

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Technical Barriers to Trade

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## INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

### Supplement

The following notice, received from the delegation of the United States, was published in the United States Federal Register, Vol. 47, No. 235 of Tuesday, 7 December 1982. It announces the promulgation of "voluntary guidelines for State and local governments and private sector bodies engaged in standards development, product testing and certification systems".

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International Trade Administration, Commerce: Voluntary guidelines for State and local governments and private sector bodies engaged in standards development, product testing and certification systems.

### Summary

This Notice complies with Section 403 of the Trade Agreements Act of 1979, (19 U.S.C. 2553; Pub. L. 96-39), which requires the President to take reasonable measures to promote the observance by State and local governments and private standards bodies of rules equivalent to those established under the act for federal agencies engaged in standards-related activities.

### For further information contact:

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### Supplementary information

The Department published proposed voluntary guidelines in the Federal Register on 27 April 1982 (47 FR 18014). Comments on the proposed voluntary guidelines were received from two individuals, two companies, two testing laboratories, four trade associations and one standards organization. Two of the commenters endorsed the proposed guidelines with no changes, six supported the guidelines with suggested changes and three offered comments on the text without endorsing or opposing the guidelines.

There were five general comments on the proposed voluntary guidelines. Three of the general comments dealt with ensuring reciprocal treatment in the standards, testing and certification area. The purpose of the guidelines is to promote domestic observance of the Agreement on Technical Barriers to Trade (Standards Code) principles and procedures. Therefore these comments were not pertinent. One commenter desired that State and local governments remove barriers to domestic goods. As the guidelines deal with international trade, the comment was not considered germane. The other general comment concerned consistency between the guidelines and the Standards Code, the Trade Agreements Act of 1979 and the proposed OMB Circular A-119, and further suggested that the guidelines not be finalized until the OMB Circular has been issued in final form. OMB Circular A-119 is addressed to federal government participation in the development and use of voluntary standards while the voluntary guidelines are directed toward State, local and private sector standards-related activities that bear on international trade. As the documents have different purposes and audiences, one is not dependent on the other. However, wherever possible, an effort was made to conform the terminology in the guidelines to be consistent with the aforementioned documents.

Several of the commenters were unclear as to the effect of the voluntary guidelines. The guidelines are discretionary and have no binding effect. The guidelines offer suggested procedures to be adopted and adapted as appropriate by State, local and private sector standards-related entities who wish to conform their actions to comply with the Standards Code aim of preventing technical barriers to international trade. Therefore, while public comment was solicited in the interest of openness and transparency, it must again be emphasized that the voluntary guidelines are not rules and have no regulatory significance.

Comments on the text of the guidelines themselves fell into three general categories:

- The wording and procedures of the guidelines should be conformed, to the greatest extent possible, to the language and obligations of the Standards Code;
- the procedures suggested to provide interested foreign parties knowledge of and access to State, local and private sector standards-related actions should be reasonable and not burdensome; and
- the guidelines should not refer to any particular State, local or private sector organization or publication.

All of these suggestions were taken into account, with necessary modifications for consistency, and are reflected in the final version of the voluntary guidelines.

Comments which suggested modifications to the guidelines which went beyond the obligations of the Standards Code were not accepted. The Trade Agreements Act of 1979 requires the President to take "reasonable" measures to promote the observance of the Standards Code by State and local governments and private standards bodies. It would not be reasonable to suggest that these organizations follow more onerous procedures than those agreed to by the Federal Government.

In addition to comments received from the private sector, one comment was received from a federal agency. The Office of Management and Budget (OMB) suggested inserting an encouragement to send copies of notices of proposed standards of certification systems to the National Bureau of Standards National Centre for Standards and Certification Information as a central repository of United States standardization and certification information. The OMB suggestion was taken into account, and is reflected in the final guidelines.

The guidelines are intended to assist State and local governments and private sector bodies engaged in standards development, product testing and certification activities which desire to conform their procedures, whenever possible, to the Standards Code aims of promoting the use of standards to facilitate trade and preventing the use of standards, testing and certification systems as barriers to trade.

