

# GENERAL AGREEMENT ON

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### Group on Environmental Measures and International Trade

#### ENVIRONMENTAL PACKAGING AND LABELLING ACTIVITIES IN THE UNITED STATES

In the United States, efforts to develop and implement requirements and guidelines regarding environmental labelling and packaging have occurred in varying degrees in the following institutions: U.S. Government legislative and executive branches; State government legislative and executive branches; non-profit independent organizations; private industry; and trade associations. This paper does not address the full scope of labelling and packaging activities in the United States; for example, this paper does not discuss labelling with respect to chemicals, health, food or energy efficiency.

This document is being submitted to the GATT Secretariat for distribution to the GATT Group on Environmental Measures and International Trade as requested at the 1-2 October 1992 meetings. This document is meant to be a preliminary introduction to packaging and labelling activities in the United States. Additional items may be added to this paper as they develop or are brought to our attention. Attachments to this paper will be made available for consultation in the Secretariat.

#### I. United States government action - executive branch

##### Environmental Protection Agency (EPA)

##### A. Statutory authority

The Environmental Protection Agency has authority under several statutes to address specific packaging and labelling issues:

- the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires the Agency to regulate pesticides and administer an extensive pesticide labelling programme;
- the Marine Plastics Pollution Prevention Act provides authority to require degradability of plastic six-pack ring container packaging;
- the Resource Conservation and Recovery Act (RCRA) which provides for the labelling of hazardous wastes. RCRA also authorizes EPA to establish procurement guidelines for federal government purchases of products made with recycled content;
- the Toxic Substances Control Act (TSCA) which provides authority to require labelling or take other regulatory measures to restrict the sale of chemicals which pose unreasonable risk to humans or the environment.

In general, based on public statements made by EPA officials, the position of the Agency with respect to environmental claims on consumer products and packaging is that: (1) environmental claims should be substantive and supported by reliable evidence, and (2) environmental claims should be as specific as possible to help educate consumers and to promote equitable competition on environmental grounds.

B. EPA actions taken to date

1. The EPA requested comments and gave notice of a public hearing to solicit comments on options for voluntary guidelines to be used in product labelling and advertising promoting the use of recycled materials and recyclable materials. A full listing of the terms covered in these guidelines is as follows:

- home scrap;
- post-consumer materials;
- pre-consumer materials;
- product;
- recycled materials;
- recyclables;
- recycled content;
- recycle;
- recycling rate.

The proposed guidelines also discuss use of a recycling emblem. The draft guidelines were published for public comment in the Federal Register, 2 October 1991.

2. The EPA along with the Federal Trade Commission and the U.S. Office of Consumer Affairs formed an interagency task force in 1991 to provide a coordinated and cohesive national response to the issue of environmental labelling and marketing claims.

3. The Task Force issued an educational pamphlet, "Green Advertising Claims", in October 1992, to help consumers evaluate environmental claims.

4. EPA supported the FTC's issuance of labelling guides and provided technical support to the FTC in development of these guides (described below).

C. EPA actions in process

1. EPA has requested public comment on the development of criteria to identify and expedite the registration of "reduced risk" pesticides. This initiative also gives consideration to whether claims can be made that these are safer than other existing alternatives.

2. Studies are being conducted regarding lifecycle assessments that evaluate environmental impacts of products, processes and services from "cradle to grave".

3. The EPA currently requires environmental hazard communication in three areas:

- first, environmental toxicity information is required on pesticide labels, and restrictions on pesticide use apply when warranted by the environmental fate (covering considerations such as, for example, impact, location, persistence, route of exposure, etc.) characteristics of the chemicals;
- second, consent orders issued under the new chemical review programme mandate the inclusion of environmental hazard cautions on the material safety data sheets of chemicals exhibiting high acute aquatic toxicity;
- third, in connection with the mandatory reporting of releases of hazardous substances, environmental criteria are used in setting the minimum release quantities of each substance which must be reported.

