

COMMENTS FROM THE EUROPEAN UNION REGARDING NOTIFICATION

G/TBT/N/IND/64

DRAFT FOOD SAFETY AND STANDARDS (PACKAGING) REGULATIONS, 2017

The European Union (EU) would like to thank the Indian authorities for providing the opportunity to comment on the draft "Food Safety and Standards (Packaging) Regulations, 2017" notified on 6 November 2017.

The EU would like to provide the following general and specific comments therein.

General comments

Innovation possibilities

For paper and board materials, metal and alloys and plastic materials, the notified draft requires that the material conforms to the relevant Indian Standards specification as provided in Schedule I, II or III. The EU would like to ask the Indian authorities to provide information on which mechanism would allow a request to be made for the creation of a new specification in order to adapt the current requirements to future innovation in the packaging area.

Standards

The EU understands that according to the notified draft it is mandatory to comply with the standards listed in Schedules I, II and III. These existing Indian standards (IS) have so far been voluntary and must be purchased from the Bureau of Indian Standards, with a higher price when purchased by foreign, non-Indian companies.

If these IS become mandatory for imported packed foods, would the Indian authorities consider making them available free of charge for all companies having to comply with them, including foreign, non-Indian companies?

In addition, the EU notes that some of these IS are not very recent, and therefore materials currently on the market may not match all the requirements, considering the evolution in science, technology and consumer expectations since the time of publication. If the IS included in the notified draft becomes mandatory, they might cause a downgrading of some materials. The EU would like to ask the Indian authorities to plan a sufficient transition period to allow companies to align their materials with the IS requirements. In the case of older standards, the EU would like to ask the Indian authorities to consider providing a derogation for materials that do not match the standards requirements, but can be proven to ensure the same level of safety as required by the standards, in order not to block innovation.

Specific comments

Food grade

The EU notes that there is no official definition recognised at international level for "food grade", and this wording is quite confusing when applied to food contact materials.

The EU would like to recommend replacing "food grade" with "suitable for food contact" or an equivalent wording, with the following minor amendments in the wording of the definition:

"(b) "suitable for food contact" means material made of substances which are safe and suitable for their intended use, which do not transfer their constituents to food in quantities which could endanger human health, or bring unacceptable change in the composition of the food or its organoleptic characteristics" .

Multilayer food packaging

The definition of "multilayer food packaging" provided in the notified draft refers to a *"material or article composed of two or more layers of different types of permitted packaging materials"*.

The EU would like to know if this definition would also cover plastic multi-layers, which are defined in the EU as *"a material or article composed of two or more layers of plastic"*, and which are quite commonly used by the food industry.

If this is the case, the EU would like to suggest rewording the definition in order to remove the reference to "different types", so that multi-layer packaging materials composed of the same material are accepted.

Package or container

The notified draft defines "package or container" as *"a pre-packaged box, bottle, casket, tin, barrel, case, pouch, receptacle, sack, bag, wrapper or such other things in which an article of food is packed"*. The EU would like to suggest this definition be replaced with a definition for "food packaging" based on the one provided in the international standard ISO/TS 22002-4: *"any product to be used for containment, protection, handling, delivery, storage, transport and presentation of food"*.

In this respect, the EU would like to recall Article 2.4 of the TBT Agreement that states *"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 the fundamental climatic or geographical factors or fundamental technological problems"*.

Primary food packaging

The notified draft defines "primary" and "secondary" food packaging.

The EU notes that there are no requirements in the notified draft which are specific to either primary or secondary food packaging. It is therefore unclear why these definitions are provided. Hence, the EU would like to suggest removing them. In case there were a need to keep them, the EU would like to recommend replacing them with definitions for "direct contact material" and "indirect contact material", which are

much more useful to the risk assessment than the concept of primary and secondary packaging.

A useful reference for these definitions is the standard ISO/TS 22002-4:

"Direct food contact surfaces or materials are in contact (i.e. physically touching the food or in contact with the headspace) or will be in contact with the food during normal use of the food packaging.

Indirect food contact surfaces or materials are not in direct contact with the food during normal use of the food packaging, but there is the possibility for substances to be transferred into the food".

Direct contact with dioxins

The EU considers that the requirement that paper meant to be in direct contact with food shall be "free from dioxins" will not be enforceable in practice.

Indeed, no analytical testing method can guarantee a total absence of a substance from a material, as the methods are always of a limited sensitivity, and are characterised by a specific Limit of Quantification and Limit of Detection.

In order to make this requirement enforceable in practice, the EU would like to suggest to the Indian authorities to clarify what is the aim of this requirement. Is it to make sure that no dioxins are present in the raw materials? Or that they do not contaminate the paper during the production process? Or any other possible objective?

List of suggestive packaging materials

The EU questions whether the inclusion of a descriptive and non-exhaustive list is useful and whether it provides added value.

In case the Indian authorities consider that this list must be kept, then the EU would like to suggest an amendment in Point 1 of Schedule IV for "Milk and milk products": the third example, "*Rigid Plastic container made up of High density Polyethylene (HDPE)/Polypropylene (PP) with Plastic (PP) caps*", should be amended into "*Rigid Plastic container made up of High density Polyethylene (HDPE)/Polypropylene (PP)/Polystyrene (PS) with Plastic (PP) caps*" in order to reflect what is currently used on the market for Dahi and yogurt packaging.

Requirements on labelling, traceability and documentation

The notified draft does not appear to refer to any requirements on labelling, traceability or documentation to be provided. The EU considers that these are fundamental aspects that should be included in legislation on food packaging in order to demonstrate compliance and ensure that the safety of the packaging in relation to the rules is adequately controlled. The EU would kindly ask India to consider this aspect or to indicate whether such requirements are already provided in a more transversal text."

The EU would be grateful if the above-mentioned comments could be taken into account and replied to.