JOB/MA/1

21 January 2010

Negotiating Group on Market Access

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Proposed texts on the Non-Tariff Barrier (NTB) Proposals

Communication from the Republic of Korea

The following communication, dated 19 January 2010, is being circulated at the request of the delegation of the Republic of Korea.

(A) MINISTERIAL DECISION ON PROCEDURES FOR THE FACILITATION OF SOLUTIONS TO NON-TARIFF BARRIERS

1. Scope

In order to specify the scope described in the Annex 1, Korea would like to propose to insert "Any measure regulated by the Agreement on the Application of Sanitary and Phytosanitary Measures" in the second bullet point. The following is Korea's revision to the Annex 1:

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 of Agriculture
- Any measure regulated by the Agreement on Application of Sanitary and Phytosanitary Measures;
- 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.

2. Contents of request

In order to clarify measures and their basis for requesting HM process, Korea would like to revise 2nd sentence of Paragraph 6 as follow:

The request shall:

(a) identify the specific measure at issue;

(b) provide a statement of the alleged adverse effects that the requesting Member believes the measure has on trade between the Parties; and

(c) explain how the requesting Member considers that those trade effects are linked to the measure

3. Relationship to the DSU

Current proposal on HM does not include relevant provisions regarding relationship to the DSU. Korea would like to articulate that the HM should not have any impact on dispute settlement procedures. Hence, Korea would like to propose to add sentences as follows in the Final Provisions before Paragraph 20;

The procedure under this mechanism is not intended to serve as a basis for any dispute settlement proceeding under the DSU. A Party shall not rely on or introduce as evidence in such dispute settlement procedures:

(a) positions taken by the other Party in the course of the procedures for the facilitation of solutions to non-tariff barriers;

(b) the fact that the other Party has indicated its willingness to accept a solution to the non-tariff measure subject to the procedures for the facilitation of solutions to non-tariff barriers; or

(c) draft reports provided by the facilitator, in case of proceeding Stage II by mutual agreement of both Parties.

(B) UNDERSTANDING ON THE INTERPRETATION OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE WITH RESPECT TO THE LABELING OF TEXTILES, CLOTHING, FOOTWEAR, AND TRAVEL GOODS

1. Scope

In order to limit the product coverage to the products, which are designated to consumer use, Korea would like to propose to insert "intermediate products, which are not purchased by end-consumers" in the first sentence of the Annex. The following is Korea's revision to the Annex:

ANNEX

TEXTILES, CLOTHING, FOOTWEAR AND TRAVEL GOODS SUBJECT TO THE UNDERSTANDING

1. With respect to textiles, clothing, and footwear, this Understanding shall cover all products contained in Chapters 50 through 65 of Harmonized Commodity Description and Coding System (HS) Nomenclature, except for intermediate products, which are not purchased by end-consumers, and the products listed below:

HS Number	Product Description
5001 - 5003	Silk Fiber
5101 - 5104	Wool Fiber
5201 - 5203	Cotton Fiber

5301 - 5305	Other Vegetable Fibers
6506.10	Safety headgear (e.g. motorcycle helmets)
6506.91	Rubber or plastic headgear
6506.99	Furskin & other headgear
6507.00	Headbands, linings, covers, hat foundations, hat frames, peaks (visors), and chin straps, for headgear
6406	Footwear Parts

2. Labelling

Since there is no clear definition of "relevant international standards" in the Agreement on Technical Barriers to Trade, Korea is concerned about paying royalty when adopting certain "relevant international standards" regarding care instructions on labels as indicated in footnote 1. The following is Korea's revision to the footnote 1:

Footnote 1: Members are encouraged to use relevant international standards, or the relevant parts of such standards, which are established by standardizing bodies that have accepted the Annex 3 Code of Good Practice for the Preparation, Adoption and Application of Standards of the Agreement on Technical Barriers to Trade.

Negotiating Group on Market Access

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Questions to the proponents of the "Ministerial Decision on Trade in Remanufactured Goods"

Communication from Turkey

The following communication, dated 20 January 2010, is being circulated at the request of the delegation of Turkey.

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1. As confirmed by the co-sponsors on many occasions, the only binding obligation that would be created by the proposal is the establishment of a specific work program under the Council for Trade in Goods (CTG) "to discuss Members' progress in reducing, or as appropriate, eliminating non-tariff barriers in respect of remanufactured goods".

In this regard, we believe that China's question (in the document JOB(09)/60) on what would be the value-added of the proposal if the concerns on remanufactured goods could readily be raised in the CTG and the sub-committees is relevant. The proponents, in reply to this question, state that a focused discussion in the CTG on the basis of the proposed definition of a remanufactured good would produce more value-added given the growing importance of the industry for both developed and developing countries.

As a follow up question, we would like to inquire if the co-sponsors could provide the NAMA Group with a study on the growing importance of remanufacturing industry in global production and trade for both developed and developing countries, as argued. Specifically:

(a) What is the volume and share of remanufactured goods in world trade and production?
(b) How trade and production in remanufactured goods is distributed among countries? What is the share of developing countries in this regard?
(c) Which are the major origin and destination countries for the "cores" used in remanufacturing?

An explanatory note on the definition of remanufacturing applied in these calculations would be appreciated.

2. The proponents identify the work program to be established for "discussing Members' progress in reducing or, as appropriate, eliminating non-tariff barriers in respect of remanufactured goods" in paragraph 3 of the proposal. Could the proponents elaborate further on the specifics of the proposed work program in terms of content and process?

3. In relation to the above question, what kinds of flexibilities are proposed for the benefit of developing countries with the second sentence of paragraph 3 in the text?

4. We would also appreciate proponents' assessments on how to refrain from any possible duplication of the work program with the work being carried out within other relevant WTO Committees dealing with non-tariff barriers in international trade, somehow.

5. The definition of a remanufactured good, although stated to be non-binding with respect to national legislations of Members, will be guiding the future work on the issue, yet it is rather vague. Specifically;

(a) How a remanufactured good would be differentiated from a used good?
(b) How much processing would be enough for a used good to qualify as a remanufactured good?
(c) How would one ensure that the changes introduced to the used good or its parts are not simply cosmetic?

6. Concerning the warranty, what would be the duration and scope of it? Related to that, how would the life cycle of the final good be determined if it consists of different remanufactured parts having different weariness levels?

7. The proponents state that the primary request of the industries from the Members is that the Members treat remanufactured goods as they would treat new goods. In order to support this request, can the proponents provide some comparative information on product life span and/or the estimated mean time to break down of identical new and remanufactured products?

8. It seems that in most cases labelling is the only viable option to identify a remanufactured good. Yet in many countries, especially in developing countries, remanufacturing is a new concept and national legislation is not established. Do the co-sponsors have concerns regarding whether different legislations and labelling requirements to be imposed by countries would lead to further fragmentation and difficulties in the implementation?

9. With respect to technical regulations or standards applied to the remanufactured goods, our understanding from industry representatives' presentations during the Workshop held on 4 November 2009 was that these goods are subjected to exact same technical regulations and standards as are new goods. Could the proponents confirm this? Furthermore, are the proponents aware of any internationally accepted standards or technical regulations developed specifically for remanufactured goods?

10. The proponents underline the benefits of remanufacturing to the environment by preventing unnecessary waste, conserving energy and raw materials. On the other hand, deferral of adopting the newer and advanced environmentally friendly and energy efficient technologies by preferring remanufactured goods may result in the opposite. Could the proponents comment on this argument?

JOB/MA/3 21 January 2010

Negotiating Group on Market Access

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Answers from the co-sponsors to questions from the 4th November 2009 Remanufacturing Workshop

Communication from Japan, Switzerland and the United States

The following communication, dated 20 January 2010, is being circulated at the request of the delegations of Japan, Switzerland and the United States.

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1. What types of NTBs affect international trade in remanufactured goods?

Co-sponsors' answer: The U.S. concept paper on remanufacturing from December 2005 in **TN/MA/W/18/Add.11** outlined broad types of NTBs that remanufacturers experience. The U.S. also made bilateral requests of seven Members on specific NTBs impacting trade in remanufactured goods in September 2007 in **TN/MA/NTR/3/Add.2.** More recently in the 4 November 2009, remanufacturing workshops at the WTO, four global remanufacturers described NTBs they face in the international arena. These include import prohibitions, excessive documentation requirements, age restrictions, and onerous import licensing measures.

