WORLD TRADE ORGANIZATION

TN/MA/W/123
27 November 2009

(09-6017)

Negotiating Group on Market Access Original: English

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Compendium prepared by the European Communities, Mauritius, Sri Lanka and the United States which contains the most recent NTBs text on Labeling of Textiles, Clothing, Footwear, and Travel Goods, as well as the history of questions and answers related to this proposal

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

The following communication, dated 27 November 2009, is being circulated at the request of the delegations of the European Communities, Mauritius, Sri Lanka and the United States.

Understanding on the Interpretation of the Agreement on Technical Barriers to Trade with respect to the Labelling of Textiles, Clothing, Footwear, and Travel Goods

Members,

Recalling **that pursuant to paragraph 16 of the Doha Ministerial Declaration, Members agreed to negotiations aimed at reducing or, as appropriate, eliminating tariffs and non-tariff barriers on non-agricultural products;**

Recognizing **the important contribution of the textile, clothing, footwear, and travel goods sectors to global economic growth and development;**

Desiring **to promote cooperative and effective approaches to address unnecessary obstacles to international trade and enhance trade in textiles, clothing, footwear, and travel goods;**

Taking into account **that labelling has an important function of informing consumers of certain characteristics of textiles, clothing, footwear, and travel goods;**

Reaffirming **their existing obligation under the Agreement on Technical Barriers to Trade (TBT Agreement) to ensure that technical regulations and conformity assessment procedures are not prepared, adopted, or applied with a view to or with the effect of creating unnecessary obstacles to international trade;**

Desiring **to interpret the provisions of the TBT Agreement as they apply to labelling requirements for textiles, clothing, footwear, and travel goods;**

Hereby *agree* as follows:

Scope

1. This Understanding applies to the labelling of products specified in the Annex to this Understanding.

Labelling

2. If a Member requires information on a label, a Member's requirement to include any of the following information shall be rebuttably presumed to be not more trade-restrictive than necessary under Articles 2.2 of the TBT Agreement:

FAQ 1: Does paragraph 2 apply to permanent labels or all labels, whether permanent or non-permanent? (TN/MA/W/114)

- Co-sponsors' answer: Paragraph 2 applies to all labels, whether permanent or non-permanent. (TN/MA/W/114)

FAQ 2: Why does paragraph 2 not include labeling information related to safety or size? (TN/MA/W/114)

- Co-sponsors' answer: 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. (TN/MA/W/114)

FAQ 3: Doesn't paragraph 2 elevate the requirements listed therein above the legitimate objectives listed in Article 2.2 of the TBT Agreement? (TN/MA/W/114)

- Co-sponsors' answer: 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. (TN/MA/W/114)

FAQ 4: Can you explain the concept of a "rebuttable presumption" in paragraphs 2 and 4? (TN/MA/W/114)

- Co-sponsors' answer: 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. (TN/MA/W/114)

Question from 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? (JOB(09)/22)

- Co-sponsors' 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 fulfill 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 fulfill. (TN/MA/W/116)

FAQ 5: 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"? (TN/MA/W/114)

- Co-sponsors answer: 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 colours, 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. (TN/MA/W/114)

Question from 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, footwear or travel goods in the future, how would this new Understanding take these standards into account? (JOB(09)/22)

- Co-sponsors' answer: Paragraph 2 does not require the WTO to undertake standardizing work nor does paragraph 2 create or contain standards. FAQ 5 above addresses this question. (TN/MA/W/116)

Question from China: Some Members expressed their concerns that this proposal seemed to get involved in the development of standards related to the labelling of textiles, clothing, footwear, and travel goods. What is the proponent's reflection on this point? (JOB(09)/60)

- Co-sponsors' answer: FAQ 5 above addresses this question and explains that the proposal does not create standards. Further rather than creating international standards – which the United States agrees is not a task for the WTO – the proposal creates a presumption about certain types of requirements that are not more trade restrictive than necessary. Importantly, the proposal does not affect the existing TBT Agreement obligation to base requirements on relevant international standards (except where ineffective or inappropriate). In fact, to reinforce that obligation, footnote 1 of the proposal limits application of the presumption create in paragraph 2 with respect to requirements to include care instructions on labels to those requirements that are based on relevant international standards. (JOB(09)/162)

Question from 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? (JOB(09)/22)

