

LABELLING AND REQUIREMENTS OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (TBT): FRAMEWORK FOR INFORMAL, STRUCTURED DISCUSSIONS

Communication from Canada

Revision

I. PURPOSE

1. The objective of this submission is to outline a number of considerations for a more structured approach to discussions on labelling in the TBT Committee.

II. CONTEXT

2. In recent years, the number of labelling proposals notified and adopted by WTO Members has grown significantly. It is difficult to estimate precisely the impact that such measures have on trade, and whether the measures are being designed, and implemented, to ensure that they do not become unnecessary obstacles to trade. Nevertheless, there is strong evidence that certain labelling measures have not been without consequences to the international flow of goods.

3. Both developed and developing country Members have raised labelling ‘cases’ at every TBT Committee meeting in 2001 under the standing agenda item on “Implementation and Administration of the Agreement”¹. Discussions on labelling also took place in the first and the second Triennial Reviews of the TBT Agreement. While some labelling concerns are broad and were addressed under “international standards”², other labelling issues continue to be raised by specific Members³. At the October 2001 meeting of the TBT Committee, it was agreed that Members would “continue informal discussions on labelling in a more structured way.” (G/TBT/M/25)

4. The 1994 Decision on Trade and Environment established the Committee on Trade and Environment (CTE) and identified “requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling”, as a relevant issue for the Committee to address. In the 2001 WTO Ministerial Declaration, paragraph 32 calls on the CTE to examine “labelling for environmental purposes”, an item already on the CTE agenda. Ministers also requested that recommendations on this item be made to them at the Fifth WTO Ministerial Conference to be held in 2003. However, labelling issues in the context of the WTO rules

*This document is re-issued due to several minor errors which had been inadvertently introduced in the document during the course of processing by the Secretariat.

¹See TBT Committee meeting minutes (G/TBT/M/25, G/TBT/M/24, and G/TBT/M/23) for statements or questions raised expressing concern or grievances related to notifications of proposed labelling regulations.

²See the Report of the 2nd Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade, contained in G/TBT/9, and specifically, Annex 4 on “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.

³ See Submissions by the European Commission (G/TBT/W/150), Switzerland (G/TBT/W/162), and USA (G/TBT/W/165).

are largely horizontal. In other words, the concerns that might arise in relation to how trade disciplines function in the context of labelling for environmental purposes can be expected to arise also in regard to general product safety or performance, including food safety. Disciplines on labelling are provided for in both the TBT Agreement and in the Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures⁴. Thus, the CTE report on labelling may have implications for both the TBT and SPS Committees. In this context, the TBT Committee should decide what action, if any, it might wish to take in advance of the next Ministerial Conference either in its own right, or to complement the work of the CTE.

5. The Ministerial Declaration from Doha also confirms that “non-trade concerns” will be taken into account in the negotiations relating to the Agreement on Agriculture (paragraph 13 of the Doha Declaration). While some Members have suggested that some aspects of labelling are relevant to trade in agricultural products, labelling measures directly related to food safety are covered in the SPS Agreement. Should WTO Members wish to elaborate on labelling measures related to providing consumers with information (as some have suggested for this context) then such discussions, if necessary, should take place in the TBT Committee.

III. IMPLEMENTATION OF TBT AGREEMENT IN THE CONTEXT OF LABELLING

6. Canada believes that the TBT Agreement applies to all labelling measures that fall within the definitions of either a technical regulation or a standard, except to the extent that such measures are governed by the labelling disciplines found in the SPS Agreement. Further, in our assessment, the TBT provisions are balanced and adequate. We have not seen any compelling arguments for developing guidelines. We have not seen any compelling rationale to re-negotiate existing rules, or to begin negotiations of new rules.

7. We support discussions on labelling as it relates to implementation of the TBT Agreement, and the Committee could benefit from a structured approach to these discussions. For example, the Committee could identify common themes of concern found in various labelling proposals (and / or existing labelling measures that have arisen in past notifications), and then group the broad issues for further examination. We believe that a better understanding of the practical steps that need to be followed in developing labelling measures in accordance with the requirements of the TBT Agreement will lead to more effective implementation and fewer ‘grievances’ for Committee Members to discuss around this issue. It may be useful, in this regard, for the Committee to further exchange practical experiences in informal discussions, using the TBT disciplines as a “framework” for such discussions.

IV. FRAMEWORK FOR DISCUSSIONS:

A. CHOICE OF POLICY INSTRUMENTS FOR LABELLING

8. There are generally a number of equally effective policy options available to meet objectives for labelling⁵. Transparent and well-designed voluntary labelling programs can be effective

⁴Annex 1 of the TBT Agreement, under “Terms and their definitions for the purpose of this agreement”, states that technical regulation “may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements, as they apply to a product, process or production method”. Annex A of the SPS Agreement, under “Definitions” states that SPS measure includes all relevant laws, decrees, regulations, requirements and procedures, including “packaging and labelling requirements directly related to food safety”.

