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MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Answers to Frequently Asked Questions on the "Understanding on the Interpretation of the Agreement on Technical Barriers to Trade with respect to the Labeling of Textiles, Clothing, Footwear, and Travel Goods"

Communication from the European Communities, Mauritius, Sri Lanka, and the United States

The following communication, dated 20 May 2009, is being circulated at the request of the co-sponsors of the proposed "Understanding on the Interpretation of the Agreement on Technical Barriers to Trade with respect to the Labeling of Textiles, Clothing, Footwear, and Travel Goods"

Core objectives: This proposal is designed to reduce and as appropriate eliminate non-tariff barriers (NTBs) affecting trade in textiles, clothing, footwear and travel goods by encouraging the harmonization of information requirements on labels for such goods and by calling for greater transparency with respect to the development of labeling requirements, including by ensuring that Members and stakeholders are afforded meaningful opportunities to participate in Members' rule-making processes.

1. Does paragraph 2 apply to permanent labels or all labels, whether permanent or non-permanent?

Paragraph 2 applies to all labels, whether permanent or non-permanent.

2. In paragraph 2.2.1 through 2.2.3, does "country of origin" refer to or include "rules of origin"? If no, how does the reference to "country of origin" relate to "rules of origin"?

The reference to "country of origin" is not a reference to "rules of origin". Generally, rules of origin are rules to determine the country of origin of a good for purposes of determining whether a good qualifies for preferential treatment (e.g., preferential tariff treatment). Our proposal does not address country of origin for purposes of determining whether a good qualifies for preferential treatment, but instead specifies a type of information – country of origin – that may be required on a label. Our proposal does not address how country of origin – for purposes of labeling or otherwise – is to be determined.

3. Why does paragraph 2 not include labeling information related to safety or size?

Paragraph 2 provides that, if a Member requires any of the information specified in paragraph 2 on a label, that requirement will be rebuttably presumed to be not more trade-restrictive than necessary under Article 2.2 of the TBT Agreement. It does not preclude a Member from requiring other information (such as information regarding size or safety) on labels. In fact, paragraph 2 expressly

references the fact that Members may require other information on labels when that requirement is not inconsistent with Article 2.2 of the TBT Agreement.

4. Doesn't paragraph 2 elevate the requirements listed therein above the legitimate objectives listed in Article 2.2 of the TBT Agreement?

No. Paragraph 2 does not address legitimate objectives. Legitimate objectives are addressed in Article 2.2 of the TBT Agreement; this provision will continue to apply in addition to paragraph 2 of the proposal if the proposal is adopted. Accordingly, even with respect to a requirement to include information specified in paragraph 2 on a label, a Member must have a legitimate objective and the requirement must not be more trade-restrictive than necessary to fulfil that objective. Paragraph 2 only creates a presumption that requiring information specified in paragraph 2 on a label is not more trade-restrictive than necessary. That presumption is rebuttable, however, for example, by demonstrating that the requirement is not necessary to fulfil the Member's legitimate objective.

5. What international standards does the negotiating text refer to in footnote 1?

Footnote 1 does not refer to specific international standards.

6. Can you explain the concept of a "rebuttable presumption" in paragraphs 2 and 4?

If a Member adopts a requirement that information set out in paragraph 2 be included on a label, such a requirement would be rebuttably presumed to be not more trade-restrictive than necessary under Article 2.2 of the TBT Agreement. This means that other Members would retain the right to rebut, or call into question, whether that requirement is in fact not more trade- restrictive than necessary under Article 2.2 of the TBT Agreement. While we do not anticipate it being the case, there could be situations where a Member may require information described in paragraph 2 on a label, but that requirement may nonetheless be more trade-restrictive than necessary to fulfil that Member's legitimate objective. In such situations, we feel that it is necessary to allow a Member to challenge the consistency of the requirement under Article 2.2 of the TBT Agreement.

Conversely, paragraph 4 contains a rebuttable presumption that the requirements listed therein *would* be more trade-restrictive than necessary to fulfil a legitimate objective within the meaning of Article 2.2 of the TBT Agreement and therefore inconsistent with Article 2.2 of the TBT Agreement. Creating a rebuttable presumption that such requirements are more trade-restrictive than necessary, rather than prohibiting such requirements outright, however would still allow a Member employing such a requirement to demonstrate that it is in fact necessary to fulfil a legitimate objective. The burden of proof would be on a Member employing a requirement listed in paragraph 4 to demonstrate that it is not more trade-restrictive than necessary.

7. Can paragraph 3 be re-drafted to identify a specific list of non-permanent labeling requirements, instead of keeping it open? Can you define "required information" in paragraph 3?

Paragraph 3 is intended to encourage Members to permit any required information to be included on a non-permanent label instead of a permanent label. "Any required information" should be read as any information that a Member requires on a label, such as the information described in paragraph 2. Paragraph 3 does not include specific non-permanent labeling requirements or disciplines because paragraph 4 already sets out such disciplines for all labels, whether permanent or non-permanent. In addition, paragraph 2 applies to all labels, whether permanent or non-permanent, and specifies the type of information, if required on a label, that would be rebuttably presumed to be no more trade-restrictive than necessary.