- Co-sponsors' answer: The co-sponsors circulated a document, TN/MA/W/113, on 22 May 2009 - FAQ, that addresses this question (TN/MA/W/116)

Question from Switzerland: Labelling (article 2): Do the co-sponsors believe that textile labelling should be applied on a national treatment basis, as provided for in Article 2.1 of the TBT Agreement? (JOB(09)/68)

- Co-sponsors' answer: Yes. (JOB(09)/162)

Question from Switzerland: Article 2.1. of the proposal refers to the indication of the country of origin. Should this definition not be agreed among members, it could vary depending on the importing country. What would be a suitable solution in the co-sponsors' view? (JOB(09)/68)

- Co-sponsors' answer: The intent of paragraph 2 of the proposal is to encourage Members (through use of a presumption) to limit the type of information they require on labels to the types listed in subparagraphs 2.1-2.3. Country of origin is one type of information listed in those subparagraphs. We believe that paragraph 2 fulfils its intent to encourage Members to limit the types of information Members may require on labels without defining "country of origin" or any of the other types of information listed in paragraph 2. (JOB(09)/162)

2.1 With respect to textiles and clothing, fiber content, country of origin, and care instructions[1]

Question from Korea: Para. 2.1 – Among textiles, yarn and fabric are subject to business to business transactions that are usually based on detailed specifications papers and no other information than the country of origin is necessary on the label. In order to reflect this aspect, could the proponents consider adding another category within this paragraph for yarn and fabric? (JOB(09)/26)

- Co-sponsors' answer: We believe this question pertains to raw materials transferred from a supplier to another business for processing into a finished product. Our understanding is that in such instances, labeling requirements are often non-applicable. The co-sponsors would happy to discuss this question further with the Republic of Korea in order to explore the issue in greater detail. (TN/MA/W/113)

Question from Switzerland: With respect to intermediate products (such as threads or fabrics which are not usually bought by the end consumers), the indication of the country of origin may be burdensome and costly and can create a non-tariff barrier. Could the co-sponsors specify the reasons for labelling requirements in case of intermediate products? (JOB(09)/68)

- Co-sponsors' answer: We would be interested in exploring this question with Switzerland and other Members further. What kinds of data or information has Switzerland's industry provided to support this claim? This negotiating text does not require Members to require country-of-origin on labels; it only encourages Members to limit their information requirements for labels to the types of information cited in paragraph 2. Therefore, the negotiating text would not require a Member to require country-of-origin on labels for intermediate products. (JOB(09)/162)

FAQ 6: What international standards does the negotiating text refer to in footnote 1? (TN/MA/W/114)

- Co-sponsors' answer: Footnote 1 does not refer to specific international standards. (TN/MA/W/114)

[1] This presumption covers requirements using relevant international standards, or the relevant parts of such standards, as a basis for the Member's technical regulations regarding care instructions on labels.

Question from New Zealand: At footnote 1, what are the "relevant international standards" which may be used as a basis for Members' technical regulations regarding care instructions on labels? The response given in TN/MA/W/114, question 5 does not make this clear. (JOB(09)/89)

- Co-sponsors' answer**:** The co-sponsors have chosen not to refer to any specific relevant international standards for care instructions on labels in this proposal. Members remain free use any relevant international standards as the basis for their technical regulations. This provision does not seek to change that. (JOB(09)/162)

Question from Switzerland: In particular for care labelling, would the co-sponsors consider making more extensive use of symbols? (JOB(09)/68)

- Co-sponsors' answer: We would appreciate clarification about whether Switzerland asking that the co-sponsors themselves make more extensive use of symbols in their own domestic regulations or asking the co-sponsors to consider referring to symbols somewhere in our proposed text? As Switzerland is aware, Article 2.4 of the TBT Agreement requires Members to base their technical requirements on relevant international standards (except where ineffective or inappropriate). Therefore, with respect to any requirements to include care instructions on labels of textiles and clothing, Members are under an existing obligation to base those requirements on relevant international standards. Footnote 1 of the co-sponsors proposal reflects that for care instructions relevant international standards exist and indicates that the presumption established in paragraph 2 of the proposal applies only with respect to requirements to include care instructions on labels if those requirements are based on relevant international standards. Footnote 1 does not identify any particular international standard, although our understanding is that a certain relevant standard for care instructions includes pictograms while another relevant standard does not. The co-sponsors decided to not refer to either in the text and maintain this view. (JOB(09)/162)

