

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

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### AUSTRIA - MANDATORY LABELING OF TROPICAL TIMBER AND TIMBER PRODUCTS AND CREATION OF A QUALITY MARK FOR TIMBER AND TIMBER PRODUCTS FROM SUSTAINABLE FOREST MANAGEMENT

#### Communication from the ASEAN contracting parties

The following communication, dated 22 October 1992, has been received from the Permanent Mission of Malaysia, on behalf of the ASEAN contracting parties, with the request that the matter be inscribed on the Agenda of the Council meeting on 4 November 1992.

The ASEAN contracting parties wish to draw the attention of GATT contracting parties to the Austrian legislation on labeling of tropical timber and tropical timber products and the creation of a quality mark for timber and timber products.

The Austrian legislation dated 26 June 1992, which came into force on 1 September 1992, provides for mandatory labeling of tropical timber and tropical timber products being placed on the market. "Placing on the market" has been given a very wide definition in the legislation to include the production, processing, storage, packing, marking, offering for sale, selling, transporting, advertising, importing and exporting of timber and timber products. The only occasion when such timber is not placed in the market is when there exists a guarantee that the timber will not reach the consumer. In implementing this law, the Federal Gazette dated 31 August 1992 requires all tropical timber, products from tropical timber and products containing tropical timber offered or sold to a consumer to have an inscription "made of tropical timber" or "contains tropical timber". In the case of advertising tropical timber and timber products, there has to be an appropriate reference indicating that there is a relation to tropical timber.

The legislation also provides for the use of an additional quality mark "from sustainable forest management" which is intended to prove that the tropical timber or tropical timber products originate from forests that have fulfilled effective exploitation. "Effective exploitation" is comprehensively defined in the legislation as having a system of silviculture that not only ensures sustainability from the point of view of economy and ecology, but also in terms of diversified exploitation which includes medicaments, oils and resins, taking account of cultivation appropriate to forest type, reforestation on sustainable management criteria and preservation of all functions of the forest ranging from the protective function to preservation of genetic diversity and preservation of the living space of indigenous peoples.

Before such a quality mark can be used, a licence has first to be obtained from the Federal Minister of Environment, Youth and Family who will grant such a licence only if it can be proven that the conditions imposed are met and the applicant undertakes to use and place on the market timber exclusively from sustainably-managed forests. More detailed conditions for determination of sustainable management will be laid down by the Minister of Environment, Youth and Family after consultation with an Advisory Committee for Tropical Wood.

The law also contains penal provisions of a fine between AS5,000 and AS100,000 if the labeling requirement is not met and if the quality mark is used without authorization.

The ASEAN contracting parties are of the view that these measures undertaken by Austria could lead to a serious disruption of exports of tropical timber and tropical timber products to Austria.

The Austrian mandatory labeling requirement is discriminatory, unjustifiable and an unnecessary obstacle to trade. Product labeling per se is not a restriction to trade, but the fact that this labeling requirement is selective, confined only to tropical timber and tropical timber products and arising from a legislation related to sustainable forest management, could give negative connotations to tropical timber and tropical timber products which could lead consumers to reject such products. The Austrian law does not provide for mandatory labeling requirements on other types of wood products imported into or produced domestically in Austria. This discriminatory treatment puts into doubt Austria's conformity of the m.f.n. and national treatment provisions as contained in Articles I and III of the General Agreement.

Austria had notified this labeling requirement to the Committee on Technical Barriers to Trade on 25 September 1992 after the legislation came into effect, and did not provide any opportunity for comments from members, as required by the TBT Code.

The quality mark requirement, although not mandatory, is an attempt by Austria to unilaterally decide what constitutes sustainably-managed forests when there is still no international consensus on the criteria and determination of sustainably-managed forests. In doing so, a dangerous precedent has been set and, if left unchecked, may trigger similar actions in other countries and lead to further market access restrictions on tropical timber and tropical timber products.

It is a well-established and accepted principle in GATT, as well as the UNCED, that trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental issues outside the jurisdiction of the importing country should be avoided and environmental measures addressing global environmental problems should, as far as possible, be based on international consensus.

The purpose of raising this matter in the Council is to express ASEAN's concern over such discriminatory and arbitrary trade restrictive measures being adopted unilaterally in the name of environmental protection. It is also to allow the Council to seek the views of GATT contracting parties on how such actions should be dealt with, especially in view of the importance and seriousness of the issue which would have an adverse effect on tropical timber producers which are mainly developing countries. This would be without prejudice to the normal recourse to dispute settlement provisions.