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Committee on Technical Barriers to Trade

MINUTES OF THE MEETING OF 26-27 FEBRUARY 2020

CHAIRMAN: MR SUNG HWA JANG

Note by the Secretariat[1]

1 ADOPTION OF THE AGENDA

1.1. The Committee adopted the agenda contained in WTO/AIR/TBT/16.

2 IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

2.1 Statements from Members under Article 15.2

2.1. The representative of Côte d'Ivoire introduced its Article 15.2 Statement to the Committee.[2] Firstly, the Geneva-based delegate took the floor to underline the importance of technical assistance for developing countries in fulfilling notification obligations. A regional workshop on TBT for French Speaking African Countries had taken place in October 2019. One of the outcomes of this workshop was Côte d'Ivoire's submission of this statement. The floor was then passed by teleconference to an official from the National Notification Authority based in Abidjan. The full statement is contained in G/TBT/2/Add.127/Suppl.1

2.2. The representative of the United Kingdom introduced its Statement under Article 15.2.[3] The full statement is contained in G/TBT/2/Add.128/Suppl.1.

2.3. The representative of Myanmar introduced its Statement under Article 15.2.[4] She underlined Myanmar's commitment to meeting its notification obligations and the importance of transparency.

[1] This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights and obligations under the WTO.
[2] G/TBT/2/Add.127.
[3] G/TBT/2/Add.128.
[4] G/TBT/2/Add.129.

2.4. The Chairman reminded the Committee of Members' notification obligation under Article 15.2 of the TBT Agreement and further informed the Committee that the latest list of statements on implementation submitted under this provision was contained in an annex to the Annual Review of the Implementation and Operation of the TBT Agreement (G/TBT/44), issued on 19 February 2020. Information on the list of statements is available on the TBT Information Management System (TBT IMS).

2.2 Specific Trade Concerns

2.2.1 Withdrawn concerns

2.5. The Chairperson reported that the following STCs had been withdrawn from the agenda at the request of the concerned Member:

- China - Administrative Measures for Registration of Overseas Inspections of Cosmetics

2.2.2 New Concerns

2.2.2.1 Mexico - Draft Amendment to Mexican Official Standard NOM-051-SCFI/SSA1-2010: General specifications for the labelling of pre-packed food and non-alcoholic beverages

2.6. The representative of the European Union raised concerns with this measure. The full statement is contained in G/TBT/W/715.

2.7. The representative of the United States supported Mexico's public health objective of reducing diet-related non-communicable diseases and appreciated its notification to the WTO. US Government and nine trade associations had provided comments through the US Enquiry Point on this measure.

2.8. The US thanked Mexico for providing a 60-day comment period and for the deliberative and public discussion on the proposed measure. The US looked forward to seeing the published comments and receiving substantive replies to its questions and concerns. The US also appreciated the bilateral discussions that had taken place with the Secretary of the Economy, Undersecretary de la Mora, her staff, and the authorities of the *Dirección General de Normas* (DGN), *Comisión Nacional de Mejora Regulatoria* (CONAMER), and *Comisión Federal para la Protección contra Riesgos Sanitarios* (COFEPRIS).

2.9. There were concerns that the proposed regulation, intended to address public health, could be more trade restrictive than necessary to meet Mexico's legitimate objective, might not be based on robust scientific evidence, did not appear to consider the relevant international standards and could contribute to consumer confusion. She highlighted the following concerns:

a. The nutrient thresholds chosen appeared more stringent than the thresholds set by other countries. For example, the threshold for sodium was lower than the proposed thresholds set by Uruguay and Chile. Considering the complexity faced by food manufacturers and exporters in complying with these requirements, Mexico was requested to justify the basis for selecting more conservative thresholds than those found in other countries.

b. Mexico derived these thresholds from the World Health Organization's Population Nutrient Intake Goals to Prevent Obesity and Related Non-Communicable Diseases. The WHO goals related to an individual's total diet. When applied to individual foods the threshold could be more conservative than necessary. This application could discourage intake of food groups important to recommended diet patterns, leading to skewed dietary patterns and potential deficiencies in essential nutrients. Would Mexico consider whether significant public health gains could be achieved with less trade-restrictive thresholds.

c. Regarding the new warning element to children consuming non-nutritive sweeteners, Mexico was requested to consider that in some products, such as sugarless gum, these sweeteners could be a healthier option, with respect to dental health. Further clarification was needed on how Mexico would treat approved non-nutritive sweeteners in the market when the potential new warning was implemented. Was Mexico concerned that sweeteners

were unsafe for consumption by children or that these substances would lead to later consumption of sweet foods?

d. The conformity assessment requirements in Chapter 9 of the regulation appeared to make the currently voluntary label approval a mandatory process, thereby requiring conformity assessment of all products with Mexican regulations and standards. There could be a potential negative economic impact associated with such requirements becoming mandatory, such as ensuring the volume of labels required to be assessed by verification bodies be processed without delay, in addition to the costs associated with label changes and the assessment process. Could Mexico confirm whether mandatory label approval and conformity assessment of all products subject to the regulation was intended in the revisions to this regulation?

e. A transition period of at least two years was requested for manufacturers to comply with the new food labelling schemes.

f. If there were new elements included or significant substantive changes to the proposed measure before its adoption or entry into force, the US requested that it be re-notified for an additional 60-day comment period according to the TBT Committee's Recommendation on Coherent Use of Notification Formats (G/TBT/35/Rev.1).

2.10. Given that this measure could affect up to US$6 billion in US-Mexico trade, the US hoped that all submitted comments would be considered before finalizing the regulation.

2.11. The representative of Switzerland requested further information so as to better understand whether the proposed technical regulation was based on scientific information and relevant international standards, and whether alternative measures had been taken into account. Switzerland shared Mexico's goals regarding the promotion of public health and consumer information. For instance, the competent Swiss authorities had issued recommendations on daily nutrient intake and set voluntary nutrient thresholds for different food categories. Major food producers and importers had also agreed to introduce the label "Nutri-Score" on packaged food – again on a purely voluntary basis – in order to provide better and more targeted information to consumers. Had Mexico considered less trade-restrictive alternative measures before pursuing the proposed measure?

2.12. The internationally agreed Codex Guidelines on Nutrition Labelling did not foresee warning labels in the absence of exact quantitative knowledge of what individuals should eat in order to maintain good health. Hence, a better understanding of the rationale behind choosing a label with negative warning, such as "exceso en", was necessary. By using such a warning, consumers might assume that these food products should be avoided altogether, even as part of a balanced and healthy diet. Switzerland looked forward to continued discussion bilaterally.

2.13. The representative of Costa Rica supported the very important work being carried out under Codex Alimentarius and also other Members' technical or scientific justification of measures based on Codex standards. Mexico was requested to clarify its position regarding the work that was being carried out under Codex on the development of guidelines on food labelling. Taking into consideration the classification parameters used when looking at excess saturated fats, sodium and sugar, Mexico was requested to indicate the international standard or the scientific evidence used when considering these levels, and to justify the front of pack warnings and the additional nutritional information. She asked that Mexico provide the international standard, or the risk assessment used in ascertaining the risk to children in consuming products with added caffeine or sugar substitutes. This measure could be inconsistent with obligations under the TBT Agreement, in particular Articles 2.2 and 2.4.

2.14. The representative of Guatemala said that, while recognizing the legitimate objective of protecting public health, it was necessary to apply the least trade-restrictive measures possible. The nutrient limits in the proposed measure deviated from WHO thresholds based on the global daily diet of an individual in line with the standard within the framework of Codex Alimentarius. Foodstuffs contain different types of nutrients so while there are specific nutrients in one, others could be lacking. Therefore, the values established by the WHO should not be the defining characteristic of a given foodstuff. The proposed measure also contained a parameter to determine excess calories and also the various criteria for doing so based on the concept of energy value, energy identity. The WHO thresholds made no reference to this or to other criteria of a similar nature.

2.15. Codex Alimentarius was currently discussing guidelines for front-of-package labelling, as well as nutritional profiles, in the Codex Alimentarius Committee on Nutrition and Foods for Special Dietary Uses. This discussion was very important for economies such as Guatemala when it came to the quest for harmonization in this area. Small- and Medium-sized Producers were facing difficulties in accessing markets caused by a lack of harmonization in labelling and different limits for each country. Mexico should look at the provisions contained in Codex Alimentarius and scientific evidence established in the various bodies. One of the objectives of the Codex Alimentarius was to arrive at international harmonization and to remove barriers to trade. Guatemala thanked Mexico for the ongoing bilateral discussions and hoped to soon receive replies to the comments and questions submitted in December.

2.16. The representative of Mexico responded to the concerns raised. The full statement was circulated in G/TBT/W/709.

2.2.2.2 Colombia - Food Prioritized for its Sodium Content, Certification Requirements, G/TBT/N/COL/238 and G/TBT/N/COL/238/Add.1

2.17. The representative of the United States raised concerns with Colombia's proposed technical regulation "Food Prioritized for its Sodium Content, Certification Requirements". The proposed measure would require different maximum sodium requirements for each of the 67 agriculture products listed in the notification. The proposed legislation set first-year and third-year maximum sodium limits. The US understanding was that once the relevant compliance dates had passed, Colombia would no longer permit the sale of products that exceeded these maximum sodium levels.

2.18. The US appreciated the opportunity to share concerns with Colombia on this notified measure and requested an update on the status of the proposed regulation. Comments were submitted on 31 October 2019. While supporting Colombia's efforts to reduce hypertension and related non-communicable diseases and having similar goals, the US was concerned that Colombia's mandatory approach, instead of a voluntary approach similar to other Members, could be more trade restrictive than necessary to meet Colombia's legitimate objective.

2.19. A key concern was that the proposed regulation might not fully consider the technical and the functional role of sodium and relevant international commodity standards. Companies might not be able to feasibly reformulate products while still maintaining shelf-life stability, product safety and palatability for consumers in the timeline proposed in the draft regulation. Implementation of this regulation could result in a number of agriculture products, like mustard, canned sardines, cream cheese, farmer's cheese and various cheese products being banned from the market once they exceeded the maximum sodium requirements.

2.20. The US reiterated its interest in having an open dialogue with Colombia's Ministry of Health, to share information regarding ways to develop evidence-based programmes to address Colombia's public health objectives while minimizing negative economic impact.

2.21. The representative of Guatemala said that, while recognizing the legitimate objective of protecting public health, there were some concerns regarding this measure. Guatemala recognized the well-coordinated work carried out within Colombia to cut down on the content of sodium in pre-packaged food products and for its notification to the TBT Committee, where maximum content levels of sodium in processed food were set forth. Guatemala thanked Colombia for sharing the scientific evidence that determined the sodium levels for each food products that were considered to have a high sodium content for humans and therefore could not be placed on the market after the transition period. However, a tolerance for a maximum limit of sodium must be a value controlling the excess of the nutrient, not a range. The Codex Alimentarius standard CAC/GL 2-1985 contained information on variables that could affect the tolerance of sodium. Further information was requested on why a single testing method had been chosen, what that method was and whether testing had to be carried out in Colombia or a foreign lab test would be acceptable.

2.22. The representative of Colombia thanked Members for their active participation and interest in the regulatory process of this draft measure. This public health measure was part of the "national salt reduction strategy 2020-2021", which took into account not only the content of sodium in processed foods but also other sources, such as added salt in restaurants, institutions or households. The strategy's objective was to contribute to reducing mortality due to arterial hypertension and

cardiovascular illness through the gradual reduction of salt in food products, by following the WHO recommendation 2021, which was a limit of five grams of salt, or two grams of sodium, per person per day. Since 2018, the Health Ministry's 'Route of Promoting and Maintaining Health' was trying to positively promote public health through avoiding risks, preventing diseases and using concrete actions to educate consumers so as to reduce excessive consumption of salt. Products that exceeded the maximum levels or salt would not be prohibited. Rather they would be penalized.

2.23. During the preparation of this regulation, an impact assessment had been conducted which considered the trade and economic effects, including cost to industry and government. This assessment was very inclusive and showed that the benefits in terms of public health were higher than the associated costs of implementing the measure. Colombia would accept certificates issued by accredited organizations with Mutual Recognition Agreements from the International Accreditation Forum (IAF).

2.24. Finally, she said that although voluntary reduction efforts existed, scientific evidence indicated that these had a low impact in reducing sodium consumption. More details on this measure had been sent to the US TBT Enquiry Point and to other Members that had provided comments. Colombia was open to continuing discussion with all interested parties, as had been the case during the regulatory process.

2.2.2.3 United States - Act to amend the environmental conservation law, in relation to regulation of toxic chemicals in children's products (State of New York - Senate Bill 501B/Assembly Bill 6296A) G/TBT/N/USA/1581

2.25. The representative of the European Union raised concerns with this measure. The full statement is contained in G/TBT/W/719.

2.26. The representative of the United States encouraged the EU and any other interested Member to submit comments on the notification. The bill, entitled "An Act to amend the environmental conservation law, in relation to regulation of toxic chemicals in children's products", was signed by the New York State Governor on 7 February 2020. Prior to signing the bill, the Governor's office reached agreement with the New York state legislature to make changes to the bill. The bill was signed, conditioned upon passage of a new bill that incorporated those agreed-upon changes. It was the US understanding that, based on the agreement between the Governor and the Legislature, the bill would be substantially changed, due in part to the concerns raised by stakeholders.

2.2.2.4 China - Draft Administrative Measures for Registration of Overseas Producers of Imported Foods

2.27. The representative of Mexico raised concerns with this measure. The full statement is contained in G/TBT/W/710.

2.28. The representative of the Republic of Korea supported the concerns raised by Mexico. According to the draft, the registration scope would be expanded to the manufacturers of all imported food categories which deviated from relevant international standards. The measure appeared to attribute registration responsibility to the exporting country's government instead of manufacturers. Thus, implementing these measures could create additional burden on exporting countries. Some articles of the current draft were too unclear for Korea to make more specific comments. Korea had been informed that China had recently received domestic comments and requested that China notify the measure to the WTO as soon as possible.

2.29. The representative of Switzerland supported the concerns raised by others on this measure. While Switzerland understood China's efforts to ensure that only safe food was imported, analysis of the draft regulation had raised several questions and concerns. Switzerland had already responded to the call for comments and shared its analysis with the competent Chinese authorities. He highlighted three areas of concern:

a. The Administrative Provision proposed to expand the registration of overseas manufacturers to include all food categories irrespective of the risk profile. Without further justification or explanation, the measure appeared more trade restrictive than necessary, thereby contradicting Article 2.2 of the TBT Agreement.

b. Switzerland was concerned that the Administrative Provisions could cause significant trade disruptions since all trading partners would have to complete an evaluation of food safety management systems as a pre-condition to export foodstuffs to China. Given the volume, this could put significant pressure on China's resources in handling these requests in a timely fashion. As a possible consequence, Chinese importers and consumers might not enjoy the same access to food products due to delays in the evaluation procedure and could face increasing costs.

c. Switzerland was concerned that the Administrative Provisions put foreign exporters at a disadvantage over their Chinese competitors, since the measure was directed exclusively at overseas manufacturers. This violated China's obligations under Article 2.1 of the TBT Agreement.

2.30. Switzerland looked forward to China's response to these concerns, including those made as part of the call for comments, and stood ready to engage with China in further discussions.

2.31. The representative of the United States urged China to reconsider putting in place such a restrictive and burdensome regulation. The measure appeared to affect all food products, including both low risk products and products already accompanied by health and safety certificates issued by US authorities. Furthermore, the measure required foreign competent authorities to confirm manufacturers' continuous compliance with China's laws, regulations and standards. Such requirements could impose additional burdens on foreign competent authorities that exceeded the resources and expertise available. The draft measure, if implemented, would likely create major trade disruptions for every country that exported food and agricultural products to China, including for developing countries whose competent authorities may have limited capacity to meet China's proposed requirements. The US requested that this measure be notified to the WTO SPS and TBT Committees, respectively, allowing for comprehensive feedback from China's trading partners, and that China seriously consider the concerns submitted during the domestic comment period.

2.32. The representative of Japan shared the concerns raised by other Members that China's proposed measures would create unnecessary barriers to trade and have negative impacts on food trade between China and other WTO Members. As China was currently in the domestic process of public comments, Japan requested that these measures also be notified to the TBT and SPS Committees in a timely manner and provide relevant information as appropriate and address Members' concerns.

2.33. The representative of the European Union also had concerns that this measure would have a serious impact on transaction costs of trade without improving safety. It appeared highly disproportionate for low risk products that were currently traded under a self-registration regime. Could China explain the objective of this proposal? The EU was willing to discuss any legitimate concerns in order to find a consensual solution and, in order to frame the discussion, it was important that China notify the measures to the WTO.

2.34. The representative of The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu shared the concerns raised by other Members on this measure, which had been published on the web page of General Administration of Customs of China on 26 November 2019. Having recognized the significant bilateral trade flow in food products, Chinese Taipei submitted comments to China's TBT enquiry point on 24 December 2019 to seek further clarification on the proposed measures. The draft measures seemed to deviate from the common international risk-based practices by requiring registration of all categories of overseas producers of food products and would therefore impede trade. Chinese Taipei requested that the scope of categories of food products be identified and information on the implementation timeline be provided; that these measures be notified to the TBT Committee so as to ensure sufficient time for stakeholders' comments, and that China take into account Members' concerns and provide a response to the written comments.

2.35. The representative of China informed the Committee that the application of registration system of overseas producers of imported foods was a requirement of China's Food Safety Law. With China's opening-up to the world, both the quantity of the importing food trade and the number of overseas registered producers had increased rapidly. The original administration measure for registration of producers no longer met the requirements. The objective of revising the Administrative Measures for Registration of Overseas Producers of Imported Foods was to implement

the Food Safety Law and improve the existing registration system, which would optimize the registration procedure and clarify the responsibilities of all the relevant stakeholders based on risk management. The administrative measure was still being drafted. Once ready, China would notify it to the WTO. All Members would then be welcome to share their reasonable comments or suggestions.

2.2.2.5 Russian Federation - Law No. 425 - on Amending Article 4 of Russian Federation Law "On Protecting Consumer Rights"

2.36. The representative of the United States had significant concerns about the recently adopted amendment to the Russian Federation's "Law on Protection of Consumer Rights". This amendment required pre-installation of Russian software on certain types of what the law called "technically complex goods" sold in Russia. A draft Government Resolution and an Explanatory Note providing some additional information about the pre-installation requirement had been issued. Notwithstanding the additional details in the draft resolution, the US had several questions and concerns about the pre-installation requirement and its consistency with the TBT Agreement. Precisely what products were considered a "technically complex good", and which specific Russian software would need to be pre-installed? What steps did companies have to take to comply with the requirements?

2.37. The US requested some clarity on the assertion in the Explanatory Note that the pre-installation requirement was "not contrary to the … international treaties of the Russian Federation". Could Russia explain the legitimate objective of the pre-installation requirement; how the pre-installation requirement was not more trade restrictive than necessary; did not create unnecessary obstacles to trade; and how this measure did not discriminate against foreign software products?

2.38. The US urged Russia to notify the draft Government Resolution implementing the amendments to Article 4 of the Law on Consumer Protection to the TBT Committee and to provide at least a 60-day comment period so that Members and stakeholders could review and provide comments and that those comments be taken into account. Some of the timeframes for implementation of the new requirements were also of concern. The US understanding was that the pre-installation requirements would apply to some products by 1 July 2020, which was less than six months away; and that the regulation was still in draft form. An implementation date of 1 July 2020 called into question how comments would be taken into account. This measure appeared to constitute a technical regulation within the definition of the TBT Agreement because the measure "lays down product characteristics … with which compliance is mandatory". Was Russia of the view that the measure constituted a technical regulation?

2.39. The representative of Japan expressed concerns with the measure. In December 2019, the President of the Russian Federation signed a law requiring pre-installation of software made in Russia to certain types of technically complex goods such as Smartphones, Tablets, Wearable devices, Computers and Smart function TVs. This proposed measure included unclear articles regarding definitions of terms, concrete requirements for review and evaluation, and the scope of regulations, including a list of software covered. Japan's concern was that the measures could hamper market access for foreign companies into Russia, depending on the concrete details of rules governing its implementation. Therefore, Japan requested that Russia implement this measure in a non-discriminatory manner and not more trade restrictive than necessary in line with the TBT Agreement. To ensure a transparent process, Japan also requested that this measure be notified to the TBT Committee.

2.40. The representative of the European Union supported the concerns raised by other Members and had concerns on amending Article 4 of the Russian Federation Law "On Protecting Consumer Rights", mainly certain discriminatory aspects, as well as the proportionality of the measure. The EU also called on Russia to notify the measure to the TBT Committee.

2.41. The representative of the Russian Federation said that Russia did not consider the TBT Committee to be the right forum for consideration of this issue. The amendments in question could not be considered as technical regulations because they did not lay down the requirements for the product characteristics and production methods or any other relative processes. These amendments did not require any conformity assessment procedures and therefore the provisions in question were not technical regulations under Annex I of the TBT Agreement. The Amendments to

Article 4 of the Federal Law of the Russian Federation "On protecting Consumer Rights" did not contain any discriminative, trade restrictive or prohibitive provisions. These provisions were aimed at consumer protection and had been developed in cooperation with foreign companies that were Members of the Association of Trading Companies and Manufacturers of Electrical Household and Computer Equipment (RATEK) so as to prevent any possible negative impact on trade. The authorities responsible for elaboration of the Legal Act took into account suggestions provided by industry. Moreover, some of the largest transnational corporations involved in manufacturing and exporting technically complex goods had reacted positively to this initiative and did not consider it to be a barrier to their foreign trade. The amendments to the federal law were not aimed at causing a negative economic impact on transboundary trade in technically complex goods.

2.2.2.6 India - Draft Food Safety and Standards (Labelling and Display) Regulations, G/TBT/N/IND/77 and G/TBT/N/IND/102

2.42. The representative of the United States requested an official update on the status of the India Food Safety and Standards (Labelling and Display) Regulations notified in G/TBT/N/IND/77 and G/TBT/N/IND/102. The measure could impact US exports of processed products, including alcoholic beverages. India was requested to confirm the withdrawal of front-of-pack nutrition labelling requirements and separate them from the general labelling regulation and that these changes be notified to the TBT Committee. The US was concerned that requiring front-of-pack nutritional label with quantities of fat, sugar and salt to be coloured red when products were "high in" these nutrients could contribute to consumer confusion and warn consumers away from products that could be part of a balanced, healthy diet. The required warning statement on alcohol beverages: "Consumption of alcohol is injurious to health" was also of concern and, as noted in the US comments provided in September, the US asked what information India considered when developing this requirement. In the US, the TTB warning statement on alcoholic beverages read, "Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery and may cause health problems". The FSSAI's continuing discussions of this draft with the US Department of Agriculture and US Food and Drug Administration representatives at the Embassy in New Delhi was appreciated and the US looked forward to continued bilateral discussion and engagement with industry stakeholders.

2.43. The representative of the European Union supported the concerns raised by the US. Written comments had been sent to India in October 2019 and the EU looked forward to receiving written replies before the adoption of the notified drafts. India should align the provisions of the draft regulations to the Codex General Standard for the Labelling of Pre-packaged Foods, as well as to the Codex Guidelines on Nutrition Labelling. The envisaged measures could result in obstacles to international trade by making the import and marketing of products that already complied with Codex Guidelines more difficult. There was also a need for a long transition period in order to allow industry, as well as consumers, time to adapt to the new measures.

2.44. The representative of India stated that the queries raised by Members were related to Schedule 1, front-of-pack labelling and advertisement provisions in the draft food safety standards, labelling and display regulations. Based on the inputs received in stakeholder consultations and the comments received, this section on front-of-pack labelling had been removed from the draft regulation during its revision. However, it was still under consideration. Based on the comments provided by the EU, the draft alcoholic beverage regulations had been appropriately considered and, once finalized, would be notified to the WTO. Regarding the US comments on alcoholic beverages labelling, the WHO and Codex discouraged the consumption of alcohol and, in various Codex Alimentarius Committee meetings, the WHO had presented the health problems related to the consumption of alcohol. Accordingly, India was providing a statutory warning that consumption of alcohol was injurious to health, which was more comprehensive and ensured that any statutory warning on any food product, including alcohol, was based on the recommended requirements.

2.2.2.7 European Union - Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products G/TBT/N/EEC/101/Add.3

2.45. The representative of the Dominican Republic raised concerns with this measure. The full statement is contained in G/TBT/W/708.

2.46. The representative of Canada stated that as trade in organic products was an important element of the Canada-EU agri-food trade relationship, Canada was paying close attention to the development of the EU's new organic products regime. The change to Regulation 1235/2008 – with respect to when the Certificate of Inspection was issued – had only been notified to the WTO after Commission Implementing Regulation 2020/25 came into force on 3 February 2020. DG-AGRI had communicated by email to Control Bodies that the Commission intended to allay stakeholder concerns by providing flexibility as to when sections of the Certificate of Inspection confirming information related to transport documents could be signed by the Control Body. Canada asked if more detailed information could be formally published or communicated by the Commission. Furthermore, the EU was encouraged to notify all changes to its current and future organic regime to the TBT Committee in order to allow Members and interested stakeholders the opportunity to appropriately review the changes and submit comments.

2.47. The representative of Panama supported the concerns raised by the Dominican Republic and noted Panama's interest in this measure.

2.48. The representative of Paraguay said that the various implications and impact of Regulations 2018/848 and 2020/25 were still being assessed in capital, as the main export destination of its organic production was the EU and EFTA countries. Paraguay was monitoring this issue very closely. The EU was requested to provide more information regarding Article 1.2 of Regulation 2020/25, which stated that the control certification was to be sent by the Control Body before the shipment left the country of origin and that it must also be approved by the competent authority in the exporting country in question.

2.49. The representative of Peru supported the concerns raised by other Members, requesting that the EU notify the various regulations and standards from Regulation 2018/848 to the WTO, providing the necessary timeframes to enable interested parties to voice their concerns.

2.50. The representative of Ecuador expressed particular concern with Regulation 2020/25 of 13 January 2020, the implementation of which meant that exporters of organic products had to submit, through "Trade Control and Export System" (TRACES), a certificate of inspection (COI) issued by the organic producer before arrival at the port of entry and not afterwards, as had been the practice. Progress had been made in bilateral discussions and she acknowledged the EU's flexibility in respect of the time limits for provision of information under certain boxes of the COI. The internal logistical steps had been carried out to comply with the requirements of the new standard. Nevertheless, a six-month extension of the deadline for entry into force of the regulation was requested, as this was the minimum amount of time necessary to optimize logistical procedures, as certain sectors still experienced delays in the issuance of the COI.

2.51. Ecuador considered that the 20-day time period granted for the entry into force of Regulation 2020/25 was too short, as this would involve changes in logistical procedures such as rescheduling harvests, shipping plans, internal transport, hiring new staff in operators and certification bodies, development of IT systems and changes in producers' practices. The effect of these logistical changes would have a cascade effect, touching 95% of producers with organic certification under Regulation 834/2007, accounting for more than 13,000 producers, all of them in the sector of family farm producers. In other words, small producers in very vulnerable, rural sectors would have to be able to duly implement the changes in sufficient time.

2.52. The representative of Colombia supported the concerns raised about Regulation 2020/25 and looked forward to due notification of the standard, as well as the EU's response to the concerns raised by Members.

2.53. The representative of Chile shared the various concerns expressed by Members, in particular with respect to the implementation of Regulation 2020/25, which, he said, had an impact on logistical procedures for issuing the certificate prior to shipping. Chile encouraged the EU to notify this measure.

2.54. The representative of the European Union responded to the concerns raised. The full statement is contained in G/TBT/W/720.

2.2.2.8 Kingdom of Saudi Arabia - Saber Conformity Assessment Online Platform / Saleem Product Safety Program G/TBT/N/SAU/993/Rev.1

2.55. The representative of the European Union raised concerns with this measure. The full statement is contained in G/TBT/W/721.

2.56. The representative of the Kingdom of Saudi Arabia clarified firstly that Saber was an electronic platform for the registration and issuing of certificates of conformity for products, the main purpose of which was the evaluation of pre-shipment conformity and reducing the clearance time at the border. He underlined that Saber platform procedures were applied equally to locally manufactured products and to imported products. Secondly, Saudi Arabia had raised the conformity assessment scheme for ceramic tiles to the Saudi quality mark due to the increasing percentage of non-compliant products on the market. Saudi Arabia had notified this measure on 7 February 2019, giving Members adequate time to comment. Furthermore, the Saudi quality mark was required for national ceramic tile products at an equal level as imported products, in conformity with the non-discrimination principle of WTO. Concerning toys, the GCC Standards Organization (GSO) managed most of the certification process through its platforms, which required type approval certificates as a conformity scheme to issue the Gulf Conformity Tracking Symbol (GCTS). Once the GCTS had been obtained from the GSO, shipment certificates could easily be issued through the Saber platform.