⁵For example, to provide certain information to some consumers, government intervention, requirements, and / or enforcement are not the only approaches available. Mandatory measures may not be the most effective, or the first best option either, given concerns expressed by some that such measures could unjustifiably promote discrimination amongst essentially “like products” (See TBT Article 2.1). Other policy

alternatives to mandatory labelling requirements in some cases. These options, and the issues related to them, could be further examined in the broader context of good regulatory practice.

B. MANDATORY VERSUS VOLUNTARY MEASURES

9. In pursuing discussions in the TBT Committee, Members would need to distinguish at the outset between mandatory measures (i.e., measures issued under government authority with which compliance is compulsory) and voluntary measures (i.e., where adherence to the measure is optional). In considering whether a labelling measure should be mandatory or voluntary, two sequential sets of questions should be explored:

- (a) Necessity: What is the problem or risk to be addressed? Is the labelling proposal necessary to fulfill a legitimate objective? Does the proposal have to be in the form of a technical regulation? Are there other equally effective options? This includes discussion on whether the technical regulation option can meet a “least trade restrictive” or “no more trade restrictive than necessary” test while achieving the objective; and whether the proposal would discriminate amongst “like products”.
- (b) Design: If labelling measures in the form of technical regulations are deemed necessary and considered the best option for achieving a given legitimate objective, then there needs to be further consideration on methodology and transparency when establishing criteria for the labelling measure. (e.g., Is the criteria being proposed more onerous than necessary to meet the objective? Is the process to establish the criteria inclusive and transparent? etc.)

C. TBT REQUIREMENTS FOR TECHNICAL REGULATIONS

10. Once a decision has been made that the labelling measure should be in the form of a “technical regulation” as defined in the TBT Agreement, then Article 2 of the TBT Agreement sets out a number of requirements that all technical regulations must meet. For example, labelling measures in the form of technical regulations⁶:

- (i) must not discriminate against imported like products;
- (ii) must not be more trade restrictive than necessary to fulfil a legitimate objective;
- (iii) must be monitored and reviewed to address changes in circumstances and objectives;
- (iv) when available and where appropriate, must adopt international standards as its basis; and
- (v) must specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics, where appropriate.

D. TRANSPARENCY AND CONFORMITY ASSESSMENT

11. Another key requirement in the TBT Agreement is transparency and information provision⁷ -- an item worth in-depth discussion in itself, particularly when designing labelling measures. Transparency provides greater disciplines on regulation makers, as well as a mechanism for quality control. Other articles of the TBT Agreement address conformity assessment⁸, and we believe this is also a topic worth in-depth discussion in itself when it comes to implementation of labelling

options to consider could include consumer education tools such as toll-free telephone hot-lines, web-sites, leaflets, etc.

⁶See Articles 2.1, 2.2, 2.3, 2.4, and 2.8 of the TBT Agreement. This is only a selection of examples.

⁷See Article 2.9 and Article 10 of the TBT Agreement

⁸See Articles 5 - 9 of the TBT Agreement

measures. Since the effectiveness of government regulations depends on the level of compliance, the manner in which conformity is achieved is an essential element of the process.

E. LABELLING “STANDARDS”

12. Informal discussions in the TBT Committee could also address voluntary labelling measures and Article 4: Preparation, Adoption and Application of Standards, and the associated Annex 3: “Code of Good Practice for the Preparation, Adoption, and Application of Standards”. For labelling discussions based on voluntary measures, standards-setting bodies (e.g., ISO) should be involved as appropriate.

F. HARMONIZATION AND EQUIVALENCY

13. The concepts of equivalency⁹ and harmonization¹⁰ are both recognized in the TBT Agreement. One notion behind both concepts is to encourage the recognition and/or use of *existing* and proven approaches, instruments, and/or schemes as much as possible, to avoid “reinventing the wheel”. The provisions in the TBT Agreement encourage Members to participate in international standardizing bodies (e.g., CODEX) to better share experiences, to cooperate on regional or multilateral approaches where possible. Cooperation in this area helps to lower transaction costs and to facilitate trade. Both equivalency and harmonization could be discussed further in the context of mandatory and voluntary labelling measures.

G. NON-PRODUCT RELATED PROCESS AND PRODUCTION METHOD (NPR PPM) LABELLING

14. Ministers mandated the CTE to discuss “labelling for environmental purposes” and, as we have already noted in the context above, the TBT Committee should have a strong interest in those discussions and recommendations. The topic of labelling for environmental purposes presents more complex scenarios that can involve, for example, labelling for the sole purpose of describing life-cycle analysis¹¹. An example would be a label put on a product solely to describe a process or production method (PPM) but where the PPM leaves no discernable traits on the product itself, or is otherwise not reflected in the performance or the characteristics of the final product. This form of labelling is often referred to as non-product related process and production method (npr PPM) labelling¹². Canada believes that there is much to discuss on this topic, particularly with respect to the trade effects of npr PPM labelling. If the TBT Committee is prepared to engage in informal discussions on this topic, then we would note that the dialogue on npr PPMs as they relate to eco-labels could proceed from the basis of the 1996 CTE Report to Ministers which addressed labelling for environmental purposes among other issues. We would also note that npr PPM labelling is not limited in implications only to the environmental context, but also has impacts in agriculture and food trade (e.g., animal welfare), and social / ethical / value issues (e.g., labour practices among others).

