

November 6, 2008

Ambassador Susan Schwab  
U.S. Trade Representative  
600 17<sup>th</sup> Street, N.W.  
Washington, DC 20230  
Submitted by electronic mail to: [fr0717@ustr.eop.gov](mailto:fr0717@ustr.eop.gov)

Dear Ambassador Schwab:

The National Electrical Manufacturers Association (NEMA) is pleased to respond to your *Federal Register* request for public comments to assist the Office of the U.S. Trade Representative and the Trade Policy Staff Committee in preparation of the annual National Trade Estimate Report on Foreign Trade Barriers (NTE).

The National Electrical Manufacturers Association (NEMA) is the largest trade association representing the interests of U.S. electrical equipment manufacturers, whose worldwide annual sales exceed \$120 billion. The 380 member companies of NEMA manufacture products used in the generation, transmission, distribution, control and use of electricity. These products are used in utility, industrial, commercial, institutional and residential installations. The Association's Medical Imaging & Technology Alliance (MITA) Division represents manufacturers of medical diagnostic imaging equipment including MRI, CT, x-ray, and ultrasound products.

NEMA urges you to take the following into account as you compile the annual NTE report:

I. Worldwide tariff elimination for all NEMA products

The worldwide elimination of tariffs on electrical products is a fundamental NEMA goal. We are founding members of, and now chair of, the Zero Tariff Coalition, after having earlier played active roles in pushing for the APEC EVSL and ATL initiatives. We therefore urge the U.S. to pursue tariff elimination for electrical products in all fora, including possible sectoral talks under the World Trade Organization "Doha Development Agenda" round of negotiations on reduction and elimination of tariffs on non-agricultural goods -- or via regional groups and/or all other opportunities as they arise. Moreover, WTO members should agree to implement agreements to eliminate tariffs on electrical equipment and medical imaging products as soon as possible, preferably on an early provisional basis with immediate effect until the new "free" or "zero+x" tariff rates are bound into the DDA round's final concluding agreement.

NEMA also urges the U.S. to push for full implementation of and compliance with the WTO Information Technology Agreement (ITA) and completion of the second phase of the Agreement (ITA-2), which would eliminate tariffs on a wide range of IT items, including some NEMA products. NEMA also supports continued efforts by U.S. officials to expand the membership of the existing ITA.

## II. Free Trade Agreements

Washington should negotiate and ratify free trade agreements (bilateral, regional and multilateral) that further open commerce in electrical goods while upholding the following NEMA principles:

- Tariff Elimination
- Openness and Transparency in Government Procurement
- No Public Sector Mutual Recognition Agreements (MRAs) For Non-Federally-Regulated Products
- Energy Services Liberalization
- Protection of Intellectual Property Rights
- Compliance with all World Trade Organization (WTO) Technical Barriers to Trade (TBT) Requirements
- Reduction in Technical Barriers to Trade (TBTs)
- Inclusive Definition of "International Standards"
- Voluntary, Market-Driven Standards and Conformity Assessment Policies and Practices
- As Many Other Market Opening Measures As Possible
- Effective Monitoring and Enforcement Mechanisms
- Free Trade Benefits Not Encumbered By Labor Or Environmental Provisions

## III. Supplier's Declaration of Conformity

While there are some in U.S. industry who maintain that the very fact that many nations do not use Supplier's Declaration of Conformity (SDOC) as the preferred means of conformity assessment for various information technology products is itself a trade barrier, our view is that moves to institutionalize SDOC could have serious negative effects on established successful practices in our sector. SDOC should be an option rather than an obligation. Where suitable monitoring institutions are in place, the market should be allowed to determine the appropriate means of conformity assessment.

## IV. European Union — Regulations and Standards

The EU Commission continues to advance regulatory initiatives such as the one relating to Energy-Using Products (EUP) that would have significant negative impacts on NEMA members' products. These follow on earlier enacted directives relating to Chemicals (REACH), Waste in Electrical and Electronic Equipment (WEEE) and Reduction in Hazardous Substances (ROHS), which are currently going through awkward implementation phases.

We have also been concerned about the EU's metric-only labeling directive, officially scheduled to come into effect on January 1, 2010 -- though our industry very much welcomes the new Enterprise Directorate proposal to suspend implementation indefinitely.

