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AGRO-FOOD PRODUCTS AND TECHNICAL BARRIERS TO TRADE: A SURVEY OF ISSUES AND CONCERNS RAISED IN THE WTO'S TBT COMMITTEE

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**AGRO-FOOD PRODUCTS AND TECHNICAL BARRIERS TO TRADE:
A SURVEY OF ISSUES AND CONCERNS RAISED IN THE WTO'S TBT COMMITTEE**

Executive summary

This study presents a survey of issues and concerns raised in the WTO's Committee on Technical Barriers to Trade, with particular emphasis on discussions related to agro-food products. It thereby aims to provide background information on TBT-related activities during the period 1995-2001. The participation of OECD and non-OECD countries in the Committee discussions is analysed, and agro-food related TBT issues that might warrant further investigation with respect to their trade and economic effects are identified. The document complements an earlier study on activities related to the WTO's SPS Committee.

During the 26 regular sessions of the TBT Committee during 1995-2001, a total of 63 specific trade concerns were raised concerning the implementation and administration of the TBT Agreement. Questioning another country's measure or the way it is notified provides an opportunity to initiate discussion and helps to resolve misunderstandings, clarify contentious matters, and possibly avoid trade disputes in the future. Twenty of the concerns were specifically related to agro-food products, mainly involving genetically modified organisms, livestock products, and beverages. Two-thirds of all agro-food concerns were related to questions of labelling.

The transparency provisions of the TBT Agreement require WTO member countries to designate a single government authority responsible for the implementation of those provisions and to specify publications that are used to announce that work on draft technical regulations and conformity assessment procedures is proceeding. WTO members also have to establish enquiry points to answer requests for information from other member countries. Yet, by the end of 2001 more than a fifth of WTO members did not meet the transparency requirement concerning enquiry point establishment, and almost half had not yet designated single government authorities and announcement publications.

Concerning notifications of technical regulations and conformity assessment procedures, the number of notified measures varied during 1995-2001 from 370 to 790 per year. Twenty-nine OECD countries and 40 non-OECD countries, including 33 developing countries, have submitted TBT notifications. About 28 per cent of the TBT notifications in 2001 specifically concerned agro-food products. Of these, a quarter referred to broad categories of agriculture and food products, a further fifth to beverages and tobacco, and almost 15 per cent each to field crops and livestock products. Almost half of all TBT notifications concerning agro-food products in 2001 stated as their objective either consumer information and labelling or prevention of deceptive practices and consumer protection.

Seventeen of the 27 disputes that alleged violations of the TBT Agreement concerned agro-food products. However, almost of all these cases were pursued mainly under other aspects of international trade law. Of the 17 disputes, two were resolved following consultations, eight led to the establishment of a panel (which in five cases led to mutually satisfactory solutions), while seven were still pending at the end of 2001. All the complaints in the agro-food disputes concerned measures implemented in OECD countries. In 12 cases the complaint was raised by other OECD countries and in five cases by developing countries.

During its second triennial review of the operation and implementation of the TBT Agreement in November 2000, the TBT Committee critically assessed the considerable number of WTO members that had not yet communicated single government authorities and announcement publications, and established TBT enquiry points. It furthermore noted that concerns regarding labelling were raised frequently during discussions in Committee meetings and reiterated the importance of any such requirements not becoming disguised restrictions on trade. Moreover, the Committee noted that developing countries continued to face difficulties in contributing to the development of international standards, so that technical assistance remained important.

While the TBT Committee review did not refer to particular economic sectors, the findings from this study suggest that technical measures and their possible trade impacts are more controversial for agro-food products than for other merchandise. Agriculture and food products account for about nine per cent of world merchandise trade, but were specifically targeted in 28 per cent of all notified TBT measures during 2001. Moreover, 32 per cent of all specific trade concerns in the TBT Committee have involved agro-food products, as well as 62 per cent of all TBT-related disputes. These results suggest that trade policy makers and technical experts at standardising bodies might want to devote particular attention to contentious issues concerning agro-food products, such as food labelling, in order to minimise the risk of disruptions of international trade.

I. Background

1. Technical regulations and standards are used by governments to achieve domestic policy objectives, such as containment of health and environment-related risks or fraud, and to facilitate trade by ensuring the interoperability of technical systems and improving market transparency. Also, demanding technical requirements can sometimes contribute to reinforce consumer confidence and boost sales of products of both domestic and foreign origin. On the other hand, excessive or cumbersome measures have the potential to undermine market contestability, discourage imports, and, thus, reduce economic efficiency.

2. The WTO Agreement on Technical Barriers to Trade (TBT Agreement) tries to ensure that regulations, standards, testing and certification procedures facilitate trade and do not give rise to unwarranted protection for domestic producers. The 1994-Agreement was part of the outcome of the Uruguay Round and extends and clarifies the 1979-Agreement that was reached in the Tokyo Round of multilateral trade negotiations. It requires that technical regulations and standards, as well as testing and certification procedures, be transparent, justified by legitimate objectives, such as national security, prevention of deceptive practices, human health and safety, animal and plant life and health, or environmental protection, and do not create unnecessary obstacles to trade. Countries have the right to pursue domestic policy objectives through technical regulations and conformity assessment procedures; however, when designing these measures, they are required to use relevant international standards, if these exist and would be effective and appropriate.

3. The TBT Agreement covers all technical measures (regulations, standards, testing and certification procedures) relating to any product or process and production method, except sanitary and phytosanitary measures, which fall under the auspices of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), and technical specifications related to government procurement, which are covered by the plurilateral Agreement on Government Procurement. Examples of measures that might fall under the TBT but not the SPS Agreement include technical regulations and procedures concerning composition and packaging, marking and labelling, process and production methods, and final product characteristics. Measures based on product requirements are supposed to be specified in terms of performance rather than design or descriptive characteristics.

4. This study presents a survey of issues and concerns raised in the WTO's Committee on Technical Barriers to Trade, with particular emphasis on discussions related to agro-food products. It complements a corresponding survey of activities in the SPS Committee (OECD, 2002), as well as ongoing work in the OECD concerning food and non-food labelling. Earlier work in the OECD on TBT issues concerning agro-food products had already analysed several specific subjects, such as trade considerations of food quality attributes (OECD, 1999) or particular forms of food labelling (OECD, 1997, 2001). In this context, the following description and discussion aims to provide broad background information on activities in the TBT Committee during the period 1995-2001, analyse the participation of OECD and non-OECD countries in the Committee discussions, and identify agro-food related TBT issues that might warrant further investigation with respect to their trade and economic effects.

