

## Reunión del Comité OTC del 22 de Marzo de 2005

### INFORME NO OFICIAL

#### *A) Preocupaciones comerciales específicas*

#### *B) Cuestiones relacionadas con los derechos de propiedad intelectual en la normalización.*

#### *A) Preocupaciones comerciales específicas*

I. Corea: Importación de cabezas de pescado

II. Indonesia: (G/TBT/N/IDN/13) Neumáticos: Proyecto de Decreto del Ministro de Industria y Comercio sobre la Norma nacional obligatoria de Indonesia aplicable a los neumáticos.

III. Unión Europea (G/TBT/N/EEC/52 and Add.1) Registro, evaluación y autorización de Químicos (REACH)

IV. Unión Europea: Reglamento relativo a determinados productos vitivinícolas (G/TBT/N/EEC/15, Corr. 1-2 y G/TBT/N/EEC/57).

V. Suiza (G/TBT/N/CHE/39) Proyecto de Orden relativa a la determinación del nivel de emisión de partículas de los vehículos de pasajeros con motor de encendido por compresión.

IV. Estados Unidos: Medida relativa a los encendedores recargables.

VII CE enmienda a juguetes/ftalatos no notificada

VIII China: Bebidas alcohólicas preenvasadas (G/TBT/N/CHN/72)

IX. Estados Unidos de América: (G/TBT/N/USA/83 y Add.1) Etiquetado de pescado y marisco (G/TBT/N/USA/83 y Add.1)

X. Méjico: Proyecto de Norma Oficial Mexicana PROY-NOM-002-SCFI-2003. "Productos preenvasados- Contenido neto- Tolerancias y métodos de verificación"(G/TBT/N/MEX/95)

XI. México: Norma relativa a los artículos de alfarería vidriada, cerámica vidriada y porcelana (G/TBT/N/MEX/69).

XII. Perú - Calzado impermeable (G/TBT/N/PER/4)

#### *B) Cuestiones relacionadas con los derechos de propiedad intelectual en la normalización.*

En cuanto a la preparación del IV Examen Trienal, algunos Miembros propusieron el tratamiento de temas relacionados con la aplicación y administración del Acuerdo; las buenas prácticas de reglamentación; la transparencia; la evaluación de la conformidad y la asistencia técnica.

El tema quizás más interesante fue propuesto por la R. P. China y refirió a las cuestiones relacionadas con los derechos de propiedad intelectual en la normalización.

Se agrega un informe no oficial sobre el tema:

Brief introduction to Chinese concern on Intellectual Property Issues in the Process of  
Standardization to be raised in WTO/TBT Triennial Review

WTO/TBT Agreement points out in its Preamble that, international standards and conformity assessment systems can make important contribution to further the objectives of GATT 1994 by improving the efficiency of production and facilitating the conduct of international trade. Article 2.4 of TBT Agreement stipulates that "Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulation....."

In the context of TBT Agreement implementation, especially the core concept and stipulation of the Agreement that Members shall adopt international standards as much as allowed, it is necessary that international standards development process be efficient enough to achieve international standards of good quality in a timely manner. It is also important that difficulties Members come across in adopting international standards be fully taken care of so as to facilitate Members' adoption international standards, and therefore the implementation of TBT Agreement.

As international and national standardization bodies have already noticed, and as Members are fully aware of, to enhance the efficiency of international standards development and to facilitate Members' adoption of international standards, patented technologies which are unavoidable to meet the objective of concerned standards must be treated properly so as to strike a right balance between the needs of international standard development and implementation and adequate and fair protection for IPR.

Therefore, Chinese government draws attention of TBT Committee to intellectual property issues in the process of standardization. Chinese government perceives it is necessary that TBT Committee hold discussion in the framework of Triennial Review to explore proper methods and policies for this matter, so as to promote the development and implementation of international standards, and therefore the implementation of TBT Agreement.

International and national standardization bodies like ISO, IEC, ITU, ANSI, CENNELC, ETSI and etc have established policies concerning patented technologies in standardization. In their policies, it is deemed desirable that fullest information on patented technologies or those in patent application should be disclosed. It is also stipulated that once a patented technology has been part of the standard, patent holders are required to declare that they would accept RAND principle in patent usage negotiation, that is, IPR holders shall negotiate with applicants for IPR usage on reasonable and nondiscriminatory terms and conditions. Those policies provide us with a good technical base and a roadmap we are to follow.

However, limited by their function and authorization thereof, there are in standardization bodies' IPR policies many issues that could not be adequately solved. Though information disclosure is important, as they have declared, standardization bodies shall not be responsible for identifying those patented rights. There is either concrete measures to encourage IPR holders to disclose related information. For another example, there are no remedy provisions once IPR holders would not make declaration of accepting RAND principle. What standardization bodies could do is mostly to withdraw or redraft the standard in question. Aside from those, there are also many technical issues to be explored further. At what stage shall concerned information be disclosed? Who shall be responsible for information disclosure? Who shall be responsible for RAND term arbitration? .....

TBT Committee is not supposed to be responsible for all of the above complex questions. However, since TBT Agreement encourages Members to adopt international standards, and those issues are important for efficiency and quality of international standards development, it justifies that TBT Committee gives due consideration to IPR issues in standardization.

The aim China raised the IPR in standardization concern is to enhance efficiency of international standardization process and to facilitate the implementation of TBT Agreement, rather than to discuss IPR protection. Therefore, we raise this concern under TBT framework instead of TRIPs.

Proper IPR policies in standardization are important for the implementation of TBT Agreement, it justifies that TBT Committee take up the discussion on this issue. That is the main idea of our submission. As for the detailed objectives and methods, i.e. where this discussion goes, what it plans to achieve, Members are free to put forward any issues they perceive necessary.

Issues about IPR in standardization are complex in nature. One could not expect arriving at an answer within a couple of years. Therefore, we request TBT Committee take up this issue as soon as possible in its Triennial Review. We believe that, taking advantage of discussion characters of Triennial Review, in contrast with negotiation characters of other working mechanism of WTO, Members would be more aware of the importance of discussions on this issue in WTO and have more and clearer idea as for concrete proposals on practical methods and polices on IPR and standardization issues. China would do our best and would closely work with other Members in promoting this discussion.