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## COMMUNICATION FROM CANADA

The following Communication, dated 20 February 1996, has been received from the delegation of Canada with the request that it be circulated to Members of the Committees.

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This paper is presented by the Canadian government to promote discussions of eco-labelling in the Committees on Trade and Environment and Technical Barriers to Trade. It reflects our preliminary views and is thus subject to further review and refinement.

### Elements of a Possible Understanding to the TBT Agreement

#### Eco-labelling

1. Eco-labelling is increasingly seen as an important tool for encouraging resource and manufacturing industries to adopt higher standards of environmental protection through influencing consumer and possibly government purchasing patterns. Such programmes may confer a competitive advantage on products carrying the label. Given the increased number of eco-labelling programmes and increased product coverage, eco-labelling programmes are becoming a significant new force in the marketplace.
2. With this in mind, this paper examines the relationship between the WTO TBT Agreement and eco-labelling programmes. It says that eco-labelling programmes, whether mandatory or voluntary, are clearly within the scope of the Agreement to the extent that they are based on standards that relate to product characteristics or their related processes and production methods (PPMs). It argues that bodies that develop and run eco-labelling programmes should be considered as standardizing bodies. It further suggests that the scope of the TBT Agreement should be interpreted to cover the use of certain standards based on non-product-related PPMs by eco-labelling programmes, provided that these standards strictly adhere to multilaterally-agreed eco-labelling guidelines. This paper does not discuss specifically the disciplines that should be developed, nor the conditions under which these disciplines would apply, to provide coverage for non-product-related PPMs.
3. For the purpose of this paper, we have used a definition of eco-labelling programmes derived from the ISO TC207 draft Guiding Principles and Procedures:

*Eco-labelling programmes are designed to contribute to reducing the environmental burdens and impacts associated with products, through identifying by the award of labels*

*(or other identifying marks) products claiming overall environmental preference. Such programmes are based on life-cycle considerations and are run by recognized bodies.*

#### Basic Principles

- (a) Mandatory eco-labelling measures, voluntary eco-labelling measures, and eco-labelling compliance procedures are within the scope of the TBT Agreement and its Code of Good Practice.
- (b) The coverage applies to all eco-labelling programmes, whether voluntary or mandatory, whether these be governmental (central or sub-central) or non-governmental.
- (c) Eco-labelling programmes are established by standardizing bodies; therefore, such bodies should accept the TBT Code of Good Practice.
- (d) The scope of the TBT Agreement should be interpreted to cover the use of certain standards based on non-product-related PPMs in eco-labelling programmes, provided that these standards strictly adhere to multilaterally-agreed eco-labelling guidelines.

#### (a) Eco-labelling is covered by the TBT Agreement

4. The TBT Agreement deals with technical regulations, standards, and conformity assessment procedures. Thus, to fall within the scope of the Agreement, mandatory eco-labelling measures must meet the definition of a technical regulation, voluntary eco-labelling measures must meet the definition of a standard, and eco-labelling compliance procedures must meet the definition of conformity assessment, as set out in Annex 1.

5. In general, the definition of technical regulations and of standards specifically includes symbols, marking and labelling requirements, which are the basic components of any eco-labelling programme, as suggested by the definition in paragraph 3 above. Furthermore, it has already been established that mandatory labelling requirements are subject to the notification provisions of Article 2, regardless of the kind of information provided on the label. In addition, TBT Committee Members are of the opinion that voluntary labelling standards are subject to the notification provisions of the TBT Agreement Annex 3 (Code of Good Practice), again regardless of the kind of information provided on the label.

6. Mandatory eco-labelling programmes are clearly within the scope of the Agreement to the extent that they are based on requirements about the product's design, characteristics or performance as well as PPMs that have a direct impact on the product's characteristics. These aspects of mandatory eco-labelling programmes fall within the scope of TBT Article 2, Article 3, Article 10 and Article 14.

7. Voluntary eco-labelling programmes are clearly within the scope of the Agreement to the extent that they are based on requirements about the product's design, characteristics or performance as well as PPMs that have a direct impact on the product's characteristics. However, the relationship between the Agreement, voluntary measures and non-product-related PPMs is less clear. The first sentence of the definition of a standard is ambiguous: it can be interpreted to exclude non-product-related PPMs, but it can also be argued that a plain reading of the definition cannot support such an interpretation (i.e. non-product-related PPMs are included in, or are not excluded from, the definition). Moreover, the second sentence of the definition could be

interpreted to include non-product-related PPMs. It thus can be argued, and this appears to be the general understanding among Members, that voluntary eco-labelling programmes fall within the scope of the TBT Agreement Annex 3, Code of Good Practice.

8. Eco-labelling compliance procedures are the equivalent of conformity assessment procedures which determine that relevant requirements in technical regulations and standards are fulfilled. Eco-labelling compliance falls within the scope of TBT Article 5, Article 6, Article 7, and Article 10.

9. Therefore, most elements of eco-labelling programmes, as described above, are covered by the TBT Agreement and are subject to the fundamental TBT provisions requiring that measures be non-discriminatory, no more trade-restrictive than necessary, based on international and performance-based standards, and transparent.

(b) Coverage applies to all eco-labelling programmes

10. The TBT negotiating history makes clear the negotiators' intent to cover both mandatory and voluntary programmes, and to require that Members take reasonable measures as may be available to them to ensure that local governments and non-governmental standardizing bodies within their territories accept and comply with the provisions of the TBT Code of Good Practice (Article 4). This wording is clear and establishes a strong obligation.

11. As a result, mandatory eco-labelling programmes should comply fully with all obligations of the TBT Agreement; at the very least, voluntary programmes fall within the scope of the Code of Good Practice and should comply with its provisions. The difference here is one of the "level of obligation" as the TBT Agreement and its Code of Good Practice are guided by the same principles.