2. Are there separate HS classifications for remanufactured goods?

Co-sponsors' answer: No, remanufactured goods fall under the same HS classifications as new goods.

3. How can one discern remanufactured goods from new goods?

Co-sponsors' answer: The primary instrument of discernment would be a label (or invoice) indicating that the good is a remanufactured good. A truly remanufactured good otherwise would only differ cosmetically from a new good, e.g. the outer coating may be darker for a remanufactured good than the equivalent new good. Otherwise there are no discernable differences as remanufactured goods meet applicable technical or safety specifications as new goods meet.
How can one define a remanufactured good?

Co-sponsors' answer: We propose a definition for a remanufactured good in paragraph 5 of our negotiating text. This definition accurately captures a range of industry processes, was drafted in close consultation with industry, and is based on U.S. experience with remanufactured goods in its free trade agreements since 2002. It is in brackets as we want to negotiate a definition acceptable to the wider Membership in the context of these NAMA negotiations. This definition has been on the table since our first negotiating text was submitted in February 2007 in **TN/MA/W/18/Add.15.** We added the phrase "and has a warranty" in a subsequent revision in October 2007 in **TN/MA/W/18/Add.15/Rev.1.**

4. What are the quality and reliability of, and standards and warranties for remanufactured goods?

Co-sponsors' answer: Remanufacturers produce their products to meet applicable technical and/or safety specifications or technical regulations that new goods meet. This in and of itself is a significant attestation of remanufactured products quality and reliability. Remanufacturers also provide the same warranties to remanufactured goods that they provide new goods. These warranties usually are linked to servicing contracts; remanufacturers make these warranties valid globally. These facts indicate that remanufacturers have a high degree of confidence in the quality and reliability of their products and are willing to stake their brands' reputations on those products. Some remanufacturers are so confident in the quality and reliability of their remanufactured products, that they believe those products are better than new, due to their corrections to any inherent design flaws in those products.

5. Could you describe any systems for post-market surveillance or traceability program for remanufactured goods?

Co-sponsors' answer: A Member would apply the same post-market surveillance regime and traceability programs for new goods to remanufactured goods.

6. What is the environmental impact of remanufactured goods?

Co-sponsors' answer: Remanufacturing is an environmentally friendly process. The remanufacturing business model uses goods at the end of their life-cycles as inputs into the remanufacturing process. Presentations by the autos parts and earthmoving equipment industries at our November 4, 2009 workshops highlighted that remanufacturing saves them 85% of energy use; 86% of water use; and 85% of the materials used in the manufacturing of parts as compared to manufacturing a new good. One of the presenters noted that their industrial process avoids the emissions caused by re-smelting metal castings. Further, the re-use of end-of-life goods prevents them from ending up in landfills. Since remanufacturers often recollect the cores, the remanufacturing process also determines what can be saved and what can be recycled more efficiently than the simple disposal of the goods by consumers. Facilitating trade in remanufactured goods would help stimulate demand in both remanufactured goods and the end-of-life goods used as inputs in the remanufacturing process. The work program we propose could have an environmental element where Members in a workshop would exchange views on the environmental impact of trade in remanufactured goods.

7. What happens when remanufactured goods reach the end of their lives? Do remanufacturers reacquire end-of-life remanufactured goods?

Co-sponsors' answer: A typical remanufacturer needs end-of-life goods to make remanufactured goods and therefore has a direct interest in acquiring such goods, i.e. "cores". "Cores" either come from customers of the remanufacturers, "core" brokers who have initially acquired the core, or salvage facilities. These "cores" may be goods that the remanufacturer already remanufactured once or several times. In some cases, when a remanufacturer sells a remanufactured good, the customer must also pay a "core" deposit, which it will only receive if it returns that good back to the remanufacturer at some point in the future. Recovering "cores" is an essential part of the remanufacturing business model. A remanufacturer can only determine whether a core can be remanufactured when it has the core in its possession. Restricting access to "cores" prevents remanufacturers from remanufacturing to the greatest degree possible, and increases the likelihood that the "cores" end up in landfills rather than in the possession of a responsible remanufacturers or recyclers.

8. How many times can a product be remanufactured?

Co-sponsors' answer: Depending on the type of product, a remanufactured good can be remanufactured many times over. The true test of remanufactureability is whether the end-of-life product meets applicable specifications. A remanufacturer is in the best position to determine whether that product can be remanufactured or recycled for scrap.

9. Do the current WTO disciplines apply to remanufactured goods?

Co-sponsors' answer: The view of the proponents is that the Multilateral Agreements on Trade in Goods, i.e. that GATT and the WTO Agreements applicable to trade in goods, do apply to trade in remanufactured goods. New disciplines for remanufactured goods are not necessary, since the Multilateral Agreements on Trade in Goods do not make a distinction between new goods, remanufactured goods, or used goods. In other words, a good is a good is a good.

10. How can we trust the ethics of remanufacturers?

Co-sponsors' answer: First, remanufacturers stand behind their products with warranties and their brand reputations, just as manufacturers of new products do. Second, remanufacturers committed to the industrial process of remanufacturing as a business model want to increase their customer base, not lose it, again, just like manufacturers of new products; therefore their interest is in supplying the best remanufactured product possible at the lowest prices possible. Third, many remanufacturers are members of industry associations that apply their own internal, enforceable codes of ethics. Unethical activities, such as supplying product that has not been remanufactured but is labeled as "remanufactured", may constitute a breach of those codes. Some associations expel their members for engaging in such practices. Finally, manufacturers of new products do not in all instances behave ethically 100% of the time. To assert that remanufacturers are less ethical than manufacturers purely because their products are not made from virgin materials seems illogical. Remanufacturers and manufacturers, as businesses, need to be ethical or their businesses will not survive.

11. Do remanufactured automobiles exist? Can automobiles be remanufactured?

Co-sponsors' answer: To the knowledge of our industry, there are no companies that remanufacture whole automobiles. However, there are many automobile part remanufacturers across the globe (see the searchable membership list of the Automotive Parts Remanufacturers Association - http://www.apra.org/directory/default.asp). Many automobile manufacturers do offer programs where they sell "certified pre-owned" automobiles. These companies do not claim that such autos are remanufactured, readily admit that they are not new, and offer warranties for such autos that are entirely distinct from the warranties from their new autos.

12. Who are the main purchasers of remanufactured goods?

Co-sponsors' answer: Remanufacturers have a large range of customers, including consumers at all income levels, businesses, original equipment manufacturers, hospitals, universities, militaries, and government agencies.

JOB/MA/3/Corr.1* 22 January 2010

Negotiating Group on Market Access

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Answers from the co-sponsors to questions from
the 4th November 2009 Remanufacturing Workshop

Communication from Japan, Switzerland and the United States

Corrigendum

Page 1, question 3, second paragraph of co-sponsors' answer, last line: change document symbol TN/MA/W/18/Add.15/Rev.1 to TN/MA/W/18/Add.16.

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* In English only.

WORLD TRADE ORGANIZATION

TN/MA/W/131
22 January 2010

(10-0333)

Negotiating Group on Market Access

Original: English

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

U.S. answers to Japan's questions on the U.S. Automotive Products NTBs negotiating text

Communication from the United States

The following communication, dated 20 January 2010, is being circulated at the request of the delegation of the United States.

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

1. General Questions (For entire parts of the proposal)

- What is the background and the need for the proposal?

U.S. answer: This proposal has its roots in the Global Automotive Industry Dialogue (GAID)[1] work on NTBs. Technical Barriers to Trade was one area on which the GAID requested that Members focus their efforts. Additionally, the United States believes that automotive products is a sector that would benefit greatly from enhanced transparency, good regulatory practices, and other provisions in the U.S. proposal, given that this sector is one of the most highly regulated sectors around the world and one where there is a substantial amount of global trade. Developing countries are key players in the global automotive trade so their suppliers and workers would have much to gain by efforts to reduce NTBs in this sector.

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[1] The Global Automotive Industry Dialogue (GAID) is a working group composed of seven major national auto and auto parts manufacturing associations that jointly represent 85% of global motor vehicle production These include: **Brazil** - Associaçao Nacional dos Fabricantes de Veiculos Automotores (ANFAVEA); **Canada** - Canadian Vehicle Manufacturers Association (CVMA); - **European Union**: Association of European Motor Vehicle Manufacturers (ACEA); **India** - Society of Indian Automotive Manufacturers (SIAM); **Japan** - Japan Automobile Manufacturers Association (JAMA); **Korea** - Korean Automobile Manufacturers Association (KAMA); **Mexico** - Association Mexicana de la Industria Automotriz; **Turkey** - Turkey Automotive Manufacturers Association (OSD); **United States** - Automotive Trade Policy Council (ATPC).