Question from New Zealand: Would the cosponsors consider, for greater certainty, the inclusion of "consumer safety information" (appropriately defined) in the provisions/coverage of paragraph 2.1? (JOB(09)/89)

- Co-sponsors' answer**:** The co-sponsors believe it is not necessary to refer to "consumer safety information" in paragraph 2. Paragraph 2 only establishes a presumption that requirements to include the types of information specified in paragraph 2 on labels are not more trade restrictive than necessary under Article 2.2 of the TBT Agreement. Requirements to include other types of information on labels may also be no more trade restrictive than necessary under Article 2.2. The fact that we do not list them in paragraph 2 does not change that. We are open to discussing any concerns New Zealand may have in this regard. (JOB(09)/162)

2.2 With respect to footwear, predominant materials of core parts[2] and country of origin; and

FAQ 7: 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"? (TN/MA/W/114)

- Co-sponsors' answer: 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. (TN/MA/W/114)

2.3 With respect to travel goods, fiber content and country of origin.

3. Members shall give positive consideration to permitting any required information to be included on a non-permanent[3] label rather than a permanent label.[4]

FAQ 8: 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? (TN/MA/W/114)

- Co-sponsors' answer: 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. (TN/MA/W/114)

Question from Korea: Para. 3 – How do Members give "positive consideration" to non-permanent labels? Could the proponents provide specific examples in which "positive consideration" works? (JOB(09)/26)

- Co-sponsors' answer: "Positive consideration" is a term used elsewhere in the TBT Agreement, in particular Article 2.7. In the context of paragraph 3 of the proposal, a Member could give "positive consideration" by favourably considering whether the required information could be included on a non-permanent (as opposed to a permanent) label. In undertaking such

[2] There are three "core parts" of footwear: (1) upper, (2) lining and sock, and (3) outer sole.

[3] "Non-permanent label" means any label on a product attached or affixed through stickers, hangtags, or through other similar means that can be removed or on the package of the product.

[4] "Permanent label" means any label on a product that is securely attached or affixed through gluing, printing, sewing, embossing, silk screening, or other similar means.

> consideration, a Member might assess whether its legitimate objective – for example of informing consumers of fiber content or country of origin – could be met if the information were included on a non-permanent label, or whether that objective could only be met if the information were on a permanent label. Requiring information on a non-permanent label as opposed to a permanent label can be a less trade restrictive means to ensure required information is conveyed to consumers. (TN/MA/W/113)

Question from New Zealand: We would welcome an elaboration of the response given on the issue of "positive consideration" (paragraph 3 of the proposal) in TN/MA/W/113, question 2. How could Members demonstrate "positive consideration", short of deciding to permit required information on a non-permanent label? Would a Member be required to determine/prove that its legitimate objective could not be met by means of a non-permanent label or that its stipulation of a permanent label was the least-trade-restrictive option available, in order to meet the "positive consideration" test? Would consideration of semi-permanent labelling as an interim measure be considered "positive consideration", provided Members were given sufficient notice of the implementation of new requirements for permanent labelling? (JOB(09)/89)

- Co-sponsors' answer: Paragraph 3 does not define how Members should provide "positive consideration." In this regard, it is similar to Article 2.7 of the TBT Agreement which also uses this term but does not define it. In our view, giving positive consideration would include considering whether information could be included on a non-permanent label and to approach that consideration with a view toward allowing the information to be included on a non-permanent label if permitting that would fulfil the Member's legitimate objective. (JOB(09)/162)

4. A technical regulation or conformity assessment procedure of a Member that:

4.1 Prohibits the information included on a label from being in more than one language, for example by prohibiting such information from being in a language other than the Member's official language(s);

4.2 Requires a label to be pre-approved, registered or certified;

4.3 Prohibits a label from including information that is not required by the Member, such as brand names;[5] or

Question from New Zealand: For reasons of consumer safety, a Member may require that information regarding the fire risk of garments be included on a separate label, so that this important message is conveyed clearly and not diluted by other information such as branding. Although such labelling may fulfil the legitimate objective requirements of TBT 2.2 and (unnumbered) paragraph 2.4 of this proposal, it would nonetheless appear to breach paragraph 4.3. We propose that the wording of the proposal be clarified to ensure that this legitimate requirement is not captured by paragraph 4.3. (JOB(09)/89)