2.2.2.9 Mongolia - Mandatory Requirement for Enrichment of Agricultural Products with Vitamins

2.57. The representative of the Russian Federation raised concerns with this measure. In 2018, Mongolia had adopted a Law on the Enrichment of Food Products, which entered into force in December 2019, the objective of which was to protect human health and prevent vitamin and mineral compounds deficiency. He added that the list of products subject to mandatory vitaminization had entered into force only in December 2019 and, only at the end of December 2019, Mongolia had issued a standard on wheat flour enrichment, defining the complex of vitamins and mineral compounds for the product. According to the standard, wheat flour should be enriched with vitamins B and D, folacin, ferrum and zinc. Russia sought clarification on the rationale for implementing the Law and subsequent standard on a mandatory basis and whether the measure was consistent with certain international standards. Furthermore, in case the standard for wheat flour had been adopted in accordance with World Health Organization recommendations, Mongolia was asked to specify whether the dosage of vitamins and mineral compounds was compliant with them.

2.58. Russia noted the insufficient time between the publication of the standard for wheat flour enrichment and its entry into force. Mongolia had not provided reasonable time for producers and exporters of wheat flour to adapt their products or methods of production to new requirements and as such, Mongolia's measures were inconsistent with its obligations under the WTO Agreements, in particular, Article X of the GATT 1994 and Article 2.9 of the TBT Agreement. The rules for production, storage and transportation of enriched food products and labelling requirements, including a particular sign indicating the vitaminization of food products, had only come into force on 30 January 2020. In this regard, Russian expressed concern with respect to the capability of national producers of wheat flour to follow the standard once it had entered into force. Given that Mongolian producers could sell their unenriched flour, while imports of the same product were forbidden, contravened Article 2.1 of the TBT Agreement. Russian looked forward to receiving further clarifications regarding the issues raised and would continue to carefully monitor the implementation of the measure in order to examine its compliance with WTO rules.

2.59. The representative of Mongolia clarified that the list of food products required for enrichment with vitamins had been adopted by Government Resolution No. 336 of 31 October 2018. The list included wheat flour and salt: four types of wheat flour were required to be enriched with B-type vitamins and vitamin D, iron and zinc; salt was to be enriched with iodine. He further explained the following: the technical requirements for enriched/fortified wheat flour, including the qualifications, physical, chemical and sanitary indicators, labelling, storage and transportation were specified in standards MNS 6812:2019; the technical requirements for wheat flour premix were specified in MNS 6811:2019; labelling requirements for enriched food products were contained in the Order by the Minister for Food, Agriculture and Light Industry No. A-27 of 30 January 2020; and the procedures for imports of enriched food products were provided in Article 9 of the Law on Food Enrichment and Article 11 of the Food Law, which also provided for inspection of enriched food. Mongolia had

provided the necessary documents to the Russian Federation and they were also available on the website of the Ministry of Food, Agriculture and Light Industry of Mongolia.

2.2.2.10 France - Mandatory Labelling of SAR Radio Equipment (G/TBT/N/FRA/184 and G/TBT/N/FRA/185)

2.60. The representative of China thanked France for notifying the draft decree on 3 April 2018. Whilst fully respecting the legitimate objective of protecting human health and safety, China deemed the measures more trade restrictive than necessary in view of the risk of non-compliance and therefore in contravention of Article 2.2 of the TBT Agreement. As no reply had been received to the comments sent to the French TBT Enquiry Point on 28 May 2018, and having learnt that the act would take effect on 1 July 2020, the following comments were reiterated.

2.61. Firstly, he suggested France cancel the requirement of displaying the values of the SAR. Under the European Union's Radio Equipment Directive (RED), which had been transposed into French law, one of the mandatory requirements was adherence to the SAR limits and if a RED-compliant device obtained the CE mark. This meant that the product complied with the applicable SAR limits and was deemed to be safe for humans. The additional display of the SAR values was unnecessary and added extra cost to manufacturers. In addition, it was still controversial whether the SAR value tested according to the relevant EU standards was "the lower the better for consumers". The measures risked misleading consumers into think that the marked value was the electromagnetic radiation injury value to the human body.

2.62. Secondly, if the requirements could not be cancelled, China recommended that relevant specific guidance documents be issued as soon as possible, and the implementation be postponed for 12 months as the transitional period was too short for manufacturers to perform the relevant compliance tests to the proposed requirements. On the one hand, the relevant test methods were incomplete. The current EU SAR test standards currently did not contain limb SAR test methods for handheld devices or for wearable devices. On the other hand, an implementing guidance seemed necessary. According to the new requirements, SAR values of head, body and limbs must be marked, however, the acts did not specify whether all products needed to be marked with all the SAR values, nor did they provide any guidance to manufacturers by quoting regulations or standards. According to manufacturers' understanding, in accordance with the testing practices and product characteristics, not all products needed to display all the SAR values, which had caused confusion for manufacturers.

2.63. Finally, China reiterated that the final version had been published on 7 November 2019 and would take effect on 1 July 2020. Such a short transitional period would bring great difficulties to manufacturers, especially when the relevant test method was still incomplete.

2.64. The representative of the European Union responded to the concerns raised. The full statement is contained in G/TBT/W/722.

2.2.2.11 Peru - Supreme Decree No. 015-2019-SA, which amends the Manual of Advertising Warnings approved by Supreme Decree No. 012-2018-SA

2.65. The representative of Costa Rica expressed concern with this measure. According to the modification, as of June 2020, stickers and adhesive labels would no longer be permitted. Costa Rican food industry had noted that the negative impact on trade from this type of provision was already being felt as products without definitive labels from origin were not being bought, in order to guarantee that there would be no inventories when the use of adhesive labels would no longer be permitted. He pointed out that the use of these labels was widely recognized at an international level, as they achieved the same objectives of protection of public health and consumer information as permanent labelling. Codex standard CODEX-STAN 1-1985 for pre-packaged goods, Articles 8.1.1 and 8.2.1 allowed for the possibility of using additional or adhesive labels, as long as they were attached to the packaging and if the language of the original label was not necessarily that of the consumer for whom it is intended. Furthermore, he noted that countries with labelling schemes requiring the use of warnings of high fat, sodium or sugar content, similar to that of Peru, had been looking into the possibility of additional labelling by means of adhesives, which not only complied with the level of protection required, but made it easier for exporters to comply with requirements that were not harmonized internationally.

2.66. In Costa Rica, Peruvian food products were able to comply with the labelling requirements using complementary adhesive labels, instead of having to establish permanent labels in the country of origin, exclusively for the Costa Rican market. This facilitated trade and was proportional to the intended level of protection; Costa Rica therefore requested reciprocal treatment. Other Peruvian measures, such as the Regulation on Surveillance and Sanitary Control of Food and Drinks D.S.N. 007-98-SA, permitted the use of adhesives for the fulfilment of labelling requirements, recognizing that it was an appropriate means of achieving the proposed legitimate objectives. He recalled that that the same Peruvian regulations considered the possibility of establishing an adhesive or additional label and this demonstrated that less trade-restrictive measures existed, thereby achieving the proposed legitimate objectives, and in accordance with the provisions of the TBT Agreement.

2.67. Costa Rica requested that Peru confirm that this measure had not been notified to the TBT Committee. If it was so, the measure might be incompatible with Peru's obligations under Articles 2.1, 2.4 and 2.9 of the TBT Agreement. Costa Rica therefore urged Peru to modify the provisions established in the Manual of Advertising Warnings to allow the use of this type of adhesive labelling. Costa Rica thanked Peru for the bilateral consultations and looked forward to receiving further information on this issue.

2.68. The representative of Chile shared the concerns raised by Costa Rica. He recalled Chile's Law 20.066, published on 20 June 2017 and subsequently phased in, regarding the nutritional composition of foodstuffs and advertising. The law dealt with the use of stickers and stick-on labels to provide more information on various imported food products. In this regard, Chile, like Costa Rica, suggested that Peru reconsider and include the use of these types of labels, which would facilitate smooth trade flows for those imported goods requiring a particular warning, as provided for in Chile's legislation. He thanked Peru for the bilateral consultations and sharing of experiences and urged Peru to reconsider the measure in order to simplify trade in various products complying with Chilean legislation on front-of-package labelling.

2.69. The representative of the United States supported the concerns raised by Costa Rica and asked Peru to modify the provisions established in the Manual, so as to allow compliance with labelling requirements through an extension for the use of stickers.

2.70. The representative of Brazil supported the concerns raised by Costa Rica and said that the prohibition on the use of stickers with nutritional labels could not form any legitimate objective under the TBT Agreement.

2.71. The representative of Colombia supported Peru's efforts of adopting a public policy measure to promote and protect public health through education, encouraging physical activity, more healthy foods in schools and the regulation of advertising related to food and non-alcoholic beverages aimed at children and adolescents to reduce non-communicable diseases. Nevertheless, this policy should not be more trade restrictive than necessary and Colombia believed that Article 2 of Supreme Decree No. 015-2019 was in violation of Article 2.2 of the TBT Agreement. Bearing in mind that the article stipulated that the use of adhesive labels with warnings would be permitted for one year, until June 2020, and as of this date processed food with an adhesive label would not be allowed to enter the Peruvian market. Adhesive stickers would not in any way distort the purpose of the legislation as the warnings, whether established by means of stickers or printed directly on the product packaging, would continue to be clear, legible, prominent and understandable, as required by the regulation.

2.72. Such a mandatory country-specific technical measure on labelling, which prohibited the use of stickers, constituted a very significant technical barrier to trade for both Peruvian importers and producers in countries like Colombia. This was particularly significant for those companies whose economies of scale and current and projected sales volumes in Peru failed to justify the cost of making a label specifically designed to comply with the regulation. Imposing this type of unnecessarily trade-restrictive measure also ran counter to international labelling practice and the Codex Alimentarius approach (CODEX–STAN 1-1985, REVISION 2018 - General Standard for Labelling of Prepackaged Foods, Article 8: Presentation of the Mandatory Information), and disregarded Article 2.4 of the TBT Agreement. Colombia therefore requested that Peru study the feasibility of allowing the use of adhesives or stickers to include warning icons and phrases on food packaging so as to avoid creating an unnecessary trade barrier.

2.73. The representative of the European Union expressed concern that Peru's proposed measure was disproportionate and would inevitably cause trade obstacles for businesses. The EU was committed to working with Peru on this issue and was confident that a solution could be found.

2.74. The representative of Guatemala expressed concern that, from June 2020, to comply with Peru's labelling requirements labels would have to be printed on the original package and adhesive labels would no longer be permitted. Guatemala noted that this measure had not been notified to the TBT Committee. She also referred to Codex Alimentarius CXS 1-1985 General Standard for the Labelling of Pre-packaged Foods, where paragraph 8.2.1 stated that "If the language on the original label is not acceptable, to the consumer for whom it is intended, a supplementary label containing the mandatory information in the required language may be used instead of relabelling" and paragraph 8.2.2 that stated "In the case of either relabelling or a supplementary label the mandatory information provided shall be fully and accurately reflect that in the original label".

2.75. Guatemala had already expressed concern in the Committee about the lack of global harmonization in food labelling. This seriously affected small and medium producers trying to access international markets. Guatemala considered that these measures limited trade more than necessary, since only large industries had the capacity to divide production and produce different packaging for different destinations. The absence of harmonization meant that each market implemented this type of measure differently. Moreover, small and medium producers in developing countries lacked the capacity to produce different packaging for different trading partners. Whilst recognizing the need to protect consumer health, Guatemala deemed the measure more restrictive than necessary and reiterated that the provisions contained in the Codex Alimentarius labelling standard for pre-packaged foods should be taken into account, allowing the possibility of using complementary labels.

2.76. The representative of Peru said that Peru remained committed to pursuing the legitimate objective of protecting public health, especially in the most vulnerable sectors of the population such as children and adolescents, in accordance with its international trade commitments. By making the information set out in the Manual of Advertising Warnings available to consumers it enabled them to make informed choices. Peru fully respected its international commitments, as well as the principles established in the WTO Agreements, notably national treatment of imported and national goods. Peru reaffirmed its commitment not to develop, adopt or apply technical regulations that could lead to unnecessary barriers to international trade, as established in the TBT Agreement. The Supreme Decree No. 015-2019-SA had not been notified, given that it contained trade-facilitating provisions. She confirmed that the regulation of Law No. 30021 for the promotion of healthy eating for children and adolescents, and the manual of advertising warnings, approved in Supreme Decree No. 012-2018-SA, which provided the technical specifications for advertising warnings on processed foods in excess of the established technical parameters had been duly notified at the draft stage.

2.2.2.12 Kingdom of Saudi Arabia – Electrical Clothes Washing Machines – Energy and Water performance Requirements and labelling

2.77. The representative of the Republic of Korea noted that the Kingdom of Saudi Arabia had issued a public notice using a 'pop-up' form in the SASO homepage on 14 January 2020, stipulating temperature conditions for testing washing performance for machines with no heating capability and requiring that manufacturers include additional data on the instruction sheet or user manual. He added that the notice actually had the same effect as the amendment of the regulation (SASO 2885:2018) as it included significant changes to temperature conditions for testing washing performance. Furthermore, he said, since the change to the temperature conditions for testing washing performance was not harmonized with the international standards, and as the notice required that manufacturers include additional data on the instruction sheet or user manual, it should be notified to the TBT Committee. Korea requested that Saudi Arabia comply with the obligation to notify the changes to the TBT Committee, in accordance with Article 2.9 of the TBT Agreement.

2.78. The representative of the Kingdom of Saudi Arabia invited Korea to continue discussing the matter bilaterally.

2.2.3 Previously raised concerns

2.2.3.1 China - Requirements for information security products, including, *inter alia*, the Office of State Commercial Cryptography Administration (OSCCA) 1999 Regulation on commercial encryption products and its on-going revision and the Multi-Level Protection Scheme (MLPS) (IMS ID 294[5])

2.79. The representative of Japan expressed concern with China's "Regulation on the Administration of Commercial Cipher Codes" and "Cyber Security Multi-Level Protection Scheme" and referred to the statements made at previous TBT Committee meetings.[6] Since the last Committee meeting, China had explained that regulations on the "Cyber Security Multi-Level Protection Scheme" were being revised and that the regulation would be open for public comment, when the revision had been completed. She noted that the Encryption Law entered into force on 1 January 2020. Japan therefore requested that China provide relevant information regarding the revision process and that the regulations be implemented transparently.

2.80. The representative of the European Union raised concerns regarding China's draft "Guidelines for grading of classified cybersecurity protection" and referred to the statement made at the previous TBT Committee meeting.[7] She added that the wide scope of application of protection level 3 and above, under the established multi-level protection schemes, had led to unwarranted and significant market entry restrictions. The EU's main concerns with regard to the Guidelines were: (i) the further extension in scope of protection level three and above; (ii) the nature of the expert review that the Guidelines prescribe; and (iii) a lack of clarity in certain definitions. The EU called on China for enhanced proportionality and transparency in the implementation of the Cyber Multi-Level Protection Scheme, instead of introducing burdensome requirements and broadening the scope of Level 3 networks.

2.81. The EU was also concerned that the lack of access to relevant Chinese Standards Developing Organisations would become particularly pressing with regard to the Cyber-MLPS, which would draw heavily on a number of mandatory and recommended standards developed by these standardization bodies. There had been recent positive developments in accessing Working Group 3 on encryption of the TC260 standards development organization. However, no semiconductor companies had yet been admitted. The EU would continue to monitor developments closely. The related industry-level standardization body, the Cryptography Standardisation Technical Committee (CSTC), had only one foreign industry participant. The EU therefore called once again for the State Cryptography Administration to make information accessible to all industry stakeholders, including EU-invested enterprises registered in China, which should also be able to participate in the formulation of said standards and specifications on an equal basis. The EU also requested that stakeholders be informed in advance about the entering into force of these measures.

2.82. As the draft Cyber-MLPS is expected to replace/upgrade the administrative regulations, the EU hoped that its comments would be useful in further developing the draft. In particular, the EU asked China to see that the key concepts were clarified, relevant standards specified, and responsible authorities defined so that complexity, costs and compliance risks could be mitigated. The EU also noted that they encouraged cross-ministerial coordination on cybersecurity legislation and standardization. Finally, the EU asked that China confirm whether the revised draft would be notified to the WTO for comments. The EU recalled the importance of allowing for adequate participation of interested parties in domestic processes.

2.83. The representative of China said that since the Encryption Law took effect on 1 January 2020, China established a unified certification system and cancelled the administrative approval of varieties and types of commercial cryptographic products. The management of the commercial cryptographic products fully embodied the principles of non-discrimination and fair competition and would treat the products and enterprises equally under the law without discrimination, regardless of whether they were produced domestically or outside of China, or by domestic or foreign enterprises. He also clarified that the mandatory testing and certification were only applied for the commercial encryption products that may affect national security, national welfare and people's livelihood, and society's

[5] For previous statements follow the thread under IMS ID 294 (under dates raised and references).
[6] G/TBT/M/79, para. 2.42; G/TBT/M/78, para. 3.159; G/TBT/M/77, para. 3.141 and G/TBT/M/76, para. 3.40.
[7] G/TBT/W/682.

interest. For the other commercial encryption products, China encouraged organizations and enterprises to voluntarily apply to qualified testing and certification agencies for testing and certification.

2.84. Regarding the MLPS, as technology developed, in response to more complicated cyber security circumstances, information security multi-level protection scheme needed to be improved. Based on experience in past years and responding to new development, the Cybersecurity Law stipulated that China would carry out the cybersecurity MLPS, which was based on information security MLPS. To fulfil the requirements in the Cybersecurity Law, regulations on cybersecurity MLPS were under drafting. They would replace the former administrative measures on information security MLPS.

2.2.3.2 European Union - Draft Implementing Regulations amending Regulation (EC) No 607/2009 laying down detailed rules for the application of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products (ID 345) G/TBT/N/EEC/264, G/TBT/N/EEC/264/Add.1 (IMS ID 345[8])

2.85. The representative of the United States raised concerns with this measure. The full statement is contained in G/TBT/W/732.

2.86. The representative of Argentina reiterated concerns expressed at previous meetings of the Committee with respect to the discrimination that Argentinian wines had to face, as these could not use the traditional terms such as *Reserva* and *Gran Reserva* on their labels.[9] This was despite the fact that Argentina had gone through the substantial approval procedures for the use of such terms in March 2012 under EU law. Argentina once again urged the EU to act on all applications to register traditional terms which had been submitted by third countries, to prevent unnecessary technical barriers to trade.

2.87. The representative of Brazil supported the concerns raised by other Members and referred to statements made at previous TBT Committee meetings.[10] The EU was invited to share any updated information with the Committee, as well as to provide information about the estimated time-frame related to the use of regulated terms for wines exported to the EU in Regulation (EC) No. 607/2009, Council Regulation (EC) No 479/2008 and revised regulations notified under G/TBT/N/EU/570 and G/TBT/N/EU/571.

2.88. The representative of New Zealand, while recognizing that Members had the right to protect their consumers from deceptive practices, asked the EU to take into consideration concerns raised by Members in relation to the scope and application of the system of traditional terms, as well as the transparency of the process, and timeline in relation to the applications by third countries.

2.89. The representative of the European Union repeated the response provided at the previous TBT Committee meeting.[11]

2.2.3.3 India — Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012, G/TBT/N/IND/44, G/TBT/N/IND/44/Add.1, G/TBT/N/IND/44/Add.2, G/TBT/N/IND/44/Add.3, G/TBT/N/IND/44/Add.6, G/TBT/N/IND/47, G/TBT/N/IND/58 (IMS ID 367[12])

2.90. The representative of the United States referred to previous interventions under the specific trade concern.[13] She noted that India's Ministry of Electronics and Information Technology (MeitY) sought to expand the product scope covered under the Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order (CRO) to include 20 new items as part of its CRO Phase IV. The US requested that India notify the expanded CRO product scope and any other

[8] For previous statements follow the thread under IMS ID 345 (under dates raised and references).
[9] G/TBT/M/79, para 2.52 and G/TBT/M/78, para. 3.56.
[10] G/TBT/M/79, para 2.54; G/TBT/M/78, para. 3.57 and G/TBT/M/77, para. 3.64.
[11] G/TBT/M/79, para 2.55.
[12] For previous statements follow the thread under IMS ID 367 (under dates raised and references).
[13] G/TBT/M/79, para 2.57; G/TBT/M/78, para. 3.199; G/TBT/M/77, para. 3.148, G/TBT/M/76, para. 3.59; G/TBT/M/75, para. 4.67; and G/TBT/M/74, para. 2.89.

changes and allow for stakeholder comment for at least 60 days. India was also requested to share an update on its timeline and its plans to finalize the expanded product scope.

2.91. The representative of Canada supported the concerns raised by the US and welcomed any clarifications and information that India could provide to the Committee.

2.92. The representative of India said that this measure mandated Indian safety standards for the notified goods with regards to the provisions of the compulsory registration scheme (CRS) of the Bureau of Indian Standards (BIS). For consumer safety, the products were covered under this Order in a phased manner following due consideration with stakeholders. To date, 44 product categories had been covered under the CRO and it had come into effect for all of the notified product categories. A minimum of six months had been given to the industry for complying with the provisions of the Order. With regards to BIS certification, there had been no change in the provisions of the Order. Regarding the compulsory registration scheme notified by BIS, only manufacturers of the notified goods could complete registration based on the article tested from any laboratory in India recognized by BIS, or any overseas laboratory covered under the Mutual Recognition Agreement with the BIS. He also clarified that every foreign applicant with an office or branch office located in India would meet all liabilities and obligations with respect to the Act and the rules and regulations framed thereunder for the purpose of registration. Lab recognition fell under the purview of the BIS, and that the BIS had notified the lab recognition scheme 2018 under the BIS Act 2016 which contained provisions for the recognition of laboratories within and outside India. In addition, India encouraged interested Members to continue discussions bilaterally.

2.2.3.4 European Union — Hazard-based approach to plant protection products and setting of import tolerances G/TBT/N/EU/383, G/TBT/N/EU/384, G/SPS/N/EU/166 (IMS ID 393[14])

2.93. The representative of the United States reiterated previously raised concerns on endocrine disruptors and expressed disappointment that the EU had proceeded with implementation despite numerous interventions by WTO Members (10 Members at last TBT Committee meeting).[15] The US also expressed disappointment that, despite concerns raised at previous meetings, the EU continued to use a hazard-based approach to restrict the use of pesticides and to lower MRLs to trade-restrictive levels without a clear relationship between the risk of non-fulfilment and the legitimate objective that the EU sought to achieve. The US had considered the explanations that the EU had offered for its actions but found that they did not address its concerns.

2.94. The US recalled that the EU had stated that it would conduct risk assessments for import tolerances, on a case-by-case basis, factoring in other relevant factors. However, the US remained troubled about the scientific underpinnings, non-discrimination, transparency, and predictability in application of the EU's process, and drew the Committee's attention to the statements of the US from the November 2019 SPS Committee meeting, circulated as G/SPS/GEN/1749 and G/SPS/GEN/1750. The explicit questions posed to the EU in these documents spoke to the fundamental principles and obligations of the TBT and SPS Agreements and were at the core of the concerns expressed by an unprecedented number of Members in various forums.

2.95. The US asked the EU to respond to its questions, with clarity and specificity, in order to gain a better collective understanding of how the EU was regulating pesticides and establishing MRLs in a manner consistent with its WTO obligations.

2.96. The representative of Brazil supported the concerns raised by the US and reiterated concerns raised at previous meetings.[16]

2.97. The representative of Canada supported the concerns raised by other Members, in particular with respect to the process for resetting import tolerances. She recalled that the EU had reassured Members that the granting of import tolerances for these products would be "considered in line with risk analysis principles on a case-by-case basis and taking into account all relevant factors". Canada asked the EU to elaborate on what other relevant factors would be considered in this process that

[14] For previous statements follow the thread under IMS ID 393 (under dates raised and references).
[15] G/TBT/M/79, para. 2.59 and G/TBT/M/78, para. 3.201.
[16] G/TBT/M/79, para. 2.65; G/TBT/M/78, para. 3.207; G/TBT/M/77, para. 3.156 and G/TBT/M/76, para. 3.67.

had not already been taken into account when the hazard-based criteria was developed. In addition, Canada continued to wait for the EU to host seminars with third countries and stakeholders and trusted that these events would provide sufficient detailed information on the import tolerance setting process. The timing of these seminars was of particular importance, as non-renewal decisions were currently in the process of being implemented by the EU. Until such a clear and predictable process for setting import tolerance was implemented, Canada requested that MRLs for active substances, which were not authorized in the EU, be maintained at existing levels to allow trade to continue. More broadly, Canada also looked forward to learning more about the EU Farm to Fork Strategy, which would be made public in the coming weeks, with implementing measures over the course of the next year. In conclusion, Canada hoped that regulatory changes arising from these new policies, such as the Farm to Fork Strategy, would be done in a coherent and transparent way that would minimize negative and unnecessary trade effects, and allow producers and exporters to make timely business decisions.

2.98. The representative of Australia reiterated its position about the importance of adopting a risk-based approach for regulating endocrine disrupting chemicals (EDCs) rather than considering only the potential for harm due to the intrinsic properties of a chemical.[17]

2.99. The representative of Argentina thanked the EU for discussions that were held at the technical level on these issues, which were very important to better understand the standard-setting approach used by the EU. Despite this, Argentina maintained uncertainty as to how the application for import tolerances of active substances that had been affected by the hazard-based cut-off criteria would be applied in practice. There were also concerns over the hazard-based approach used by the EU in relation to pesticides, without identification of the hazards. Argentina urged the EU to take the appropriate precautions to avoid an unnecessary barrier to international trade, especially given the importance of the EU market to developing countries, such as Argentina.

2.100. The representatives of Costa Rica[18], Colombia[19] and Panama[20] reiterated concerns with the hazard-based approach adopted by the EU and requested that the application of the regulations be based on sound scientific criteria.

2.101. The representative of Uruguay raised concerns with this measure. The full statement is contained in G/TBT/W/706.

2.102. The representative of Ecuador continued to express concern with this measure, in particular with regards to the maximum limits for substances which were very important in the process of food production in countries like Ecuador. There was a lack of information and the information that was provided was inconclusive. There was a move towards a reduction of the threshold values to the minimum amount, and the EU had said that its decisions were not provisional and, once adopted, would be very difficult to adopt afterwards. Therefore, once again the EU was urged to act in compliance with WTO Agreements and adopt measures based on technical and scientific information that was conclusive. Ecuador appealed to the EU that in cases where a lack of information existed, recommendations regarding a maximum of residue limit should not be implemented and commercial trade should not be limited. She stressed that the measure should be based on hazard-based criteria that was conclusive and looked at the impact on health and unjustified technical obstacle to trade should be avoided.

2.103. The representative of Guatemala continued have concerns with this measure, in particular with regards to the hazard-based criteria/analysis. There was a need to recognize the importance of the general framework for hazard-based analyses as well as the communication of risks or hazards. The precautionary principle could be used to identify some negative effects. Therefore, she insisted that, in line with transparency obligations, it would be necessary for the EU to provide evidence to exporting countries that exported food products to the EU so that they could better understand the procedures. Guatemala also underscored the importance of a risk-based analysis, especially when it came to developing countries with tropical climatic conditions as they were very different from the countries that held sway in the EU. While recognizing the need to contain insects and plagues, it was

[17] G/TBT/M/79, para. 2.64; G/TBT/M/78, para. 3.211; G/TBT/M/77, para. 3.162 and G/TBT/M/76, para. 3.64.
[18] G/TBT/M/79, para. 2.62; G/TBT/M/78, para. 3.208 and G/TBT/M/77, para. 3.155.
[19] G/TBT/M/78, para. 3.209.
[20] G/TBT/M/78, para. 3.206.

important to look at the distance and time for exports of agricultural products into Europe in order to avoid unnecessarily restricting the trade flows.

2.104. The representative of Paraguay reiterated concerns with this measure, in particular with regards to the lack of scientific evidence when it came to a hazard-based analysis for *de jure* or *de facto* use of plant health products. Paraguay was concerned about the lack of clarity regarding the tolerance policy for imports that would be applied by the EU. Without this clarity, the EU seemed to be trying to force the implementation of its standards on other Members, without taking into account affected Members climatic, environmental or financial conditions and the economic consequences that those policies would have on the economy and development. Paraguay also expressed concerns that the unilateral nature of the measures would go against the standards set forth in the Codex Alimentarius, which was a multilateral body in which those various decisions were made. She noted that the measures did not comply with the prerequisites of the SPS Agreement, in order to be able to justify any modification to those standards or the implementation of the measure in a provisional way whilst looking at the precautionary principle. The EU often stated that it considered the Codex Alimentarius to be a very good framework when it came to the justification of measures of other Members. However, it seemed not to be the case for these measures. Finally, Paraguay asked the EU how developing countries could continue exporting any type of agricultural product if there was a proliferation of measures that restricted unnecessarily developing country products, be they conventional agricultural products or organic agricultural products.

2.105. The representative of the Dominican Republic supported the concerns raised by other Members.

2.106. The representative of the European Union repeated the response provided at the previous TBT Committee meeting.[21] She stressed that the EU would act in full transparency and would keep Members duly informed about further developments.

2.2.3.5 China - Regulations for the Supervision and Administration of Medical Devices (Order No. 650 of the State Council) G/TBT/N/CHN/1313 (IMS ID 428[22])

2.107. The representative of the Republic of Korea reiterated concerns about this measure[23] and looked forward to receiving any progress or updates.