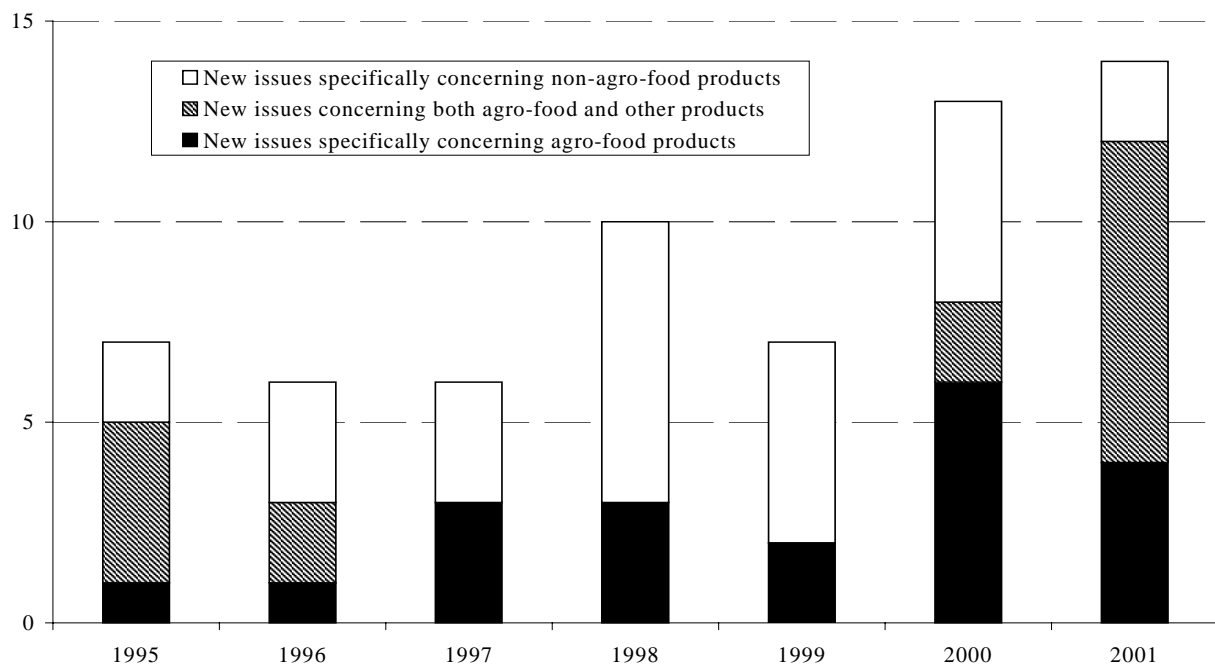
5. The remainder of the document is organised as follows. Section 2 provides an overview of specific trade concerns that have been raised in meetings of the WTO's TBT Committee. Section 3 reports on the implementation of the transparency provisions of the TBT Agreement, notably the designation of single government authorities and announcement publications, the establishment of enquiry points, and the notification of TBT measures. Section 4 then discusses trade disputes related to TBT matters. Finally, section 5 summarises some preliminary evaluations concerning the implementation of the TBT Agreement.

II. Specific trade concerns raised in meetings of the TBT Committee¹

6. The TBT Agreement established the TBT Committee, whose role it is to oversee the implementation and operation of the Agreement's provisions. In particular, the Committee discusses trade issues related to technical regulations and conformity assessment procedures, reviews notifications, and develops policy and procedural recommendations. Over the period 1995 to 2001, the Committee held 26 regular meetings, as well as three special meetings on procedures for information exchange (November 1995, September 1998, and June 2001).

7. During the 26 regular sessions, a total of 63 distinct issues were raised by delegations concerning trading partners' policies or regulations. Questioning another country's measure or the way it is notified provides an opportunity to initiate discussion on the particular issue in the Committee. It can thereby help to resolve misunderstandings, clarify contentious matters, and possibly avoid trade disputes in the future. The number of new concerns discussed has shown an increasing trend over time, rising from six to seven per year during 1995-97 to fifteen in 2001 (Figure 1).

Figure 1: Number of specific trade concerns raised in the TBT Committee, 1995-2001



Source: OECD Secretariat based on WTO information (G/TBT/M).

8. Twenty specific trade concerns were directly related to agro-food products, 16 were of a general nature, and 27 concerned non-agro-food products.² Agro-food related concerns have been raised about

1. While the term 'specific trade concern' is not mentioned in the minutes of the meetings of the TBT Committee, the WTO Secretariat has recently released a document (WTO, 2002a), in which specific trade concerns are taken to be questions and concerns raised in the TBT Committee about trading partners' measures. In this paper, the term is used accordingly.

2. This method of counting follows the approach of the WTO Secretariat (WTO, 2002a & 2002b) of tallying specific trade concerns in the form of distinct issues discussed in the TBT Committee. Alternatively, one could define the number of specific trade concerns as the individual interventions that delegations have

TBT measures in 20 OECD countries (counting the EU as 15 countries) and five developing countries. Conversely, 22 OECD countries and 17 non-OECD countries (counting ASEAN as 10 countries), including 16 developing countries, have raised or supported agro-food concerns.

9. Of all the specific trade concerns related to agro-food products, five referred to genetically modified organisms, four to livestock products and beverages, two to fish and tobacco, and one to wood, organic products, and perishable products. Two-thirds of all cases concerned questions of labelling, i.e. measures regulating the kind and size of printing on packages and labels and defining the information that may or should be provided to consumers. Issues concerned missing or unclear notifications, as well as labelling requirements that were seen as unjustified in the sense of discriminating among "like" products. A brief description of the 20 specific trade concerns related to agro-food products, drawing on material from the WTO meeting summaries, is given in the Annex. It should be noted, however, that the material does not make it possible to evaluate whether a particular country is not satisfying its obligations under the TBT Agreement.

10. Countries are likely to have had additional concerns about trading partners' measures, which may have been raised and resolved bilaterally. The discussions of specific trade concerns in the TBT Committee might, therefore, be seen as primarily representing issues that could not be resolved bilaterally or were regarded as being of generic importance so to warrant the attention of the Committee. In this context, raising a concern in the Committee might be seen as an intermediate solution attempt before continuing on to formal consultations and dispute settlement.

III. Notifications under the TBT Agreement

11. WTO member countries are required to designate a single government authority responsible for the implementation of the TBT transparency provisions and to specify publications that are used to announce that work on draft technical regulations and conformity assessment procedures is proceeding. They also have to establish enquiry points that are able to answer requests for information from other member countries. Further transparency provisions under the TBT Agreement concern notifications by WTO members of bilateral or multilateral agreements that they have reached on issues related to technical regulations, standards, and conformity assessment procedures and of standardising bodies that have accepted the Code of Good Practice. This Code provides transparency and other disciplines for the preparation, adoption and application of standards by central and local governmental, non-governmental and regional standardising bodies, and thereby helps to avoid duplication of standardisation work.

12. Moreover, countries have to notify other members through the WTO Secretariat of the proposed introduction of or changes to technical regulations or conformity assessment procedures for which no international standard, guide or recommendation exists or that differ from such international benchmarks and that may have a significant effect on trade of other member countries. Notifications are supposed to specify the products covered by the proposed technical regulation or conformity assessment procedure and contain a brief description of the objective and rationale of the measure. Notifications are to take place at an early appropriate stage, i.e. normally 60 days before the measures are finalised, in order to make it possible to introduce amendments and take comments from other member countries into account. In case of urgent problems of safety, health, environment protection or national security, the comment period can be shortened.

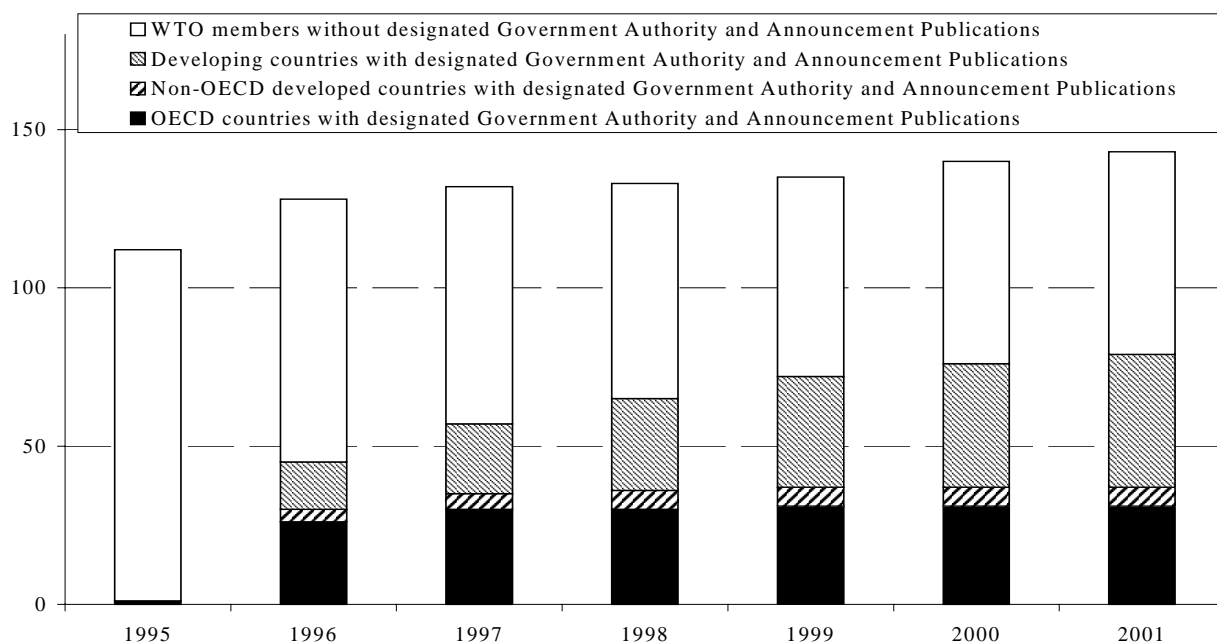
made when raising or supporting concerns. If this procedure is used, there were 58 concerns specifically related to agro-food products, 57 were of a general nature, and 38 concerned non-agro-food products.

