

Supplemental Information for Providing Comments

On

Standards-Related and SPS Measures

The Office of the United States Trade Representative (USTR) provides the following additional information to assist the public in responding to USTR's *Federal Register* notice of September 24, 2009 seeking comments on sanitary or phytosanitary (SPS) measures and standards-related measures (SRMs) that create barriers to U.S. exports.

1. *SPS Measures*

a. Definition

By the term "SPS measures," USTR means measures that a foreign government applies to:

- (a) protect animal or plant life or health in its territory from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms, or disease-causing organisms;
- (b) protect human or animal life or health in its territory from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages, or feedstuffs;
- (c) protect human life or health in its territory from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests;
or
- (d) prevent or limit other damage in its territory from the entry, establishment, or spread of pests.

b. Examples

The following list provides examples of the sorts of SPS measures that USTR invites the public to identify:

- preventive controls against harmful bacteria that lack a scientific basis;
- discriminatory or otherwise unreasonable health standards for meat processing plants;
- maximum pesticide residue levels for horticultural commodities that are more stringent than international standards;
- unreasonable preclearance programs for fresh produce;
- restrictions on imports of fruit from areas infected with pests that are either discriminatory or lack a scientific basis;
- import bans imposed on U.S. beef and beef products regarding bovine spongiform encephalopathy (BSE); and
- restrictions on the use of drugs in animal husbandry that lack a scientific basis.

2. *Standards-Related Measures (SRMs)*

a. Definition

By the term “standards-related measures,” USTR means standards, technical regulations, and conformity assessment procedures that a foreign government applies. For these purposes,

Standard: means a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labeling requirements as they apply to a product, process, or production method.

Technical regulation: means a document which lays down product characteristics or their related processes and production methods, including the applicable administrative

provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process, or production method.

Conformity assessment procedure: means any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

Conformity assessment procedures include, *inter alia*, sampling, testing, inspection, evaluation, verification, certification, self-declarations of conformity, accreditation, and approval.

b. Examples

The following list provides examples of the sorts of standards-related measures that USTR invites the public to identify:

- labeling or packaging requirements for agricultural or industrial products that are costly, burdensome, discriminatory, or lack a sound scientific or technical basis;
- minimum quality or identity requirements for agricultural products that act to exclude U.S. products from foreign markets;
- product requirements that are based on design or descriptive characteristics (including processing and production method requirements), rather than specified in terms of performance;
- requirements that are overbroad or unnecessarily distort trade due to a failure to consider the available scientific and technical information or the intended end uses of a product as part of the regulatory process;
- testing, certification, or other conformity assessment procedures that discriminate against U.S. products, are unnecessarily costly or burdensome, are duplicative or in conflict with

other requirements, or would lead to the disclosure of business confidential or other sensitive commercial information;

- requirements to comply with proprietary standards that favor foreign producers to the detriment of U.S. exporters;
- failure to provide sufficient time for regulators to implement new requirements or for suppliers to comply with them;
- requirements that unnecessarily diverge from relevant international standards, guides, or recommendations or, in their absence, common international practices or U.S. requirements; and
- requirements that were not developed and implemented in a transparent manner (*e.g.*, have not been set out in an official publication).

3. *Submissions*

Comments on a particular SRM or SPS measure should be specific as possible in describing how it may be inconsistent with international trade obligations or otherwise create a barrier to U.S. exports. As explained in USTR's *Federal Register* notice of September 24, 2009, each comment should include an estimate of the potential increase in U.S. exports that would result from removing the barrier as well as a description of the methodology the commenter used to derive the estimate. Each comment should also include, to the extent practicable:

- (a) an Internet link to or a copy of the measure (in English, if possible);
- (b) an explanation and documentation supporting a claim that the measure is inconsistent with a U.S. trade agreement or otherwise acts as a barrier to U.S. exports (*e.g.*, evidence of sales lost to foreign competitors or increased costs);
- (c) scientific or technical information supporting the claim, where pertinent;

- (d) alternative measures, if any, that the foreign government could adopt that would fulfill its legitimate policy objective in a less trade-restrictive manner, or an explanation, where applicable, of why the foreign government could fulfill its policy objective in the absence of a measure;
- (e) actions that the U.S. government could take to address the barrier;
- (f) actions that the commenter or other persons are taking or plan to take to address the barrier (*e.g.*, discussions with the foreign government, administrative or legal proceedings, cooperative activities, or technical assistance);
- (g) how the measure may be part of a trend or pattern of similar barriers or other actions that the foreign government or other U.S. trading partners have imposed or that raise systemic issues; and
- (h) actions that the U.S. government could take to reduce the incidence of other barriers of the same type, whether imposed by the foreign government identified in the comment or by other governments (*e.g.*, greater regulatory cooperation, technical assistance, new trade agreements, or new initiatives in regional or international fora such as the Codex Alimentarius Commission, the North American Free Trade Agreement, or Asia Pacific Economic Cooperation forum).

In addition to comments on specific SRMs and SPS measures, USTR also invites comments identifying systemic SPS and standards-related issues affecting one or more sectors, and ways the U.S. government could address these issues. Systemic issues include, for example, trends or patterns in the sorts of SRMs or SPS measures that create barriers to U.S exports and actions that contribute to the creation or perpetuation of export-restrictive SRMs and SPS measures.