Voluntary guidelines for State and local governments and private sector bodies engaged in standards development, product testing and certification systems

Introduction

One result of the recent "Tokyo Round" of Multilateral Trade Negotiations (MTN) held under the General Agreement on Tariffs and Trade (GATT) is the "Agreement on Technical Barriers to Trade", popularly known as the Standards Code, which became effective 1 January 1980. The Standards Code aims to promote the use of standards as facilitating trade and to prevent standards, testing and certification systems from becoming technical barriers to trade. To achieve these goals the Code establishes international rules concerning the procedures by which standards and certification systems are prepared, adopted and applied, and by which products are tested for conformity with standards. The provisions of the Code are binding only on central government bodies, but signatories are required to "take such reasonable measures as may be available to them" to promote compliance by regional, State, local and private bodies.

The legislation implementing the Standards Code in the United States is Title IV of the Trade Agreements Act of 1979, 19 U.S.C. 2531 et seq.; Pub. L. 96-39 (the "Act"), which establishes rules for federal agencies engaged in standards-related activities, Section 403 of this legislation requires the President to take reasonable measures as may be available to promote the observance by State agencies and private persons of equivalent rules. To this end, the voluntary procedural guidelines presented below have been prepared for State, local and private bodies involved in three types of activities: developing standards, testing products and operating certification systems. Many State and local governments and private organizations already use substantially identical procedures. They are, therefore, in compliance with the sense of Congress that "no state agency and no private person should engage in any standards-related activity that create unnecessary obstacles to the foreign commerce of the United States".

Additional information concerning the Standards Code and the Act is available from: Trade Advisory Centre, Room 1015-C, Department of Commerce, Washington D.C. 20230.

The following procedural guidelines are intended to help State and local government and private standardizing and certifying bodies see that their activities do not create unnecessary obstacles to the foreign commerce of the United States. For purposes of these guidelines, standardizing and/or certifying body refers to both State and local government agencies and private organizations.

#### Standards development

1. Before preparing a new standard or revising an existing one, a standardizing or certifying body should make an effort to determine whether any relevant international standards exist or are in preparation. Toward this end, upon request, the National Bureau of Standards National Centre for Standards and Certification Information ("Centre") at the United States Department of Commerce (301/921-2587) will identify and provide information on relevant existing international standards. If appropriate, relevant international standards should be used in preparing the new standard.

The Standards Code and the Act recognize that the reasons for not using the international standard include, but are not limited to the following:

- national security requirements;
- protection of human health or safety, animal or plant life or health, or the environment;
- fundamental climatic or other geographical factors;
- fundamental technological problems; and
- prevention of deceptive practices.

The Standards Code does not require that regional standards be taken into consideration. Regional standards are prepared by organizations whose membership is not open to all national bodies.

2. Private standardizing and certifying bodies are encouraged to play a full part within the limits of their resources in the development of international standards. Depending on the rules of the International Standards Organization, participation should be arranged through the United States member body. Some international organizations recognize only one member body. For example, the American National Standards Institute (ANSI) is the United States member body to the International Organization for Standardization (ISO), and ANSI's "United States National Committee to the IEC" is the United States member body to the International Electrotechnical Commission (IEC).

3. Standards should be based on performance criteria rather than design criteria, where appropriate. Performance criteria, for example, are related to the intended use of the product and the level of performance that the product must achieve under defined conditions. Design criteria, for example, are related to the physical form of the product or the types of materials of which the product is made.

4. When standards are proposed, notices to that effect should be published so that interested parties in other countries are informed and afforded the opportunity to comment, as detailed below. This does not apply if international standards are used to prepare the new standards or if it is determined by the standardizing body that the standards will not have a significant effect on the trade of other countries.

4.1 When proposing a new standard or revising an existing standard, the standardizing body should announce the proposed action so as to notify interested parties in the United States and other countries. This might be accomplished by publishing notices in trade journals. Whenever possible, copies of notices should be forwarded to the NBS Centre.

