ANALYSIS OF NON-TARIFF MEASURES

THE CASE OF LABELLING: OVERVIEW AND ANALYSIS OF WTO DATA
Acknowledgements

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# TABLE OF CONTENTS

I. INTRODUCTION ................................................................................................................... ......... 5  
II. WHAT IS PRODUCT LABELLING?............................................................................................. 6  
   A. Definitions ......................................................................................................................... 7  
   B. Types of labelling policies ............................................................................................... 8  
   C. Compliance and enforcement procedures ....................................................................... 9  
III. LABELLING AS A TECHNICAL MEASURE WITH POTENTIAL TRADE EFFECTS.............. 10  
IV. LABELLING AND THE TBT AGREEMENT ............................................................................. 14  
   A. Transparency and non-discrimination ........................................................................... 14  
   B. Avoiding unnecessary trade restrictiveness ................................................................ 15  
   C. Harmonisation and recognition of equivalence .......................................................... 15  
   D. Assessment of conformity ............................................................................................ 16  
   E. Standards and the Code of Good Practices ............................................................... 16  
   F. Other provisions of GATT ............................................................................................ 16  
V. INFORMATION ON THE EXISTENCE AND NATURE OF LABELLING REGULATIONS. 17  
   A. Labelling-related notifications under the TBT Agreement ........................................... 17  
   B. Notifications under Article 10.7 - Bilateral or Multilateral Agreements reached by Members on issues related to Technical Regulations, Standards or Conformity Assessment Procedures.................................................................................................................. 26  
   C. Trade concerns raised about labelling policies in the Committee on TBT. ................. 26  
   D. Labelling issues in the context of the WTO dispute settlement process ..................... 28  
VI. CONCLUDING REMARKS ......................................................................................................... 30  

REFERENCES ............................................................................................................................. 32  

ANNEX 1. NOTIFICATIONS BY COUNTRY ..................................................................................... 35  
ANNEX 2. TYPES OF LABELLING BY STATED OBJECTIVE........................................................ 36  
ANNEX 3. LABELLING MEASURES RAISING CONCERNS OVER TRADE OR CONSISTENCY WITH WTO RULES .......................................................................................................................... 37
Executive summary

This paper provides some initial analysis of product labelling in the context of ongoing work designed to examine the use and potential trade effects of individual types of non-tariff measures. Product labelling potentially impacts on a large portion of global trade. Growth and diversity of labelling standards within and across export markets raise questions concerning whether policies aimed at providing information for consumers restrict trade.

Product labelling is considered a type of technical measure that governments use to correct inefficiencies in markets and to achieve other regulatory goals. The purpose of labelling regimes is to inform consumers about attributes of products or how they are produced. Labelling can take various forms, ranging from mandatory information disclosure requirements to private voluntary programs. Because labelling *per se* does not oblige producers to modify their products in order to enter a market, labelling usually is considered a relatively trade-friendly regulatory approach. Nevertheless, by design or effect, labelling can be costly for businesses and restrict trade.

Sources for data on countries’ labelling measures are limited. To learn more about the regulatory activity in this field and related trade issues, the texts of TBT notifications for 1995-2001 and other WTO material were analysed for this paper. Given the exploratory and tentative nature of this exercise, no conclusions are offered at this point.

The present document is the first part of the intended report on labelling. It will be complemented by research that identifies in more detail specific trade problems perceived by exporters as well as labelling-related market opportunities and possibly by a review of available theoretical and empirical literature about the market and trade effects of product labelling.
ANALYSIS OF NON-TARIFF MEASURES
THE CASE OF LABELLING: OVERVIEW AND ANALYSIS OF WTO DATA

I. INTRODUCTION

1. Few goods that are placed on the market escape some form of labelling regulation. Therefore, this type of regulation potentially impacts on a very large portion of global trade.

2. In recent years there has been a trend towards growing complexity in labelling practices, driven in part by the increasing sophistication of consumers and the widening range of products. The pressure to supply more information is increasing, in terms of not only amount but also detail. This development has been well documented e.g. for food, where there is an extensive history of labels developed to provide consumers nutritional and other health and safety related information (use of pesticides, fertilisers and other chemicals, food additives, irradiation etc.). The demand for more information is also taking hold in markets for many non-agricultural products (textiles and clothing, household appliances).

   − In the food sector, labelling has become more widespread in many countries. This parallels the development of new products and new production methods, which has contributed to a desire of consumers to know more and the desire of producers to improve their competitive position through marketing.1

   − The number of voluntary initiatives is growing. There has been a proliferation of eco-labelling programs world-wide in particular consumer sectors, and they are spreading to new sectors. They cover now almost any food and agricultural product.2 Certification and eco-labelling are also growing in the tourism industry. The latest trend is the certification of “sustainable” natural resources industries, such as forestry and fisheries, and the marketing of associated products with a “sustainable management” eco-label.3

3. The issue with respect to labelling is how to provide the desired information most efficiently and in ways consistent with good regulatory practice. In policy-making, this includes the consideration of alternative tools to help avoid unnecessary trade restrictiveness.

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1 For example, in the United States the rate of introduction of new food products in the 1980s was twice that of the 1970s, and in 1990 alone, over 13,000 new food products were introduced, and the growth trend is expected to persist in the future. See M.R. Russo and E.W. McLaughlin, The Year 2000: A Food Industry Forecast. Agribusiness: An International Journal, Vol. 8, No. 6, 1992, p. 502; and E.W. McLaughlin and V.R. Rao, Decision criteria for new product acceptance and success, Quorum Books, Westport, Connecticut, 1990. The new or modified products and new food processing technologies introduced since World War II are seen as having created a need for new, potentially trade restrictive standards, health and safety regulations, and other control mechanisms. See Fidele Ndayisenga and Jean Kinsey, The structure of non-tariff trade measures on agricultural products in high-income countries, Agribusiness, Vol. 10, No. 4, 1994, p. 277.


4. At the multilateral level, labelling issues have been discussed in the WTO Committee on Technical Barriers to Trade (TBT) as well as in the Committee on Sanitary and Phytosanitary Measures (SPS). Environmental labelling schemes have been extensively discussed by the Committee on Trade and Environment (CTE). Although the Doha declaration mandated the CTE to pursue work on labelling for environmental purposes, no work was agreed to during the Cancun Ministerial.

5. From a broad welfare perspective, the underlying issue is whether labelling - particularly when made mandatory by governments – is the most appropriate policy tool for achieving the desired regulatory objective and whether there has been consideration of alternative approaches. The multiplication of labelling schemes raises specific questions of transparency, information costs for consumers as well as for producers - including foreign suppliers. There are many other substantive and procedural concerns that exporters and trading partners have voiced about market access in connection with specific labelling practices. However, a labelling scheme may also create new market opportunities for companies that differentiate their products based on the label information.

6. Therefore, an examination of the use and potential trade effects of product labelling appears timely and relevant. Based on reactions from Delegations, the approach has been adjusted to exclude quantitative analysis of information contained in national reports previously investigated. Drawing on other material, the analysis will comprise three parts. This paper describes the role of labelling, the features distinguishing it from other technical barriers affecting trade, and the principal benchmarks contained in the TBT Agreement against which labelling is usually assessed. To learn more about labelling policies and issues of concern to exporters, the report furthermore reviews labelling notifications under the TBT Agreement, concerns raised during TBT Committee discussions and WTO dispute settlement cases. This information is not likely to be exhaustive in its description of labelling policies and/or trade problems.

7. The information that can be drawn from the WTO material about labelling is not detailed enough to allow the identification of specific trade problems perceived by exporters. Further work will be undertaken by the Secretariat in order to identify these problems and potential opportunities.

II. WHAT IS PRODUCT LABELLING?

8. Product labelling belongs to a category of so-called ‘technical measures’\(^4\), widely used by governments to correct inefficiencies in markets and to achieve other domestic regulatory goals. Besides being mandated by public authorities, labelled information can be provided voluntary, which is a common business practice. The central function of labelling is to give consumers information so that they can better choose products that match their individual preferences.

9. Product labelling can improve the information environment by either supplying information that is missing (imperfect information) or by improving the flow of information between suppliers and consumers (information asymmetries). By making more information available for consumers and users, labelling can improve the functioning of markets for the attributes of the product themselves.\(^5\)

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\(^4\) Labelling is frequently cited as a source of non-tariff barrier to trade for goods or “technical barrier to trade”. However, like some other measures, such as product or process specifications or packaging requirements, labelling is not a trade measure that directly restricts imports. The effect on trade is uncertain and often incidental. Therefore these measures, including labelling, will be called ‘technical measures’ in this study. The term ‘technical measure’ is also common terminology in the UNCTAD coding system of trade control measures used for TRAINS.

