

# NAM Priorities for International Standards, Technical Regulations, and Conformity Assessment Procedures

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Heading into 2017, the National Association of Manufacturers (NAM) is concerned with the growing trade barriers for manufacturers in the United States posed by discriminatory international standards, conformity assessment, and technical regulations. The NAM is the largest manufacturing association in the United States, representing businesses small and large in every industrial sector and in all 50 states. Manufacturing is the backbone of the American economy, and a strong manufacturing economy is a critical component of keeping America strong. Manufacturing contributes more than \$2.17 trillion to the U.S. economy annually, employs more than 12 million women and men across the country and supports an additional 6 million jobs.

As manufacturers in the United States compete in a challenging global economy, tackling market-distorting policies and actions by other countries must be a top priority. Such practices often lead to unfair competition in the U.S. market and high barriers to access for U.S. exports in growing foreign markets. To rebuild public confidence in a rules-based trading system and grow an even stronger U.S. manufacturing sector, the U.S. government must redouble its efforts to ensure a level playing field for manufacturers and their workers in the United States. Those efforts must vigorously oppose market-distorting trade practices using all available tools, including direct engagement with trading partners to eliminate these barriers, robust enforcement of existing trade agreements and domestic trade rules, and the active use of dispute settlement procedures under internationally agreed-upon rules and bilateral and multilateral agreements.

Additionally, the U.S. government must take steps to expand real opportunities for manufacturers in the United States to sell to the 95 percent of the world's consumers living outside the United States. U.S. manufactured goods exports have more than doubled since the 1990s, topping \$1.3 trillion in 2015, supporting the growth of a variety of U.S. manufacturing sectors from electrical machinery, capital equipment and medical and scientific instruments to food and computer products to cars, trains and trucks.

Foreign standards, technical regulations, and testing requirements are increasingly under the microscope as potential barriers for manufacturers in the United States. Such regulations set the "ground rules" for new products seeking to enter the market and for existing products competing for market share. Notifications of new and revised technical regulations in foreign countries more than doubled between 2005 and 2015. A [new analysis](#) by the U.S. Department of Commerce shows that [92 percent of U.S. exports](#) may face foreign technical regulations – barriers that have a substantive impact on U.S. manufacturers, particularly small- and medium-sized manufacturers and their ability to support and grow jobs.

In particular, unique regulatory and technical standards and conformity assessment requirements increase significantly the cost of manufacturing exports to countries around the world, making U.S. manufactured goods less competitive. In some countries, such standards and requirements effectively block access by U.S. manufactured goods. In other cases, the proliferation of problematic standards stem from proactive efforts by individual countries or regional organizations (such as the European Union (EU)) to promote their own standards at the exclusion of U.S. or international standards, putting products manufactured in the United States at a competitive disadvantage.

To address these barriers, the NAM has long worked with the U.S. government to promote full compliance by all countries with the international rules developed by the World Trade Organization (WTO), including the WTO Agreement on Technical Barriers to Trade (TBT Agreement) and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). These agreements support the development of national and international standards, technical regulations, and conformity assessment rules that do not discriminate and provide transparency and stakeholder input.

Yet much more aggressive work is required to reverse the proliferation of unique regulatory and technical standards that are undermining the competitiveness of manufacturers in the United States. The NAM strongly supports efforts that:

- Require trading partners to enforce fully all international commitments related to standards and conformity assessment, including commitments under the TBT Agreement and under bilateral and regional agreements. Such commitments include requirements that they develop such policies through an open, transparent process; apply those policies fairly to both domestic and foreign products; and provide national treatment to U.S. manufacturers, standards developers, and testing and certification bodies.
- Use all channels, including multilateral organizations, bilateral and regional negotiations, commercial dialogues, and best practice exchanges, to promote harmonization of standards and regulatory requirements in ways that benefit manufacturers in the United States. This includes adopting international standards where possible and international schemes that allow for acceptance of test results as a means to achieving compliance in the destination markets. Additionally, the U.S. government should actively counter efforts by other countries and regional actors (particularly the EU) to promote the adoption of their technical standards and conformity assessment requirements, efforts that often result in the exclusion of U.S. technical standards and conformity assessment requirements to the detriment of U.S. manufacturing.
- Ensure that the definition of an “international standard” is not just limited to those developed by international bodies such as the International Organization for Standardization (ISO) or International Electrotechnical Commission (IEC), but also private-sector standards that are broadly used around the world.
- Encourage public-private collaboration in standards development, including cooperation between standards development organizations and government agencies. Such collaboration should recognize the major contributions to industry development and company flexibility that have been made by voluntary standards developed by industry through trade associations, technical societies, and accredited standards development organizations.

