

LABELLING

Submission by the European Communities

I. INTRODUCTION

1. With a view to facilitating trade and providing greater legal certainty for regulators and other interested parties in developing labelling schemes, this paper proposes a non-exhaustive list of issues for discussion in the TBT Committee. The paper argues for a continued exchange of information, including an examination of relevant work in international and regional fora, and consideration of the need to reach some form of common understanding, interpretation or guidance for labelling requirements. In the absence of such action, there is a risk that TBT inconsistent labelling schemes will be enacted, thus potentially undermining international trade.

2. As a related issue to discussions in the TBT Committee on labelling, the EC notes that the Doha Ministerial Declaration of 14 November 2001 (paragraph 32) instructs "the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to:... ..(iii) labelling requirements for environmental purposes".

II. IMPACT OF LABELLING ON TRADE

3. In general, labelling requirements tend to be not trade restrictive or less trade restrictive than many other regulatory measures. Nevertheless, depending on its content, scope and nature, including its mandatory or voluntary character, labelling may have a significant impact on trade. Producers may encounter difficulties complying with, or demonstrating compliance with, labelling requirements, particularly when these requirements vary from market to market. Such problems may be particularly acute among developing country exporters.

4. There appears to be a tendency for labelling requirements and schemes to increase. This is reflected in growing concerns over the impact of labelling on trade. In 2001, the EC has calculated that there was both a higher number and a higher percentage of TBT notifications relating to labelling than in any previous year. The mechanisms that countries impose, including at their borders, to control the respect of some labelling requirements are in some instances contributing to slowing down the flow of trade. Furthermore, the 2nd Triennial Review of the TBT Agreement (G/TBT/9 of 10 November 2000, paragraph 48) noted that "...concerns regarding labelling were raised frequently in the Committee meetings during discussions on the implementation and operation of the Agreement".

III. DEVELOPING A COMMON UNDERSTANDING, INTERPRETATION OR GUIDANCE ON LABELLING REQUIREMENTS

5. The TBT Committee could examine the need to clarify WTO rules through a common understanding, interpretation or guidance on labelling requirements. As a first step, the

TBT Committee could exchange information and experience with regard to the application of TBT provisions to labelling. This should help ensure a better mutual understanding of different approaches to labelling, including the choice of the desired level of consumer information and the use of voluntary and mandatory labelling. It should also help ensure the transparent and non-discriminatory preparation, adoption and application of least trade restrictive measures to respond to consumer demands for and rights to information, including with respect to the contents of goods and the way goods are produced or processed.

IV. TRANSPARENCY

6. With regard to both voluntary and mandatory labelling, the Committee could examine transparency and consultation provisions in the TBT Agreement, and explore ways to enhance their effectiveness. The objective of any such discussions should be to ensure that all interested parties have the opportunity to be involved in a meaningful way in the preparation, adoption and application of labelling schemes.

7. For voluntary labelling, some progress was made in the 1st Triennial Review of the TBT Agreement (G/TBT/5 of 19 November 1997, paragraph 12). With regard to the TBT Agreement's Code of Good Practice for Standards, the Committee agreed:

"...without prejudice to the views of Members concerning the coverage and application of the Agreement, the obligation to publish notices of draft standards containing voluntary labelling requirements under paragraph L of the Code is not dependent upon the kind of information provided on the label".

This can be seen to provide some clarification on the transparency obligations for voluntary labelling schemes irrespective of the specific information contained therein, including in terms of so called non-product related process and production methods. Nevertheless, in the absence of an obligation to notify voluntary labelling schemes to the WTO, the transparency provisions in the TBT Agreement appear weaker than for mandatory labelling. The EC proposes that the TBT Committee examines how to enhance the effectiveness of transparency provisions relating to voluntary labelling.

8. As for mandatory labelling, the EC believes that the TBT notification system works well in most cases. The TBT Committee adopted the following decision on transparency obligations with regard to mandatory labelling requirements in July 1995:

"In conformity with Article 2.9 of the Agreement, Members are obliged to notify all mandatory labelling requirements that are not based substantially on a relevant international standard and that may have a significant effect on the trade of other Members. That obligation is not dependent upon the kind of information which is provided on the label, whether it is in the nature of a technical specification or not" (G/TBT/1/Rev.8).

While there are differing interpretations of the scope of the TBT Agreement, notably with regard to its coverage of non product related process and production methods, this decision should help reduce the risk of inconsistency in the approach to notifications adopted by different Members. The EC proposes that the Committee examines the implementation of the decision with a view to ensuring the consistent notification of mandatory labelling schemes.

V. NON-GOVERNMENTAL STANDARDIZING BODIES

9. Given the existence of voluntary labelling schemes developed by non-governmental standardizing bodies, which may have a similar impact on trade as government schemes, the TBT Committee could examine the application of the Code of Good Practice by these bodies and look at ways to enhance its implementation. Article 4.1. of the TBT Agreement states that Members "shall take such reasonable measures as may be available to them to ensure that... non-governmental standardizing bodies within their territories... accept and comply with...this Code of Good Practice".