- What does the proponent think the impact the proposal have on the existing framework to address international regulation or standards as UNECE/WP.29 or ISO?

U.S. answer: The U.S. proposal seeks to support international harmonization efforts for automotive products, for example, by promoting application of the TBT Committee Decision on Principles for the Development of International Standards, enhancing transparency and good regulatory practices, and encouraging Members to participate in international standardizing bodies. Currently, a key forum for harmonizing automotive regulations and creating "Global Technical Regulations" is UNECE WP-29 under the 1998 Agreement. Other bodies that currently develop automotive standards and contend that they observe the TBT Committee Decision on Principles for the Development of International Standards when elaborating them include the Society of Automotive Engineers International (SAE) (121,000 members in more than 97 countries), the Institute of Electrical and Electronics Engineers (IEEE) (375,000 members in more than 160 countries), ISO (members in 163 countries), and ASTM International (30,000 members in more than 120 countries). Standards developed by these bodies are frequently used by regulators around the world in designing their automotive technical regulations. Given that automotive materials, design, technologies, and regulations continue to evolve at a rapid rate, however, the bodies that develop automotive standards are changing and will continue to change. Thus, the United States believes that the wisest approach would be to maintain the TBT Committee's focus on the principles for development of international standards (recently re-affirmed by WTO Members as part of the Fifth Triennial Review), rather than focusing on particular bodies. Any attempt to try to "lock in" particular bodies as the sole or "main" standardizing body has the potential to distort the marketplace and make it more difficult for Members to achieve their legitimate objectives by essentially compelling them to use standards that may be outdated or otherwise sub-optimal.

2. Scope and Coverage

- The proposal only targets at central government bodies, however, it is likely there would be inconsistency between standards of central government bodies and those of local government bodies if it only includes central government bodies. What is the US's view on that?

U.S. answer: The U.S. proposal focuses on central government bodies because, for the automotive sector, while some sub-federal measures exist, the vast majority of standards, technical regulations and conformity assessment procedures adopted or maintained by the United States are at the federal level.

3. International Standards

(Paragraph A)

- Do the "international standards, guide or recommendation" include technical regulations annexed to the 1958 Agreement and the 1998 Agreement administered by UNECE/WP.29?

U.S. answer: Paragraph III.A of the U.S. autos proposal would commit Members to base their determination of whether an international standard, guide or recommendation exists on the principles set out in the 2001 TBT Committee Decision on Principles for the Development of International Standards. Thus, under the U.S. proposal, if a standard were developed under UNECE/WP.29 or in some other forum in accordance with the TBT Committee decision principles, a Member could consider that standard "international."

4. Good Regulatory Practice

(Paragraph B(1))

- What is the background of this requirement?

U.S. answer: This provision requires Members when preparing or proposing to adopt a technical regulation or conformity assessment procedure to consider the cost of complying with the proposed technical regulation or conformity assessment procedure. One of the elements of Article 2.2 of the TBT Agreement is that technical regulations must achieve the regulator's legitimate objective in a way that is no more trade-restrictive than necessary. Similarly, one of the elements of Article 5.1.2 of the TBT Agreement is that conformity assessment procedures must be no stricter than is necessary to give the importing Member adequate confidence that products conform to the applicable technical regulations or standards. In the U.S. view, assessing costs of compliance with proposed technical regulations or conformity assessment procedures can inform the regulatory analysis and help Members ensure that the regulations and procedures they adopt or no more trade-restrictive or stricter than necessary in accordance with their obligations under Articles 2.2 and 5.1.2. The United States believes that assessing compliance costs is a key aspect of Good Regulatory Practice (GRP) and, therefore, it is no surprise that many regulators in WTO Members already assess compliance costs in some manner. We believe that if the assessment of costs were a widespread practice among the WTO membership, over time regulators would produce better technical regulations and conformity assessment procedures that are less trade-restrictive while still fulfilling Members' legitimate objectives. Additionally, please see our answer to question 5 from Thailand regarding this issue in JOB(09)37 (which is also contained on pg. 4 of our compendium of questions and answers on this proposal in TN/MA/W/125).

(Paragraph B(2))

- Why does the US add this requirement especially in this proposal while there is no equivalent provision in the "Agreement on Non-Tariff Barriers Pertaining to the Electrical Safety and Electromagnetic Compatibility (EMC) of Electronic Goods"?

U.S. answer: Assessing the availability of regulatory and non-regulatory alternatives when preparing or proposing to adopt a technical regulation or conformity assessment procedure can help avoid the creation of unnecessary obstacles to trade. This provision reflects work on Good Regulatory Practice (GRP) undertaken in the TBT Committee and other international and regional fora, such as the Asia Pacific Economic Cooperation (APEC) and the Organization for Economic Cooperation and Development (OECD). Specifically, in the recently-released report of the Fifth Triennial Review of the Operation and Implementation of the TBT Agreement, the TBT Committee indicated that the determination of the need to regulate was "one aspect of GRP," and noted that Regulatory Impact Assessments were beneficial because "they can induce governments to better assess whether or not government intervention is necessary" and "facilitate the identification of the need for regulation." The Committee also "stresse[d] the importance of considering alternatives – and, in some cases, even reconsidering the need for regulation in the first place." See paras. 12-13 of the report. We are open to discussing Members' views on whether this provision may be appropriate for the electronics sector.

5. Harmonizing Technical Regulations and Conformity Assessment Procedures

(Paragraph D)

- This paragraph has an assumption that a Member shall consider using another Member's regulation in some case. We understand that the Member can use another Member's

regulation on the basis that its knowledge about this regulation is correct and does not have to make any further research. Is that correct?

U.S. answer: Paragraph III.D of the U.S. proposal does not address when a Member can or cannot use another Member' technical regulation or conformity assessment procedures as the basis for its own. Instead, paragraph III.D would commit Members to *consider* using, as a basis for its own technical regulation or conformity assessment procedure, another Member's technical regulation or conformity assessment procedure, where a relevant international standard does not exist or use of relevant international standards would be ineffective or inappropriate in fulfilling the Member's legitimate objective. Our intent is that a Member would consider the technical regulations or conformity assessment procedures of other Members that are brought to its attention (e.g., by interested parties) or of which it is otherwise aware. The provision does not set out how Members should undertake this consideration or the factors or criteria they should take into account. Instead, it leaves these decisions to Members, with the exception that Members should only consider technical regulations and conformity assessment procedures that are not inconsistent with the WTO Agreement. Although this latter criterion should be self-evident, we thought it was important to make it explicit in the text. We do not believe that incentivizing global harmonization to regulatory approaches that are non-transparent, unworkable, not based on science, discriminatory, etc. would be a desirable outcome of this exercise.

6. Transparency

(For all the paragraphs in this part)

- What is the need for strengthening the requirements stipulated in the TBT Agreement?

U.S. answer: The report of the Fifth Triennial Review of the Operation and Implementation of the TBT Agreement (G/TBT/26, 13 November 2009) emphasizes that "transparency is a fundamental pillar in the implementation of the TBT Agreement and a key element of Good Regulatory Practice." See para. 29 of the report. In paragraph 8 of the report, the Committee also "stresses the importance of transparency in processes and procedures used in the development and application of technical regulations and conformity assessment procedures. Participation by interested parties helps ensure legitimacy to what a government does, and the measures it chooses to implement. It also enhances the outcome of the regulatory process by contributing to the creation of higher quality technical regulations and conformity assessment procedures and helps to increase awareness about government actions and avoid unnecessary obstacles to trade." The United States believes that enhanced transparency TBT disciplines for large, globalized sectors such as electronics and automotive products will help prevent NTBs from arising in the first place, for example, by ensuring that parties affected by proposed standards, technical regulations, and conformity assessment procedures (e.g., manufacturers, importers, and testing facilities) have the opportunity to present their views and have their concerns heard prior to adoption of the final measure. We also believe that transparency is critical to another important goal of the U.S. autos proposal, which is promoting greater alignment of regulatory approaches. The more open and transparent that Members' regulatory development processes are, the more likely that regulators will develop aligned approaches that meet their legitimate objectives. For example, when regulators ensure that interested parties in the territory of any Member have a meaningful opportunity to comment on proposed measures (including by submitting data, arguments, and other information and analysis), take this information into account, and explain the basis for their conclusions, including how they took comments received into account, it helps ensure that regulators across WTO Members receive and are accountable to the same type of information and concerns when regulating to meet common objectives. This in turn makes it more likely that, when seeking to achieve common objectives, regulators will reach similar conclusions, such as on the risks associated with a particular product and appropriate measures to mitigate those risks. We have had positive experiences in including enhanced transparency disciplines in our free

trade agreements and believe that introducing them at the WTO would have long-term systemic and practical benefits for all Members. See also the U.S. response to Thailand's question 6 on this issue in JOB(09)/37.