2.108. The representative of China repeated the response provided at the previous TBT Committee meeting.[24]

2.2.3.6 China - Insurance Regulatory Commission (CIRC) Information and Communication Technology Regulation G/TBT/N/CHN/1172 (IMS ID 489[25])

2.109. The representative of the European Union reiterated comments made at the previous Committee meeting.[26]

2.110. The representative of China stated that following the merging of the CBRC and the CIRC, China had decided to cancel the Information and Communication Technology Regulation in response to the new circumstances. He stressed that China always abided by the WTO commitments and that the drafting process of information technology measures in the banking and insurance sectors proceeded in an open and transparent way. All measures that had been adopted applied equally to domestic and foreign companies.

[21] G/TBT/M/79, paras. 2.69-2.70.
[22] For previous statements follow the thread under IMS ID 428 (under dates raised and references).
[23] G/TBT/M/79, para. 2.71.
[24] G/TBT/M/79, para. 2.72.
[25] For previous statements follow the thread under IMS ID 489 (under dates raised and references).
[26] G/TBT/M/79, para. 2.73.

2.2.3.7 Ireland - Public Health (Alcohol) Bill 2015 G/TBT/N/IRL/2 (IMS ID 516[27])

2.111. The representative of the United States reiterated comments made at the previous Committee meeting.[28] While the EU had suggested that the transition period would commence after the WTO commenting process, the US remained sceptical after the Public Health (Alcohol) Bill was signed into law in 2018 without consideration of WTO Member comments.

2.112. The representative of Mexico thanked the EU for their bilateral meeting and recalled the concerns raised at previous TBT Committee meetings.[29] She requested more information regarding the status of the measure and its recent stages and also sought clarification with respect to the secondary legislation that would be required for Ireland to implement the law.

2.113. The representative of Argentina reiterated concerns made at the previous Committee meeting.[30] He requested that the EU provided updated information regarding the regulatory procedure that was underway and future notifications that would be brought before the Committee.

2.114. The representative of Australia recognized the right of governments to take measures necessary to protect public health and appreciated Ireland's efforts to address a legitimate public health concern. Australia continued to seek clarification on the details and implementation of the remaining eight sections of the Public Health (Alcohol) Act 2018, in particular Section 12 on Labelling and also on the process with regards to clearance at EU level. Regarding the expected timeline for the implementation of the new requirements, Australia requested further information as the response provided by the EU at the previous TBT Committee meeting did not address those issues. Australia also referred to the EU's previous advice that the new Act would be re-notified to allow trading partners to comment on the revised proposal given the substantial changes since the original notification.

2.115. The representative of Chile supported the concerns raised by other Members and reiterated comments made at the previous Committee meeting.[31]

2.116. The representative of New Zealand stated that, while New Zealand acknowledged and supported the rights of all WTO Members to regulate for the protection of human health, New Zealand shared concerns raised by other Members that the proposed labelling requirements appeared more trade restrictive than necessary to fulfil the objective of the legislation. Had Ireland considered aligning the proposed requirement with those of other EU Member States? An update on timelines for the secondary legislation in respect of the labelling provisions was requested. In particular, an update on when these measures would be notified to the TBT Committee.

2.117. The representative of the European Union reiterated responses from previous TBT Committee meetings and explained that Ireland was obliged to enact the primary legislation at the earliest possible date and that the Bill had been signed into law on 17 October 2018.[32] The labelling provisions of the Health Bill required secondary legislation. She noted that public consultation had been held on the regulations that would be made on the labelling provisions under the Public Health (Alcohol Act). The measure would also be notified to the TBT Committee once the process was completed. The three-year lead-in time before the labelling provisions become operational would not commence until the notification processes at the EU and WTO level were completed to allow businesses the full three years to prepare for and to make the necessary changes to comply with the new measures. In November 2018, the Minister for Health had signed an order to commence a number of sections of the Public Health (Alcohol) Act, that did not require secondary legislation, into operation.[33]

[27] For previous statements follow the thread under IMS ID 516 (under dates raised and references).
[28] G/TBT/M/79, para. 2.82.
[29] G/TBT/M/76, para. 3.134.
[30] G/TBT/M/79, para. 2.84.
[31] G/TBT/M/79, para. 2.86.
[32] G/TBT/M/79, para. 2.87.
[33] G/TBT/M/79, para. 2.87.

2.2.3.8 China - Cyberspace Administration of China - Draft implementing measures for the Cybersecurity Review of Network Products and Services (IMS ID 533[34])

2.118. The representative of Japan expressed concern with regard to the Cybersecurity Review Measures and referred to the statement made at the previous TBT Committee.[35] At the previous meeting, China had explained that the submitted comments from each country would be taken into consideration in drafting the revision. As such, Japan requested that China provide the latest updates. Japan also asked that China implement the measures in a transparent manner and in full consideration of the comments and concerns raised by Members.

2.119. The representative of the European Union reiterated concerns raised at the previous TBT Committee meeting.[36] She added that the EU sought clarification on previously raised questions in order to ensure that they had a correct reading of the situation.

2.120. The representative of Canada stated that comments had been submitted on the Cybersecurity Bureau of the Cyberspace Administration of China on 24 June 2019. He invited China to indicate when it would respond to Members' comments, provide an updated version of the measure and also notify the measure. Canada found that the measure lacked clarity in a number of areas including what Critical Information Infrastructure was and how this measure was in line with National Treatment and MFN obligations of the TBT Agreement. Such clarifications were necessary in order to ascertain whether a legitimate objective was being pursued.

2.121. The representative of China referred to the response given at the previous Committee meeting.[37] He stressed that not all products and services were required to be reviewed; the focus was put on those which could affect national security applied in critical information infrastructures and important information systems. The security review would not violate the intellectual property right of the enterprises. China always attached great importance to IPR protection and protected the IPR in accordance with the law, adding that great efforts had been made to severely crack down on the violation of enterprise IPR in any form, as intellectual property protection was also in the interest of China's enterprises. The review was not targeted at certain Members, and there was no difference in treatment between domestic and foreign enterprises in the security review process. Meanwhile, the review would not restrict the market access of foreign products. On the contrary, it could help increase consumer confidence in these products and could expand companies market share.

2.2.3.9 China - Draft revised Encryption Law of the People's Republic of China by the Office of State Commercial Cryptography Administration (OSCCA) (IMS ID 534[38])

2.122. The representative of Japan continued to have concerns regarding this measure that entered into force on 1 January 2020 and referred to its statement made at the previous TBT Committee.[39] She requested that China consider comments from Japan and other Members when drafting related regulations and not hamper foreign companies' activities or market access to China.

2.123. The representative of the European Union reiterated concerns with this measure that had entered into force from the beginning of 2020.[40] Concerns remained about the wide scope of the law, in conjunction with the lack of clarity of a number of foundational concepts as well as administrative procedures described in the text. Both of these factors would negatively impact business confidence. The EU noted that the new law did not recognize China's previous commitment made in 2000 that the cryptography-related regulation would only apply to products whose core function was that of providing encryption – the so-called "Year 2000 Clarification" by the SCA. China was urged to ensure that legal and regulatory requirements were non-discriminatory, did not favour specific technologies, did not limit market access or lead to a forced transfer of intellectual property. Regulatory procedures related to products containing cryptographic components needed to be transparent, predictable and consistent with international practices. China was asked to guarantee the participation of foreign invested enterprises (FIEs) on an equal footing with domestic companies

[34] For previous statements follow the thread under IMS ID 533 (under dates raised and references).
[35] G/TBT/M/79, para. 2.88.
[36] G/TBT/M/79, para. 2.89.
[37] G/TBT/M/79, para. 2.91.
[38] For previous statements follow the thread under IMS ID 534 (under dates raised and references).
[39] G/TBT/M/79, para. 2.92.
[40] G/TBT/M/79, para. 2.93.

in the production, research, development and sale of cryptography products on its market. In this context, the EU drew attention to the World Semiconductor Council (WSC) "Encryption Principles" and the exchanges between the EU and China in the related "Government/Authorities Meeting on Semiconductors" (GAMS). China was requested to notify the Cryptography Law to the TBT Committee, as set out in Article 2.9 of the TBT Agreement. She also inquired whether China planned to issue any implementing regulations to support the law and, if so, what would be the timetable of those.

2.124. The representative of the United States supported the concerns raised by other Members. She informed the Committee that the US intervention would be combined with its intervention on the Cybersecurity Law on this subject, under STC 45.[41]

2.125. The representative of Canada supported the concerns raised by other Members and referred to the statement made at the previous TBT Committee meeting.[42]

2.126. The representative of China said that The Law on Cryptography of the People's Republic of China had entered into force on 1 January 2020. This law clearly stipulated that all levels and relevant departments would follow the principle of non-discrimination, and would treat all entities equally including foreign-invested enterprises that engaged in commercial cryptography research, production, sales, service, importation and exportation etc. China encouraged commercial cryptography technical cooperation based on voluntary principle and commercial rules in the process of foreign investment. Administrative agencies and their staff were prohibited to force any transfer of commercial cryptography technology by means of administrative measures.

2.2.3.10 India - Amended regulation on toy imports G/TBT/N/IND/143 and G/TBT/N/IND/131 (IMS ID 546[43])

2.127. The representative of the United States requested that India clarify its policies on requirements for imported toys. On 2 December 2019, the Directorate General of Foreign Trade of India issued a notification to amend the 2017 Indian Trade Clarification. According to the revised policy, samples from each toy consignment that arrived in India were subject to mandatory random testing by laboratories accredited by India's National Accreditation Board for Testing and Calibration Laboratories (NABL). This appeared to replace the previous requirement for manufacturers to submit a certificate of conformance from an NABL-accredited lab. This had led to confusion in US industry as the measure had not been notified to the WTO. She sought further clarification from India on whether the change in import procedure had already been implemented. The US asked that India not implement the amendment until it had been notified to the WTO. She also requested that India provide an appropriate time period so as to allow all interested parties to submit written comments and for the consideration of any comments in preparing revisions before moving to implementation. The US understood that there were many parties involved in the importation of toys, including the manufacturer, licensor, licensee, exporter, importer, distributor, retailer, or various intermediary parties and asked who would be responsible for paying for the random testing.

2.128. The US also expressed its appreciation for India's notification of the draft Toys (Quality Control) Order 2019 (QCO) in accordance with the TBT Agreement. The QCO, which amended the 2017 Import Policy for Toys, appeared to specify the use of a Standard Mark under a licence granted by the Bureau of Indian Standards. The US understood that India had not extended the QCO's comment period of 15 days from the date of notification to allow interested parties to submit written comments. India was urged to reconsider and provide a 60- to 90-day comment period.

2.129. The representative of the European Union supported the comments made by the US and referred to the statement delivered at the previous TBT Committee meeting.[44] The EU was further concerned by the related new quality control order on toys notified to the WTO on 7 February 2020 which introduced additional new requirements to the imports of toys in India. The EU deeply regretted that India had only provided 15 days as a comment period, without respecting the 60-day period recommended by the Committee. The EU was still assessing the new notified measure but, preliminarily, had identified a number of concerns which put into question the compatibility of the

[41] China - Cybersecurity Law.
[42] G/TBT/M/79, para. 2.90.
[43] For previous statements follow the thread under IMS ID 546 (under dates raised and references).
[44] G/TBT/M/78, paras. 3.286-3.287.

new measure with the TBT Agreement. Among others, the requirements included the burden of a newly introduced requirement to obtain a licence for each manufacturing factory or the discriminatory requirement to provide a bank guarantee only foreseen for foreign manufacturers. substantive comments to India on the new measure and expected that they would be duly considered by the Indian authorities.

2.130. The representative of Canada appreciated the efforts made by India and other WTO Members to implement measures to protect the health and safety of infants and children. Canada had noted several times the importance of allowing foreign-accredited laboratories to test toys in order to put foreign and domestic producers on a level playing field. Canada noted its concern with India's recently notified amended regulation on quality control order for toys that did not address this key issue. Further, Canada understood that under the new requirements of the Order, foreign manufacturers must nominate and retain an in-country Indian representative, obtain a performance bank guarantee, and provide an indemnity bond. Canada viewed those requirements as being more trade restrictive than necessary to achieving the policy objective of ensuring the safety of toys for children. Canada sought clarification from India regarding the rationale for allowing a comment period of only 15 days for the measure. Canada also welcomed any additional clarification and information that India could provide to the Committee on the measure.

2.131. The representative of India said that responses to Members' queries had been provided in previous TBT Committee meetings.[45] With regards to new developments, India had notified G/TBT/N/IND/143, on 24 February 2020, and a new draft regulation on toys contained in G/TBT/N/IND/131 on 7 February 2020, with the comment period ending on 22 February 2020. This had been done so as to address concerns related to national security, health, safety, environment and certain deceptive trade practices. The text of the Draft Toys Quality Control Order 2020 was attached to the notification. A six-month time period would be provided for the implementation after the issuance of the QCO on toys in the Official Gazette. With regards to the requirements for use of the standard mark under licence from the BIS, he clarified that it followed scheme 1 mentioned in the BIS conformity assessment regulations 2018 and envisaged scheme 1, not scheme 2, of Schedule 2 of BIS conformity assessment regulations 2018. Certain issues had been recently reported by the US to India's TBT enquiry point, which would be examined by the concerned department. An appropriate response would be provided to the US and other Members who had raised them. For any additional concerns, India requested that Members provide their statements so that they could be sent to capital for any further clarification on the issues.

2.2.3.11 Brazil - Draft Technical Resolution No. 51, 7 April 2017 on labelling of beverages, wine, and grape derivatives G/TBT/N/BRA/719 and G/TBT/N/BRA/719/Add.2 (IMS ID 557)

2.132. The representative of the European Union thanked Brazil for a fruitful bilateral meeting. The EU welcomed the fact that, according G/TBT/N/BRA/719/Add.2 of 13 February 2020, the Brazilian Ministry of Agriculture, Livestock and Food Supply had withdrawn the proposed Technical Regulation, which approved the rules regarding the labelling of beverages, wine, and grape derivatives. The EU requested confirmation whether there were plans to prepare a new proposal and its notification under the TBT Agreement.

2.133. The representative of Brazil stated that, in the notification mentioned by the EU, Brazil had officially informed WTO Members that the development of draft regulation 51 had been discontinued. Should Brazil decide to regulate matters related to this STC again, it would open a new public consultation process with a new draft proposal. In light of these circumstances, Brazil requested the EU to consider withdrawing STC IMS ID 557.

2.2.3.12 European Union - Chlorothalonil (pesticide active substance) (IMS ID 579[46])

2.134. The representative of Colombia raised concerns with this measure. The full statement is contained in G/TBT/W/712.

[45] G/TBT/M/79, para. 2.254 and G/TBT/M/78, paras. 3.288-3.289.
[46] For previous statements follow the thread under IMS ID 579 (under dates raised and references).

2.135. The representative of Panama referred to the statement provided at the previous TBT Committee meeting.[47] Panama reiterated to the EU that the safe levels of chlorothalonil had been adopted by Codex Alimentarius. This substance was very important for bananas with thick skin, which are not consumed by human beings, and that the use of other substances had been justified by the EU to be used for citrus fruits. As had already been stated by Colombia, the study on chlorothalonil was not conclusive. At the previous meeting, Panama had explained extensively how chlorothalonil combatted black sigatoka on bananas and how this had proliferated due to global warming. Panama noted that, to date, the EU's position had not changed. However, already in the first two months of 2020, records for the hottest year had been broken and this would certainly aid the proliferation of black sigatoka and thus affect banana crops.

2.136. Panama did not understand the EU's double message – on the one hand, champions of combatting climate change and, at the same time, prohibiting the use in developing countries of the tools to combat it. Panama urged the EU to reconsider its measures until it had conclusive scientific evidence and to realign with other Members and Codex Alimentarius and not jeopardize, without any scientific evidence, the well-being and work of thousands of small vulnerable producers in developing countries.

2.137. The representative of Brazil reiterated its support for this STC. Brazil regretted the EU's decision to base measures on a hazard-based approach, without an adequate risk analysis and with no compliance with long-standing scientific principles. The non-renewal of approval for chlorothalonil did not duly consider that it was currently authorized in over 100 countries, and that the MRLs allowed by Codex could reach up to 70mg/kg. Brazil was concerned that some hazard-based analyses conducted by the European Food Safety Agency (EFSA) had led to the non-renewal of certificates and, subsequently, to the reduction of MRL limits. The case of chlorothalonil affected Brazil's exports of agricultural products, such as banana, coffee, citrus fruits, papaya and watermelon, among other crops, which used this substance for pest control. Brazil expressed systemic concern that issues related to the non-renewal of agricultural pesticides were being dealt with firstly in the TBT Committee. In many cases, the communication of non-renewal of approval of important substances for trade of agricultural commodities was notified to the TBT Committee as an announcement of the future reduction of MRL limits in the SPS Committee. As this situation remained, Brazil would continue to raise and support these concerns in both Committees.

2.138. The representative of Costa Rica supported the concerns raised by other Members. This draft technical resolution would lead to the non-renewal of the approval of the active substance chlorothalonil. As pointed out on previous occasions, the use of this active substance was very important for agricultural protection in Costa Rica and its non-renewal would cause serious problems for producers, as Costa Rica did not have substitute phytosanitary products that were better for the environment. Chlorothalonil was used to combat very important pests, particularly in the production of bananas. Costa Rica was the second largest producer and exporter of bananas in the world, with sales of approximately US$1 billion representing around 2% of its GDP and 38.6% of agricultural GDP, with 40,000 direct jobs and almost as many indirect jobs. The EU was the main destination of 50% of fruit produced in Costa Rica and this would seriously impact production. It was important to note that the EU had not established a risk either to health or to the environment. Costa Rican producers applied good agricultural practices based on highly recognized certificates, such as Global Gap, Rainforest Alliance, Fair Trade and others. Costa Rica's phytosanitary agency had displayed important samplings, which had demonstrated the absence of an impact of chlorothalonil, confirming the good agricultural practices used in Costa Rica. The non-renewal of this active substance was not based on a solid risk assessment, in accordance with Article 2.2 of the TBT Agreement. Non-renewal should not be on the basis of concerns that have no conclusive evidence, as had been indicated by the EU itself in its non-renewal. Costa Rica once again urged the EU to carry out a proper risk assessment before deciding on non-renewal and to demonstrate its effects on public health. This should be done within a multilateral framework through Codex Alimentarius, which establishes MRLs of chlorothalonil for different agricultural practices.

2.139. The representative of Ecuador raised concerns with this measure. The full statement is contained in G/TBT/W/717.

2.140. The representative of Guatemala supported the concerns raised by other Members. Guatemala did not have any information regarding scientific evidence of any damage or injury

[47] G/TBT/W/692.

caused to human health as a consequence of the consumption of fruit and vegetables, in particular, those produced in Latin America. This measure was of huge significance to Guatemala. The EU had mentioned that it had identified the potentially negative effects to health from the use of this product. However, the EU had not communicated the scientific evidence used. Guatemala clarified that concerns over this substance were not for the producers of the substance, but rather because this substance was used to control different diseases linked to fungi, in particular, for the control of Ascochita, Antracnosis, black sigatoka and also mildew, early tizón, late tizón, grey mould and rotting fruit, amongst others. These diseases affect the production of bananas, coffee, melons, tomatoes and other crops. Guatemala thanked the EU for considering the conditions of the various tropical countries and looked forward to seeing the very conclusive studies along the lines of what is established by the Codex Alimentarius.

2.141. The representative of El Salvador shared the concerns raised by other Members regarding the negative impact the EU measure would have on exports of agricultural products from El Salvador and a number of other developing countries. El Salvador was seriously concerned about the many technical regulations envisaged by the EU regarding MRLs and urged the EU to base these measures on scientific evidence and to avoid any unnecessary barriers to trade.

2.142. The representative of Nicaragua supported the concerns raised by other Members. If these measures were implemented, they would have a negative impact on the export of Nicaraguan products, especially bananas, but other products as well, exported chiefly to the EU market. Nicaragua hoped to see this discussion continue in the TBT and other Committees.

2.143. The representative of Paraguay recalled that this concern, like STC 36[48], was linked to considerations that had been discussed in the past and referred the Committee to statements delivered in previous TBT Committee meetings.[49]

2.144. The representative of the European Union responded to the concerns raised. The full statement is contained in G/TBT/W/723.

2.2.3.13 Kingdom of Saudi Arabia - Added Sugar Upper Limit in Some Food Products G/TBT/N/SAU/1108 and G/TBT/N/SAU/1108/Add.3 (IMS ID 589[50])

2.145. The representative of the Russian Federation thanked the Kingdom of Saudi Arabia for the bilateral engagement and for notifying the intention to withdraw this measure. While sharing the public health objectives contained in the draft measure, Russian requested that Saudi Arabia confirm that the measure had indeed been withdrawn.

2.146. The representative of the Kingdom of Saudi Arabia thanked the Russian Federation for its interest in the proposed technical regulation which was notified on 16 April 2019. He clarified that, after considering comments from WTO Members, Saudi Arabia had withdrawn the proposed technical regulation.

2.2.3.14 India - Air Conditioner and its related Parts (Quality Control) Order, 2018, G/TBT/N/IND/110 (IMS ID 598[51])

2.147. The representative of the United States recalled that, on 28 October 2019, India had notified this measure to the WTO. The proposed measure required the exclusive use of Indian standards to evaluate the energy efficiency of air conditioners; applied separate energy efficiency requirements to component parts; and required certification by the Bureau of Indian Standards (BIS). The US was concerned that exclusive use of the identified standards to evaluate and certify energy efficiency of air conditioners might be more trade restrictive than necessary and create unnecessary obstacles to trade. The TBT Agreement made clear that there could be more than one relevant international standard that fulfilled a legitimate objective of a regulation. Many US companies used international standards to verify the energy efficiency of their products, such as Air-Conditioning, Heating and Refrigeration Institute (AHRI) standards, which were accepted in foreign markets. The US requested

[48] European Union - Regulation (EC) No 1272/2008 (CLP Regulation) (ID 539)
[49] G/TBT/M/79, para. 2.141 (referring to G/TBT/M/78, para. 3.79).
[50] For previous statements follow the thread under IMS ID 589 (under dates raised and references).
[51] For previous statements follow the thread under IMS ID 598 (under dates raised and references).

India to clarify and/or confirm whether the Indian standards in the Air Conditioners QCO were based on existing international standards.

2.148. In order to expedite the availability of air conditioner equipment that had a documented verification testing record, the US suggested that the BIS should recognize, without additional testing, equipment for which the energy efficiency had been verified by the AHRI Certification Program. The BIS could access testing results on the AHRI website. Applying separate energy efficiency requirements to component parts of air conditioners, including temperature sensors and hermetic compressors, might not only be redundant regulation but also did not accurately capture actual performance, because the performance of each component of a system would impact the energy efficient performance of the other components. Thus, the stand-alone energy efficiency rating was not an accurate indicator of a component's energy efficiency when part of a system.

2.149. The choice of components in finished products was already a major consideration for manufacturers when designing products to meet energy efficiency requirements. US industry had advised the US Government that it was unaware of any other markets or relevant international standards that applied separate energy efficiency requirements to component parts as a method of energy efficiency evaluation. The US supported a six-month grace period to comply with the draft measure, particularly if there were not enough laboratories to complete the testing in India. If India continued to apply separate regulations to component parts, the US would request India to provide sufficient transition time for stakeholders to comply. The US understood that the draft measure could be implemented in a phased manner and urged India to defer implementation of requirements concerning component parts by one year as part of the second phase of a phased implementation period.

2.150. The representative of the Republic of Korea said that once this regulation entered into force on 1 June 2020, a finished air conditioners product, as well as the related parts, would be obliged to comply with BIS standards and have the BIS certification mark. According to the regulation, manufacturers with operating facilities in India should take the BIS certification mark and the products to be tested to the designated laboratories in India. However, manufacturers were having difficulties in complying with this regulation due to the absence or insufficiency of designated testing laboratories.

2.151. As of 12 February 2020, the status of designated testing laboratories in India, for three types of air conditioning finished products, was confirmed as just one test laboratory designated for "unitary" and "split" type and no test laboratories for "package" air conditioners. For air conditioning parts, the "temperature sensing control devices" could be tested at one designated laboratory, but the laboratory for the "hermetic compressor" and "heat exchanger" had not been designated. In this regard, Korea asked that India request the relevant authority to designate testing laboratories for all areas of finished products and related parts and to guarantee capacity for testing and certification, as well as to grant a sufficient grace period after testing laboratories were operational. If the sufficient number of testing laboratories were not designated or operational before the enforcement date, Korea asked India to provide alternative measures, such as accepting internationally recognized test reports. In addition, since the regulation stipulated that manufacturers should use certified parts in order to take the certification for the finished product, a more sufficient grace period was required for finished products. Korea asked India to provide an environment that would make it easier for companies to comply with this regulation.

2.152. The representative of India said that regarding non-availability of testing laboratories, the BIS, under its Laboratory Recognition Scheme 2018, had recognized an outside laboratory as per IS/1391, room air conditioners, part 1, that is, for unitary air-conditioners; and part 2, that is, for split type air-conditioners. Another outside laboratory had been recognized for testing, as per IS/IEC 60730-2-9:2011, automatic electrical controls for household and similar use, part 2, particular requirements, section 9, temperature sensing controls. These details were available on the BIS website.

2.153. The recognition of laboratories under the BIS Laboratory Recognition Scheme 2018 was a continuous and ongoing process. Further, under the provision of the BIS conformity assessment regulations 2018, the conformity of the product to relevant Indian standards could be verified through in-factory testing and BIS licences could also be granted on a factory-testing basis. Therefore, India saw no lack of necessary testing facilities as had been alleged by some Members. Regarding the recognition of foreign laboratories, the BIS Laboratory Recognition Scheme 2018 had

provided for the recognition of overseas laboratories and details were available on the BIS website. The recognition of foreign laboratories would be carried out on a reciprocal and mutually beneficial basis.

2.154. The request to grant an additional grace period for implementation of the Air Conditioner and its related Parts, (Quality Control) Order, 2018 had been duly noted and would be forwarded to capital for examination. India invited Members with any additional concerns to continue discussions bilaterally.

2.2.3.15 Ghana - Administrative Process for Homologation of Model of Motor Vehicle and its Variants (IMS ID 600[52])

2.155. The representative of the United States reiterated previously raised concerns[53] regarding Ghana's draft measures that would discontinue the acceptance of vehicles built to comply with US regulations. The US government and industry had submitted comments on the measures in September 2019, which Ghana was urged to consider before issuing the final measure. She asked that Ghana provide an update on its domestic procedures. The US commended Ghana for having taken steps to improve road safety by adopting motor vehicle safety and emissions standards used internationally and for having notified the changes to the WTO. However, there were concerns that the measures would discontinue acceptance of vehicles built to comply with US regulations even though there was no data identifying specific issues relating to the operation of such vehicles on Ghana's roadways. The US strongly encouraged Ghana to continue accepting vehicles built to US Federal Motor Vehicle Safety Standards (FMVSS) and US Environmental Protection Agency (EPA) emissions requirements.

2.156. The representative of Ghana was not in the room. The concerns expressed were subsequently transmitted to the relevant authorities.

2.2.3.16 Turkey - Draft Amendment of the Regulation on Cosmetics (IMS ID 603[54])

2.157. The representative of the United States thanked Turkey for the bilateral meeting. Reiterating concerns raised at the November 2019 TBT Committee meeting, she said that the US industry was reporting concerns about the implementation of regulatory requirements for cosmetics products in Turkey when those requirements had not been formally adopted or notified to the WTO. In fact, exporting cosmetics products to Turkey had become even more challenging compared to when the concern had first been raised, with the introduction of several new product filing, labelling, testing and public disclosure requirements in November 2019. The changes, as well as Turkey's reverting to requiring that products be registered rather than notified, delayed market access and placed companies' confidential business information at risk. Turkey's cosmetics exports to the US were growing, up 18% from 2017 to USD 20 million in 2018. However, due to these changes, US cosmetic exports to Turkey had dropped by 43%, when 2019 third quarter figures were compared to those of two years prior. In June 2019, Turkey's enquiry point had indicated that Turkey would notify the draft amendment to the WTO. In November, in response to a reminder from the US, Turkey had committed to notify with a 60-day comment period, but still had not done so. The US asked when Turkey would notify the draft amendment and urged for the suspension of the implementation of requirements, until they were notified and comments from stakeholders were taken into account. Furthermore, the US requested that the Turkish Ministries of Health and Trade meet with US industry and government representatives in Ankara to discuss the industry's concerns.

2.158. The representative of Turkey informed the Committee that there was ongoing internal coordination on the draft regulation taking into consideration the concerns raised by trading partners. As stated previously, the Cosmetic Regulation of Turkey was one of the areas where harmonization with EU legislation was continuing as a requirement of the EU-Turkey Customs Union Agreement. Therefore, the Draft Amendment on Cosmetics had been submitted to the EU Commission for comments. Turkey's Ministries of Trade and Health had recently received and evaluated the EU Commission's comments. In this context, the Ministry of Health was inclined to make amendments on the draft regulation so that products could be placed on the market upon

[52] For previous statements follow the thread under IMS ID 600 (under dates raised and references).
[53] G/TBT/M/79, paras. 2.18-2.20.
[54] For previous statements follow the thread under IMS ID 603 (under dates raised and references).

notification without the necessity to upload the Cosmetic Product Safety Assessment file to the Turkish Notification System. In this sense, the new regulation aimed to converge the Turkish Notification System as much as possible with the EU Cosmetic Products Notification Portal (CPNP). In addition, the Ministry of Health considered defining the "Responsible Person" who would be responsible for keeping the Cosmetic Product Safety Assessment file and be accessible to the competent authorities upon request. On the other hand, the Ministry of Health had detected 37% non-conformity in cosmetic products as a result of its market surveillance and inspection activities, which had led to increasing concerns regarding product safety and which was the main reason behind Turkey's draft regulation. Furthermore, Turkey was planning to submit a TBT notification allowing a 60-day comment period after re-drafting the amendment. He reiterated Turkey's willingness to communicate and work together with interested Members, as in the past, to address any specific concerns on Turkey's Cosmetic Regulation.

