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Committee on Technical Barriers to Trade

MINUTES OF THE MEETING OF 13-14 MAY 2020: WRITTEN PROCEDURE ON SPECIFIC TRADE CONCERNS

CHAIRMAN: MR SUNG HWA JANG

Note by the Secretariat[1]

On 13 and 14 May 2020, the TBT Committee held, on an exceptional basis due to the COVID-19 pandemic, its meeting by written procedure. This was not a virtual meeting; it was an exchange of statements on specific trade concerns (STCs) using eAgenda. Remaining regular agenda items of the Committee (those other than STCs), as well as the planned thematic sessions for May, will be reverted to at the Committee's next meeting, currently scheduled for 28-29 October 2020. A timeline for the written procedure was circulated on 6 April 2020 in JOB/TBT/365; the Airgram was issued on 15 April (WTO/AIR/TBT/17); and, the Annotated draft Agenda was circulated on 28 April (JOB/TBT/366). According to the timeline, the written procedure took place over three phases: Annotated draft Agenda (Phase 1); Written Procedure (Phase 2); and, Statements and Minutes (Phase 3). The minutes of this meeting compile all statements uploaded to eAgenda by 28 May 2020.

1 SPECIFIC TRADE CONCERNS

1.1 Withdrawn Concerns

1.1. The following STCs were withdrawn from the agenda at the request of the concerned Member.

a. Indonesia - Recommendations to Import Horticulture Products (RIPH)

b. Brazil - Ministry of Agriculture, Livestock and Food Supply – MAPA Ordinance 79, of 13 May 2019 establishing a public consultation to amend the Technical Regulation 67, 5 November 2018 regarding the procedures and requirements for export and import certification of beverages, fermented acetic, wines and wine and grapes derived products (ID 597)

[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.

1.2 New Specific Trade Concerns

1.2.1 Bangladesh – Hazardous Waste (E-waste) Management Rules, 2019, G/TBT/N/BGD/3 (IMS ID 620[2])

1.2. The delegation of Canada provided the following statement. Canada welcomes this opportunity to discuss its concerns on transparency and clarity regarding G/TBT/N/BGD/3, *Hazardous Waste (E-Waste) Management Rules, 2019*, which Bangladesh notified to WTO Members on 20 February 2020. In its initial comments submitted on 16 April 2020, as well as on two previous occasions in March 2020, Canada requested that Bangladesh extend the comment period of the notification to 60 days and share the full regulatory text of the *Management Rules* with Canada. Canada would like to take this opportunity to reiterate these requests and ask Bangladesh to share the full regulatory text with other WTO Members and stakeholders to foster greater transparency and clarity on the *Management Rules*. While Canada trusts that Bangladesh is currently giving due consideration to our comments, we nevertheless use this opportunity to highlight some of our questions and concerns on the *Management Rules*. Canadian stakeholders have voiced various concerns regarding the lack of clarity of the proposed *Management Rules* and are requesting that Bangladesh provide additional supportive documentation on the new measure, which they consider as challenging to understand. Additional explanations would be beneficial on the scope of the measure, the selection criteria for the substances identified as "hazardous", and the rationale behind the determination of the threshold limits for each of them.

1.3. Canada would further request that Bangladesh clarify specific aspects of the *Management Rules*, notably regarding the method and rationale Bangladesh has followed to elaborate the grouping in Schedule 3. Some of these groups contain a broad range of substances, each with their own level of risks and hazard profiles. Some of these may not require to be grouped under the same threshold limit or be included in Schedule 3 altogether. This includes, for example, the broad group of "Mineral Wool" or the joint entry for "Nickel and Cadmium/Cadmium oxide/Cadmium Sulphide". We also understand that some substances serve a specific purpose in the design of electronic products, like the flame retardant *Tetrabromobisphenol-A*, and would like to know more on the rationale for their inclusion in Schedule 3. Canada would also appreciate additional information on how Bangladesh will be approaching enforcement of the *Management Rules*. In light of the various requests for greater engagement on this issue, Canada asks that Bangladesh delays the adoption and entry into force of the *Management Rules*, and takes the time necessary to provide greater transparency so that all affected parties may assess the potential impacts of the measure and provide substantial comments for Bangladesh's consideration in avoiding unnecessary impacts on trade. Canada would also strongly encourage Bangladesh to give due consideration to any additional inputs or scientific evidence provided by stakeholders to ensure that the *Management Rules* are not more trade restrictive than necessary to meet the objectives of Bangladesh, specifically with regards to the categories and threshold limits of Schedule 3. This would help ensuring that the new measure does not generate unnecessary complexity and uncertainty in global trade. Canada thanks Bangladesh for its future engagement on this specific trade concern (STC) and looks forward to receiving written answers on our letter of comments sent on 16 April 2020.

1.4. The delegation of the United States provided the following statement. The United States thanks Bangladesh for providing notification of the Hazardous Waste (E-waste) Management Rules, 2019, including a summary, excerpted translation of two clauses, and a threshold limits schedule for the management of electronic waste products. However, we note that because Bangladesh did not notify the entire draft text of the proposed e-waste rules, stakeholders cannot reconcile the changes from previous versions. We ask that Bangladesh notify the entire updated measure to the WTO and provide a public comment period of at least 60 days. Bangladesh should consider stakeholders' comments in preparing revisions before implementing new e-waste rules. Can Bangladesh provide us with information as to when these draft e-waste rules come into force? Without additional information, we also remain concerned about the unintended consequences of this new policy as it may ban products ranging from television sets to life-saving medical devices and critical medical equipment such as lead shielding for x-rays. Additionally, the import of used or refurbished electrical and electronic equipment also appears to be banned by this measure. There is no indication whether industry will be able to import refurbished and repaired electrical and electronic equipment. This practice could extend the lifetime of millions of dollars of valuable equipment. We encourage you to speak with the relevant ministries to ensure that the rules accomplish the intended goals of

[2] For previous statements follow the thread under IMS ID 620 (under dates raised and references).

protecting the health and welfare of Bangladeshi citizens, while not restricting the access of consumers in Bangladesh to the global supply of goods and products.

1.5. The delegation of the Russian Federation provided the following statement. On 20 February 2020, Bangladesh notified its Hazardous Waste (E-Waste) Management Rules, 2009 (G/TBT/N/BGD/3) to the WTO. Following notification, on 10 March 2020, Russia sent comments to Bangladesh's TBT Enquiry Point. We thank Bangladesh for the opportunity to comment on its draft Rules. Although Russia believes that our comments are being considered and will be replied to soon, we would like to underline some of our concerns. Specifically, Schedule 3 of the draft Rules establishes a list of hazardous substances. No explanation is provided as to what criteria were used to identify substances as hazardous. Schedule 3 also sets a threshold limit for each hazardous substance. Within five years from the enactment of the draft Rules, specified hazardous substances in electrical and electronic products shall be below threshold limits provided in the Schedule. The Russian Federation notes that Schedule 3 lists nickel metal as hazardous and includes it in a group with cadmium and two cadmium compounds. This grouping appears to be incorrect due to significant differences between nickel and cadmium in terms of substance identity and hazard profile. The maximum nickel and cadmium content for products that fall within the scope of the draft Rules is set at an extremely low level, namely at 0.1%. For this reason, the Russian Federation requests that nickel should be considered separately and moreover should be entirely removed from the draft Rules.

1.6. Russia emphasizes that the draft Rules seem to effectively prevent the use of high-quality nickel-containing stainless steel, which enhances the longevity of electronic equipment. Also, stainless steel plays an important role in medical equipment, as the material not only withstands corrosion, but is also easy to clean and to disinfect. The measure at issue may affect the use of nickel coatings, which play an essential role in many electrical and electronic products. The Russian Federation stresses that nickel is not classified by the International Agency for Research on Cancer and any major WTO Member as carcinogen, mutagen and reprotoxine (CMR) of categories 1A or 1B substance and it has no other hazardous properties that would suggest singling it out in a short list of hazardous substances that should be avoided in electrical and electronic products. In case of adoption of the draft legislation, we note the contradiction between the measure itself, and its declared objective to tackle the problem of e-waste. Without the use of nickel-containing stainless steel, the life span of many of the products that fall within the scope of Bangladesh's regulation would be shorter, thus aggravating e-waste problem.

