



12 March 2013

(13-1342)

Page: 1/4

Committee on Technical Barriers to Trade

Original: Spanish

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON THE APPROXIMATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE
PROVISIONS OF THE MEMBER STATES CONCERNING THE MANUFACTURE,
PRESENTATION AND SALE OF TOBACCO AND RELATED PRODUCTS
(G/TBT/N/EU/88)**

**STATEMENT BY THE DOMINICAN REPUBLIC TO THE
COMMITTEE ON TECHNICAL BARRIERS TO TRADE
6 AND 7 MARCH 2013**

The following communication, dated 11 March 2013, is being circulated at the request of the delegation of the Dominican Republic.

1 INTRODUCTION

1.1. On 18 January 2013, the European Union (EU) notified the Committee on Technical Barriers to Trade (TBT) that the European Commission had published its final proposal for a new *Tobacco Products Directive*.¹ Although the Dominican Republic shares the EU's interest for protecting human health, as demonstrated by its high import duties on such products and its restrictions on the public areas in which they can be used, this draft proposal causes the Dominican Republic great concern. If adopted, the measure may be seen as contrary to the Community's undertakings as a signatory to the TBT Agreement, the TRIPS Agreement and the GATT 1994.

2 DESCRIPTION AND IMPACT OF THE PROPOSED TOBACCO PRODUCTS DIRECTIVE

2.1. The proposed Directive imposes a series of requirements concerning tobacco products. The Dominican Republic does not object to all aspects of the draft proposal, although we are deeply concerned by a number of the requirements that it envisages, which will prejudice the competitive opportunities of imported tobacco products, unjustifiably encumber the use of trademarks and have wide-ranging and damaging effects on international trade. These requirements are as follows:

- a. Standardized packaging: the Directive requires cigarette packets to be cuboid in shape, to contain a minimum of 20 cigarettes and to be made from carton or soft material, with a flip-top lid.² Furthermore, roll-your-own tobacco packets must have the form of a pouch and contain tobacco weighing at least 40 g.³
- b. Ban on "deceptive packaging elements": the Directive prohibits the use of "deceptive packaging elements", which supposedly include "misleading" colours.⁴ The European Commission's impact assessment that accompanies the proposed Directive

¹ G/TBT/N/EU/88.

² Article 13 of the Tobacco Products Directive.

³ Article 13 of the Tobacco Products Directive.

⁴ Article 12 of the Tobacco Products Directive.

envisages the use of certain colours on packaging, such as white and gold, which hardly constitutes a strict interpretation of the ban.⁵

- c. Ban on descriptive elements: the proposal bans statements suggesting that a particular tobacco product is less harmful than others from appearing on packaging, even if such statements are true.⁶ The Directive also prohibits the use of descriptors referring to products as "natural" or "organic", even if these are true.⁷ Similarly, the Directive bans descriptors of characterizing flavours and prohibits tobacco producers from using descriptors that convey information about flavour or taste⁸, even if such information is correct and regardless of the fact that it is legal for many tobacco products to contain such flavours and have a particular taste.⁹
- d. Graphic health warnings: cigarettes and roll-your-own tobacco must carry health warnings that cover 75% of both the front and back surface of the packet and appear on the top edge of the packet. The warnings must measure not less than 55 mm in width and 64 mm in height.¹⁰ Unlike the previous legislation, it appears that the Directive prohibits such warnings from being displayed on non-removable adhesive labels, instead requiring that these be printed directly onto the packet. It should be noted that this requirement could be particularly problematic for cigars, for which health warnings are usually displayed by means of stickers.
- e. Ban on "misleading" cigarette sizes: the Directive prohibits cigarettes with a diameter of less than 7.5 mm (so-called "slim" cigarettes) as these are deemed to be misleading in that consumers may underestimate the health consequences of such cigarettes.¹¹
- f. Plain packaging: the Directive does not require the use of plain packaging. However, it allows EU Member States to introduce additional provisions concerning tobacco products, which may involve the adoption of plain packaging.¹² Indeed, the explanatory memorandum accompanying the Directive implicitly encourages the use of plain packaging¹³, and it is our understanding that some EU Members have announced that they will adopt such a measure.
- g. Ban on flavours: the proposed Directive prohibits cigarettes and roll-your-own tobacco with a characterizing flavour.¹⁴ For the time being, cigars, cigarillos and smokeless tobacco products are exempt from this prohibition. Nevertheless, the European Commission may unilaterally withdraw this exemption in the event of increased sales of these products.¹⁵
- h. Reporting of ingredients, emissions and yields: the Directive requires manufacturers and importers of tobacco products to submit a list of all ingredients, as well as of the emissions and yields of such products.¹⁶

2.2. The aforementioned series of requirements would radically change the way in which tobacco products are packaged, sold and consumed in the EU, which is one of the world's leading markets. It should be noted that more than 10% of cigarettes produced in the Dominican Republic are exported directly to the EU. While the Directive does not require the use of plain packaging, it would ultimately entail the elimination of any distinction between competing tobacco products and encumber the use of valuable trademarks. The new Directive would also prohibit information

⁵ Impact Assessment of the European Commission, pages 30-31.

⁶ Article 12 of the Tobacco Products Directive.

⁷ Article 12 of the Tobacco Products Directive.

⁸ Article 12 of the Tobacco Products Directive.

⁹ Article 12 of the Tobacco Products Directive.

¹⁰ Articles 7-9 of the Tobacco Products Directive. The Tobacco Products Directive also requires text warnings to cover 50% of the lateral sides of the packaging and to respect minimum dimensions (20 mm in width by 43 mm in height). Article 8(3) of the Tobacco Products Directive.