\(^5\) This is particularly useful for ‘credence’ attributes, where consumers are unable to judge the quality of a product even after purchase and use, and to some extent also for ‘experience’ attributes which can be judged only after repeated use. Labelling transforms these attributes into ‘search’ attributes, allowing consumers to judge the product
A. Definitions

10. The terms “labelling” or “product labelling” elude a straightforward and widely accepted definition. For example, instead of offering a definition of “labelling”, the Dictionary of Trade Policy Terms published by the Centre for International Economic Studies at the University of Adelaide, Australia refers the reader to the following, more specialised labelling terminology: “eco-labelling”, “genetic labelling”, “marks of origin” and “social labelling”. More comprehensive descriptions or definitions offered by other sources are shown in Box 1.

<table>
<thead>
<tr>
<th>Box 1: Some definitions and descriptions of labelling</th>
</tr>
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<tbody>
<tr>
<td><strong>Labelling requirements</strong> - “…measures regulating the kind and size of printing on packages and labels and defining the information that may or should be provided to the consumer”.</td>
</tr>
<tr>
<td><em>UNCTAD, Trade Analysis and Information System (TRAINS)</em></td>
</tr>
<tr>
<td><strong>Product labelling</strong> - “… any policy instrument of a government or other third party that somehow regulates the presentation of product-specific information to consumers. This information might describe use characteristics of the product, such as price, taste and nutrition, or non-use characteristics, such as the environmental impact or moral/ethical elements surrounding the product’s manufacturing process.”</td>
</tr>
<tr>
<td>A product label is one of the most important and direct means of communicating product information between buyers and sellers and serves three primary functions:</td>
</tr>
<tr>
<td>1. Provides basic product information such as: the common name, list of key ingredients, net quantity, durable life dates, grade/quality, country of origin and name/address of responsible manufacturer, dealer or importer;</td>
</tr>
<tr>
<td>2. Provides health/safety and nutrition information including: instructions for safe handling, nutritional profile or other specific information relevant to recommended possible uses of the product; and</td>
</tr>
<tr>
<td>3. Vehicle for marketing, promotion and competition: advertises and promotes product sale and trade via label vignettes, promotional information and label claims.</td>
</tr>
<tr>
<td>Label information constitutes the primary means by which consumers differentiate between individual products and brands to make informed purchasing choices…”</td>
</tr>
</tbody>
</table>

11. The definition of labelling requirements proposed by UNCTAD focuses on the regulatory character of providing information and they point out that information requirements can be of voluntary or mandatory nature. Teisl and Roe’s definition of product labelling also identifies the regulatory mechanism; they define product labelling from the consumer’s perspective and make explicit mention of the use and non-use characteristics of a product. The description provided by the Australian Chamber of Commerce and Industry does not stress any regulatory objective of a product label and they regard the label as not before purchase. See P. Nelson, Information and consumer behaviour, *Journal of Political Economics*, 1970, No. 78, p. 311-329 and OECD, *Uses of food labelling regulations*, OCDE/DG(97)150, Paris 1997.
only an instrument with the aim to provide basic product information to the consumer but they also include the business perspective where product labels function as a marketing and promotion tool.

12. Labels or stamps are sometimes used to show that, for example, internal taxes have been duly paid. Such affixations to, or markings on, a product are not labels in the common usage of the term.

B. Types of labelling policies

13. Labelling schemes can take different forms. Producers may provide label information voluntarily. Also, governments may decide to regulate labelling if they believe that a certain type of information is important to consumers or users and is not being adequately supplied by the markets.

Labelling programmes are often distinguished depending on whether they originate from the public authorities or the private sector and whether compliance is mandatory or voluntary:

- Government-mandated labelling requirements prescribe the type of information with respect to the product, its packaging or the production process which the label must contain.

- Private voluntary labelling schemes refer to market-based initiatives for the optional use of a label in one of the following contexts:
  - a certification programme, where a label or mark is used to identify products that meet specific criteria and undergo certification by parties outside the firm. It is up to the producer to decide whether or not to apply for certification and use of label.
  - a marketing strategy by individual companies that seek out attributes that are attractive to consumers and voluntarily provide information about these attributes. Companies have an interest in making claims for particular attributes that differentiate and promote their products.

14. To be effective, labeling need not be a government-mandated requirement. In fact, many labeling schemes are private and voluntary. Also, public authorities can play various roles in programmes that are voluntary. For example, governments themselves may (co)sponsor voluntary certification and labelling schemes or participate in some other aspect of their implementation. Or governments may exercise some oversight and issue guidelines or rules regulating private companies’ product claims, so as to protect consumers from false or misleading representation. They may set forth conditions for the use of certain terms (e.g. when to use the terms “fresh”, “pure”, or “natural” in food labelling), mandate additional information when particular claims are made or prohibit certain representations.

15. There are alternative approaches of providing information without the use of labels. This can take the form of public information and educational campaigns, flyers with user instructions and other types of information at point of purchase, advertising, consumer reports, and web-based databases.

16. The information delivered on a label can be different in character depending on the purpose of the message. For example, the information conveyed on a bag of frozen vegetables will be different from the information printed on a packet of cigarettes. The former product label may provide consumers with general information about such attributes as the contents’ weight, vegetable mix, nutrition and best-before-date, whereas the latter product label is likely to include \textit{inter alia} a list of toxic chemicals and health warning. Governments may require warning labels for products that carry certain risks (e.g. are flammable, toxic) or green labels for products that are recyclable or biodegradable. Quality ‘designations’ (e.g. purity level of gold in jewellery or cocoa content in chocolate) and labels describing processes or conditions of
production may also provide valuable information on which to base purchases and therefore reduce information asymmetry. Besides specific attributes of a product, label information may describe the way in which a good has been produced, including ethical issues surrounding production practices that consumers may value.⁶

17. Labelling can also be used to stimulate behaviour change, supporting regulatory goals in situations where externalities associated with consumption and production patterns create significant social costs. Examples are public health and environmental protection. Dietary label information or health warnings can be used to influence consumer behaviour (eating, drinking and smoking habits) so as to reduce public health problems. Government-sponsored or private labelling schemes typically seek to motivate consumers to buy, and manufacturers to produce, products made of materials or processes that place fewer burdens on the environment. Product packages may for example be required to display a label indicating the percentage of recyclable ingredients or products containing ozone-depleting substances may be required to display an appropriate warning. Most voluntary eco-labelling programmes assess and certify environmentally friendly products based on their entire life cycle. The basic idea is that labels such as these can differentiate products and consumer demand for the labelled items will increase. Increased consumer demand, and a price premium which the labelled product may carry, in turn are expected to act as incentives for companies to change their production processes or products’ content formulas.⁷

18. Finally, it should be noted that in many societies consumers or other stakeholders are actively seeking a more important role in the setting of regulatory goals, including through labelling. Specific concerns or preferences expressed by major groups of consumers may attempt to assert pressure on governments to establish labelling rules in response to complaints about the inability to purchase ethically, or about the lack of information on which to base decisions relating to the risk to health or the environment. Such groups are frequently demanding labelling information under the “right to know”⁸ justification, which has recently received more attention.

C. Compliance and enforcement procedures

19. Labelling policies usually have two components: label content and conformity assessment procedures.

20. Labelling regulates the kind of information affixed on the label of the product (e.g. name of product, composition, country of origin), or the presentational aspects of a label (affixed on the label of the product, provided on stickers on the original label, or on the package of the product, and size and other elements of the text and the label). However, the label itself is only the tip of the iceberg of a labelling regime. To ensure that the information on the label is accurate and that products are labelled as required, or to qualify for the optional use of a label, labelling regimes involve some mechanism of demonstrating compliance and/or enforcement. Consumers or users may otherwise not trust information provided by a label, whose truthfulness they usually are unable to ascertain on their own.

⁶ “Ethical” is a subjective term. It refers here to the process or method of producing goods without harm or exploitation of humans, animals or the environment, which consumers may use as criteria for their purchases.