1.7. Russia considers the measure to be more trade restrictive than necessary, as the inclusion of nickel in the list is not scientifically justified and has the potential to create unnecessary obstacles to international trade in a wide range of nickel-containing products. Besides, according to the notification (G/TBT/N/BGD/3), the period for comments in respect of the draft Rules was limited to March 2020, but the measure was notified on 20 February 2020. Russia kindly reminds Bangladesh that in accordance with Article 2.9 of the TBT Agreement, Members should provide the period for comments on draft technical regulations not less than 60 days. Bearing all these factors in mind, the Russian Federation suggests that Bangladesh: (i) make a revision of the document to remove nickel from the Schedule 3 as it is not classified as CMR 1A or 1B; (ii) provide Members of the WTO with the criteria used to include substances into the Schedule 3 in order to improve transparency and justification of the list; (iii) use appropriate methodologies approved at the international level when forming the list of hazardous wastes, including a proper hazard and feasibility assessment; (iv) conduct socio-economic assessment for the consequences of the draft measure for Bangladesh's and global economy; (v) take into consideration legitimate objectives when elaborating technical regulations, as well as conditions that require scientific justification under Article 2.2 of the TBT Agreement; (vi) follow the transparency provisions under Article 2.9 of the TBT Agreement; and (vii) respond to the Russian comments sent to Bangladesh's TBT Enquiry Point in March 2020. We would like to emphasize that Russia remains open for bilateral consultations with Bangladesh on this issue.

1.8. The delegation of the European Union provided the following statement. The European Union has concerns on the hazardous waste management rules. We sent written comments to Bangladesh in April 2020 and are looking forward to receiving written replies before the adoption of the notified drafts. Our main point is that the notified draft restricts use of substances that are not restricted by any existing international legislation and thus creates more restrictions to trade than necessary. The EU would be grateful if the above-mentioned comments could be taken into account and replied to before adoption of the notified draft.

1.9. In response, the delegation of Bangladesh provided the following statement. Bangladesh thanks Members for the concerns raised, which are still being reviewed by our competent authorities in capital. We will revert back once we have more detailed replies. Bangladesh has extended the comment period on notification G/TBT/N/BGD/3 until 30 June 2020, notified in G/TBT/N/BGD/3/Add.1.

1.2.2 Viet Nam – Draft Circular replacing the Circular No.05/2019/TT-BTTTT dated 9 July 2019 specifying the list of products and goods with unsafe capability under management responsibility of Ministry of Information and Communications, G/TBT/N/VNM/161 (IMS ID 621[3])

1.10. The delegation of the United States provided the following statement. The United States thanks Viet Nam for its recent notification of the draft Circular "Regulations on list of products and goods liable to cause unsafety under the governance of the Ministry of Information and Communications (MIC)" as G/TBT/N/VNM/161. We understand this circular replaces Circular No. 05/2019/TT-BTTT. The US Information Technology Industry Council (ITIC) provided Viet Nam comments through MIC and the US Enquiry Point on 23 March 2020. We received substantive responses on 17 March 2020. ITIC again responded on 27 April 2020. We appreciate the robust discussion of this measure through the enquiry points. Our understanding is the draft Circular will go into effect on 1 July 2020, less than two months after Viet Nam plans to release the final measure on 10 May 2020. This short transition period does not allow a reasonable interval for stakeholders to come into compliance with the requirements and will likely cause significant delays to international trade of impacted products. We ask Viet Nam to implement at least a one-year transition period after the measure is finalized to allow stakeholders to adapt their products and methods of production to the new requirements.

1.11. We also understand that the draft Circular may invalidate existing Type Approval (TA) and Suppliers' Declarations of Conformity (SDoC) certificates. Can Viet Nam please confirm our understanding? We would request that Viet Nam continue to recognize the validity of existing TA and SDoC certificates until their expiration. Invalidation of existing certificates would be costly and overly burdensome for companies that have already spent time and money on the required existing certifications for Viet Nam. Our understanding from US industry is that Viet Nam does not currently have any established laboratories qualified to test a number of products listed in the draft Circular. This situation would make compliance with the regulations impossible within the current specified transition period and create a significant testing backlog. When does Viet Nam expect a majority of its existing approved laboratories to be qualified to conduct this scope of testing?

1.12. In response, the delegation of Viet Nam provided the following statement. The draft Circular amending and supplementing a number of articles of Circular No.05/2019/TT-BTTTT was notified to WTO Members in notification G/TBT/N/VNM/161 with 60 days granted for comments. In this draft Circular, the list of goods liable to cause unsafety was updated with the technical regulations QCVN 86:2019/BTTTT, which was promulgated in November 2019 and shall enter into force on 1 July 2020. This national technical regulation was previously notified to WTO on 25 March 2019 in notification G/TBT/N/VNM/138 with 60 days granted for comments. Since then Viet Nam had not received any comment from WTO Members. Therefore, the enterprises have had more than six months from the date of promulgation of the above-mentioned technical regulation to prepare for application and TBT Agreement Article 2.12 was met in this case. Viet Nam will follow and designate and recognize the competent testing labs under the new technical regulation before the date of its entry into force. After this date, directions will be given to specific cases where the competence of testing labs is not satisfactory. Meanwhile, Viet Nam has also recommended foreign testing labs (including those from US) to have them registered for recognition under a Mutual Recognition Agreement (MRA).

1.2.3 India – Draft Chemicals (Management and Safety) Rules, 2020 (IMS ID 622[4])

1.13. The delegation of the United States provided the following statement. The United States has repeatedly asked India to notify its Draft Chemicals (Management and Safety) Rules to the WTO. The first request was on 20 December 2019, and we again requested notification on 23 March 2020. When will India notify this measure? On 6 March, the US Enquiry Point submitted comments from the US industry concerning this draft measure. The Indian Enquiry Point has acknowledged these

[3] For previous statements follow the thread under IMS ID 621 (under dates raised and references).
[4] For previous statements follow the thread under IMS ID 622 (under dates raised and references).

comments. We note industry's concerns that India has included in the Draft Rules a list of 750 chemicals, classified as "Priority Substances," without any public consultation. US industry is also concerned about the potential trade disruptions that may result from the criteria used by the Draft Rules' risk management system. It bases the identification of Priority Substances on the mere presence of certain chemicals, rather than on assessments of actual risk of chemical exposure to humans or the environment. We urge India to consider risk-based approaches in identifying and prioritizing chemicals for regulatory action. We note that the broad criteria of the Draft Rules' proposed risk management system could affect many products already regulated in India under other relevant regulations, such as cosmetics, pharmaceuticals, and agricultural pesticides. Has India considered exemptions for other affected products (e.g. polymers) controlled under other regulations?

1.14. We request that India clarify stakeholder engagement as outlined in Chapters II and III of the Draft Rules. For example, how will the Chemistry Division work with manufacturers to designate a chemical as a "Substance for Registration?" We also ask that India provide further clarification as to how it defines intermediates. Do the same registration and testing requirements apply to intermediates that are restricted in Schedule VI? We observe that when additional testing is required to fulfil data requirements for substance registration, the Draft Rules mandate that such testing occur in India. We request India ensure that results of conformity assessment procedures conducted outside of India are also accepted to fulfil these data requirements. Industry notes that it needs a grace period of more than six months after final adoption of the Draft Rules in order to adapt products and methods of production to the new requirements. Additionally, due to the broad scope of the Draft Rules, we request that India consider launching its system in phases, working with industry stakeholders to determine a reasonable timeframe for phased implementation.

1.15. In response, the delegation of India provided the following statement. India thanks the United States for their interest in India's Draft Chemicals (Management and Safety) Rules, 2020. India would like to inform the Members that the Draft Chemicals (Management and Safety) Rules 2020 is yet to be finalized. It has been circulated among the industry associations as part of extensive stakeholders' consultation, which is completely an internal exercise. Once the draft is finalized, it will be notified to WTO TBT Committee for circulation to Members, providing them opportunities to comment within a reasonable time period.

1.2.4 Colombia – Issuing the Technical Regulation on rational energy-use labelling for certain types of electrical and gas end-use equipment, for marketing in Colombia, G/TBT/N/COL/212/Add.6 (IMS ID 623[5])

1.16. The delegation of the Republic of Korea provided the following statement. Korea would like to make some comments regarding this regulation as follow. With regard to the amended provisions for air conditioners, Korea understands that the criteria which have been previously adopted separately by product group (Room air conditioner and Compact terminal equipment / Air conditioning equipment) will be integrated into one and slightly stronger criteria will be applied by the timeframe. The first criteria will be applied from the date of entry (not determined) to 31 December 2021 (hereinafter called "1st stage"), and stronger criteria will be applied from 1 January 2022 (hereinafter called "2nd stage"). Air conditioner manufacturers and distributors have a concern regarding the application schedule of this regulation. As the effective date has not been determined yet, effective date of regulation is expected to be after the second half of 2020. In this case, the date of enforcement will be after the second half of 2021, thus the criteria of 1st stage will be applied in a short period of less than six months from the enforcement date to 31 December 2021. The new criteria will be applied after 1 January 2022. In such a case, the company might have an administrative and costly burden because of changing the label twice in a short period. Changing technical regulation twice in a short period is considered undesirable for the people of Colombia in terms of operating a stable system. Therefore, please let us know if the Colombian government has any information on the effective date of this regulation, and Korea would like to know an alternative to this matter if the effective date is delayed as stated above.