- Can a Member implement the requirements in this part in its national language?

U.S. answer: The notification itself must be in a WTO language, as is already required under the TBT Agreement. However, publication of the proposed or final technical regulation, conformity assessment procedure, or standard, and any responses to significant comments can be in a Member's national language(s).

(Paragraph E)

- What is the need for applying the paragraph regardless of whether relevant international standards, guides or recommendations exist?

U.S. answer: In our view, greater transparency and enhanced opportunities for input from Members and interested parties can facilitate greater alignment of standards, technical regulations, and conformity assessment procedures and help prevent the creation of unnecessary barriers to trade. We believe this is true even in instances where a Member believes its proposed measure is based on relevant international standards. For example, our proposal would ensure that Members and interested parties have the opportunity to comment on elements of the measure that may differ from or go beyond relevant international standards; or to offer differing views as to whether the proposed measure is in fact based on relevant international standards or whether the measure should be based on an alternative standard (international or otherwise) that, for example, may better fulfill the Member's objective (e.g., because an alternative standard is more relevant, effective, or appropriate due to factors such as climate, geography, technology, etc.).

(Paragraph E(1), (2) and (3))

- What is the difference among the three: "proposed standard, ..." in the paragraph (1), "provisions of standard, ..." in the paragraph (2), and "particulars concerning the proposed standard, ..." in the paragraph (3)?

U.S. answer: Our answer pertains to paragraph G of the revised U.S. negotiating text (TN/MA/W/120). "Provisions of the standard" in subparagraph (2) mean the provisions of the "proposed standard" as referenced throughout paragraph G. We can consider changing the phrase to "provisions of the proposed standard" if that will eliminate any confusion among Members. The "particulars concerning the proposed standard" is not defined, but, as stated in subparagraph (3) of the text, could include "the elements described in paragraph E(3)(ii)-(iii)". Generally, we intend "particulars" to refer to information or details about the proposed standard. We note that "particulars" is used in Articles 2.9.3, 5.6.3, and 10.8.2 of the TBT Agreement, as well as paragraphs E and F (3) of the proposal.

(Paragraph E(6))

- Is it deemed as fulfilling the requirement in the paragraph to publish summarized comments a Member received from other Members or interested parties?

U.S. answer: No. This provision (paragraph E(7) in the revised U.S. proposal TN/MA/W/120) requires Members to publish all comments received from other Members or interested parties, not just summaries of those comments. The United States is willing to discuss any concerns this provision

may raise for Japan or other Members. We would note that U.S. regulators publish all comments received (except where confidential), usually doing so on their own websites or at regulations.gov.

(Paragraph G(2))

- What is the difference between "objective and rationale" in this paragraph and the same words in the paragraph E(2)?

U.S. answer: The words "objective and rationale" appear in paragraphs G(2) and H of the revised U.S. proposal (TN/MA/W/120). These words also appear in Articles 2.9 and 5.6 of the TBT Agreement in the same phrasing and context. In our view, the word "objective" refers to the goal the Member wishes to pursue in adopting or proposing to adopt the measure (e.g., protecting the environment from harmful vehicle emissions) and the word "rationale" refers to the reason or reasons it is adopting or proposing to adopt the particular measure (e.g., why the Member chose this particular approach as a means to achieve its objective).

(Paragraph I and J)

- The proposal says in paragraph I that "a reasonable period of time shall usually be not less than 18 months after the date of publication." and in paragraph J that "within no less than the following 12 month period." Could the proponent instruct us the basis of these "18 months" and "12 months" as reasonable periods of time?

U.S. answer: Japan's question and our answer pertain to paragraphs J and K of the revised U.S. proposal (TN/MA/W/120). Paragraph J states that Members must provide no less than 18 months between the date on which the measure is published and the date on which compliance becomes mandatory. Paragraph K provides that Members must publish a regulatory agenda on an annual basis that includes the standards, technical regulations, and conformity assessment procedures it reasonably expects to issue in proposed or final form in at least the next 12 month period. With respect paragraph J, in the auto sector where models generally change no more frequently than once a year, it takes manufacturers a significant amount of time – and longer than six months – to retool and redesign vehicles to meet new regulations, especially if conformance would require a substantial change in automobile design or technology. For this sector, we believe that no less than 18 months is a reasonable interval in situations involving such a change. In fact, we understand that in many cases regulators have provided intervals of significantly longer than 18 months for compliance. We have qualified the time period with the term "usually," because there could be situations where due to urgency or some other unforeseen factors that a regulator will need to require compliance within a shorter time period. With respect to paragraph K, we would note that U.S. regulators are required by Executive Order 12866 to prepare a plan of the most important significant regulatory actions that they reasonably expect to issue in proposed or final form within the next fiscal year or thereafter. We believe that this requirement is beneficial for GRP and the process for developing technical regulations, standards, and conformity assessment procedures for several reasons. Advance planning provides notice to other regulators in the same Member (and in other Members) that a regulator is thinking about developing a measure. This knowledge helps to maximize consultations between regulators, whether in the form of, *inter alia*, information sharing; coordination on scope, methodology, and/or regulatory approach; or ensuring that there are no overlaps or duplications between measures. If there are potential conflicts between measures, the advance notice provided by this requirement will allow sufficient time to resolve such conflicts at an early stage. Advance notice also allows regulators to involve interested stakeholders, both foreign and domestic, in regulatory planning and to understand potential concerns even before a proposal has been drafted and is notified for comment to the WTO. All of these consultations make it less likely that any eventual measure will create unnecessary obstacles to trade. Advance notice will also aid in the harmonization of automotive measures worldwide as regulators will have more time to consider what other regulators

are doing in response to common problems, avoid unnecessary regulatory divergences which could disrupt trade flows, and possibly collaborate on potential joint solutions, which could have positive effects both for trade and for achieving legitimate regulatory objectives.

(Paragraph I)

- What is the difference between the "dates on which compliance with the technical regulation" in this paragraph and the date for "entry into force" provided in the TBT Agreement?

U.S. answer: Japan's question and our answer pertain to paragraph J of the revised U.S. proposal (TN/MA/W/120). In some cases it may be possible for a measure to enter into force (i.e., have legal effect) before compliance with the measure or provisions of the measure becomes mandatory.

- Exactly what extent of change in automobile design is deemed as the "substantial change"?

U.S. answer: Japan's question and our answer pertain to paragraph J of the revised U.S. proposal (TN/MA/W/120). A "substantial change" is one in which the form or function of the automobile undergo significant alterations, e.g. if the engine is modified to emit less particulate matter, or if onboard electronics are modified to facilitate greater energy efficiencies in the operation of the automobile.

7. Testing

(For all the paragraphs in this part)

- Please instruct us the background and the needs for the requirements in this part. What is the difference from the already existing framework under the 1958 Agreement where they recognize testing facilities each other in addition to conformity of products with regulations, etc?

U.S. answer: Japan's question and our answer pertain to paragraph L of the revised U.S. proposal (TN/MA/W/120). Paragraph L would prohibit Members from requiring testing to be performed within its territory and require them to allow testing facilities located in other Members' territories to be deemed competent or otherwise approved. We are interested in hearing from Japan and other Members who participate in the 1958 Agreement (the United States does not) about the differences they see in this proposal and the regime established under the 1958 Agreement.

8. National Treatment of Conformity Assessment Bodies

(Paragraph M)

- What is the difference between requirements in this paragraph and those in the paragraph K(2)?

