

**DEPARTMENT OF COMMERCE****International Trade Administration****FEDERAL TRADE COMMISSION****Public Workshop: Alternative Dispute Resolution for Consumer Transactions in the Borderless Online Marketplace**

**AGENCY:** International Trade Administration, Department of Commerce; Federal Trade Commission.

**ACTION:** Initial Notice Requesting Public Comment and Announcing Public Workshop

**SUMMARY:** The United States Department of Commerce (the "Department") and the Federal Trade Commission (the "FTC"), will hold a public workshop to examine developments, gain further understanding, and identify potential issues associated with the use of alternative dispute resolution for online consumer transactions. This Notice is also seeking public comments to inform the discussion that will take place at the workshop.

**DATES:** Written comments and requests to participate as a panelist in the workshop must be submitted on or before March 21, 2000. The workshop will be held in spring 2000. The exact date and location of the workshop will be announced at a later date.

**ADDRESSES:** Mail written comments to Secretary, Federal Trade Commission, Room H-159, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

**SUBMISSION OF DOCUMENTS:** Comments should be captioned "Alternative Dispute Resolution for Consumer Transactions in the Borderless Online Marketplace." To enable prompt review and public access, paper submissions should include a version on diskette in ASCII, WordPerfect (please specify version), or Microsoft Word (please specify version) format. Diskettes should be labeled with the name of the party and the name and version of the word processing program used to create the document. As an alternative to paper submissions, email comments to: [adr@ftc.gov](mailto:adr@ftc.gov). Messages to that address will receive a reply in acknowledgment. Comments submitted in electronic form should be in ASCII, WordPerfect (please specify version), or Microsoft Word (please specify version) format.

Written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552 and Commission regulations, 16 CFR Part 4.9, on normal business days between the hours of 8:30 a.m. and 5:00 p.m. at 1401 Constitution Avenue, N.W., Washington, D.C. 20230 and at

600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Department and the FTC will make this notice, and, to the extent possible, all papers or comments received in response to this notice available to the public through the Internet at [www.ita.doc.gov](http://www.ita.doc.gov) and [www.ftc.gov](http://www.ftc.gov). Paper submissions should include three paper copies and a version on diskette in a format specified above.

**FOR FURTHER INFORMATION CONTACT:** Kate Rodriguez, International Trade Administration, phone (202) 482-2145; email: [kate\\_rodriguez@ita.doc.gov](mailto:kate_rodriguez@ita.doc.gov) or Maneesha Mithal, Federal Trade Commission, phone: (202) 326-2771; email: [mmithal@ftc.gov](mailto:mmithal@ftc.gov).

**SUPPLEMENTARY INFORMATION:** In November 1998, the President directed the Secretary of Commerce, in consultation with the Federal Trade Commission and other relevant Federal agencies, to foster consumer confidence in e-commerce by working to ensure effective consumer protection online. Included in this directive was the mandate to facilitate partnerships between industry and consumer advocates to develop redress mechanisms for online consumers. Since the President's Directive was released, broad interest in the development of one redress mechanism, alternative dispute resolution (ADR), has been expressed in the Organization for Economic Cooperation and Development (OECD) and the June 1999 FTC Workshop on consumer protection in the global electronic marketplace. Numerous private sector groups have also expressed interest in alternative dispute resolution, including the Global Business Dialogue on Electronic Commerce, Internet Law and Policy Forum, Trans-Atlantic Business Dialogue and Trans-Atlantic Consumer Dialogue.

To begin an open discussion of how alternative dispute resolution programs may contribute to fostering consumer confidence without unnecessarily burdening business, the Department of Commerce and the Federal Trade Commission will hold a public workshop to examine the use of alternative dispute resolution as one means of providing transparent, effective, quick, and inexpensive redress for consumers engaging in online transactions. The workshop aims to explore the use and development of alternative dispute resolution programs in a variety of contexts; to identify obstacles to and potential issues arising from more widespread use of alternative dispute resolution for online consumer transactions; and to examine incentives

for creating such programs. The agencies seek a balanced discussion about the potential of alternative dispute resolution to facilitate the growth of electronic commerce by providing consumers and business with greater confidence and predictability for resolving disputes arising in the online environment. The agencies also wish to explore existing and emerging models for fair and effective alternative dispute resolution for online consumer transactions.

**Background**

The electronic marketplace offers consumers unprecedented choice and 24-hour accessibility and convenience, and it offers businesses low-cost access to an enormous customer base. It also poses new challenges, however. Consumers must be confident that the goods and services offered online are fairly represented and the merchants with whom they are dealing, who may be located in another part of the world, deliver on their commitments. Consumer confidence also requires that consumers have access to fair and effective redress for problems arising in the online marketplace. In many instances, consumers face unique difficulties in resolving problems arising out of online transactions, such as language and cultural differences, and the inconvenience and expense that may result from the fact that the consumer and seller may be in entirely different locales, possibly thousands of miles apart. Where resort to litigation becomes necessary, consumers may also encounter difficulties in establishing jurisdiction, determining the applicable law, and enforcing judgments.