⁸ From a consumer perspective, ‘right-to-know’ can be defined as the notion that the public has a basic right to know any fact it deems important about a product before making a purchasing decision. Degnan, Frederick H., 1997, The Food Label and the Right-to-Know, Food and Drug Law Journal, Vol. 52, p. 49-60.
21. Compliance systems vary, ranging from pre-market surveillance, commonly used in the case of higher-risk products, to surveillance after labelled products have been placed on the market. Imported products are often subject to specific customs regulations regarding mandatory labels and which entail controls at the border. The complexity and consequent costs of the conformity procedures can vary significantly.

22. Certification programmes require assurance of conformity with specified criteria, carried out by a competent person or private or public body, before the producer can use the label. Conformity assessment procedures exist regardless of whether the labelling program is mandatory or voluntary. For example, while eco-labelling can be wholly voluntary, government-sponsored or private program – the label or mark is granted only if certification has been completed through an independent body against a set of predetermined criteria. Other examples of voluntary certification and labelling programs are the “dolphin-safe tuna” label and “certified organic produce” labels in the United States, which are administered by the federal government. For other types of voluntary labelling, such as certain marketing claims involving processed food, producers may have to present a proposed claim, accompanied by evidence substantiating the claim, for formal prior approval by the relevant authorities.

23. Conformity procedures do not always necessitate pre-market authorisation of label use or formal determination that the information disclosed on the label is accurate and not misleading. At times, suppliers themselves are responsible for ensuring that their products are in conformity with applicable labelling requirements or guidelines that authorities may issue where labels are used voluntarily. In such instances, controls by regulatory authorities or a recognised oversight body may be limited to periodic inspection and testing of labelled products on the premises of the supplier or at the point of final sale and the monitoring of market reactions (e.g. consumer complaints). It appears that systems limited to some form of post-market surveillance are relatively often used to ensure truthfulness and credibility of disclosures when suppliers make claims about their products’ attributes. Contraventions usually result in the withdrawal of the product from the market but may also include fines and penalties.

24. For any type of labelling approach, the government provides the ultimate enforcement because fraud is always subject to legal sanctions. Even with private label standards and private testing and certification, legal safeguards usually protect users and consumers from fraudulent and deceptive labelling and advertising. 10

III. LABELLING AS A TECHNICAL MEASURE WITH POTENTIAL TRADE EFFECTS

25. Markets rarely work perfectly, and labelling is one of a range of regulatory regimes or measures that governments can use to correct market failures. For example, a classification scheme developed by Roberts et al (1999) for the analysis of trade barriers in agricultural markets includes labelling in a list of so-called “technical barriers to trade”. These barriers are defined from an economics perspective as “regulations and standards governing the sale of products into national markets that have as their prima facie objective the correction of market inefficiencies stemming from externalities associated with the

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10 Governments have enacted laws and set up agencies to protect the consumer from deceptively or falsely labelled or advertised products and producers against unfair competition. Civil and/or criminal penalties can be sought if a false or misleading label or marketing practice is used, for example a false statement concerning quantity, quality, identity, origin or manufacture, or if there is failure to disclose certain information.
production, distribution, and consumption of these products.”

Focusing on government-enforced measures, their analysis omits private systems.

26. From a trade perspective, while discriminatory application of regulations and standards creates barriers to trade, barriers to trade arise also where regulations and standards are neutral and applied equally to domestic and imported products but differ across countries. If such measures and related compliance procedures differ across markets, imports are placed at a competitive disadvantage because foreign suppliers face higher costs. Having to conform to labelling standards that differ across national markets means that foreign suppliers have to produce and pay for different labels and compliance procedures. These additional costs can be so considerable that they prevent some producers from competing in the market and reduce trade. Apart from market-access issues arising from heterogeneous policies, there are numerous other ways in which labelling and other technical measures can impede trade.

27. As described in Section II.B, the government may require labelling or it may control voluntarily-provided claims by circumscribing their form or content. Besides these information remedies, there are other categories of measures that may be seen as welfare-enhancing though potentially trade-restricting, e.g. as shown in Table 1.

28. The different policy options correspond to different types of government intervention in the marketplace, usually in response to different degrees of perceived risk or hazard (or other types of social costs) which the use of a product or production method may pose for the individual consumer or for society. These options are not necessarily mutually exclusive. For example, a labelling requirement can be used as a substitute for, or as a complement to, other policies.

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11 Roberts, D., Josling, T.E. & Orden, D., A framework for analysing technical barriers in agriculture markets. Economic Research Service, U.S. Department of Agriculture, Washington, 1999, p. 3. As the authors explain, regulations and standards may be adopted, for example, when “regulators or industry representatives believe that information about the health, hedonistic, or ethical attributes of […] products is either unknown or asymmetrically distributed between producers and consumers, and the transaction costs of obtaining this information are prohibitively high for consumers” (ibid, page 3).


13 This analytical framework was developed in Roberts, D., Josling, T.E. & Orden, D., A framework for analysing technical barriers in agriculture markets. Economic Research Service, U.S. Department of Agriculture, Washington, 1999. Some adjustments have been made here. The term “standard” has been replaced by the term ‘technical specifications’, which includes both mandatory government requirements, i.e. “regulations”, and voluntary “standards”. In theory and as legally defined by relevant WTO provisions (TBT Agreement), technical regulations are distinct from technical standards. In practice, the borderline between the two is often not clearly drawn. For example, it has been observed that standards can effectively become mandatory for a producer and operate like a requirement if they become standard business practice in a market (so that non-compliance with them will impede efforts to sell in a market). Standards acquire a ‘binding’ force also if they are explicitly referred to in regulatory or legal texts. (See e.g., Roberts, D., Josling, T.E. & Orden, D.A., op. cit., p. 3, and Henri Schwamm, World trade needs worldwide standards, ISO Bulletin, September 1997, p. 22 and 28). Also note that the range of types of policy instruments listed could be extended to include other types of measures. For example, a classification of regimes regulating food attributes developed by Bredahl & Holleran also includes “input standards”, “conditions of sale or service” and “conditions of use”. Maury E. Bredahl & Erin Holleran, Technical regulations and food safety in NAFTA (http://www.ssu.missouri.edu/ssu/agec/cite/technafta.htm)
Table 1. Classification of technical barriers by policy instrument*

<table>
<thead>
<tr>
<th>(Import) ban</th>
<th>Technical specifications</th>
<th>Information remedies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total ban</td>
<td>Partial ban</td>
<td></td>
</tr>
<tr>
<td>Process specifications</td>
<td>Product specifications</td>
<td>Packaging specifications</td>
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29. Where the characteristics of products pose serious individual or collective health or safety risks, such as with food safety issues, governments tend to use technical specifications or other direct forms of regulation and use labelling only as a complementary tool. The reason is that direct regulation offers more certain and consistent minimum standards of safety for all consumers.\(^\text{14}\) Labelling is more widely used in situations where risks are more limited and can be controlled relatively easily through the actions of the consumer, (e.g. safe handling labels for storage of fresh meat or hazard warnings for the use of household cleaning products, obligatory labelling of foods and textiles for known allergens, declarations of preservatives in foods). Some governments make extensive use of informational remedies in the nutrition area.\(^\text{15}\)

30. From a regulatory policy perspective, informational remedies tend to be viewed as the preferred method of improving market outcomes because government intervention is more limited than when products are banned from the market or directly regulated. When technical specifications are applied, producers must satisfy these as a precondition for market entry. Such measures relate to the attributes of the product itself (product specification), how it is produced (process specification) or the manner in which it is packaged (packaging specification). For example, regulatory authorities may prescribe the maximum toxicity or the minimum nutritional content for foods or set a minimum performance standard for energy and water use by appliances. Specific inputs or production technology may be prescribed. Or specifications may stipulate in which manner specified goods must be or cannot be packed.

31. Typically, such technical specifications will directly or indirectly result in the exclusion or removal of some products from the market, thus limiting consumer choice and depriving sellers and buyers of trading opportunities. In situations where regulators deal with low-risk products and consumer preferences differ widely, economists usually recommend the use of labelling or other information tools because they accommodate differences in consumer preferences and in production possibilities. Producers also prefer information tools over measures that would oblige them to modify products, production processes or packaging in order to be allowed to put them on sale (although labelling may entice them to do so in order to avoid disclosing mandated information about characteristics of the product or production process that consumers may dislike).

32. Also, the array of measures shown in Table 1 does not cover information tools comprehensively. As noted in Section II, there are other ways in which information can be supplied without the use of a label and in which the government may or may not play a role. Labelling associated with purely private


\(^\text{15}\) OECD, *Uses of food labelling regulations*, OCDE/GD(97)150.
certification programmes (in which public authorities take no part) is another option, which is not captured by the classification scheme.