U.S. answer: Japan's question and our answer pertain to paragraphs L(2) and N of the revised U.S. proposal (TN/MA/W/120). Paragraph L requires Members to ensure that any requirements it maintains concerning testing or accreditation be based either on relevant international standards (paragraph L(1)) or a measure adopted in accordance with paragraphs E and H of the proposal (paragraph L(2)). (Paragraphs E and H contain transparency disciplines with respect to the preparation and adoption of technical regulations and conformity assessment procedures.) Paragraph L also requires each Member to allow testing to be performed in competent facilities outside its territory and to allow facilities in other Members' territories to demonstrate that they meet the Member's requirements to be deemed competent or otherwise approved. Paragraph N requires Members to

accord conformity assessment bodies in the territory of any other Member national treatment with respect to approving or otherwise recognizing conformity assessment bodies as competent to test or certify. Paragraphs L and N work together to ensure that competent testing facilities are permitted to test products outside the importing Member's territory (paragraph L) and that any criteria, procedures, or other conditions for approving or otherwise recognizing such facilities as competent are no less favorable than those applicable to testing facilities in the importing Member's territory (paragraph N).

9. Procedures for Review

(Paragraph N)

- What are "tribunals" in this paragraph like? And could you give some examples for the bodies and procedures required in this paragraph if there is any Member that has such bodies and procedures?

U.S. answer: Japan's question and our answer pertain to paragraph O of the revised U.S. proposal (TN/MA/W/120). Paragraph O refers to judicial and quasi-judicial tribunals and is meant to refer to entities such as courts and administrative review boards.

10. Annex I

- Are motorcycle and four-wheel buggy excluded from the scope of this proposal?

U.S. answer: Yes, but we are open to exploring ideas on expanding the product scope if there is an interest.

WORLD TRADE ORGANIZATION

TN/MA/W/132
22 January 2010

(10-0334)

Negotiating Group on Market Access

Original: English

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Responses to Brazil and India's questions on Trade in Remanufactured Goods

Communication from Japan, Switzerland and the United States

The following communication, dated 20 January 2010, is being circulated at the request of the delegations of Japan, Switzerland and the United States, co-sponsors of the NTB proposal on Remanufacturing.

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1. A variety of views, most of them expressing difficulties in accepting the suggested definition of "remanufactured goods", has been heard in the discussions thus far. Should not the discussion of the definition in itself be one of the items of the work program?

Co-sponsors' answer: The proposed definition describes the industrial process of remanufacturing. We welcome specific suggestions on it. Some Members have offered text suggestions which we have taken into account. Others have not yet specified what their exact concerns are. We believe that the current NAMA negotiations offer the best opportunity for Members to agree to a non-binding definition, to help frame the discussion in work program. It is not our intent to create an obligation that Members adopt this definition in their domestic legislation or regulations.

2. The proponents state that the suggested definition for remanufactured goods is non-binding and that there are no requirements for Members to implement it. If that is so, how do proponents envisage the implementation of dispositions no. 2 and 3? How would Members discuss reducing or eliminating NTBs in respect of remanufactured goods if they have different views on what is a remanufactured good?

Co-sponsors' answer: As stated in the answer to question 1, Members would not have to adopt the definition in paragraph 5 into their domestic legislation or regulation. Regarding paragraph 2, the expectation would be for Members to review their non-tariff measures on their own and determine whether they are imposing prohibitions or restrictions on the importation of remanufactured goods. The definition of a remanufactured good in paragraph 5 serves as a lens through which Members can determine how their non-tariff measures may apply to remanufactured goods. Similarly regarding paragraph 2, the definition in paragraph 5 would serve as a lens through which Members can examine particular non-tariff barriers raised in the context of the work program in the Council for Trade in Goods. Presumably, Members would have a discussion of the characteristics of the good in question and how the non-tariff barriers raised impact trade in those goods.

3. The concepts of "reasonable manufacturing activity" and "minimum value addition" do not figure in the definition of remanufacturing. How do the proponents evaluate the possible use of such criteria as part of the definition itself?

Co-sponsors' answer: **[Note: We are consulting with these delegations on these terms.]** We would appreciate clarification about how Brazil and India define these terms in order to provide an appropriate answer to this question.

4. How do the proponents propose that remanufacturing be distinguished from other terminologies such as refurbished, recycled, re-used, repaired, second hand, overhauled?

Co-sponsors' answer: The definition of a remanufactured good in paragraph 5 focuses on the industrial process of remanufacturing. We recognize that some industries use other terminologies, but their processes may be exactly the same as the process the definition in paragraph 5 describes. If those processes do not meet the rigor and criteria of the definition in paragraph 5, then we would not expect Members to raise concerns about barriers to trade in those goods in the work program suggested in paragraph 3. With respect to how we distinguish remanufactured goods from other goods in practice, in the United States, customers know that they are buying remanufactured goods (or any other good that is not new) by reading labels that indicate that such goods are remanufactured. We describe how the United States regulates in this area in JOB(07)/60, but the general requirement is for suppliers to label the products they sell in a truthful, non-deceiving manner.

5. Members have expressed concerns about the possible environmental impact of trade in remanufactured products. How do the proponents propose that these concerns be taken into consideration in the assessment of existing NTBs related to these products?

Co-sponsors' answer: Remanufacturing is an environmentally friendly process. The remanufacturing business model uses goods at the end of their life-cycles as inputs into the remanufacturing process. Presentations by the autos parts and earthmoving equipment industries at our recent workshop highlighted that remanufacturing saves them 85% of energy use; 86% of water use; and 85% of the materials used in the manufacturing of parts as compared to manufacturing a new good. They noted that their industrial process avoids the emissions caused by re-smelting metal castings. Further, the re-use of end-of-life goods prevents them from ending up in landfills. Since remanufacturers often recollect the cores, the remanufacturing process also determines what can be saved and what can be recycled more efficiently than the simple disposal of the goods by consumers. Facilitating trade in remanufactured goods would help stimulate demand in both remanufactured goods and the end-of-life goods used as inputs in the remanufacturing process. We understand that there are some concerns and possible misconceptions that remain about what the remanufacturing industry does and does not do. We envision that the work program would have an environmental element where Members in a workshop format would exchange views on the environmental impact of trade in remanufactured goods.

6. The concept of "remanufacturing" relates to several WTO disciplines such as TBT, SPS, Customs valuation, IPR, tariff commitments; rules of origin; etc. Do the proponents believe that discussing these relations is relevant in the assessment of the existing NTBs related to remanufactured goods?

Co-sponsors' answer: If Members would like to raise any NTBs affecting trade in remanufactured goods and related to the above issues, they can do so in the work program that our negotiating text proposes. In that case, as the last sentence of paragraph 4 notes, such consultations shall not prejudice Member's rights and obligations under the WTO Agreement, including the TBT, SPS, and TRIPS agreements, etc. Also, we noted in footnote 1 in our negotiating text that paragraph 1 does not require a Member reduce or eliminate tariffs on remanufactured goods. Thus, tariff commitments will not be a part of the work program.

7. How do the proponents intend to address developmental issues deriving from this proposal, given that remanufacturing will adversely affect the process of manufacturing in poorer developing countries, including through competition of imported remanufactured goods with new domestically manufactured goods in such markets at low prices?

Co-sponsors' answer: It is true that remanufactured products can be lower priced, but the effect of that on development is not as one-sided as the question suggests. Remanufacturing offers numerous development opportunities. In terms of employment, remanufacturing is a labor intensive industry since it involves hands-on disassembly, repair and reassembly, perhaps even more so than original production, which is more easily mechanized. Skills required by remanufacturing are diverse, ranging from low-skilled disassembly to high-skilled engineering. It can enable the transfer of technology and technical knowledge, both of which can aid development. Many globalized companies already are employing these practices in developing countries where they operate. As well, domestic manufacturers in developing countries are increasingly adopting practices such as using low cost used cores as inputs, to remain globally competitive. Remanufacturing also necessitates growth of other businesses, for example transportation, salvage, parts supply, and recycling. With respect to use of remanufactured goods, business purchasing low-cost, high quality remanufactured goods can extend the lives of equipment vital to their operations, allocate resources more efficiently, grow their companies, employ more staff, and offer more and better services to their customers. Remanufactured products also can be affordable, high quality options for consumers.

8. Monitoring and enforcement mechanisms are critical to prevent the misuse of the policy of imports of remanufactured goods. How do the proponents propose to take this concern into consideration in the discussion of reducing the NTBs to remanufactured goods, "*vis-à-vis*" the capacity constraints of developing countries to put in place such mechanisms?

