



ANSI Response to Request for Comments: Modernization of the North American Free Trade Agreement (NAFTA)

FR Doc. 2017-10603; USTR-2017-0006

Office of the United States Trade Representative (USTR)

The American National Standards Institute¹ (ANSI) welcomes the opportunity to provide its input on this administration's negotiations with Canada and Mexico to modernize the North American Free Trade Agreement (NAFTA).

ANSI supports the administration's overall goals for this negotiation, as outlined in its May 18 notification letter² to Congress and in the negotiating principles laid out in section 102 of the *Bipartisan Congressional Trade Priorities and Accountability Act of 2015*.³

On behalf of the U.S. standardization community, ANSI respectfully submits the following comments addressing these topics:

- ANSI's role in facilitating U.S. companies' competitiveness and their access to foreign markets
- Issues related to technical barriers to trade
- The role of market-driven standardization activities in enhancing trade and competitiveness
- Priorities for the modernization of NAFTA and examples from previous texts

ANSI's Role – Leadership of U.S. Standardization Community

ANSI is a federation whose members are government agencies, trade associations, standards developing organizations (SDOs), professional societies, companies, academic and international bodies, and consumer organizations. ANSI represents the interests of more than 125,000 companies and 3.5 million professionals. As the coordinator and voice of the U.S. standards and conformity assessment system, ANSI empowers its members and constituents to strengthen the U.S. marketplace position in the global economy while helping to assure the safety and health of consumers and the protection of the environment.

The U.S. standardization system is fundamentally built on the needs of the marketplace, where users decide which standards best meet their needs, and in which standards development venues they wish to work. Ultimately, the U.S. standardization community supports the fact that there are multiple paths to global relevance – as articulated by the World Trade Organization (WTO) Technical Barriers to Trade

¹ <http://www.ansi.org/>

² <https://ustr.gov/sites/default/files/files/Press/Releases/NAFTA%20Notification.pdf>

³ <https://www.finance.senate.gov/imo/media/doc/PLAW-114publ26.pdf>

(TBT) Agreement⁴ – and that it is the marketplace that decides the utility or applicability of any given standard.

Voluntary consensus standards for products, processes, and services are at the foundation of the U.S. economy and society. The United States has a proud tradition of developing and using voluntary standards to support the needs of our citizens and the competitiveness of U.S. industry in world markets.

ANSI oversees the creation, promulgation, and use of thousands of norms and guidelines that directly impact businesses in nearly every sector: from acoustical devices to construction equipment, from dairy and livestock production to energy distribution, and many more. ANSI is also actively engaged in accreditation – assessing the competence of organizations determining conformance to standards.

The Institute promotes the use of U.S. standards internationally, advocates U.S. policy and technical positions in international and regional standards organizations, and encourages the adoption of international standards as national standards where they meet the needs of the user community. ANSI is the sole U.S. representative and dues-paying member of the two major non-treaty international standards organizations, the International Organization for Standardization (ISO), and, via the U.S. National Committee (USNC), the International Electrotechnical Commission (IEC). As a founding member of both international organizations, ANSI plays a strong leadership role in policy matters and ensures that U.S. stakeholders may participate in and lead technical activities:

- ANSI is a permanent member of both the ISO Council and Technical Management Board. ANSI and its members participate in more than 75% of ISO Technical Committees (TC) and Subcommittees (SC) and administer 15% of TC and SC Secretariats.
- ANSI's USNC is a permanent member of the IEC Council Board, Standardization Management Board, and Conformity Assessment Board. The USNC participates in over 94% of IEC TCs and SCs, and administers over 13% of TC and SC Secretariats. Jim Shannon, former CEO of the National Fire Protection Association (NFPA), is IEC President.

Technical Barriers to Trade

Together with intellectual property rights (IPR) enforcement, standards and technical barriers to trade (technical regulations and related compliance programs) are consistently identified by U.S. industry as top barriers to export – adding to significant time and cost to market.