To achieve these critical goals, the NAM and its members strongly urge the U.S. Department of Commerce and their interagency counterparts to make standards, conformity assessment procedures, and technical regulations a priority issue with trading partners, and to demonstrate that commitment through both rhetoric and action. Such work could include efforts to:

- Designate technical barriers to trade as a strategic issue in bilateral, regional, and multilateral negotiations, and ensure that commercial dialogues, particularly with priority countries such as China, India, Brazil, and Indonesia, include clear mechanisms to engage directly on these issues. Additionally, it is important to ensure the expanded acceptance of U.S. technical standards and conformity assessment requirements in key markets around the world is an explicit goal of trade and commercial negotiations, including trade agreements.
- Improve interagency communication and coordination that could boost U.S. government effectiveness in advocating on standards. Addressing such gaps could include strengthening internal training and coordination for employees working both in the U.S. and in U.S. missions abroad, bolstering and expanding the existing Standards Attaché program to priority markets, dedicating resources to translate problematic technical regulations, strengthening internal information reporting structures, and requiring agencies to coordinate messaging and approaches on these issues.
- Engage other U.S. government agencies, such as the U.S. Trade and Development Agency, and private sector actors to develop programs to promote government-to-government and public-private interaction involving foreign officials responsible for developing and implementing standards, conformity assessment, and technical regulations.
- Develop new tools to help all stakeholders, both U.S. government officials, industry representatives, and others, not only navigate foreign standards and conformity assessment regimes, but also assess future compliance risk. Such work could build on the U.S. Department of Commerce’s June 2016 report on the importance of standards to include new tools to help stakeholders map and analyze “hotspots.” Work with both interagency staff and private-sector stakeholders to publicize such tools for manufacturers of all sizes in the U.S.

In addition to the specific standards and conformity assessment issues raised in the NAM’s October submission to the National Trade Estimate report (attached), NAM members subsequently have noted additional concerns in markets such as Saudi Arabia and Mexico. In Saudi Arabia, members noted additional examples in which Saudi Arabia’s Saudi Standards, Metrology, and Quality Organization (SASO) has written ISO standards into their code in ways that create competitive challenges for manufacturers in the U.S. – this time in their final Minimum Energy Performance Standards (MEPS). In Mexico, manufacturers are concerned about continued efforts to force local testing for equipment, such as imposing new rules that complicating the process to finalize mutual recognition agreements (MRAs) in electrical goods.

The NAM welcomes this opportunity to provide comments and priorities on standards and conformity assessment issues, and looks forward to working with the incoming administration to use all existing tools and find new ways to address these barriers more effectively so that U.S. manufacturing can continue to grow through access to foreign markets.

## Excerpt<sup>1</sup> from NAM Submission to the National Trade Estimate Report

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### Standards and Technical Regulations

Unique regulatory and technical standards and conformity assessment requirements can add significantly to the cost of manufacturing exports to countries around the world – often a multiple of the tariff rate actually charged on a product. The NAM works to prevent and reverse the proliferation of unique regulatory and technical standards as trade barriers by promoting reliance on the TBT Agreement, as well as the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), as the basis for developing national and international standards, technical regulations, and conformity assessment rules that provide national treatment for conformity assessment bodies. The NAM was pleased to see strong SPS and TBT chapters included in the TPP Agreement, and is similarly seeking strong TBT and SPS provisions in the TTIP and future negotiations.

Standards, technical regulations and conformity assessment procedures should be applied evenly to both imported and domestic goods and should be undertaken in a manner that is focused on achieving their objective without spillover effects. They should be based on scientific evidence and consider regulatory impact for all stakeholders. They should be transparent and allow reasonable opportunities for public access to all stakeholders. When national laws, regulations, policies, and practices do not conform to these global norms, further action is needed in the WTO and through bilateral and regional agreements to reduce the use of technical standards as trade barriers.

Additionally, the NAM firmly believes that the definition of an “international standard” should include not only international bodies such as the International Standardization Organization (ISO) or International Electrotechnical Commission (IEC), but also private-sector standards that are broadly used around the world. The NAM has urged this approach in international fora, such as the WTO, regional and bilateral negotiations, including with the **European Union** for the Transatlantic Trade and Investment Partnership, and also with respect to individual markets around the world. For example, in **Saudi Arabia**, the Saudi Standards, Metrology, and Quality Organization (SASO) has adopted a policy of basing all national standards for electrical products exclusively on IEC standards. This policy was put in place despite the fact that Saudi Arabia has a sizable residential, commercial, and industrial infrastructure that utilizes products and systems in line with U.S.-developed international standards. Many Saudi companies continue to issue product specifications utilizing U.S. standards and depend on genuine replacement parts and products that meet those very standards, meaning that this new policy hinders the ability of companies to import the U.S. electrical products and spare parts they need.