1.17. The delegation of the United States provided the following statement. The United States thanks Colombia for notifying its draft technical regulation on "Rational Energy Use Labelling for Certain Types of Electrical and Gas End Use Equipment, for Marketing in Colombia", as G/TBT/N/COL/212/Add.6. We notice that the draft resolution references "AHRI Standard 1360" for

[5] For previous statements follow the thread under IMS ID 623 (under dates raised and references).

the testing of the "Datacom Cooling" product. We applaud Colombia for referencing this international standard. However, we are concerned that the draft resolution lacks reference to the acceptance of international standards, such as other AHRI standards, for other products covered in this resolution. We urge Colombia to revise the resolution to expand the acceptance of international standards and avoid duplicative testing and unnecessary delays to international trade. The United States is concerned that by not referencing the other international standards, products demonstrated to be of high efficiency and quality are either delayed or denied market entry, thus reducing consumer choices and compromising Colombia's energy efficiency goals.

1.18. In response, the delegation of Colombia provided the following statement. We should like to thank the Republic of Korea and the United States for the information and comments relating to the draft resolution amending labelling requirements and clarifying a number of requirements established in the general annex to the technical regulations on energy efficiency labelling. In this connection, the Colombian Ministry of Mining and Energy states that the draft amendment to the technical regulations on labelling seeks to harmonize energy efficiency ranges for air conditioners, in order to facilitate compliance with technical requirements, and the entry into force of the new reference values has been set for 1 January 2022. As regards the concern raised by the Republic of Korea on the requirement of two labels for a single air conditioning product over a short period, Colombia states that, due to the health emergency caused by COVID-19 and other factors mentioned by the parties interested in updating the technical regulations on labelling, a date of issue for the regulatory amendment cannot be determined at this time. In response to the concerns of the Republic of Korea, the Ministry of Mining and Energy will evaluate the alternative of amending the proposed dates for the change in energy efficiency ranges. Finally, we should like to clarify that the change in reference values does not necessarily mean that tests or other related procedures will have to be performed again to demonstrate conformity. As long as the conditions are the same as for the first label, the product may be reclassified (where applicable) using the same results according to the new energy efficiency ranges.

1.2.5 Russian Federation; Kazakhstan; Kyrgyz Republic; Armenia – Requirements for energy efficiency of energy related devices (IMS ID 624[6])

1.19. The delegation of the Republic of Korea provided the following statement. Korea would like to make some comments regarding this regulation as follows. The Decision Nr 114, adopted by the Decision of the Council of Eurasian Economic Commission was released via the EAEU webpage on 8 August 2019. WTO Member states, however, had no opportunity to submit their comments because Russia, Kazakhstan, Kyrgyz and Armenia failed to comply with the obligation of the WTO TBT notification. Regarding the regulation, Korea has concerns over the compliance with the WTO TBT Agreement and specific regulations for a few devices, and would like to make requests as follows. The first is with regards to the WTO TBT Agreement. Four of the EAEU member States, which are also WTO Members, shall comply with the notification procedure to collect comments from all of the WTO Members under the WTO TBT Agreement. Therefore, in accordance with Article 2.9 of the WTO TBT Agreement, we request a period of at least 60 days for the notification procedure, during which time the WTO Member stakeholders may express their opinions regarding the Decision.

1.20. The second concerns requests following a review by our side. Korea understands that the Decision reflects the previous version of internationally recognized EU standards and an amendment draft of the EU standards. In this regard, Korea is concerned that the level of some regulations by item is excessive or the timeline before the date of entry into effect is too tight. Therefore, Korea would like to make the following four (4) requests listed below:

a. *Televisions (Annex 4)*: All types of television displays will enter into effect in September 2021. However, manufacturers are having difficulties in complying with this Decision for products such as micro LED and high resolution (4K+) displays which is required very new technologies. The recently revised EU regulation will enter into effect from 2023 to encourage the commercialization of micro LED display products. Therefore, in line with international standards, we ask for the date of enforcement to be no earlier than 2023.

b. *Standby mode electric power consumption (Annex 5)*: The energy consumption of equipment in standby mode is excessively higher than other major countries (e.g. 0.5 W in the US and EU countries) and applied discriminatively to different working mechanisms

[6] For previous statements follow the thread under IMS ID 624 (under dates raised and references).

(0.1 W for automatic and 0.3 W for mechanical). We therefore ask for an explanation of the scientific grounds as to why the standby power criteria have been set higher than the international level (0.5 W).

c. *Vacuum cleaners (Annex 16)*: As the test standard for vacuum cleaners is currently unclear and the international standard is still in the stage of revision, no country has enforced any test standard for vacuum cleaners at the present time. It will be necessary to enforce this provision once the corresponding international standard has been released.

d. *Labelling*: Although labelling shall be written in the Russian language, it is also required to be written in state language at the request of a member State. This could entail a burden for businesses. The EU and GCC Standardisation Organisation (GSO) member States do not regulate the energy label to be written in their local language. Korea therefore asks that a single unitary language for labelling within the EAEU member States.

1.21. Lastly, it would be appreciated if you inform us of any information regarding confirmation of the final version or any additions or changes to the procedures and timeline prior to enforcing the Decision.

1.22. In response, the delegation of the Russian Federation provided the following statement. The Russian Federation as well as Kazakhstan, Armenia and Kyrgyz Republic would like to thank Korea for its interest in the Eurasian Economic Union's requirements on energy efficiency for energy-using devices. The Technical Regulation "On requirements on energy efficiency for energy-using devices" was adopted on the 8 August 2019 and enters into force upon adoption of the decision of EAEU Council setting labelling requirements for energy-using devices, but not earlier than 1 September 2021. The technical regulation applies to energy-using devices, including refrigerators, TV sets, electric bulbs, household and office equipment, etc. The document has been drafted in close cooperation with the business community, including multinational companies producing these devices. Korean companies were also involved in this process. All requests voiced by Korea will be conveyed to the Eurasian Economic Commission for proper consideration with the EAEU's member States. The Russian Federation as well as other members of the EAEU are open for consultations with the Korean delegation on these issues.

1.2.6 United States – Guidance on Federal Conformity Assessment Activities, G/TBT/N/USA/1587 (IMS ID 625[7])

1.23. The delegation of the European Union provided the following statement. The European Union would like to signal its concerns with regard to the proposed revision to the Guidance on Federal Conformity Assessment Activities (15 CFR Part 287) by the National Institute of Standards and Technology (NIST), notified on 4 March 2020. Specifically, first, the language of the Guidance seems to suggest that agencies may deviate from the NIST Guidance on Federal Conformity Assessment Activities in the exercise of their regulatory competences. Could the US clarify if this assumption is correct? If so, could the US further clarify what type of actions NIST may take to ensure coherence on conformity assessment at federal level in case an agency decides to deviate from the NIST Guidance on Federal Conformity Assessment Activities? Secondly, the Guidance removes "the responsibility for NIST to collect and disseminate information on Federal, State and private sector conformity assessment activities". The European Union considers that the use of multiple on-line sources might entail difficulties for domestic and overseas stakeholders in having access to and obtaining a comprehensive overview of the different conformity assessment schemes that may exist at Federal, State and private levels in the US. The setting up of a single portal providing information on conformity assessment in the US would overcome these difficulties and better ensure transparency requirements.