- Co-sponsors' answer: The co-sponsors would be happy to discuss this concern with New Zealand further and are open to considering any text suggestions that New Zealand may have that would address it. The intent behind paragraph 4.3 is to ensure that suppliers may choose to label their

[5] "Information" for purposes of subparagraph 4.3 means information related to the product or the marketing of the product and does not include information that is false, deceptive or misleading.

products with information that is not mandatory such as brand names. It is not meant to prevent Members from requiring that safety information be clearly displayed on labels. (JOB(09)/162)

4.4 Specifies requirements that a label be of one or more materials;

Shall be rebuttably presumed to be more trade-restrictive than necessary to fulfill a legitimate objective within the meaning of Article 2.2 of the TBT Agreement or be more strict or be applied more strictly than is necessary to give the importing Member adequate confidence that the product conforms with the applicable technical regulation within the meaning of Article 5.1.2 of the TBT Agreement.

5. Notwithstanding Articles 2.9 and 5.6 of the TBT Agreement, if a Member proposes to adopt or amend a technical regulation or conformity assessment procedure with respect to labelling, in whole or in part, it shall:

5.1 Publish the proposed technical regulation or conformity assessment procedure in a publication at the earliest appropriate stage, in such a manner as to enable interested persons in other Members to become acquainted with it and to submit comments before the Member finalizes the technical regulation or conformity assessment procedure;

Question from 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? (JOB(09)/22)

- Co-sponsors' 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." (TN/MA/W/116)

5.2 Notify other Members through the Secretariat of the products to be covered by the proposed technical regulation or conformity assessment procedure, together with a brief indication of the measure's objective and rationale and, to the extent applicable, an identification of the parts of the regulation or procedure which in substance deviate from relevant international standards and, in the case of a permanent label, the reason for requiring information other than that covered by paragraphs 2.1-2.3 of this Understanding. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account

Question from New Zealand: We see the requirement in paragraph 5.2 that Members identify in their notifications "*those parts of a proposed regulation or procedure which in substance deviate from relevant international standards"* as a useful transparency addition to existing TBT disciplines. However, the subsequent requirement in paragraph 5.2 that Members include, as part of their notification "the reasons for requiring information other than that covered by paragraphs 2.1-2.3" seems to undermine the cosponsors' assurances (TN/MA/W/114, question 4) that the labelling requirements of paragraphs 2.1-2.3 will not be elevated above the "legitimate objective" test of TBT 2.2. Why should Members have to justify other labelling requirements in respect of *both* TBT 2.2 *and* paragraphs 2.1-2.3? (JOB(09)/89)

- Co-sponsors' answer: The requirement in paragraph 5.2 to include the reason it is requiring information on a label other than the information set out in

paragraphs 2.1-2.3 concerns is design to provide enhanced transparency and is not a requirement that Members justify the measure under Article 2.2. of the TBT Agreement. A reason a Member might require information other than the information listed in paragraph 2 to be included on a label might be, e.g., that it is necessary to protect public safety. The provision also serves another function – that is, to encourage Members to require information on non-permanent labels (as opposed to permanent labels), and in that regard reinforces paragraph 3 of the proposal which also seeks to encourage use of non-permanent labels. It also reflects the fact that the text allows Members to require other types of information to be included on labels other than those types listed in paragraphs 2.1-2.3, so long as those labelling requirements are consistent with TBT Agreement Article 2.2. Paragraph 5.2 purely concerns transparency and does not constitute a "justification" of the measure itself within the context of the legitimate objectives contained in TBT 2.2. (JOB(09)/162)

5.3 allow no less than 60 days for Members to submit comments in writing. The Member shall give favourable consideration to reasonable requests to extend the comment period; and

5.4 discuss, upon request, any comments it receives with the Member or interested person providing them, and take these written comments and the results of these discussions into account in finalizing the measure, and publish or otherwise make available to the public, either in print or electronically, its responses to significant issues raised in comments it receives no later than the date it publishes the final technical regulation or conformity assessment procedure.