33. Though useful, the categorisation system in Table 1 is simplistic. Although informational remedies can be viewed as the least intrusive form of government regulation shown in the Table, this does not necessarily mean that labelling causes less interference in trade than the other forms of regulatory policy. While some trade disputes could be averted by the use of labelling regulations instead of other regulatory options, there is much evidence that labelling can also create trade friction. It appears that the economic and trade effects of labelling depend on the characteristics of a given product market as well as the labelling policy chosen and its design and implementation.

34. Irrespective of the degree to which labelling may affect trade, there are a variety of ways in which labelling is sometimes perceived to act so as to restrict trade, some of which are mentioned here for illustration:

- As already mentioned above, the existence of **different requirements for labelling in different countries** imposes costs for producers who wish to supply several markets. Similarly, labelling requirements differing across regions of a state can affect internal trade. This raises the issue of harmonization or other forms of regulatory rapprochement.

- By design or effect, the **process of obtaining a label may be more difficult** for foreign producers, e.g. if compliance procedures may be more cumbersome or stricter, including because of customs controls.

- **Adjustments that labelling schemes require suppliers to make** may go well beyond producing and paying for the label. For example, producers may have to set up identity preservation or other segregation procedures to ensure the traceability of inputs and final goods.16

- The effect of the label on consumers depends, **inter alia**, on the type of information or message conveyed by the label. The **labelled information may carry negative connotations, implicit warning, and bias consumers against competing products**. Some messages may make the imported product appear less attractive. This has been an issue in some controversies over labelling.17

35. Thus, a labelling regime can entail a cost element that may be significant or small and may be the same for domestic and foreign manufacturers or suppliers or affect them differently. In some cases, the additional costs may be attenuated by the willingness of consumers to pay “price premiums” for labelled products. How the burden of the labelling-related costs is distributed along the supply chain, i.e. whether costs are passed on to consumers in the form of higher prices at the retail level or whether the costs are passed on to foreign exporters in the form of lower prices paid for the imports, also needs to be taken into account in the overall evaluation of trade effect.

36. The specific ways in which labelling can influence trade will be examined in more detail in a separate analysis (Part II) of this project. In the remaining sections of this paper the scope of analysis is

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16 These issues are reported to have arisen in debates on labelling products derived from modern biotechnology and on the extension of country-of-origin labelling requirements to the ingredients of foods. See Ellen Mann, Food labelling in Codex Alimentarius, Economic Perspectives, Vol. 9, No. 2, May 2002, p. 27.

17 For example, manufacturers of products derived from biotechnology are reportedly concerned that a biotech label will unjustifiably stigmatise their products and reduce sales. See Roberts et al, op. cit. March 1999, p.10.
being narrowed to an overview of relevant provisions of the WTO Agreement on Technical Barriers to Trade (TBT Agreement) and examination of labelling-related data from notifications under the TBT Agreement, concerns raised during TBT Committee discussions and WTO dispute settlement cases.

IV. LABELLING AND THE TBT AGREEMENT

37. Within the WTO system, the TBT Agreement sets forth binding disciplines on the development and application of standards, technical regulations and conformity assessment procedures – the range of which may be relevant for evaluating whether a particular labelling requirement is an unnecessary barrier to trade.

38. Recognising the possibility that technical regulations and standards, including labelling and marking requirements, can act as a trade barrier, the provisions of the TBT Agreement seek to ensure that the measures which Members take

“are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade…”18

39. Labelling requirements are explicitly included in the meaning of the term ‘technical regulation’, which Annex 1 of the Agreement defines as

"[d]ocument which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.”

40. Labelling with which compliance is not mandatory is included in the definition of ‘standard’. A standard is defined as

“[d]ocument approved by a recognised body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.”

41. Standards are subject to the provisions of the Code of Good Practices for the Preparation, Adoption and Application of Standards.

42. For labelling regulations dealing with food safety, the provisions of the SPS Agreement prevail, unless the measure in question is not covered by Annex A in that Agreement, in which case the TBT Agreement and its provisions apply.

A. Transparency and non-discrimination

43. In terms of disciplines, Members have very specific obligations in the TBT Agreement concerning transparency. Whether a measure is voluntary or mandatory, governments and private standardising bodies are obliged to provide public notice of a proposed standard, technical regulation or conformity assessment procedure. They have to solicit comments from interested parties, and take those

18 Preamble, Agreement on Technical Barriers to Trade (http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)
comments into account before adopting a final measure. In addition, when Members develop or modify mandatory measures that may affect trade, they must notify the proposed measure to the WTO Secretariat for distribution to other Members. When the measures are voluntary, notification is made pursuant to the Code of Good Practice through publication of a work programme, at least twice a year, of standards anticipated to be developed. Finally, Members should maintain an information clearing-house for inquiries related to their technical barriers.

44. The most basic requirement is non-discrimination between domestic and foreign products:

“... products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country” (Article 2.1).

B. Avoiding unnecessary trade restrictiveness

45. In order to keep potentially adverse effects of technical barriers on trade at a minimum, the Agreement stipulates that

“Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create” (Article 2.2).

46. Such legitimate objectives are defined in Article 2.2. of the Agreement as, inter alia, “national security requirements, the prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment”.

47. Also, Article 2.8 states that “whenever appropriate, Members shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive standards.”

48. Although countries are not obliged to carry out scientific risk assessment and show scientific evidence in order to justify a technical barrier, available scientific and technical information, related processing technology or intended end-uses of products are referenced as relevant elements of consideration when assessing the risks that non-fulfilment of legitimate objectives would create. 19

C. Harmonisation and recognition of equivalence

49. In order to facilitate trade, the TBT Agreement endorses and encourages the harmonisation of national technical regulations based on international standards:

“Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems”(Article 2.4).

19 Under the SPS Agreement, scientific risk assessment is explicitly required to justify a measure. For this reason, the SPS Agreement is often seen as applying a more rigorous standard when evaluating the appropriateness of a measure.
50. Also, Members “shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.” (Article 2.7)

D. Assessment of conformity

51. The TBT Agreement also applies to the procedures used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled. As stated in Annex 1, these conformity assessment procedures include “…inter alia, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations”.

52. Key provisions contained in Article 5 include obligations of MFN and national treatment and avoidance of unnecessary obstacles to trade. Where products are to comply with technical regulations or standards, Members are to ensure that central governments use international standards, recommendations or guidelines where they exist or where their completion is imminent, as a basis for the conformity standards, if appropriate. Harmonisation of conformity procedures is also encouraged.

53. According to Article 6, Members are to recognise the results of conformity assessment of other Members where there is confidence that the procedures are equivalent, even if different. Members are responsible for ensuring that the local government bodies comply with Articles 5 and 6, and they are also responsible for ensuring that non-government bodies, which also operate conformity assessment procedures, comply with these two Articles.

54. Article 9 obliges Members to, whenever practicable, formulate and adopt international systems for conformity assessment and become members or participate in them.

E. Standards and the Code of Good Practices

55. Non-mandatory labelling measures that fall within the Agreement’s definition of standards are subject to the rules of the Code of Good Practices. The Code requires that these schemes are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade, and that they do not discriminate against imported goods. It also calls on standardising bodies to base their national standards on international standards, and if these do not exist, to promote their development.

56. A number of issues regarding how the Code relates to particular kinds of labelling measures have been raised in WTO discussions focusing on the TBT Agreement. These include questions of interpretation of the definition of standards (i.e. the extent to which voluntary labelling schemes fall within the definition of a standard); the role of the Code in regulating private voluntary label programmes; and its role for voluntary programmes that distinguish products based on production criteria.

F. Other provisions of GATT

57. Other provisions of the GATT could also be applicable to labelling, depending on the type, purpose and design of the specific measure. These include GATT Articles I and III (MFN and national treatment) and XX (derogations from basic GATT principles).
V. INFORMATION ON THE EXISTENCE AND NATURE OF LABELLING REGULATIONS

58. There are no readily available data sets indicating trends and patterns of use of labelling regulations. An exploration of records in UNCTAD’s TRAINS database relating to labelling regulations found that the quality of data in this area is poor.\(^{20}\) Another possible source of information is the notifications to the WTO that Members make when they either introduce a new measure or revise existing regulation. This section provides detailed information about labelling-related measures that were notified under the TBT Agreement in 1995-2001. It also reviews instances where issues related to the Agreement’s notification requirement for labelling has been raised during the meetings of the TBT Committee and identifies labelling issues that have arisen in the context of disputes brought to the WTO.