13. During the period 1995-2001, an increasing number and proportion of WTO members has designated single government authorities and announcement publications and established enquiry points (Figures 2 and 3). All thirty OECD countries and the European Union had reported enquiry points by the end of 1997 and named government authorities and announcement publications by the end of 1999. However, 32 WTO members, including 29 developing countries, had not reported enquiry points and 64 member countries, including 58 developing countries, had not named single government authorities and announcement publications by the end of 2001. In other words, by the end of 2001, 22 per cent of WTO members did not meet the transparency requirement concerning enquiry point establishment, and 45 per cent had not fulfilled the obligation to designate single government authorities and announcement publications.

14. It is unclear how effective the notification authorities and enquiry points are in providing timely information on new draft regulations and in replying to questions and comments, respectively. In some cases there seems to have been a lack of awareness at the national level of countries' obligations under the TBT Agreement or insufficient co-ordination between agencies involved in the notification process (WTO, 2000). Also, a survey of WTO members revealed that enquiry points are not always well equipped with electronic facilities, due to resource constraints and lack of technical know-how (WTO, 1999). These deficiencies are likely to adversely affect the speed and quality of responses to queries and comments from other WTO members. Hence, in some of the countries that have designated single government authorities and announcement publications and established enquiry points these institutions might not be fully operational.¹⁵ Concerning notification by WTO members of bilateral or multilateral agreements on issues related to technical regulations, standards, and conformity assessment procedures, 35 such agreements were notified during 1995-2001. One of these applies specifically to TBT measures concerning agro-food products, six to all products, and 15 to non-agro-food products. Thirteen notifications did not specify the products concerned.

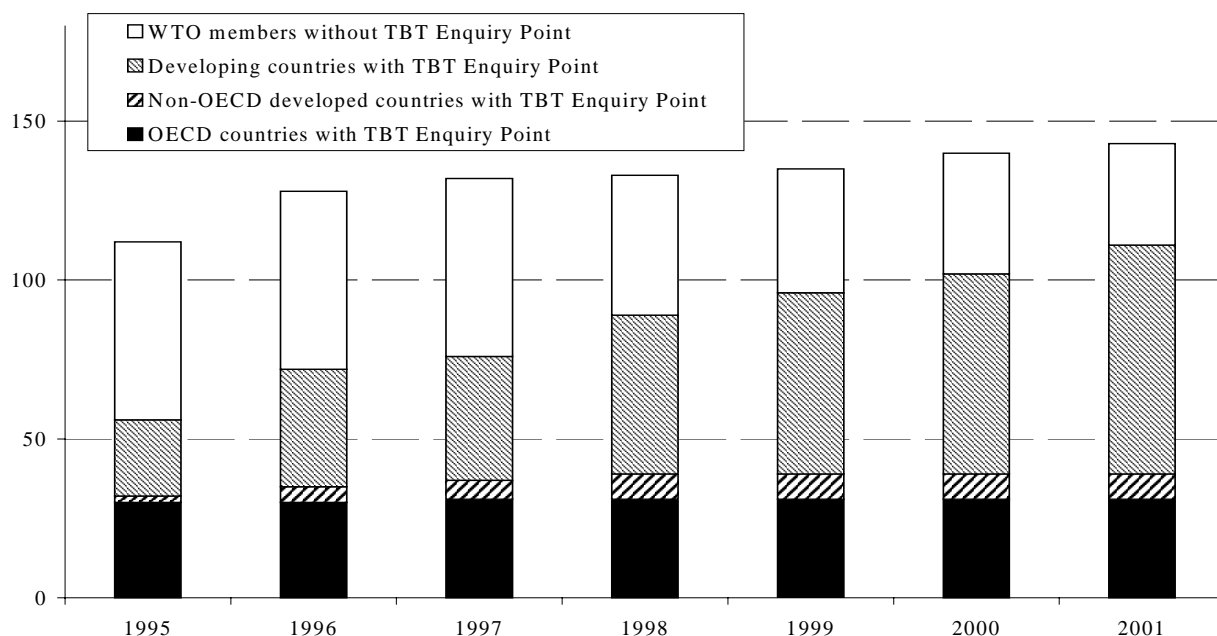
15. During the period 1995-2001, 138 standardising bodies from 94 WTO members have adhered to the Code of Good Practice. All OECD countries and the European Union have notified at least one standardising body. In addition, five non-OECD developed countries and 58 developing countries have submitted corresponding notifications.

Figure 2: Number of WTO members with and without designated Government Authority and Announcement Publications



Note: The information on WTO membership refers to the end of the year, while the data on the designation of Government Authorities and Publications is based on WTO documents (G/TBT/2 & addenda) that were released during the same year.
Source: OECD Secretariat based on WTO information.

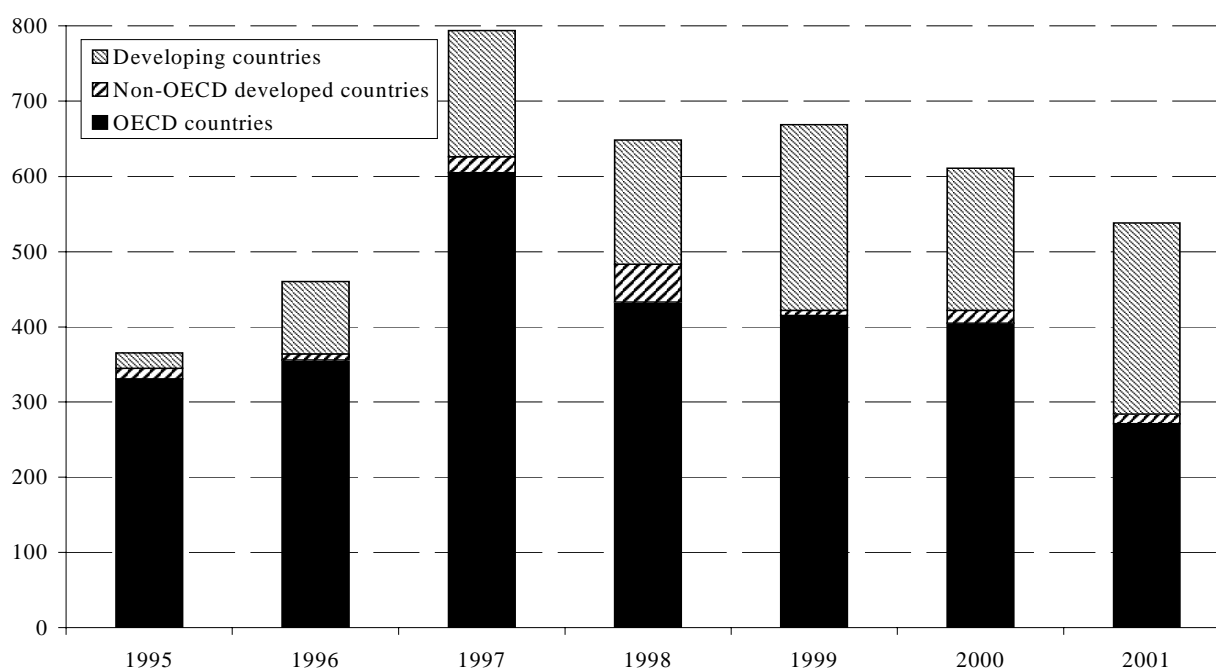
Figure 3: Number of WTO members with and without TBT Enquiry Points



Note: The information on WTO membership refers to the end of the year, while the data on the establishment of Enquiry Points is based on WTO documents (G/TBT/ENQ) that were released during autumn of the same year.
Source: OECD Secretariat based on WTO information.