4. EPA research underway

- (a) An update of "Environmental Labeling in the United States: Current Status and Future Evolution", a report originally issued in December 1989, is underway and completion is anticipated in the winter of 1992.
- (b) An analysis of uses of environmental marketing terms is underway to provide EPA and other federal agencies with an analytical foundation to facilitate evaluating the effectiveness of environmental labelling. A draft is now under review with a final report expected in December of 1992.
- (c) Studies are underway and planned to evaluate different aspects of the effectiveness of environmental labelling programmes in order to support EPA policy analysis. Studies are underway to examine life-cycle analysis and other methods as criteria for awarding "seal of approval" designations; the effectiveness of seal of approval approaches to conveying environmental messages to consumers; and, the effectiveness of seal of approval programmes in reducing pollution.

Federal Trade Commission (FTC)

A. FTC statutory authority

In February 1991, the FTC was petitioned to issue industry guides on environmental labelling under its statutory authority (Section 5 of the Federal Trade Commission Act) to prevent deception in advertising or labelling. On 31 May 1991, the FTC published, in the Federal Register at 56 FR 24968, guidelines proposed by the two petitioners and requested public comments.

B. FTC actions taken to date

- On 28 July 1992, in response to the petitions described above, the FTC issued guidelines to help reduce consumer confusion and prevent the false or misleading use of environmental terms in advertising and labelling of consumer products in the marketplace (attachment will be made available for consultation in the Secretariat). A full listing of the terms covered in these guidelines is as follows:
  - general environmental benefits claim;
  - compostable;
  - degradable;
  - biodegradable;
  - photodegradable;
  - recyclable;
  - recycled content;
  - source reduction;
  - refillable;
  - ozone safe and ozone friendly.
- Like all FTC guidelines, they are administrative interpretations of laws administered by the FTC. They are not legally enforceable regulations, but provide guidance to marketers in conforming with legal requirements. If the marketer makes a claim contrary to the guidance, the FTC can take corrective action against the marketer if it finds that the claim is false or misleading. The guidelines do not pre-empt state or local laws or regulations.
- Modifications of these guidelines will be considered after three years.
- The guidelines also address four general concerns:  
(1) qualifications and disclosures should be sufficiently clear and prominent to prevent deception; (2) environmental claims should make clear whether they apply to the product, the package, or a component of either; (3) the claims should not overstate the environmental benefit or attribute; and (4) comparison of the environmental attributes of one product with another should be clear about the basis for comparison and should be substantiated.

Consumer Product Safety Commission (CPSC)

A. Statutory authority

Under authority of the Federal Hazardous Substances Act, the CPSC addresses labelling requirements for consumer products used in the home when these products pose a unique hazard, as defined by certain criteria. Labelling includes words of caution, warning or danger; affirmative statements regarding the hazard; instructions or precautionary measures; first aid measures; and, the name and address of the manufacturer.

National Oceanic and Atmospheric Administration  
(National Marine Fisheries Service)

A. Statutory authority

NMFS has authority under the Dolphin Protection Consumer Information Act to regulate the use of any term or symbol implying that a tuna product contains tuna caught using fishing methods that are not harmful to dolphins. Labelling tuna as "dolphin safe" is not required. However, mislabelling constitutes a violation of the Federal Trade Commission Act. Enforcement is based on required documentation linking the product to the catch of a particular vessel on a particular trip. Interim final rules were published in the Federal Register on 19 September 1991.

I. U.S. Government action - legislative branch

U.S. Congress

Legislation was introduced in last Congress to reauthorize the Resource Conservation and Recovery Act (RCRA). Some of this legislation included provisions regarding packaging and environmental marketing claims, but the legislation was not enacted. Future legislative action on these subjects is uncertain.

