsor.



Article 1: Definition of Export Licensing

For the purposes of this Protocol, export licensing means any administrative procedures involving the submission of an application or other documentation (i.e., other than that required for customs purposes) to the relevant administrative body or bodies as a prior condition for exportation from the customs territory of the exporting Member.

Article 2: Notification

1. Within 60 days after the entry into force of this Protocol, each Member shall notify, in writing, the [Committee on Market Access] (referred to in this Protocol as ["the Committee"]) of its existing measures on export licensing, if any. Thereafter, each Member shall notify the [Committee] in writing of any new measures on export licensing or modification to an existing measure on export licensing within 60 days after the effective date of the new measure or modification thereof.

2. Members shall include in a notification under Paragraph 1 the:

- (a) list of products subject to the licensing procedure, including to the extent possible by HS number;
- (b) description of the procedures for the submission of applications or other documentation, including eligibility criteria for applicants (including any criteria that reflect requirements that differ from those applied to products that are exported without a requirement of a license (e.g., requirements for an activity license, investment or a particular form of establishment in the exporting Member, or other similar requirements));
- (c) contact point for information on eligibility;
- (d) administrative body(ies) to which applications must be submitted;
- (e) date and name of publication(s) in which the licensing procedure is published;
- (f) description of the measure, if any, being implemented through the export license and the reasons for the measure;
- (g) expected duration of the export licensing if this can be estimated with some probability, and if not, reason(s) why this information cannot be provided;
- (h) overall amount of the quota to be applied by quantity and/or value and the opening and closing dates of the quota if a Member administers a quota by means of export licensing; and
- (i) possibility, if any, for persons, firms or institutions to request exceptions or derogations from an export licensing requirement, as well as information on how to make such a request and a description of the circumstances under which requests would be granted.

3. When a Member notifies a new or existing measure on export licensing or modification thereto, the Member shall provide a copy of the relevant measure (e.g., law and implementing regulations) to the [Committee].

4. Any interested Member which considers that another Member has not notified a new or existing measure on export licensing or modification thereto in accordance with the provisions of Paragraphs 1 and 2 may bring the matter to the attention of such other Member. If notification is not

made promptly thereafter, the interested Member may itself notify the measure on export licensing or changes therein, including all relevant information.

#### Article 3: Requests for Information

1. A Member shall provide to any Member, upon request:
  - (a) all relevant information concerning:
    - (i) the administration of the measure on export licensing , including the information listed in Paragraph 2 of Article 2;
    - (ii) the export licenses granted over a recent period; and
    - (iii) measures, if any, taken in conjunction with export licensing, including but not limited to restrictions on domestic production or consumption, and governmental stabilization plans for a good; and
  - (b) where available, all relevant information concerning:
    - (i) the distribution of such licenses among importing countries, including importing countries' shares, i.e., by quantity and/or value as relevant, of any quota currently allocated; and
    - (ii) the most recent available statistics (i.e., value and/or volume) on the amount expected to be produced, actually produced, expected to be exported, and actually exported with respect to the product subject to export licensing.