16. From 1995 to the end of 2001, a total of 4085 technical regulations and conformity assessment procedures were notified under the TBT Agreement. The number of notified measures increased markedly up to 1997, but has since then generally been falling (Figure 4). Of the 30 OECD countries, only Hungary had not notified a TBT measure by the end of 2001.³ Moreover, 40 non-OECD countries, including 33 developing countries, have submitted TBT notifications. Indeed, the share of notifications by non-OECD countries has increased almost continuously over time and accounted for half of all notifications in 2001.

Figure 4: Number of notified TBT measures, 1995-2001

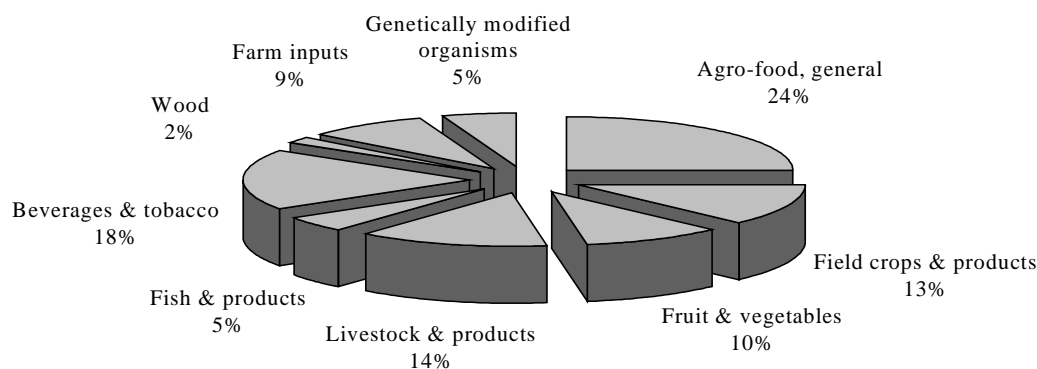


Source: OECD Secretariat based on WTO information (document G/TBT/11).

17. Of the 538 notifications made during 2001, 152 referred specifically to agro-food products. This corresponded to a share of about 28 per cent. A quarter of all agro-food notifications under the TBT Agreement referred to broad categories of agriculture and food products, a further fifth to beverages and tobacco, and almost 15 per cent each to field crops and livestock products (Figure 5). About 95 per cent of the agro-food notifications during 2001 concerned technical regulations and the remaining 5 per cent conformity assessment procedures. Emergency notification procedures were invoked for about 5 per cent of all agro-food notifications. All agro-food notifications originated from authorities at the level of central government.

18. Concerning the stated objectives of the TBT measures concerning agro-food products notified during 2001, almost half of the notifications mentioned either consumer information and labelling or prevention of deceptive practices and consumer protection. Consumer health and safety provided the rationale for measures in a fifth of all cases, and adoption of new domestic law and technology for a further 8 per cent. The detailed breakdown of objectives and rationales, classified in accordance to the criteria laid down in WTO document G/TBT/W/18, is shown in Table 1.

3. The EU has been reporting Union-wide measures and these are counted as notifications by all 15 member countries. In addition, 10 EU members have notified national regulations or procedures.

Figure 5: TBT notifications concerning agro-food products by product group, 2001

Source: OECD Secretariat based on WTO information (documents G/TBT/GEN/N).

Table 1: TBT notifications concerning agro-food products by objective, 2001

Objective or rationale of notified TBT measure	Number of notifications*	Share of notifications
National security requirements	0.0	0%
Consumer information, labelling	19.0	13%
Prevention of deceptive practices & consumer protection	55.5	37%
Protection of human health or safety	34.0	22%
Protection of animal or plant life or health	2.5	2%
Protection of the environment	4.7	3%
Quality requirements	4.0	3%
Harmonisation	2.0	1%
Adoption of new domestic law and technology	11.5	8%
Lowering or removal of trade barriers	1.5	1%
Trade facilitation	7.3	5%
Others	5.0	3%
Not specified	5.0	3%
Total	152.0	100%

*) When notifications state more than one objective, a weight of less than one was assigned to each particular objective, so that the sum of the objectives adds up to the total sum of notifications.

Source: OECD Secretariat based on WTO information (documents G/TBT/GEN/N).

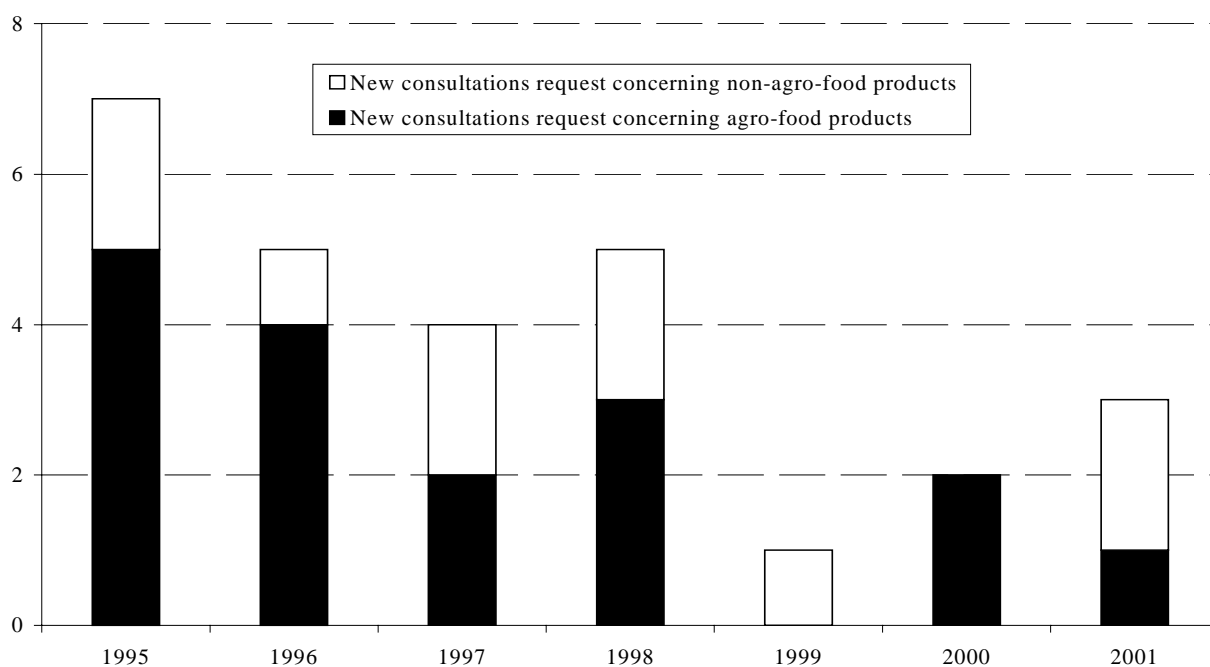
IV. TBT-related disputes

19. In cases where bilateral or multilateral discussions have not made it possible to resolve a trade-related disagreement about technical measures between countries, member countries can ask for resolution of the issue according to the WTO dispute settlement rules. If formal consultations as the initial stage of the process do not lead to a mutually agreeable solution, the establishment of a dispute panel can be requested. This panel rules on the compliance of a measure with the provisions of international trade law, including the TBT Agreement. If necessary, the panel's ruling could subsequently be reviewed by the WTO Appellate Body.