Question from Korea: Para. 5.4 – Does the expression "make available to the public" include an option of providing the information on request rather than putting it on the open notice? (JOB(09)/26)

- Co-sponsors' answer: Yes, however in order to make that meaningful, we would expect that the Member would need to have some mechanism to make the public aware of the opportunity to request copies or access to the Member's response to comments. For example, the Member could publish a notice (in print or electronically) that the public may obtain copies of the Member's responses to comments by contacting the Member at a certain address. "Make available to the public" would also include making documents available in a reading room at a government agency, for example. The point is that the public should have access to such information, whether in a publication, on government websites, in libraries, or in some other accessible way. (TN/MA/W/113)

FAQ 9: Can you more clearly explain paragraph 5.4 and the publication of responses to comments? (TN/MA/W/114)

- Co-sponsors' answer: 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. (TN/MA/W/114)

Question from New Zealand: How would Members determine which are "significant comments" for the purposes of paragraph 5.4? (JOB(09)/89)

- Co-sponsors' answer: The text leaves the determination of whether comments are significant to the discretion of Members. We note that the word "significant" or "insignificant' is also used in various provisions of the TBT Agreement and to our knowledge there has not been significant concern that the meaning of those terms are unclear. In our view, significant comments are those that express substantive, reasoned views relevant to the proposed measure. (JOB(09)/162)

FAQ 10: Can you clearly explain how paragraphs 5 and 6 differ from the TBT? (TN/MA/W/114)

- Co-sponsors' answer: 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. (TN/MA/W/114)

6. Notwithstanding Articles 2.10 and 5.7 of the TBT Agreement, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Member, that Member may omit such of the steps enumerated in paragraph 5 as it finds necessary, provided that the Member upon adoption of a technical regulation or conformity assessment procedure shall:

6.1 Publish the final technical regulation or conformity assessment procedure in a publication at the earliest appropriate time, in such a manner as to enable interested persons in other Members to become acquainted with it;

6.2 Notify other Members through the Secretariat of the products to be covered by the final technical regulation or conformity assessment procedure, together with a brief indication of the measure's objective and rationale, including the nature of the urgent problems, and, to the extent applicable, an identification of the parts of the regulation or procedure which in substance deviate from relevant international standards and, in the case of a permanent label, the reason for requiring information other than that covered by paragraphs 2.1-2.3 of this Understanding.

6.3 Allow interested persons and other Members to submit comments in writing and discuss these comments upon request with the Member or interested person providing them, and take these written comments and the results of these discussions into account in deciding whether to modify the regulation or procedure, and publish or otherwise make available to the public, either in print or electronically, its responses to significant issues raised in comments it receives at the earliest appropriate date after it publishes the final technical regulation or conformity assessment procedure.

Question from Korea: Para. 6 – Do the proponents have any reason for omitting "in the case of a permanent label, the reason for requiring information…" in this paragraph while paragraph 5.2 contains this clause? (JOB(09)/26)

- Co-sponsors' answer: The co-sponsors will examine this drafting issue and thank the Republic of Korea for bringing it to our attention. (TN/MA/W/113)

Question from Singapore: Would this result in numerous individuals insisting that the Member enter into separate discussions with them? (JOB(09)/22)

- Co-sponsors' answer: A Member would have discretion on how it wants to respond to comments from interested persons, either on an individual or collective basis. (TN/MA/W/116)

Question from Singapore: Can this interested person be from a non-WTO Member?

- Co-sponsors' answer: The co-sponsors circulated a document, TN/MA/W/113, on 22 May 2009, that addresses this question. (JOB(09)/22)

FAQ 11: Can you explain the meaning of the term "interested persons" in the context of paragraphs 5 and 6? (TN/MA/W/114)

- Co-sponsors' answer: "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. (TN/MA/W/114)

Question from 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? (JOB(09)/22)

- Co-sponsor answer: FAQ 11 addresses this question. (TN/MA/W/116)

Question from New Zealand: The proposal includes a requirement to allow "interested persons" to comment on proposed technical regulations and conformity assessment procedures (paragraph 6.3). This appears to be broader than the requirement in the TBT Agreement, which refers to "interested parties in WTO Members". What is the reason for including a broader requirement? (JOB(09)/89)

- Co-sponsors answer: In FAQ 11, we explain that "interested person" refers to anyone, anywhere in the world, including legal entities and private individuals that have an interest of any nature in the measure. (JOB(09)/162)

Final Provisions

7. The Committee on Technical Barriers to Trade shall review the operation and implementation of this Understanding, including the list of products contained in the Annex, on an annual basis. The Committee shall also review other developments in technical regulations and conformity assessment procedures involving international trade in textiles, clothing, footwear, and travel goods of importance to this Understanding in accordance with the Committee's procedures.[6]

[6] It is understood that, for this purpose and to facilitate transparency, exchanges of information, and discussions among Members, the WTO Secretariat will prepare an annual report of the notifications received by the WTO Secretariat with respect to the labelling of textiles, clothing, footwear, and travel goods.