2.2.3.17 United States - Modernization of the Labelling and Advertising Regulations for Wine, Distilled Spirits and Malt Beverages (IMS ID 601[55])

2.159. The representative of the European Union, referring to the detailed written comments sent on 26 June 2019, raised concerns regarding this measure. The EU sought confirmation that the new labelling rules would not lead to any new barriers to trade for European exporters. The EU noted that the draft Regulation contained provisions relating to appellations of origin and names of geographic significance which the US might consider as covered by Chapter 3 (geographical indications) of the Trade-Related Intellectual Property Rights (TRIPS) Agreement. In this regard, the EU asked whether the US would notify the regulation to the Council for TRIPS, in accordance with the undertaking in Article 63 of the TRIPS Agreement, thus facilitating scrutiny of the relevant US rules to take place in that forum. Additionally, as regards the labelling of wine, the EU raised concerns regarding the following issues: the justification for character size limits (especially maximum limits); restrictions on the indication of the vintage year and grape variety; appellations of origin for fruit, rice and agricultural wines; a minimum alcohol content of 15% and the type "vermouth", which seemed to cover all aromatized wines. As regards the labelling of spirits, the EU's main concerns related to: tolerance for labelling of alcohol content; multiple distillation claims that were inconsistent with long-standing labelling conventions; statements of age, storage and percentage; and standards of identity (e.g. a minimum alcohol content of 40% requirement for all distilled spirits). As regards the use of the term "organic", the EU asked for clarification whether the wines labelled as organic in the EU and imported into the US under the equivalency recognition would be allowed to also use the term "organic".

2.160. The representative of the United States confirmed that the US was reviewing the EU comments received. The US had received approximately 1,200 comments on this rulemaking. As per the laws of the US, the US government needed to review the relevant matter in each of these comments and address the reasons why they had or had not been incorporated into any final rule. In terms of next steps, there were a number of potential paths forward, including: finalization of regulations exactly as proposed, finalizing some proposals but not others, re-noticing proposals (that is, publishing an updated Notice of Proposed Rulemaking in the Federal Register), withdrawing certain proposals, splitting the proposals into parts for finalization, or a combination of these. The US was analysing hundreds of comments that addressed a number of very challenging issues of widespread interest. In the interest of transparency and fairness to other commenters, the US generally did not accept new comments on a proposed rule after the close of the comment period, which was 26 June 2019 in this case.

2.2.3.18 Ecuador - Energy Efficiency Requirements for Clothes Dryers for Domestic Use (IMS ID 599[56])

2.161. The representative of the Republic of Korea thanked Ecuador for having considered Korea's request from the previous meeting and for having extended the comment period for the measure until 5 January 2020. According to Ecuador's energy efficiency requirements for clothes dryers, the range of energy efficiency classes for sale of dryers was limited to A and B while other Members from Latin America, such as Chile and Peru, which followed the international standard IEC 61121, had no restrictions on sales based on minimum energy classes. In addition, the A and B classes, which restricted the sales in Ecuador, had higher standards. It would be difficult for dryers to enter

[55] For previous statements follow the thread under IMS ID 601 (under dates raised and references).
[56] For previous statements follow the thread under IMS ID 599 (under dates raised and references).

into the Ecuadorian market because the class for all dryers that were currently sold globally were estimated to be Class C or lower under the amendment. Korea thus asked Ecuador to withdraw the clause for the minimum allowable classes for sale and to share the timeline of the amendment process.

2.162. The representative of Ecuador explained that technical regulation No. 111, which had been in force since 2015, had been reviewed in the context of a larger review of technical regulations. The draft regulation had been notified in May 2019 with a 60-day comment period and had subsequently been modified to take into account comments received. Following a bilateral meeting with Korea, it had been notified with a new comment period until 5 January 2020. Ecuador would revert back to Korea and the TBT Committee once the competent authorities had reviewed the comments submitted by Korea on 3 January 2020.

2.2.3.19 Indonesia - Halal Product Assurance Law No. 33 of 2014 G/TBT/N/IDN/123 (IMS ID 502)

2.163. The representatives of the European Union and the United States raised concerns with this measure. The full statements are contained in G/TBT/W/724 and G/TBT/W/733.

2.164. The representative of Brazil supported the concerns raised by the EU and the US and reiterated its concerns raised at previous TBT Committee meetings. Brazil acknowledged that there had been recent progress in the development of new regulations aimed at implementing the Halal Product Assurance Law 33 of 2014. Nevertheless, Indonesia had not fully complied with the transparency obligations established under the TBT Agreement. For instance, regulation 31 on "Implementation Provisions of Law 33/2014", which had come into force in May 2019, had not yet been duly notified to the WTO.

2.165. Moreover, Indonesia had neither established the list of international certifiers authorized by Indonesia's Halal Product Assurance Organizing Agency (BPJPH) nor defined certification requirements for specific types of products. Until there was a clear definition of such requirements, Brazil understood that Law 33 and its subsequent regulations would not be implemented. Indonesia was invited to confirm this understanding. Brazil also asked Indonesia to provide timeframes for the publication of future regulations related to halal certification, and to notify such measures to the WTO accordingly. Brazil thanked Indonesia for having partially clarified that "non-halal" labelling for products containing "non-halal" substances would not be necessary and requested further clarification on its new legislation, as well as the possibility of co-existence of halal and non-halal products.

2.166. The representative of The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu recalled that, in 2014, Indonesia had issued the Halal Product Assurance Law, which mandated halal certification for the circulation and trade of all products in Indonesia. The implementation of the law on 17 October 2019 had stipulated that only products with halal or non-halal labels could be circulated in the Indonesian market. Subsequently, a number of stakeholders in Chinese Taipei had inquired about the actual practices required by the said law. Chinese Taipei requested Indonesia to provide information on the mechanism of mutual recognition between Indonesia's halal certification bureau (BPJPH) and foreign halal institutions, so that its halal products could successfully enter the Indonesian market.

2.167. The representative of Australia thanked Indonesia for its response with respect to the notification of the draft Regulation of the Minister of Religion regarding the Implementation of Halal Product Assurance. Australia appreciated Indonesia's confirmation that halal auditors employed by foreign halal certifying agencies were not required to be Indonesian citizens, or to obtain specific certification and approval by the Indonesian Council of Ulama or the Halal Product Assurance Agency (BPJPH) outside the existing accreditation process. Australia noted Indonesia's comments regarding non-halal labelling not being a compulsory requirement. However, Australia appreciated further clarification on Article 148 of the draft Regulation regarding what constituted a "non-halal remark" for non-halal products. Australian halal certifiers that were approved to certify products for Indonesia had commenced the process of re-accreditation with the BPJPH. Noting this, Australia requested confirmation that Australian halal certifier accreditation would continue to be recognized if certifiers had commenced the re-registration process following the expiry of their accreditation. There were other comments that had not been addressed in detail in Indonesia's response, such as the

accreditation process for Australian halal certifiers, state-based restrictions for halal certifiers and halal product segregation. As such, Australia welcomed opportunities to discuss these matters further with Indonesia. Australia highly valued its trading relationship with Indonesia and looked forward to further collaboration.

2.168. The representative of Canada supported the concerns raised by other Members, particularly regarding its broad scope of application and the lack of clarity regarding the products covered and the certification and registration processes. Canada thanked Indonesia for its recent response to comments on the notified draft Minister of Religious Affairs measure regarding the Implementation of the Halal Product Assurance Law. It was now Canada's understanding that fresh seafood was exempt from the halal certification and labelling requirements, but that frozen plant products and seafood were considered "processed" under the regulation and would therefore require halal certification and labelling. Canada asked Indonesia whether this certification would apply to all frozen single ingredient products. Canada was concerned that this could disadvantage imported products that must be frozen in order to maintain freshness during transport. For instance, in 2019, Canada had exported CAD$43 million worth of frozen crabs to Indonesia.

2.169. More broadly, Canada appreciated that, in its response, Indonesia had identified specific articles in the draft measure that provided details of how foreign halal certifying organizations and products were to be accredited or approved by Indonesia once the Halal Product Assurance Law and implementing regulations were fully in force. While this was very helpful information, it remained unclear how foreign halal certifying organizations and products would be accredited. Canada encouraged Indonesia to provide timely information as further implementing regulations and guidance documents were developed and to notify such measures to the Committee so as to provide trading partners with sufficient time to comment and seek clarifications as needed.

2.170. The representative of New Zealand thanked Indonesia for the timely and informative response to its enquiries on the draft regulation of the Ministry of Religious Affairs regarding the Implementation of the Halal Product Assurance Law. He noted in Indonesia's response that the types of products as stipulated in Article 29, paragraph 2, would be further stipulated in a draft ministerial decree and asked for further guidance on the timeframe for the release of this decree. New Zealand appreciated any further information from Indonesia as to whether there were any other regulations relating to halal under development, in addition to the Ministry of Religious Affairs regulation noted in its response. New Zealand understood that the halal certification fees would need to be set in the Ministry of Finance regulation and welcomed any further clarification on this. Regarding the latest version of the Omnibus Bill on Job Creation that might include revisions to Halal Law 33/2014, New Zealand requested Indonesia to provide any further guidance on what these proposed changes might include and how they would affect the proposed halal assurance system.

2.171. The representative of Indonesia underscored the importance of transparency in the TBT Committee and reiterated its position that Indonesia had fulfilled its transparency commitment by notifying the Draft of Minister of Religious Affairs regarding the Implementation of Halal Product Assurance in notification G/TBT/N/IDN/123 of 14 October 2019. Indonesia thanked Members who had given their valuable comments and inputs to the draft regulation and noted that replies had been promptly sent to the comments received through its enquiry point.

2.172. Indonesia confirmed that sufficient transition time would be provided to comply with these halal requirements. Furthermore, she assured Members that, during the transitional period, the sale of non-certified halal products would still be allowed. Indonesia also acknowledged reciprocal mutual recognition arrangements with foreign halal certification bodies based on international standards of conformity assessment. Indonesia reiterated that the requirements of halal labelling and non-halal information were not intended to create costly and burdensome requirements for companies or to create confusion for consumers. Rather, they were intended to provide adequate protection to Muslim consumers through clear information of products.

2.2.3.20 Viet Nam - Decree 116/2017/ND-CP on business requirements for manufacturing, assembly and imports of automobiles, automobiles warranty and maintenance services G/TBT/N/VNM/154 and G/TBT/N/VNM/116/Add.1 (IMS ID 549[57])

2.173. The representative of Thailand acknowledged Viet Nam's attempt to improve Decree 116 and Circular No. 03, which had both been notified to the WTO in November 2019. While appreciating Viet Nam's acceptance of self-declaration and extension of the type evaluation period up to 36 months for imported cars, Thailand still had serious concerns with the burdensome nature of some of the requirements in Decree 116. In particular, new import cars needed to be tested by the one and only designated local laboratory in Viet Nam, which might not be enough to process a large volume of cars, causing a significant increase in extra costs, customs clearance time and serious delays for those exporting cars to Viet Nam. Consequently, it appeared to be an unnecessary barrier to trade to fulfil safety or environmental objectives. In line with Article 5.1.2 of the TBT Agreement, Thailand urged Viet Nam to revise the conformity assessment requirements, to consider accepting test reports from overseas laboratories, and to urgently update the expected timeline for the implementation of the Decree 116 amendment.

2.174. The representative of the European Union welcomed the modifications and improvements to Decree 116 notified in the "Decree amending and supplementing a number of decrees relating to business investment conditions under state management of Ministry of Industry and Trade" (G/TBT/N/VNM/116/Add.1). The EU had sent comments on 17 February 2020 and awaited Viet Nam's reply. The EU reiterated its earlier position questioning the compatibility of the Decree with WTO rules and regretted that, irrespective of the fact that the Implementing Circular had been issued in October 2017, the TBT Committee had not been notified on time about the Decree, which had entered into force on 1 January 2018. The EU reminded Viet Nam of its obligations under Articles 2.9 and particularly 2.9.4 of the TBT Agreement. The new testing procedures introduced by the Decree deviated from those based on internationally recognized UN Regulations, imposing additional costs to third country exporters, without providing any additional safety value. This harmed the competitiveness of imported vehicles vis-à-vis locally manufactured car brands and was, as such, discriminatory in nature. A good solution would be to accept UN-type approval certificates as alternatives to domestic certificates based on Vietnamese requirements. The EU recalled that conformity assessment procedures should not be prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade.

2.175. Under the framework of Decree 116, Viet Nam had also notified a new Circular (G/TBT/N/VNM/140) for car parts that no longer allowed for the recognition of UN certificates and required all imports to undergo local testing. The EU had sent comments on 7 June 2019 and was still awaiting an official reply to the specific concerns raised therein. The EU invited Viet Nam to accept UN certificates, markings, test reports and conformity assessment reports, and to conduct checks only on the basis of a reasonable risk assessment system that would take into account the very low risk posed by imports conducted by the official importer of vehicle or component manufacturers. In light of the above, the EU requested Viet Nam to suspend the application of the Decree, to reconsider the comments provided by WTO Members in different fora, and to re-consult all stakeholders, in particular small volume importers of foreign cars.

2.176. The representative of the Russian Federation, referring to Viet Nam's notification of amendments to Decree 116/2017/ND-CP in November 2019, noted that the final version amended discriminatory provisions in respect of imported new automobiles and was supposed to provide equal conditions of conformity assessment procedures for importers and domestic new automobiles. He thanked Viet Nam for having taken into consideration its comments but also indicated Russia's intention to continue bilateral discussions to get clarifications on technical issues related to the new regime of conformity assessment procedures.

2.177. The representative of the United States welcomed Viet Nam's revision of Decree 116 to address concerns that had been raised since its introduction, in particular the elimination of the lot-by-lot testing requirements and exemptions for vehicles from countries that provided for self-certification of conformity with safety and emissions regulations from additional certification processes. The US requested that Viet Nam incorporate a meaningful transition period for the efficient implementation of the revisions to allow importers sufficient time to comply with the new requirements. It was especially important that both the Decree and the implementing circular(s)

[57] For previous statements follow the thread under IMS ID 549 (under dates raised and references).

went into effect concurrently so that there was no uncertainty about the requirements and their compliance procedures.

2.178. The representative of Japan welcomed the amendment of Decree 116/2018 (Decree 17/2020) and Circular 3/2018 and requested that the regulations be no more trade restrictive than necessary.

2.179. The representative of Viet Nam said that Decree 17/2020/ND-CP on adjustments and supplements to Government Decree 116/2017 stipulating regulations on car manufacture, assembly, imports and warranty services had been issued on 5 February 2020. Viet Nam had also notified the amendment on 25 November 2019 in document G/TBT/N/VNM/116/Add.1. Upon promulgation, Decree 17 had been immediately published on the government website to enable interested persons to become acquainted with the amendments. The new regulation in Decree 17/2020/ND-CP was expected to facilitate importation as it was amended to reduce the time needed for clearance for sales and to lower the cost for inspections, testing and storage for automobile importers. In particular, the VTI requirement in Decree 116 had been removed and there would be no inspection for each batch of imported vehicles for type of vehicle. Instead, the vehicle type evaluation would be based on technical safety and environment protection testing and inspection results of representative samples and quality assurance evaluation results. This could be in a manufacturing facility for imported automobiles manufactured in countries where management by vehicle type approval was applied. It could also be based on technical safety and environment protection testing and inspection results of representative samples and inspection of samples taken on the market for those manufactured in countries where management by self-declaration was applied. Maximum type evaluation frequency was 36 months. Viet Nam's TBT Enquiry Point was also preparing to notify Decree 17/2020/ND-CP to the TBT Committee. Viet Nam was still in the process of revising the regulation for inspecting imported motor vehicles under Circular 03/2018/TT-BGTVT.

2.2.3.21 Viet Nam - Cybersecurity Measures (ID 544)[58]

2.180. The representative of Japan referred to its previous statement at the TBT Committee[59] and requested Viet Nam to provide information on the current status of the draft Decree and further steps.

2.181. The representative of the United States expressed deep concerns with this measure and disappointment that this Law had not been notified so as to allow the opportunity to comment while it was still in draft form. She urged Viet Nam to immediately notify the Law and the draft implementing measures that had been published on 2 November 2018 so as to allow all interested parties to provide input. Viet Nam should carefully review and consider stakeholder comments when finalizing these measures. She invited Viet Nam to work with US and other stakeholders to resolve concerns with the Law on Cybersecurity and its implementing decree and encouraged Viet Nam to consider using a risk-based approach to cybersecurity drawing on industry best practices, widely accepted definitions, and international standards. Viet Nam should consider the Common Criteria Recognition Arrangement (CCRA) certification process when finalizing the draft implementing measures for the Law.

2.182. The representative of the European Union supported the concerns raised by others on this measure, which had entered into force on 1 January 2019. There were concerns regarding the potential economic impact of this legislation and the compatibility with Viet Nam's WTO commitments. The EU welcomed the public consultation on the Draft Implementing Decree on Cybersecurity setting out further details for some articles of the Cyber Security law, to which the European Commission and the European External Action Service had provided comments in December 2018. The EU hoped that Viet Nam would seriously consider these concerns and continue dialogue with the EU to ensure its alignment with international best practices. The EU requested Viet Nam to provide updates on the latest developments of the adoption of the Implementing Decree.

2.183. The EU requested Viet Nam to notify this draft Implementing Decree to the TBT Committee in accordance with Article 2.9 of the TBT Agreement to allow Members the opportunity to analyse the draft decree in depth and to provide comments. Viet Nam was asked to provide up-to-date information on any plans for taking into consideration comments from interested parties, including

[58] For previous statements follow the thread under IMS ID 544 (under dates raised and references).
[59] G/TBT/M/79, para. 2.240.

industry and stakeholders. The EU would appreciate any indications on Viet Nam's likelihood and future intentions regarding the potential development of further implementing measures.

2.184. The EU encouraged Viet Nam to develop and implement the Cyber Security Law and any implementing measures in full respect of WTO principles, such as non-discrimination and proportionality, and to take into consideration available international standards and best practices.

2.185. The representative of Australia supported the concerns raised by others. Australia had also provided feedback on Viet Nam's draft decree implementing the new Law, noting its interest in seeing a law that maintained Viet Nam's entrepreneurialism and embrace of digital platforms; supported increased participation in global e-commerce; and enhanced the business environment in Viet Nam, including by being transparent, clear and compliant with international trade commitments and regional trade agreements. Australia shared the view that safeguarding cyber security was a legitimate policy objective of governments but questioned whether requirements in the law and draft implementing decree were necessary to meet Viet Nam's cybersecurity objectives. The current laws did not represent the least trade restrictive manner to achieve those objectives and this could affect Viet Nam's reputation as an open economy and impact its ability to benefit from the digital economy.

2.186. Viet Nam was strongly encouraged to notify the drafts of the decree to the TBT Committee. Australia looked forward to continuing work with Viet Nam on the implementation of the Cyber Security Law and thanked Viet Nam for its bilateral engagement.

2.187. The representative of Canada supported concerns raised by others and reiterated its previous concerns over Viet Nam's cybersecurity measures. Canada urged Viet Nam to notify the draft implementing Decree to the TBT Committee to allow for sufficient comment and stakeholder views.

2.188. The representative of Viet Nam said that Viet Nam's Law on Cybersecurity and the draft Decree for implementing certain articles of this Cybersecurity Law did not contain technical requirements for IT products and devices. Therefore, they were not subject to the TBT Agreement. The draft Decree was currently being considered for adoption. In the drafting stage, Viet Nam's drafting agency had published all draft legislations on respective government portals in order to enable all individuals, organizations, and domestic and foreign stakeholders to access and provide comments. Numerous meetings and workshops had been held and intensive consultations had been undertaken so that Viet Nam could carefully listen to comments and explain the legitimate policy objectives and proper regulations to the interested parties.

2.2.3.22 Brazil - Technical Regulation 14, 8 February 2018, to set the additional official identity, quality standards for wine and derivatives of grape and wine products as well as the requirements to be acquainted and Technical Regulation No. 48, 31 August 2018 published in the Official Gazette on 10 September 2018 G/TBT/N/BRA/956 (IMS ID 568[60])

2.189. The representative of New Zealand understood that Brazil had consolidated the requirements set out in Normative Instruction 14 (IN14) 2018 into Operational Administrative Rule (OAR) 01/2019. New Zealand noted that the updated regulation had been notified on 14 January 2020, but the proposed date of entry into force was 2 January 2020. The requirements of the certificate of analysis for wine exported to Brazil set out in Normative Instruction IN75 posed a significant barrier to trade for New Zealand wine exporters as recognized wine-testing laboratories in New Zealand did not provide testing for a number of required parameters. Certificates of Origin issued by New Zealand's Ministry for Primary Industries were unable to reference Certificates of Analysis provided by a third country, meaning the additional testing requirements could result in New Zealand being unable to meet the requirements of Normative Instruction 67 (IN67), leading to trade disruption. New Zealand sought clarification on how Brazil had ensured that the certificate of analysis requirements implemented through Normative Instruction 14 2018 were not more trade restrictive than necessary. Brazil was invited to explain the rationale for its departure from conformity with OIV-adopted resolutions and encouraged to bring IN14 into alignment with OIV recommendations.

[60] For previous statements follow the thread under IMS ID 568 (under dates raised and references).

New Zealand thanked Brazil for its bilateral engagement and welcomed discussions aimed at finding an acceptable solution.

2.190. The representative of the European Union thanked Brazil for notifying the adoption of Technical Regulation 75 of 31 December 2019. The simplification of the list of certification parameters for imported wine and, in particular, the removal of the burdensome parameters, sweeteners and colours, significantly facilitated trade. The EU noted, however, that some of the important concerns raised in its written comments and in previous TBT Committee meetings remained relevant. With regard to the list of certification parameters for imported wine, the EU asked Brazil for the reasons for systematic analysis of methanol, which made imports of small volumes of wine very difficult. Methanol was naturally produced in wine during the alcoholic fermentation and, according to scientific studies performed by the European Food Safety Authority, did not represent a food safety concern.

2.191. As noted previously, several content limits required by the Brazilian technical regulations were not aligned to the OIV recommendations, in particular, maximum limits for total acidity. Other limits, for example, for chlorides and ashes were not covered by OIV recommendations. In addition, the OIV non-compliant limits for alcoholic degree did not cover, for example, EU wines covered by geographical indication with alcoholic limits that could go down to 4.5% volume. Finally, as repeatedly raised by the EU, the sugar content limits diverging from OIV were causing longstanding problems for imports of EU sparkling wines. EU wine importers had encountered lengthy and cumbersome customs procedures in Brazil, including counter-analysis of certification parameters. The divergence of test methods from OIV standards also caused difficulties for imports, as the results could differ from the results in the certificate of analysis in origin. The EU asked Brazil for the reasons behind these requirements, which seemed disproportionate for low-risk products, such as wine.

2.192. The EU appreciated Brazil's constructive approach in addressing concerns and reiterated its suggestion to make maximum use of the OIV recommendations when revising the relevant technical regulations and to consider accepting imported wines made according to oenological practices authorized by the OIV. The EU looked forward to continued bilateral engagement with Brazil in this respect.

2.193. The representative of the United States recalled that, on 14 January 2020, Brazil had notified Technical Regulation 75, consolidated regulations for beverages, wine, wine and grape by-products in document G/TBT/N/BRA/956. Although Brazil had not provided the opportunity for WTO Member comments, the US was developing formal comments on Brazil's measure to be sent through the enquiry point in which it sought clarification on definitions and import requirements related to wine and wine-making. The US requested that Brazil respond to its questions at its earliest convenience so as to avoid trade disruptions.

2.194. The US reminded Brazil of its obligations to notify a new technical regulation that could have a significant effect on trade to the TBT Committee prior to implementation, pursuant to Article 2.9. She asked Brazil to postpone implementation of its consolidated regulations until it had fulfilled these obligations. Of particular concern were the certification requirements for wine outlined in the consolidated regulations. These requirements appeared to be redundant and more trade restrictive than necessary to achieve Brazil's legitimate objective of preventing deceptive practices, protecting human health or safety and ensuring quality.

2.195. US understanding was that wine imports must be accompanied by a certificate of analysis issued by a registered foreign laboratory containing the following analysis: sugar content, alcoholic graduation, reduced dry extract, total sulphates, total acidity, volatile acidity and methyl alcohol. It was also the US understanding that there was an additional requirement for an import-inspection pre-certification report containing several additional analyses apart from those required in the certificate of analysis and that this certificate would be generated by the Brazilian laboratory upon importation. The US was not aware of any other market that required laboratory analysis and corresponding certification in both the exporting and importing countries for a single shipment. Brazil was invited to explain the rationale for these seemingly burdensome requirements that were likely to restrict trade and asked whether both certificates were always required for all wine imports?

2.196. Lastly, the US noted that it was reviewing Brazil's Ordinance 9 on the inspection of beverages, wines and derivatives of grapes and wine notified on 5 February 2002 in document

G/TBT/N/BRA/962. The US was prepared to submit formal comments to Brazil, as needed, by the specified deadline. There was concern about the myriad of new import requirements for wine entering Brazil and the US hoped to continue discussing these requirements with Brazil bilaterally so that trade would not be disrupted.

2.197. The representative of Brazil acknowledged that, upon raising this STC once again, New Zealand and the EU had also made reference to Technical Regulation 75, published on 31 December 2019 and notified on 14 January 2020 in document G/TBT/N/BRA/956. This new Technical Regulation, which had come into force on 2 January 2020, defined the criteria and analytical parameters to be used in the inspection and control of national and imported wine and derivatives of grape and wine products.

2.198. In this context, it was important to remember that Technical Regulations 14 and 48 defined, for both domestic and foreign producers, physical-chemical analytical parameters for wine and derivatives of grape and wine products. With subsequent Technical Regulation 67, notified as G/TBT/N/BRA/853, the models of certificates and related documents required for certification for the export and import of drinks, acetic fermented wines and grape and wine derivatives had been approved. Among other elements, Technical Regulation 67 required the presentation of analysis results for the parameters defined in Technical Regulations 14 and 48.

2.199. Technical Regulation 75, on the other hand, established which analytical parameters should be included in the laboratory reports to be used in the inspection and control of imported and national drinks. These analytical parameters were those set out in Operational Standard No. 1 of 24 January 2020. Therefore, the number of parameters had been reduced to seven, in comparison with the 15 parameters contained in the provisions of Technical Regulations 14 and 48. The practical effect of such measures, by decreasing the ratio of physical-chemical parameters required by Technical Regulations 14 and 48, was to make the technical criteria for importing wine more trade promotive. Brazil understood Technical Regulation 75 to be a trade facilitating measure when compared to past regulations and was willing to clarify any further questions from Members.

2.2.3.23 European Union - Transitional periods for MRLs and international consultations G/TBT/N/EU/682, G/TBT/N/EU/683, G/SPS/N/EU/248, G/SPS/N/EU/360 (IMS ID 580[61])

2.200. The representative of the United States raised concerns that the EU's transition measures did not provide adequate time for producers to modify their pest-management programs to clear the channels of trade. Furthermore, the EU's policies appeared to establish arbitrary differences in the treatment of domestic and imported products. The described legitimate objectives of human health and safety did not appear to account for obstacles posed to imported products compared with generally non-existent risks of non-fulfilment.

2.201. The US recalled that, in previous TBT Committee meetings, the EU had suggested that the matter of transition periods for MRLs should be referred to the SPS Committee. When the SPS Committee had met in 2018 and 2019, however, the EU had suggested that Members should refer to TBT notifications as the "early warning" of possible future impact to MRLs.

2.202. The lack of consistency and transparency around statements of possible future impact did not provide foreign growers with the regulatory certainty needed to inform food production practices and decision-making in the present. Rather, it placed foreign growers who complied with existing EU MRL standards at the time of production in jeopardy of facing future rejection at EU borders. EU growers did not face this damaging prospect under the current regulatory provisions. The EU appeared to suggest that foreign producers should stop using substances simply because the EU had chosen not to renew them domestically, even when the EU's domestic producers could continue using non-renewed substances through the domestic grace period and expected to be regulated under the older MRLs.

2.203. If the EU's short transitional measures for imported products were based on health concerns, as the EU had claimed for certain pesticides, then could the EU explain why MRL changes had only been notified to the SPS Committee after EU growers had benefited from grace periods and ensured

[61] For previous statements follow the thread under IMS ID 580 (under dates raised and references).

that their own treated products could clear the channels of trade? The US also asked the EU why it had not extended corresponding grace periods or transition measures to foreign producers.

2.204. In the EU's response to US comments on G/SPS/N/EU/248, one of the first notified EU MRL measures to introduce the transition measures in question, the EU had explicitly acknowledged that non-EU countries would have a shorter time to comply with new MRLs compared to EU Member States. Given this acknowledgement, the US again asked the EU to clarify how it was considering its obligations to not arbitrarily or unjustifiably discriminate between its own territory and that of other Members.