A. Labelling-related notifications under the TBT Agreement

59. During the years 1995-2001, a total of 4085 notifications were filed under the TBT Agreement, mostly under Articles 2.9 and 5.6 relating to proposed mandatory measures.\(^{21}\) A total of 781 notifications contain a reference to labelling or marking in the text. A subgroup of 359 notices report about labelling or marking as the principal regulatory measure.\(^{22}\) The majority of these notices are about new labelling regulation, not amendments or revisions.

60. The number of new or amended labelling requirements may be higher than these figures indicate. The search picked up notifications only if they explicitly mention labelling or a related word. In addition to the 781 notifications, there are other notified laws which include labelling related provisions. This means that labelling is likely to play a more important role in the regulation of trade than what the numbers here suggest.

61. Further examination of the 781 notifications revealed the difficulty of separating product labelling from other technical barriers, both conceptually and in practice. Labelling is often a part of national regimes that regulate a product market comprehensively, so that labelling issues are treated in conjunction with, and not separately from, product or process specifications and other issues. Changes in one part of the system may or may not entail changes in the other parts. Many of the 781 notifications report changes in product standards or other technical barriers - how products have to be packaged, handled and transported, and the necessary approval procedures before they can be released onto the market. Here, any trade effect will come primarily from regulatory elements other than labelling or marking. The trade effect of labelling is likely to be secondary. Also, these ‘comprehensive’ notifications make only a short reference to a label or mark, making it impossible to say more about them on the basis of the notification document alone.

\(^{20}\) UNCTAD’s TRAINS data include no information about whether the measures included are trade restricting or not. Descriptive details about labelling requirements are uneven. For the vast majority of entries no information is available about the reason or purpose of the labelling requirement. Country and product coverage is also very uneven. Most remarkably, there are no records for labelling for most of the EU countries.


\(^{22}\) To identify relevant notifications, a search of the WTO’s electronic database of TBT notifications was undertaken using the search words “labelling”; “label”; “marking”; “mark”. A total of 781 documents were identified. The set was checked against a list of 723 ‘notifications related to labelling’ which the WTO Secretariat has compiled for the Committee on TBT (G/TBT/W/183). Our set of notifications includes all notifications included in the WTO list for the period 1995 through 2001, plus 127 notifications that mention the terms marking or marks, for the same period. From this total, the subset of 359 notices about labelling and marking as the principal measure notified was retained for this analysis.
62. **Figure 1** shows broad reporting trends for notifications with a reference to label, labelling, mark or marking in the text, with the corresponding data for both sets of ‘comprehensive’ and specific labelling notifications.

![Figure 1. Evolution of TBT Notifications with a reference to label or mark](image)

Source: OECD Secretariat based on WTO information (documents G/TBT/Notif. series, 1995-2001)

63. In accordance with the above comments, the documented rise in the number of measures notified since 1995 does not fully or accurately capture the actual developments in government regulation of information through labelling.

64. Moreover, as can be seen from **Box 2**, Members are under no obligation to notify voluntary labelling programmes to the WTO. Also, mandatory labelling requirements have to be reported only when they ‘may have a significant effect on trade’. The TBT Committee has made an effort to clarify this concept, establishing some common criteria and guidelines for Members to use when they determine which measures they must notify.

65. There is another gap, resulting from the limited number of WTO Members who have participated in the notification process. A total of 38 Members submitted (specific) labelling notifications during the period reviewed, with the bulk of such notifications (more than 70 %) being made by 18 notifying OECD countries. Two countries (Japan and the United States) jointly accounted for almost one third of all 359 labelling notifications. Of the 20 non-OECD countries that reported labelling regulation, 6 reported only one measure during the 6-year period. A detailed breakdown by country is shown in the table in **Annex 1**.
Box 2. WTO Notification requirements relevant for labelling

A. Mandatory labelling
Members must publish a proposed technical regulation at an early appropriate stage to give notice to interested parties, and it must notify other WTO Members through the Secretariat any draft when 2 conditions apply: (1) whenever a relevant international standard or guide or recommendation does not exist, or the proposed or adopted regulation or conformity procedure is not in accordance with the relevant international standards or guidelines of recommendations; and (2) if the labelling provision or conformity procedure may have a significant effect on the trade of other Members (Articles 2.9 and 5.6, or Articles 2.10 and 5.7 for urgent problems of health, safety, environmental protection). Local governments at the level directly below central governments are required to notify such rules or procedures which have not been previously notified by their central government authority (Articles 3.2 and 7.2).

To ensure a consistent approach in the selection of measures to be notified, the TBT Committee issued a recommendation with a set of criteria. Pursuant to this recommendation, the concept of “significant effect on trade of other Members” may refer to the effect on trade:

- of one technical regulation or procedures for assessment of conformity only, or of various technical regulations or procedures for assessment of conformity in combination;
- in a specific product, group of product or products in general; and
- between two or more Members. 23

As recommended further, “[w]hen assessing the significance of the effect on trade of technical regulations, the Member concerned should take into consideration such elements as the value or other importance of imports in respect of the importing and/or exporting Member concerned, whether from other Members individually or collectively, the potential growth of such imports, and difficulties for producers in other Members to comply with the proposed technical regulation. The concept of a significant effect on trade of other Members should include both import-enhancing and import-reducing effects on the trade of other Members, as long as such effects are significant.” 24

The TBT Committee has sought to clarify the coverage of the Agreement with respect to labelling requirements. It decided at its meeting of 14 July 1995 that “…Members are obliged to notify all mandatory labelling requirements that are not based substantially on a relevant international standard and that may have a significant effect on the trade of other Members. That obligation is not dependent upon the kind of information which is provided on the label, whether it is in the nature of a technical specification or not.” 25

B. Voluntary labelling
Labels that are not mandatory but which nevertheless provide for characteristics for products or related processes and production methods for common and repeated use are considered “standards” for the purpose of TBT applicability and do not have to be notified to the WTO Secretariat. However, Article 4 states that Members must ensure that “their central government standardising bodies accept, and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards…”

Members are also expected to make an effort to ensure that local government and non-governmental standardising bodies as well as regional standardising bodies in which they participate, accept and comply with the Code.

23 Committee on Technical Barriers to Trade, Decisions and Recommendations Adopted by the Committee since 1 January 1995, G/TBT/1/Rev.7, WTO, 28 November 2000, p. 15.
24 Ibid., p. 15.
25 Ibid., p. 18.
As for notification, the Code has the following provisions: Standardising bodies adhering to the code must notify at least twice a year the existence of their work programme, and where details of this programme can be obtained. Notifications can be sent directly to the ISO/IEC Information Centre in Geneva, to the national member of ISO/IEC or, to the relevant national member or international affiliate of ISONET (Section J). Before adopting a standard the standardising body must allow and publish a notice announcing a period (of at least 60 days except in urgent situations) for comments to be submitted from interested parties (Section L).

With regard to the Code of Good Practices, the TBT Committee in the 1st Triennial Review of the TBT Agreement agreed: “...without prejudice to the views of Members concerning the coverage and application of the Agreement, the obligation to publish notices of draft standards containing voluntary labelling requirements under paragraph L of the Code is not dependent upon the kind of information provided on the label.”26

66. As noted above, the yearly number of notifications is not a useful measure for gauging the intensity of regulatory activity in the area of labelling; it may rather provide an indication of the seriousness that countries attach to their commitments and to transparency in general.

67. The subsequent analysis will be developed using information from the set of 359 notifications where labelling is the principal notified measure (labelling notifications). Notifications of certification marking or other types of marks are retained in this set and, where relevant, shown as a separate category of information measure.27

i) Regulatory goals of labelling

68. Article 2.2 of the TBT Agreement mentions a non-exhaustive list of possible legitimate objectives for technical barriers to trade, including labelling policies: “inter alia national security requirements, the prevention of deceptive practices; protection of human health or safety; animal or plant life or health, or the environment.” Additional categories of objectives which the TBT Committee uses in its annual overview of TBT notifications are: consumer information; consumer protection; quality requirements; harmonisation; lowering or removal of trade practices and fair competition.

69. Following broadly the practice of the Committee, Table 2 shows the number of notifications classified by the different objectives and rationales stated in a notification by a Member.28 Almost half of them mention consumer information and protection as the rationale for labelling, reflecting the prominent role which labelling serves in helping consumers make purchase decisions and protecting consumer well-being in general. Another 6% mention protection of consumers from deceptive practices.