20. Of the more than 240 requests for consultations that had been formally raised during 1995-2001, 27 concerned alleged violations of the TBT Agreement (Table 2). During 1995-98, there were four to seven new consultations requests per year, while subsequently the number of new cases fell to one to three (Figure 6). Seventeen cases, i.e. more than three-fifths of all TBT-related cases, concerned agro-food products. However, in all of these cases violations of other parts of international trade law were also alleged (see last column in Table 2), and panels and the Appellate Body may in such instances base their decisions on rules other than those under the TBT Agreement. For example, the consultation requests of 10 of the agro-food cases also alleged violations of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) and concerned indeed often mainly SPS issues.⁴ The alleged violation of the TBT Agreement was in these cases generally related to some part of the regulation or standard that was not of a sanitary or phytosanitary nature, such as a labelling requirement. The seven agro-food related TBT cases that did not refer to the SPS Agreement related to the EU's trade description of scallops (three requests for consultations from Canada, Peru, and Chile), Philippines' complaint against USA's import prohibition of certain shrimps and shrimp products, New Zealand's complaint against EU's measures affecting butter products, USA's complaint against Belgium's administration of measures establishing customs duties for rice, and Peru's complaint against EU's trade description of sardines. Only in the latter case was the dispute primarily based on the TBT Agreement.⁵

4. In addition, Canada's complaint against EC's (France's) measures affecting asbestos, which does not directly concern agro-food products, alleged violation of both the TBT and the SPS Agreements.

5. The case, for which no mutually satisfactory solution had been reported yet by the end of October 2002, can be summarised as follows: In 2001, Peru requested consultations and subsequently the establishment of a panel concerning the EC's trade description of sardines. Venezuela, Chile, the USA, and Ecuador later joined the consultations. The Peruvian authorities alleged that the implementation of Council Regulation (EEC) No. 2136/89, which prevents Peruvian exporters from continuing to use the trade description "sardines" for their products, violated GATT Article XI, as well as Articles 2 and 12 of the TBT Agreement. In particular, the Council Regulation was seen as an unjustified barrier to trade, as it did not correspond to the Codex Alimentarius standards that classified the species "*sardinops sagax sagax*" as being "sardines". In 2002, the Panel and the Appellate Body found the EC Regulation to be inconsistent with Article 2.4 of the TBT Agreement and requested the European Communities to bring the EC Regulation into conformity with its obligations under that Agreement.

Figure 6: Number of new TBT-related requests for consultations, 1995-2001

Source: OECD Secretariat based on WTO information (documents WT/DS).

21. In eight of the 17 agro-food disputes invoking the TBT Agreement the complaining party requested the establishment of a panel. Three panels dealt with the EC's trade description of scallops, two with the EC's import prohibition on meat produced with growth-promoting hormones, and one each with the EC's measures affecting butter products, the EC's trade description of sardines, and Belgium's administration of measures establishing customs duties for rice. Solutions for the three scallop, the butter, and the rice duties cases had been found by the end of 2001, and a brief summary of the disputed issues is provided in Box IV.1. Moreover, two of the nine cases for which no panel had been established (yet) were settled after consultations, while seven cases were still pending by the end of 2001.

22. All the complaints in the agro-food disputes concerned measures implemented in OECD countries. In 12 cases the complaint was raised by other OECD countries and in five cases by developing countries.

Box IV.1: TBT-related disputes that have been resolved after establishment of panels

In 1995, Canada, Chile, and Peru requested consultations and subsequently the establishment of panels concerning the EC's **trade description of scallops**. According to an order by France's government, certain varieties of *pectinidae* (scallops) could after 1 January 1996 no longer be sold using the traditional description of "Coquilles St. Jacques" or "Noix de St. Jacques" on the French market, but had to use the trade description "pétoncle", which – according to the complainants – consumers associate with a product of lower quality. The complainants alleged violation of GATT Articles I and III, as well as Article 2 of the TBT Agreement, which requires that imports be treated no less favourably than 'like products' of national origin. The dispute was settled in July 1996 on a mutually satisfactory basis by the implementation of a new order by the French government. Scallops are henceforth to be marketed in France under the name "Coquilles Saint Jacques" or "Noix de St. Jacques", followed by the scientific name of the species. Moreover, the country of origin must be indicated on the label.

In 1997, New Zealand requested consultations and subsequently the establishment of a panel concerning the EC's **measures affecting butter products**. New Zealand claimed that, in addition to GATT Articles II, III, X and XI and the Agreement on Import Licensing Procedures, the EC was violating Article 2 of the TBT Agreement through its decision to qualify butter manufactured by two particular butter-making processes (Spreadable and AMMIX) as not being "manufactured directly from milk or cream" and, hence, to exclude such butter from eligibility for New Zealand's country-specific tariff quota established by the EC's WTO schedule. A mutually satisfactory solution was found in November 1999, when the EU's Council of Ministers passed a new regulation, clarifying that butter manufactured by using concentrated milkfat and/or the fractionation of such milkfat, such as in the Spreadable and AMMIX butter-making processes, should still be considered as being manufactured directly from milk or cream and, therefore, meet the EC's requirement for butter applying in connection with the country-specific tariff quota for New Zealand.

In 2000/01, the United States requested consultations and subsequently the establishment of a panel concerning Belgium's **administration of measures establishing customs duties on rice**. The US alleged that Belgian customs authorities had disregarded the transaction values associated with certain shipments of rice imported from the United States between 1 July 1997 and 31 December 1998, for purposes of establishing the relevant customs values and duties. Although the Belgian authorities approved the proffered transaction values prior to entry of the rice in question, Belgian customs authorities in November 2000 rejected the use of the same transaction values when assessing duties. The rejection of the proffered transaction value appeared to have been based *inter alia* on the application of an unpublished interpretative memorandum addressing the value to be assigned to specific, limited product characteristics. Belgium customs authorities applying this interpretative memorandum, which confined the category of product characteristics and the value to be assigned to such characteristics in establishing the customs value of the imports in question, were seen to have acted inconsistently with Belgium's obligations set forth in paragraphs 2, 4 and 5 of Article 2 of the Agreement on Technical Barriers to Trade. In addition, violations of GATT Articles I, II, VII, VIII, X and XI, the Customs Valuation Agreement, and the Agreement on Agriculture were alleged. A mutually satisfactory solution was found when the Belgian authorities, acting under EC law, redetermined the duties in dispute on the basis of new evidence.

Table 2: WTO disputes invoking the TBT Agreement, 1995-2001

Parties and nature of complaint	Countries supporting complaint	Consultations request	Panel request	Panel established	Panel report	Appellate body report	Decision on dispute	Implementation deadline	Solution reported	Comments
USA's complaint against Korea's shelf-life requirements for frozen processed meats and other products.	CAN, JAP	3-May-95	-	-	-	-	-	-	20-Jul-95	Also involving GATT Art. III & XI; SPS; Agreement on Agriculture.
Canada's complaint against EU's trade description of scallops.	Chile, ICL, JPN, Peru	19-May-95	7-Jul-95	19-Jul-95	5-Aug-96	-	-	-	19-Jul-96	Also involving GATT Art. I & III.
Peru's complaint against EU's trade description of scallops.	CAN, Chile, JPN	18-Jul-95	14-Sep-95	11-Oct-95	5-Aug-96	-	-	-	19-Jul-96	Also involving GATT Art. I & III.
Chile's complaint against EU's trade description of scallops.	CAN, JPN, Peru	24-Jul-95	13-Sep-95	11-Oct-95	5-Aug-96	-	-	-	19-Jul-96	Also involving GATT Art. I & III.
Canada's complaint against Korea's restrictions on treatment methods for bottled water.	EU, USA	8-Nov-95	-	-	-	-	-	-	24-Apr-96	Also involving GATT Art. III & XI; SPS.
USA's complaint against EU's import prohibition for meat produced with growth-promoting hormones.	AUS, CAN, NZL	26-Jan-96	25-Apr-96	20-May-96	18-Aug-97	16-Jan-98	13-Feb-98	13-May-99		Also involving GATT Art. III & XI; SPS; Agreement on Agriculture. USA authorised (26-Jul-99) to raise tariffs by 100% on EU products worth US\$116 mill. p.a.
USA's complaint against Korea's inspection procedures for fresh fruits.		24-May-96								Also involving GATT Art. III & XI; SPS; Agreement on Agriculture.
Canada's complaint against EU's import prohibition for meat produced with growth-promoting hormones.	AUS, NZL, USA	28-Jun-96	16-Sep-96	16-Oct-96	18-Aug-97	16-Jan-98	13-Feb-98	13-May-99		Also involving GATT Art. III & XI; SPS; Agreement on Agriculture.. CAN authorised (26-Jul-99) to raise tariffs by 100% on EU products worth C\$11.3 mill. p.a.
Philippines' complaint against USA's import prohibition of certain shrimps and shrimp products	AUS, JPN	25-Oct-96								Also involving GATT Art. I, II, III, VIII, XI and XIII.