Co-sponsors' answer: Making a policy distinction between used and remanufactured goods, which we have demonstrated are different than used goods is effective to promote trade liberalization of remanufactured goods. For some Members, labeling is a sufficient means to prevent deceptive practices by compelling suppliers to be honest about what they are selling. Other Members may have different, but equally effective practices. We envision discussing monitoring and enforcement practices in a workshop as a part of the post-Doha work program in order to help Members understand their options in this regard.

9. How do the proponents propose to deal with the issue of conformity assessment to identify and certify the goods as remanufactured for the purpose of consumer information? Have the proponents deliberated on the issues related to operational mechanism for obtaining the certification, the criteria of selection of these agencies, etc.?

Co-sponsors' answer: This proposal does not dictate to Members what conformity assessment procedures (e.g. testing, certification, or accreditation) they should use. Generally, the technical regulations or standards (either original or current) to which new goods must conform also apply to remanufactured goods. In that regard remanufactured goods should also be subject to the same conformity assessment procedures as new goods. We envision discussing regulation and conformity assessment practices in a workshop as a part of the post-Doha work program in order to help Members understand their options in this regard.

10. The current practices by OEMs on remanufactured goods could be a good gauge of how they compare with "new goods"? How do the proponents evaluate the possibility of incorporating discussions on these practices in the Work Program?

Co-sponsors' answer: We agree. Remanufacturing done by OEMs should be discussed in the work program. It is important to note that original equipment manufacturers (OEMs) are not always

remanufacturers, as demonstrated by the industry presentations in the 4 November 2009, remanufacturing workshops at the WTO. Independent companies can remanufacture goods for OEMs, and OEMs can remanufacture goods for other OEMs. No matter who produces the remanufactured goods, those goods should meet the same technical regulations or standards (either original or current) that apply to new goods. Also, in instances where a product is obsolete and OEMs no longer produce new replacement parts, remanufactured parts may become the only viable options.

11. The presentation by the US industry on 4.11.2009 did not throw light on whether there are standards for remanufactured products "*per se*" rather than quality management standards which are process-related. Could the proponents indicate whether there are standards set by ISO, IEC, ITU or other relevant standard setting bodies on remanufactured products?

Co-sponsors' answer: Generally, applicable standards or technical specifications for new products also apply to remanufactured products. Any standards that exist solely with respect to remanufactured products are usually process-oriented. We are examining ongoing efforts by standards development organizations to develop a remanufacturing process standard and view that topic as one for discussion in the work program, as well.

12. What are the specific set of information on labels put on remanufactured goods which are recommended by the relevant international standards? Apart from indicating that the products is remanufactured, is there any difference in the information to be set on labels "*vis-à-vis*" new goods?

Co-sponsors' answer: There is no international standard on labeling for remanufacturing. Generally, remanufactured goods should bear on their labels the information that governments require on labels for new goods. If a Member determines that other pieces of information should be included on labels, such as whether a good is remanufactured, in order to meet a legitimate objective under TBT Agreement Article 2.2., it can do so, so long as such a requirement is not more trade-restrictive than necessary.

13. The presentation by the US industry on 4.11.2009 revealed that there are differences in life cycles in which a product could be remanufactured. Since metal fatigue is an important parameter for remanufactured goods, should not the number of cycles through which a product has been subject to remanufacturing be an important information to be set on labels of remanufactured goods?

Co-sponsors' answer: The question of metal's lifespan is more related to engineering and technical specifications than labeling. Fundamentally, the soundness of a core determines its remanufacturability. It seems like the question makes an artificial distinction in relation to remanufactured goods, when many "new" products, are in fact, made of recycled metals that have been processed multiple times and may have undergone more re-processing than the simple reuse of a core. An example of the latter could be a car door made from processed aluminum cans or multiple scrap sources. Moreover, many consumer electronics products are increasingly made from recycled materials.

14. How would Members, especially developing countries, ensure that import regulations on remanufactured goods are not misused? What is the cost of post-market surveillance for remanufactured goods? How can it be assured that developing countries take on this burden only to the extent they can manage to do so?

Co-sponsors' answer: The focus of the work program in the Council for Trade in Goods, as proposed by the co-sponsors, is to discuss non-tariff barriers impacting trade in remanufactured goods. This would include the misuse of import regulations. Over time, Members would gain experience with the concept of remanufacturing and trade in remanufactured goods and would ensure that their trade regimes evolve in a manner that enhances market access opportunities for remanufactured goods. Fundamentally, Members would refine their non-tariff measures so as to treat remanufactured goods as they would new goods to the greatest extent possible. Regarding post-market surveillance, the additional costs of Members' extending their regimes for new goods to remanufactured goods should be marginal. Members would not need to maintain separate post-market surveillance regimes for remanufactured goods, since the standards and/or technical regulations (original and/or current) and conformity assessment procedures that apply to new goods would also apply to remanufactured goods.

15. Should not the proponents include, in the discussions proposed in the Work Program, the issue of risk assessment and how to refer to it in the label of a remanufactured good "*vis-à-vis*" a new good?

Co-sponsors' answer: The co-sponsors appreciate the suggestion offered by Brazil and India to include an element on "risk assessment" in the proposed work program. Could Brazil and India provide more clarity on what they mean by this term in the context of trade in remanufactured goods? The question seems to infer either that Members should discuss how to assess the risks of purchasing a remanufactured good versus a new good, or how the risks associated with a particular remanufactured good should be conveyed on a label. Any further clarity on this question would be helpful in considering the suggestion.

16. How do proponents suggest that Members address issues relating to "safety" of remanufactured goods, especially in developing countries who might have limitation in enforcing surveillance and control mechanisms?

Co-sponsors' answer: Remanufactured goods should meet any technical regulation a Member maintains related to the safety of a new good. Members could apply the same "surveillance and control mechanisms" they apply to new goods to remanufactured goods, considering the underlying technical regulations (or standards) would be the same as the ones that they apply to new goods.

WORLD TRADE ORGANIZATION

TN/MA/W/133
22 January 2010

(10-0335)

Negotiating Group on Market Access Original: English

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

U.S. answers to Japan's questions on Rev.1 of the U.S. Electronics NTBs Negotiating Text

Communication from the United States

The following communication, dated 21 January 2010, is being circulated at the request of the delegation of the United States.

Agreement on Non-Tariff Barriers Pertaining to the Electrical Safety and Electromagnetic Compatibility(EMC) of Electronic Goods

1. General Question

- What is the background and the need for the proposal?

U.S. answer: The objective of the proposal is to facilitate trade in electronic goods by helping to ensure that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to international trade in electronic goods. The electronics sector is one of the most dynamic in terms of export growth, as countries develop global production networks to meet international demand for these products. Total trade in electronics products was over $5 trillion (exports + imports) in 2006-2008 and accounted for 22% of global non-agricultural trade in that period. From 2006 to 2007 total exports of electronics increased by almost $533 billion and from 2007 to 2008 by almost $179 billion. Both developed and developing countries are important players in the global supply chain for electronics. In 2006 – 2008, developing countries accounted for 44% of electronics exports. Exports of electronics from developing countries grew by 43% between 2003 and 2007, compared to a growth rate of 10% in exports from developed countries. The global IT/electronics industry is truly global - in research and development, design, manufacturing, supply-chain and in marketing. This industry is characterized by rapid innovation and extremely short times to market. Economies that effectively deploy information technology can realize benefits in productivity and competitiveness not only in the electronics sector but also in other downstream industries that utilize information technology. Certainly, there has been an explosion of growth in the IT sector in the past 10 years since many tariffs were liberalized through the Information Technology Agreement. Industry has pointed out, however, that non-tariff barriers in the areas of standards, technical regulations and conformity assessment can increase costs, delay getting products to market, and in some cases prevent products from getting to market at all.

Our proposal, therefore, contains provisions that build upon the TBT Agreement and seek to address barriers in these areas by improving transparency and good regulatory practice and further promoting the use of international standards with respect to electrical safety and EMC for electronic goods. The proposal creates a framework for Members to move to more trade-facilitative forms of conformity assessment over time, consistent with market development and regulatory capacity, while ensuring that legitimate objectives such as protecting human health and safety and preventing harmful interference continue to be met. Together, we believe disciplines that, for example, ensure interested parties have an opportunity to comment on proposed technical regulations and permit required testing to be done outside the territory of the importing Member in approved facilities, would reduce obstacles to trade in electronic goods and facilitate trade in these products. The United States submitted a room document at the March 2009 NAMA NTB week that detailed the proposal's objectives, negotiating history, and documents tabled in support of the proposal. The room document highlights the initial efforts of several delegations (specifically/including the Republic of Korea, the European Communities, and the United States) to promote a substantive outcome in this area.