The NAM has concerns with the proliferation of standards and technical regulations that serve as effective barriers to trade or limit market opportunities for manufacturers in the United States. In some cases, the proliferation of these standards stems from activities undertaken by IGOs designed to influence national regulators to adopt a particular policy agenda. While these activities oftentimes start broadly through means such as international conferences and political declarations, the end result is frequently model legislation or technical regulations developed without broad stakeholder input or evidence that are then pushed to the national level. For example, the World Health Organization’s (WHO) World Health Assembly in May 2016 passed a controversial resolution<sup>2</sup> urging member states to adopt WHO technical guidance to prohibit the marketing of complementary food products for infants and young children.<sup>3</sup> The WHO technical guidance seeks to deny consumers and health care professionals access to information about milk products designed to meet the specific nutritional needs of young children. NAM members have already seen related draft regulations in markets such as **Hong Kong, Malaysia, Indonesia and Thailand** that appear to target imported products coming from the United States and other countries.

In other cases, the proliferation of problematic standards stem from proactive efforts by individual countries or regional organizations to promote their own standards at the exclusion of U.S. or international standards. For example, U.S. automotive safety and environmental standards are being eclipsed in third markets thanks to concerted efforts by other groups, notably the **European Union**, to promote their own standards in lieu of U.S. standards. For example, motor vehicle manufacturers in the United States have seen a significant move toward the adoption of European-based vehicle standards (UN-ECE) and away from U.S.-based standards (FMVSS), encouraged through Europe-funded advocacy and capacity-building programs. **Ecuador’s** 2014 announcement that it would no longer accept FMVSS on 12 safety-related standards was a jarring example, representing a departure from the status quo in which Ecuador accepted both FMVSS (U.S. Environmental Protection Administration) and United Nations Economic Commission for Europe (UNECE) certifications for motor vehicles. After significant advocacy from the U.S., Ecuador announced that it would postpone implementation of the regulation in August 2015, but only until October 2016. Similar advocacy to protect continued recognition of U.S.-based standards have also occurred in recent years in **Egypt, Morocco, Colombia, and Peru**.

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<sup>1</sup> Full report can be accessed via the [NAM’s website](#).

<sup>2</sup> World Health Assembly, “[Resolution on ending inappropriate promotion of foods for infants and young children](#),” (WHA69.9), May 28, 2016.

<sup>3</sup> World Health Assembly, “[Guidance on ending the inappropriate promotion of foods for infants and young children](#),” (A69/7 Add.1), May 13, 2016.

The NAM is closely monitoring the **European Union's** efforts to expand existing regulatory regimes related to chemicals, including its Restrictions on the Use of Hazardous Substances (RoHS) regime and the scope of chemicals included in the EU's Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) to include new areas such as phthalates and nanomaterials. The NAM and its members remain concerned that these measures may reflect an approach to regulating and managing chemical risk that differs from those in the United States, such as approaches incorporated into the recent Lautenberg Chemical Safety Act. As the NAM has indicated in comments on these measures, broad implementation of such measures not only impacts manufacturers of those substances, but also a wide range of products that incorporate those substances into other products – meaning that these technical regulations may inadvertently impede the ability to sell or deliver key types of equipment that serve important public purposes. As noted above, regulatory approaches should seek input from all stakeholders and be narrowly tailored to address their objectives. As well, when major changes are made, sufficient transition times should be included especially where new product innovation will be required. In addition to the expansion of these chemical regulations in Europe, other countries are also drafting or considering chemical regulations that either appear to largely incorporate elements of RoHS and REACH (such as **China, Laos, Ukraine**, and the **United Arab Emirates**) or are considering varying models for chemical regulation (such as **Brazil**).