¹¹ Article 12.2 of the Tobacco Products Directive.

¹² Article 24.2 of the Tobacco Products Directive.

¹³ Section 3.2 of the statement of reasons.

¹⁴ Article 6 of the Tobacco Products Directive.

¹⁵ Articles 2(30) and 3(1) of the Tobacco Products Directive.

¹⁶ Article 5 of the Tobacco Products Directive.

concerning tobacco products from appearing on packaging, even if such information were objectively correct. We seriously question whether such a move would promote health objectives and note with regret that the EU has not explored less restrictive alternatives.

2.3. In addition, Article 16 of the Directive covers various aspects that could affect the marketing of tobacco, and we would therefore welcome more information about how the Article would be applied.

2.4. We recall that we have already had several occasions to emphasize the importance of the tobacco sector for our country's economy. In the Dominican Republic, 55,000 people are employed directly in tobacco production and another 63,000 work in the tobacco industry, which means a total of 118,000 direct jobs and more than 500,000 indirect jobs across the country. In 2012, tobacco exports amounted to US\$520 million and currently represent nearly 10% of total exports from the Dominican Republic. Moreover, according to TradeMap (UNCTAD-WTO) data the Dominican Republic was the leading exporter of cigars (in terms of volume) in 2011, accounting for 49% of the global total. Cumulative investment in this sector totals US\$2.8 billion, and has been used to develop an export-oriented industry based on high-quality products.

2.5. We believe that measures such as those proposed by the EU are likely to have a serious impact on trade for developing countries such as the Dominican Republic. There can be no justification for such an impact, because these measures are not based on credible and reliable evidence and could be substituted for less restrictive alternatives.

3 INCONSISTENCY WITH THE TBT AGREEMENT

3.1. The Dominican Republic is concerned that the Directive may run counter to Article 2.1 and 2.2 of the TBT Agreement.

3.2. Article 2.1 of the TBT Agreement requires Members to ensure "that in respect of technical regulations, products imported from the territory of any Members shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country". The Dominican Republic is concerned that, under the proposed Directive, tobacco products imported from the Dominican Republic and other developing countries would be treated less favourably than other like products originating in EU or other countries. In this regard, we are particularly disturbed by the fact that the discrimination which might ensue from the proposed ban on the use of descriptors of characterizing flavours, as well as on "slim" and flavoured cigarettes.

3.3. The Dominican Republic also believes that the Directive is contrary to Article 2.2 of the TBT Agreement, which stipulates that technical regulations "shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create". As it presently stands, the Directive will prejudice the competitive opportunities of imported tobacco products, in the majority of cases without making any positive contribution towards the health objectives that are legitimately targeted by the EU. The Directive disregards less restrictive alternative measures that would contribute in the same way to such health objectives.

3.4. The Dominican Republic therefore has strong reservations about the evidentiary basis of a number of the Directive's requirements. For example, we are not aware of any credible scientific proof to support the notion that young people start using tobacco because of the shape of its packaging, and we would point out that health warnings can be suitably displayed on packets that are not cuboid in shape. We also fail to see how colours such as white or gold might be "misleading", as suggested in the EU's impact assessment¹⁷, or how cigarettes of a diameter of less than 7.5 mm might mislead consumers.¹⁸

3.5. The proposed ban on descriptive elements¹⁹ is, moreover, more trade-restrictive than necessary. The measure prohibits the use of misleading descriptors. However, as we have already seen, the proposal goes even further and prohibits the use of other descriptors, even including

¹⁷ Impact Assessment of the European Commission, pages 30-31.

¹⁸ Article 12.2 of the Tobacco Products Directive.

¹⁹ Article 12 of the Tobacco Products Directive.

those which are accurate. We fail to see how eliminating precise and non-misleading information can benefit public health, particularly when the descriptor could convey information that would encourage consumers to change to less harmful products.

3.6. Insofar as certain EU Member States intend to go beyond the Directive's requirements and impose plain packaging²⁰, the Dominican Republic reiterates the deep concern that it previously expressed before this Committee in relation to the plain packaging measures adopted by Australia.²¹ We also note that Australia's measures are currently being examined by the Dispute Settlement Body.²²

3.7. There are other elements of the Directive that the Dominican Republic does not consider relevant to public health. For example, it is not necessary to require graphic health warnings to be printed directly onto the packaging, when the use of non-removable adhesive labels has an equivalent effect and costs less for the producers and importers of tobacco products. Likewise, as there are no international standards for measuring cigar emissions and yields, the requirement that manufacturers and importers of tobacco products report such information has no intrinsic value to public health. The information reported could not be compared among different brands and would have little meaning for consumers. The purpose of such information is not clear either, since the Directive does not establish any maximum yield level or any uniform measuring method for cigars. The Dominican Republic is also concerned by the proposed ban on characterizing tastes in cigarettes and roll-your-own tobacco. We seriously question the scientific evidence provided in support such a ban, which we consider to be more trade-restrictive than necessary.

3.8. The restrictions imposed by the Directive are particularly problematic given that there are alternative measures that have already proved effective in promoting health objectives and are less restrictive to international trade.

3.9. Finally, we consider that the draft proposal's inconsistency with the TBT Agreement cannot be justified by referring to other international agreements or standards. In any case, the measures within the Directive which give us cause for concern are not required by the WHO Framework Convention on Tobacco Control.

3.10. The Dominican Republic urges the EU to reconsider its position and to comply with its obligations under the WTO Agreements.

²⁰ Article 24.2 of the Tobacco Products Directive.

²¹ IP/C/M/66; IP/C/W/565; G/TBT/W/339; G/TBT/W/346.

²² WT/DS434; WT/DS435; WT/DS441.