- What is the definition of that "electrical safety"? What specific kinds of contents the proponent is assuming in this regard?

U.S. answer: The U.S. proposal does not define the term "electrical safety." Generally, we understand electrical safety to refer to relative freedom from risk due to electrical hazards or hazards associated with electrical products. Electrical hazards are any conditions that pose a risk of injury from the presence of electricity. These hazards include, but may not be limited to: electric shock, fire, burns, hazards associated with flying objects, noise, and electromagnetic radiation. If Japan has a specific definition in mind, we are happy to discuss it.

- Doesn't this proposal permit national certification schemes? We are asking this because the proposal refers to only three options; conformity assessment, SDoC, and third party certification systems.

U.S. answer: The intent of the U.S proposal is that Members would use one of <u>two</u> forms of conformity assessment schemes – either third-party certification or supplier's declaration of conformity – in situations where a Member requires a positive assurance that a product conforms to electrical safety or electromagnetic compatibility (EMC) requirements.

2. Scope and Coverage

(Para II.D)

- What is the US's intention to newly adding the sentence "to the extent such amendment or addition pertains to electrical safety or EMC for electronic goods", which does not exist in Article 1.6 of the TBT Agreement, into this proposal?

U.S. answer: The scope of the U.S. proposal is limited to standards, technical regulations, and conformity assessment procedures that pertain to electrical safety or EMC of electronic goods. Therefore, the paragraph referring to amendments and additions similarly needs to be limited to measures that pertain to electrical safety or EMC of electronic goods.

3. Standards, Technical Regulations, and Conformity Assessment Procedure

(Para III.A)

- What is the background of inserting this requirement?

U.S. answer: One of the elements of Article 2.2 of the TBT Agreement is that technical regulations must achieve the regulator's legitimate objective in a way that is no more trade- restrictive than necessary. Similarly, one of the elements of Article 5.1.2 of the TBT Agreement is that conformity assessment procedures must be no stricter than is necessary to give the importing Member adequate confidence that products conform to the applicable technical regulations or standards. In the U.S. view, assessing costs of compliance with proposed technical regulations or conformity assessment procedures can inform the regulatory analysis and help Members ensure that the regulations and procedures they adopt are no more trade-restrictive or stricter than necessary in accordance with their obligations under Articles 2.2 and 5.1.2.. The United States believes that assessing compliance costs is a key aspect of Good Regulatory Practice (GRP) and, therefore, it is no surprise that many regulators in WTO Members already assess compliance costs in some manner. We believe that if the assessment of costs were a widespread practice among the WTO membership, over time regulators would produce better technical regulations and conformity assessment procedures that are less trade-restrictive while still fulfilling Members' legitimate objectives. Additionally, please see our answer to question 5 from Thailand regarding this issue in JOB(09)37 (which is also contained on pg. 4 of our compendium of questions and answers on this proposal in TN/MA/W/125).

- Whose and what "cost" is implied in the sentence, "costs of complying with the proposed technical regulation or conformity assessment procedure," subject to?

U.S. answer: The U.S. proposal does not define the term "costs of complying" and affords Members flexibility to determine what it considers costs and how best to take those costs into account. In terms of "whose" costs, this provision concerns the costs of those entities or individuals that would seek to comply with the proposed technical regulation or conformity assessment procedure (e.g. manufacturers).

(Para III.B)

- Is it correct to understand that each Member has sole discretion on determining whether an international standard, guide or recommendation within the meaning of TBT Agreement exists?

U.S. answer: The U.S. proposal requires each Member to base its determinations of whether a relevant international standard, guide or recommendation exists on the TBT Committee Decision principles. Thus, the determination must be supported by a Member's analysis of whether the six principles set out in the Decision were observed by a standardizing body when it was elaborating a particular standard, guide, or recommendation.

4. Transparency

(Para III.C and others)

- What is the background of the reinforcement of the transparency procedures?

U.S. answer: The report of the Fifth Triennial Review of the Operation and Implementation of the TBT Agreement (G/TBT/26, 13 November 2009) emphasizes that "transparency is a fundamental pillar in the implementation of the TBT Agreement and a key element of Good Regulatory Practice." See para. 29 of the report. In paragraph 8 of the report, the Committee also "stresses the importance of transparency in processes and procedures used in the development and application of technical regulations and conformity assessment procedures. Participation by interested parties helps ensure legitimacy to what a government does, and the measures it chooses to implement. It also enhances the outcome of the regulatory process by contributing to the creation of higher quality technical regulations and conformity assessment procedures and helps to increase awareness about government

actions and avoid unnecessary obstacles to trade." The United States believes that enhanced transparency TBT disciplines for large, globalized sectors such as electronics and automotive products will help prevent NTBs from arising in the first place, for example, by ensuring that parties affected by proposed standards, technical regulations, and conformity assessment procedures (e.g., manufacturers, importers, and testing facilities) have the opportunity to present their views and have their concerns heard prior to adoption of the final measure. We have had positive experiences in including such disciplines in our free trade agreements and believe that introducing them at the WTO would have long-term systemic and practical benefits for all Members. See also the U.S. response to Thailand's question 6 on this issue in JOB(09)/37.

(Para III.E (1))

- Is it correct to understand that each Member has a discretionary power on determining whether comments from Members or interested parties are "significant and relevant"?

U.S. answer: The U.S. proposal (in paragraph III.F(1) in TN/MA/W/105/Rev.2) would require each Member to publish its responses to significant and relevant issues raised in comments it receives. The U.S. proposal does not limit the discretion Members would have to determine in the first instance which issues are relevant and significant, although it is certainly possible that a Member may disagree with a regulating Member's assessment of what issues are relevant and significant and decide to raise it as a concern with the regulating Member. See also the U.S. response to Thailand's question 6 in **JOB(09)/37**.

(Paragraph III.H)

- What is the meaning of the provision "If a Member requires a positive assurance that a product listed for electrical safety, EMC or both in its schedule to Annex III conforms to a standard or technical regulation, it shall accept as such assurance a supplier's declaration of conformity (SDoC)."

U.S. answer: This provision (paragraph III.I in TN/MA/W/105/Rev.2) would require a Member to accept SDoC for products listed in its schedule to Annex III. A Member could specify in its schedule to Annex III whether, for a particular product, it accepts SDoC for EMC or for electrical safety, or for both. If a Member does not list a particular product in Annex III for either EMC or electrical safety, then it does not have to accept SDoC for that product.

- Also, we understand the above provision means that the proposal accepts notification to the government and other requirements as integrals of the SDoC system. Is this understanding correct?

U.S. answer: The U.S. proposal would not preclude a Member from imposing requirements associated with implementation of an SDoC system. However, a key element of this paragraph (III.I in TN/MA/W/105/Rev.2) is that a Member shall base any requirements for an SDoC on a relevant international standard, guide or recommendation that has been developed in accordance with the TBT Agreement and the TBT Committee Decision on Principles for the Development of International Standards or a conformity assessment procedure established in accordance with the proposal's transparency provisions.

WORLD TRADE ORGANIZATION

TN/MA/W/134
28 January 2010

(10-0406)

Negotiating Group on Market Access

Original: English

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Co-sponsors' Answers to Japan's Questions on the "Understanding on the Interpretation of the Agreement on Technical Barriers to Trade with respect to the Labelling of Textiles, Closing, Footwear, and Travel Goods"

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

The following communication, dated 27 January 2010, is being circulated at the request of the delegations of the European Union, Mauritius, Sri Lanka, and the United States.

Scope of Information Requirements (Para 2)

1. Why were the items listed in Para 2 including "country of origin," "care instructions" specifically chosen to be regarded as less trade restrictive? How can these items be justified to be consistent with the condition of Article 2.2. of TBT agreement; national security requirements, prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment?

Co-sponsors' answer: The items listed in Paragraph 2 stem from extensive consultations with industry. In those consultations, requirements to include the information listed in Paragraph 2 were cited as the most prevalent types of labeling requirements worldwide for textiles, apparel, footwear, and travel goods, as appropriate. Article 2.2 of the TBT Agreement contains a non-exhaustive list of legitimate objectives. Accordingly, a Member may require information to be included on a label to fulfill one of the objectives listed in Article 2.2 or any other legitimate objective. Paragraph 2 does not address the reasons or objectives a Member might have for requiring certain information on a label. That said, for example, a requirement to include fiber content on clothing labels might serve to protect consumers that are allergic to certain materials or to prevent consumers from being deceived about the quality or nature of the clothing they are purchasing.

