

14 March 2019

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Committee on Technical Barriers to Trade

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**EUROPEAN UNION – APPLICATION OF REGULATION (EU) NO. 1169/2011 AND  
REGULATION (EC) NO. 1924/2006 AS REGARDS THE LABELLING OF  
FOOD PRODUCTS, IN NOT PROHIBITING OR EXAMINING THE  
USE OF "PALM OIL FREE" LABELS**

STATEMENT BY COLOMBIA TO THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE  
6 AND 7 MARCH 2019

The following communication, dated 14 March 2019, is being circulated at the request of the delegation of Colombia.

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1. Colombia reiterates its concern, already raised in documents G/TBT/W/467 and G/TBT/W/577, regarding the measures and campaigns, both at European level and within EU member States, against the use or consumption of palm oil in different products, in which palm oil is identified as harmful to health and destructive to the environment.
  2. One of these measures involves "negative labelling" of certain products, where the label highlights nutritional and health properties that the items in question do not possess (unvalidated by the competent authority), such as, for example, the indications "palm oil free" or "no palm oil" promoted in the EU.
  3. Colombia believes that these practices (i) stigmatize the use of palm oil; (ii) lack scientific justification; (iii) discriminate against palm oil as opposed to like products; and (iv) disregard the processes developed by the palm oil agro-industry under international environmental sustainability standards. Consequently, they constitute disguised technical barriers that are inconsistent with the national treatment and MFN obligations in Article 2.1 of the TBT Agreement and in Articles I:1 and III:4 of the GATT 1994.
  4. Regulation (EU) No. 1169/2011, which relates to food labelling, makes the provision of food information mandatory, including in relation to fats. We note that the expression and presentation of "fats" covers "saturates", "mono-unsaturates" and "polyunsaturates". The mandatory food information does not specify whether the fat originates from palm oil or another source. Hence the negative label "palm oil free" does not constitute mandatory food information and is contrary to the provisions of the regulation.
  5. Similarly, it seems to us that the same regulation establishes the illegality of misleading claims on the packaging of products for human consumption. Chapter V stipulates that such labelling: (i) shall not mislead the consumer; (ii) shall be based on relevant scientific data; (iii) shall be objective and non-discriminatory; (iv) shall not be applied in such a way as to create obstacles to the free movement of goods; and (v) shall not lead to unfair competition.
  6. Moreover, Directive 2005/29/EC prohibits unfair business-to-consumer commercial practices and covers misleading commercial practices, which are a feature of this particular case. The Directive provides that a commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or information which, even if correct, is likely to deceive the average consumer and cause him to take a transactional decision that he would not have taken otherwise. The above types of misleading information relate, *inter alia*, to the main characteristics of the product (its benefits, risks, composition, geographical origin, the results to be expected from its use, etc.).

7. Lastly, account must be taken of the international standard Codex Stan 1-1985<sup>1</sup> (General Standard for the Labelling of Prepackaged Foods), which establishes that any information may be shown on the label, provided that it is not in conflict with the mandatory requirements, including those relating to claims and deception established in Section 3 (General Principles) of that standard. This international standard also indicates that "[p]repackaged food shall not be described or presented on any label or in any labelling in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect".

8. In view of the above, Colombia would like to know what kind of surveillance, control and monitoring systems the European authorities use to check the additional nutrition claims on the label indicating that the product is "palm oil free". How can the European authorities guarantee the accuracy of the information provided on the labels of products claiming to be palm oil free prior to their placement on the market?

9. In conclusion, Colombia considers that the European authorities have been remiss in their surveillance and control in connection with the verification and acceptance of additional claims that are being used to attribute to products special properties that have not been verified and scientifically substantiated, in particular the negative labelling "palm oil free", which ultimately constitutes a disguised trade restriction designed to discriminate against palm oil as opposed to other similar oils and has been accepted as deceptive advertising in violation of the national treatment and MFN obligations contained in Article 2.1 of the TBT Agreement and Articles I:1 and III:4 of the GATT 1994.

10. Colombia appreciates this opportunity to make these observations, and looks forward to the EU's replies to its questions.

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<sup>1</sup> See in particular section 3 and section 7.1 of Codex Stan 1-1985.