4.2 Copies of proposed standards should be provided if they are requested to any interested party in foreign countries. A reasonable fee may be charged for this service, including the cost of airmail postage to overseas recipients.

4.3 In order to allow adequate time for interested parties to comment, a period of at least forty-five days should be allowed for the submission of comments, except in cases where urgent problems of safety, health, etc., arise or threaten to arise. Comments and other information received should be taken into account in the further processing of the proposed standard.

5. Once adopted, a standard should be published promptly so that interested parties can become familiar with it. In the case of a mandatory standard, a reasonable interval should be allowed between publication and entry into force, so that producers will have time to adapt their products or methods of production to the requirements.

#### Certification systems

6. When rules of certification systems are developed, interested parties in foreign countries should be informed and afforded the opportunity to comment. When certification is denied, there also should be the opportunity to comment. The procedures suggested below are much the same as those listed for proposed standards and, as with standards, they are not necessary if the certifying body determines that the proposed rules will not have a significant effect on the trade of other countries.

6.1 When proposing a new certification system or revising an existing system, the certifying body should announce the proposed rules so as to notify interested parties in the United States and other countries. This might be accomplished by publishing notices in trade journals. Whenever possible, copies of notices should be forwarded to the NBS Centre.

6.2 Copies of the proposed rules of certification systems should be provided, if they are requested, to any interested parties. A reasonable fee may be charged for this service, including the cost of airmail postage to overseas recipients.

6.3 In order to allow adequate time for interested parties to comment, a period of at least forty-five days should be allowed for the submission of comments, except in cases where urgent problems of safety, health, etc., arise or threaten to arise. Comments and other information received should be taken into account in the further processing of the proposed rules.

7. If a State or local agency or private organization maintains a certification system, it should provide access to imported products to be certified as long as the suppliers are able to fulfil the requirements of the system. This includes receiving the mark of the system, if any, under the same conditions that affect domestic products. The certifying body should treat imported products the same as domestic products.

#### Product testing

8. When testing is required to determine conformity with technical regulations or standards, the testing agency or organization should treat imported products the same as domestic products. There may, however, be situations when it is not possible to test foreign products on the same basis as United States products because of incomparable conditions. For example, if a foreign country uses a pesticide on produce which the

United States does not allow, then it may be necessary to test imported produce for a pesticide residue while it would not be necessary to test produce.

8.1 Test methods and administrative testing procedures should be no more complicated or time-consuming for imported products than they are for United States products.

8.2 Any fees charged for testing imported products should be on an equitable basis to those charged for United States products.

8.3 The sites of testing facilities and the selection of samples for testing should not cause unnecessary inconvenience to importers, exporters or their agents.

8.4 Results of tests should be made available to the party who submitted the product for testing and, if requested and thereafter authorized by the party, to the importer and exporter or their agents.

8.5 Confidential information about imported products should be respected the same way as it is for domestic products.

9. Whenever possible, testing or certifying bodies are encouraged to accept test results or certification marks from their counterpart organizations in other countries or even accept self-certification from producers in other countries. It is recognized that differences in test methods, testing competency, purposes and uses of test results (e.g. safety, health, etc.), and exposure to legal liability may preclude acceptance. Even when acceptance is possible, it may be necessary to hold consultations in the importing and exporting countries in order to reach a mutually satisfactory arrangement.

#### Disputes

10. If an interested party in the United States has a problem with a foreign governmental or private standard or certification system, it should bring its complaint to the attention of the GATT Affairs Division of the Office of the United States Trade Representative, Washington D.C. 20506, (202/395-3063). The Office of the United States Trade Representative will then work with its counterpart government agency in the country in question to arrange a mutually satisfactory solution.

11. In the reverse situation, if a foreign country that is a signatory to the Standards Code has a problem with a United States State or local government or private standardizing certifying body, the Office of the United States Trade Representative would receive a complaint according to its specific procedures. This includes co-operating with the domestic parties involved in order to reach a mutually satisfactory solution.