II. State action

There is growing state activity regarding regulation of the use of environmental claims. Laws or regulations are in effect in some states, including New York, Rhode Island, and California. The terms covered by these laws include, among others: "biodegradable", "ozone friendly", "recyclable", "recycled", "photodegradable", and "reusable". The regulations in New York and Rhode Island are derived in part from model definitions and standards developed by the Northeast Recycling Council (NERC) (Brattleboro, VT.) which address the use of the terms "recycled" and "reusable". Other states may pass laws concerning environmental marketing in the near future, although a number of states prefer a Federal standard in order to promote harmony in the marketplace.

States are also taking an active role in the regulation of plastic resin coding. Currently, over twenty states are requiring that plastic products and packages be labelled as to their resin category. The regulations typically correspond to guidelines developed by the Society of the Plastics Industry with some minor variations in requirements from state to state.

State Attorneys General have been active in bringing enforcement actions against companies making false or misleading environmental marketing claims. A task force of ten State Attorneys General has published "The Green Report: Findings and Preliminary Recommendations for Responsible Environmental Advertising", (December 1990), which recommended that the U.S. federal government adopt a national regulatory scheme establishing definitions to be used in the labelling, packaging, and promotion of products on the basis of environmental attributes. The task force published proposed guidelines for environmental marketing claims and submitted them to the FTC. By resolution adopted 20 March 1990, the National Association of Attorneys General requested that the FTC develop uniform national guidelines. In May 1991, the task force now representing eleven states published a revised set of recommendations in "The Green Report II".

In February 1991, the Coalition of Northeastern Governors issued "Preferred Packaging Guidelines" to encourage the elimination or reduction of packaging. The guidelines establish a hierarchy of actions, including refill, reuse, or recyclability of packages if they cannot be eliminated or reduced. In 1990, CONEG proposed model legislation for reduction of the following heavy metals in packaging: lead, cadmium, mercury, and hexavalent chromium. To date, approximately ten states have adopted this model legislation into their state laws.

Several states have enacted laws requiring minimum recycled content in various types of packaging, such as glass containers. Mandatory deposit-refund systems, "bottle bills", for beverage containers have been implemented in ten states. Approximately twenty states and numerous local governments have enacted mandatory recycling laws which generally require households to separate newspapers and beverage and food containers from the rest of the trash for separate collection and recycling.

### III. Private labelling initiatives

The following section discusses examples of some private labelling initiatives in the United States.

- A. Examples of some third party certification and standard setting actions include the following:
  - 1. Green Seal is an independent, nonprofit, environmental standard setting organization. It sets environmental standards and allows the use of its certification mark on products that it finds to meet these standards. Among other things, Green Seal's standards seek to reduce or eliminate toxic chemical pollution, improve energy efficiency, protect water resources, and minimize impacts on fish and wildlife and their habitat. The Underwriters Laboratories will conduct most of Green Seal's product evaluations and factory inspections. Opportunity is provided for public comment on proposed standards.

2. Scientific Certification Systems, Inc. (SCS) provides independent certification of environmental marketing claims such as recycled content levels. The programme has not established product standards like Green Seal. The SCS is developing a separate programme, related to the Environmental Certification programme, that is called "Environmental Report Card". The Environmental Report Card programme would provide consumers with information on a wide variety of environmental impacts, allowing the consumers to make their own environmental impact determination.
  3. The American Society for Testing and Materials (ASTM), based on Philadelphia, is a non-profit, private organization, working to establish standards setting methods for voluntary standards for packaging and environmental labelling. ASTM publishes standard test methods, specifications, practices, guides, classifications and terminology. Examples of some of ASTM's standards development activities include metals, paints, plastics and textiles.
- B. Industry actions: There are many industry/manufacturing programmes addressing environmental packaging and labelling issues. Examples of these efforts include:
1. The National Food Processors Association and a broad-based group of manufacturers and retailers developed proposed guidelines on environmental marketing terms and petitioned the Federal Trade Commission for their adoption in February 1991.
  2. The Cosmetics, Toiletry and Fragrance Association and the Nonprescription Drug Manufacturers Association also petitioned the FTC and offered proposed guidelines.