H. DEVELOPING COUNTRY CONSIDERATIONS

15. The TBT Agreement also contains provisions that address developing country concerns and needs¹³. Since many developing countries have expressed reservations about having a dialogue on

⁹See Article 2.7 of the TBT Agreement

¹⁰See Article 2.6 of the TBT Agreement and Article G of Annex 3 to the Agreement

¹¹A “life-cycle analysis” (LCA) is used to analyse the full environmental impact of a single product, including, for example, water and energy use and release of various pollutants. A LCA would combine and consider all the environmental impacts of a product’s production, use, and disposal (i.e., from cradle to grave). See “Environment and Trade, A Handbook”, which is jointly published by the International Institute for Sustainable Development (IISD) and the United Nations Environment Program (UNEP).

¹²See Annex 1 for a fuller description of process and production methods (PPMs)

¹³See Articles 11 - 12 of the TBT Agreement

labelling in the TBT Committee, developing countries' needs and interests have to be considered as an essential feature in any framework for discussions. Poorly designed labelling measures (whether voluntary or mandatory) could have market-access effects on all, but particularly on developing countries. This issue could be another item for discussion for TBT Members so as to ensure that developing countries can substantially contribute to, and benefit from, the dialogue on labelling. For example, the discussion could focus on how Members can enhance market access by reducing unnecessary obstacles to trade, and on mechanisms to target available technical assistance and capacity-building programmes to where the needs are greatest. There is already a concern that developing country exports are at risk given their limited capacity to compete with the more technologically advanced production methods sometimes used in developed country markets.

I. RULES OF ORIGIN / GEOGRAPHICAL INDICATORS

16. Labelling requirements to indicate country of origin or geographical indicators can also affect trade and / or implicate intellectual property rights provisions in trade agreements. Should the TBT Committee wish to explore these types of labelling issues as well, then we would propose that this work be undertaken in cooperation with the relevant WTO fora (i.e., Committee on Rules of Origin and the Council for Trade-Related Intellectual Property Rights).

V. NEXT STEPS / PROPOSALS

17. We propose that the TBT Committee consider tasking the Secretariat with preparing a taxonomy of all labelling issues that relate to trade (and not just labelling concerns related to PPMs). The Secretariat could prepare this taxonomy, drawing from labelling notifications at the WTO, and reviewing recent Members' submissions on labelling and discussions at the TBT Committee, including issues raised under the agenda item on "Implementation of the Agreement". Previous Secretariat work, e.g., work for the CTE on eco-labelling, could also be drawn upon.

18. In addition, we propose that the TBT Committee consider whether Members would be interested in an informal workshop, outside the formal deliberations of the Committee's work. The informal workshop could be designed mainly as a "learning event" that would involve Members from the CTE and perhaps the SPS Committee(s) as well, depending on the program. One objective could be to draw out current practices on labelling through specific examples and case studies to be identified by Members. All Members could be invited to relate their experiences with both mandatory and voluntary labelling programs to further exchange ideas. In this context, Canada would be prepared to describe its domestic approach in a number of areas -- both in the mandatory and voluntary context.

ANNEX 1

WHAT IS THE DIFFERENCE BETWEEN PRODUCT-RELATED PROCESS AND PRODUCTION METHODS (PPMS), AND NON-PRODUCT RELATED (NPR) PPMS?

Labelling that describes “*how*” a product is produced is known as labelling based on a “process or production method” (PPM).

PPM labelling can be classified under two types: (i) product-related PPMS, and (ii) non-product related (npr) PPMS.

(i) **Product-related PPMS** refer to process and production methods which affect the nature, properties, or qualities of the product itself and its ability to have direct impact on, for example, the environment in the country of use and/or disposal, or human health. It typically describes a process or production method which changes the characteristic of the final product and that PPM is discernible in the change. In any case, the PPM has an expression in the product. Product-related PPMS are normally dealt with through product specifications. This type of PPM is most frequently found in the case of industrial process requirements to ensure a product’s quality or fitness for use (e.g., rules for metalizing practices to prevent corrosion or ensure strength). Another example is the pasteurization of milk.

(ii) **Non-product-related (npr) PPMS** describe a process or production method which does *not* affect *or* change the nature, properties, or qualities of (nor discernible traits in or on) a product. An example could be the harvesting of fish. A fishing vessel that uses a net with mesh size larger than another fishing vessel could catch the same fish in the sea. The final product (e.g., the fish) is not affected by the production method (e.g., mesh size of fishing net). However, the mesh / net size or catch method more generally can affect other sea-life and shared living resources (e.g., an impact on the ability of non-target species to escape capture). Other examples of non-product related process and production methods not related to the environment include labour standards, or the welfare of animals in farming practices for agricultural products.