8. Can you clearly explain how paragraphs 5 and 6 differ from the TBT?

The text of paragraphs 5 and 6 elaborates obligations regarding the notification provisions of the TBT Agreement with respect to the labeling of textile, clothing, footwear and travel goods:

- The TBT Agreement requires a Member to provide other WTO Members notice that it is proposing a technical regulation or conformity assessment procedure if: (i) the technical content of the proposed technical regulation or conformity assessment procedure is not in accordance with the technical content of a relevant international standard, guide or recommendation or if a relevant international standard, guide or recommendation does not exist and (ii) the technical regulation or conformity assessment procedure may have a significant effect on trade of other Members. Under the proposal, a Member would be required to notify other WTO Members of *all* proposed technical regulations or conformity assessment procedures with respect to the labeling of products covered by the proposal. Further, the proposal would require a Member to identify up front in its WTO notice the parts of the proposed measure that in substance deviate from relevant international standards, guides or recommendations (rather than provide such information subsequently upon request) and its reasons for requiring information on permanent labels other than the information described in paragraph 2.

- The TBT Agreement requires a Member to publish notices and, upon request, provide other Members copies of proposed technical regulations and conformity assessment procedures. Under the proposal, a Member would be required to publish the actual proposed technical regulation or conformity assessment procedure "at the earliest appropriate stage," rather than simply a notice that the Member proposes to introduce a measure with a subsequent commitment to provide Members a copy of the proposed measure upon request. This will ensure that the proposed technical regulation or conformity assessment procedure is made available to interested parties as well as Members in a timely manner.

- The TBT Agreement requires a Member to allow reasonable time for other Members to make comments on the proposed technical regulation or conformity assessment procedure and to take any such comments into account. The proposal recognizes that interested parties as well as Members shall be given the opportunity to submit comments on proposed technical regulations and conformity assessment procedures. Under the proposal, a Member would be required to take into account comments received from interested parties as well as Members in finalizing its technical regulation or conformity assessment procedure. In addition, the proposal specifies that a Member shall allow at least 60 days for other Members to submit comments and shall provide favourable consideration to reasonable requests to extend the comment period. The proposal would also require a Member to publish or otherwise make available to the public, either in print or electronically, its responses to significant comments it receives from other Members or the public no later than the date on which it publishes the final technical regulation or conformity assessment procedure.

9. Can you explain the meaning of the term "interested persons" in the context of paragraphs 5 and 6?

"Interested persons" refers to anyone, anywhere in the world, including legal entities and private individuals that have an interest of any nature in the technical regulation or conformity assessment procedure.

10. Can you more clearly explain paragraph 5.4 and the publication of responses to comments?

Paragraph 5.4 concerns ensuring full transparency and participation in the process of developing technical regulations and conformity assessment procedures with respect to the labeling of textiles, apparel, footwear, and travel goods. This paragraph would require a Member to discuss comments upon request by another Member or interested person. This paragraph would also require a Member to take into account both the comments and the discussions in finalizing the technical regulation or conformity assessment procedure. Such "discussions" may be broadly read as including multiple means of communication (e.g., face-to-face meetings, digital video conferences, e-mail, and teleconferences). A Member would have to publish or make publicly available its responses to significant comments received in the rule-making process no later than the date on which it publishes the final technical regulation or conformity assessment procedure. In other words, a Member can publish responses to such comments prior to, or at the same time as, it publishes the final technical regulation or conformity assessment procedure.

11. Why are you creating new TBT-related disciplines for a specific sector? Would it not be more effective and balanced to amend the TBT Agreement so that any changes applied across all sectors?

Early on in the NAMA NTB negotiations, Members submitted indicative lists of non-tariff barriers, distilled from information provided by global industry. TBT issues were the second most common market access problem cited behind trade facilitation. For this reason, several Members have submitted industry-driven TBT-related NTB proposals that aim to facilitate trade and improve market access globally in specific sectors set out in the indicative lists. The types of measures that may constitute technical barriers to trade or be more trade-restrictive than necessary will differ from sector to sector, as will the means by which a reduction of non-tariff barriers can be achieved.
This proposal identifies what may be considered "more trade restrictive than necessary" with respect to requirements concerning labeling of textiles, clothing, footwear and travel goods in response to a particular NTB – labeling of goods – observed in that sector. In the context of the textiles, clothing, footwear and travel goods sector, we believe paragraph 2 addresses the types of measures in that sector that we have found are generally not more trade-restrictive than necessary, and in the case of paragraph 4, are generally more trade-restrictive than necessary.

12. Can you explain why this negotiating text does not constitute standards-setting by the WTO? Could you explain the distinction between "parameters for government action" and "standards"?

As Members have consistently indicated, the WTO is not a standards-setting body. This proposal does not create standards, nor should it. The proposal does not mandate that Members, for example, include certain information on labels or use specific colors, fonts, font sizes, locations of information, or languages for the labeling of textiles, apparel, footwear, and travel goods. The proposal also does not mandate that Members comply with particular standards. Rather, paragraphs 2 and 4 of the proposal clarify the types of measures that are rebuttably presumed to be not more trade-restrictive than necessary, in the case of paragraph 2, and those that are rebuttably presumed to be more trade-restrictive than necessary, in the case of paragraph 4, in the textiles, clothing, footwear, and travel goods sector.