VI. INTERNATIONAL AND REGIONAL STANDARDS

10. Labelling based on international standards has a significant potential to facilitate trade and help developing countries. In accordance with the provisions of article 2.4 of the TBT Agreement, where relevant international standards exist or their completion is imminent, they should form the basis for technical regulations, including mandatory labelling schemes, except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued. Similar provisions apply to standards, including voluntary labelling schemes, under paragraph F of the TBT Code of Good Practice for the Preparation, Adoption and Application of Standards.

11. The TBT Committee could try to identify relevant international standards, such as ISO and Codex Alimentarius standards, with a view to ensuring Members are in a better position to use them. The Committee could also examine ways to support work relating to the development of international standards on labelling, including by identifying sectors and bodies in which such work is taking place. Promoting developing country participation in the international standardization process is relevant in this context, and, more generally, issues related to maximising the benefits to be derived from international standards for developing countries could be addressed. Discussions could also examine regional labelling schemes and their potential to eliminate unnecessary barriers to trade.

VII. EQUIVALENCY

12. Equivalency agreements have the potential to reduce trade barriers resulting from labelling requirements. For mandatory labelling schemes, Article 2.7 of the TBT Agreement obliges Members to "...give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations". Members could exchange views and experiences, and aim to ensure that the potential of this provision is fully realised.

13. For voluntary standards, the TBT Agreement's Code of Good Practice for Standards does not have a counterpart to Article 2.7 on equivalency of mandatory technical regulations. However, in line with the objective of the TBT Agreement to ensure that standards do not create unnecessary obstacles to international trade, and given the increasing recourse to voluntary labelling schemes, the TBT Committee could consider this issue, and examine the issue of equivalency agreements for voluntary labelling schemes.

14. With regard to equivalency, Members could examine the potential to use relevant international standards as a tool or means to facilitate a comparison of different labelling requirements. Any discussion on equivalency should also consider the wider potential impact of equivalency agreements, including on international standards.

VIII. KEEPING MEASURES UNDER REVIEW

15. Article 2.3 of the TBT Agreement sets out an obligation not to maintain technical regulations "if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade restrictive manner". No equivalent obligation exists in the TBT Agreement's Code of Good Practice for Standards. The issue of keeping voluntary labelling schemes under review could be examined, particularly in the light of the apparent growing recourse to voluntary labelling schemes and potential uncertainties over their impact on trade. In this context, the EC notes the decision of the TBT Committee on principles for the development of international standards (G/TBT/9) which underlined the importance of ensuring that such standards are effective and relevant.

IX. DEVELOPING COUNTRY CONCERNS

16. More effective measures and actions are required to address developing country concerns and interests on labelling. Establishing clearer guidance for the development of labelling requirements may help. The delivery of effective technical assistance is essential and could be an element of the TBT Committee's technical co-operation programme. Any such work could build on the results of the survey of developing country needs. Specific issues to address may include (1) the provision of timely information to developing countries on proposed and existing labelling requirements and schemes; (2) ways to facilitate the capacity of developing countries to comply with labelling requirements in export markets; (3) developing country participation in the setting of international standards on labelling and co-operation with relevant international organizations and standardization bodies; and (4) enabling developing countries to make appropriate use of international standards and to maximize the benefits from doing so. The question of the impact of labelling requirements and procedures at the border to ensure their respect could also be examined with a view to ensuring trade facilitation.

17. The TBT Committee could aim to identify so-called "win-win-win" situations, in which labelling can facilitate trade, boost developing country exports, and help fulfil legitimate policy objectives. In some cases, labelling can improve market access by reinforcing consumer confidence and boosting demand. As an illustration, eco-labelling may offer developing countries the opportunity to gain a larger share of developed country markets for their environmentally friendly products. However, obstacles may arise to such situations, such as a lack of capacity for developing countries to demonstrate compliance with labelling requirements. The Committee could therefore aim to identify tools and actions to support such "win-win-win" situations, including in terms of equivalency agreements, regulatory co-operation and technical assistance.

X. OTHER RELEVANT SUBMISSIONS OF THE EUROPEAN COMMUNITIES

18. This paper builds on the EC submission to the TBT Committee on labelling, G/TBT/W/150, of 2 November 2000. This set out the scope of the TBT Agreement with regard to labelling (Annex A highlights the relevant paragraphs). The EC also submitted a non-paper on mandatory labelling for agricultural products to the Special Session of the Committee on Agriculture, Informal Meeting, on 3-5 December 2001. This sets out proposals for guidelines for the introduction of mandatory labelling requirements for agricultural products which it believes to be consistent with the TBT Agreement.