In **Korea**, market access for passenger vehicle and motorcycle manufacturers has been substantially impeded by a lack of transparency and predictability, and insufficient adherence to good regulatory practice such as periodic reviews of existing regulations and standards. The result has been a steady stream of proposed new and modified regulations that do not align with international norms and serve as non-tariff barriers to imports of these products made in the United States. Although the KORUS FTA was supposed to resolve many of the existing market access problems facing imported vehicles, companies still face a range of longstanding barriers, as well as new measures, that have had an adverse impact on imports. In the automotive sector, these mostly technical barriers vary widely, including new damage disclosure requirements on motor vehicle manufacturers, new fuel economy compliance test requirements that must be in place by the end of 2016 without a fully defined tolerance level, and new greenhouse gas innovation credit scheme that required significant US government and industry intervention to bring it in line with global norms but still does not include a mid-term review, and rushed plans to adopt a unique Korean Real Driving Emissions (RDE) requirement for passenger vehicles before the global standard is completed. Other unnecessary non-tariff barriers include marking requirements for a growing number of auto parts, unique regulatory requirements related to recalls and defects, rules for specific auto parts such as panoramic sunroofs, and outdated requirements for seat size and vehicle ground clearance. In addition, Korea maintains noise standards for motorcycles that limit the use of large motorcycles on Korean highways. These and other barriers must be addressed urgently to ensure meaningful access to the Korean market for automobiles and motorcycles, and that the KORUS FTA delivers fully on its promise for manufacturers in the United States.

**China's** State Council Legislative Affairs Office (SCLAO) in March 2016 released the Standardization Law for public comments, with significant potential changes to China's standardization system. Key areas included in these changes include the role of association standards, whether foreign technical experts will be allowed to draft and participate in standards-setting, treatment of confidential business information, and how proposed mechanisms for addressing standards-related conflicts may be resolved. The NAM and its members remain concerned about various provisions in the law – including the lack of reference to China's commitments to its WTO TBT obligations and stated self-declaration requirements for enterprise standards that could endanger IP rights.

As part of a broader import substitution policy, **Ecuador's** Foreign Trade Committee (COMEX) announced Resolution 116 in December 2013, a document requiring U.S. exporters for some 300 products to obtain Certificates of Recognition through a conformity assessment process that could only be conducted by bodies approved by the Ecuadorian Accreditation Organization. Those rules were never notified to the WTO, and were almost immediately a topic of major concern for the U.S. and other governments. Although EU officials have negotiated an exemption to the rule for products of EU origin, and although COMEX issued a series of resolutions in 2014 removing some of the initial products from the scope of the resolution, significant concerns remain about this resolution and its impact on manufacturers in the United States seeking to export to Ecuador.

**India** has taken steps to address previous concerns related to previous certification challenges with food products, but has raised new questions about technical regulations in medical devices. In food products, the Food Safety Standard Authority of India (FSSAI) has been working with U.S. and other stakeholders to address and improve its food approval process, after the earlier process was ruled unconstitutional by the Indian Supreme Court. The NAM encourages the U.S. government to continue to monitor FSSAI's efforts closely to ensure full compliance. On medical devices, the NAM and its members are concerned with new policies and regulations that continue to apply an outdated, one-size-fits-all regulatory approach to both pharmaceuticals and medical device products, such as the lack of progress on revising the Drug and Cosmetics Act, delays in introducing separate new regulations for medical devices, and the addition of cardiac stents to India's essential drug list.

**Canada** also maintains strict rules to define hazardous waste that crosses its borders that disrupt trade in the chemical industry with the United States. Unlike Canadian provincial rules or U.S. federal and state regulations, the Canadian federal government does not provide any exemption to allow empty containers with a de minimis level of hazardous waste residue to bypass the substantial paperwork requirements that normally accompany transboundary shipments of hazardous waste. Such policies mean that any

containers transiting the border for cleaning have to go through onerous and time-consuming transboundary permitting and cradle-to-grave paperwork tracking requirements, impacting not only makers and end users of chemicals and paints, but downstream industries that use those products as well as hazardous waste cleaning facilities.

Many countries require local testing and certification for imported products, as opposed to testing by a laboratory or conformity assessment body certified by an independent international certification body. Such local testing and certification requirements drive up the cost and delay for getting products to market, harming both the growth of those industries as well as choices available to local consumers. These requirements include local testing requirements for information technology equipment in **Brazil** and **India**, local retesting of ICT hardware after software updates in **Costa Rica** and continued local telecom testing requirements in **Mexico** (due to the stalled implementation of a mutual recognition agreement).

Manufacturers in the United States also face many other instances of unique standards and certification procedures, such as unique standards on motorcycle tires in **Indonesia** that may be designed to protect local industry and unnecessary requirements set by **Saudi Arabia's** SASO requiring burdensome testing for electric motors that by regulation should be exempted.