Continued on next page.

Table 2 (cont.)

Parties and nature of complaint	Countries supporting complaint	Consultations request	Panel request	Panel established	Panel report	Appellate body report	Decision on dispute	Implementation deadline	Solution reported	Comments
New Zealand's complaint against EU's measures affecting butter products		24-Mar-97	6-Nov-97	18-Nov-97	24-Nov-99	-	-	-	11-Nov-99	Also involving GATT Art. II, III, X and XI; Agreement on Import Licensing Procedures.
EU's complaint against USA's restrictions on imports of poultry products.		18-Aug-97								Also involving GATT Art. I, III, X, XI; SPS.
India's complaint against EU's restrictions concerning rice imports.		25-May-98								Also involving GATT Art. I, II, III, VIII and XI; SPS; Agreement on Import Licensing Procedures; Agreement on Agriculture.
Canada's complaint against EU's restrictions on pine wood imports due to nematodes.		17-Jun-98								Also involving GATT Art. I, III and XI; SPS.
Canada's complaint against USA's restrictions on imports of live animals and grains.		25-Sep-98								Also involving GATT Art. I, III, V, XI, and XXIV; SPS; Agreement on Agriculture.
USA's complaint against Mexico's measures affecting trade in live swine.		10-Jul-00								Also involving GATT Art. III and XI; SPS; Agreement on Agriculture.
USA's complaint against Belgium's administration of measures establishing customs duties for rice		19-Oct-00	19-Jan-01	12-Mar-01					18-Dec-01	Also involving GATT Art. I, II, VII, VIII, X and XI; Customs Valuation Agreement; Agreement on Agriculture.
Peru's complaint against the EU's trade description of sardines	Venezuela, Chile, USA, Ecuador	23-Apr-01	7-Jun-01	24-Jul-01						Also involving GATT Art. I and III.

Source: OECD Secretariat based on WTO information (documents WT/DS).

V. Summary of evaluations concerning the implementation of the TBT Agreement

23. The TBT Agreement asks for a review of the operation and implementation of the Agreement through the TBT Committee every three years. The first such review was concluded in November 1997 and the second in November 2000. During the second review the Committee stated with respect to the transparency provisions of the Agreement that, given the considerable number of WTO members which had not named single government authorities and announcement publications, "the status of implementation needed to be improved" (WTO, 2000). Similarly, concerning the provision of information on TBT enquiry points by member countries the Committee considered that the "status of implementation was not satisfactory".

24. While acknowledging the increasing number of notifications made by central governments as well as the increasing number of notifying countries, the Committee noted "the low level of notifications of technical regulations and conformity assessment procedures of local government at the level below that of the central government of Members" (WTO, 2000). Furthermore, the Committee observed that "concerns regarding labelling were raised frequently in the Committee meetings during discussions on the implementation and operation of the Agreement. In this regard, the Committee reiterated the importance of any such requirements being consistent with the disciplines of the Agreement, and in particular stressed that they should not become disguised restrictions on trade." Moreover, the Committee noted that "international standardization was an area where developing country participation was still limited and constrained" and recognised the importance of technical assistance in this regard.

25. The Committee's evaluation of the operation and implementation of the TBT Agreement did not differentiate between sectors or product groups. But the description of TBT issues and concerns in this study suggests that problems associated with technical barriers to trade might be particularly pertinent for agro-food products. Agriculture and food products account for about nine per cent of world merchandise trade (WTO, 2001), but were specifically targeted in 28 per cent of all notified TBT measures during 2001. Moreover, 32 per cent of all specific trade concerns raised in the TBT Committee have concerned agro-food products, as well as 62 per cent of all TBT-related disputes. Hence, technical measures and their possible trade impacts seem to be more controversial for agro-food products than for other merchandise. However, most TBT-related disputes also involve and are often mainly about alleged violations of other parts of international trade law, so that the absolute number of disputes should be interpreted with care. Nevertheless, the finding of an increasing trend in the number of specific trade concerns raised in the TBT Committee suggests that trade policy makers and technical experts at standardising bodies might want to devote particular attention to contentious issues concerning agro-food products, such as food labelling, in order to minimise the risk of future disruptions of international trade.

27. Indeed, informal discussions on labelling have already been initiated in the TBT Committee in order to look at ways in which disciplines might be imposed on labelling regimes. One idea has thereby been to extend the application of the principles of the Code of Good Practice to labelling issues. These discussions are still ongoing in the TBT Committee as well as in other technical organisations.

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ANNEX

**QUESTIONS AND DISCUSSIONS IN THE COMMITTEE ON
TECHNICAL BARRIERS TO TRADE**

Agricultural products, 1995-2001

1. Mexico. Meat packaging and labelling.

Concern	The problem of labelling in general. Are adhesive labels acceptable and can the Spanish language label be affixed in Mexico?
Issue raised by	New-Zealand
Issue supported by	
Date and relevant documents	April 1995 (G/TBT/M/1)

In April 1995, New Zealand focussed its attention on a Mexican regulation which appeared to apply to a large range of products, including meat products, and did not appear to be justified. The regulation laid down a strict framework for packaging and labelling. The speaker asked if adhesive labels were acceptable and whether the Spanish language label could be affixed in Mexico.

Mexico confirmed that the definitive versions of these plans would be brought to the Committee's attention, while answers to the questions raised by New Zealand would be provided by the competent authorities as soon as possible.

2. United States. Tea standards.

Concern	International standards not applied
Issue raised by	European Communities
Issue supported by	
Date and relevant documents	June 1996 (G/TBT/M/5), October 1996 (G/TBT/M/6)

The European Communities asked the United States to explain the reasons why it was not using the international standard in the draft regulation on tea.

3. European Communities. Lack of notification concerning GMOs.

Concern	No notification of technical regulation.
Issue raised by	Canada
Issue supported by	United States
Date and relevant documents	June 1997 (G/TBT/M/8), October 1997 (G/TBT/M/10)

Canada maintained that the European Communities had not provided notification of a technical regulation and an amendment to a Directive on genetically modified organisms. The former laid down the rules for the authorisation and labelling of genetically modified foodstuffs, while the amendment to the Directive stated that foodstuffs containing GMOs should be described as such on the package. The European Communities replied that the notifications had been sent out.

4. Thailand. Ingredients used in manufacturing cigarettes and cigars.

Concern	Clarification concerning draft legislation on the disclosure of ingredients used in manufacturing cigarettes and cigars.
Issue raised by	European Communities
Issue supported by	
Date and relevant documents	June 1997 (G/TBT/M/8)

The European Communities drew attention to a Thai Government Act, adopted in April 1997, concerning disclosure of the ingredients used in manufacturing cigarettes and cigars. The questions focussed on the notification date. Thailand replied that it would ask its authorities for the answers.