At the same time, it is important to encourage the growth of this new marketplace and to avoid unduly burdening businesses, particularly small- and medium-sized enterprises, who will face similar difficulties in resolving problems arising out of online transactions. In addition, businesses face burdens in determining where they could be subject to jurisdiction and which laws might apply to them. Complying with the laws of numerous jurisdictions and being vulnerable to lawsuits in multiple courts could significantly increase the cost of doing business online.

One way to address business and consumer concerns regarding dispute resolution for online transactions is to work toward the development of effective alternative methods of dispute resolution. Broad interest in the development of alternative dispute resolution mechanisms in this arena has

already also been expressed in other important international fora:

*OECD Guidelines on Consumer Protection in the Context of Electronic Commerce*

During 1998 and 1999, the Consumer Policy Committee of the OECD drafted Guidelines on Consumer Protection in the Context of Electronic Commerce, which were approved by the OECD Council on December 9, 1999 (see text of the Guidelines at <http://www.oecd.org/dsti/sti/it/consumer/prod/guidelines.htm>). The Guidelines address the prevention of fraud, deception and unfairness in electronic commerce; provide guidance to industry on fair business practices; and emphasize the need for global cooperation among governments, consumers and businesses. In addition, the Guidelines seek to address how effective redress could be provided to consumers.

The Guidelines section on Dispute Resolution and Redress provides that "[c]onsumers should be provided meaningful access to fair and timely alternative dispute resolution and redress without undue cost or burden." To accomplish this goal, the Guidelines call on business and consumer representatives to establish mechanisms to address consumer complaints and assist consumers in resolving disputes. In addition, they encourage businesses, consumer representatives and governments to "work together to continue to provide consumers with the option of alternative dispute resolution mechanisms that provide effective resolution of the dispute in a fair and timely manner and without undue cost of burden to the consumer."

*June 1999 FTC Workshop*

Last June, the FTC convened a public workshop on consumer protection in the global electronic marketplace, which aimed to facilitate an ongoing dialogue on how governments, industry and consumers could work together to encourage the development of a global marketplace that offered safety, transparency and legal certainty for consumers. One of the issues addressed at the workshop was how to provide consumers with meaningful access to redress in the event of a dispute arising from an electronic transaction. A consensus emerged at the workshop that out-of-court avenues for consumer redress should be explored. Participants at the workshop agreed that one of the most effective ways to ensure meaningful access to redress for consumers is through innovative forms of alternative dispute resolution, such as

online dispute resolution. Through alternative dispute resolution, consumers could obtain quick, inexpensive, and effective redress without having to resort to courts, while at the same time, ensuring that businesses' exposure to lawsuits in multiple jurisdictions would be reduced.

*Private International Fora*

Numerous private organizations, including both business and consumer organizations, have advocated the development of alternative dispute resolution mechanisms to provide easy and inexpensive remedies to e-consumers. For example, the Transatlantic Business Dialogue and the Transatlantic Consumer Dialogue have both recommended that US and EU governments encourage the development of alternative dispute resolution mechanisms. Consensus emerged at the July meeting of the Internet Law and Policy Forum, a group of worldwide companies engaging in e-commerce, that alternative dispute resolution mechanisms for online consumers should be explored. In addition, at its meeting in September, the Global Business Dialogue on Electronic Commerce encouraged businesses to take the lead in providing alternative, easy and inexpensive systems to deliver remedies to e-consumers, and governments to promote alternative dispute resolution mechanisms for online consumer transactions by legally authorizing such mechanisms and developing legal frameworks to recognize and enforce such mechanisms. At that meeting, Secretary of Commerce Daley emphasized the need to develop effective alternative dispute resolution mechanisms.

The Department and the FTC recognize that the use of alternative dispute resolution mechanisms has been widespread for some time in a variety of contexts. It has also been the subject of international arrangements developed by international organizations such as the World Intellectual Property Organization (WIPO). The Department and the FTC recognize that these arrangements may offer lessons learned for examining ADR in the context of online consumer transactions.

To inform the Department and the FTC prior to the workshop, these agencies seek the views and additional information on this subject from industry, consumer representatives, the academic community and the larger public from the United States and other countries, including views on the elements of fair and effective alternative

dispute resolution for online consumer transactions. Views are welcome on any aspect of this subject, though the following questions are offered to help organize the comments:

*Existing Alternative Dispute Resolution Programs*

(1) What types of ADR are there? Are certain types better suited for online transactions?

(2) Under what circumstances is ADR used to resolve disputes about consumer transactions today? How does ADR work in such cases? How are decisionmakers or mediators selected under an ADR program? What lessons can be taken from such a mechanism?