1.24. Thirdly, the Guidance also removes "the standards and conformity assessment related organizational names as examples (§287.4). The inclusion or exclusion of names may be perceived as endorsement or criticism." This deletion concerns in particular the organizations named in §287.4(d) of current 15 CFR Part 287 that include among others "the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Telecommunications Union (ITU) and the Organization for Economic Cooperation and Development (OECD), the World Health Organization (WHO), and the Codex Alimentarius Commission." In

[7] For previous statements follow the thread under IMS ID 625 (under dates raised and references).

parallel, the notified draft measure refers, among others, to the NIST Special Publication 2000-01 "ABC's of Conformity Assessment" which acknowledges the role and relevance of the conformity assessment standards developed by ISO and IEC and further states that "The combination of geographical reach and a multi-stakeholder development approach creates wide support and use of the CASCO toolbox." (see page 6). The same applies to the NIST Special Publication 2000-02 "Conformity Assessment Considerations for Federal Agencies", which repeatedly makes reference to the ISO/IEC conformity assessment standards and encourages agencies to make use of them. As a consequence, the explanations included in the notified draft measure as regards this change seem to entail a contradiction as, on the one hand, the proposed revision removes names of relevant international standard-setting organizations as their inclusion may be perceived as endorsement and, on the other hand, the proposed revision refers in parallel to other relevant NIST publications which expressly acknowledge and endorse the relevance of these organizations in setting up relevant international conformity assessment standards. The European Union therefore considers that an exemplary reference to ISO and IEC should be kept as relevant international standard-setting organizations in the field of conformity assessment. The same approach should apply to the references to ITU, OECD, WHO, and Codex Alimentarius Commission that are proposed to be removed, given the relevance of these organizations in defining relevant international conformity assessment standards.

1.25. Fourthly, when it comes to the acceptance of conformity assessment results, the Guidance introduces further changes to "reflect that U.S. access to international markets is achievable through many mechanisms. (…) The revised language recognizes that other mechanisms (not just recognition) can facilitate acceptance of standards and conformity assessment results to increase market access for U.S. products and services." However, the notified draft measure does not provide any further explanations on the other mechanisms that could facilitate the acceptance of US standards and conformity assessment results. Can the US further elaborate on these additional missing examples? Fifthly, in accordance with the Guidance, the new responsibilities of NIST include "(f) To the extent that resources are available and upon request by a state government agency, work with that state agency to reduce duplication and complexity in state conformity assessment activities." The European Union considers that the above language does not sufficiently encourage or promote the mutual recognition of conformity assessment results at state level. To the contrary, it seems to suggest that each state retains broad discretion in not using or recognizing conformity assessment results of Federal agencies or other states. This entails a serious risk of fragmentation and duplication of conformity assessment activities, leading to unnecessary costs and time delays in placing products on the US market. In this regard, could the US explain how it intends to ensure that the selection and use of conformity assessment procedures by a state that does not accept or recognize conformity assessment results from Federal agencies or other states does not constitute an unnecessary duplication in conformity assessment activities?

1.26. In response, the delegation of the United States provided the following statement. The United States thanks the European Union for its comment on G/TBT/N/USA/1587 as received on 7 April and confirmed by the US Enquiry Point. The guidance was notified for transparency as it will, in part, implement the US obligations to the WTO Agreement on Technical Barriers to Trade under Article 15.2. The guidance is neither a technical regulation nor a conformity assessment procedure. Instead, it is a guidance for US federal agencies to use as they rely on conformity assessment to meet agency requirements. Therefore, this measure is inappropriately listed as a specific trade concern in the WTO TBT Committee agenda. Substantive comments will be addressed when the final guidance is published in the US Federal Register. The final guidance will also be notified to the WTO. We would welcome bilateral discussion with the EU on this guidance if further information is needed.

1.2.7 European Union – Revision of the Batteries Directive (IMS ID 626[8])

1.27. The delegation of Japan provided the following statement. Japan recognizes that the EU intends to amend the Batteries Directive by October this year and is considering introducing regulations that cover not only in-vehicle batteries but all batteries, focusing on: (i) ethical sourcing of raw materials; (ii) measuring the carbon footprint of battery manufacturing; (iii) facilitating reuse, repurposing and recycling; and (iv) management of toxic substances in battery production, in the amendment of the directive. In the review process for the directive, the EU has proposed: (i) requiring extreme durability of in-vehicle batteries, for example, 10 years or more; and (ii) requesting detailed information on batteries, etc. Japan requests that the EU ensure that any

[8] For previous statements follow the thread under IMS ID 626 (under dates raised and references).

revision of the directive will not be more trade restrictive than necessary. Furthermore, in the Electric Vehicles and the Environment (EVE) informal group of the United Nations World Forum for Harmonization of Vehicle Regulations (WP29), the participating countries and regions, including Japan and EU, are working together to discuss the development of international standards for in-vehicle batteries. The group's proposal is expected to be finalized in June 2021. According to Article 2.4 of the TBT Agreement, where completion of relevant international standards is imminent, WTO Members shall use them as a basis for their technical regulations. Therefore, Japan asks the EU to consider taking the discussions in the UN/WP29 into account in the revision of the Batteries Directive. In addition, since the EU is considering the short timeframe ending October of this year for the revision, Japan is concerned whether the comments or inputs from Member countries will be fully reflected in the revision of the regulation. Japan requests that the EU ensure that the regulation will be amended in a transparent manner, including: (i) ensuring the opportunity for stakeholders to submit their comments; (ii) timely TBT notification that allows the comments from Member countries to be taken into consideration; and (iii) providing an adequate period between the publication of the revised directive and its entry into force.

1.28. In response, the delegation of the European Union provided the following statement. The European Union would like to thank Japan for its interest in the planned amendment of the EU Batteries Directive. The EU would like to clarify that the European Commission is currently working on a preparation of a proposal for a new regulatory framework repealing the Batteries Directive. If adopted by the Commission, the proposal would be submitted to the Council and the Parliament in the framework of the Ordinary Legislative Procedure. The decision-making process in the EU usually takes approximately 18 to 24 months from the submission of the Commission proposal. Differentiated deadlines and targets would be foreseen in the revised measure, which would provide sufficient time for economic operators to adapt.

1.29. The EU would like to note that the current Batteries Directive already covers all type of batteries, including those used in electric vehicles. The legislative proposal under preparation aims at an integrated and comprehensive approach covering the whole life cycle of batteries and the whole value chain. This should include, *inter alia,* sustainability requirements related to the responsible sourcing of raw materials for battery manufacturing, and their associated carbon footprint, which would improve their overall environmental performance and sustainability in a non-discriminatory manner. The Commission is also considering to propose new end-of-life provisions for all types of batteries, provisions on durability of batteries and on adequate consumer information. The European Union would like to assure Japan that it is fully committed to the on-going international efforts under the EVE informal group of the United Nations World Forum for Harmonization of Vehicle Regulations (WP29). Finally, the European Union would like to note that a stakeholder consultation took place as part of the preparation of the Commission proposal. The European Union will comply with its transparency obligations under the TBT Agreement and will notify the Commission proposal to the WTO TBT Committee in due time, providing sufficient comment period to WTO Members.

1.2.8 European Union – Non-renewal of the approval of the active substance mancozeb, G/TBT/N/EU/712 (IMS ID 627[9])

1.30. The delegation of Colombia provided the following statement. Colombia wishes to express its concern regarding the measure notified by the European Union in document G/TBT/N/EU/712 of 17 April 2020 relating to the non-renewal of the approval of the active substance mancozeb, given that this substance is vital to pest control for a wide variety of crops. The EU has been adopting measures resulting in the non-approval of the use of plant protection products, which is affecting the exports of its trading partners. Measures on the suspension or non-approval of the marketing of numerous active substances and the subsequent reduction of their maximum residue levels (MRLs) to the minimum detection level are being taken without any sound scientific evidence and without proof that such measures are the least trade-restrictive means of achieving an appropriate level of protection for consumers. Mancozeb is a fungicide that has been registered since the 1960s. It has been used in more than 70 fruit and vegetable crops across the world to control over 400 phytopathogenic fungi that severely attack the crops. However, the main use of mancozeb is to prevent the fungi from developing resistance to curative fungicides (by using it in combination with them), helping to ensure that these fungicides remain effective.

[9] For previous statements follow the thread under IMS ID 627 (under dates raised and references).

1.31. In Colombia, the use of the active substance mancozeb is essential in agricultural production for protecting banana crops against pests and diseases, such as Black Sigatoka, a devastating disease that attacks the foliar system and is caused by the fungus Mycosphaerella fijiensis. This fungus is extremely dangerous and is classed as very high risk by the scientific authorities (Fungicide Resistance Action Committee) due to its ability to adapt rapidly to climatic changes and, above all, its inherent capacity to develop resistance to various chemical groups of fungicides. This fungus currently shows resistance to three different chemical groups of fungicides used, which is severely limiting the control of the disease. This is why the use of mancozeb is of such importance in banana-producing countries. Recently, the EU also banned the marketing of chlorothalonil, which is the main tool for controlling Black Sigatoka. In this regard, banning mancozeb (an alternative substance) would leave banana-producing countries without any phytosanitary tools to control this disease, resulting in significant economic losses in Latin American countries. Such measures would be in disregard of Article 2.2 of the TBT Agreement, which provides that technical regulations shall not be more trade-restrictive than necessary to fulfil a country's legitimate objective. In this case, there is no known method for producing bananas that is more effective than the method involving the use of the above-mentioned active substances to control Black Sigatoka.