(c) Eco-labelling programmes are established by standardizing bodies

12. An eco-labelling programme is basically the granting by a third party of a label that certifies that a product conforms to a set of criteria or standards that have been developed by that third party. These criteria can relate to the method of production, the characteristics or performance of a product, as well as to its disposal. Consequently, the activities linked to the development of criteria for eco-labelling programme are similar to those of regulatory bodies or standardizing organizations.

13. Furthermore, in Annex 1 of the TBT Agreement, a standard is defined as a "document approved by a recognized body...". Although the term "recognized body" is not expressly defined, it is arguable from the definitions of the ISO/IEC Guide 2:1991 that legal or administrative entities (including organizations, authorities, companies and foundations) which are recognized on a national, regional or international level constitute "recognized" bodies. The term "recognized body" is broader in its scope than "standards body" or "national body", which are more specific; thus, one can conclude that voluntary standards established by non-traditional standards-setting bodies fall within the scope of the standards definition. Members should therefore acknowledge that as eco-labelling programmes are established by standardizing bodies, they should take reasonable measures to ensure that such standardizing bodies, whether governmental or non-governmental, accept the Code of Good Practice.

(d) Scope of the TBT Agreement should be interpreted to cover the use of certain standards based on non-product-related PPMs by eco-labelling programmes, provided that these standards strictly adhere to multilaterally-agreed eco-labelling guidelines

14. Eco-labelling programmes are based, to a significant extent, on life-cycle approaches, i.e. consideration of the environmental impact from the extraction/production stage, through to consumption and final disposal. Life-cycle approaches are now considered an integral part of eco-labelling programmes, and one basis of their environmental credibility. Life-cycle approaches consider the environmental impact at each stage of the product's life and the eco-labelling programme criteria are developed accordingly. In cases where the greatest impact is at the consumption (e.g. energy or water consumption of home appliances) or final disposal (e.g. batteries, lubricating oil) stage, the resulting eco-labelling criteria will be largely product-related and characteristic or performance-based. Such eco-labelling criteria are thus no different from other voluntary standards and should be subject to existing TBT disciplines. Where, however, the life-cycle approach indicates that significant environmental impact is at the production stage (e.g. photofinishing), the resulting eco-labelling criteria may have a strong component of non-product-related PPMs.

15. It has been argued that non-product-related PPM-based measures are not consistent with WTO rules when these measures discriminate between "like products", solely because the methods used to manufacture or process them are different. Such measures would be inconsistent with non-discrimination obligations of the GATT 1994 and the TBT Agreement. However, it would seem excessive to suggest that eco-labelling programmes should not be viewed as compatible with the WTO simply because one of their essential tools, the life-cycle approach, uses some components that may or may not fall within the scope of the TBT Agreement.

16. The challenge is how to accommodate the comprehensive life-cycle approaches of eco-labelling programmes in the TBT Agreement without compromising basic WTO principles. One possible solution would be to interpret the TBT Agreement to provide for eco-labelling programmes that include the use of certain standards based on non-product-related PPMs provided that these programmes are developed according to multilaterally-agreed guidelines in order that the possibility of discrimination and trade-distortion be minimized. ISO 14000 is the most advanced example of a multilaterally developed set of guidelines for eco-labelling.

17. Acceptance of the use of multilaterally-agreed guidelines to regulate the use of non-product-related PPMs in eco-labelling programmes would still raise a number of implementation questions. International guidelines and standards are under development in a variety of fora and thus there is need to consider which ones would qualify as well as what can be done in the interim. For example, to be recognized by the WTO TBT Agreement, eco-labelling guidelines should be developed by recognized bodies that have a wide, open, international membership including a balanced representation of interests. The guidelines should be developed in a way consistent with the obligations of the GATT 1994 and the TBT Agreement.

18. Other important considerations would be (as suggested in the draft ISO Guiding Principles and Procedures on Environmental Labelling) that environmental criteria "shall be capable of demonstrating that products meeting the criteria fulfil the labelling objective of reducing environmental impact; the development and selection of criteria for environmental labels shall be based on scientific methodology; and the establishment of criteria, as well as their review and revisions, should be the result of impartial decisions." It may also be useful to consider how the principle of "equivalency" can be applied to PPM-based standards. Mutual recognition, on a product-by-product basis, among eco-labelling programmes could also provide an interim solution

and minimize costs to exporters. These issues should be addressed further, perhaps with the assistance of eco-labelling practitioners.

19. In summary, mandatory and voluntary eco-labelling programmes are clearly within the scope of the TBT Agreement to the extent that they relate to product characteristics or their related PPMs. The relationship between the Agreement and eco-labelling criteria based on standards that relate to non-product-related PPMs is less clear. In view of the growing importance of eco-labelling programmes in the market place, and of the increasing use of comprehensive life-cycle approaches in the development of criteria for these programmes, we recommend that the joint CTE/CTBT consider the benefits of interpreting the scope of the TBT Agreement to cover the use of certain standards based on non-product-related PPMs. The standards would have to adhere strictly to multilaterally-agreed eco-labelling guidelines. These guidelines would be developed in such a way so as to be consistent with the obligations of the GATT 1994 and the TBT Agreement such as non-discrimination; national treatment; transparency and consultation; use of relevant international standards when they exist; and consideration given to available scientific and technical information. Consideration should also be given to equivalency of standards and mutual recognition based on a case-by-case approach. It is understood that this proposal should not be interpreted as providing any scope or safe haven for the use of standards based on unilaterally-determined non-product-related PPMs that do not strictly adhere to multilaterally-agreed eco-labelling guidelines.