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26 Committee on TBT, First Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade, G/TBT/5, WTO, 19 November 1997, p.4.

27 As is the case for labelling, concerns about the creation of barriers to trade have been raised with respect to a perceived multiplication of public and private certification marks or labels. See for example Labels and conformity marks in a global marketplace. Note by Sweden for the Working Party on Consumer Safety. DAFFE/CP/S(97)1, OECD, Paris, 27 August 1997. Note also that country-of-origin marks or labels are included in the set of 359 labelling notifications.

28 In cases where a notification does not contain a clearly defined objective, it has been included in the category which appears most suitable.
70. Another frequently stated objective is the protection or promotion of human or public health and safety. A typical example is a notified requirement for cigarettes to carry a warning that they are harmful to health.

71. A relatively low number of notified measures state the protection of the environment (including conservation) as their objective. Labelling policy aimed at the protection of animal and plant life or health usually falls under the SPS Agreement and only one TBT notification stated this objective.

Table 2. Objectives and rationales stated in labelling notifications, 1995-2001

<table>
<thead>
<tr>
<th>Objectives and Rationales</th>
<th>Notification references*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(number)</td>
</tr>
<tr>
<td>Consumer protection or consumer interest</td>
<td>111</td>
</tr>
<tr>
<td>Consumer information</td>
<td>91</td>
</tr>
<tr>
<td>Prevention of deceptive practices</td>
<td>25</td>
</tr>
<tr>
<td>Product quality</td>
<td>5</td>
</tr>
<tr>
<td>Protection of human health or safety</td>
<td>77</td>
</tr>
<tr>
<td>Protection of animal or plant life or health</td>
<td>1</td>
</tr>
<tr>
<td>Protection of the environment</td>
<td>16</td>
</tr>
<tr>
<td>Geographical indications</td>
<td>1</td>
</tr>
<tr>
<td>Protection of intellectual property rights</td>
<td>1</td>
</tr>
<tr>
<td>Harmonisation</td>
<td>18</td>
</tr>
<tr>
<td>Lower trade barriers, fair competition</td>
<td>16</td>
</tr>
<tr>
<td>Other</td>
<td>44</td>
</tr>
<tr>
<td>Not specified</td>
<td>16</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>422</strong></td>
</tr>
</tbody>
</table>

* Members sometimes state multiple objectives and rationales when notifying a measure. For example, a regulation on labelling might address both information about content and safety issues. Where notifications state more than one objective or rationale, each stated objective or rationale was counted separately. Therefore, the total figure shown here exceeds the actual number of 359 labelling notifications examined.

Note: The classification of objectives and rationale is based on the criteria laid down in WTO document G/TBT/W/18, 26 January 1996.

72. Sometimes governments have notified measures which would facilitate competition or enhance trade. The notification process thus documents not only labelling regulations that may restrict trade but also initiatives aimed at facilitating trade. A fuller examination of the notification texts indicates that 18 of the 359 labelling notifications report actions intended to either remove a labelling requirement, simplify a measure or replace a regulation with a less strict one (e.g. a sales ban on products that did not meet specified requirements by a labelling regime, or a mandatory label with a voluntary one). Because countries at times state different rationales where they take action that facilitates trade, this is inadequately reflected by the figures shown for ‘lower trade barrier’ or ‘harmonisation’ in this Table.

73. It is not uncommon to find that a particular labelling regulation is aimed at multiple objectives. Also, notifying Members sometimes state different objectives for similar labelling regimes. In some cases involving the same type of food label, one country stated that the objective is the protection of consumers’ interests, whereas another country referred to human safety. The rationales stated for various notified biotechnology-related food labelling regimes is also quite diverse. These include environmental concerns, concerns about health issues, and ethical reasons.
ii) Policy alignment

74. The TBT Agreement strongly endorses the principle of harmonization. It obliges countries to base their technical barriers on international standards, guidelines or recommendations, where these exist or their completion is imminent, unless they would be ineffective or inappropriate for fulfilling legitimate objectives. It also encourages mutual recognition. In Table 2, where stated objectives relate to ‘harmonisation’ this either refers to initiatives to align local requirements with the requirements or practices of other trading partners or, in some cases, to harmonisation of a measure at the national level (e.g. that at the national level the same standard for country-of-origin markings applies across different product groups). Notification texts were also reviewed for whether they contained specific references made to international or to regional standards, or whether the notification stated that the policy of a trading partner served as orientation for the national labelling regime.

75. The texts of 79 labelling notifications include relevant references. In 49 notifications the regulation notified is a regional standard or compliance action taken by a country subject to a regionally developed standard (mostly EU and regulation developed by the Food Standards Australia New Zealand). In 14 other cases, a third country adopted or adjusted its existing labelling regime to conform to a given regional standard (mostly alignments by EU accession candidate countries with EU regulation).

76. References made to international standards, guidelines or recommendations indicate that standards promulgated by organisations such as e.g. ISO, Codex, OIE, or the ICAO Treaty are being followed or at least taken into account in national regulatory activity. Since countries do not have to notify to the WTO measures which they adopt consistent with international standards, few notices (16) include this information. However, countries should still notify standards that are mandated in regulations when they significantly affect trade.

iii) Distribution across product groups

77. Regulations on labelling cover a wide range of products, but Figure 2 shows that the vast majority of the labelling notifications relate to food and agricultural products, which together account for 58% of the notifications. Machinery and equipment is the next largest group of products (13%) subject to notified measures, followed by chemicals and derived products (11%) and other manufactured goods, including paper and glass products and toys (6%).
78. In the agricultural and food sectors, product groups mentioned relatively frequently include vegetables, spices and fruits, beverages, meat and fish. Requirements for packaged food and products made from biotechnology are also often mentioned.

79. In the machinery and equipment sector, notified measures often relate to household appliances and motor vehicles; together these account for more than 50% of the notifications in this sector.

80. In the chemicals sector, measures are reported mostly for pharmaceuticals, cosmetics, fertilizers and pesticides.

iv) Market scope of measure

81. For traders, determining the economic impact of a labelling policy requires identification of which products are subject to a labelling requirement. Labelling may affect some products in a product category, other labelling requirements may affect all products sold in a national market.

82. For about one third of the notified measures, the applicable market is defined broadly. These are mostly requirements affecting the agro-food sector, and in particular processed food. In many instances the labelling standard applies to all processed food, or all packaged food products. Labelling applied to specific product groups involves relatively more often products that fall in the categories of beverages, transport equipment and household appliances.
v) Types of labelling

83. Although some classification systems exist, for example for food labelling based on types of attribute (e.g. nutrition, value, etc), these cannot be applied with any consistency to the markets for non-food products, and a generic taxonomy of labelling has not been developed. As a result, the notified measures have been grouped based on what the text of the notice states is the purpose for the label or the product attribute addressed by the labelling standard.

84. Figure 3 shows the distribution of notified measures by broadly constructed categories. Quality labelling can refer to quality as a grade issue where different grades are associated with differences in the value of products as perceived by market participants. Quality can also reflect the product’s more general attributes such as health, safety or other characteristics unrelated to quality grading. The notification texts were not consistently detailed enough to produce a more refined description of quality labelling.

85. A large number of measures set standards for the labelling of such product attributes as composition, nutrition, grade or general quality. Also relatively frequent are notifications about labelling standards for product use and care, labeled warnings and transport-related handling instructions, all of which usually alert consumers or users to certain health risk and other hazards arising from the manner in which a product is used or handled.

![Figure 3. Distribution by category of labelling type](image)

Note: Broad reference to a labelling requirement contained in some notifications did not allow further characterisation of the measure (‘label not specified’). Some notified measures relate to two or more of the types of labelling shown here; this ‘broad labelling’ is included under ‘other labels’, along with a few miscellaneous notified measures that e.g. pertain to the registration or approval of a label.

Source: OECD Secretariat based on WTO information (documents G/TBT/Notif. series 1995-2001)

86. In Figure 3, most of the notifications identified as PPM-related have been about labelling standards for food labelled as organically grown or products labelled as derived from biotechnology. About half of the labelling schemes for energy efficiency are of a voluntary nature, mostly notified by one
Member (Hong Kong). New or changed standards for various kinds of markings are also relatively often the reason for a notification.