1.32. In addition, due to the limited number of chemical groups of fungicides available/alternatives for the control of Black Sigatoka in banana crops, the risk of the fungus developing resistance is extremely high. Mancozeb has been used effectively, with no signs of resistance reported, which has reduced the amount and frequency of the applications of this substance on crops. There is evidence that the absence of mancozeb, combined with the lack of products having a similar effect, could cause the resistance shown by the fungus to increase to the point of no return, where phytosanitary management is difficult. This would have catastrophic consequences on banana crops, as well as on the agricultural producers whose livelihoods depend on them. Many regions across the world produce bananas and they are a key part of agricultural exports. In this regard, there must be appropriate technical phytosanitary management of the crop and it must be environmentally sustainable. The absence of any of these pillars could mean that banana production would no longer be viable.

1.33. A review of the EU's draft regulation shows that the scientific justification for the changes/amendments to regulations on active substances is becoming less relevant. For example, the decision on the non-renewal of the approval of mancozeb has been taken using a hazard-based approach and applying the precautionary principle. This means that the lack of information and scientific studies in the EU required to make a risk- and science-based decision has been overlooked, contrary to the provisions of the WTO TBT Agreement. The foregoing also constitutes a violation of Article 2.2 of the TBT Agreement, since, as has been indicated, there is insufficient information to establish criteria for the acceptance or rejection of mancozeb. This is because, from a scientific point of view, its effect on health and the environment has not been clearly determined. It is therefore crucial for the EU to use a risk assessment approach in the analysis of this regulatory change, given that it lacks sufficient and conclusive scientific studies from EU member States to determine the various toxicological aspects that may affect human health. There are even preliminary findings that point to a safe use of mancozeb within the EU.

1.34. Furthermore, it should be noted that there are scientific opinions at the European level that indicate that mancozeb is not an endocrine disruptor. On that basis, a scientifically sound evaluation would only be possible if sufficient time is granted to generate information from countries, in order to conduct a risk assessment of all scientific studies available that include the corresponding levels of exposure for determining the safety thresholds for mancozeb. In light of the above, Colombia considers that the draft technical regulation amending EU Regulation No. 1107/2009 (non-renewal of the approval of mancozeb) must take into account the scientific evidence and banana production processes and methods in countries that may be affected by the implementation of the regulation, in order to avoid creating an unnecessary technical barrier to trade.

1.35. Moreover, with regard to the deadlines established in notification G/TBT/N/EU/712 of 12 May 2020, we would be grateful if the EU could provide greater clarity regarding the timeframe for the adoption of the measures. In this respect, we wish to recall that, in accordance with Article 2.12 of the TBT Agreement, Members shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member. In addition to the above, the health and scientific authorities in all countries, including Colombia, have been forced to focus on addressing the situation that has arisen as a result of global COVID-19 health emergency. Similarly, key sectors

such as food producers, organizations and associations are making significant efforts to ensure biosecurity controls in the fruit and vegetable supply chain. This is reducing their ability to analyse draft regulatory measures and thus to adjust production methods accordingly, creating additional burdens on international trade in food products and hampering worldwide economic recovery efforts, particularly in developing countries.

1.36. In light of the arguments presented, Colombia requests the EU to renew the approval of mancozeb and maintain its MRLs as a risk management measure to guarantee the health of consumers in the EU and facilitate trade for its partners. It is worth highlighting that a potential ban and consequent reduction of MRLs in the EU for chlorothalonil and mancozeb (an alternative substance) would leave Black Sigatoka control programmes without any phytosanitary tools, resulting in highly regrettable consequences for the environment and the economic sustainability of banana crops in all banana-producing countries. Such countries would also see social consequences, bearing in mind that in Colombia, for example, over 35,000 people directly and some 120,000 indirectly depend on the production of bananas exported to the EU for their livelihoods.

1.37. The delegation of Brazil provided the following statement. Brazil would like to raise a concern regarding the non-renewal of the approval of the active substance mancozeb, according to notification G/TBT/N/EU/712. Mancozeb is a substance whose use is approved for many different crops by the Brazilian Health Regulatory Agency, including soy. MRLs for soybeans in Brazil are set in 0,3 mg/kg. Around 11% of the soy produced in Brazil is exported to the EU. Therefore, restrictions on mancozeb would significantly impact the income of Brazilian farmers. This is the reason why we have warned European delegates about the relevance of mancozeb in past bilateral meetings and tried to receive more information regarding the review process. However, the EU informed that before the notification publication no comments would be taken into consideration. Therefore, we kindly ask the EU to indicate the early appropriate stage of the development of the technical regulation in which countries could present comments that EU would effectively take into consideration. Brazil remembers the TBT Agreement in Article 2 states the following: "Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Members, Members shall: publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular technical regulation; without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account."

1.38. The availability of an alternative to mancozeb in the short and medium term is also limited by the fact that other substances of similar use have already been banned in the European market, such as chlorothalonil. Mancozeb is an important tool for the management of fungicide resistance to control soybean rust, one of the most devastating diseases for this crop. It is used as a crop protection additive, intended to increase the effectiveness of other fungicides, minimizing resistance and prolonging the life cycle of other molecules, which would otherwise have an extremely short life cycle. Also, such crops cannot have their treatments changed in time for exportation to the EU market before late 2020. We also urge European authorities to consider establishing transition periods that are adequate to the production cycle of the affected crops. By refraining from changing its approach regarding assessment of endocrine disruptors, the EU will keep on imposing measures related to active substances that are more trade restrictive than necessary to achieve its legitimate objectives under the TBT Agreement. The implementation of regulations with serious impacts on trade prior to a thorough risk analysis raises concerns about discrimination, transparency and due scientific evaluation. The Brazilian delegation was informed that the EU used as a basis for the non-renewal of mancozeb a study from 1980 and, considering that more recent studies are available, we would like to hear from the EU delegation if that information is accurate and up to date.

1.39. In summary, Brazil kindly asks EU delegations to point out the following: (i) what are the most recent studies and assessments used for the re-evaluation of mancozeb? (ii) does the EU consider that the notification was made at an early stage in order to take other Members' views into consideration? (iii) what other less trade-restrictive alternatives were considered in the development of said draft regulation?

1.40. The delegation of Costa Rica provided the following statement. Costa Rica supports the concern raised by Colombia, Brazil, Ecuador and the United States in relation to the draft

implementing regulation notified by the European Union, under which approval for the use of mancozeb would not be renewed. The use of this active substance is essential for Costa Rica's agricultural production process. Mancozeb is currently used for more than 20 crops that are grown for export and domestic consumption, and is therefore vital for ensuring the supply of food. The COVID-19 pandemic faced by the world in recent months has maximized the need to avoid the application of measures that could affect food supplies, particularly when such measures constitute restrictions that could conflict with multilateral obligations.

1.41. In Costa Rica there are currently no authorized phytosanitary protection products that could be considered substitutes of, or that are similar to, mancozeb, which is used to combat pests of economic importance, particularly in banana production. Costa Rica is the world's second largest exporter of bananas, and the first country to have obtained a geographical indication for this product. Foreign exchange revenue from banana exports totalled approximately USD 1 billion, representing around 2% of GDP and 38.6% of agricultural GDP. The banana sector also generates 40,000 direct jobs and around 100,000 indirect jobs. The main destination for exports is the European Union, where over 50% of the fruit produced in Costa Rica is sent, which further illustrates the impact that would be generated by the ban on the use of mancozeb and the subsequent reduction in maximum residue levels (MRLs) for this substance in bananas. The Costa Rican banana sector is currently assessing, in conjunction with the competent authorities, products that might be used as alternatives to mancozeb. However, time is needed to complete the relevant tests and approval procedures.

1.42. Costa Rica recognizes that Members have the right to determine the appropriate level of sanitary or phytosanitary protection needed to protect human, animal or plant life or health, and to establish measures to that end; in turn, may we remind Members that these measures must be science-based and should not create unnecessary barriers to trade, especially in these times of economic recovery faced by the global market in light of the current pandemic. Costa Rica requests that the EU postpone the non-renewal process and subsequent reduction of MRLs for mancozeb, so as to give the national sanitary and phytosanitary authorities a reasonable period of time to respond to the numerous challenges posed by the COVID-19 pandemic and find an alternative substance so that Costa Rican farmers can continue to grow bananas and meet the demand of EU countries.