2.205. The US reiterated its request that the EU conduct a risk assessment prior to resetting MRLs and determining transition periods. Additionally, the US asked the EU to extend its MRL transitional measures to account for realistic production and processing times for food and agricultural products.

2.206. The representative of Colombia raised concerns with this measure. The full statement is contained in G/TBT/W/713.

2.207. The representative of Panama supported the concerns raised by the US and Colombia. Panama noted that there were certain situations that producers of perishable goods faced that did not enable them to send products to the EU. This could lead to significant losses for producers. Panama reminded other Members acceding to the EU, members of EFTA, the UK, and any other Member that might adopt their own MRL measures that these measures should be notified to the TBT Committee and other fora.

2.208. The representative of Brazil supported the concerns raised by others. He stressed the relevance of Article 2.12 of the TBT Agreement, as it related to the establishment of a reasonable interval between the publication of technical regulations and their entry into force, except in cases of urgent problems of safety, health, environmental protection or national security. It was of utmost importance to guarantee adequate intervals of transition, especially for those cases in which the scientific opinions of the EFSA on the toxicity of substances were "inconclusive" or only indicated a "suspected risk". He reiterated Brazil's concern that the EU, based on a hazard-based approach, was deciding to reduce the MRLs of certain substances.

2.209. Last year, for instance, the EU had defined a grace period of three months for accepting the presence of MRLs for chlorpyrifos in the EU, notified in G/TBT/N/EU/682. This time period was incompatible with the production period of an orange crop, whose plants had already been sprayed with chlorpyrifos. It was also incompatible with the production process, given that a significant part of the juice was exported frozen. This issue was especially important to small farmers that had already used chlorpyrifos under the current regulation. If the time for adaptation was not extended, small farmers would be hindered from trading their production and, in most cases, would not be able to endure the losses. In bilateral meetings, Brazil had consistently tried to expand the transitional period for chlorpyrifos MRLs, but no progress had been achieved.

2.210. The representative of Ecuador thanked Colombia, Panama and the US for including this agenda item as it effected, in particular, developing countries. Ecuador expressed concern with the transition periods granted by the EU for implementation of these MRLs. For reasonable time periods, it was necessary to bear in mind harvest times and time for agrochemicals to ensure their effectiveness. Farmers required more time to adapt to the MRL preconditions, especially when developing a new pesticide, for example, which took 35 months on average. Ecuador urged the EU once again to consider at least 36 months, which would enable Ecuador to make the necessary adjustments in its production and developing countries to comply with the conditions under the EU regulations.

2.211. The representative of Canada recognized and supported Members' rights to apply food safety measures deemed necessary to protect human health while at the same time not unjustifiably restricting international trade. It was essential that the EU's transition periods for maximum residue limits took into account the need for exporters to adapt to new requirements and ensured that the conditions and requirements were the same for domestic producers and foreign exporters. According to Canada, this approach would acknowledge the reality of the agricultural supply chain, such as multi-year inventory and extensive shelf life, including in foreign countries.

2.212. The representative of Paraguay thanked the US, Colombia and Panama for again including this agenda item. She reiterated Paraguay's concern with regard to the EU's proposed transition periods, which were insufficient since they would require a complete transformation of the production system. The EU had regularly voiced in the TBT Committee and elsewhere that, once a measure had been notified to the TBT Committee, there should be a two-year transition period, not six months. The EU therefore believed that all the steps in this notification process going forward would simply be processes leading towards what had been decided at the time of its notification to the TBT Committee. Paraguay asked how all the comments could be taken into account from the notification until the adoption of the MRLs. This had many implications and the EU was urged to ensure that the MFN principle and the TBT Agreement be taken into account and to enable alignment of production systems. This also had to do with import processes, and it was necessary to have clear rules based on scientific evidence.

2.213. The representative of Costa Rica supported the concerns raised by others. Reducing the timelines had a great impact on Costa Rican products arriving in the EU market. Due to the different substances used in agriculture and their limitations, production could not adjust within a 6-month time period as there were new molecules that had to be subject to a lengthy and complex process. Like other Members, Costa Rica hoped that the EU could extend this period, especially for bananas and other products, and that it could engage in dialogue with exporters of agricultural products that were substantially affected. Ideally these studies, analyses and decisions should be adopted multilaterally within the context of the Codex Alimentarius and in accordance with WTO rules.

2.214. The representative of Uruguay raised concerns with this measure. The full statement is contained in G/TBT/W/707.

2.215. The representative of Egypt thanked the US, Colombia and Panama for again including this agenda item. Egypt was very interested in this issue and was following discussions closely. Egypt had already expressed concerns regarding the short transitional periods provided for in EU notifications G/TBT/N/EU/683 (on the draft regulation concerning the non-renewal of the approval of the active substance chlorpyrifos-methyl) and G/SPS/N/EU/360 (on the draft regulation on the maximum residue levels for chlorpyrifos and chlorpyrifos-methyl in or on certain products). Both would enter into force in October 2020. Egypt believed that consideration should be given to the time needed by producers to adjust to new requirements in order not to limit the market access of exports, particularly from developed and least developed countries, and especially from micro, small- and medium-sized enterprises. Egypt would continue discussions bilaterally with the EU on this matter.

2.216. The representative of Guatemala thanked the US, Colombia and Panama for raising this issue and joined their concerns. She reiterated the importance for the EU to give a transition period in line with the stages of crop production, in particular, those in tropical countries. The productive sectors required more time for adaptation and, in particular, to find alternative substances. In some cases, it was necessary to wait for ideal cycles in production for application and testing. Guatemala agreed with Colombia that the TBT Committee should not be the only for a for discussion. Issues raised by Members should lead to discussion and dialogue and for their views to be taken into account. This did not seem to be the case. In particular, because the position and comments of exporters and producers to the EU could not be part of the review process directly. Only substance producers were included in discussions and, in Guatemala's view, this was not transparent for trade. She thanked the EU for establishing genuine dialogue in order to discuss this matter and urged the EU to extend the transition period so to avoid creating an unnecessary obstacle to trade and to allow developing countries time to adapt. Guatemala would also welcome its comments being taken into account in the regulatory process.

2.217. The representative of the European Union clarified that, as in previous TBT Committee meetings, as a matter of principle, the EU considered concerns on the setting of maximum residue levels (MRLs) of pesticides and any details regarding their implementation to be matters for discussion at the SPS Committee, rather than the TBT Committee. Further to requests by some Members, and in the interests of transparency, the EU had decided to notify all draft measures on pesticide active substances that were relevant for the TBT Committee also to the SPS Committee. In practice, it meant that future draft acts on the non-approval or restriction of approval of an active substance would be notified to both Committees.

2.218. However, in the interest of efficient proceedings in both Committees and in line with the respective Agreements, the EU continued to consider that matters on approval of active substances should be discussed exclusively in the TBT Committee and matters on the setting of MRLs for pesticides should be discussed exclusively in the SPS Committee.

2.219. The EU fulfilled all its obligations under both the TBT and SPS Agreements, including notifying its trading partners about planned measures that fell within the scope of either of these Agreements. Information and comments received in response to these notifications were duly considered and taken into account before final decisions were taken, as explained in EU replies to trading partners.

2.220. As regards possible transitional periods, when MRLs were lowered, the EU wished to remind the Committee about two key provisions of such measures.

2.221. First, following the formal adoption, publication and entry into force of an act lowering MRLs, a deferred date of application was set. The date of application was the date from which the new law on MRLs would effectively be enforced. The length of the deferral was six months after entry into force in the vast majority of cases. This deferral of the application date permitted, *inter alia*, third countries and food business operators to prepare themselves to meet the new requirements that would result from the modification of the MRLs.

2.222. Second, products produced in the EU or imported into the EU before the aforementioned application date may continue to benefit from the old higher MRLs and remain on the market if information showed that a high level of consumer protection was maintained. This was regularly not the case where MRLs were lowered because the safety of consumers could not be demonstrated.

2.2.3.24 China - Cosmetics Supervision and Administration Regulation (Draft) and Regulation for Notification of Non-special Cosmetics (Draft) (IMS ID 576[62])

2.223. The representative of Japan repeated concerns regarding the Cosmetics Supervision and Administration Regulation and Regulation on Cosmetic Inspection in Registration and Filing, which were raised at the previous TBT Committee meeting.[63] Japan also had concerns regarding the Interim Measures on the Administration of Overseas Inspections of Cosmetics, where the coverage of the inspection, including the product development stage, was broader than necessary. While information related to research and development was not necessarily essential for product safety assurance, it was the most important confidential information for companies. In this regard, inspections for Chinese domestic companies were only conducted on production sites. China was thus requested to provide equal treatment to both domestic and overseas companies. Finally, Japan also requested China to: (i) provide a detailed timeline for these revision process; (ii) provide an adequate grace period of at least one year for implementation of these regulations and the related detailed regulations to avoid confusion in the market; and (iii) notify the latest revised regulations to the TBT Committee.

2.224. The representative of the Republic of Korea requested China to allow companies to submit evidence to the Chinese regulatory authority only when necessary, or to grant exemption from disclosure requirements. Korea was also concerned with the proposed revision's requirement that over-labels in Chinese be consistent with the original labels. Compliance with such requirements should be in line with international practice, in accordance with the labelling requirements of the exporting country. Test results required for the registration of cosmetic products must be issued by testing laboratories that have obtained the CMA and comply with the regulation. However, only laboratories in China were known to have obtained the CMA. China was requested to offer flexibility to foreign laboratories in granting CMAs and to recognize test results issued by foreign laboratories. China should recognize test results issued by foreign laboratories or internationally recognized practices such as ISO. Under the draft of the "Cosmetics Supervision and Administration Regulation", the licence for special-use cosmetics had validity periods. This was not in line with international practice where the licence issued by most countries, including Korea, the US, and European countries, did not have a determined validity period. Therefore, China was invited to reconsider setting the validity periods of the licence for special-use cosmetics. Korea requested that China give full consideration to these comments when reviewing the draft regulations. Korea asked China to

[62] For previous statements follow the thread under IMS ID 576 (under dates raised and references).
[63] G/TBT/M79, paras. 2.117-7.120.

provide the date of entry into force of this proposed regulation and to allow for a sufficient transition period so as to allow industry time to adapt to the new regulation.

2.225. The representative of Australia expressed deep sympathy and support for China and its people as it dealt with the difficult and complex COVID-19 public health crisis. While noting the impact that COVID-19 was having in China, Australia was aware of reports that China's State Council formally passed the Cosmetics Supervision and Administration Regulation (CSAR) on 3 January 2020. Australia requested an update from China on the CSAR, particularly with respect to the status of the CSAR and timelines for implementation and how it would work in practice. In this respect, Australia asked: would China publish and formally notify WTO Members prior to publication of the CSAR? Did China remove the requirement for imported cosmetics to be tested on animals? What certification requirements did China envisage for imported cosmetics?

2.226. Australia was also interested in knowing more about the concept of mutual recognition, as mentioned by China at the November 2019 TBT Committee meeting. Australia encouraged China to provide equal treatment to Chinese and foreign cosmetics products; and to be no more trade restrictive than necessary when implementing any measures to ensure the safety of cosmetics. Australia requested details of any further drafts or final versions of the CSAR, particularly on any new measures that trading partners would be required to comply with. Australia was willing to engage bilaterally on the cosmetics regulation and alternatives to animal testing.

2.227. The representative of the United States understood that the State Council passed the CSAR draft in January 2020, with the Premier's signature expected any day. US industry was pleased that China had chosen to modernize its cosmetics regulations as the resulting reforms could promote the rapidly growing cosmetics trade between the US and China. As China developed the CSAR implementing measures, the US asked China to continue notifying all draft and final measures to the WTO and engage with US industry. This would help to ensure that CSAR would promote innovation and trade while meeting the National Medical Products Administration's (NMPA) mandate to ensure safe products.

2.228. It was the US understanding that the Draft Measures for the Registration and Filing of Cosmetics, notified in G/TBT/N/CHN/1311, was significantly amended, without notification. This amendment required that certain special-use cosmetics undergo testing in China, even when there was test data available from international labs that followed good laboratory and clinical practices. She asked that China notify these proposed amendments to the WTO and avoid adopting duplicative testing and other requirements that may be more trade restrictive than necessary.

2.229. The US also hoped that China was taking into account the concerns raised regarding China's proposed conformity assessment requirements for imported non-special-use cosmetics notified in G/TBT/N/CHN/1331. The US would welcome a discussion bringing together the NMPA, the State Administration for Market Regulation, and the Ministry of Foreign Trade and Commerce with US Government officials and industry to better understand China's concerns and to find a solution that would not be more trade restrictive than necessary. The success of China's cosmetics and personal care industry was important to the US given both the number of Chinese products used daily by US consumers, as well as the economic opportunity China represented to US companies seeking to serve China's growing consumer base. The industry provided an example of the potential for the expansion of US-China bilateral trade, given robust exports from both countries.

2.230. The representative of China said that the objective of this measure was to ensure the quality and safety of cosmetics, safeguard consumer health and promote the development and innovation of the cosmetics industry by regulating cosmetic production and strengthening the administration and supervision of cosmetics management. China notified this regulation to the WTO in December 2018 and it was adopted by China's State Council on 3 January 2020. Regarding the regulation for notification of non-special-use cosmetics, she stated that the inspection and safety standards were the same for imported and domestic products. Imported and domestic non-special cosmetics were also subject to consistent supervision management. Since 10 November 2018, the present method of approval administration of the imported non-special-use cosmetics was adjusted accordingly. China hoped to further strengthen information exchange and cooperation with interested Members and improve the cosmetics supervision system.

2.2.3.25 Chile - Public Consultation for draft legislation setting out rules on the preparation, description and labelling of milk products deriving from milk (IMS ID 566[64])

2.231. The representative of New Zealand repeated concerns raised at the previous TBT Committee meeting.[65]

2.232. The representative of the Russian Federation shared the concerns raised by New Zealand. The definition of "milk" was different from the relevant definition under the effective Code of Hygienic Practice for Milk and Milk Products of the Codex Alimentarius Committee. Codex defined "milk" as "the product of the normal mammary secretion of milking animals obtained from one or more milkings without either addition to it or extraction from it, intended for consumption as liquid milk or for further processing". The same definition was in the provisions of the Codex Stan 206-1999. Chile's definition stated: "the colostrum-free liquid product resulting from the complete and uninterrupted milking of healthy, well-fed and well-rested cows". Compliance with this definition would be complicated for exporters as there were no methods and approaches on how to confirm the state of satiety and rest of cows. The same applied to the definition of cheese. Russia therefore asked Chile to reconsider its draft legislation in order to avoid obstacles to their bilateral trade in dairy products.

2.233. The representative of the United States referred to concerns previously raised with this measure.[66] Despite Chile's commitment to providing written responses to comments received, none had been communicated to the US and Chile was asked to inform the Committee when responses would be communicated. In the absence of a response, it appeared that, based on the timing of approval of the measure and the US initial review of the measure itself, neither US comments nor previous concerns raised during TBT Committee meetings were taken into consideration in the preparation of this final measure.

2.234. Chile's proposal to require labelling of reconstituted dairy products and the restriction of using reconstitution in cheese production appeared to diverge from Codex Alimentarius standards. In this respect, the US asked: (i) could Chile explain its rationale for not adhering to the relevant Codex standards, and specifically those pertaining to reconstitution, in the development of this measure? (ii) could Chile elaborate on the timing for drafting and notifying forthcoming implementing regulations that would be needed for operationalizing the measure? (iii) could Chile explain what steps it intended to take to ensure trading partner comments would be taken into account prior to issuing the final regulation or any implementing regulations associated with the law? and (iv) could Chile confirm its intention to delay the 2 August 2020 enforcement date of the law pending confirmation with trading partners that their trade concerns, and particularly the divergence from Codex standards, have been taken into account in a revised version of the measure?

2.235. The representative of Chile responded to the concerns raised. The full statement is contained in G/TBT/W/711.

2.2.3.26 India - New Telecommunications related Rules (Department of Telecommunications, No. 842-725/2005-VAS/Vol.III (3 December 2009); No.10-15/2009-AS-III/193 (18 March 2010); and Nos. 10-15/2009-AS.III/Vol.II/(Pt.)/(25-29) (28 July 2010); Department of Telecommunications, No. 1015/2009-AS.III/Vol.II/(Pt.)/(30) (28 July 2010) and accompanying template, "Security and Business Continuity Agreement") (IMS ID 274[67])

2.236. The representative of the European Union repeated concerns made at the previous TBT Committee meeting.[68]

2.237. The representative of Canada considered that India's in-country testing requirements for telecommunications equipment could potentially exclude operators from the Indian market. It appeared to be part of a systemic approach by India, across a range of products, to not accept testing from accredited foreign testing facilities. Canada stated that in-country testing and

[64] For previous statements follow the thread under IMS ID 566 (under dates raised and references).
[65] G/TBT/M/79, para. 2.110.
[66] G/TBT/M/79, para. 2.111.
[67] For previous statements follow the thread under IMS ID 274 (under dates raised and references).
[68] G/TBT/M/79, paras. 2.186-2.187.

certification is duplicative, costly for exporters, and delayed the introduction of products on the Indian marketplace. Canada understood that the recognition of ILAC-accredited laboratory results could be terminated at the end of March 2020. In this respect, Canada asked if India could confirm this and whether the extension of this recognition had been considered. Canada asked India to confirm if it intended to apply the measure to as many network-connected equipment as possible and whether there was any timeliness for such extensions.

2.238. The representative of India reiterated the same responses by his delegation at the last meeting.[69]

2.2.3.27 Russian Federation - Draft Technical Regulation on Alcohol Drinks Safety (published on 24 October 2011) (IMS ID 332[70]) G/TBT/N/RUS/2

2.239. The representative of the European Union raised concerns with this measure. The full statement is contained in G/TBT/W/725.

2.240. The representative of Ukraine supported the concerns raised by the European Union related to the application of conformity procedures, and the time allowed for a company to comply with the necessary documentation requests. The conformity assessment procedures included additional time, costs and conditions associated with the registration of legal entities in the territory of the EAEU or contracting with existing legal entities registered in the territory of the EAEU. The required conformity assessment resulted in higher costs for producers compared to those based in the EAEU. Ukraine asked Russia to provide an update on alcohol regulations so as to avoid unjustified barriers to trade.

2.241. The representative of the Russian Federation stated that the Technical Regulation was adopted in December 2018 and was to enter into force in 2021. Regarding the request to notify the adopted text of the Technical Regulation, Russia recalled that WTO transparency provisions required only the notification of the draft technical regulations and conformity assessment procedures. The Technical Regulation did not contain any provision covered by the TRIPS Agreement, as definitions of cognac, champagne and calvados were considered by Russian as well as Eurasian economic union consumers as generic names: thus, they were not protected as appellations of origin in their territories. In accordance with the Civil Code of the Russian Federation, in order to be protected, the intellectual property should be registered in the Federal Service for Intellectual Property by its rights holder. Moreover, these types of products had been manufactured in Russia since the Russian Empire and associated as generic or traditional names. That was why Russian consumers were not misled by the definitions in the Technical Regulation mentioned above. In addition, under arrangements between Russia and France, the designations "cognac", "champagne" and "calvados", written in Cyrillic characters, could refer to products manufactured in Russia that were marketed domestically. This provision was also included in the Technical Regulation on Safety of Alcohol Products under Chapter 8, "Requirements for labelling of alcoholic beverages". The provision provided that only beverages originating in respective areas of France could bear the label "cognac", "champagne" and "calvados" in Roman characters, while products manufactured in Russia for domestic consumption could bear the label in Cyrillic characters. Therefore, Russia did not see any reason to notify the measure in accordance with Article 63.2 of the TRIPS Agreement.

2.242. Concerning the physical and chemical requirements, these were incorporated in the current national legislation and did not cause any negative effect on volumes of transboundary trade in alcoholic beverages. In accordance with the Russian obligations under the Article 2.4 of the TBT Agreement, the technical regulations should just be "based on" but not "aligned with" international standards. In this respect, Russia asked the EU to indicate the relevant provisions regarding physical and chemical requirements of the Technical Regulation that were different from international recommendations.

2.243. Russia stressed that the Technical Regulation did not discriminate against foreign products over domestic ones. The measure's core legitimate objective was the protection of human health and safety of Russian and EAEU members' citizens. Regarding mandatory labelling requirements, Russia reiterated that these requirements could not be considered as additional obstacles to trade because they did not contain any aspects that burdened producers. Consumers, in order to avoid

[69] G/TBT/M/79, paras. 2.191-2.192.
[70] For previous statements follow the thread under IMS ID 332 (under dates raised and references).

alcoholic intoxication or even fatal outcomes, had to be informed about the storage conditions and date of marking and bottling. Russia confirmed there was no prohibition on the use of stickers. On concerns raised regarding conformity assessment procedures, Russia stated that these procedures were set in the Technical Regulation and applied to both domestic and foreign alcoholic beverages l manufacturers. Russia did not consider them disproportionate nor that they created unnecessary obstacles to trade. Most of these procedures were currently in effect and the companies involved in manufacturing, supplying and importing did not face any challenges.

2.244. In conclusion, Russia informed that the comments made by the EU had been considered by the Federal Service for Alcoholic Market Regulation, which was the responsible authority for elaboration of the technical regulation. Some of these comments would be included in the planned amendments to the Technical Regulation. The relevant amendments would be proposed in accordance with Decision No. 48 of the EAEU and Article 2.9 of the TBT Agreement.

2.2.3.28 China - Registration Fees for Drugs and Medical Device Products (IMS ID 466[71])

2.245. The representative of the Republic of Korea continued to raise concerns on this measure. Concerns included higher registration fees for importing drugs and medical device products, specifically the implementation rules on drug registration fees and the implementation rules on medical device registration fees. At previous TBT Committee meetings, China responded that higher registration fees for imported medical devices were due to the on-site inspection of facilities overseas. However, not all imported medical devices were required to have such an on-site inspection under Chinese laws. China's clarification that registration fees were determined mainly by the cost of conformity assessment, along with minor differences due to the cost of manufacturing, workload, and the various price levels of the labour sector did not explain why the registration fee for imported products was twice as high as that of domestic ones. Korea hoped to see substantial progress this year. In 2016, during China's trade policy review, China had said that registration fees would be adjusted based on re-evaluation processes every five years. It was now five years since the last adjustment. Korea thus expected that the re-evaluation to take place in 2020. Korea requested that China take its comments into account in the revision process and notify the revision to the WTO. In addition, Korea asked China to share any information pertaining to the revised implementation rules.

2.246. The representative of Australia expressed an on-going interest in developments in China's regulation of drugs and medical devices. Australia looked forward to bilateral discussions with China on a range of health technology topics of interest to both sides and to further cooperation and information exchanges.

2.247. The representative of China said that the registration fees for drugs and medical device products were determined mainly by the cost of the conformity assessment. The minor difference of the registration fees between imported and domestic products was due to the different costs of manufacturing, which reflected the difference of the workloads and the various price level. China took note of the other comments made by Korea, which would be conveyed to capital.

2.2.3.29 China - Interim Measures for Quality Management of Commercial Coal (IMS ID 477[72]) G/TBT/N/CHN/1057

2.248. The representative of Australia reiterated the concerns raised in previous TBT Committee meetings[73], especially the need for transparent coal quality testing processes, which adopt international standards, and to encourage smooth trade flows and equitable port processing. As a reliable, long-term supplier of high-quality coal to China, Australia respected China's right to ensure the use of coal meeting its environmental standards.

2.249. The representative of China said that Australia had always been an important source of China's coal imports. The free trade agreement between China and Australia offered a zero-tariff rate favourable treatment for Australian coal. Since the Interim Measures for Quality Management

[71] For previous statements follow the thread under IMS ID 466 (under dates raised and references).
[72] For previous statements follow the thread under IMS ID 477 (under dates raised and references).
[73] G/TBT/M/79, para. 2.202.

of Commercial Coal entered into force, both imported coal and domestic coal had been treated equally and both Chinese and international inspection standards were accepted.

2.2.3.30 India - Draft Food Safety and Standards (Alcoholic Beverages Standards) Regulations, 2015 G/TBT/N/IND/51 and G/TBT/N/IND/104 (IMS ID 494[74])

2.250. The representative of the European Union reiterated concerns with this measure. While welcoming publication of the regulation on additives for alcoholic beverages in August 2017, not all concerns raised by the EU were taken on board. The regulation covering standards for alcoholic beverages was published in April 2018, and had been implemented since April 2019, with exception of the parameter for yeast in various categories of beer and the modification of certain specific provisions, for which an extension of six months had been announced. The EU also welcomed the July 2019 notification of a number of amendments to the standards notified in G/TBT/N/IND/104. The EU sent comments on these amendments on 26 November 2019 and requested a reply.

2.251. The EU appreciated that India had taken most of its comments into account and provided a six-month extension of the deadline for certain provisions to enter into force. Nonetheless, the EU still had some concerns with this regulation, notably that India alignment this measure with OIV standards. The EU highlighted concerns. Firstly, with the lack of stock-exhaustion clause (to allow the sale of products already placed on the Indian market until stocks were exhausted in order to minimise the impact for economic operators) and the transition period. Secondly, the presence of some technical specifications (maximum alcohol content, sugar content, some wines' definitions) that were not be in line with international standards or with widely accepted international practices. These could cause a negative impact on international trade by preventing some EU wines, spirits or beers from entering the Indian market. Thirdly, some labelling requirements were excessive (residues of additives in the final product) and would potentially trigger additional technical controls that might result in unjustified barriers to trade. Fourthly, the regulation included the need to satisfy excessive analytical parameters that would result in additional technical controls (residual extracts, higher alcohol, iron) that might also result in unjustified barriers to trade.

2.252. A meeting had taken place in March 2019 with the Scientific Panel of the Food Safety and Standards Authority of India (FSSAI) to discuss the most important outstanding EU concerns, but most requests were rejected by India. The EU had again expressed concerns in May and December 2019 to the Indian authorities and hoped to continue discussion so as to find an acceptable solution to the outstanding issues.

2.253. The representative of Australia recognized the right of India to take measures necessary to protect public health, but at the same time emphasized the importance of compliance with WTO obligations, in particular, the requirements that measures be implemented in a non-discriminatory manner and be no more trade restrictive than necessary. India's draft amendments to its food and safety regulations in relation to alcoholic beverages would create barriers for winemakers in warmer climates, both in Australia and India.

2.254. Australia appreciated bilateral engagement with India on the draft amendments, and the advice from the FSSAI that the proposed amendments had been revised to address Australia's concerns. However, India was requested to confirm that Australia's comments were reflected in the revised regulations and the addition of water to wine for the purpose of aiding fermentation would be allowed. As noted at the previous TBT Committee meeting, wine producers in Australia are permitted under the Australia-New Zealand Food Standards Code to add water to dilute high sugar musts to aid fermentation. The addition of water was done in minimal circumstances and only as a technical necessity in small volumes to aid fermentation. Australia had encouraged India to consider permitting the addition of limited amounts of water to facilitate fermentation to enable winemakers to effectively respond to stuck fermentations. Australia thanked the FSSAI for allowing Australia to provide alternative wording for the regulations to enable this outcome.

2.255. Australia also requested clarification regarding the proposed amendments of wording to declare the range of sugar as specified under the regulations. This wording may cause confusion as to whether winemakers should state the sugar content or provide statements such as brut, dry or

[74] For previous statements follow the thread under IMS ID 494 (under dates raised and references).

sweet, as proposed in another section of the regulations. Australia asked India to confirm these revisions, and to renotify the change to the WTO.

2.256. The representative of India thanked the EU and Australia for their comments, input and interest in this measure. He referred the Committee to India's detailed statement in previous meetings of the TBT Committee.[75] These regulations were developed taking into account stakeholder comments, including those of WTO Members and keeping in view the prevailing Indian conditions and practices. He confirmed that the various comments and inputs submitted by the EU and Australia, as well as the FSSAI, have been duly considered, reviewed and incorporated in the draft regulation as and where appropriate and suitable amendments have already been made to the draft regulation.

2.257. With respect to the concern about the stock exhaustion clause, he noted that the Food Safety and Standards of Alcoholic Beverages Regulation 2018 gave food business operators a transition period up to 1 April 2019 to comply with this regulation. In addition, under Section 16.5 of the Food Safety Act, a period of six months was again given for the use of old, unused labels and printed cans. Further, he noted that alcoholic beverages manufactured prior to 1 April 2019 could be sold in the market until 31 March 2020, or until the finalization of the amendment regulations incorporating modifications, whichever was later. He explained that therefore, a period of two years – from March 2018 until March 2020 – was given to food business operators for exhausting their existing stocks. Concerning the range of sugar, this was mandatory so that consumers could be aware of which kind and how much sugar was being consumed. India remained open for bilateral discussions with WTO Members.