5. Thailand. Labelling of cigarette packets.

Concern	Clarification concerning the Bill on cigarette packet labelling
Issue raised by	European Communities
Issue supported by	
Date and relevant documents	October 1997 (G/TBT/M/10)

The European Communities raised the problem of the labelling of cigarette packets which had been broached in a Thai Ministerial Rule that had not yet been notified.

The Communities asked for the notification date. Thailand replied that it would answer as soon as its authorities had given their reply.

6. European Communities. Labelling of food products containing GMOs.

Concern	Mandatory labelling of foodstuffs produced from genetically modified organisms
Issue raised by	United States
Issue supported by	Argentina, Brazil, Canada and New-Zealand
Date and relevant documents	July 1998 (G/TBT/M/12), September 1998 (G/TBT/M/13), November 1998 (G/TBT/M/14), March 1999 (G/TBT/M/15), June 1999 (G/TBT/M/16), October 2000 (G/TBT/M/21), November 2000 (G/TBT/M/22), March 2001 (G/TBT/M/23), and June 2001 (G/TBT/M/24)

In July 1998, the United States representative drew attention to European Council Regulation No.1139/98 on the Compulsory Indication of the Labelling of Certain Foodstuffs Produced from Genetically Modified Organisms (GMOs). She recalled that the labelling requirement had been the subject of previous interventions in the Committee. The proposal was notified to the Committee (G/TBT/Notif.97.766) on 12 December 1997 and her authorities had commented on it. However, she was concerned that in adopting its final Council Regulation, the European Communities failed to take into account the comments that were made on its objectives and the practical aspects associated with its implementation. She feared that it would create unnecessary obstacles to international trade in corn and soybeans, and would set an unfortunate example for the future regulation of other food and agricultural products. She believed that other Members shared similar concerns, and requested an explanation from the Commission on how the concerns raised by her delegation were addressed, and on the steps that would be taken to ensure compliance with the obligations under the Agreement.

The American approach was backed by New Zealand which stressed, on one hand, the failings of scientific assessments and, on the other, the considerable extra cost of the tests, which would be borne by consumers. Other ways of informing consumers could be explored.

Canada said that it shared US concerns about the validity of protein identification, the ability of the labelling system to inform consumers, compliance with procedures and the possibility of trade being disrupted.

The European Communities justified the choice of the equivalence criterion instead of the concept of « substantial equivalence » by stressing that the presence of protein and DNA resulting from genetic modification constituted a demonstrable difference, over and above the natural variations with a conventional foodstuff. The European Communities then invited their partners to continue bilateral discussions.

7. Egypt. Meat labelling.

Concern	Labelling difficult to perform, costly and not consistent with international practice
Issue raised by	European Communities
Issue supported by	United States
Date and relevant documents	September 1998 (G/TBT/M/13), November 1998 (G/TBT/M/14) , March 1999 (G/TBT/M/15)

In September 1998, following complaints from exporters, the European Communities, stressed the extent to which Egypt's decision to make double labelling of meat mandatory (inside and outside of packaging containers, plus the requirement to indicate the names of the importers and slaughterhouses) was costly, technically difficult to comply with and not in conformity with international practice, and therefore constituted a technical barrier to trade.

Egypt replied that this sort of labelling had been introduced for religious reasons, inasmuch as it made it possible to establish that the animals had been slaughtered in accordance with Islamic custom. It added that double labelling was in no way a barrier to trade in that the exporter had this information and the obligation to indicate the date of slaughter and the country of origin was necessary in order to protect the health of consumers.

8. Netherlands. Mandatory labelling of wood and wood products.

Concern	Request for clarification
Issue raised by	Canada, ASEAN
Issue supported by	Norway, Poland, Ecuador and Brazil
Date and relevant documents	September 1998 (G/TBT/M/13), November 1998 (G/TBT/M/14), March 2001 (G/TBT/M/23) and June 2001 (G/TBT/M/24)

In September 1998, Canada asked the Netherlands for clarification on a notification about a Bill on the labelling of wood and wood-based products. The legislation, which was scheduled to come into force in January 2000, was deemed discriminatory and inconsistent with WTO and TBT agreements because it appeared to be mandatory. Wood products would be treated differently depending on their origin (primary forest or not) and wood-based products would also be treated differently from similar products. Canada pointed out that there was no consensus on the definitions of primary forest and on the idea of an area where wood production would be on a sustainable basis. Environmental practices with regard to forest management could differ according to the objectives, production methods and the country. Canada could agree to the notification, as long as it was market-based and independent and was voluntary.

In November 1998, the ASEAN, through its representative, the Philippines, and having stated that the Netherlands had to comply with the obligations deriving from its status as a member of the International Tropical Timber Organisation, endorsed Canada's arguments and judged the Bill inopportune.

The European Communities noted that countries had strong feelings about the Bill. They stressed that these comments would be submitted to the Dutch Parliament which would take a new decision. The Bill had not yet been voted and a new notification would be presented.

In May 2001, through its representative, Malaysia, the ASEAN again expressed doubts concerning the rationale behind this notification, adopted by the Dutch Lower House in 2000, and criticised the Netherlands' unilateral interpretation of sustainable forest management. The Bill ran counter to international agreements such as the International Tropical Timber Agreement (ITTA). Brazil and Canada joined in the criticism.

The European Communities replied that the Bill had not yet been voted by the Senate and that, for it to be ratified, the Bill would subsequently need to be signed by the government. The comments would be passed on.

9. European Communities. Wine labelling with « traditional expressions »

Concern	EC Regulation restricting the use of expressions used to describe characteristics such as colour and vinification or other methods.
Issue raised by	United States
Issue supported by	Argentina, Australia, Canada, Chile, Egypt, Mexico, New Zealand and Uruguay
Date and relevant documents	October 1999 (G/TBT/M/17), February 2000 (G/TBT/M/18) and October 2001 (G/TBT/M/25)

The United States drew attention to the content of a European Communities document stipulating that wines with labels bearing one of the expressions considered by the EC to be traditional would be refused access to the Community unless they came from a country with which a bilateral agreement had been reached. However, the terms referred to were descriptive and in wide use throughout the world, but did not provide any information as to the origin and quality of the wine. They were not reserved designations. Another source of concern, in addition to the wine problem, was the extension of this type of label to other agricultural products. Other countries joined with the United States in expressing their concerns.

While Uruguay shared the same objective as the European Communities, i.e. the protection of guarantees of origin, it was perplexed about the use of a number of expressions which did not appear to designate varieties of products that could be connected with a specific European region. Uruguay asked for further clarification.

The European Communities said that the object of the regulation was to protect expressions which, over time, had taken on a particular connotation. The aim was to « avoid misleading consumers and to discourage unfair competition ».

They answered the United States by saying that only certain specific expressions would be retained, stressing that it had not provided a single example of a wine about which traditional expressions were used, thus proving their specificity and the need to protect them. Application of the regulation had been postponed and had not yet been notified.

In October 2001, the United States again expressed its concern regarding another text that used the same arguments as those set out above. The said Bill restricted imports of wines and constituted a barrier to trade.

10. Australia and New Zealand. Labelling of transgenic products.

Concern	Purpose of mandatory labelling for all products containing GMOs, including those substantially equivalent to conventional products
Issue raised by	Canada
Issue supported by	
Date and relevant documents	June 1999 (G/TBT/M/16), October 1999 (G/TBT/M/17)

Canada welcomed the combined approach adopted by New Zealand and Australia concerning the labelling of products derived from gene technology. It pointed out, however, that the obligation also applied to products that were substantially equivalent to traditionally derived products, though without understanding either the reasons or the purpose. It asked what the reasons were for this strategy, how the labelling programme would be compatible with international trade obligations, and how it would be applied and monitored and on the basis of what method of analysis.

New Zealand replied that the purpose of the labelling was to inform the consumer and that written replies would be sent to Canada. Australia endorsed the reply given by New Zealand.