2. How to ensure that other information requirements on labels than those listed in Para 2 are not prejudged to be trade restrictive under TBT agreement?

Co-sponsors' answer: Irrespective of Paragraph 2, Members requiring the types of information contained in paragraph 2 on labels (or any other type of information) must ensure that their requirements are not inconsistent with Article 2.2 of the TBT Agreement, i.e. those requirements must be no more trade restrictive than necessary to fulfill a legitimate objective. As we stated in our FAQ (TN/MA/W/114), Paragraph 2 only creates a presumption that requiring the information specified in Paragraph 2 on a label is not more trade-restrictive than necessary. That presumption is rebuttable, however, for example, by demonstrating that the requirement is not necessary to fulfill the Member's legitimate objective. While under Paragraph 2 requirements to include certain information on a label

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will be presumed to be no more trade restrictive than necessary within the meaning of Article 2.2 of the TBT Agreement, this does not prejudice the fact that requirements to include other information may likewise be no more trade restrictive than necessary within the meaning of Article 2.2. We underline that the major difference is that such other information does not benefit from a presumption.

Rebuttable Presumption (Para 2 and 5)

Just for a confirmation, is the understanding that any Member's right to establish any domestic labeling systems at its discretion is not precluded *inter alia*, any Member is not forced to legislate the labeling requirements of information listed in Para 2 correct?

Co-sponsors' answer: It is correct that nothing in the proposal requires Members to require that the information listed in Paragraph 2 to be included on labels.

Positive Consideration on Non-permanent Labels (Para 3)

Does uneven treatment in the proposal for permanent and non-permanent labels in considering the legal effect oppose the current trend in consumer policy which prefers permanent labels?

Co-sponsors' answer: This paragraph only asks Members to give "positive consideration" to the use of non-permanent labelling; it does not require Members to require non-permanent labels in lieu of permanent ones. Please refer to the compendium to the TAFT proposal (TN/MA/W/123) which contains answers to questions from the Republic of Korea and New Zealand on the issue of "positive consideration". Also, we are not aware of any studies showing that consumers prefer permanent labels. Our industries indicate that non-permanent labelling facilitates trade and helps ensure that customers receive goods in a cost-effective and timely manner. Different Members require different sets of information on labels, including what information must be on a permanent label versus what can be put on a stick-on or hang-tag label. This dynamic often causes problems and raises costs for exporters, especially when the destination is changed mid-shipment. While it costs only a few cents to sew in or otherwise permanently affix a label in the first place, it can cost up to a dollar per garment to rip out the original label and sew in a new label because of new requirements or change in destination. Additionally, exporters encounter additional administrative and handling costs, the delay, and possible penalties for having the wrong label in the garment. These additional costs are passed on to the consumer.

JOB/MA/4

2 February 2010

Negotiating Group on Market Access

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Proposal for Modifications to "Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers"

Communication from the United States

The following communication, dated 2 February, 2010, is being circulated at the request of the Delegation of the United States.

The attached document proposes modifications to a "Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers."

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 market access for non-agricultural products aimed at, *inter alia*, reduction or as appropriate elimination of non-tariff barriers (NTBs), 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~~ can restrict 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'~~ assist efforts by Members to raise and address concerns regarding possible non-tariff barriers in a manner that ~~aid exporters and importers, while respecting the legitimate objectives of the Members maintaining the measures~~ promotes trade, enabling Members to address these important and vital interests,

~~*Recognizing*~~ *Affirming* that ~~these~~ the procedures established under this Decision neither alter nor address the rights and obligations of Members under the WTO Agreement,

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

Emphasizing that the procedures established under this Decision are not intended to ~~replace~~ substitute for, alter, or ~~otherwise affect~~ pre-empt recourse to the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), and Members' rights and obligations thereunder,

Decide as follows:

GENERAL PROVISIONS

1. ~~Pursuant to this Decision, any~~ Any Member may seek to address through recourse to the procedures set out below its concerns regarding any ~~non tariff barrier ("NTB")~~ measure of a Member, as specified in Annex 1 of this Decision, which it believes is adversely ~~affects~~ affecting its trade.

1*bis*. A Member shall not make a request under paragraph 6 regarding a measure unless:

(a) The Member has requested that the measure be placed on the agenda for a meeting of the relevant WTO Committee[1]; and

(b) The relevant committee has discussed the measure pursuant to that request.

2. These procedures shall neither ~~enforce any rights or obligations under the WTO Agreement nor~~ add to nor diminish the rights and obligations of Members under the WTO Agreement, and ~~shall be~~ are without prejudice to Members' rights and obligations under the ~~Understanding on Rules and Procedures concerning the Settlement of Dispute~~ ("DSU") .

3. These procedures shall be applied in the context of relevant WTO ~~Committees[2]~~ Committees.

4. ~~Any time limit referred to in this Decision may be modified by mutual agreement between the Members involved in these procedures~~. The requesting and responding Members (hereinafter "the parties") may agree to modify the time limits and any procedural step specified in this Decision.

5. A Member shall exercise due restraint in making a request for information under paragraph 6 regarding a measure of a least-developed country Member. At all stages of these procedures, a requesting Member shall give particular consideration to the special situation of ~~least developed country Member 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~~ a responding least-developed country Member ~~and solutions explored shall take into consideration the specific situation of the least developed country Member involved, if any~~.

5 *bis*. The provision of information under these procedures shall be without prejudice to the rights of any Member. In particular, no Member may reference, or submit to a panel, arbitrator, or the Appellate Body, in any dispute settlement proceeding under the DSU: a) the request made under paragraph 6; b) a response provided under paragraph 7; c) a draft or final factual report provided under paragraph 18; d) an other document created for the purposes of these procedures; e) any written or oral information not otherwise available to the Member or facilitator that the Member or facilitator receives under these procedures; or f) any advice or suggestions that a facilitator has offered.

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[1] The relevant WTO Committee is the Committee or Council overseeing the operation of the WTO Agreement that the requesting Member reasonably determines is most closely related to the measure at issue. If there is no such Committee for a particular measure, the Council for Trade in Goods shall be considered that the relevant WTO Committee.

[2] ~~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.~~

PROCEDURES FOR ADDRESSING CONCERNS REGARDING POSSIBLE NTBS

Stage I: Request and Response ~~on a Specific NTB~~ Concerning a Measure

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~~ measure of that other Member that it considers may be a NTB. 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~~ effect on trade. The requesting Member may request the responding Member to provide relevant information concerning the nature and application of the measure including: (a) the title, date and description of the measure; (b) the scope of the measure; (c) the administrative body or agency responsible for promulgating and/or applying the measure, including a contact point for obtaining additional information; (d) the objective and rationale of the measure; and (e) a[n official] copy of the measure. A requesting Member may not make more than one such request regarding the same measure[2]

~~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.~~

~~6.~~7. Whenever practicable within [60] days after receiving a request for information under paragraph 6, the responding Member shall provide to the requesting Member in writing its response to the request. Where the responding Member considers that a response within ~~[20~~60] 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.

~~7.~~8. ~~Upon submission~~ When it submits a request for information under paragraph 6, the requesting Member shall notify ~~its~~ the request to the relevant WTO ~~Committee~~[3] Committee[4] which shall promptly circulate ~~it~~ [the notification] to all Members. The responding Member shall ~~equally~~ promptly notify its response to the relevant WTO Committee, which shall promptly circulate ~~it~~ [the notification] 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 a possible next steps.~~

Stage II: Resolution Procedures *[comment: It's not entirely clear which paragraphs comprise "stage II". The headings don't help much since there is a new heading starting at paragraph 12. Consider moving the two following headings to the side or provide some other indication to make clear where stage II starts and stops.]*

~~8.~~9 ~~Following this initial information exchange~~ After the responding party provides its written response under ~~Stage I~~ paragraph 7, the parties ~~shall~~ may decide ~~on whether~~ by mutual agreement to proceed to Stage II of these procedures ~~Stage II of these procedures may only be initiated by mutual~~

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[2] If there is a change to the measure itself, or a change in how the measure is applied or enforced, this would not constitute the same measure for purposes of this Decision.

[3] ~~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.~~

[4] 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.