

WORLD TRADE ORGANIZATION

RESTRICTED

G/TBT/W/121

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Committee on Technical Barriers to Trade

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AMENDMENT OF THE TBT AGREEMENT

Proposal by Japan

I. BACKGROUND

1. The TBT agreement contains several ambiguous provisions. In order to make the Agreement more effective, predictable and operational, it is necessary to clarify its provisions taking into account the following factors:

- (i) Existence of standards that cannot be regarded as the “international standards” within the meaning of the TBT Agreement;
- (ii) Lack of market /technology relevancy in certain international standards; and
- (iii) Lack of transparency, openness and impartiality in the development of international standards/guides or recommendations.

2. It was with this understanding that the Government of Japan tabled a proposal (G/TBT/W/113) to the Committee on Technical Barriers to Trade on 15 June 1999, regarding clarification of the definitions of “international standards” and “guides or recommendations issued by international standardizing bodies (ISB).”

3. The Government of Japan hereby submits this paper in order to supplement and clarify our previous proposal.

II. EXPLANATION

4. For the convenience of readers, we developed a matrix of subjects to be stipulated and corresponding provisions of TBT agreement (see the attached table). As this table shows, the definitions of “international standards,” “guides or recommendations issued by ISB” are not sufficient or clear enough. For instance, even among the ISO standards, there exist inappropriate standards that only reflect limited regional needs or technically outdated specifications. Existence of such inappropriate standards could lead to a situation where other WTO Members could challenge a Member for violation of the TBT Agreement, if it does not use those standards as the basis of its technical regulations, even though the Member has a just cause for not adopting such standards. In order to eliminate such a possibility, it is indispensable to define what kinds of standards should be treated as “international standards” under the TBT Agreement. From this point of view, the Government of Japan believes that the essential condition for “international standards” under the TBT Agreement is that the standards are developed in a transparent, open and impartial process. To ensure this condition, certain disciplines to secure transparency, openness and impartiality for the development of international standards, which are not currently provided in the Agreement, should be adopted as express provisions in the Agreement.

5. Since the WTO cannot impose obligations on other international bodies directly, these provisions should take the form of binding obligations on WTO Members to take reasonable and available measures to ensure compliance by ISBs with the disciplines.

6. In addition, the Government of Japan proposes introduction of the concept of market/technology relevancy into the Agreement, because international standards should reflect the market needs on a global scale. When certain standards do not appropriately reflect market realities or the status of existing technologies, we believe it is not appropriate for such a standard to be regarded as the controlling “international standard” within the meaning of the TBT Agreement. Paragraph 4 of Article 2 should not be applied in such a case.

7. Regarding conformity assessment, the Government of Japan has a similar concern in spite of the existence of certain provisions, such as Paragraphs 2 and 3 of Article 9. It is not clear what are “guides or recommendations issued by ISBs” and if international systems for conformity assessment (ISCA) can develop documents with binding nature in the Agreement. The Government of Japan believes that “guides or recommendations” referred to in Paragraph 5.4 should exclusively be developed by ISBs in a process similar to the process through which ISBs develop “international standards.” Needless to say, an international body that limits its membership to developed countries or bodies willing to conclude MRAs, etc. should not be regarded as an ISB in the Agreement. Documents from ISCAs should not have binding nature in the Agreement although such documents might be useful as references for implementation of conformity assessment. We believe that such reference documents should also be developed in a transparent, open and impartial process.

III. PROPOSALS FOR AMENDMENT

(Amendments are underlined.)

A. A new Article 4 *bis* should be added after Article 4. The new Article 4 *bis* is to read:

Article 4 *bis* International Standards

1. Members shall take such reasonable measures as may be available to them to ensure that international standards developed by international standardizing bodies of which Members or relevant bodies within their territories are members or participants comply with the provisions of Article 2 and the following conditions:

- (a) **A notice should be published at a sufficiently early stage, in such a manner as to enable interested parties within the territory of a Member to become acquainted with it, that an international standardizing body (hereinafter referred to as an “ISB”) is proposing to introduce a particular standard. For purposes of this Article, when preceding procedures have been conducted by relevant bodies under a contract or an agreement with the ISB, such a sufficiently early stage shall mean an appropriate stage in the preceding procedures;**
- (b) **Notification should be made through established mechanisms to the members of the ISB providing a brief description of the scope of the proposed standard, including its objective and rationale. Such notification shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;**
- (c) **Upon request, at any stage, copies of the proposed standard should be promptly provided to the members of the ISB;**

- (d) A reasonable period of time should be provided, without discrimination, for the members of the ISB to make comments in writing at a sufficiently early stage so that such comments may be taken into account in the further consideration by the ISB;
- (e) The members of the ISB should be given substantial opportunities reflecting market realities and the status of technologies to participate in standard-developing work, including any preceding procedures conducted by relevant bodies under a contract or an agreement with the ISB. In decision-making procedures all interested members shall be treated in an equitable manner; and
- (f) The standard should be published promptly upon adoption.

2. Members recognize that “international standards” referred to in Article 2.4 shall comply with the provisions of Article 2 and conditions of paragraph 1 of this Article. In addition, when certain standards do not appropriately reflect market realities (i.e. do not have a substantial share (x %) in the global market of like products in terms of consumption) or the status of existing technologies, such standards should not be regarded as “international standards” within the meaning of this Agreement.

B. The text of paragraph 2 and 3 of Article 9 should be modified as follows.

9.2 Members shall take such reasonable measures as may be available to them to ensure that international and regional systems for conformity assessment in which relevant bodies within their territories are members or participants comply with the provisions of Articles 5, 6 and the following conditions:

9.2.1 Documents developed by international systems for conformity assessment shall not have a binding nature but shall be used as reference for implementation of conformity assessment in the Agreement. The “guides or recommendations” referred to in Paragraph 4 of Article 5 shall be developed only by ISBs and comply with the provisions of Article 2 and the conditions of Paragraph 1 of Article 4 bis.

9.2.2 When international systems for conformity assessment (hereinafter referred to as “ISCAs”) develop reference documents for implementation of conformity assessment, their development process shall be guided by the following:

- (a) A notice should be published at an early appropriate stage, in such a manner as to enable interested parties within the territory of a Member to become acquainted with it, that ISCA is proposing to introduce a particular reference document for implementation of conformity assessment;
- (b) Notification should be made through established mechanisms to the members of the ISCA providing a brief description of the scope of the proposed reference, including its objective and rationale. Such notification shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;
- (c) Upon request, copies of the proposed reference document should be promptly provided to the members of the ISCA; and
- (d) A reasonable period of time should be provided, without discrimination, for the members of the ISCA to make comments in writing, which should be taken into account in the further consideration by the ISCA.

(e) Interested parties within the territory of a Member should be given appropriate opportunities, whenever possible, to participate in reference-developing work

(f) The references should be published promptly upon adoption.

9.2.3 In addition, Members shall not take any measures which have the effect of, directly or indirectly, requiring or encouraging such systems to act in a manner inconsistent with any of the provisions of Article 5 and 6.

9.3 Members shall ensure that their central government bodies rely on international or regional conformity assessment systems only to the extent that these systems comply with the provisions of Article 5, 6 and the conditions set out in paragraph 2 of this Article, as applicable.

Members recognize that “guides and recommendations” referred to in Article 5.4 comply with the provisions of Article 2 and the conditions of Paragraph 1 of Article 4 bis.