2.2.3.31 Russian Federation - Rules of cement certification (IMS ID 497[76]), G/TBT/N/RUS/48, G/TBT/N/RUS/49

2.258. The representative of the European Union recalled concerns raised in previous meetings of the TBT Committee.[77] The relevant notifications from the Russian Federation (G/TBT/N/RUS/48 and G/TBT/N/RUS/49) referred to measures that were already adopted and had entered into force at the time of their notification. This was not in line with Article 2.9 of the TBT Agreement. The EU highlighted that its comments on these two measures, sent to Russia in May and June 2016, never received replies. The EU deeply regretted that Russia continued to adopt restrictive measures in the area of cement certification that were disproportionate, unjustified and not notified to the WTO before their entry into force. Since the introduction of the mandatory certification for cement, EU exports of cement to Russia were practically blocked, except for white cement, necessary for Russian industry.

2.259. Considering the above, the EU welcomed the announcement that standards on cement certification would be revised and a new standard eliminating additional inspection procedures would be notified to the WTO at a draft stage in accordance with the TBT Agreement. In the margins of the November 2019 TBT Committee, Russian authorities confirmed that the new standard on cement would soon be notified. The timeline for the TBT notification, as communicated to the EU, foresaw notification prior to the February 2020 TBT Committee. Given the lack of notification at the time of this meeting, the EU asked the Russian Federation to share the updated timeline for this notification.

2.260. The representative of Ukraine supported the concerns raised by the European Union. Access to the Russian market for cement was dependent on meeting requirements established in the EAEU. The certification rules required the conformity assessment of products, and the applicant must be a legal entity or individual proprietor or producer or seller or agent of a foreign producer. This relationship must be demonstrated in a written contract with the foreign producer, which must also be registered pursuant to the legislation of the EAEU member state on its territory. Ukraine said requirements for applicants related to the mandatory registration on the territory of member states of the EAEU create additional burdens on WTO Members. Ukraine urged Russia to develop and notify amendments to the cement certification standards in accordance with the provisions of the TBT Agreement. Ukraine called for greater willingness from Russia to provide basic information

[75] G/TBT/M/79, para. 2.212 and G/TBT/W/675.
[76] For previous statements follow the thread under IMS ID 497 (under dates raised and references).
[77] G/TBT/W/631.

requested. This was a fundamental WTO transparency commitment necessary for predictable and non-discriminatory trade.

2.261. The representative of the Russian Federation said the measure at issue was aimed at fighting illicit trade in cement and building materials and ensuring the strength of building materials, which was of paramount importance for the durability of buildings. Currently, the amendments to GOST-R "Rules of cement certification" were being discussed internally among the relevant Russian authorities and the cement industry. Russia expected these discussions to conclude soon.

2.2.3.32 Egypt - Manufacturer Registration System (Decree No. 43/2016 and Decree No. 992/2015) (IMS ID 505[78]) G/TBT/N/EGY/114, G/TBT/N/EGY/115

2.262. The representative of the European Union reiterated previously raised concerns with this measure[79] and thanked Egypt for its efforts to make registration more efficient and for the communication dated 12 February 2020 on the status of EU pending registration requests. Nevertheless, the EU regretted that at least 41 out of the 108 pending registration cases known to the EU had not been successfully processed due to expired application documents. It was the EU's understanding that this related to quality control system certificates with one-year validity, which expired due to the failure of the General Organization of Export and Import Control (GOEIC) to register the companies within reasonable time limits. As a result, European companies were confronted with additional costs and administrative burden of updating their registration applications.

2.263. Moreover, the EU found it very worrisome that more than half of the non-registered companies happened to be active in the ceramics sector, in particular, ceramic tiles. The EU ceramics sector was disproportionately affected by the discretionary application of Decree 43/2016, with practically no registrations taking place since the introduction of the Decree in 2016. The EU requested that all the companies which submitted updated quality control system certificates and completed their application documents be registered without any further delay.

2.264. While the EU appreciated the creation of the registration committee in the Egyptian Ministry of Trade, this did not resolve the structural problems related to Decree 43/2016, like the lack of transparency of the registration process, lack of clear deadlines for processing the requests and lack of a clear appeal procedure. The EU therefore repeated its invitation to Egypt to suspend or substantially improve the registration process with a view to liberalizing trade and to refer for details to the EU's statements at past TBT Committees.

2.265. The representative of the Russian Federation thanked Egypt for its prompt help and comprehensive cooperation in solving this issue. However, Russia was still concerned with the Egyptian registration procedures under Decree No. 43/2016 and reiterated the statements made during the previous meetings of the TBT Committee and the Council for Trade in Goods. A Russian exporter of steel reinforcement had been waiting under the registration process since 2016. The damage to the Russian steel company was estimated at US$100 million per year. Moreover, this exporter relaunched the registration process due to the expiration of certificates of conformity with management quality and ecological standards.

2.266. Furthermore, other companies faced challenges from Egypt's registration process. For instance, a Russian manufacturer involved in exporting cosmetics had not been able to gain market access since April 2019. Negotiations conducted by the Trade Representative of the Russian Federation in Egypt with General Organization of Export and Import Control (GOIEC) were not able to resolve this issue. In this regard, Egypt was requested to provide Russian companies with market access, taking into account the interests of local importers and consumers, as well as the relevant rules of the WTO.

2.267. The representative of Turkey appreciated the bilateral discussions with Egypt on this issue both in the capital and in Geneva. Nevertheless, Turkey had ongoing concerns on Egypt's registration system. Although there was progress, Turkey observed a lack of transparency regarding how the applications were evaluated and whether the completion of the process was subject to any time limits. In addition, no regular information was provided to companies on the status of their

[78] For previous statements follow the thread under IMS ID 505 (under dates raised and references).
[79] G/TBT/M/79, para. 2.217.

application, and whether it was approved or not. Companies were facing long delays and bore additional costs in the registration process.

2.268. More importantly, there were many companies still awaiting approval since the entry into force of the legislation. Currently, more than 160 Turkish companies that applied for registration were still waiting for their application to be approved. Although the list of the companies had been submitted to Egypt on various occasions, Turkey had not received sufficient feedback. Besides, Turkey had also not received any contact information for the new registration committee that was established by Egypt. In addition, last January, Turkey learned that the applications of 38 Turkish companies were suspended due to out-of-date documents. In all these areas, Turkey expected tangible steps from Egypt to review its measure considering the principles and obligations of the WTO Agreements and ensure its implementation in full transparency.

2.269. The representative of Egypt referred to the response provided at the last TBT Committee[80], where positive developments regarding the establishment of the new committee to review and facilitate the registration process for pending application had been shared. In the first three months of its operation, this committee managed to register more than 158 outstanding applications from 17 of Egypt's main trading partners.

2.270. Additionally, since the latest TBT Committee meeting and until the end of January 2020, more than 100 companies from the EU alone had successfully registered and were fully capable of resuming their export processes to Egypt. In total, there were 1,254 registered EU companies. She highlighted that the limited number of outstanding applications was solely attributable to incomplete documentation and the ones that renewed their documents recently were currently being processed.

2.271. Finally, she emphasized that all regulations affecting trade were subject to prior reviews to ensure that their implementation was being undertaken in a transparent manner and that no unnecessary burdens were imposed on Egyptian or foreign operators. Egypt urged Members who continued to face problems with implementation of the aforementioned Decree to convey them so that they can be communicated to capital.

2.2.3.33 China - Cybersecurity Law (IMS ID 526[81])

2.272. The representative of Japan expressed continued concern with this measure and referred to Japan's statement at the November 2019 TBT Committee.[82] Japan was also concerned with the related enforcement regulation and requested that China provide notification of the enforcement regulations to the TBT Committee and consider comments from stakeholders. In addition, Japan requested that China provide adequate lead time between completion of these regulations and their enforcement, and to implement them in a transparent manner.

2.273. The representative of the European Union referred to its comments made in previous TBT Committees regarding the Cybersecurity Law.[83] The scope of the requirements was unclear, as key terms had not been specified in sufficient detail; concepts such as "critical information infrastructure" and "secure and trustworthy products" were not sufficiently clarified. The EU maintained concerns about the revised methodology. While references to "source code" had been removed, the mere requirement of providing "relevant materials" to verify the security and controllability of products could imply source code disclosure.

2.274. The EU recalled the importance of international standards and noted that the law only referred to national standards, which could lead to lack of interoperability with international standards. In the development of national standards, it would be appropriate to build on existing international standards and to involve all relevant stakeholders, including foreign-invested and wholly foreign-owned enterprises, in a non-discriminatory manner in the relevant technical Committees.

2.275. The EU requested more clarity regarding several of the implementing measures of China's Cybersecurity Law. For example, the Cyberspace Administration of China's Cross-Border Data

[80] G/TBT/M/79, para. 2.219.
[81] For previous statements follow the thread under IMS ID 526 (under dates raised and references).
[82] G/TBT/M/79, para. 2.228.
[83] G/TBT/M/80, para. 2.230.

Transfer Measures continued to raise concerns due to their broad scope, what was considered as critical information infrastructure and which kinds of cross-border data transfers were affected. A definition of critical information appeared to cover many commercial activities and whole sectors that had no bearing on national security. Moreover, the list of what was considered important data was open-ended. As a result of the data localization and security assessment requirements, foreign companies operating in China could find themselves in a less competitive situation compared to domestic operators. Concerning the certification and security requirements on critical information infrastructure, the EU was concerned that such requirements led to a *de facto* ban on products and services from foreign-invested enterprises providing products and services to businesses falling under the notion of "critical information infrastructure".

2.276. The EU called on China to implement these provisions in a non-discriminatory manner, respecting the principles of proportionality, necessity and technology neutrality, and ensuring adequate protection of intellectual property. Moreover, the EU repeated its previous requests for clarifications on the relationship with existing Multi-Level Protection Schemes and the expected implementation timeline. The EU noted with concern that the Cybersecurity Law already applied and was enforceable (including possible fines and sanctions), while the implementing measures that would clarify its implementation were still not in place. This created significant uncertainty for economic operators, and the EU asked China to inform the Committee when implementing measures would be adopted. Finally, the EU requested that China notify draft measures concerning any sectoral implementation to the TBT Committee in order to give adequate opportunity for WTO Members and their stakeholders to comment on any subsequent developments.

2.277. The representative of the United States remained very concerned about China's suite of cybersecurity and cryptography measures. As stated in prior TBT Committee meetings, this was a major concern for US companies, given China's intertwined requirements for conformity assessment systems for security testing, technical regulations, and a multi-level classification scheme laying out requirements including mandatory standards and testing for the purchase of ICT goods across a wide range of commercial sectors. China's Cybersecurity Law entered into force on 1 June 2017 despite serious and long-standing concerns from the US and many other international stakeholders. Since then, China continued to develop and, in certain cases, finalize related implementing measures that were sometime general in scope, and sometimes sector specific.

2.278. The US underscored many concerns regarding China's Cybersecurity Law and related measures, which imposed far-reaching, highly trade-restrictive conditions on foreign ICT products through "secure and controllable" requirements, enforced by cybersecurity review regime checks. Such requirements were largely based on a planned update and expansion of the Ministry of Public Security's Multi-Level Protection Scheme (MLPS). As one example, China's 25 January 2018 draft measure, "Information Security Technology – Guidelines for Grading of Classified Cybersecurity Protection", appeared to repeat and elaborate upon China's MLPS. Numerous other concerns were laid out in prior statements by the US and other Members at past Committee meetings.

2.279. Additionally, the US reiterated its serious concerns regarding China's Office of State Commercial Cryptography (OSCCA) draft Cryptography Law of the People's Republic of China and had submitted comments to China in May 2017. The US was concerned that this law would codify potentially far-reaching, highly trade-restrictive cryptography-related constraints on foreign ICT products. Because these issues were technically complex and China's approach appeared to be both novel and would have a potentially widespread impact in the commercial sector, the US requested that China undertake in-depth consultations with the US Government, other WTO Members and global stakeholders.

2.280. The US also requested that China afford subsequent opportunities for interested parties to submit comments on revised iterations of draft standards and all other implementing measures related to the Cybersecurity Law. Given the broad potential impact of these standards and measures and the serious concerns they raised, it was critical that China act deliberately to collaborate with all interested parties, taking their comments into account before adopting the drafts as written. The US would continue to carefully monitor China's implementation of the Cybersecurity Law and related measures, as well as movement on the draft Cryptography Law and looked forward to continuing this important dialogue with you.

2.281. The representative of Australia reiterated previously raised concerns regarding this measure and related laws[84], including the Provisions on Internet Security Supervision and Inspection by Public Security Organs. Australia respectfully noted that many details about the Cyber Security Law remained unclear. Consistent with the TBT Agreement, Australia said the measures should be implemented in a non-discriminatory manner and in a way that is no more trade restrictive than necessary. Australia urged China to consider less trade-restrictive alternative measures that were reasonably available to achieve its objectives. Australia noted the entry into force of China's Cryptography Law on 1 January 2020 and appreciated ongoing discussion with China on implementation of the Cryptography Law and other related cyber laws.

2.282. The representative of Canada said that in line with interventions made by Canada on other STCs related to China's cybersecurity measures, and as stated in previous TBT Committee meetings, there were continued concerns with this measure. Canada encouraged China to notify any subsequent draft measures implementing the law to the TBT Committee to allow WTO Members and stakeholders the opportunity to review and provide comments.

2.283. The representative of China stated that the objective of this measure was safeguarding national security and public interests, and protecting the rights and interests of citizens, legal persons and other organizations in China. Its aim was by no means to restrict market access of foreign enterprises, technologies and products in China, nor to restrain the orderly, free flow of data.

2.2.3.34 European Union - Organic production and labelling - Maté (erva-mate) (IMS ID 524[85])

2.284. The representative of Brazil recalled concerns related to this measure. While Brazil appreciated all clarifications received and the regulatory changes established by EU Regulation 848/2018, the unjustifiable refusal to provide a transitory solution to this concern constituted an unnecessary obstacle to trade. The non-inclusion of erva-mate in the organic product list without any technical or scientific justification was discriminatory and more trade restrictive than necessary, and thus not in line with TBT Agreement obligations. Brazilian producers would be denied access to EU markets on an equitable basis until January 2021, without any compensation.

2.285. The representative of the European Union noted responses provided at previous TBT Committee meetings, as well as bilaterally. Erva-mate was not within the scope of the current organic Regulation (Regulation (EC) 834/2007) and there was no possibility to modify this. However, as proposed by the European Commission, the new Regulation (EU) 2018/848 on organic production and labelling adopted on 30 May 2018 by the European Parliament and the Council included Maté under its scope. The new Regulation would apply from 1 January 2021.

2.2.3.35 European Union - Regulation (EC) No 1272/2008 (CLP Regulation) (IMS ID 539[86])

2.286. The representative of the Russian Federation raised concerns with this measure. The full statement is contained in G/TBT/W/731.

2.287. The representative of Australia recognized the EU's right to regulate for public and occupational health and safety, and that appropriate classification and labelling for hazardous substances and mixtures could address legitimate public and occupational health concerns. Australia and other WTO Members had raised concerns on multiple occasions, in this and other forums, that these measures were more trade restrictive than necessary.

2.288. Australia was disappointed that the regulations had been adopted without fully taking into account the concerns expressed by WTO Members and industry bodies, although it welcomed the narrower scope for the TiO2 regulation to powder form only. Australia's concerns focused on the potential of these regulations to create unnecessary obstacles to international trade in products containing titanium oxide and cobalt. Australia had yet to receive a clear response to its concerns, particularly with regard to downstream products containing small amounts of TiO2 or cobalt.

[84] G/TBT/M/79, para. 2.233.
[85] For previous statements follow the thread under IMS ID 524 (under dates raised and references).
[86] For previous statements follow the thread under IMS ID 539 (under dates raised and references).

Australia urged the EU to ensure that regulations to address concerns about the possible hazards associated with TiO2 and cobalt were no more trade restrictive than necessary.

2.289. The representative of the United States stated that its concerns with the EU's proposed 14th Adaptation to Technical Progress to the CLP regulation for the classification and labelling of cobalt were well known. With the Adaptation to the ATP pending final adoption before the EU Parliament as a delegated act, the US asked the EU to provide clarifying guidance to industry that metal compounds containing trace amounts of cobalt and, in particular, stainless and other specialty steels were not currently covered in the ATP restrictions on the use of cobalt. As noted by the EU in the original notification of the draft cobalt restriction to the WTO, the Commission did not yet have sufficient information to determine whether there was a risk of cobalt exposure via metal compounds.

2.290. Given how disruptive this classification could be to trade in products such as stainless steel and other specialty steels, the US asked the Commission to issue clarifying guidance that these uses would not be subject to these restrictions until the completion of the good faith testing efforts by US and EU industry, along with the appropriate EU authorities, to determine whether there was an actual health risk. The US requested the EU to provide a timeline for when it would communicate that the ATP cobalt restrictions no longer applied to metal compounds containing trace amounts of cobalt and, in particular, stainless and other specialty steels.

2.291. The representative of the European Union responded to concerns raised with this measure. The full statement is contained in G/TBT/W/726.

2.2.3.36 European Union - Regulation (EC) No 1107/2009 - non-renewal of approval of the active substance picoxystrobin G/TBT/N/EU/437 (IMS ID 535[87])

2.292. The representative of Brazil raised concerns that the European Union's non-renewal of picoxystrobin registries was not in line with scientific consensus regarding the safety of the substance and its use to protect crops.

2.293. He recalled that, in January 2017, the EU notified to the TBT Committee that the approval of picoxystrobin had not been renewed (G/TBT/N/EU/437). It was only in July 2018, after one and a half years, that the EU notified to the SPS Committee the adoption of Commission Regulation (EU) 91 in January 2019, establishing very restrictive Maximum Residue Levels for seven substances, including picoxystrobin and buprofezin, which were important for Brazil's exports of agricultural commodities. Brazil considered that the transitional period of August 2019 provided for producers to adapt to the new MRLs was unreasonable, given that studies conducted by the European Food Safety Authority were inconclusive, not based on due risk analysis and inconsistent with CODEX guidelines.

2.294. Council Directive 91/414/EEC of the European Commission declared that picoxystrobin was not toxic; the report of the European Food Safety Authority (EFSA) claimed that it was not possible to deliver final conclusions on the genotoxic potential of picoxystrobin based on the available data. The Food and Agriculture Organization and the World Health Organization specialists had also concluded that the substance was not genotoxic. This substance was used in more than 65 countries and had been approved by many bodies, such as the US Environmental Protection Agency, the Canadian Management Regulatory Agency, the Japanese Agency, as well as in Brazil itself. Brazil considered that the MRL for picoxystrobin was already very low – for instance, for soybeans, the default was 0.01 mg/kg.

2.295. Brazil also expressed concerns regarding statements delivered by European representatives in the SPS Committee, that countries had had enough time to adapt to restrictions imposed on pesticides mentioned in G/SPS/N/EU/264, because they had already known that there would be a reduction in MRLs since the non-renewal of approval of these substances had been communicated to the TBT Committee. It was important to remind the EU that many countries had different teams of experts dealing separately with each Committee. Where there was a lack of clarity regarding

[87] For previous statements follow the thread under IMS ID 535 (under dates raised and references).

whether a measure should be notified under either the SPS or the TBT Agreement, it was Brazil's position that Members should notify it under both Committees.

2.296. The representative of Paraguay requested that the concerns raised under STC 12[88], be also considered under this STC. Given the European Union's response under STC 12 which is also related to this STC, Paraguay noted that the EU had indicated that TBT and SPS measures would be simultaneously notified to both Committees. However, only a few days prior, G/TBT/N/EU/699 had been notified to the TBT Committee on a seafood-tuna pesticide but not to the SPS Committee. Therefore, Paraguay asked the EU from what point it could expect the effective implementation of the announcement that the EU would notify before both Committees when there was a measure that had implications in relation to both Agreements as had been announced at this meeting, as well as in the previous SPS Committee.

2.297. The representative of Colombia supported the concerns raised by others and stressed again that this was a systemic concern.

2.298. The representative of Guatemala noted its interest and concern on this matter.

2.299. The representative of Panama stated that, like other Members, this substance – picoxystrobin – affected the production of another substance in Panama and, therefore, he wished to register Panama's interest in and concern about this matter.

2.300. The representative of the European Union said that, as had been explained in detail at previous TBT Committees, the European Commission had decided not to renew the approval of picoxystrobin through Commission Implementing Regulation (EU) 2017/1455. Authorizations for plant protection products containing picoxystrobin in the EU were required to be withdrawn by 30 November 2017. Member States had been allowed a grace period until 30 November 2018 at the latest. The EU notified third countries of the draft Regulation via the TBT procedure. The measure did not lead to immediate disruptions in trade, as the measure itself did not amend the Maximum Residue Levels (MRLs) and provided for a grace period for use of products containing picoxystrobin. Given the issues identified by the European Food Safety Agency (EFSA), the existing MRLs were reviewed in a separate measure in view of their safety to consumers.

2.301. A draft measure lowering the MRLs for picoxystrobin to the limit of quantification (LOQ) was prepared and presented to the Standing Committee on Plants, Animals, Food and Feed. The EU notified third countries of the draft Regulation via the SPS procedure. Comments received from non-EU countries and stakeholders were available to the Standing Committee, where a summary of the key points raised was presented. The Standing Committee gave a favourable opinion on the draft. The European Commission formally adopted the revised MRLs in January 2019. The revised MRLs were applicable as of 13 August 2019. Import tolerance requests, however, remained possible and would be assessed on a case-by-case basis by the EFSA. Such requests would have to be supported by substantial new data addressing the concerns.

2.2.3.37 China - Catalogue of Solid Wastes Forbidden to Import into China G/TBT/N/CHN/1211 (IMS ID 545[89])

2.302. The representative of New Zealand acknowledged and supported the rights of all WTO Members to regulate to achieve legitimate domestic health and environmental objectives. New Zealand applauded China's stated proactive policy objectives in relation to sustainable development and encouraged valid actions to limit harmful environmental impacts from contaminated waste inside its borders. New Zealand did not seek to question China's right to regulate to protect its environment. However, New Zealand remained concerned that vanadium slag was included in China's catalogue of banned imports under this measure and reiterated its view that vanadium slag is a purposefully produced co-product with a purposeful end use in production of specific forms of steel. It is not a waste product, and so should not fall under measures for solid waste. New Zealand recalled that China itself is the largest global producer of vanadium slag, with approximately 500,000 tonnes annual production generated as a co-product from steel mills. New Zealand requested clarification on how China has ensured that the rules applied to foreign products were no less favourable than those accorded to domestic products. Further explanation was also requested on how China has

[88] European Union - Chlorothalonil (pesticide active substance) (IMS ID 579).
[89] For previous statements follow the thread under IMS ID 545 (under dates raised and references).

ensured that the import ban on vanadium slag was not more trade restrictive than necessary to achieve China's environmental and health protection objectives. New Zealand thanked China for the recent discussion on this issue and looked forward to further constructive engagement on this topic to better understand China's approach to distinguishing between waste and non-waste materials.

2.303. The representative of the United States reiterated concerns raised at the November 2019 TBT Committee meeting regarding the negative trade and environmental impacts resulting from China's import ban, and accompanying measures, on certain recovered materials.[90] China had made certain references to environmental concerns and had invoked the legitimate objective of environmental protection as a rationale for the measures. Yet, China had provided no details as to what specific environmental concerns it hoped to address, much less how these restrictive measures – including a full ban – were intended to alleviate any such environmental concerns. The most likely outcome of the ban was that reusable plastics would be redirected from productive purposes, such as recycling, to the waste stream. The US recognized China's interest in addressing valid environmental concerns. Meetings had been repeatedly requested with experts from China's Ministry of Ecology and Environment (MEE) to understand China's environmental concerns and why these measures were necessary to address those concerns, and to work cooperatively to ensure that valid environmental concerns were met in the least trade-restrictive manner possible. China had declined all such requests. Instead of explaining its environmental objectives and working constructively to minimize trade restrictions, China had moved forward with the implementation of these measures and even expanded the scope of restricted materials.

2.304. The US requested China to suspend immediately implementation of its import ban and its import control standards for recovered materials. Additionally, the US requested, at least in the interim, that China revise these measures in a manner consistent with existing international standards for trade in recycled commodities. The US noted that, in July 2018, and again in July and December 2019, China released draft revisions to the Law on Prevention and Control of Environmental Pollution by Solid Wastes. As currently written, this draft law appears to ban the import of all recyclable materials into China. The US was concerned with the overly broad scope of "solid waste", which can effectively result in an import ban on recyclable materials. Recyclable materials separated from the waste stream for recycling as a raw material were saleable items traded within a distinct global marketplace (i.e. they had an underlying economic value). According to the US, these qualities make the classification of recyclable materials as "waste" inaccurate. The US urged China to provide allowances for trade in recyclable materials and to properly define and distinguish "waste" from recyclable materials and scrap before finalizing and implementing this draft law.

2.305. The representative of Canada reiterated support for China's willingness to protect the environment, including by limiting harmful impacts resulting from contaminated waste material. However, the regulatory changes implemented by China contributed to the increasingly difficult and uncertain trading conditions for exporters of waste and scrap products. In particular, Canada reiterated its request for clarifications as to why wood pellets were not exempted from the list of banned materials imported to China, which came into effect on 31 December 2019. Canada noted that wood pellets were not contaminated and were not waste. They were made from pure forest fibre, such as logging residuals (small diameter stems and branches) and residues (sawdust) from logs being converted into lumber in sawmills. Wood pellets were beneficial for the environment and could contribute to China's goal of enhancing environmental protection. As a renewable, low-carbon resource, switching from coal to wood pellets reduced GHG emissions significantly. Canada thus asked China to consider permitting again the import of wood pellets into China, as a ban on this product was more trade restrictive than necessary to meet China's environmental and health protection objectives.

2.306. The representative of China recalled the statement provided at previous TBT Committee meetings and contained in G/TBT/W/653. However, considering the importance of this issue, China highlighted that the trade of raw materials processed from solid waste, which meet China's quality and safety standards was still permitted. China noted that, over the past decades, enterprises from some WTO Members had exported large quantities of harmful solid waste to China and derived huge financial gains. Scientific studies indicated that the residues resulting from the recycling and disposal of solid wastes and their carried wastes may pose various risks to human, animal, and plant life and health, as well as to the environment. In accordance with internationally recognized principles, each

[90] G/TBT/M/79, para. 2.248 and G/TBT/M/78, para. 3.291.

Member had the obligation to handle and dispose of the wastes it had generated on its own. China urged Members, especially those still exporting harmful solid waste, to actively fulfil their international social responsibility and make contributions to global environmental protection.

2.2.3.38 European Union - Amendments to the Directive 2009/28/EC, Renewable Energy Directive (IMS ID 553[91])

2.307. The representatives of Colombia, Malaysia, Indonesia and Ecuador continued to raise concerns with this measure. The full statements are contained in G/TBT/W/714, G/TBT/W/730, G/TBT/W/716 and G/TBT/W/718, respectively.

2.308. The representative of Guatemala thanked the Members raising this issue. Guatemala continued to have systemic concerns with this measure.

2.309. The representative of the European Union noted that the issue of amendments to the EU Renewable Energy Directive was now subject to WTO dispute settlement proceedings, notably under DS593 (*EU – Certain measures concerning palm oil and oil palm-based biofuels*). The EU stated that, in order to preserve the integrity of such proceedings, it would defer all discussions to that forum and accordingly refrain from discussing this matter at the TBT Committee meeting.

2.2.3.39 Thailand - Certificate of Analysis for the import of alcoholic beverages G/TBT/N/THA/548 and G/TBT/N/THA/549 (IMS ID 556[92])

2.310. The representative of the European Union welcomed the enactment of a new Ministerial Regulation on Liquor Importation permission and of the Excise Department's Notification on the quality standards for imported liquor that had entered into force on 5 June 2019. According to the new Ministerial Regulation, the former standards from the Thai Industrial Standards Institute (TISI) were replaced by the reference standards determined by the Director General of the Excise Department in the Excise Department's Notification. The EU thanked Thailand for its efforts in addressing its concerns regarding certain elements related to the Certificate of Analysis for the marketing of fermented and distilled alcoholic beverages (wines, spirits or beer). For instance, the removal of the discrimination in the standards in favour of domestic artisanal products. The EU's comments on the limits of certain substances were also significantly taken on board. However, in light of its remaining systemic concerns, written comments were submitted on 20 December 2019, noting the existing differences in the regulated substances and methods of analysis between that of the Excise Department and that of the International Organisation of Vine and Wine (OIV).

2.311. In this context, the EU requested a clarification from Thailand on the meaning of the "equivalent test methods" concerning the Standard for Analysis of Beer, Wine and Sparkling wine made from grapes and fermented liquor and Distilled Liquor, and in particular, whether international OIV methods of analysis are recognized as "equivalent test methods" for wine and sparkling wine made from grapes and fermented liquor. The EU added that the harmonization of the Thai Quality Standard for Imported Liquor with internationally recognized standards was important to avoid unjustified trade barriers. Further, the EU requested Thailand to confirm whether EU exporters could use the EU "wine export certificate" to show compliance with the new Thai standards, and whether Thai authorities accept laboratory results from foreign laboratories. The EU remained available to work with Thailand on the review of the Thai standards, including through discussions at expert level on the regulated substances and the methods of analysis.

