WORLD TRADE ORGANIZATION

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Committee on Technical Barriers to Trade

THEMATIC SESSION ON TECHNICAL REGULATIONS: MARKING AND LABELLING[1]

27 OCTOBER 2020, 15:00

Moderator's Report[2]

The Moderator of the Thematic Session on technical regulations (mandatory marking and labelling) delivered this Report at the WTO TBT Committee's meeting of 28-29 October 2020.

At the Eighth Triennial Review, Members agreed to continue to hold thematic sessions in conjunction with its regular meetings during 2019 to 2021, with a view to further deepening the Committee's exchange of experiences on specific topics. In particular, with a view to furthering its work in the area of mandatory marking and labelling requirements, Members agreed to hold a discussion of how to facilitate compliance with mandatory marking and labelling requirements on products.[3] The programme for the thematic session is contained in the Annex of this report. The presentations summarized below are available through the WTO website.[4]

Panel

1.1. **Mr. Christian Scharling**[5] (European Union) addressed the background, role, and importance of the CE Marking for the internal market of the European Union (EU). The CE Marking is a symbol which visibly figures on many industrial products sold in the EU. It was introduced into EU legislation in order to provide information for national authorities on the compliance of a product and to guarantee its free movement within the European Union and the European Economic Area. In particular, the CE Marking affixed on a product means that the manufacturer declares that the product has undergone an examination and it is in conformity with the applicable requirements set out in EU product harmonization legislation. It was clarified that the CE Marking is therefore *not* an origin indication "made in Europe"; it is *not* a quality mark; and it is *not* affixed by a third party, but by the manufacturer itself following a successful completion of the required conformity assessment procedure.

1.2. Mr. Scharling explained the criteria that must be met in order to affix the CE Marking. It was noted that the affixing of the CE Marking takes place before the product is placed on the market. It is the manufacturer who affixes the CE Marking and who is responsible for the compliance of a product. At the same time, economic operators further down the supply chain (e.g. distributors and importers) must ensure that only safe and compliant products are placed on the market. Moreover, the CE Marking shall be affixed visibly and legibly to the product or to its data plate. If that is not possible because of the nature of the product, it shall be affixed to the packaging and accompanying documents. Importantly, while other markings and labels may be affixed to the products, the visibility, legibility and meaning of the CE Marking cannot be compromised. Finally, in terms of enforcement, Mr. Scharling noted that the CE Marking provides the first indication of compliance of a product and that market surveillance authorities can nevertheless perform additional controls to

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[1] The Annex of this document contains the final programme for this thematic session.
[2] Mr. José Antonio Cury G. Braga (Brazil). This Report is provided on the Moderator's own responsibility.
[3] G/TBT/41, para. 8.2.a.iv, footnote 303.
[4] https://www.wto.org/english/tratop_e/tbt_e/tbtthematcimarkinlabel27102020_e.htm
[5] DG GROW, European Commission.

protect the public interest. Therefore, EU Member States ensure the proper enforcement by pursuing violations and abuse of the CE Marking.

1.3. **Ms. Beatriz Menéndez Aller**[6] (European Union) said that marking and labelling requirements affect many goods and are of growing complexity and therefore they have an important impact on trade. Indeed, a large proportion of specific trade concerns (STCs) raised in the TBT Committee are about these types of measure – and it is, she stressed, a particularly important area for regulators. The EU's contribution was mainly about the practical compliance issues related to marking and labelling requirements on imported products and it focused on *mandatory* measures.[7]

1.4. Ms. Menéndez Aller said that marking and labelling requirements could include information about product characteristics and production methods and processes. Marking and labelling provisions can have different purposes: they can indicate product conformity with mandatory technical requirements; assert the identity of manufacturers, state the origin of the products for traceability purposes; and, inform consumers about safety, health and environmental matters, among others. The presentation aimed to cover practical aspects of compliance – the objective is to promote measures and practices that enable producers to fulfil the legitimate objectives pursued by regulations in the least costly and burdensome way possible. There is, however, Ms. Menéndez Aller stressed, no one-size-fits-all way to do this. There is always a need to balance the legitimate need to ensure products are safe (as well as other objectives) without creating excessive cost and administrative burden for producers who need to market their products.

1.5. Ms. Menéndez Aller observed that several issues need to be considered. These include, for instance: what to require (on the label); what to allow; the procedural aspects and, and the timing of labelling. With respect to the information required by the regulator, the scope of the information to be affixed on the label should be limited to information relevant for consumers or users of the product, or needed to indicate the product's conformity with mandatory technical requirements. The regulator also needs to allow additional information unless it is misleading, contradictory or confusing. This could include, for example, information in other languages; internationally accepted nomenclatures, pictograms, symbols or graphics. Regarding the labels themselves, it was noted that there should be no prior approval, registration or certification required, nor any fee (this would otherwise be cumbersome for producers – although there could be some exceptions with respect to risk (human, animal or plant health or life, the environment, national security). On method and timing, it is important that corrections be allowed in the territory of the importing party, as well as non-permanent or detachable labels. Also, sufficient time needs to be given to adapt the labels of products in case of new labelling requirement, and there needs to be transitional provisions (products already on the market would not need to comply with new requirements).