1.43. The delegation of the United States provided the following statement. The United States thanks Brazil, Colombia, and Guatemala for raising this concern. The European Union's approach to pesticide regulation, which has led to the April 2020 Draft Commission Implementing Regulation concerning the non-renewal of the approval of mancozeb, remains a continual concern. The United States is concerned the EU continues to ignore international standards and fails to provide adequate rationale of the risk of non-fulfilment to justify the non-renewal of substances. Mancozeb is one of several fungicides for which, along with its common metabolite ethylene thiourea (ETU), the United States has completed a rigorous risk assessment. Once that highly refined risk assessment was completed, the United States established maximum residue limits (MRLs) for the use of mancozeb following its registration renewal in 2005. The substance is currently under re-evaluation. Codex Alimentarius has also established MRLs for mancozeb on many food crops based on full risk assessment and review of good agricultural practices, which facilitate trade while protecting consumer health. As repeated in prior WTO interventions on the EU's hazard cut-off criteria for possible endocrine disruptors, the United States is concerned that non-renewal due to hazard potential creates excessive uncertainty for agricultural trade.

1.44. The EU regularly suspends its risk assessments following identification of hazard criteria or data gaps. It has not finalized its consumer risk assessment of mancozeb. Mancozeb is used to protect many fruit, vegetable, nut and field crops against a wide spectrum of diseases, including potato blight, leaf spot, scab and rust. It is also used for seed treatment of cotton, potatoes, corn, safflower, sorghum, peanuts, tomatoes, flax and cereal grains. Many of these crops cannot have their treatments changed such that they can be harvested and shipped to the EU market before the third quarter of 2020. Others have few or no other options available and could suffer crop losses without access to mancozeb. The United States exported more than USD 3.3 billion in fruits, vegetables, and tree nuts to the EU in 2019. The trade loss resulting from any one MRL can be difficult to measure; however, the EU's systemic removal of MRLs for important crop protection tools increases costs and creates uncertainty for growers and traders, which damages trade. The United States asks the EU to maintain its current mancozeb MRLs while it completes a consumer health risk assessment. If MRLs are lowered, the United States requests that the EU establish transitional measures that allow all foods, including those with long shelf lives, to go through the complete channels of trade before enforcement. The United States will be submitting comments to the WTO

regarding the non-renewal of approval of mancozeb and requests the EU consider the comments and these interventions fully before making any decision on the final regulation. The United States looks forward to the EU's responses, in advance of the closing of the WTO comment period on 16 June, on the additional clarification for the non-renewal, and when the EU will finalize its consumer risk assessment.

1.45. The delegation of Ecuador provided the following statement. Ecuador wishes to express its concern regarding notification G/TBT/N/EU/712 on the non-renewal of the approval of the active substance mancozeb. This substance is crucial for the management of various crops of export significance to our country that are also important to European consumers, such as bananas, cocoa, broccoli, dragon fruit, pineapples and roses. For Ecuador, it is vital that studies concerning the renewal of active substances be based on scientific evidence showing conclusive results and not on the precautionary principle. We refer to Article 2.2 of the WTO TBT Agreement, which states that "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. […] In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information, related processing technology or intended end-uses of products". Ecuador therefore urges the EU to take into consideration the relevant scientific information emanating from international specialized agencies recognised by the WTO, such as the Codex Alimentarius, which has information relating to this substance, especially since, according to the EFSA risk analysis summary, the consumer risk assessment has not been completed.

1.46. In the study presented by the EU in the draft notification, Ecuador verified that the analysis was carried out specifically for tomatoes, potatoes, wheat and grapes. While this notification currently only mentions the marketing of this substance in the European Union, and not maximum residue levels (MRLs) for mancozeb, Ecuador takes this opportunity to urge the EU to review its decision to reduce all MRLs for mancozeb to the limit of detection. The MRL for this substance should be determined on a product-by-product basis, given that agricultural production varies according to region, and what works in Europe might not be appropriate in other climates and regions. Furthermore, for certain crops treated with mancozeb that are currently exported, there might not be any effective pest-control alternative, and this would heavily impact Ecuador's agricultural exports, which are already affected by the world health situation (COVID-19). Ecuador therefore joins calls for the EU to base its measures on conclusive studies, to refrain from introducing definitive measures on the basis of the precautionary principle, and to establish transition periods of at least 36 months for the registration of alternative substances, in view of the current shortage of tools available to control pests.

1.47. The delegation of Paraguay provided the following statement. The delegation of Paraguay would like to thank the delegations of Colombia, Brazil, Costa Rica, the United States and Ecuador for including this concern on the agenda. Mancozeb is an active substance in use for over 50 years and is still considered an important tool for controlling phytopathogenic fungi worldwide, especially as part of resistance-combating programmes. Mancozeb is a multisite, protective fungicide used on more than 70 crops such as vegetables, fruit trees, ornamentals, nuts, cereals, soya beans, maize, potatoes, bananas, citrus fruit, grapes and turf. The substance is used to treat more than 400 diseases, alone or blended with systemic fungicides, of species belonging to the four major fungi groups: PHYCOMYCETES, ASCOMYCETES, DEUTEROMYCETES, BASIDIOMYCETES; *Phytophthora, Botrytis, Alternaria, Michosphaerella, Septoria, Peronospora, Phoma, Pseudoperonospora, Cercospora, Venturia, Plasmopara, Monilia, Anthracnose, Puccinias, Uromyces, Ascochyta, Helminthosporium, Sphaceloma, Uncinula, Diplocarpon*. It has become a strategic fungicide used to control the 10 major diseases worldwide, with more than a 95% usage rate.

1.48. Paraguayan producers currently use mancozeb to control soybean rust which, due to resistance, cannot be tackled using other fungicides currently on the market. Given its multisite usage, mancozeb acts in various environments within the pathogenic organism that has become resistant to other fungicides. Consequently, withdrawing this product from circulation could potentially increase the use of other fungicides during the productive cycles, while simultaneously reducing their efficiency. This would hit the production output of a crop that is a mainstay of the Paraguayan economy. There are very few multisite products like mancozeb. One such product is chlorothalonil, which is equally subject to a trade concern since the European Union (EU) is also phasing out its use. Mancozeb and chlorothalonil account for almost 90% of multisite use in

Paraguay. Besides soya bean crops, maize crops will be affected by this non-renewal, as mancozeb is used on maize to combat a disease caused by *Phaeosphaeria maydis*. This substance is currently the only commonly-used and effective alternative, offering producers a good price-quality ratio.

1.49. Over the last decade regulatory authorities in several regions have reassessed mancozeb as a current active ingredient. Based on an extensive database, studies and regulatory guidelines on health and the environment, mancozeb has successfully completed the regulatory reassessment. In the last few years, products containing it have been re-registered in a number of countries, including in the EU. When used in compliance with good agricultural practices that do not endanger human health or the environment, mancozeb is a substance with low environmental persistence, low levels of acute toxicity in mammals and little or no phytotoxicity. Any reduction in mancozeb's maximum residue levels (MRLs) could have a significant impact on world trade, adversely affecting third country producers' market access.

1.50. As a landlocked developing country, the impact on Paraguay could be strong, affecting farmers and lessening or ending access to the European market. The negative impacts would be felt directly by agricultural producers and indirectly by those involved in the entire production and export chain of agricultural products, including in transport and logistics. Moreover, without an alternative product on the market to control the phytopathogen, food safety could be affected should Paraguay wish to export to one of its main trading partners. We therefore urge the EU to: (i) set measures supported by conclusive risk assessments based on criteria established by international standards and recommendations, in accordance with the provisions of the SPS and TBT Agreements; and (ii) maintain the EU's existing MRLs for mancozeb and do not set more restrictive levels, particularly in the aftermath of COVID-19, in acknowledgement of the issues raised in communications G/SPS/GEN/1778 and G/TBT/GEN/296. We recall that, for Paraguay, agriculture is crucial and a well-functioning agricultural sector is key to ensuring food security, agricultural producers being one of the main sources of domestic food and income, who rely on the availability of tools like mancozeb to effectively combat attacks by pests.

