

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

TBT/1/Add.1/Suppl.4  
16 December 1982

Special Distribution

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Committee on Technical Barriers to Trade

## INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

The following notice, received from the delegation of the United States, was published in the U.S. Federal Register, Vol. 47, No. 215 of Friday, 5 November 1982. It announces the final USTR regulations concerning "procedures for representations under Section 422 of the Trade Agreements Act of 1979". The regulations, mandated by Section 422 of the Act, describe the procedures foreigners should use when making allegations to the United States Government of U.S. violations of the Agreement on Technical Barriers to Trade.

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Office of the United States Trade Representative: submission of representations concerning standards-related activity (15 CFR Part 2009)

Summary: These regulations provide for the proper submission of representations by certain foreign countries concerning standards-related activities viewed by such countries as barriers to trade. These regulations implement Section 422 of the Trade Agreements Act of 1979 and the Agreement on Technical Barriers to Trade which was entered into by the United States in the Tokyo Round of Multilateral Trade Negotiations.

Effective date: 6 December 1982.

For further information contact: Donald S. Abelson, Chairman, Trade Policy Staff Committee, Standards Subcommittee (Tel: 202/395-3063).

Supplementary information: The Agreement on Technical Barriers to Trade (the "Agreement") was approved by Congress in Section 2 (a) of the Trade Agreements Act of 1979 (19 U.S.C. 2503 (a)) and entered into force for the United States on 1 January 1980. Article 14:2 of the Agreement provides: "If any party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded by another Party or Parties, and that its trade interests are being significantly affected, the Party may make written representations or proposals to the other Party or Parties which it considers to be concerned. Any Party shall give sympathetic consideration to the representations or proposals made to it with a view to reaching a satisfactory resolution of the matter".

This provision was implemented in domestic law by Section 422 of the Trade Agreements Act of 1979 (19 U.S.C. 2552), which provides that the United States Trade Representative shall receive all such standards-related representations.

The Office of the United States Trade Representative published proposed regulations to further implement Article 14.2 and Section 422 at 46 FR 59547 (7 December 1981). Comments were due 5 February 1982. One comment was received.

The commenter objected to the requirement that representations by a foreign government conform to part 2009, stating that rejection of an official representation on the basis of formal defects would violate United States obligations to consult under Article 14.2 of the Agreement. The commenter urged that the regulations be expressed as guidelines rather than as mandatory requirements.

However, Section 422 explicitly requires that foreign government representations be made in accordance with procedures prescribed by USTR. We have revised the regulations to provide maximum flexibility for foreign representations within the parameters of Section 422. The only mandatory requirement is that representations provide information on trade impact; Article 14.2 itself requires such a showing. The non-mandatory guidelines below are designed to facilitate a prompt and thorough response to the representation in question.

#### Authority

The authority for the regulations published below is 5 U.S.C. 301; the Trade Agreements Act of 1979, Sections 3 (b) (19 U.S.C. 2504 (b)) and 401-422 (19 U.S.C. 2251-54); E.O. 11846 of 27 March 1975 (40 FR 69173); Reorganization Plan No. 3 of 1979 (44 FR 69173), and E.O. 12188 of 2 January 1980 (45 FR 989).

#### Drafting information

The principal authors of this document were Amelia Porges, Clifford Marshall and Robert Stang of the Office of the General Counsel, Office of the United States Trade Representative.

#### Regulatory impact analysis

The Office of Management and Budget has determined that these regulations are issued with respect to a foreign affairs function of the United States. Thus, Section 3 of E.O. 12291 does not apply and a Regulatory Impact Analysis is not required.

List of subjects in 15 CFR Part 2009

Foreign Trade: Standards.

Accordingly, new USTR regulations entitled "Submission of Representations Concerning Standards-Related Activity" are established in a new Part 2009 of Chapter XX of Title 15 of the Code of Federal Regulations and are set forth below:

(signed: William E. Brock, United States Trade Representative).

Part 2009 - Procedures for representations under Section 422 of the Trade Agreements Act of 1979

Sec.

2009.0 Submission of representation.

2009.1 Information required in representation.

Authority: 5 U.S.C. 301; 19 U.S.C. 2504 (b), 2551-54; E.O. 11846, 40 FR 14291; Reorganization Plan No. 3 of 1979, 44 FR 69173; E.O. 12188, FR 989.

§2009.0. Submission of representation.

(a) Any -

(1) Party to the Agreement; or

(2) Foreign country that is not a Party to the Agreement but is found by the United States Trade Representative ("Trade Representative") to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement, may make a representation to the Trade Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement on Technical Barriers to Trade.

(b) All representations under Section 422 of the Trade Agreements Act of 1979 ("Section 422") shall be addressed to the United States Trade Representative, Office of the United States Trade Representative, 600 17th Street, N.W. Washington, D.C. 20506. Alternatively, such a representation may be made by diplomatic correspondence and may be accepted by the Trade Representative.

(c) "The Agreement", a "Party to the Agreement" and "standards-related activity" are defined as in Section 451 of the Act (19 U.S.C. 2561).

§2009.1. Information required in representation.

- (a) Each representation submitted under Section 422 should state clearly on the first page that the representation is a request for action with respect to the obligations of the United States under the Agreement, and should contain the following information:
- (1) The foreign country making the representation, the division of the foreign country's government representing that country's interest, the person(s) within the division who is (are) co-ordinating the foreign country's representation:
  - (2) A description of the standards-related activity at issue, including, whenever possible, copies of the standards-related activity's provisions.
  - (3) Identification of the foreign goods or services affected by the standards-related activity at issue.
  - (4) A statement of how the standards-related activity concerned is alleged to violate the obligations of the United States under the Agreement. This statement should indicate with particularity which such obligations are alleged to be violated.
  - (5) Indication as to whether the foreign country has officially petitioned, filed or complained for relief concerning the same subject matter as this representation to any international forum.
- (b) Each representation submitted under Section 422 of the Act must contain information sufficient to provide a reasonable indication that the standards-related activity concerned is having a significant trade effect, including (but not limited to) the volume of trade in the goods concerned.
- (c) Representations should be submitted in 10 copies.