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Regulation amendment on container labels of alcoholic beverages

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Narrative

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Report Highlights:

On September, 4, 2014, the Minister of Health, proposed two amendments to the regulations relating to health messages on container labels of alcohol beverages. South Africa has proposed that the health messages on container labels must cover at least one eighth (1/8) of the total size of the container. Secondly, health messages shall be exhibited with equal regularity to each other within a twelve months cycle. The proposed amendment to the regulation was notified to the WTO TBT Committee on December, 3, 2014, and WTO members have 90 days for comments via the TBT enquiry point route. The deadline for comments is March, 3, 2015.

Background

The United States exports of wine, beer and distilled spirits was approximately US\$14.4 Million in the 2013 calendar year. South Africa has regulations relating to health messages on container labels of alcohol beverages. [Click here to download the regulation.](#) On September, 4, 2014, the Minister of Health, in terms of Section 15 of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972), proposed amendments to the regulations relating to health messages on container labels of alcohol beverages. The deadline for the submission of comments was initially set as December, 4, 2014. [Click here to download the proposed amendment.](#) However, the proposed amendment was only notified to the WTO Committee on Technical Barriers to Trade (TBT Committee) on December, 3, 2014, and WTO members have 90 days for comments via the TBT enquiry point route. The WTO notification reference is G/TBT/N/ZAF/48/Rev.1 and the deadline for comments is March, 3, 2015.

Proposed amendments

South Africa has proposed that the health messages on container labels must cover at least one eighth (1/8) of the total size of the “container” instead of the “container label”. The second amendment proposes an additional requirement that container labels be exhibited with equal regularity to each other within a twelve months cycle. **Figure 1** shows how the new section on health messages on container labels will read if the proposed amendment to the regulation is passed. The proposed amendments are highlighted in red.

Figure 1: Amendments to health messages on container labels

Health messages on container labels	
2.	(1) Container labels for alcoholic beverages must contain at least one of the health messages set out in the annexure to these regulations.
	(2) A health message referred to in subregulation (1) shall-
	(i) be visible, legible and indelible and the legibility thereof shall not be affected by any other matter, printed or otherwise;
	(ii) be on a space specifically devoted for it which must be at least one eighth of the total size of the container labels
	(iii) be in black on a white background; and
	(iv) be exhibited with equal regularity to each other within a twelve months cycle.

Source: Foodstuffs, Cosmetics and Disinfectants Act, 1972

Objectives and implications of the regulation amendment

On January, 21, 2015, post met with the Department of Health (DoH) to discuss the objectives and implementation of the proposed amendment. The DoH indicated that the objectives of the proposed amendment was based on the concern regarding the harm and issues related to alcohol, such as health, accidents, injuries, violence, crime and abuse. According to the DoH, approximately, 60 – 70% of people in South Africa do not drink, but the 30 – 40% that drink, are largely classified as excessive drinkers. In addition, the DoH had received complaints that health messages on alcohol beverages were not visible. As a result, the amendment to the regulation was proposed as one of the interventions in order to inform the public of the dangers of alcohol, and to curb alcohol abuse in South Africa.

The DoH confirmed that extensive comments had been submitted to date. An acknowledgement of receipt will be sent to each party that submits comments, and no detailed responses will be provided to individual parties. The DoH were not in a position to confirm how long the comment review process would take and when the regulation would be passed. However, they are striving towards finalizing this regulation this year.

Due to the serious nature of the harm associated with alcohol in South Africa, there is an Inter Ministerial Committee (IMC) on Combating Substance Abuse, and this Committee discussed the amendment at a high level. The IMC is represented by the following departments:

1. Department of Social Development;
2. Department of Health;
3. Department of Trade and Industry;
4. Department of Science and Technology;
5. Department of Basic Education;
6. Department of Transport;
7. Department of Higher Education;
8. Department of Correctional Services;
9. Department of Agriculture, Fisheries and Forestry;
10. South African Revenue Services (SARS);
11. Department of Communications and Information Systems;
12. Performance, Monitoring, Evaluation and Administration;
13. Department of Economic Development;
14. Department of Sports and Recreation;
15. South African Police Services (SAPS);
16. National Treasury.

The DoH confirmed that they received considerable comments seeking clarification on the meaning of “container” as defined in the regulation. The DoH indicated that while the definition of container is intended to mean the packaging of the product that will be sold to consumers, this could be extended to mean the boxes, advertisement, or vehicles transporting alcoholic beverages. The DoH acknowledged that this definition was open to interpretation and welcomed suggestions on how to better improve the definition so as to provide more clarity.

Post was advised that South Africa proposed that the health messages on container labels must cover at least one eighth (1/8) of the total size of the “container” instead of the “container label” so as to increase visibility of the health messages as well as to curb the misinterpretation by industry. The one eighth

measure will apply to the total surface area of whole container. The DoH indicated that the proposed size was based on tobacco product health message labelling, which is deemed to be highly visible in South Africa. The DoH agreed that there is no scientific evidence that exists for adopting this size and also indicated that there are challenges in measuring the impact of this amendment. The DoH believes that the remaining 7/8 of the container surface area is adequate for brand visibility, and would not impact on any trademark. Post was provided with an illustrative example of a supplier label that is already complying with the proposed amendment. **Figure 2** below shows the illustrative example.

Figure 2: Illustrative example of changes in the size of health messages on container



Source: Department of Health

The second amendment proposes that container labels be exhibited with equal regularity to each other within a twelve months cycle. The implication of this proposal is that the following seven health messages should be rotated on labels annually:

1. Alcohol reduces driving ability, don't drink and drive.

2. Don't drink and walk on the road, you may be killed.
3. Alcohol increases your risk to personal injuries.
4. Alcohol is a major cause of violence and crime.
5. Alcohol abuse is dangerous to your health.
6. Alcohol is addictive.
7. Drinking during pregnancy can be harmful to your unborn baby.

The DoH indicated that the objective of this amendment was to ensure that all the seven health messages were communicated to consumers, as industry had the tendency of selecting health messages believed to have the least impact to alcohol sales. The DoH confirmed that they received considerable comments regarding this amendment. Some of the recommendations that the DoH was considering include the stipulation of font size to be used for health messages. The use of stickers and supplementary labels would be permitted. However, labels that have all the seven messages would not be permitted as they would not achieve the intended objective of increasing visibility.

The proposed amendments relating to health messages on container labels of alcohol beverages would come into operation 18 months after the date of promulgation. This could change depending on the comments submitted and the practicality of implementing the amendments within this period. The DoH had originally proposed 12 months but this was changed to 18 months following consultation with industry bodies during the drafting process.

The DoH acknowledges that monitoring and ensuring compliance of the regulations remains a challenge. The DoH views the interventions to curb harm caused by alcohol as a partnership with industry and the society at large, as a result believes that industry will comply. However, non-compliance and contravention of the regulation could result in a conviction of the respective parties, which comes with a fine or imprisonment as directed by the court.

The South African industry contacts have also shared the same concerns discussed above. Post encourages United States industry to review the amendment and submit comments before the March, 3, 2015 deadline. Post will continue to provide feedback on the progress of this proposed amendment to regulation relating to health messages on container labels of alcohol beverages.

The details for the South African WTO TBT point of enquiry are provided below.

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