As we and other industry associations have often noted, the EU is increasingly establishing regulations that lack technical justification and whose burdens of implementation are not proportionate to intended consumer or environmental benefits. Typically, these regulations are developed with procedures that are not transparent to all stakeholders, including the U.S. electrical manufacturing industry and other trading partners. Further, stakeholders find they have no way to hold EU authorities accountable for the regulations produced.

On a related level, the important standards-setting bodies CEN and CENELEC are even more lacking in transparency and openness inasmuch as they absolutely deny participation by any U.S.-interested party despite legitimate business concerns and impacts. This is particularly significant when there is specific knowledge that CEN/CENELEC standards resulting from New Approach directives will be developed into *de facto* market access requirements. Moreover, given European predominance as per the one-nation-one-vote schemes employed by the International Electrotechnical Commission (IEC) and International Standardization Organization (ISO), CEN/CENELEC standards inevitably have the inside track on becoming the norms adopted by these bodies (with, despite our efforts, ISO and IEC standards still frequently not including products built to North America-based international requirements.)

Our industry is committed to working with USTR, through engagement with the EU on questions of governance and regulatory disciplines, to find solutions to its systemic regulatory problems, ensuring justification, transparency and openness in development of directives, as well as "national treatment" and accountability in their application.

On another note, while U.S. wire and cable manufacturers do have access to the EU market and can qualify for the certification marks of individual European countries, they cannot obtain the continent-wide HAR (for "Harmonized") mark that is essential for selling throughout Europe. The HAR mark arises from a cleverly-designed agreement among European testing laboratories. Not only are U.S. labs not allowed to join it because this country does not officially embrace CEN/CENELEC (i.e., European) standards, U.S. wire and cable products are not even allowed to test for the mark — even though they would almost certainly qualify. Many NEMA members contend that the HAR scheme is WTO-illegal and that the US should be pursuing the matter in Geneva.

## V. Asia-Pacific

### China — Standards and Conformity Assessment

We urge China, as a new member of the WTO, to improve its transparency and information-sharing regarding its standards development and conformity assessment requirements for electrical products, as well as give greater consideration to North-American-based international norms.

Also of particular concern to our industry: while Beijing committed upon entering the WTO to change its conformity assessment procedures so as to accord non-Chinese product "national treatment", for many electrical products it has also recently made erroneous moves -- with the introduction of its new China Compulsory Code (CCC) mark -- to only accept goods built to Chinese national standards, which are essentially based on standards published by the IEC and ISO.

Multiple inspection and certification requirements for medical equipment also remain problems despite Beijing's pledges under the auspices of the Joint Committee on Commerce and Trade (JCCT).

#### Thailand – Uninterruptible Power Supply (UPS) Products

Before they can be sold on the Thai market, Bangkok requires that imported UPS products meet a national standard, TIS 1291, that lacks acceptable radio frequency emission limits currently in place throughout the world. TIS 1291 is modeled after the widely adopted international standard, IEC 62040-2, except for one major difference: IEC 62040-2 allows for two classes of product: "B" and a less stringent "A," whereas TIS 1291 only provides for class "B." There has been no justification given for this difference and it appears to be a desire to protect local UPS manufacturers.

#### APEC MRA — Technical Regulations

Many APEC governments continue to pursue the development of a public-sector Mutual Recognition Arrangement on Conformity Assessment of Electrical and Electronic Equipment (MRA) — an Arrangement in which, at NEMA's behest, the U.S. government is not participating. In our view, the International Electrotechnical Commission (IEC)-based conformity assessment schemes for electrical products are designed to be global in applicability, and should be adopted in lieu of regional public sector MRAs. While NEMA is in favor of public-sector Mutual Recognition Arrangements or Agreements for federally-regulated products such as medical devices, it opposes them for non-regulated items such as most other electrical equipment. In the latter instances, MRAs open the door to the creation of unnecessary U.S. federal regulation.

#### Japan — Technical Regulations

Medical equipment manufacturers in Japan continue to face long product approval times for many products. We encourage Japanese Competent Authorities to actively move towards the harmonization of voluntary, transparent international standards and to recognize a manufacturer's International Quality Management System Certificate (i.e. ISO 13485) instead of requiring a PAL QMS audit prior to product approval. These steps will help improve the product approval process.