XI. NEXT STEPS

19. The EC notes that the TBT Committee concluded at its meeting in March that the informal TBT Committee meeting in June would provide an opportunity to elaborate further the proposal for a

Secretariat paper on labelling. The EC believes that, at an initial stage, the Secretariat paper should be a descriptive analysis and its scope could include the following areas:

- (i) An overview of TBT and other WTO Committee Secretariat papers on labelling and of Members' papers / submissions on labelling to both the TBT and other WTO Committees;
- (ii) WTO notifications relating to labelling under both the TBT and other Agreements, including in terms of products covered, the notifying country, the year of notification, and stated policy objectives;
- (iii) A review of TBT and other WTO Committee decisions relating to labelling, such as those taken concerning transparency in the TBT Committee;
- (iv) All labelling issues raised in the TBT Committee during discussions under the agenda item "Implementation and Administration of the Agreement";
- (v) An overview of developing country technical assistance needs relating to labelling, notably building on results of the ongoing TBT survey; and
- (vi) An overview of international labelling activities, in co-operation with relevant international organizations.

Any such work by the Secretariat should develop in close consultation with TBT Committee Members and could lead to the development of a thematic presentation of trade-related labelling issues.

20. The EC supports the proposal for the TBT Committee to organize an informal workshop on labelling. The EC believes that this could focus in part on developing country interests and concerns. In this context, issues that could be addressed include practical constraints in demonstrating compliance with labelling schemes and requirements, enhancing transparency, and participation in setting and the use of international standards on labelling. Developing countries could also share information on labelling schemes which have facilitated exports and examine ways to promote and expand such initiatives where appropriate.

21. In addressing developing country concerns and interests on labelling, the delivery of effective technical assistance may be key. Given this, the workshop could highlight specific needs, notably as identified in the TBT survey, with a view to facilitating the provision of technical assistance and results being fed into ongoing discussions on trade-related technical assistance.

22. International standards and conformity assessment systems relating to labelling could be another element of the workshop. One key issue, closely related to developing country concerns and interests, is the transparency of, and the participation of all interested parties in, the international standardization and conformity assessment system. In addition, TBT Committee observers could participate in the proposed workshop and present their activities relating to labelling. For example, the International Organization for Standardization could be invited to present its standards on voluntary eco-labelling. Additional presentations by observers may also be useful, for example by the International Trade Centre (ITC) on its work to facilitate developing country exports, as well as by UNCTAD, OECD and Codex Alimentarius. Other concerned organizations could also be invited, such as UNEP.

23. Members could make presentations and submissions to the workshop on their experience in developing and operating both national and regional labelling schemes and requirements, including

with respect to how they promote transparency and the approaches taken to safeguarding the legitimate objectives pursued.

24. The EC proposes that any informal workshop on labelling is held towards the end of 2002. The EC notes that the Doha mandate for work on labelling in the Committee on Trade and Environment specifically concerns "labelling requirements for environmental purposes". TBT Committee work on labelling has a different scope and has been discussed in the TBT Committee under the agenda item on the follow-up to the 2nd TBT Triennial Review. Nevertheless, participation in the workshop by Members of other WTO Committees, such as the Committee on Trade and Environment, would enhance synergies between ongoing work on labelling in different WTO fora, and thus maximize the chance of achieving progress on substance this side of the 5th Ministerial meeting.

XII. CONCLUSION

25. Without prejudice to the ongoing work under the Doha Ministerial Declaration, this paper has highlighted a number of labelling issues that the EC believes could usefully be addressed by the TBT Committee. The EC believes that there is a need to establish a more systematic work programme on labelling with a view to the conclusion of the 3rd Triennial Review. Whatever the outcome, any discussion must not undermine existing TBT rules, nor create scope for protectionism, and take into full account the needs of developing countries.

ANNEX A

Scope of the TBT Agreement with regard to labelling
Paragraphs 3 to 6 of submission from the European Communities to the TBT Committee
G/TBT/W/150, 2 November 2000

3. Annex 1 of the TBT Agreement defines a "**technical regulation**" as:

"Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which *compliance is mandatory*. It may also include or deal exclusively with terminology, symbols, packaging, marking or *labelling requirements* as they apply to a product, process or production method (italics added)";

4. Annex 1 of the TBT Agreement defines a "**standard**" as:

"Document approved by a recognized body that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which *compliance is not mandatory*. It may also include or deal exclusively with terminology, symbols, packaging, marking or *labelling requirements* as they apply to a product, process or production method" (italics added)".

5. Labelling requirements falling within the definition of a **technical regulation** are subject to the relevant TBT provisions. These include: Non-discrimination (Article 2.1); Necessity and proportionality (Article 2.2); Use of international standards (Article 2.4); Notification requirements (Article 2.9); Provision of information (Article 10); Technical assistance (Article 11) and; Special and differential treatment (Article 12).

6. Labelling requirements falling within the definition of a **standard** are subject to the provisions of the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3). A number of these provisions reflect those for technical regulations, including those on non-discrimination, necessity, and the use of international standards. In addition, the TBT provisions on technical assistance and special and differential treatment also apply.
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