87. In terms of product markets, the notified new or revised labelling requirements which relate to the quality or composition of products mostly concern the agricultural and food sectors (Table 3). Foodstuffs are also the product category to which almost all of the notified PPM-related measures apply, as well as a large portion of notified instruction and warning labelling (here especially tobacco). The latter requirements are associated relatively frequently with chemicals. Energy-efficiency labelling is concentrated in the machinery and equipment sector, where it concerns especially the labelling of household appliances to signify that they are meeting certain energy efficiency requirements.

Table 3: Analysis by product groups and labelling type

<table>
<thead>
<tr>
<th>Product Group</th>
<th>Claim-related</th>
<th>Quality &amp; composition</th>
<th>Instructions &amp; warnings</th>
<th>PPM related</th>
<th>Energy efficiency</th>
<th>Origin</th>
<th>Language &amp; format</th>
<th>Other labels</th>
<th>Label not specified</th>
<th>Markings</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural products</td>
<td>22</td>
<td>23</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>36</td>
<td></td>
<td>36</td>
</tr>
<tr>
<td>Processed food and tobacco</td>
<td>19</td>
<td>55</td>
<td>23</td>
<td>25</td>
<td>8</td>
<td>7</td>
<td>10</td>
<td>14</td>
<td>9</td>
<td>170</td>
<td>170</td>
</tr>
<tr>
<td>Textiles and clothing</td>
<td>10</td>
<td>3</td>
<td>25</td>
<td>23</td>
<td>8</td>
<td>3</td>
<td>4</td>
<td>18</td>
<td></td>
<td></td>
<td>18</td>
</tr>
<tr>
<td>Chemicals and derived products</td>
<td>1</td>
<td>8</td>
<td>13</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>5</td>
<td>4</td>
<td>39</td>
<td>39</td>
</tr>
<tr>
<td>Machinery and equipment</td>
<td>1</td>
<td>5</td>
<td>27</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>7</td>
<td>47</td>
<td></td>
<td>47</td>
</tr>
<tr>
<td>Other manufactured goods</td>
<td>4</td>
<td>6</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>6</td>
<td>22</td>
<td></td>
<td>22</td>
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<tr>
<td>Not classified</td>
<td>1</td>
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<td>3</td>
<td>5</td>
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<td>31</td>
<td>13</td>
<td>18</td>
<td>17</td>
<td>29</td>
<td>34</td>
<td>359</td>
</tr>
</tbody>
</table>

Source: OECD Secretariat based on WTO information (documents G/TBT/Notif. series 1995-2001)

88. A further breakdown of these categories is shown in the Table in Annex II, which provides information about what kinds of objectives are associated with different labelling types. In general, most of the labelling grouped under ‘description’ is associated with the objectives to inform and protect consumers. Consumer protection is the stated objective for the vast majority of notified quality labelling standards, whereas the labelling of product ingredients/composition or nutritional characteristics is mainly for consumer information. Instruction statements are also aimed at the consumer but, as would be expected, are mostly driven by human health and safety considerations. The reasons given for some other schemes are more diverse. This is the case for biotech-related labelling, energy-efficiency labelling, as well as for certification and identification marking. Also, from what the notifications tell about product coverage, quality labelling is almost always applied to specific products. Therefore, quality labelling may have less impact on trade than for example nutrition labelling, which often is developed for large groups of products (e.g. all processed foods, or all pre-packaged foods). Many labelling schemes for products derived from biotechnology also apply to broad product groups.
B. Notifications under Article 10.7 - Bilateral or Multilateral Agreements reached by Members on issues related to Technical Regulations, Standards or Conformity Assessment Procedures

89. Under Article 10.7, a Member who has reached an agreement with any other country or countries on issues related to technical regulations, standards or conformity assessment procedures which may have a significant effect on trade must notify other Members through the WTO Secretariat of the product to be covered by the agreement, and provide a brief description of the agreement.29

90. To minimize the impact of diverging and possibly contradictory national technical barriers on trade, the TBT Agreement encourages Members to conclude mutual recognition arrangements. From 1995 through 2001, a relatively small number of notifications were filed under this Article. A total of 38 notifications were made, the vast majority of which announce bilateral or plurilateral arrangements for the mutual recognition of mandatory conformity procedures (i.e. recognition of testing, certification and registration of quality system) for non-agricultural goods. Eight of these include a reference to the extension of the recognition also to conformity marking. From the limited descriptions of the measures notified under this Article, none pertains to agreements establishing frameworks of substantive equivalence of labelling schemes used in different countries.

C. Trade concerns raised about labelling policies in the Committee on TBT.

91. Besides the obligation to notify a proposed measure, the TBT Agreement provides that a Member must give all other Members the opportunity to comment on the measure prior to its enactment, discuss these comments if requested and take the comments and the results of the discussions into account. The Agreement mandates provision of ‘reasonable time’ for comments but does not specify a time limit (Articles 2.9.4 and 5.6.4). The TBT Committee has recommended this period to be at least 60 days.30

92. As shown in Table 4, the comment periods stated in the 359 labelling notifications submitted from 1995 through 2001 varied. Frequently, the periods for comments that Members allowed were substantially shorter than the recommended 60 calendar days. Closer examination reveals that this has been the case in each individual year and that the record has not changed over time.

<table>
<thead>
<tr>
<th>Table 4. Length of comment period</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of labelling notifications with comment period of:</strong></td>
</tr>
<tr>
<td>86</td>
</tr>
</tbody>
</table>

Note: Calculated on the basis that the date of publication of the notification by the WTO Secretariat counts as the first day. Figures are for the total of 359 notifications submitted for 1995-2001.

Source: OECD Secretariat based on WTO documents G/TBT/Notif. series 1995-2001 and WTO Secretariat Note G/TBT/W/183.

29 Agreement on Technical Barriers to Trade (http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)

30 Committee on TBT, Decisions and recommendations adopted by the Committee since 1 January 1995. Note by the Secretariat. G/TBT/1/Rev.8, WTO, 23 May 2002, p. 17. The Code of Good Practice applicable to standards (voluntary labelling) states explicitly that a standardising body must give interested parties at least 60 days for the submission of comments on a draft standard, which then must be taken into account in the further processing of the standard (Sections L and N).
93. The meetings of the TBT Committee provide a collective forum where Members can raise trade concerns, express their reservations and request clarification with respect to notifications or other specific technical barriers. Such inquiries can give rise to further bilateral discussions and may result in the change of a policy.

94. A number of the labelling-related notifications filed from 1995 through 2001 provoked questions and comments during Committee meetings. It has been noted that labelling issues account for a large percentage of the measures about which questions have been raised in the TBT Committee since 1995.

95. Based on a review of the minutes of the TBT Committee meetings held from 1995 through 2001, the WTO Secretariat has recently prepared a list of these measures, along with a descriptive listing of the concerns which have been raised for each case.

96. Using the compilation prepared by the WTO Secretariat, Annex 3 reports the labelling measures brought to the attention of the Committee and listed in the report by the WTO Secretariat. As can be seen from the Annex, most often these are measures affecting products in the agro-food sector. Several times, it was labelling regimes for foods or feeds derived from biotechnology that prompted concerns, as did various regulations for wine.

97. With respect to consumer goods, questions were raised about various labelling regimes for textiles/clothing.

98. Besides labelling related to the use of biotechnology, various other PPM-based labelling policies - organic farming, tuna fishing, sustainable forest management, labelling based on social norms, animal welfare – all raised concerns.

99. From the statements which the WTO Secretariat document lists for each of the 38 cases, the concerns frequently raised were:

- The scope for justifying technical barriers to trade under the TBT Agreement is wide. In 21 cases, the necessity of, or justification provided for, a measure was questioned.

- In 8 cases, the measure was seen as discriminating against foreign products or trading partners, either by design or in effect.

- In 13 cases, concerns and questions concerned transparency and decision-making procedures. At issue were missing or deficiently prepared notifications, the process of consulting interested parties, notably foreign producers, and uncertainties as to whether and how comments had been taken into account.

- In 7 cases, the issue was on what basis the measure had been developed.

- In 9 cases, clarification was sought whether other measures had been considered or suggestions were offered in this respect.

31 See Labelling, Submission from the European Communities to the Committee on Technical Barriers to Trade, G/TBT/W/150, WTO, 2 November 2000.

32 Specific Trade Concerns Related to Labelling Brought to the Attention of the Committee Since 1995 (G/TBT/W/184), WTO, 4 October 2002.
– In 15 cases, clarification relating to the implementation of the regulation by the relevant authorities was requested, and in 5 cases, clarification was sought on aspects of implementation on the part of businesses.