2.312. The representative of the United States recalled that, on 18 June 2019, Thailand notified its Ministerial Regulation entitled "Liquor Importation Permission (No. 2) B.E. 2562 (2019)" (amending the Ministerial Regulation entitled "Liquor Importation Permission B.E. 2560") and its "Notification of the Excise Department Prescribing Quality Standards for Imported Liquor", to the TBT Committee. Effective 5 June 2019, all alcohol beverage imports required a certificate of analysis confirming the product's compliance with a series of maximum limits for contaminants, food additives and chemical attributes. She noted that testing for all the requested substances was not standard practice in the US. The US appreciated the bilateral exchange with Thailand on 5 February 2020 and looked forward

[91] For previous statements follow the thread under IMS ID 553 (under dates raised and references).
[92] For previous statements follow the thread under IMS ID 556 (under dates raised and references).

to arriving at a mutually agreeable solution, which satisfied Thailand's objective of protecting consumer health and safety and eased the burden on US exporters.

2.313. The representative of Australia repeated the concerns raised at the previous TBT Committee meeting.[93]

2.314. The representative of Canada thanked the Members raising this issue and reiterated its support for Thailand's efforts in addressing specific public health concerns related to import of alcoholic beverages. Canadian industry was following closely developments in the Certificate of Analysis requirements due to the possible undue negative impact on trade in alcoholic beverages. Canada specified two concerns with the new requirements under the Thai Certificate of Analysis: some substances are not tested in Canada such as Ferrocyanide; and some limits of substances are slightly lower than the ones established by Canada, such as Aldehyde, Benzoic acid, Sorbic acid and Arsenic. Canada requested additional information on the work of the regulatory body on determining the testing standards and the scientific evidence for these particular content levels set in the Thai Certificate of Analysis. Further, Canada was particularly interested in receiving confirmation on whether foreign certifications issued by accredited laboratories, such as those issued in Canada would be accepted. Canada thanked Thailand for the bilateral engagement to date.

2.315. The representative of New Zealand supported Thailand's right to introduce new regulations to address specific health concerns and noted that, in seeking to address the harmful use of alcohol, these technical regulations had a legitimate health objective. However, New Zealand exporters continued to face uncertainty with regards to certification requirements and had concerns about the impact of the additional testing requirements on their ability to gain timely certification for exports. New Zealand requested an update as to whether Thailand had given any further consideration to accepting other recognized industry certification that achieved the stated objectives. New Zealand reiterated its eagerness to work with Thailand to ensure New Zealand exporters met Thailand's objectives under these regulations through the least restrictive trade means.

2.316. The representative of Thailand noted that Thailand has issued the Ministerial Regulation on Liquor Importation Permission B.E. 2560 (2017), which has been enforced since 16 September 2017, and the Notification of the Excise Department on Prescribing Quality Standard for Imported Liquor, which entered into force on 5 June 2019. Thailand's Excise Department had several meetings with various WTO Members, such as the EU, the US, Australia and Mexico, in order to discuss the guidelines for establishing the liquor importation permission criteria and the liquor analysis standard before the law came into effect.

2.317. In response to certain concerns expressed at the November 2019 TBT Committee meeting, Thailand informed the Committee that the new regulation was focused on protection of Thai people's health and safety. In addition to the statistical report, the results of the analysis of samples of liquor determined that contaminant substances, found in some types of liquor produced in the country and imported, were harmful to human health. In order not to discriminate between domestic and imported liquor, Thailand had complied with the national treatment on internal taxation and regulation standard to protect public health and safety.

2.318. Thailand provided an explanation of the meaning of the equivalent test method in response to concerns expressed in this regard. First, the substances being tested had to match and the parameter of those substances could not exceed the parameter requirements. Second, the test method must be equivalent and recognized by ISO/IEC 17025 (or equivalent) and recognized by the international organization standard or regional organization standard. For all other test methods that did not have equivalents and were not recognized by the above standards, the importer could submit the test method to the Development of the Analytical Standard on Excisable Products Committee set up by the Excise Department to determine whether other test methods could be equivalent and recognized as a test method. Thailand appreciated all the concerns expressed by Members and added its willingness to consult with experts from Members in order to assist them to comply with the Thai legal standards.

[93] G/TBT/M/79, para. 2.277.

2.2.3.40 Russian Federation - Federal law No 487-FZ, providing a framework for comprehensive use of special labelling and traceability of goods and Decision No. 792-r specifying the goods to which labelling will apply and the dates of introduction of the mandatory labelling (IMS ID 567[94])

2.319. The representative of the European Union continued to raise concerns with this measure. The full statement is contained in G/TBT/W/27.

2.320. The representative of the Republic of Korea noted that this regulation sought to attach traceable special labels to products in order to prevent the manufacture of counterfeit goods and to protect consumers in the Russian Federation. Korea requested that Russia notify this compulsory labelling scheme in accordance with Article 2.9 of the TBT Agreement.

2.321. The representative of Ukraine supported the concerns raised by others. This measure presented certain inconsistencies with the TBT Agreement as it places additional burdens on producers exporting to the Russian Federation compared to domestic producers. First, on registration to obtain the marking requirement, products must first have an individual tax number. This was not available for non-residents of the Russian Federation. Second, it was necessary to include a digital signature for the receipt of the producers in the unified state register of legal entities or in the unified state register of individual entrepreneurs. Producers that were not Russian citizens could not use such a digital signature and a delegation of authority to a Russian citizen was necessary, which put producers in unequal situations. Ukraine requested that Russia remove unjustified technical barriers to trade and bring the provisions of the draft law in line with international practice.

2.322. The representative of Indonesia was closely following this measure which would be applied to several goods, including footwear. Indonesia was specifically concerned that the enforcement of these measures could disrupt the trade of footwear products between Indonesia and Russia. While respecting Russia's objective of ensuring the legal circulation of goods and traceability by the implementation of these marking and labelling requirements, Indonesia observed that these measures fell under the scope of TBT Agreement as set out in Annex 1, which states that "technical regulations or standards may also include or deal with terminology, symbols, packaging, marking or labelling requirements as they apply to product process, or production method". Indonesia also noted that Russia was not meeting its obligations under Article 2.9 of the TBT Agreement. Indonesia expressed its readiness to have close discussions with Russia in order to ensure that these measures would not create unnecessary barriers to trade for Indonesian footwear products.

2.323. The representative of the Russian Federation reiterated the statements made at previous TBT Committee meetings.[95] This measure could not be considered to be a technical regulation as the system did not meet the requirements stipulated in the TBT Agreement. Labelling requirements in technical regulations refer to fulfilling the technical requirements indicated in technical regulations. Thus, if a product did not comply with the requirements, the relevant label would not be added, and it would not be allowed on the market. Russia emphasized that the Track and Trace system did not aim at securing fulfilment of the requirements stipulated in the relevant technical regulations. Labelling requirements under technical regulations should contain information about the product characteristics in the form of inscriptions or uniform labels, such as "EAC" or "CE". Track and Trace did not apply to the product characteristics or their related processes and production methods. Moreover, similar to other labelling requirements, such as excise stamps, the system fell under the regulations regarding customs enforcement, the protection of trademarks and the prevention of deceptive practices. Russia noted that the legislation and comprehensive guidelines regulating Track and Trace, whether in effect or drafts, were publicly available in the information system, "Chestiyznak". Planned pilots and the volume of issued data matrix code in respect of the products covered by the regulation were also available there. He added that the system was completely transparent, and the information was available in Russian and English.

2.324. Moreover, Russia pointed out that it did not consider the system as disproportionate or more trade restrictive than necessary as the concept in respect of each type of product had been elaborated in collaboration with the companies involved in manufacturing, supplying, and importing the products covered. The mechanism of the system should be approved by business before entry into force. Given that the price of one data matrix code is about half of a rouble (i.e. less than one

[94] For previous statements follow the thread under IMS ID 567 (under dates raised and references).
[95] G/TBT/M/79, para. 2.284.

US cent), the measure would cause additional costs. In addition, according to the statistics done the Operator of the System, approximately 8 billion codes had been issued for tobacco products, 800 million codes for shoes, and 400 million for pharmaceuticals. Taking into account these figures, that market operators had adapted to the system, its functioning was stable, and all the negative forecasts in respect of disruption to traditional trade flows due to the Track and Trace system had not been confirmed.

2.325. Further, a great volume of smuggled tobacco products had been recorded within Russia. The average price of smuggled cigarettes was lower, and the circulation of such products was not surveyed. This situation negatively impacted both consumers and authentic suppliers. The Track and Trace system would eliminate such practices. With respect to the application of the measure to textiles, towels, bedlinen, shoes, and other products, Russia emphasized that the measure was applied not only in respect of counterfeiting goods but aimed at restricting illicit circulation and smuggling. For this reason, the measure sought to protect the interests of faithful suppliers, importers, and manufacturers. Regarding stocks, Russia stated that a transition period could not be provided, as manufacturers might put an inappropriate date of manufacturing on the product and the system would not be effective. For perfumes, the Track and Trade measure would enter into force on 1 October 2020 and the transition period for stocks manufactured or imported before 1 October 2020 would be effective until 30 September 2021.

2.2.3.41 European Union - Draft Commission Regulation laying down eco-design requirements for electronic displays pursuant to Directive 2009/125/EC of the European Parliament and of the Council, amending Commission Regulation (EC) No 1275/2008 and repealing Commission Regulation (EC) 642/2009 (and its accompanying annexes) (IMS ID 575[96])

2.326. The representative of China reiterated concerns raised in previous TBT Committee meetings and circulated as G/TBT/W/693, which had not been solved. In addition to the suggestion to withdraw the ban on halogenated flame retardants in D4 Annex 2, China suggested that the EU reduce the energy efficiency limit for OLED displays or explain the justification for the limit. In the updated text of the regulation, although the correction parameter is revised to 10 considering the technical characteristics of OLED displays, the standard for calculating the EEI (energy efficiency index) value of OLED displays was still higher than the requirement of many countries, such as the US and Japan.

2.327. The representative of Brazil noted that producers would be particularly affected by the prohibition on use of halogenated flame retardants in the enclosure and stand of electronic displays, according to The New Version Annex II D, related to "materials efficiency". Recalling its statement at the previous TBT Committee meeting, Brazil understood that such requirements were not even in line with the REACH Regulation and the Restriction of Hazardous Substances Directive. The potentially conflicting regulatory requirements between those measures and the Ecodesign Directive raise questions about transparency in regulating these products. Brazil asked that the EU consider withdrawing requirements that were overly strict, such as those on the use of halogenated flame retardants.

2.328. The representative of the European Union stated that the Ecodesign Regulation for electronic displays was published in the Official Journal of the EU on 5 December 2019 and entered into force 20 days later. As regards the restriction of halogenated flame retardants, the EU clarified that the restriction covered any halogenated flame retardant but only applied to the stand and enclosure of the display. The restriction did not cover any internal component, such as Printed Circuit Boards, wiring or internal plastic parts (when they are not part of the external enclosure). The EU recalled that the restriction was not directly related to the hazardousness of these substances, as this was addressed by the RoHS Directive. However, the requirement aims at increasing the yield of recycled plastics once the displays, at their end of life, were treated at recycling plants, because currently the plastics containing any of the halogenated compounds are systematically incinerated. The EU added that, in the context of the Circular Economy Strategy, the requirement represented an example of how eco-design and waste legislation (WEEE) complemented each other: both the RoHS and WEEE Directives explicitly refer to the Ecodesign Directive as enabling specific eco-design requirements for products that may also be covered by those Directives.

[96] For previous statements follow the thread under IMS ID 575 (under dates raised and references).

2.2.3.42 Kingdom of Saudi Arabia – Technical Regulation for plastic products OXO – biodegradable (IMS ID 583)

2.329. The representative of the European Union reiterated that, in 2016, the Kingdom of Saudi Arabia notified a SASO Technical Regulation for Degradable Plastic Products to the TBT Committee, requiring certain types of disposable plastics to be oxo-degradable and bear a specific mark to demonstrate compliance. In autumn 2018, Saudi Arabia announced the scope of this measure would be extended to primary and secondary packaging as of February 2019, which was postponed to spring 2020. The EU noted that, if Saudi Arabia implemented this requirement for primary and secondary packaging, it would constitute a serious barrier to trade for various EU industries exporting products packaged in stretch and shrink film to Saudi Arabia, including the toy, cosmetics, textiles, machinery and food/drink industry. SASO issued this regulation more than two years ago. A substantial amount of international scientific research had been undertaken since then on so-called oxo-biodegradable plastics, also known as oxo-degradable plastics, and the results question their real environmental benefits. Consequently, on 5 June 2019, the EU co-legislators adopted the Directive on the reduction of the impact of certain plastic products on the environment, to be implemented by the EU Member States within two years after its entry into force. The Directive required Member States to prohibit the placing of products made from oxo-degradable plastics on the market. The EU asked Saudi Arabia about the results of the recent scientific studies evaluating the impact of oxo-degradable plastic in Saudi local conditions and, in particular, whether, in light of these results, the implementation of phases 2 and 3 for primary and secondary packaging would be suspended.

2.330. In addition, the EU invited Saudi Arabia to consider suspending the implementation of the regulation on plastics, to review the regulation in light of the relevant scientific studies guaranteeing that the EU-s and Saudi Arabia's environmental objectives be aligned in a way that did not create unnecessary obstacles for economic operators, and to comply with the WTO TBT notification obligations in relation to such review. The EU thanked SASO for cooperative engagement and looked forward to pursuing this dialogue in the coming months.

2.331. The representative of Switzerland supported the EU's intervention and reiterated the concerns expressed at the previous TBT Committee meeting.[97] He noted that, while sharing Saudi Arabia's legitimate objective to protect the environment and public health, Switzerland remained concerned that the need to use, especially for the market in Saudi Arabia, oxo-degradable SASO-certified plastic packaging leads to additional costs and created trade barriers. Switzerland requested that Saudi Arabia provide an update on the regulatory development of this measure and its timeline. Switzerland encouraged Saudi Arabia to consider less trade-restrictive alternatives to achieve its environmental objectives and to take relevant international scientific research on oxo-degradable plastic into account.

2.332. The representative of the Kingdom of Saudi Arabia indicated that phases 2 and 3 of the technical regulation, including stretch and shrink film, had been suspended until further notice.

2.2.3.43 European Union - Medical Device Regulation (MDR) and In Vitro Diagnostic Medical Devices Regulation (IVDR) (IMS ID 594[98])

2.333. The representative of Japan expressed support for the development of medical device regulations setting high standards of quality and safety for medical devices, but still had serious concerns regarding the implementation of MDR from 26 May 2020. First, the EU has not provided necessary and sufficient information, or completed guidance documents, for manufacturers to comply with the requirements of MDR. With respect to the list of "Ongoing Guidance Development within MDCG (Medical Devices Coordination Group) Subgroups", Japan requested that the EU promptly provide guidance documents which are necessary for product development processes. Japan further requested that the EU establish a consultation desk for guidance documents and updated Q&A. Second, there was an insufficient number of operational notified bodies designated to perform certification activities under MDR. While the number of designated notified bodies had increased from 7 to 14 since November 2019, and 7 notified bodies were conducting audits under the Medical Device Directive in Japan, only one notified body had started the MDR audit to date. Therefore, there was a high probability that Japanese manufacturers could not comply with the MDR

[97] G/TBT/M/79, para. 2.291.
[98] For previous statements follow the thread under IMS ID 594 (under dates raised and references).

before 26 May 2020 due to a lack of capacity of notified bodies. Japanese manufacturers would be unable to export new medical devices and improved medical devices to the EU after May 2020. The EU was requested to postpone the date of application for a minimum of two years and undertake reform so as to allow Japanese manufactures to comply with the requirements of the MDR.

2.334. The representative of the United States raised concerns with this measure. The full statement is contained in G/TBT/W/734.

2.335. The representative of the Republic of Korea thanked the EU for sharing information but shared the concerns raised by Japan and the US. Korea pointed to the insufficient number of notified bodies (NBs) as it was informed that there were currently only 12 NBs to perform certification activities under the MDR. As the number of accredited NBs appeared to be insufficient, the needs of exporting manufacturers might not be met. Korea appreciated that the EU had been committed to providing information in the form of a guideline and to adopting implementing acts to facilitate the implementation of the new regulations. However, there had been a delay in the process, which could cause difficulty for Korean industry in preparing for its CE application under the new regulations. Therefore, Korea requested the EU to designate a sufficient number of NBs as operational as soon as possible, to provide an update on the relevant information, including the number of designated NBs, and to grant a sufficient grace period of at least one year.

2.336. The representative of Canada supported the concerns raised by others regarding the implementation of this measure, which affected an important export market for Canadian medical device manufacturers.

2.337. The representative of China appreciated the EU's notification of its Medical Device Regulation and its efforts in improving the performance of medical devices but stated that there were less trade-restrictive approaches to achieve the objective of the EU's Medical Device Regulation. China suggested that the EU provide a simplified audit path for low risk products and that the EU postpone the implementation of the MDR to the end of 2020, and accelerate the development of relevant guidelines.

2.338. The representative of the European Union responded to the concerns raised. The full statement is contained in G/TBT/W/716.

2.2.3.44 Republic of Korea - Package Recycle Classification Regulation G/TBT/N/KOR/857 (IMS ID 588[99])

2.339. The representative of the United States appreciated Korea's leadership to promote recycling and reduce unnecessary waste but asked that Korea consider how its packaging criteria might offer flexibility for the differing functions that packaging played and allow for innovation and resource saving in recycling technology. Noting that the original date of implementation was listed as 25 December 2019, the US asked that Korea confirm that the measure posted online was the final version of the notified measure and that all comments were fully reviewed and taken into account prior to the implementation date. She also requested that the Package Recycle Classification Regulation, which the Ministry of Environment (MOE) finalized on 17 April 2019 be notified. The US additionally asked Korea to provide more details as to the criteria used to evaluate the recyclability of product packaging and noted that US industry welcomed the opportunity for a dialogue with the MOE on the criteria. Greater transparency as to how Korea would implement its consultations with companies to evaluate its product packaging would be appreciated. The US wanted to ensure there was no "Korea-unique" packaging requirement so as avoid measure unnecessarily disrupting trade. The US requested that Korea consider extending the grace period of two years for product packaging to be graded, evaluated and labelled, given the need to adjust supply chains.

2.340. The representative of Australia recognized the Republic of Korea's right to implement regulations that promoted the reduction of waste and the production of easily recyclable packaging materials. Australia thanked Korea for notifying this proposed measure and referred to its comments submitted through the Enquiry Point. Acknowledging that the Korean Ministry of Environment and the Korea Environment Corporation provided further clarification on the measures and issues, Australia understood that producers would have up until December 2021 to apply the labelling. Korea

[99] For previous statements follow the thread under IMS ID 588 (under dates raised and references).

was encouraged to continue engaging with affected parties and confirm the requirements, particularly in relation to wine bottles and tetra packaging. Further clarification was sought on the different treatments proposed for the "recycle friendly" colourless, brown or green glass and glass of other colours, said to be "recycle unfriendly", and, in particular, on the scientific and technological basis for the measure and for classifying different colours of glass bottle in this manner. Australia indicated that it would be concerned if this regulation limited the range of colours of glass containers considered "recycle friendly" without a scientific basis.

2.341. Noting that the Detailed Standards stated that some coloured bottles such as those used for wine may be considered "recycle unfriendly", Australia however acknowledged that Korea, at the 27 November 2019 briefing, indicated it would review the requirement for recycling labelling on wine bottles and tetra packaging (aluminium lining) due to the lack of substitutability for such packaging. The use of darker coloured glass for certain light sensitive products, such as red wine and olive oil, helped prevent oxidation and maintain the quality of the product. Australia also sought clarification of the process for exceptions, specifically how and on what grounds an exemption could be sought. She also requested that Korea consider extending the current implementation date, as international food companies needed one and a half to two years to create and apply new packaging and labelling designs. Additionally, some products, particularly wine, may not be exported for some time after production.

2.342. The representative of Canada recognized the Republic of Korea's efforts to protect the environment but indicated that the proposed measure could affect a wide range of products and have a significant impact on trade. Canada understood that the measures entered into force on 25 December 2019 and that a series of exemptions would be developed for products, such as sterilized packs and certain alcoholic beverages, and requested that Korea confirm this understanding as well as the timeline for notifying Members of the products potentially subject to an exemption. Canada also requested clarification on the process and consultation methods followed by Korea in developing these exemptions and questioned why certain exemptions were granted based on the function of the packaging material (i.e. only for a bottle that contains wine or whiskey) and not based on the material itself (i.e. dark-green glass). In Canada's view, international standards existed upon which Korea could have relied to achieve the same policy objectives and minimize potential trade distortions. Canada also urged Korea to allow for a sufficient implementation and transition period to give stakeholder the time needed to evaluate current packing and consider possible improvements.

2.343. The representative of Chile supported the statements made by other Members and expressed, in particular, a concern with respect to the marketing of alcoholic beverages.

2.344. The representative of New Zealand expressed support for measures that focus on legitimate objectives, such as encouraging recycling and reducing waste, but asked that the Republic of Korea explain how its proposed measures were no more trade restrictive than necessary. He encouraged Korea to consider how the measures would impact a wide range of products, including consideration of potential exemptions and flexibility in the scheme. For example, the impact of the measures on products that are largely "recycle friendly" but may have a small component attached that would be considered difficult to recycle. Concerns were also raised with respect to measures relating to packaging of a particular colour or substance deemed necessary to maintain product quality standards or for product safety reasons. New Zealand requested that Korea ensures that transparent and clear guidelines be published on how exporters can comply with these measures, which indicate what may, or may not, classify as "recycle friendly" and the consequences of such classification.

2.345. The representative of Mexico supported some of the concerns raised by others and welcomed the information that the Republic of Korea might be able to share on the measures and exceptions granted.

2.346. The representative of the Republic of Korea noted that, on 9 September 2019, the new packaging criteria had been notified to the TBT Committee and, following a request by the US, the comment period was extended to 22 November 2019. The new recyclability classification for packaging materials was the result of a thorough consideration of the comments from Members. For example, although glass bottles of wine and whisky products were indeed difficult to recycle in Korea, they were excluded from the obligation to indicate "difficult to recycle" on their labels. This additional clause, concluded on 17 February 2020, took into account that packaging of certain types of products had few available alternatives. The final version of this regulation, including the Package Recycling

Classification Regulation, would soon be shared with Members. All the information was available on Korea's legislation information system. This regulation required a classification assessment and an indication of the recyclability class. Only those products graded the lowest as "difficult to recycle" were obliged to indicate the recyclability class on their labels. In addition, there was a nine-month grace period until the completion of the classification assessment, and another 15 months was allowed to complete the class indication on the label. In total, up to two years was granted to comply with the regulation. All other comments by Members would be relayed to the competent authority and Korea would remain accountable and transparent in implementing this recycling regulation.

2.2.3.45 European Union - Concerns on regulations with regard to eco-design requirements for various products in EU (IMS ID 592[100])

2.347. The representative of China reiterated concerns raised in previous meetings[101] and asked the European Union if it had any updated information on the eco-design requirements on light sources and household washing machines.

2.348. The representative of the European Union noted that the EU had submitted 11 different notifications between 5 July 2018 and 23 November 2019 covering a number of different eco-design requirements. For all these notifications, a 60-day period had been allowed for interested Members to comment. Comments had been received from Brazil, Japan, China, the US and Korea. In 2018 and early 2019, the Eco-design Regulatory Committee had met to discuss the proposed ecodesign regulations. Every proposed measure had been voted favourably by the Member States, sometimes with changes to the text.

2.349. After the vote, each ecodesign regulation had been subject to a three-month scrutiny period with the European Parliament and the Council. After this period (during which no objections had been raised), the Commission had adopted and published the eco-design measures as follows:

- Enterprise servers had been adopted on 15 March 2019 and published on 18 March 2019;
- External power supplies, power transformers, welding equipment and electric motors had all been adopted on 1 October 2019 and published on 25 October 2019;
- Washing machines, refrigerators, dishwashers, electronic displays, light sources and refrigerators with a direct sales function had been adopted on 1 October 2019 and published on 5 December 2019.

2.350. All these revised regulations would now repeal the previous legislation for the same product groups. Next to an update of the energy efficiency requirements to take into account technological progress, the new and revised eco-design regulations also included new "circular economy" requirements aimed at increasing durability and improving reparability of these product groups.

2.2.3.46 European Union - Commission Delegated Regulation (EU) 2019/945 on Unmanned Aircraft Systems and on Third-country Operators of Unmanned Aircraft Systems G/TBT/N/EU/628 (IMS ID 585)

2.351. The representative of China noted that, taking into account Article 2.3 and Article 2.8 of the TBT Agreement, and after a very careful study of the final Regulation, China had the following suggestions for the EU:

a. the factor of mechanical strength for the heavier-than-air tethered UAS cable in the EU Regulation 2019/945 should be no less than 4 times the maximum take-off mass (MTOM). The regulation required that the cable of the mechanical strength was 10 times the take-off weight. According to assessment by manufacturers, 4 times was enough for safety assurance. It was calculated that the safety factor was 2.8-8.4 when different material cables' mechanical strength was 10 times the take-off weight. 2.8-8.4 was much higher than the safety factor of all parts of manned civil aviation and general aviation (1.25-1.8). Superabundant requirement could also lead to a significant reduction of the overall performance. In addition, the backup batteries, automatic return

[100] For previous statements follow the thread under IMS ID 592 (under dates raised and references).
[101] G/TBT/M//79, para. 2.294.

and other technologies were more conducive to the safe operation of tethered UAS in terrible weather, air flow and other special conditions.

b. to change the extension length limit of category C3 of tethered UAS from "50 metres" to "120 metres". With the development of technology, category C3 of tethered UAS had good stability and wind resistance. The extension length of 50 metres, required by the EU regulation, could not meet the needs of customer's applications. Since the regulation limited the flying height of "Open Drones" to 120 metres, and category C3 of tethered UAS did not have more risk than Open Drones, China suggested that the EU consider using the same criteria for both.

2.352. The representative of the European Union informed the Committee that Regulation (EU) 2019/945 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems and Commission Implementing Regulation (EU) 2019/947 on the rules and procedures for the operation of unmanned aircraft had been published in June 2019.

2.353. The EU stressed that all relevant stakeholders had been consulted. China had had the opportunity to comment on this draft and the comments submitted by China had been duly taken into account and replied to in April 2019. In this respect, the EU had adapted the wording of its requirement on the light identification device, as well as the definition of the "follow-me mode" to a mode where the unmanned aircraft (UA) followed only the pilot and not any other person or device, as China had suggested.

2.354. On the range limitation imposed on unmanned aircraft (UA) when the "follow-me" mode was on, the EU considered, however, that the range limitation must be maintained at 50 metres for safety reasons until reliable autonomous UA were available. Indeed, the UA should stay in close vicinity of the remote pilot in order to allow him to stay aware of the flight environment of his UA and to be able to quickly intervene and regain control of the UAS in case of necessity.

2.355. On the physical serial number affixed to the equipment, under the relevant EU legislation, the serial number was not used for the registration of the unmanned aircraft systems (UAS). A simple approach had been adopted whereby only the manufacturer's code would be attributed internationally by the International Civil Aviation Organization (ICAO) and the manufacturers would be responsible for the definition and the maintenance of the numbering of their products.

2.356. Regarding the requirement for the mechanical strength of the tethered UAS cable being stricter than necessary, the factor of 10 was coming from tethered gas balloons certification specifications and took into account unmanned aircraft accelerations, the variability of the tether material and a safety factor.

2.357. Lastly, with respect to the test criteria for noise, since there was no sound limit imposed for class C3 unmanned aircrafts, in case the test code provided could not be strictly observed, documented deviations from the test code may be acceptable, as long as conditions set out in EN ISO 3744:2010 were met (e.g. measurement radius equal to or greater than twice the characteristic source dimension).

2.2.3.47 Qatar - Ministry of Public Health Circular regarding shelf life for cheese (IMS ID 602[102])

2.358. The representative of the European Union expressed concern with regard to the State of Qatar Ministry of Public Health Circular of 30 May 2019 establishing new import requirements for UHT milk and white cheese that had entered into force the following day, on 1 June 2019. The EU regretted that Qatar had not notified these requirements to the WTO under either the TBT or the SPS Agreements. Implementation of these rules was causing serious disruptions to EU exporters as compliance with the requirements was not feasible for certain cheese and milk products. As a consequence, EU products covered by the measure could no longer be exported to Qatar. Her delegation was particularly concerned about the stringent restrictions on shelf-life that disadvantaged imported products over local products, but also about certain product characteristics for UHT milk and types of white cheese, in particular, obligatory addition of vitamins to milk and

[102] For previous statements follow the thread under IMS ID 602 (under dates raised and references).

low-fat-only requirements for certain types of white cheese. She said that the requirements were not in line with Codex Alimentarius' relevant international standards, were not science-based and did not guarantee the safety of imported products. The measures therefore appeared to be more restrictive than necessary to fulfil the legitimate objective of public health protection. In this context, the EU referred to Articles 2.1, 2.2 and 2.4 of the TBT Agreement. The EU invited Qatar to suspend the application of the measure without further delay, align it to the WTO rules and comply with its notification obligations. Qatar was thanked for bilateral exchanges during the past months, which unfortunately had not yet resulted in an effective solution. The EU was prepared to continue working constructively with Qatar to resolve this important issue.

