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Committee on Technical Barriers to Trade

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IMPROVING INFORMATION IN NOTIFICATIONS

EIGHTH TRIENNIAL REVIEW

Submission from the United States

The following submission, dated 14 March 2018, is being circulated at the request of the delegation of the United States.

1 INTRODUCTION

1.1. Members' notifications under Article 2.9, 2.10, 5.6, and 5.7 of the TBT Agreement facilitate the transparent development and adoption of technical regulations and conformity assessment procedures. Stakeholders need this transparency in order to engage effectively with Members – in efforts to prevent unnecessary obstacles to international trade. Accordingly, stakeholders have praised [ePing](#), the WTO's TBT and SPS notification alert system, which allows for electronic distribution of notifications in real time. Using ePing, governments and stakeholders, especially small and medium enterprises (SMEs), can now receive alerts for notifications affecting foreign markets and products of interest.¹ However, as much as this innovation has significantly improved the potential implementation of the TBT Agreement, reliance on ePing also reinforces the need for Members to provide complete and accurate data in their notifications so relevant parties are able to submit comments and understand how their interests are affected.

1.2. This paper highlights several types of information that are particularly important to traders, but appear to be routinely missing from Members' notifications. The United States recommends that the Eighth Triennial Review include a discussion of the challenges faced with respect to providing maximum specific information in Members' notifications, with a view to improving the quality of Members' notifications.

2 BACKGROUND

2.1. In 2016, the United States presented the results of research undertaken with respect to Members' notifications to the TBT Committee between 1 January 2006, and 18 August 2015, to identify the magnitude of the link between technical regulations and conformity assessment procedures and exports. The paper, "Standards and Regulations: Measuring the Link to Goods Trade" (hereinafter "the March 2017 research paper"), was presented at the Committee meeting of 29-30 March 2017 and produced a lively discussion.²

2.2. One of the main observations of the March 2017 research paper was that 41% of TBT notifications during the period lacked information on which products could be affected.³ Item 4 of the Committee's agreed notification format provides that the products covered by the technical regulation or conformity assessment procedure notified should be identified by the Harmonized System (HS) or Customs Cooperation Council Nomenclature (CCCN) codes. This is per the

¹ G/TBT/1/Rev 13, page 38, footnote 176.

² G/TBT/GEN/215, 28 April 2017. Remarks of Mr. Jeff Okun-Kozlowicki, U.S. Department of Commerce.

³ G/TBT/GEN/215, 28 April 2017, page 6. Remarks of Mr. Jeff Okun-Kozlowicki, U.S. Department of Commerce.

Coherent Use of Notification Formats⁴ and the TBT on-line Notification Submission System (TBT NSS) that was agreed to by the TBT Committee. Nonetheless, HS are often not utilized in identifying the relevant products.⁵ The March 2017 research paper found that the percentage of notifications that did not provide HS codes for the specific products affected by the notified technical regulation or conformity assessment procedure even *increased* to 66 % in 2014 from 14% in 2008.

2.3. Another major area of interest to the Committee – and stakeholders – is the date on which a final technical regulation or conformity assessment procedure will enter or has entered into force. This is a key element for "facilitating the traceability of information pertaining to a given notification." To that end, the Committee agreed in 2014 to a recommendation on the Coherent Use of Notification Formats.⁶ Accordingly, the Committee has recommended that Members submit Addenda when "the notified proposed technical regulations or conformity assessment procedure enters into force, especially in cases where relevant dates have not been provided in the original notification or have been changed."⁷ However, the March 2017 research paper noted that 85% of notifications in the period did not provide information on whether or not the notified proposed technical regulation or conformity assessment procedure had been brought into force.⁸ In examining these notifications that lacked entry-into-force information, the March 2017 research paper estimated that around 87% of those technical regulations or conformity assessment procedures notified had subsequently been brought into force without notification to the WTO Secretariat, resulting in confusion among stakeholders and hindering compliance with the final technical regulations and conformity assessment procedures.

