

WORLD TRADE ORGANIZATION

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Committee of Participants on the Expansion
of Trade in Information Technology Products

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NON-TARIFF MEASURES WORK PROGRAM

Communication from the United States

The following communication, dated 11 October 2002, has been received from the Permanent Mission of the United States.

I. INTRODUCTION

While the ITA made great strides in eliminating or lowering tariffs on Information Technology (IT) products, U.S. information technology industries are still facing some formidable market access hurdles in the form of Non-Tariff Measures. In consultations with industry, it is obvious that there is widespread concern over the various NTMs the global IT industry faces, specifically in the areas of conformity assessment, regulatory process and procedures, standards, rules of origin requirements and customs procedures. These NTMs can negate the free market benefits of the ITA and the intent of ITA participants. While various NTMs were identified in WTO Member submissions, five areas of concern emerge as most problematic. They also reflect the concerns of the U.S. information technology and telecommunications industries.

II. EXAMINATION OF THE ECONOMIC AND DEVELOPMENTAL IMPACT OF SUCH MEASURES ON TRADE IN ITA PRODUCTS

A. CONFORMITY ASSESSMENT, TESTING AND CERTIFICATION

The lack of harmonized conformity assessment procedures, especially when a single internationally recognized standard/regulation is accepted by each of the countries involved, can result in increased costs due to duplicative/multiple testing and certification, prolonged time to market, uncertainty and unpredictability related to contacting approval authorities, certification bodies or laboratories in other countries. Most ITA participants share the same regulatory objectives with regard to ITA products, i.e. protection of health and safety (mainly related to electrical safety), electromagnetic compatibility, efficient use of radio spectrum resources and protection of the public network. There also are internationally recognized safety and electromagnetic interference standards for many IT products (i.e. IEC 60950, CISPR 22 and 24). Many governments that regulate in these areas have adopted these international standards and this international harmonization has greatly facilitated trade. However, the proliferation of variations in the approach on regulations in the area of conformity assessment (testing and certification) is now seriously diminishing the benefits of these international standards and undermining the progress made in trade facilitation in IT products through the ITA.

Conformity assessment procedures that are more burdensome than necessary result in delay in time to market and ultimately impact the consumer, without any benefit to health and safety. The global regulation of EMC/EMI illustrates this point and has been highlighted in a number of Member submissions. In countries that regulate EMC, regulatory requirements for IT products/components are based on the IEC/CISPR standards. However, there are a variety of

approaches to conformity assessment requirements ranging from Supplier's Declaration of Conformity to third-party certification. Considering that EMC risk for IT products is considered to be low, it would behoove Members of the Committee who regulate in this area to consider reviewing their regulations to ensure that they are indeed appropriate to the risk involved and not undermining the objective of the ITA in facilitating trade in IT products. To this end we support the pilot project on EMI/EMC conformity assessment for ITA products proposed by Canada.

When regulations require the submission of test reports or evidence of certification, the lack of acceptance of test reports and certification results in redundant testing and certification procedures that can impede trade in IT and unnecessarily burden manufacturers.

B. REGULATORY PROCESS AND PROCEDURES

Certain aspects of regulatory systems and requirements should be considered as NTMs when they are not proportionate to risks involved, nor based or supported by internationally recognized standards, nor limited to protecting public imperatives, lay down detailed technical requirements, or hinder innovation. These lead to costs and delays to the market with no value-added to the consumer or public interest.

Since the early 1990s, many governments have increased their use of regulations that govern high-tech products. As a result, the IT industry is experiencing a variety of regulatory issues that can be viewed as NTMS, including lack of transparency in government regulation, multiplicity of bodies with responsibility for administering regulations, and deficient coordination among regulatory bodies. In some countries, the focus of regulation has been on environment, health, and safety (EHS) but it is also expanding to include regulation and product requirements for privacy, security, and electromagnetic compatibility. We are concerned that this regulation is having an increasingly significant impact on industry in three ways:

Cost: The marked increase in government regulatory action is placing, in many instances, costly and unnecessary burdens on high-tech companies' and their ability to innovate, provide increased consumer choice, enhance product functionality, and offer affordable product prices.

Market Access: Regulations serve as a barrier to companies entering the international marketplace. They reduce access to the latest technology by consumers in smaller economies because requirements of market size force high-tech manufacturers to the largest markets with the fewest regulatory barriers.

Competitiveness: There are competitiveness implications for the high-tech industry because some regions promote their regulatory model in bilateral negotiations to the detriment of 3rd country industries. We are concerned about the bad example these regulatory actions set. Countries may look to increased use of high-tech product regulation as a way of protecting their markets and embark on their own product regulation initiatives in a similar manner.

NTMs have also been identified as resulting from "voluntary" but de facto requirements, often referencing standards which many times have a quasi-regulatory status or government or legislative sponsorship. In many cases these regulations and the process under which they were developed do not demonstrate the necessary level of transparency, accountability, justification, openness, impartiality, effectiveness, technical coherence and constitution.