1.51. The delegation of Guatemala provided the following statement. We thank Colombia, Brazil, the United States and Costa Rica for including this trade concern on the agenda. Guatemala shares the concern regarding the absence of information on the scientific evidence of harm to human health caused by the consumption of fruit and vegetables, particularly those produced in Latin America. The European Union has previously mentioned that it has identified potentially negative effects on health. The EU has failed to provide countries affected with information on the contamination of products that have been assessed with the scientific information available. Moreover, the EU has not presented any scientific evidence of the supposed danger and harmful nature of mancozeb in the production and exportation of fruit and vegetables in Latin America. The EU has notified the TBT Committee of the non-renewal of the approval of the active substance mancozeb. This will lead to a subsequent revision of the current permitted MRLs, which will have a direct impact on agricultural exports to the EU. Mancozeb is key for the production of a number of strategic agricultural crops that are exported to the EU, such as fruit (bananas and plantains, among others) and vegetables, which would affect other countries in Latin America.

1.52. In terms of other types of agrochemicals, there are very few alternatives with multi-site properties available for the control of fungi. Mancozeb, as a multi-site fungicide, attacks different parts of the fungus and creates no resistance. In the case of plantains and bananas, mancozeb is essential given the absence of alternatives offering the same effectiveness. Black Sigatoka is caused by the fungus *Mycosphaerella fijiensis*, which invades and necrotizes the leaf tissue, causing leaf death in perennial banana and plantain crops. Black Sigatoka is the disease that has the greatest economic impact on banana and plantain crops worldwide and can only be successfully controlled with mancozeb. The ban on the use of mancozeb will have an economic and social impact on Guatemala, given that both plantain and banana crops are a significant source of job creation, foreign exchange and food for the country. The growth of these crops creates over 280,000 direct and indirect jobs and therefore affects over 1,120,000 Guatemalans. Banana exports accounted for 30% of Guatemala's total exports of traditional products in 2018 and 11.2% of total exports from the customs territory. The banana is the world's most consumed and exported fruit and, as a result, there has been a significant rise in the foreign exchange generated by this crop. Such earnings have been on the increase since 2018, ranging from USD 800 million to USD 1 billion.

1.53. In light of the above, we request the EU to maintain the current MRLs for mancozeb so as to avoid affecting the production and exports of Guatemala and other Latin American countries,

particularly given the economic and social impact that this type of measure will have on developing countries.

1.54. The delegation of Indonesia provided the following statement. Indonesia thanks Colombia, Brazil, Costa Rica, the United States, and Ecuador for raising this issue and shares the concern regarding EU regulation on non-renewal of the approval of the active substance mancozeb. Indonesia understands that the EU has considered the safety and health aspect of environmental while developing the Draft Commission Implementing Regulation concerning the non-renewal of the approval of the active substance mancozeb, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011. However, Indonesia is of the view that this measure is more stringent than necessary and has the potential to disrupt trade, specifically for developing countries who export horticulture and other agriculture products to the EU. Indonesia regrets the application of this measure and, therefore, urges the EU to ensure that this measure is not more stringent than necessary. In addition, Indonesia would also like to remind the EU to use the risk assessment approach that is internationally accepted based on appropriate data and scientific study. In developing this measure, EU only refers to risk assessment conducted by European Food Safety Authority (EFSA), which are clearly not in line with the recommendation of the FAO Manual on the development and use of FAO and WHO Specifications for Plant Protection Products, FAO Plant Production and Protection Paper No. 173, Rome 2002. In this paper, FAO acknowledges the use of mancozeb as the active substance for plant protection product. Indonesia, thus, requests the EU to review its policy regarding the non-renewal of the approval for mancozeb and to allow the use of mancozeb as active substances for plant protection product.

1.55. The delegation of Nicaragua provided the following statement. The delegation of Nicaragua thanks the delegations of Brazil, Colombia, Costa Rica and the United States for including this concern on the agenda. This concern relates to the European Union notification contained in document G/TBT/N/EU/712, in which it notifies the non-renewal of the approval of the substance mancozeb. The active substance or compound mancozeb is a pesticide used extensively in agriculture. It belongs to the dithiocarbamates chemical group and is currently used to combat Black Sigatoka disease in musaceae. Black Sigatoka is a leaf disease of bananas, which is caused by the ascomycete fungus *Mycosphaerella fijiensis* Morelet and constitutes one of the crop's main phytopathological problems. The delegation of Nicaragua reiterates that the policy implemented by the EU concerning the approval of certain substances and the modification of MRLs could have a significant impact on trade in food and the agricultural economy in developing and least developed countries. While Nicaragua respects the rights of each Member to determine the appropriate level of protection, we reaffirm that Members' efforts should, as far as possible, be harmonized with the relevant international provisions.

1.56. In response, the delegation of the European Union provided the following statement. The European Union thanks WTO Members for raising this issue. On 17 April 2020, the European Union notified to the TBT Committee a draft Commission Implementing Regulation concerning the non-renewal of the approval of the active substance mancozeb, in accordance with Regulation (EC) No 1107/2009 on the placing of plant protection products on the market. Existing authorizations of plant protection products containing mancozeb will be withdrawn and such products cannot be placed into the market. The non-renewal of the approval is based on a scientific assessment conducted under Regulation (EC) No 1107/2009 by experts from the member States of the European Union and the EFSA. In order for an active substance to be approved in accordance with Regulation (EC) No 1107/2009, it must be demonstrated that the substance is not harmful to human health, animal health or the environment. Specific criteria, listed in Article 4 of the Regulation (and further detailed in Annex II), must be met to enable approval. During the evaluation and peer review of mancozeb, the following concerns were identified by EFSA. A reprotoxic potential of mancozeb, classified as Toxic for reproduction category 1B in accordance with the criteria set out in Commission Regulation (EC) No 1272/2008. The non-dietary exposure estimates exceed the reference values for tomatoes, potatoes, cereals and grapevines. Moreover, endocrine disruptors criteria are met for humans and likely for non-target species. In light of the above, EFSA concluded that mancozeb does not meet the approval criteria as outlined in Article 4 of Regulation (EC) No 1107/2009 and cannot be currently approved. EU member States must withdraw existing authorizations for plant protection products containing mancozeb at the latest by three months from the date of entry into force of the Commission Implementing Regulation. The grace period in line with Article 46 of Regulation 1107/2009 shall expire, at the latest, after six months from the entry into force of the Implementing

Regulation. This decision only concerns the placing on the market of mancozeb and plant protection products containing it. Following non-approval and the expiry of all grace periods for stocks of products containing this substance, separate action will likely be taken on Maximum Residue Levels (MRLs) and a separate notification will be made in accordance with SPS procedures.

1.2.9 European Union – Draft Commission Regulation amending Annex III to Regulation (EC) No 1925/2006 of the European Parliament and of the Council as regards botanical species containing hydroxyanthracene derivatives, G/TBT/N/EU/702 (IMS ID 628[10])

1.57. The delegation of Mexico provided the following statement. The delegation of Mexico is submitting this concern relating to the Draft Commission Regulation amending Annex III to Regulation (EC) No. 1925/2006 as regards botanical species containing hydroxyanthracene derivatives, of which the Members of the TBT Committee were notified in document G/TBT/N/EU/702. The Government of Mexico is sending its comments on this draft regulation on 2 May 2020 within the framework of the WTO public consultation process. The delegation of Mexico recognizes the interest of the EU in establishing public health protection measures. However, it considers that the draft regulation may unnecessarily restrict trade in view of the legitimate objective pursued. Given that the draft regulation would impose an absolute ban on the use of aloe and its extracts in food and beverage formulas, its implementation would adversely impact the Mexican industry that produces and exports to the European Union a variety of products for human consumption containing aloin, a component naturally found in aloe vera.

1.58. It is considered that the draft regulation could violate the principle of proportionality (Article 2.2) and conformity with international standards (Article 2.4), and not allowing a reasonable interval for the measure's entry into force (Article 2.12) of the WTO's TBT Agreement. These considerations are based on the following. The proposed amendments are based on a scientific opinion issued by the European Food Safety Authority (EFSA) on 22 November 2017, about which we should like to make the following comments. The EFSA's opinion does not differentiate between whole leaf preparations and aloe vera extracts which may contain minimum levels of hydroxyanthracene derivatives (HAD). In its risk assessment, the EFSA's scientific opinion does not include measures on the potential effects of other types of aloe containing minimum or zero levels of HAD for use in food products and preparations. The EFSA does not provide advice on a daily aloe intake that does not give rise to concerns about harmful effects to health, aside from improving bowel function. The EFSA's conclusions are based on studies performed on rats, rather than on humans. It is even recognized in those conclusions that the possible effects of aloe vera and its extracts on human health remain uncertain and that it would be inappropriate, therefore, to implement an absolute ban on consumption of the substance. Neither the EFSA's opinion nor the documents shared with notification G/TBT/N/EU/702 indicate whether any international standards were used as a reference for the proposed amendments. Yet the Codex General Standard for Food Additives (GSFA, CODEX-STAN-1995 (2019)) recognizes aloe vera as an additive that can be used under specific conditions for certain food categories or certain food products. The draft regulation was not notified as an urgent technical regulation. Therefore, the provisions of Article 2.12 of the TBT Agreement and Article 5.2 of the Ministerial Declaration adopted by the WTO Members on 20 November 2001[11] relating to the reasonable interval for the entry into force of technical regulations must not be neglected.