#### Article 4: Confidential Information

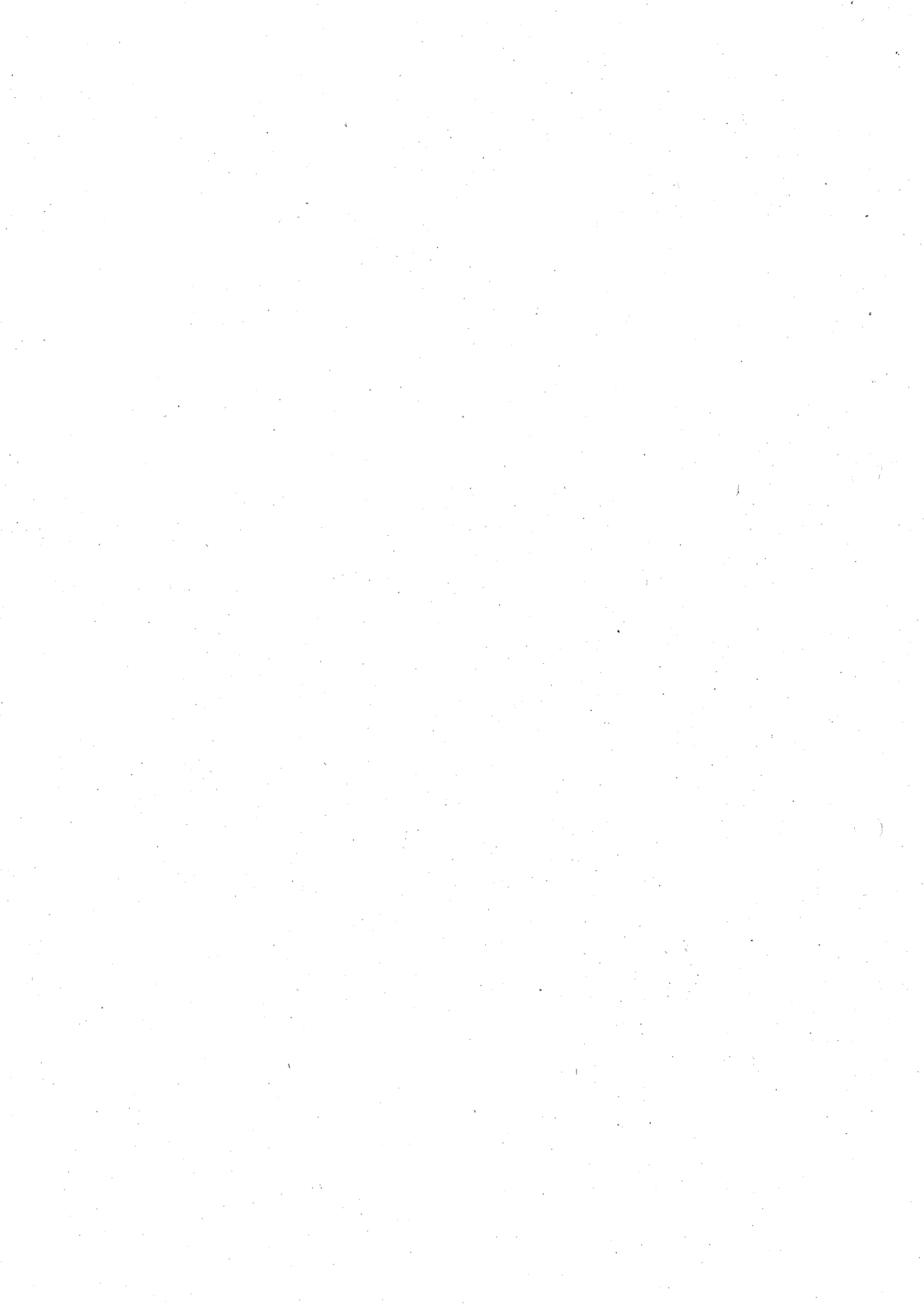
1. Nothing in this Protocol shall be construed to require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.
2. Nothing in this Protocol shall be construed to require any Member to furnish any information the disclosure of which it considers contrary to its essential security interests.

#### Article 5: Review

1. The [Committee] shall review as necessary, but at least once every two years, the implementation and operation of this Protocol, taking into account the objectives thereof, and the rights and obligations contained therein.
2. To facilitate the [Committee]'s review and to help ensure that interested parties can become acquainted with each Member's requirements, if any, for export licensing, the [Committee] shall establish a registry of notifications submitted pursuant to Article 2.
3. The Secretariat shall record in the registry and make available to the public, through the internet or other electronic means, the information notified by Members under this Protocol.<sup>2</sup>

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<sup>2</sup> The URL (Uniform Resource Locator) of the official internet site where relevant information of such measure is sufficiently available may be recorded alternatively, but this is without prejudice to the notification obligation under the Article 2.



3/2/10

Negotiating Group on Market Access

Original: English/  
French/  
Spanish

**MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS**

Communication from European Union, Mauritius,  
Sri Lanka and the United States

Addendum

**Understanding on the Interpretation of  
the Agreement on Technical Barriers to Trade with respect to  
the Labelling of Textiles, Clothing, Footwear, and Travel Goods**

Ukraine should be added to the list of sponsors of the above-mentioned communication.

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**Groupe de négociation sur l'accès aux marchés**

**ACCÈS AUX MARCHÉS POUR LES PRODUITS NON AGRICOLES**

Communication présentée par l'Union européenne, Maurice,  
Sri Lanka et les États-Unis

Addendum

**Mémoire d'accord sur l'interprétation de l'Accord sur les obstacles  
techniques au commerce en ce qui concerne l'étiquetage des textiles,  
des vêtements, des chaussures et des articles de voyage**

Ukraine doit être ajoutée à la liste des coauteurs de la communication susmentionnée.

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**Grupo de Negociación sobre el  
Acceso a los Mercados**

**ACCESO A LOS MERCADOS PARA LOS PRODUCTOS NO AGRÍCOLAS**

Comunicación de la Unión Europea, Mauricio,  
Sri Lanka y los Estados Unidos

Addendum

**Entendimiento relativo a la interpretación del Acuerdo sobre Obstáculos  
Técnicos al Comercio con respecto al etiquetado de los textiles,  
las prendas de vestir, el calzado y los artículos de viaje**

Se debe añadir Ucrania a la lista de patrocinadores de la comunicación mencionada *supra*.