2.4. Traders are also interested in whether impending technical regulations and conformity assessment procedures are in accordance with international standards, guides or recommendations. The Committee noted in 2009 that, "in practice, for the sake of greater transparency, some Members choose to notify draft proposed technical regulation or conformity assessment procedure if they are in accordance with relevant international standards, guides or recommendations." In fact, "with a view to increasing transparency on the use of international standards," the Committee agreed in 2009 "to encourage Members, whenever possible and on a voluntary basis, to indicate in Box 8 of the notification format whether or not they consider that a relevant international standard exists and, if appropriate, to provide information about deviations."⁹ However, information is not generally available through ePing or the TBT Information Management System ([TBT IMS](#)) on whether or not Members consider that a relevant international standard, guide or recommendation exists and, if they do, provide information about deviations.

2.5. Greater awareness of this information could be helpful for Members and stakeholders alike. Not only does it enable Members and stakeholders to fully understand the potential impact of the technical regulations and conformity assessment procedures notified, it also promotes transparency and compliance.

3 PROPOSALS

3.1 Products affected

3.1. Without information on products affected, stakeholders using ePing and other services to track Members' notifications may not see or recognize that the notified technical regulation or conformity assessment procedure could potentially impact their products, and thus may miss important notifications on which they would otherwise want to comment.

- a. In light of the importance of receiving this information, we propose that the Eighth Triennial Review include an initial discussion after the conclusion of the Review of the

⁴ G/TBT/35

⁵ G/TBT/32, 29 November 2012, as referenced in G/TBT/1 Rev. 13, 8 March 2017, Section 5.6.4.1(a).

⁶ G/TBT/1/Rev.13, 8 March 2017, page 25.

⁷ G/TBT/1/Rev.13, 8 March 2017, page 57.

⁸ G/TBT/GEN/215, 28 April 2017, page 6. Remarks of Mr. Jeff Okun-Kozlowicki, U.S. Department of Commerce.

⁹ G/TBT/26, 13 November 2009, para. 36 – as referenced in G/TBT/1 Rev 13, Section 5.3.1.4(e), page 25.

challenges faced with respect to providing product codes and how Members might overcome these difficulties.

- b. We also propose that the Committee provide a specific recommendation on the importance of Members providing maximum specific information in their notifications regarding the codes for products potentially impacted by the proposed technical regulation or conformity assessment procedure, for example, by referring to the specific International Classification for Standards (ICS) codes or - HS chapters or codes

3.2 Entry into force

3.2. Without information on whether proposed technical regulations and conformity assessment procedures have entered into force, Members and stakeholders may not be able easily understand if a notified technical regulation or conformity assessment procedure is final and its entry into force. Some adjustments in the practices of the Committee may be helpful. These could include one or more of the following:

- a. The Committee regularly discusses both proposed and final technical regulations and conformity assessment procedures. The more information about final technical regulations and conformity assessment procedures that Members provide in their notifications, the more specific we can be in the Committee. For example, the "Specific Trade Concerns" item on the Committee meeting agenda could be separated into two categories: "Specific Trade Concerns: proposed technical regulations or conformity assessment procedures" and "Specific Trade Concerns: Final technical regulations or conformity assessment procedures."
- b. The United States also proposes the Committee consider a recommendation that Members review their national Official Gazettes and notify final technical regulations and conformity assessment procedures.

3.3 International Standards

3.3. As noted above, although some Members choose to voluntarily notify technical regulations and conformity assessment procedures even when they are in accordance with relevant international standards, guides or recommendations, information is generally not available through ePing or the TBT IMS on whether or not Members consider that a relevant international standard, guide or recommendation exists, and on deviations. Without this information, Members and stakeholders may have difficulty determining whether to devote resources to examining and commenting on the notified technical regulation or conformity assessment procedure.

- a. Therefore, we propose that the Eighth Triennial Review include a discussion of the challenges faced in identifying and notifying the relevant international standard, guide or recommendation and any deviations. This could include a discussion of revisions to the Committee's *Format and Guidelines for New Notification* form and changes to ePing or the TBT IMS.
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