Question from New Zealand: Do the cosponsors see the requirements of paragraph 7 as placing additional administrative burdens on the Secretariat/Committee? Annual review seems quite frequent, especially given the Committee's already full work programme. (JOB(09)/89)

- Co-sponsors' answer: We do not see paragraph 7 as placing additional administrative burden on the Secretariat or Committee. The annual review could take a variety of forms and involve as much time and resources as Members decide is appropriate. We see the review as an opportunity not a burden for Members. Moreover, the Committee mandate already includes consideration of textile, clothing, footwear and travel goods labelling issues raised by Members. If the proposed Understanding is adopted, those issues could continue to be raised in the Committee as part of its review of the implementation of this Understanding. (JOB(09)/162)

8. The Annex to this Understanding constitutes an integral part thereof.

ANNEX

TEXTILES, CLOTHING, FOOTWEAR AND TRAVEL GOODS SUBJECT TO THE UNDERSTANDING

1. With respect to textiles, clothing, and footwear, this Understanding shall cover all products contained in Chapters 50 through 65 of Harmonized Commodity Description and Coding System (HS) Nomenclature, except for the products listed below:

HS Number	Product Description
5001 - 5003	Silk Fiber
5101 - 5104	Wool Fiber
5201 - 5203	Cotton Fiber
5301 - 5305	Other Vegetable Fibers
6506.10	Safety headgear (e.g. motorcycle helmets)
6506.91	Rubber or plastic headgear
6506.99	Furskin & other headgear
6507.00	Headbands, linings, covers, hat foundations, hat frames, peaks (visors), and chin straps, for headgear
6406	Footwear Parts

2. With respect to travel goods, this Understanding shall cover all products listed below:

HS Number	Product Description
ex 3926.90	Handbags made of beads, bugles and spangles, of plastics
42.02	Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, insulated food or beverage bags, toilet bags, rucksacks, handbags, shopping bags, wallets, purses, map-cases, cigarette-cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder-boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper.
	- Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels and similar containers:
4202.11	With outer surface of leather, of composition leather, or of patent leather

4202.12	**With outer surface of plastics or of textile materials**
4202.19	**Other**
	- Handbags, whether or not with shoulder strap, including those without handle:
4202.21	**With outer surface of leather, of composition leather or of patent leather**
4202.22	**With outer surface of sheeting of plastic or of textile materials**
4202.29	**Other**
	- Articles of a kind normally carried in the pocket or in the handbag:
4202.31	**With outer surface of leather, of composition leather or of patent leather**
4202.32	**With outer surface of sheeting of plastic or of textile materials**
4202.39	**Other**
	- Other:
4202.91	**With outer surface of leather, of composition leather or of patent leather**
4202.92	**With outer surface of sheeting of plastic or of textile materials**
4202.99	**Other**
ex 4602.11	**Luggage, handbags and flat goods, whether or not lined, of bamboo**
ex 4602.12	**Articles of a kind normally carried in the pocket or in the handbag, of rattan**
ex 4602.12	**Luggage, handbags and flat goods, whether or not lined, of rattan, nesoi**
ex 4602.19	**Luggage, handbags and flat goods, whether or not lined, of willow**
ex 4602.19	**Articles of a kind normally carried in the pocket or in the handbag, of palm leaf**
ex 4602.19	**Luggage, handbags and flat goods, whether or not lined, of palm leaf, nesoi**
ex 4602.19	**Luggage, handbags and flat goods, whether or not lined, made from plaiting materials nesoi**
9605.05	**Travel sets for personal toilet, sewing or shoe or clothes cleaning**

General Questions and Answers:

FAQ: 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? (TN/MA/W/114)

- Co-sponsors answer: 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. (TN/MA/W/114)