C. STANDARDS

We are supportive of international standards development organizations and the adoption of internationally recognized voluntary standards. However, the development, content, and application of some governmental regulations based on standards could be considered NTMs. For example, divergent non-market driven national standards can be used to protect local industry, and more importantly, require manufacturers to redesign their products for a specific market, hindering trade. As a result of unique national standards and frequency allocation, manufacturers must redesign products, carry out testing and certification against multiple standards, experience prolonged time to market, and endure uncertainty as to what standards, national deviations etc. actually apply.

Standards referenced in regulations that go beyond the basic protection requirements act as an NTM, requiring manufacturers to redesign for a specific market and slow the flows of trade in IT. The industry has reported that, in some cases, international voluntary standards are developed for a particular perceived market application and then adopted into a regulation. This in itself may not be an NTM if it is, in fact, addressing a particular perceived market need. However, the problem arises when another country adopts the same standard as a regulation without the accompanying perceived market need. As IT equipment becomes more and more pervasive in our homes and workplaces some countries may be feeling the need to regulate these products more. Regulators should be cautious in adopting international standards, solely based on the fact that they are international. Rather, they should first be sure that the standard they choose is actually appropriate to achieve the regulatory objective.

D. CERTIFICATE OF ORIGIN MANDATES

A certificate of origin requirement is an additional, unnecessary documentation requirement that effectively undermines the benefits of the ITA and consequently has become a significant NTM for trade in IT and telecom products. A certificate of origin requirement can be extremely burdensome in that it can take a full shipping day (or longer if the shipment is scheduled for delivery on a weekend) to get a certificate of origin approval from the exporter's shipping country. Even a one-day delay can add millions of dollars in storage and other fees for products that are awaiting shipment to their final destination.

The information submitted as part of the usual required customs documentation (i.e., a goods declaration and/or invoice) is already sufficient for providing the information necessary to enter the shipment and protect the revenue, commerce and customs laws of the importing country. Furthermore a certificate of origin requirement is very costly especially in the absence of an explanation of the intent underpinning the requirement, making its utility in the import process difficult to understand.

E. CUSTOMS PROCEDURES

Customs procedures act as an NTM when they involve cumbersome, non-transparent and overly bureaucratic procedures related to obtaining customs clearance and/or marketing authorization. This results in increased costs, including those for additional human resources required to carry out customs procedures, and indirect costs related to time, undue delays at borders, and costs related to increased uncertainty and unpredictability.

III. THE BENEFITS WHICH WOULD ACCRUE TO PARTICIPANTS FROM ADDRESSING THEIR UNDUE TRADE-DISTORTING EFFECTS

The WTO itself states that, "Although it is difficult to give a precise estimate of the impact on international trade of the need to comply with different foreign technical regulations and standards, it certainly involves significant costs for producers and exporters"¹. While this is true, the explanations above identify practices that can be NTMs to trade in IT and telecommunications products, negatively impacting the IT industry and undermining the important progress made in trade facilitation by the Information Technology Agreement. The variety of studies listed in the Secretariat's Compilation of Submissions, as well our consultations with US industry substantiate the impacts of these NTMs on trade and the need for some means to address them.

The 1998 U.S. International Trade Commission Staff Research Study, "Global Assessment of Standards Barriers to Trade in the Information Technology Industry," through numerous industry examples concludes that standards-related measures (including technical regulations, testing and certification) are among the most important and costly trade barriers for manufacturers of IT products"². The industry still finds this to be true today.

As the IT and telecommunications industries have grown and matured since the implementation of the ITA, they have also become truly global industries. As the technical standards for IT have generally been globally harmonized, manufacturers are seeking to design one product for the global marketplace. However, the obstacles presented by differing national regulations implementing these standards, unique testing and certification requirements, lack of portability of conformity assessment data, rules of origin requirement and burdensome customs procedures are inhibiting trade and slowing down global consumer access to the latest technology. There is no doubt that removing these obstacles would facilitate trade in ITA products and benefit global consumers, by allowing them access to affordable cutting-edge technology and also to society as a whole by facilitating deployment of IT in a variety of business and industry sectors, encouraging economic growth and productivity.

Increasingly we are seeing the benefits from the use of information technology, including important productivity and efficiency gains, cost savings, increased competition, accelerated innovation and entrepreneurship, job creation associated with higher wage rates, and the important promotion and acceleration of economic development. ITA participants appreciated these benefits and sought to advance trade in IT products to realize these benefits for their economies. The United States hopes the benefits accrued as a result of forming the ITA are just the beginning and looks forward to new opportunities for further tariff elimination through WTO accessions as well as through the new negotiations in non-agricultural goods market access. The United States also encourages ITA participants to continue to seek to address the NTMs that are increasingly counteracting the trade facilitation benefits realized from the ITA and obstructing trade in IT and telecommunications products.

¹ http://www.wto.org/english/thewto_e/whatis_e/eol/e/wto03/wto3_4.htm

² Office of Industries, US International Trade Commission, Publication 3141, November 1998, p.5-1.