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Negotiating Group on Market Access

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MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Communication from the European Communities and the United States

The following communication, dated 26 October 2007, is being circulated at the request of the delegations of the European Communities and the United States.

The following submission, dated 26 October 2007, is being circulated at the request of the Delegations of the United States and the European Communities. The United States and the European Communities understand and intend that, if WTO Members adopt this draft Understanding, it would be legally binding on Members and would constitute an interpretation of the Agreement on Technical Barriers to Trade set out in Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization. As such it would be part of a covered agreement under the Understanding on Rules and Procedures Governing the Settlement of Disputes.

**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 and 2.5 of the TBT Agreement:

- 2.1 with respect to textiles and clothing, fiber content, country of origin, and care instructions¹;
- 2.2 with respect to footwear, predominant materials of core parts² and country of origin; and
- 2.3 with respect to travel goods, fiber content and country of origin.

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.

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

A Member may only require additional information on a label when it is not inconsistent with Article 2.2 of the TBT Agreement.

3. Members shall give positive consideration to permitting any required information to be included on a non-permanent³ label rather than a permanent label.⁴

4. A technical regulation 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

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.

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;

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 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;

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

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.

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.

5.4 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 finalizing the measure, and publish or otherwise make available to the public, either in print or electronically, its responses to significant comments it receives no later than the date it publishes the final technical regulation or conformity assessment procedure.

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 an identification of the parts of the regulation or procedure which in substance deviate from relevant international standards.

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 comments it receives at the earliest appropriate date after it publishes the final technical regulation or conformity assessment procedure.

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

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

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.

ANNEX

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

1. With respect to textiles and clothing, this Understanding shall cover all products contained in the Annex to the former WTO Agreement on Textiles and Clothing.
2. With respect to footwear, this Understanding shall cover all products contained in Chapter 64 of Harmonized Commodity Description and Coding System (HS) Nomenclature, except for HS6406 (Footwear Parts).
3. With respect to travel goods, this Understanding shall cover all products listed below:

<u>HS Number</u>	<u>Product Description</u>
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
 - 9605.0 Travel sets for personal toilet, sewing or shoe or clothes cleaning
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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.

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Answers by the co-sponsors to Questions from Korea 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”

I. TEXTILES, APPAREL, FOOTWEAR AND TRAVEL GOODS LABELING

1. **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?

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.

2. **KOREA:** Para. 3 – How do Members give “positive consideration” to non-permanent labels? Could the proponents provide specific examples in which “positive consideration” works?

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 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.

3. **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?

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.

4. **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?

ANSWER: The co-sponsors will examine this drafting issue and thank the Republic of Korea for bringing it to our attention.