(3) What ADR programs currently exist for online consumer transactions? Do these programs address cross-border transactions? Please describe these programs and how they work. In describing the programs, please address issues such as fairness, effectiveness, affordability, accessibility, and due process concerns.

(4) Does this ADR program provide information to a consumer before he or she is asked to agree to submit disputes to the program? At what point and how is this information provided?

(5) What are the procedural effects of this program, for example, to what extent are decisions binding? To what extent are they appealable for a decision? Is participation in the program a prerequisite to filing a law suit?

(6) How are decisions enforced under this ADR program?

(7) What are the costs to the parties engaging in ADR? Who funds these costs? Is this program cost-effective? Is it suitable for small-dollar transactions? Does this program handle a large volume of disputes? Is it capable of doing so?

(8) Is ADR for online consumer transactions better suited to certain situations than others, for example, cross-border disputes or cases limited to a certain monetary amount? Are there any other factors relevant to determining whether ADR is suited to particular online consumer transactions?

*Development of Alternative Dispute Resolution Programs for Online Consumer Transactions*

(9) Describe alternative dispute resolution programs for online consumer transactions that are being developed by businesses, consumer representatives or other groups.

(10) What are the obstacles, if any, to the implementation of alternative dispute resolution programs for online consumer transactions? What are the

incentives and disincentives for businesses and consumers to use such programs?

(11) A variety of arrangements have been developed through international organizations and private sector bodies to facilitate ADR, particularly in a commercial global context. What lessons have been learned from these experiences that might contribute to better understanding of this area in the context of consumer online transactions?

(12) To what extent are mechanisms that have been designed to prevent disputes from arising in online consumer transactions, such as escrow accounts, being used in the online world? Are there legal or other obstacles to the development of these types of mechanisms?

*Elements of Fair and Effective Dispute Resolution Programs for Online Consumer Transactions*

(13) The OECD "Guidelines on Consumer Protection in the Context of Electronic Commerce" encourage businesses, consumer representatives and governments to "work together to continue to provide consumers with the option of alternative dispute resolution mechanisms that provide effective resolution of the dispute in a fair and timely manner and without undue cost of burden to the consumer." What are some steps that could be taken to implement this principle? How can issues such as those raised in questions 4 through 7 (above) be considered in this context?

(14) What issues are raised or created for ADR, if any, by online consumer transactions that do not exist in the traditional, offline environment?

*Role of Governments*

(15) What should be the role of governments, if any, in connection with the use and/or development of alternative dispute resolution programs for online consumer transactions?

(16) What, if any, U.S. laws or international treaties to which the United States is a member, would have to be examined as potential barriers to implement effective alternative dispute resolution programs for online consumer transactions?

*Workshop*

(17) What should be the primary focus and scope of the public workshop on alternative dispute resolution for online consumer transactions?

(18) Are there any other interests not previously described in this notice that should be represented at the workshop?

By direction of the Commission.

Dated: February 11, 2000.

**Donald S. Clark,**

*Secretary.*

**Barbara S. Wellbery**

*Counsellor to the Under Secretary for Electronic Commerce, International Trade Administration, Department of Commerce.*

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**BILLING CODE 3510-25-U; 6750-01-U**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Export Trade Certificate of Review

**ACTION:** Notice of application to amend an Export Trade Certificate of Review.

**SUMMARY:** The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

#### Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be

nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 88-3A012."

The National Tooling and Machining Association ("NTMA") original Certificate was issued on October 18, 1988 (53 FR 43140, October 25, 1988), and was last amended on September 2, 1993 (58 FR 47868, September 13, 1993). A summary of the application for an amendment follows.

#### Summary of the Application:

*Applicant:* National Tooling and Machining Association ("NTMA"), 9300 Livingston Road, Ft. Washington, Maryland 20744-4998.

*Contact:* Thomas H. Garcia, Manager, Marketing Programs.

*Telephone:* (301) 248-6200.

*Application No.:* 88-3A012.

*Date Deemed Submitted:* February 3, 2000

*Proposed Amendment:* NTMA seeks to amend its Certificate to include the attached list of companies as "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)).

Dated: February 10, 2000.

**Morton Schnabel,**

*Director, Office of Export Trading Company Affairs.*

#### Attachment

b & b Tool Company, Inc., Rockford, IL  
A & A Industries, Inc., Peabody, MA  
A & A Machine Company, Inc.,  
Southampton, PA  
A & A Machine Shop, Inc., La Marque,  
TX  
A & B Machine, Van Nuys, CA  
A & B Machine Shop, Rockford, IL  
A & B Tool & Manufacturing Corp.,  
Toledo, OH  
A & D Precision, Fremont, CA  
A & E Custom Manufacturing, Kansas  
City, KS  
A & E Machine Shop, Inc., Lone Star,  
TX  
A & G Machine, Inc., Auburn, WA