

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Answers by the Co-sponsors to Questions from Singapore on the “Understanding on the Interpretation of the Agreement on Technical Barriers to Trade with respect to the Labelling of Textiles, Clothing, Footwear, and Travel Goods”

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

The following communication, dated 26 May 2009, is being circulated at the request of the co-sponsors.

UNDERSTANDING ON THE INTERPRETATION OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE WITH RESPECT TO THE LABELLING OF TEXTILES, CLOTHING, FOOTWEAR, AND TRAVEL GOODS¹

1. **SINGAPORE:** Paragraph 2 - Article 2.5 of the TBT Agreement states “...*Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.*” The term “*rebuttably presumed*” only features in the TBT Agreement once and have certain conditions attached to it. Will the co-sponsors please state clearly the legitimate objective of each of the information listed in sub-paragraphs of paragraph 2?

ANSWER: Our proposal does not attempt to identify the legitimate objective of a requirement to include certain information on a label – for example the information listed in paragraph 2 – and wonder whether such an objective is something that can be identified in the abstract. Instead, it would seem that each Member must determine for itself what its legitimate objective is and, if it adopts a measure to fulfil that legitimate objective, the TBT Agreement requires that that measure be no more trade-restrictive than necessary to meet that legitimate objective. Paragraph 2 of our proposal simply provides that requiring the specified information on a label shall be presumed not to be more trade restrictive than necessary. That presumption can be rebutted, however, by showing for example that the requirement is more trade restrictive than necessary to meet the legitimate objective the Member imposing the measure seeks to fulfil.

2. **SINGAPORE:** Arguably, paragraph 2 appears to require the WTO to undertake standardizing work, an area which the WTO is not responsible for and unfamiliar with. In the event that there are new international standards with regards to labelling of textiles, clothing,

¹ Submitted by the European Communities, Sri Lanka, Mauritius and the United States (documents TN/MA/W/93 and TN/MA/W/93/Add.2).

footwear or travel goods in the future, how would this new Understanding take these standards into account?

ANSWER: Paragraph 2 does not require the WTO to undertake standardizing work nor does paragraph 2 create or contain standards. The co-sponsors circulated a document, TN/MA/W/113, on 22 May 2009, that addresses this question.

3. **SINGAPORE:** Paragraphs 2 and 4 – How would the co-sponsors consider the interplay of the last sentence of paragraph 2 i.e. “A Member may only require additional information on a label when it is not inconsistent with Article 2.2 of the TBT Agreement” and paragraph 4 which stipulates how “a technical regulation of a Member ... shall be rebuttably presumed to be more trade-restrictive than necessary to fulfil a legitimate objective within the meaning of Article 2.2 of the TBT Agreement” and can the co-sponsors please use examples to elaborate on this?

ANSWER: The co-sponsors circulated a document, TN/MA/W/113, on 22 May 2009, that addresses this question.

4. **SINGAPORE:** Paragraph 5.1 – Could the co-sponsors please elaborate on how they see “in such a manner” in the context described in this sub-paragraph?

U.S. ANSWER: This phrase is borrowed from Articles 2.9.1 and 5.6.1 of the TBT Agreement. By including “in such a manner”, the co-sponsors are not precluding any publishing method that would “enable interested persons in other Members to become acquainted with” a proposed technical regulation “and to submit comments before the Member finalizes the technical regulation or conformity assessment procedure.”

5. **SINGAPORE:** Paragraphs 5.4 and 6.3 – paragraphs 2.9.4, 5.6.4, 2.10.3, and 5.7.3 of the TBT Agreement require the Member to allow “other Members to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.” Paragraphs 5.4 and 6.3 of this Understanding would now require the Member to “discuss these comments upon request with the Member or **interested person providing them**” [emphasis in bold added]. What interested person(s) do the co-sponsors have in mind?

ANSWER: The co-sponsors circulated a document, TN/MA/W/113, on 22 May 2009, that addresses this question.

6. **SINGAPORE:** Would this result in numerous individuals insisting that the Member enter into separate discussions with them?

ANSWER: A Member would have discretion on how it wants to respond to comments from interested persons, either on an individual or collective basis.

7. **SINGAPORE:** Can this interested person be from a non-WTO Member?

ANSWER: The co-sponsors circulated a document, TN/MA/W/113, on 22 May 2009, that addresses this question.
