

21 May 2021

(21-4280)

Page: 1/2

Committee on Technical Barriers to Trade

Original: English

PROPOSAL ON TRANSPARENCY PRACTICES

NINTH TRIENNIAL REVIEW

Submission from the United States

The following submission, dated 21 May 2021, is being circulated at the request of the delegation of the United States.

1 BACKGROUND ON PROPOSAL TO NOTIFY DRAFT MEASURES THAT IMPLEMENT ARTICLE 15.2

1.1. Transparency is central to the TBT Agreement and a key element of good regulatory practice that has been addressed through subsequent decisions and recommendations of the TBT Committee. Article 15.2 obligates Members to inform the TBT Committee of measures taken to ensure the implementation or administration of the TBT Agreement as well as any changes thereafter. In practice, many Members have only complied with this article upon joining the Committee.

1.2. Just as the standards and conformity landscape is continually changing, so too have Members' laws and practices. For example, National Quality Infrastructure (NQI) laws, while not generally considered technical regulations, do contain important elements relating to Member practices for the development of standards, technical regulations and conformity assessment procedures. Some Members do notify draft NQI measures to the TBT Committee with open comment periods, while others have not yet notified these types of measures. The notification would assist Members with understanding systematic changes to the national quality system, particularly as they pertain to standards, conformity assessment procedures, and metrology.

1.3. Another example relates to consultation practices that have evolved as technology has changed. Many Members have developed, or have received support from international organizations or other Member technical assistance to set up, online consultation platforms to facilitate transparency. These are often distinct from the Enquiry Point function and operated by other bodies, but do include consultations on technical regulations as well as consultations on other regulations. Some platforms contain not only the draft regulation, but primary and supporting documents, and comments received.

2 PROPOSALS

2.1. That Members notify their National Quality Infrastructure laws as a good practice. We recommend a notification format that would be specific to Article 15.2 to distinguish the notifications from proposed technical regulations and conformity assessment procedures.

2.2. That Members notify or update the information on where Members' comments on draft technical regulations can be submitted.

3 BACKGROUND ON PROPOSAL TO NOTIFY THE WTO AT THE SAME TIME AS DOMESTIC CONSULTATIONS

3.1. With regard to the timing of notifications, in 1995 the Committee agreed that when implementing the provisions of Articles 2.9.2, 3.2 (in relation to Article 2.9.2), 5.6.2 and 7.2 (in relation to Article 5.6.2), a notification to the WTO should be made when a draft with the complete text of a proposed technical regulation or procedures for assessment of conformity is available and when amendments can still be introduced and be taken into account.

3.2. The United States has observed that many WTO Members neither conduct their domestic and international consultations on draft technical regulations at the same time, nor take comments from domestic and international stakeholders simultaneously. It appears that domestic consultation often occurs first and then a measure is notified. If this is the practice, while it may still be possible to take into account WTO Members' comments, it is preferable to simultaneously consider domestic and WTO Members' comments on draft measures so as to minimize issues with having to integrate and consider domestic stakeholder concerns separate from those of WTO Members.

4 PROPOSAL

4.1. That Members notify draft technical regulations at the same time that domestic consultations occur.