⁴ The WTO TBT Agreement Committee Decision states that the global relevance of a standard is determined by how it was developed, not where. More specifically, the Decision states that the development of international standards must rely upon a number of principles, including openness, impartiality, consensus, transparency, and coherence, among others. In other words, the global relevance of a standard cannot and should not be measured by which organization developed it. The degree to which a standard is used in the global marketplace is the best measure of an international standard. In the United States, we refer to this concept as the “multiple-path approach.” See G/TBT/ 1/REV. 10. “*Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the Agreement*” at

<https://docsonline.wto.org/dol2fe/Pages/FormerScriptedSearch/directdoc.aspx?DDFDocuments/t/G/TBT/1R9.doc>

A June 2016 report⁵ by the U.S. Department of Commerce's International Trade Administration estimated that 92% of U.S. exports may face foreign technical regulations that make it difficult to compete in key markets. U.S. industry is increasingly global and invests in relevant international standards forums to develop standards. If foreign governments use these standards, this expands market opportunities – particularly for small businesses that don't have the resources to comply with different home-grown requirements in different markets.

Conversely, where countries arbitrarily limit their consideration of standards to particular bodies rather than selecting the best standard for their regulatory needs, the result can be unnecessary regulatory divergences; suboptimal health, safety, and environmental solutions; and trade disruptions. Standards development and use should not be employed as a tool of trade policy to discriminate against products from other countries or regions.

U.S. law and policy encourage the public and private sectors to follow the WTO TBT principles guiding the development of international standards. These principles include transparency, openness, impartiality and consensus, and are the hallmarks of the flexible and responsive U.S. system. ANSI recommends that the future agreement with Canada and Mexico uphold these principles and grant the presumption of compliance to international standards as defined in the WTO TBT principles. This would allow the actual technical qualities, relevance, and effectiveness of specific standards to be the basis for selection, regardless of which SDO was responsible for the standard.

ANSI also supports provisions that enable all affected stakeholders to provide comments in the development of technical regulations, in adherence to WTO TBT Agreement provisions. And we believe there must be accountability to ensure Canadian and Mexican regulators consider such comments when finalizing a measure. This will help ensure that legitimate objectives are met efficiently, and with as little trade disruption as possible.

The future agreement with Canada and Mexico should include TBT provisions that are at least as strong as those contained in more recent Free Trade Agreements (FTAs) negotiated by the United States, such as provisions on trade facilitation, technical regulations, conformity assessment, transparency, timely exchange of information, and enhancement of cooperation to eliminate unnecessary technical barriers to trade.

Market-Driven Standardization Activities

Standards are a key component of U.S., Canada, and Mexico trade relations. ANSI believes that any regulatory cooperation mechanisms developed by the U.S., Canada, and Mexico must ensure that regulators, companies, and consumers have the ability to choose international and regional standards from multiple sources. Allowing Canada and Mexico regulators that flexibility would not only enable them to select the standards that best meet their objectives, but also would provide an important mechanism for greater regulatory alignment among the U.S., Canada, and Mexico.

⁵ <http://ita.doc.gov/td/standards/pdf%20files/Standards%20and%20Competitiveness.pdf>

The *United States Standards Strategy* (USSS)⁶, developed under the leadership of ANSI, promotes a flexible, multiple-path approach and recognizes the growing need for standards designed to meet stakeholder needs irrespective of national borders. U.S. law and policy⁷ call for federal agencies to base technical regulations on voluntary consensus standards developed by the private sector – and, in particular, relevant international standards – wherever possible, rather than creating government-unique standards. And U.S. regulators are given flexibility to select the standards that best suit their regulatory objectives. Regulatory cooperation is also encouraged to address common issues as well as unnecessary differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts that may impair economic growth, innovation, competitiveness, and job creation.