2.359. The representative of the United States expressed deep concern with the State of Qatar's dairy product regulation, published by the Ministry of Public Health on 30 May 2019, which restricted the reconstitution of milk and shelf life of cheeses, among other things. Her delegation was also concerned with Qatar's adoption of the measure without notifying it to the WTO, providing trading partners the opportunity to comment, or with a reasonable implementation period. Qatar was asked to explain its rationale for not notifying and adopting such a measure. She recalled that the measure had been raised previously at the TBT Committee and, despite assurances, the issue had not been resolved. In fact, the US understood that Qatar's circular had affected exports of "white cheese" from a number of exporting countries. She further recalled that the US had requested that Qatar suspend or amend the measure and that a response to this request was still being awaited. Despite Qatar's willingness to meet with the US bilaterally, she reported that US exporters continued to face detentions due to the enforcement of the measure. The US therefore reiterated its request for Qatar to engage with the US on the measure immediately.

2.360. The representative of Canada said that this measure was having a direct impact on some Canadian exports to the State of Qatar. More specifically, the Canadian industry had indicated that it was unable to fulfil existing contracts with importers of paneer cheese due to the overly restrictive shelf-life requirements. The 50- to 55-day ocean transit from Canada to Qatar effectively made it impossible to comply with these new 45-day shelf-life requirements. These stringent shelf-life requirements encouraged the domestic or close proximity sourcing of these products, ultimately resulting in the unfair discriminatory treatment of imported products. Qatar was strongly encouraged to notify the measure to the WTO, pursuant to the WTO's transparency obligations, in order to provide trading partners with the opportunity to comment. Canada requested that in the meantime Qatar suspend its implementation. Canada expressed its readiness to further engagement with Qatar.

2.361. The representative of the State of Qatar underlined that consumer protection was of primary importance and that the relevant authorities with specialized expertise in the matter were mandated with the adoption of appropriate measures to ensure the quality of products and, in particular, agricultural products available in Qatar, in accordance with Qatar's international obligations under the WTO Agreements, including the TBT Agreement. Qatar assured Members that the relevant measures were adopted to protect consumers and their health, applied equally to domestic and imported products and were therefore non-discriminatory in nature. Furthermore, any impact that such regulation may have on trade would not be more than necessary to contribute to the fulfilment of the legitimate objective of protecting consumers. Qatar trusted that Members would agree that ensuring quality products for consumers in Qatar was a legitimate objective and that Qatar was entitled to adopt regulatory requirements contributing to the fulfilment of this objective. Qatar emphasized that product-specific requirements applied in the State of Qatar did not prevent the importation and sale of any products meeting the quality standards and did not have a significant effect on trade. Qatar remained open to bilateral engagement with interested Members to provide additional explanation where necessary.

2.2.3.48 Pakistan - Amendment to Pakistan's Imports and Exports (Control) Act, 1950: Statutory Regulatory Order (SRO) 237 on labelling, shelf-life, and halal certification (IMS ID 607[103])

2.362. The representative of the United States, whilst recognizing that the Ministry of Commerce had delayed implementation of SRO 237 until 1 July 2019, requested that Pakistan suspend implementation of these requirements by at least one year and notify the SRO as a draft, under the terms of Article 2 and Article 5 of the TBT Agreement. The US had previously communicated this

[103] For previous statements follow the thread under IMS ID 607 (under dates raised and references).

request to suspend implementation and notify via a communication to Pakistan's TBT Enquiry Point in March 2019 and then in January 2020, as well as at a US-Pakistan TIFA meeting held in May 2019, and in the November 2019 TBT Committee meeting. Pakistan was remined that WTO Members should be afforded a reasonable period to submit comments (60-90 days) and comments received should be considered prior to implementation of the measure.

2.363. With respect to halal labelling requirements within the New Labelling SRO, in addition to the lack of transparency, the US was concerned that the SRO required that all products be halal-certified and labelled, even those products broadly recognized as being naturally halal. While the US recognized the importance of ensuring that products were halal for Pakistani consumers, Pakistan was urged to develop halal policies that met the needs of consumers without being overly burdensome or trade prohibitive. The US encouraged Pakistan to follow other Islamic countries in making halal certification and labelling voluntary. For example, in Malaysia, US exporters could choose to voluntarily label and certify their consumer food and beverage products as "halal" for Malaysian consumers, but the voluntary nature of this requirement is not trade-prohibitive. The US had several halal certification bodies, accredited by members of the International Halal Accreditation Forum (IHAF) and the Standards and Metrology Institute for the Islamic Countries (SMIIC). The US also said that, rather than only recognizing halal certifiers that were accredited by IHAF and SMIIC members, Pakistan should also recognize halal certificates from other US-based halal certifiers recognized by other Islamic countries. Finally, the US noted that a MOC memorandum issued on 31 July 2019 stated that raw and semi-processed agricultural products might not need halal certification. The US asked Pakistan to clarify the definition of semi-processed agricultural products and what "may not" meant in this context.

2.364. The representative of the European Union expressed regret that regulations establishing import requirements for foodstuff had been adopted without previous notification to the TBT or SPS Committees. The EU stressed the importance of notifying any future revisions to the WTO in the draft stage, providing WTO Members with an opportunity to comment. The conditions laid out with regard to labelling were discouraging for EU importers especially given that the use of stickers, overprinting, stamp or scratched labelling was prohibited. Given the lack of a sufficient transitional period, these requirements considerably delayed approvals of imported products for the Pakistani market. In addition, the EU noted no change had been introduced with regard to labelling and certification clauses in the subsequent Rule, i.e. SRO 438 (dated 9 April 2019). The EU thus asked Pakistan to consider suspending the implementation of SRO 237 for at least 18 months to allow for an adaptation period for EU importers.

2.365. The representative of Pakistan informed the Committee that the SRO was under detailed review. Furthermore, SRO 237 had been amended and replaced by SRO 438 of 9 April 2019 and application of the measures had been suspended from 9 April to 1 July 2019 to address the concerns of exporters. Pakistan would keep stakeholders abreast of developments as a result of the ongoing review of the measures and remained open to bilaterally engage with concerned Members to address their concerns.

2.2.3.49 Republic of Korea - Ballast Water Management Act (IMS ID 606[104])

2.366. The representative of the European Union raised concerns with this measure. The full statement is contained in G/TBT/W/729.

2.367. The representative of the Republic of Korea acknowledged that the issue on Korea's Ballast Water Management Act raised by the EU fell under the Ballast Water Management System with type approval from EU member States. The issue apparently required legitimate recognition by Korea for the system approved by EU countries. He said that the issues on type approval were embodied in Regulation D-3 of the Ballast Water Management Convention's Annex demonstrating the responsibility of the competent authority for type approval without any provisions for recognizing other countries' type approval. The EU had reportedly implemented the scheme that any foreign system was required to have the type approval granted by each European government or the recognized organization. Korean manufacturers had put a great deal of time and expense into obtaining type approval from EU countries or their recognized organizations in deference to the legal system of EU.

[104] For previous statements follow the thread under IMS ID 606 (under dates raised and references).

2.368. The Ballast Water Management Act had already stipulated that foreign systems may be equal to Korean products in the conditions for type approval. In addition, Korea had implemented the updated scheme to grant type approval testing ease or immunity to the system approved overseas since the amendment of the Act on 1 July 2019. The approval requirements were mainly replaced with the relevant documents screening, the detailed procedure for which could be found in the Ballast Water Management Act. For reference, he said that one EU manufacturer had applied to obtain type approval through a document review to the Government of the Republic of Korea on 1 November 2019. This, he said, was an indicator that Korea had created no technical and institutional barriers in the procedure of type approval of Ballast Water Management System in comparison with the EU. He informed Members that any comments or enquiry would be received by the Ministry of Oceans and Fisheries, the competent authority of Korea.

2.2.3.50 Kingdom of Saudi Arabia - Electrical Clothes Dryers Energy Performance Requirements and Labelling (IMS ID 605[105])

2.369. The representative of the Republic of Korea reiterated its concern raised during the November 2019 Committee meeting that the Kingdom of Saudi Arabia's energy efficiency requirements for clothes dryers and criteria of the power consumption tolerance for motor-operated type dryers were different from the international standards. According to the International Standard IEC 60335-1 with respect to this regulation, household appliances were classified into "heating and combined appliances" and "motor-operated appliances" depending on the presence of heat sources, motors, etc. The criteria of the power consumption tolerance were also based on this classification as motor-operated appliances were allowed three times of the tolerance compared to the heating and combined application due to the difference of driving methods.

2.370. Just like household appliances, clothes dryers were also classified into the two types depending on the driving methods. However, Saudi Arabia's regulation, SASO 2883, stipulated unnecessarily harsh conditions for the motor-operated compliance because it regulated the same power consumption tolerance for all types of dryers regardless of driving method. He said that the measure might cause unnecessary trade restrictions due to the difference from the international standard and the criteria of all countries implementing energy efficiency regulations for clothes dryers. Korea therefore asked Saudi Arabia's relevant ministries to harmonize the dryer power consumption tolerance with the international standard IEC 60335-1 as soon as possible. Regarding the Korean Government's requests, Saudi Arabia had informed Korea that the amendment process for its proposals would be taken and could be issued in the mid-2020s. Korean thanked Saudi Arabia for its efforts to harmonize the regulation with the international standard and hoped that the regulation could be modified as soon as possible. Relevant Saudi authorities were asked to share the timeline of the amendment process.

2.371. The representative of the Kingdom of Saudi Arabia indicated that the Saudi Standards, Metrology and Quality Organization (SASO) would modify Saudi standard SASO 2883 and would issue the amendment by the end of 2020.

2.2.3.51 European Union - Revised Draft EU Regulation on Ecological Design Requirements for External Power Supply (IMS ID 596[106])

2.372. The representative of China brought the Committee's attention to the suggestions made in previous meetings. Firstly, that the EU cancel the mandatory requirement to place "output power" on the nameplate; and, secondly, to extend the transitional period of these regulations.

2.373. The representative of the European Union noted that, on 5 October 2018, the EU submitted the notification in question allowing a 60-day comment period. Comments were received from China, Japan and Korea. The Ecodesign Regulatory Committee (ERC) met on 16 January to discuss and vote on the Commission proposal. Discussions in the regulatory committee resulted in the addition of an information requirement regarding the product nameplate, including the mentioning of the output power on the nameplate. In the context of comitology procedures (as set out in Regulation (EU) 182/2011), committee members representing EU Member States have the opportunity to suggest amendments to the Commission draft and shall endeavour to find solutions that command the widest possible support within the committee. The additional information on the product

[105] For previous statements follow the thread under IMS ID 605 (under dates raised and references).
[106] For previous statements follow the thread under IMS ID 596 (under dates raised and references).

nameplate was considered by Member States as a necessary measure to help market surveillance authorities to check these products and have the relevant information available on the spot. Moreover, it supported interoperability by helping end users to understand how an External Power Supply (EPS) could be used with other products, which were not sold together with that specific EPS, but that have a compatible connector. Finally, adding information on output power (i.e. one additional figure per output) was feasible even in the case of nameplates of small dimensions.

2.374. With regard to the transition period, Regulation 2019/1782 was published in the Official Journal of the EU on 25 October 2019 and would apply from 1 April 2020. The date of application was established based on the following arguments:

- products compliant with the new requirements are already largely present on the market, therefore, no major (technical) redesign efforts are needed; and
- this transitional period is considered optimal for contributing to the EU's commitment to increase with 32.5% its energy efficiency by 2030.

2.375. With regard to the test standards, the regulation was flexible and provided for the use of harmonized EU standards or other reliable, accurate and reproducible methods, which take into account the generally recognized state-of-the-art. Thus, the publication of European standards was not a precondition, as other state-of-the-art measurement methods existed (e.g. US Department of Energy test procedure for external power supplies).

2.2.3.52 China — National Standards on Limits of Volatile Organic Compounds for Furniture G/TBT/N/CHN/1094, G/TBT/N/CHN/1095, G/TBT/N/CHN/1096 (IMS ID 509[107])

2.376. The representative of the European Union referred the concerns raised in several previous TBT Committee meetings.[108] The EU understood that there would be one new mandatory standard pertaining to plastic furniture and asked whether China would notify this in accordance with the TBT Agreement. In addition, the EU requested confirmation on whether one of the announced standards, "Limits of harmful substances in furniture" (BD 28481:2012), would replace the previous notified standards to the WTO contained in G/TBT/N/CHN/1094, G/TBT/N/CHN/1095 and G/TBT/N/CHN/1096. To help facilitate the timely implementation of these furniture-related standards, the EU needed to know whether any other furniture groups, besides plastic furniture, would be covered by the new standards. The EU reiterated that it remained open to hold technical discussions in Brussels on issues pertaining to these and any other relevant furniture standards, as originally proposed by China in June 2017. To this end, the EU renewed its request for China to designate its contact point for the organization of such meeting. The EU once again respectfully reminded China to notify the announced standards in accordance with the TBT Agreement.

2.377. The representative of China informed the Committee that this standard was still in the drafting process, under the responsibility of the Ministry of Industry and Information Technology. The Ministry expected to complete the preparation of the draft standard in the first half of 2021, and it would then be submitted to the Standardization Administration of China for approval. During the development of the standard, China would adhere to the principles of openness and transparency, take ISO standards into account and solicit opinions and comments from all sectors of society, including opinions from foreign-invested enterprises and experts.

2.2.4 Reported progress on STCs

2.378. The representative of the Russian Federation thanked the Kingdom of Saudi Arabia for taking into account comments made by WTO Members and for the withdrawal of the measure, Kingdom of Saudi Arabia - Added Sugar Upper Limit in Some Food Products (IMS ID 589). Russia also thanked Viet Nam for the progress in solving market access issues.

[107] For previous statements follow the thread under IMS ID 509 (under dates raised and references).
[108] G/TBT/M/79, paras. 2.220-2.222.

2.2.5 Update on eAgenda

2.379. The Secretariat updated the Committee on eAgenda. This new platform made it faster and easier for Members to submit STCs for inclusion in the Annotated draft Agenda. It was intended to increase transparency and early notice on STCs that Members planned to raise. It also allowed Members to share statements with each other directly through the platform. eAgenda had been piloted by nine Members for the November meeting and for this meeting 14 Members that used eAgenda to raise their STCs.[109] The training session that had taken place in the margins of the Committee meeting had helped familiarize delegates with the functionalities of the system. Further training sessions would be organized at future meetings. Members were encouraged to use eAgenda and were welcome to provide any feedback or suggestions.

2.380. The representative of the United States said that the US statements would be uploaded to eAgenda and encouraged other Members to do the same in order to facilitate the exchange of statements. She also asked the Secretariat some technical questions regarding Members joining a concern on the floor and how this statement could be included in eAgenda.

2.381. The representatives of Australia, Switzerland and Canada confirmed that they would share their statements through eAgenda.

2.2.6 Exchange of Experiences

2.2.6.1 Good Regulatory Practice

2.382. The Moderator's report is contained in G/TBT/GEN/287.

2.2.6.2 Conformity Assessment Procedures

2.383. The Moderator's report is contained in G/TBT/GEN/288.

2.2.6.3 Follow-up on Committee Decisions and Recommendations

2.384. The Chairman invited delegations to continue the Committee's follow-up on the various recommendations adopted by the Committee, including during the Eighth Triennial Review (G/TBT/41). He recalled that a compilation of the Committee's decisions and recommendations was contained in G/TBT/1/Rev.14 (24 September 2019).

2.2.6.3.1 Conformity Assessment Procedures: Guidelines

2.385. On conformity assessment, the Chairman noted that there were five submissions on the table from the European Union, the United States, Australia, Japan and the latest was from Canada (JOB/TBT/358). There had been some discussion and exchange of views on the proposals at the Committee's past meetings, in June, September and November 2019 and, most recently, at the Committee's 30 January 2020 informal meeting. He said that these exchanges were reflected in the Aide-Memoire document circulated on 18 February 2020 (Section 2.2 of JOB/TBT/273/Rev.6). The Chairman noted that, at the January informal, Members had again highlighted the importance of other Members contributing submissions. In response, a few Members had said they were working on pending submissions. Members also exchanged some comments on the proposals on the table. The point was made that the guidelines should not only be built on written submissions, but also on past discussions on conformity assessment, including in the context of thematic sessions. In this respect, there had been a suggestion that the Secretariat prepare a background note summarizing past discussions of conformity assessment in the Committee, as an update of its 2017 background paper (JOB/TBT/224).

2.386. The representative of Canada introduced her delegation's submission (JOB/TBT/358). Canada acknowledged the efforts already put forward by other Members and had pulled together some common themes and ideas. It was Canada's hope that this would serve to highlight complementary ideas as well as advance some new ones. Canada also reiterated its support for the

[109] Australia, Brazil, China, Colombia, Costa Rica, Dominican Republic, the EU, Japan, the Republic of Korea, Malaysia, Mexico, New Zealand, Russian Federation and the US.

development of non-prescriptive guidelines on conformity assessment procedures and looked forward to further contributing to this process.

2.387. The representative of the European Union thanked Canada for its submission, which provided additional ideas and suggestions regarding the work on the guidelines and, as had been mentioned before, the EU encouraged other Members to contribute actively to this exercise – either through individual submissions or by participating in thematic sessions on conformity assessment. The EU reiterated his delegation's proposal to prepare an update of the 2017 Secretariat note so as to allow Members to have a complete overview of all discussions held on this topic to date.

2.388. The representative of the United States said that while her delegation could agree to a Secretariat update of the background paper, it had to be clear that some of the participants to the thematic sessions were not necessarily representative of a government view. These were sometimes experts from international organizations, or even from the private sector. While an update would be helpful, that should not mean any such submission would be automatically included in the *guidelines*, simply because such information had been included in the background paper.

2.389. The representative of China said that his delegation was preparing a proposal on the guidelines for conformity assessment procedures, hopefully to be submitted before the next Committee meeting. China looked forward to being involved in discussions of the guidelines.

2.390. The Chairman asked the Secretariat whether it would be prepared to update the background paper on conformity assessment for the next meeting of the Committee.

2.391. The Secretariat confirmed that it would be able to do so.

2.2.6.4 Transparency

2.392. The Chairman recalled that the Eighth Triennial Review included a series of recommendations on transparency (para. 6.19 of document G/TBT/41). Some of these had been discussed during the Committee's June 2019 transparency thematic session. The Moderator's report (G/TBT/GEN/265) provided a summary of these discussions. In addition, Section 3 of the Aide-Memoire (JOB/TBT/273/Rev.6) reflected all discussions and updates pertaining to the transparency recommendations. The Chairman recalled that, at its November 2019 meeting, the Committee had adopted a revised Addendum format. This had been circulated in document G/TBT/35/Rev.1 (21 November 2019). He was of the understanding that the Secretariat needed some time to incorporate the changes to the Addendum format in its information management systems, including the NSS, IMS and ePing. Nevertheless, the new format would be operational in advance of the May Committee meeting. The Chairman noted that there were several other pending Eighth Triennial Review recommendations related to transparency.

2.393. The representative of Switzerland recalled that ePing allowed for the publication of comments on notifications and of replies to such comments. It was therefore a valuable tool to implement the TBT Committee's recommendations with respect to the handling of comments and, in particular, with respect to the publication of comments and replies. Switzerland encouraged Members to use ePing for this purpose and to share information with respect to comments on notifications and replies on such comments. He clarified that Members could decide to publish their entire comment or reply or only parts of it. Members could also simply indicate that they had provided comments or replies or post links to existing websites where such comments and replies had been published. All this was now possible with the enhanced features in ePing. This increased transparency of the handling of comments and the publication of comments and replies allowed for more efficient discussions and solutions of STCs, better coordination between interested Members, and helped avoid unnecessary obstacles to trade. Switzerland asked about other Members' views on the publication of comments and replies to such comments and, specifically, on the use of ePing for this purpose. He stressed the importance of the Secretariat's continued efforts to ensure that ePing remained a useful tool for the publication of comments and replies. He also asked the Secretariat to keep the Committee informed of any new features and enhancements that contributed to the implementation of the Committee's recommendations with respect to the handling of comments.

2.394. The representative of Australia encouraged other Members to make use of the features Switzerland had just highlighted. All methods of encouraging transparency in this Committee were welcome.

2.395. The representative of the United States said that the US was very supportive of all of enhancements that had been made to ePing; the US strongly encouraged the WTO to continue enhancing that system and its integration with other TBT online systems, such as the TBT information management system (TBT IMS). The United States appreciated everything that the ITC, WTO and UNDESA had done to make the system as useful as it already was. ePing, it was emphasized, was a powerful tool that could strongly enhance transparency and facilitate information sharing – and could thus, potentially, contribute to resolving STCs. She encouraged the Secretariat to keep working on the development of the system.

2.396. The Secretariat updated the Committee on transparency-related recommendations of the Eighth Triennial Review. First, it was noted that, in relation to updating of enquiry point information, to date 118 Members had validated their enquiry point information and the annual review report in G/TBT/44 contained a list of these Members. Members were invited to follow up with the Secretariat if they had not already done so regarding these updates. Second, on the availability of final text on websites, 22 Members had responded and, once again, the annual review report contained a list of these websites. The Secretariat would welcome more Members to come forward with information regarding where they stored adopted final texts at the national level. Third, on ePing, at the time of the meeting, there were over 9,300 registered users. A walk-in session on ePing had been held on the margins of the Committee meeting to demonstrate key features and respond to queries from delegations. As had already been noted, the Eighth Triennial Review included a recommendation from Members to discuss the possibility of exchanging comments and replies related to notifications via ePing and enquiry points could already do so using the system. To date, TBT officials from 81 Members had been granted admin rights, which meant they were able to post comments on the system. One Member, Switzerland, had already done so. Members interested in further information on ePing were invited to contact the Secretariat.

2.2.6.5 Thematic sessions in 2020[110]

2.397. The Chairman asked Members about their views on the upcoming thematic sessions in 2020. At the last meeting in November, the Committee had agreed on the topics for 2020 thematic sessions, and these had been circulated in document JOB/TBT/350. To recall, at the May meeting, the Committee would discuss the topics of "Transparency" and "Technical Regulations" focusing on mandatory marking and labelling requirements on products. In October, the Committee would discuss "Conformity Assessment Procedures" and "Technical Assistance". For these latter two (for the October meeting), however, the focus had not yet been determined. He raised three matters for the Committee to consider:

a. Regarding **transparency**, the Chairman noted that one of the topics that the Committee had yet to tackle was how to improve information regarding product coverage in notifications, including with respect to use of HS and ICS codes. In this regard, the Chairman suggested that the thematic session on transparency could be an opportunity for the Committee to study this issue further.

b. Second, under **technical assistance** (but also related to transparency), there was another recommendation to develop a good practice guide on how to prepare a comment on a notification. Also here, he suggested that Members could kick-start this work and share their experiences in this regard during the transparency thematic session.

c. Finally, he sought delegations' input on the focus for the October thematic sessions – on conformity **assessment procedures** and **technical assistance**. Any suggestions, even preliminary, for a specific focus would be helpful to ensure effective planning.

2.398. The representative of Canada recalled that the Committee had agreed, in the 8th Triennial Review (para. 5.8(d) of G/TBT/41) that it would hold a workshop on the role of gender in the development of standards. Canada wished to confirm that the workshop would take place on the

[110] A tentative schedule of thematic sessions was circulated in document JOB/TBT/350.

margins of the next TBT Committee on Monday, 11 May 2020 (from 3pm) at the WTO building. The workshop would be divided into three parts. The first part would include presentations from Members outlining their respective efforts and experiences in advancing the issue of gender considerations and standards. The second part would present the perspective of certain intergovernmental organizations that have done work on the issue of gender and standards. The third part would be focused on how the application of gender considerations in the development of standards had translated into the real world. The holding of this event fell within the spirit of the Joint Declaration on Trade and Women's Economic Empowerment, endorsed at MC11 in Buenos Aires, in December 2017.

2.399. The representative of the European Union referred to the topic on technical regulations with particular focus on mandatory marking and labelling. The EU acknowledged that the matter remained sensitive – indeed, marking and labelling requirements figured in a number of STCs the Committee had just discussed. A broader, horizontal discussion was therefore timely. The objective of the thematic session was thus to promote measures and practices that enabled producers to fulfil the legitimate objectives pursued by mandatory marking and labelling requirements in the least costly and burdensome way possible. In this context, the EU encouraged Members to actively participate in the thematic session so that it could be used as an opportunity to showcase different approaches, measures and practices that facilitated the compliance with mandatory marking and labelling requirements from a horizontal or sectoral perspective.

2.400. The representative of United States noted, with respect to the idea on how best to develop a model comment (in the area of transparency) – that the Chair's idea had a lot of merit – especially for the users of the notification system, including industry. There was a need, however, to consider how to structure the discussion in the Committee: perhaps it could be based on a template? There were many stakeholders that would welcome this kind of initiative from the WTO and sharing practices could help make comments better. This was something the Committee could perhaps discuss at the informal meeting.

3 AGENDA ITEM 3: TWENTY-FIFTH ANNUAL REVIEW

3.1. The Secretariat introduced the Committee's Annual Review (G/TBT/44). He made two remarks. On **notifications**, the Committee had received over 3,300 notifications in 2019 – a record, and they had been submitted by 93 Members. It was notable that many notifications came from African and Latin American countries. The share of notifications that comes from developing Members continues to increase; this was not more than 60% of all notifications (in 2019). On **specific trade concerns** (STCs), 2019 was also a record year: 185 STCs had been discussed, and again developing countries were increasingly active in raising concerns. The large majority of STCs raised in the Committee were about *proposed* measures – which put a finger on a distinctive feature of this Committee (as well as SPS): that delegations were discussing *draft* measures, these had not actually entered into force. This was an effective way of addressing trade friction.

3.2. The Committee took note of the report.

4 AGENDA ITEM 4: TECHNICAL COOPERATION ACTIVITIES

4.1. The Secretariat provided a report on TBT technical assistance activities in 2019. Similar to previous years, in 2019, the TBT TA activities requested to, and provided by, the WTO Secretariat continued to be significant. In 2019, the Secretariat had organized, or otherwise participated in, a total of 37 TBT TA activities in various formats. In 2019, there had been a strong demand for national TBT TA activities (13). The Secretariat had also organized a one-week TBT transparency course back-to-back with the June Committee meetings. An Advanced Short Course on TBT had been held in November 2019 back-to-back with the regular meetings. Finally, and also in 2019, in response to requests for more offerings in French, a regional TBT workshop for Francophone African countries had been organized. It was also noted that, in 2019, there had been a marked demand for training activities on TBT transparency in general, and ePing in particular.

4.2. Regarding e-Ping, the Secretariat continued to include ePing in its capacity-building activities, sometimes through brief overview presentations and sometimes through more detailed hands-on training sessions, depending on the context, beneficiaries and their requests. The Secretariat had also liaised with agencies such as the ITC, ISO, Standards Alliance and UNDESA in the delivery of

capacity-building on transparency and ePing. Tailored training materials had been provided to interested Enquiry Points for them to run training sessions for their domestic stakeholders. In addition, thanks to improvements to in-house IT tools, the Secretariat was now in a better position to provide training through video-conference.

5 AGENDA ITEM 5: UPDATING BY OBSERVERS

5.1. Updates on activities relevant to the TBT Committee were provided by the following observer organizations: ARSO, UNECE, CODEX, ISO, IEC and BIPM.[111]

5.2. The representative of Turkey reiterated his country's support for granting observer status to the Standards and Metrology Institute for the Islamic Countries (SMIIC) in the TBT Committee. This was supported by the representative of Jordan.

6 AGENDA ITEM 6: ELECTION OF CHAIRPERSON

6.1. The Chairman noted that Members had not yet finalized the selection process for the Chairperson of the Council for Trade in Goods (CTG) and its subsidiary bodies, including the TBT Committee. This meant that this agenda item would be suspended at the current meeting and that the Committee would revert to it at the next regular meeting, just after adoption of the agenda.

7 AGENDA ITEM 7: OTHER BUSINESS

7.1. The Chairman said that he had received a communication from the Chairperson of the CTG. This communication noted that, given that the Ministerial Conference was taking place in June 2020, the Chairperson of the General Council would like to submit to the Ministerial Conference, in addition to the 2019 Annual Report, a brief update describing the developments in its subsidiary bodies covering the first few months of 2020. To this end, the Chairperson of the CTG had invited the TBT Chairperson to prepare, under his own responsibility, a brief update to the developments in the work of the Committee. The Chairman indicated his intention to submit to the CTG a brief and factual update of the work of the TBT Committee during the first few months of 2020. Members would be duly informed of this update.

8 AGENDA ITEM 8: DATE OF NEXT MEETING

8.1. The Chairman said that the WTO had marked its 25th anniversary in 2019. The Secretariat intended to organize, and webcast, an event commemorating the original TBT Agreement's 40th anniversary on Friday, 30 October. This would follow the last day of the Committee's regular meeting in October. He recalled that this event had originally been planned for the end of 2019, on 15 November 2019, but had had to be postponed because more time was needed for the November thematic sessions. To repeat, the Secretariat now intended to organize this event in the morning of Friday, 30 October 2020, immediately after the last day of the formal meeting. A detailed programme would follow.

8.2. Regarding dates, the Chairman drew Members' attention to the tentative dates for 2021 (JOB/TBT/364) and recalled that the next regular meeting of the Committee is scheduled to take place on 13-14 May 2020 and would be preceded by two thematic sessions on 12 May.

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[111] G/TBT/GEN/289, G/TBT/GEN/290, G/TBT/GEN/291 and G/TBT/GEN/292.