In recent years, Japan has issued regulations on certification requirements, metric-only labeling, and product waste take-back, and has been preparing changes to regulations to impact the design

of imported electrical products. Often a technical regulation enters into force before a final text of the regulation is available from the government. The 2001 WTO Ministerial in Doha clarified that under the TBT, the "reasonable interval" countries must give each other between the publication of new technical regulations and entry-into-force should be at least six months, except in emergency cases. NEMA urges Japan to adhere to the WTO TBT requirements for justification, notice and comment on technical regulations.

### Taiwan – Public Procurement

Our membership has expressed concerns about some Taiwanese public procurement practices, particularly the ban on Mainland Chinese goods in tenders issued by the Central Trust of China (CTC).

## VI. THE AMERICAS

### Mexico — Standards and Conformity Assessment

NEMA is very involved in the standards and conformity assessment processes in Mexico. The country is developing or making revisions to 20 to 30 electrical product standards each year. The authorities do accept and take into account public comments on proposed standards; however, a document that has been substantially revised based on public comments may not be circulated for final public review prior to publication. NEMA would welcome the Mexican standards authority's application of consistent procedures in the consideration and adoption of NOM standards, which directly affect market access for many proven commercial products since they are *de facto* technical regulations.

We are pleased with the change in procedures being followed with regards to incorporating voluntary NMX standards into mandatory NOM standards, although experience shows that in the long term we must remain vigilant to ensure proper compliance by the authorities.

Mexico was required under its NAFTA obligations to recognize, starting January 1, 1998, conformity assessment bodies in the U.S. and Canada under terms no less favorable than those applied to Mexican conformity assessment bodies. Mexico indicated its willingness to conform to these obligations late in 2005 via an announcement in the *Official Gazette*. So far we are aware of two U.S. conformity assessment bodies that have been recognized by Mexico to conduct conformity assessment on products that are exported from the U.S. and Canada to Mexico.

Mexico's national electrical commission, CFE, and the Mexico City utility Luz y Fuerza are requiring that 50% of their purchasing for their projects come from Mexican supplier, even if cases where only one "local" company making the equipment in question, in practice excluding many U.S. companies from taking part in these often very lucrative opportunities.

## Brazil — Tariffs, Standards and Conformity Assessment

Brazil continues to charge high electrical equipment external tariffs on non-MERCOSUR imports and inputs. Some of our magnet wire members, for example, are particularly concerned about high Brazilian duties even as Brazilian wire products enjoy, by virtue of our Generalized System of Preferences (GSP) program, tariff-free market access to this country that is beginning to encroach upon U.S. manufacturers' market share.

Further, under great pressure from European manufacturers, Brazil is developing standards for an increasingly broad range of electrical products that are principally based on IEC standards. New INMETRO certification decrees covering electrical products are being issued each year.

Moreover, part of the Brazilian electrical sector (increasingly under the influence of European companies) is trying to use the MERCOSUR standardization and certification channels to create barriers to U.S. products in Brazil. The strategy consists in replacing all Brazilian standards that also permits the use of American products by MERCOSUR standards, which, in many cases, would not include U.S. technology, because they are based on IEC standards. In addition, European manufacturers in Brazil are more aggressively trying to impede NEMA participation in the Brazilian standardization process through their large "influence" in the trade association ABINEE and the national standards organization ABNT. NEMA calls on Brazil to ensure consistent application of national and WTO TBT national treatment policies to all manufacturers, both domestic and foreign.

Our membership has also expressed concerns about Brazil's duty-drawback policy, which requires 60% local integration in order to be claimed. In practice, double-duties impact on far too many products that are shipped to Brazil and then trans-shipped onwards to third countries.

## Colombia — Conformity Assessment

Colombia requires certificates of conformity to be issued by the Industry and Commerce Superintendency (SIC). Foreign certification bodies must either be accredited by SIC or their certificates must be validated by a body accredited by SIC. NEMA would like to see Colombia participate in a scheme such as the IECEE CB Scheme, which would allow for U.S. national certification bodies to be recognized there.

Thank you for your consideration of these remarks.

Sincerely,



John Meakem  
Manager, International Trade