In addition, the *United States Conformity Assessment Principles* (USCAP)⁸, developed under the leadership of ANSI, support allowing conformity assessment providers the ability to provide services on a national treatment basis – an important tool to facilitate trade for manufacturers. It will provide a boost to global competitiveness and economic growth in the U.S., Canada, and Mexico and beyond. ANSI and its members believe that these principles are critical components of an agreement that will help the U.S., Canada, and Mexico reach our shared goals of facilitating trade and supporting greater regulatory compatibility.

ANSI meets bilaterally with the Standards Council of Canada (SCC) on a biannual basis, as well as with representatives of the Dirección General de Normas (DGN) during regularly scheduled meetings, to discuss ongoing areas of collaboration regarding standards, conformance, and technological advancements in the standards arena. During our ongoing discussions, we will continue to develop new areas of cooperation that we anticipate will also support the NAFTA negotiations.

When it comes to global trade, transparent, consensus-based international standards are not an obstacle – they are part of the solution. If used effectively, in conjunction with effective conformity assessment, they have the capacity to remove barriers to trade and fuel business growth.

Modernization of NAFTA Using Past Examples

ANSI strongly recommends negotiators look to the agreed text of the Trans-Pacific Partnership for appropriate language, specifically Chapter 8 on Technical Barriers to Trade. The most innovative companies in the world demand flexibility and choice in standards so that they can offer exciting new products and services that meet emerging demands of today's marketplace. Modernizing NAFTA by addressing outdated standardization policies of the past will promote greater flexibility and choice in standards and conformity assessment solutions - driving greater prosperity, innovation, safety, and wellbeing for citizens and businesses in the United States and throughout North America.

⁶ <http://www.us-standards-strategy.org>

⁷ White House Office of Management and Budget (OMB) Circular A-119; the *National Technology Transfer and Advancement Act of 1995* (NTTAA)

⁸ <http://www.ansi.org/uscap>

The following specific provisions may apply to update and modernize NAFTA provisions:

TPP Chapter and Provision	NAFTA Article
Article 8.1 – Definitions	Article 915 on Definitions
Article 8.2 – Objective	It is worthwhile to reinforce that the objective of this chapter is to facilitate trade while promoting regulatory cooperation and good regulatory practices.
Article 8.3 – Scope	Article 901 on Scope and Coverage
Paragraphs 8.3.2 and 8.3.6	Articles 902 on Extent of Obligations and 903 on Affirmation of Agreement on Technical Barriers to Trade and Other Agreements
Article 8.4 – Incorporation of Certain Provisions of the TBT Agreement	Articles 902, 903, 904 on Basic Rights and Obligations, 907 on Assessment of Risk , and 915
Article 8.5 – International Standards, Guides and Recommendations	Articles 905 on Use of International Standards
Article 8.6 – Conformity Assessment	Articles 908 on Conformity Assessment
Article 8.7 – Transparency	NAFTA Articles 909 on Notification, Publication, and Provision of Information and 910 on Inquiry Points
Article 8.8 – Compliance Period for Technical Regulations and Conformity Assessment Procedures	Annex 908.2 on Transitional Rules for Conformity Assessment Procedures
Article 8.9 – Cooperation and Trade Facilitation	Article 911 on Technical Cooperation
Article 8.10 – Information Exchange and Technical Discussions	Articles 911 on Technical Cooperation and 914 on Technical Consultation
Article 8.11 – Committee on Technical Barriers to Trade	Article 913 on Committee on Standards-Related Mechanisms
Article 8.12 – Contact Points	It is a worthwhile addition to have designated TBT points of contact at each Party.
Article 8.13 – Annexes (pharmaceuticals, cosmetics, medical devices and proprietary formulas for prepackaged foods and food additives)	NAFTA Annexes 913.5.a-1 through 913.5.a-4 outline sector-specific subcommittees. Perhaps these sector-specific subcommittees should be updated to consider current industry needs.

Conclusion

As the U.S., Canada, and Mexico move toward increased alignment and greater compatibility, ANSI looks forward to the opportunity to discuss these matters further.

Thank you for your consideration and the opportunity to comment. We would be happy to provide clarification or further engage with you in any way deemed useful as you work toward a strong and effective trade partnership.