11. United States. Eco-labelling of tuna-based products based on the method of fishing.

Concern	Uncertainty as to the mandatory nature of eco-labelling
Issue raised by	Brazil
Issue supported by	Egypt, Mexico, Thailand
Date and relevant documents	February 2000 (G/TBT/M/18), May 2000 (G/TBT/M/19), October 2000 (G/TBT/M/21), November 2000 (G/TBT/M/22)

In February 2000, Brazil asked the United States for clarification concerning a notification about tuna fished using techniques which were not dangerous for dolphins. According to the notification, the label affixed would indicate how they had been fished. But what was not clear was whether the label would be mandatory ; if it was, it would constitute a barrier to trade by accentuating the damage to the developing countries.

In May 2000, Mexico endorsed Brazil's concerns. The United States replied that there was legislation requiring the use of an official stamp on a voluntary basis. In November 2000, it said that a corrigendum to the notification had been published.

12. New Zealand. Conservation and protection of trout

Concern	Import ban on trout
Issue raised by	Canada
Issue supported by	
Date and relevant documents	May 2000 (G/TBT/M/19), July 2000 (G/TBT/M/20) and October 2001 (G/TBT/M/25)

Canada expressed concern in May 2000 about the New Zealand Bill banning imports of trout as a non-commercial species, which was contrary to the WTO agreement. No information had as yet been provided.

New Zealand replied that it was a temporary ban, designed to provide time to consider the question of the protection of trout fishing in that country. There was not at present any market, or therefore commercial sale likely to jeopardise the sustainable operation of wild trout fishing. The authorities would look at the whole question of the protection of trout fishing and would look at the problem again at a later date.

That reply did not satisfy Canada which, in July 2000, when the ban had been extended, asked for further clarification concerning the link between trout imports and the sustainability of wild trout fishing. Canada asked for the ban to be lifted forthwith. New Zealand replied that the question had high priority and asked Canada to pursue discussions.

13. Japan. Labelling standards concerning the quality of perishable foodstuffs.

Concern	Content of the label not in compliance with international standards.
Issue raised by	New Zealand, Egypt
Issue supported by	Australia
Date and relevant documents	May 2000 (G/TBT/M/19), July 2000 (G/TBT/M/20), November 2000 (G/TBT/M/22) and March 2001 (G/TBT/M/23)

In May 2000, New Zealand expressed concern regarding a notification from Japan on labelling standards concerning the quality of processed foodstuffs, fresh foodstuffs, hulled rice, white rice and marine products. The labelling was based on the country of origin and applied to all foodstuffs and beverages intended for sale.

Although the « protection of consumers' interests » argument was put forward to justify the labelling, it transpired that the latter was mandatory and that a link was made between product quality and the country of origin of the product. New Zealand challenged that idea, there being no scientific link between quality and the country of origin.

New Zealand also pointed out that this policy resulted in additional costs that would have to be borne by consumers. Discussions had already taken place with Japan, but without convincing New

Zealand. How could extra costs be justified when what was involved were pointless barriers to international trade? What scientific arguments were the Japanese authorities using to justify this policy? What were the risks?

Japan replied that the labelling requirement was in response to consumer demand, Japanese consumers choosing products on the basis of the efforts made to improve both quality and price, and that that obligation applied to all products, including those produced locally. It was stressed that the new labelling system would result in significant additional costs.

In March 2001, Egypt again asked Japan for an explanation concerning compliance with the obligation for SMEs and stressed the consequences for the developing countries.

14. European Communities. Labelling of beef and beef products.

Concern	System for the identification and registration of bovine animals, as well as the labelling of beef and beef products.
Issue raised by	Brazil, Egypt
Issue supported by	Canada, South Africa, United States and New Zealand
Date and relevant documents	July 2000 (G/TBT/M/20), October 2000 (G/TBT/M/21) and November 2000 (G/TBT/M/22)

Brazil asked the European Communities about their notification concerning a system for the identification and registration of bovine animals, as well as the labelling of beef and beef products. The label was required to indicate the country of origin, the slaughterhouse, the de-boning hall and the category of the animal. Brazil wondered whether only the first two requirements were mandatory.

Egypt said in November 2000 that it was concerned by this new system which could well prove to be a serious barrier to trade from the developing countries.

The European Communities said that they were anxious to provide all the necessary documents and were ready to discuss labelling problems with the Committee.

15. European Communities. Marketing standards applying to eggs.

Concern	Unjustified marketing standards
Issue raised by	Canada
Issue supported by	India, United States
Date and relevant documents	October 2000 (G/TBT/M/21), November 2000 (G/TBT/M/22)

In November 2000, Canada asked the European Communities to justify a new regulation concerning certain marketing standards for eggs, which involved labelling that varied according to operating conditions.

The European Communities replied that the process of adopting this new regulation was not very far advanced and that the labelling was in response to a need for information on the part of consumers. The technical requirements were being drawn up.

16. Indonesia. Labelling of food products, wines and spirits.

Concern	Barrier to international trade
Issue raised by	European Communities
Issue supported by	Egypt, United States
Date and relevant documents	July 2000 (G/TBT/M/20), October 2000 (G/TBT/M/21), November 2000 (G/TBT/M/22) and June 2001 (G/TBT/M/24)

The European Communities felt in June 2001 that some of the requirements in Indonesia's notification concerning the labelling of foodstuffs, wines and spirits ought not to apply because of their restrictive effect on international trade. Indonesia said that it would reply at a later date.

17. European Communities. Certification of biological products

Concern	Discrimination between countries with regard to certification
Issue raised by	United States
Issue supported by	
Date and relevant documents	October 2001 (G/TBT/M/25)

In October 2001, the delegate of the United States expressed concern over a notification from the European Communities on requirements with respect to the importing and certification of biological products. Their products would have to be approved by competent authorities of individual Member States. Each Member State could decide which border authorities be assigned this task. However, in the Member States, there was no procedure established for border authorities to communicate with the competent authorities that issued the import authorisation. She was concerned about the potential delays and the unclear procedures that would be implemented, though the EC had responded that its Member States would inform it on how the new regulations were to be implemented. In view that the regulations were to be implemented in July 2002, she requested the EC to provide clear information on the procedures in Member States.

The e European Communities promised to pass the questions and comments on to the competent authorities.

18. European Communities. Standards for wine bottles.

Concern	Treatment favouring products of European origin
Issue raised by	United States
Issue supported by	Argentina, Australia, Canada, Chile, New Zealand and Uruguay
Date and relevant documents	October 2001 (G/TBT/M/25)

In October 2001, the United States criticised a European Communities plan which involved, first, coming back to the « traditional expressions » information and, second, reserving certain types of bottle solely for EU use, thus favouring products of European origin and creating an unnecessary barrier to trade. This scheme, which was contrary to both the GATT agreements and the WTO agreement, represented an attempt to obtain a competitive advantage for locally produced wines and alcoholic beverages. Australia joined with the United States in asking for notification of the draft regulation.

The representative of the European Communities explained that it was not possible to notify the proposal at the moment, since the proposal was under discussion within the Commission as well as between Member states at the expert level, and no draft text had been prepared. He assured the Committee that it would be notified when a formal draft text exist, in time before it was adopted.

19. Chile. Labelling of transgenic foodstuffs.

Concern	Labelling created a barrier to trade
Issue raised by	Canada
Issue supported by	
Date and relevant documents	October 2001 (G/TBT/M/25)

Canada expressed concern about a Chilean regulation on the system of labelling transgenic foodstuffs. Canada had doubts concerning the scientific justification, the implementation of the measures and their binding nature.

Chile took note of Canada's questions and confirmed the measure which would come into effect one year after its publication in the Official Journal.

20. Brazil. Labelling of foodstuffs containing GMOs.

Concern	Request for clarification
Issue raised by	United States
Issue supported by	
Date and relevant documents	October 2001 (G/TBT/M/25)

The United States asked Brazil in October 2001 whether the decree on labelling, which set a tolerance threshold of 4% of GMOs in foodstuffs, was a definitive text and whether it was going to be the subject of a notification or not. Brazil replied in the affirmative.