1.6. The EU proposed that the Committee discuss and share experiences from Members in the area of marking and labelling and develop recommendations or other guidance documents to support Members in the implementation of the TBT Agreement.

1.7. **Dr. Douglas Balentine**[8] (United States) presented some considerations about labelling and its relation to consumers, marketing, and public health. With respect to labelling and the consumer, it was explained how labelling is a tool to provide relevant information to consumers, so that they can make informed choices. The provision of certain information on a label could be mandatory or voluntary. Mandatory information may refer to, among others, product identity (name or statement of identity), net contents and lot identity, ingredients, nutrition facts, and manufacturer. In turn, voluntary information may refer to, among others, health-related information (i.e. gluten free), shelf life or date marking, production type (e.g. organic, fair trade, sustainability), and other types of claims (e.g. health, comparative, marketing).

1.8. Dr. Balentine also addressed the relevance of labelling for marketing and promotion purposes. It was noted that labelling is often used for branding and may refer to a series of aspects related to a product, such as names, logos, mascots or regions. Labelling also plays an important role when making claims about a product. Moreover, front of pack labelling, which can be mandatory or voluntary, is commonly used to convey information to consumers regarding the nutrition of a

[6] DG TRADE, European Commission.
[7] The EU had previously made a submission on the topic, in G/TBT/W/534, dated 6 June 2018.
[8] Senior Science Advisor, International Nutrition Policy, Center for Food Safety and Applied Nutrition, Food and Drug Administration (CFSAN FDA).

product, the production methods used or any social aspects that want to be highlighted. Turning to the role of labelling in the area of public health, it was noted that it can be a useful tool to convey information to consumers regarding important information, such as nutrition facts, allergen information, health and function claims, dietary guidance statements, and front of pack nutrition labelling. In addition, Dr. Balentine explained the Nutrition Innovation Strategy of the United States' Food and Drug Administration (FDA), which seeks to help consumers make informed choices and to stimulate innovation and reformulation of products to offers consumers more healthful and nutritious options. In particular, the FDA's Nutrition and Innovation Strategy seeks to empower consumers by providing education and information to make healthy food choices and to facilitate innovation by encouraging industry innovation toward healthier foods.

COMMENT BY MODERATOR

1.9. On a personal note, **the Moderator** makes the following remarks. I would like to make a few personal remarks. I think that the presentations and discussions shed light on some interesting practical considerations and case studies related to mandatory marking and labelling. The experiences shared by presenters illustrated the type of considerations that regulators frequently take into account when designing and implementing marking and labelling requirements. We heard about the example of the CE Marking as a valuable tool used by the European Union to ensure the proper functioning of its internal market. Other examples, including in the areas of marketing and public health, illustrated the type of challenges that Members face in relation to the provision of information to consumers through labelling. In my view, the discussions suggest that, in the future, the Committee may wish to consider developing recommendations or other guidance to support Members in the implementation of the TBT Agreement in the area of marking and labelling, specially when new developments in applying digital technologies will need to be taken into account. I look forward to further fruitful discussion in the Committee on these matters.

ANNEX

THEMATIC SESSION ON TECHNICAL REGULATIONS: MARKING AND LABELLING

27 OCTOBER 2020, STARTING AT 3PM

Final Programme[1]

At the Eighth Triennial Review, Members agreed to continue to hold thematic sessions in conjunction with its regular meetings during 2019 to 2021, with a view to further deepening the Committee's exchange of experiences on specific topics. In particular, with a view to furthering its work in the area of mandatory marking and labelling requirements, Members agreed to hold a discussion of how to facilitate compliance with mandatory marking and labelling requirements on products.[2] On this basis, the Committee agreed to hold a session on technical regulations with a focus on mandatory marking and labelling on 27 October 2020.

This thematic session will be moderated by: **Mr. José Antonio Cury G. Braga (Brazil)** and the presentations can be found here.

Panel

- **European Union**: *CE Marking*, Christian Scharling, DG GROW, European Commission.[3]
- **European Union**: *Compliance issues of mandatory marking and labelling requirements of imported products*, Beatriz Menéndez Aller, DG TRADE, European Commission.[4]
- **United States**: *Labelling: Marketing, Consumers and Public Health*, Dr. Douglas Balentine, Senior Science Advisor, International Nutrition Policy, Center for Food Safety and Applied Nutrition, Food and Drug Administration (CFSAN FDA).[5]

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[1] The draft programme is contained in G/TBT/GEN/304.
[2] G/TBT/41, para. 8.2.a.iv, footnote 303.
[3] JOB/TBT/369.
[4] JOB/TBT/369.
[5] JOB/TBT/372.