– In 11 cases, concerns were expressed that the regulation would have adverse trade effects, with the costliness of compliance with the regulations mentioned several times.

100. This is not an exhaustive list, but it illustrates problems that foreign suppliers may experience when labelling measures are being developed and implemented. Box 4 provides a more detailed and comprehensive list of concerns and issues which the statements reported in the WTO Secretariat document express.

**D. Labelling issues in the context of the WTO dispute settlement process**

101. Technical barriers are a documented source of frequent friction and disputes over technical barriers to trade have been taking on increased importance in the trade field as shown by the significant proportion of requests for consultations that have been submitted to the Dispute Settlement Body of the WTO in this area since 1995. However, the question of labelling has actually arisen in very few disputes.
Box 4. Concerns and issues raised in the WTO TBT Committee

TRADE EFFECTS
- Claim of measure having negative effects (not specified)
- Claim of measure being costly (additional or unnecessary costs, not specified)

TRANSPARENCY
- Lack of notification or reminder to notify
- Late notification or other information deficiency
- Request for more information (general)

CONSULTATION
- Lack of opportunity for comments
- Unsatisfactory consultation*

APPROPRIATENESS OF MEASURE
- Necessity of measure questioned
- Justification of measure challenged
- Voluntary measure preferred to mandatory measure
- Measure does not fulfil stated purpose

CHOICE OF MEASURE
- Questions about the scientific/technical/factual basis of the measure
- Justification of measure requested
- Questions about whether policy alternatives were checked
- Suggestion of an alternative measure
- Request for revision of measure

DISCRIMINATION
- Alleged discrimination by design
- Alleged discrimination by effect

IMPLEMENTATION
- Implementation unclear / Interpretation issues arise
- Problems or request for clarification of implementation by public authorities
- Problems or request for clarification of implementation by businesses

INTERNATIONAL STANDARDS/RECOGNITION
- Consistency issues raised
- Questions about whether international standards/recognition were considered

OTHER ISSUES OF CONSISTENCY WITH TBT/GATT
* no response to comments, uncertainty of how comments are handled, questions about how comments are dealt with

Source: Based on the information contained in WTO Committee on Technical Barriers to Trade, "Specific trade concerns related to labelling brought to the attention of the Committee since 1995", G/TBT/W/184, 4 October 2002.
102. Labelling-related issues have arisen in the 4 cases shown in Table 5. In the Hormones case, labelling was not the measure in dispute. Rather, during the proceedings of this case the question was posed whether labelling could not be a less trade-restrictive alternative for the action taken by the EC. However, this possibility was not explored further.

Table 5. Overview of complaints

<table>
<thead>
<tr>
<th>Measure</th>
<th>Complaining Party</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Measures concerning meat and meat products (hormones)(EC)</td>
<td>United States and Canada</td>
<td>Whether labelling might not be an alternative to the prohibition imposed on the use of hormones</td>
</tr>
<tr>
<td>Trade description of sardines (EC)</td>
<td>Peru</td>
<td>Restriction of trade description “sardine” for the marketing of preserved sardines, excluding the ‘Sardinops sagax’ species</td>
</tr>
<tr>
<td>Trade description of scallops (EC)</td>
<td>Canada, Peru, Chile</td>
<td>Restriction of trade description for the marketing of scallops in France, requiring Canadian scallops to be described as “petoncles”</td>
</tr>
<tr>
<td>Trade description of fresh, chilled and frozen beef (Korea)</td>
<td>United States and Australia</td>
<td>A new labelling regime applied only to foreign beef</td>
</tr>
</tbody>
</table>


VI. CONCLUDING REMARKS

103. As the review of this WTO material has shown, the regulatory activity of product labelling is very diverse. The obligation to notify under the TBT Agreement is an important element of a set of procedures that governments are expected to follow in order to ensure that labelling and other types of technical barriers are not unduly restricting trade. The review of labelling notifications finds that labelling schemes are predominantly aimed at consumer information and protection, although governments use labelling also to advance other objectives, including the facilitation of trade. The review also confirms that there is significant regulatory activity in this area for the agricultural and food markets. TBT notifications provide some insights into evolving labelling practices even though the notifications process itself provides an incomplete picture of the regulatory activity in this area and the notifications themselves contain no data indicating what the specific trade effects of a particular measure would be.

104. Concerns which countries have expressed about specific labelling measures in the TBT Committee identify certain aspects of the regulatory activity in this area that cause problems in trading relationships. While very few disputes about labelling under the WTO dispute settlement system have occurred, concerns and disagreements among trading partners over labelling approaches and many more
complaints from exporters faced with label schemes in their export markets suggest the need for a fuller analysis of developments in this area. Forthcoming work on this project aims at contributing to a better documentation of the issues that give rise to these concerns, along with an exploration of market opportunities that labelling policies may offer. It will also review what the existing theoretical and empirical work can contribute to the understanding of the trade significance of labelling policies.
REFERENCES


WTO, Agreement on Technical Barriers to Trade http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm


WTO (1996), Committee on Technical Barriers to Trade - Notifications Made Under the Tokyo Round Agreement on Technical Barriers to Trade – Note by the Secretariat, G/TBT/W/18, World Trade Organisation, Geneva, 26 January 1996.


WTO (2000), Committee on Technical Barriers to Trade - Decisions and Recommendations Adopted by the Committee since 1 January 1995 – Note by the Secretariat - Revision, G/TBT/1/Rev.7, World Trade Organisation, Geneva, 28 November 2000.


WTO (2002), Committee on Technical Barriers to Trade - Decisions and recommendations adopted by the Committee since 1 January 1995 – Note by the Secretariat - Revision, G/TBT/1/Rev.8, World Trade Organisation, Geneva, 23 May 2002.

WTO (2002), Committee on Technical Barriers to Trade - Specific Trade Concerns Related to Labelling Brought to the Attention of the Committee Since 1995 – Note by the Secretariat, G/TBT/W/184, World Trade Organisation, Geneva, 4 October 2002.

### ANNEX 1. NOTIFICATIONS BY COUNTRY

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**Source:** OECD Secretariat based on WTO information (documents G/TBT/Notif. Series 1995-2001)
## ANNEX 2. TYPES OF LABELLING BY STATED OBJECTIVE

<table>
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<tr>
<th>Labelling types</th>
<th>CLAIMS</th>
<th>DESCRIPTION</th>
<th>PRODUCTION METHOD</th>
<th>QUALITY LABEL</th>
<th>ORIGIN</th>
<th>LANGUAGE/FORMAT</th>
<th>OTHER LABELLING</th>
<th>NOT SPECIFIED LABEL</th>
<th>MARKINGS</th>
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Source: OECD Secretariat based on WTO information (documents G/TBT/Notif. Series 1995-2001)
ANNEX 3. LABELLING MEASURES RAISING CONCERNS OVER TRADE OR CONSISTENCY WITH WTO RULES

Agriculture and food products
*GM foodstuff labelling: (7, including modifications, amendments, work of Codex)
Food labelling: (2)
Meat labelling: (2)
Labelling of beef and beef products
Organic agricultural product standard, incl. proper labelling
Tea standards
Cigarette labelling
Use of liquor labels

Use of ‘traditional terms’ on labels (wine)
Labelling and protection of “traditional expressions” (wine products)
Labelling requirements for wines and derived beverages
*Rules for description, designation, presentation and protection (of traditional expressions) of certain wine sector products

Geographic indications and designations of origin

Manufactured products
Textiles and/or clothing labelling (commercial info): (3)
Textile care labelling
Hides and tanned skills, footwear, leather goods labelling

Motor vehicle content labelling

PPM-related labelling
*Labelling of sustainably produced timber
Labelling of dolphin-safe tuna (official mark)
Marketing standards for eggs
*Labelling of socially responsibly produced goods and services

Other
Mark of origin/country of origin label: (3)
General labelling of industrial products, incl. food (commercial information)
*Labelling of pre-packaged consumer products (weight, measures, retail price, etc)
Official Seal
Quality supervision, inspection and quarantine (food and cosmetics)

Note: ( ) refers to the number of different cases
* = item prompted relatively more questions or comments from Members.

Source: Committee on TBT: Specific Trade Concerns Related to Labelling Brought to the Attention of the Committee since 1995, (G/TBT/W/184), WTO, 4 October 2002.