1.59. The delegation of Mexico therefore respectfully submits the following requests to the delegation of the EU: reconsider the proposed amendment to Part A of Annex III of Regulation (EC) No. 1925/2006, on the basis of existing scientific evidence on the use of aloe vera or its extracts in consumer products, which does not reveal a threat to public health that would warrant a ban on these substances; clarify whether the draft regulation also covers aloin naturally contained in food products; align the draft regulation with the provisions of CODEX-STAN-1995 (2019), or explain why the European Commission is promoting the adoption of a measure that deviates from this standard; set a reasonable interval for the entry into force of the draft regulation; and review and take into consideration the comments sent by Mexico on 2 May 2020 during the public consultation process. The delegation of Mexico thanks the delegation of the EU for giving consideration to this statement and the requests therein.

[10] For previous statements follow the thread under IMS ID 628 (under dates raised and references).
[11] Ministerial Declaration of 20 November 2001, available at: https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_implementation_e.htm.

1.60. In response, the delegation of the European Union provided the following statement. The European Union thanks Mexico for raising this issue. The proposed draft measure is based on the scientific advice of the EFSA and on extensive consultations with member States and all interested parties. The draft measure aims to ensure a high level of safety, as well as proportionality, by prohibiting the use in foods of the substances whose harmful effect on health has been established, while placing under Union scrutiny the substances for which scientific uncertainties remain according to the EFSA opinion. Under the scrutiny period, interested parties will have the possibility to submit data demonstrating the genuine safety of the substances in question. In the scientific opinion of EFSA of 22 November 2017, certain hydroxyanthracene derivatives – HADs – (such as emodin, aloe-emodin and danthron) and aloe extracts containing HADs were found to be genotoxic and/or carcinogenic based on the data obtained from *in vitro* and *in vivo* clinical studies. The EFSA Panel further considered that there is a safety concern for certain extracts containing HADs (such as Rheum, Cassia and Rhamnus extracts), although scientific uncertainty persists. Considering that the EFSA Panel noted that there was some evidence of genotoxic effects of aloe extracts depleted of HADs, and that it could not advise on a daily intake of HADs that does not give rise to concerns for human health, no safety limit could be set in the measure to distinguish between the different aloe preparations with a range of HAD levels.

1.61. The proposed measure is in accordance with the procedure under Article 8 of Regulation (EC) No 1925/2006 on the addition of vitamins and minerals and of certain other substances to food. The mentioned procedure allows the Commission to prohibit, restrict or place under Union scrutiny the use of a substance other than vitamins or minerals in foods, or of an ingredient containing it, if that substance is associated with a potential risk to consumers. Article 2 of the Regulation defines a substance other than a vitamin or a mineral as a substance that has a nutritional or physiological effect. The draft measure is therefore applicable to the substances when added to food for nutritional or physiological purposes without regulating other possible uses, such as the addition of the substances for technological purposes as food additives. Besides the TBT notification, the draft measure was published for a seven-week consultation period to ensure the possibility of providing feedback to all interested parties. During that consultation, a number of comments were submitted by different stakeholders, such as business associations, companies, NGOs, academic and research institutions, as well as citizens. The European Commission is currently analysing all the comments received and will consider possible amendments to the draft measure in order to ensure that the most appropriate risk management decision is taken on this matter.

1.2.10 New Zealand – Consumer Information Standards (Origin of Food) Regulations 2019, G/TBT/N/NZL/93 (IMS ID 629[12])

1.62. The delegation of Canada provided the following statement. Canada would like to thank New Zealand for its bilateral engagement on this issue and for providing preliminary responses to Canada's comments submitted on 7 February and 20 March through New Zealand's Enquiry Point. Canada acknowledges New Zealand's legislative requirement to establish a consumer information standard for the disclosure of a regulated food's country or place of origin. We also recognize New Zealand's objective to provide consumers with accurate country-of-origin information for certain single-ingredient, minimally processed foods. However, Canada is concerned with the proposed requirements for meat and cured pork that require labels to contain information on where the animal was raised. Given the highly integrated nature of the North American supply chain for meat and livestock, producers and slaughterhouses would need to implement costly segregation and traceability measures throughout the production chain in order to comply with New Zealand's proposed labelling requirements. Canada's experience with similar measures imposed by another WTO Member in the recent past is well known. In fact, Canada was successful in demonstrating that this measure resulted in the discriminatory treatment of trade from Canada and was in violation of international trade obligations.

1.63. Canada respectfully requests that New Zealand consider using relevant international standards, such as the Codex Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985) for its proposed COOL requirements for meat products. This standard states that "[w]hen a food undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling". Doing so would meet the objective of providing consumers with accurate and useful information pertaining to the food they purchase without requiring unnecessary restrictive traceability or

[12] For previous statements follow the thread under IMS ID 629 (under dates raised and references).

segregation measures that impact trade. We remain open and willing to continue our engagement with New Zealand.

1.64. In response, the delegation of New Zealand provided the following statement. The Consumer Information Standards (Origin of Food) Regulations will prescribe requirements for the disclosure of where a regulated food was grown, harvested, caught or raised, rather than where the food was merely packaged, manufactured or processed. Due to COVID-19, the regulations will be made by June 2021, instead of June 2020. We note in particular that where it is challenging to trace the supply chain of a product, the regulations allow for multiple relevant countries to be included on the label to indicate the country of origin. In drafting the Regulations, New Zealand took steps to ensure their consistency with WTO TBT Agreement obligations. New Zealand also considered all comments received during the open consultation period, including those received in response to the 2018 TBT notification G/TBT/N/NZL/84. New Zealand notes that the regulations will be non-discriminatory. They will apply to both domestic and imported products equally. New Zealand thanks Canada for its comments and remains open to further discussion on this matter if necessary.

1.2.11 India – Quality Control Orders for Chemical and Petrochemical Substances, G/TBT/N/IND/116, G/TBT/N/IND/122, G/TBT/N/IND/124 (IMS ID 630[13])

1.65. The delegation of Canada provided the following statement. Canada welcomes this opportunity to discuss a series of 22 individual "Quality Control Orders" on chemicals and petrochemicals substances notified by India since November 2019. These prospective measures would make mandatory the use of Indian Standards on the notified substances. Canada submitted its initial comments on these prospective measures on 31 March 2020 and would like to seize this opportunity to highlight some of its concerns with regards to the various notifications. Firstly, Canada requests additional explanations from India on the rationale for enforcing mandatory Indian Standards on those chemicals and petrochemicals substances. Canada noted that each of the 22 notifications published by India did not contain any justifications for the new measures, except that "the Central Government […] is of the opinion that it is necessary or expedient so to do in the public interest". Can India elaborate on the necessity for these mandatory Bureau of India Standards to safeguard public interest, and why international standards or other type of voluntary standards were deemed not sufficient to achieve the same objectives? Secondly, Canada is concerned with India's approach to these notifications, and would request clarifications as to why India notified these new standards individually and without supporting documentation that would clarify the stated objective of the proposals, i.e., to ensure "health, safety and environment for prevention of deceptive practices and national safety", and how these new regulatory requirements are not more trade restrictive than necessary to achieve this objective. What process, research, and assessment has India performed on these substances to arrive at this conclusion? Can India share those documents with WTO Members? What are the risks to health, safety, environment, and – specifically – "national safety"?

1.66. Thirdly, Canadian stakeholders are concerned that these new measures could seriously undermine the ability of foreign chemical manufacturers to access the Indian market. The new permit requirements will add a significant level of bureaucracy for both industry and Indian regulators and could reasonably result in significant delays in the import process. Moreover, Canada understands that the certification period will be limited to one year, which would accentuate the pressure on the administrative body to review, deliver and/or renew new permits on a constant basis. What steps has India taken to ensure the capacity of its administrative authorities to effectively implement the new measures and deliver the new permits in a timely manner? Has India considered extending the certification period beyond one year? Fourthly, could India confirm if it will accept quality control assessments conducted by foreign firms and laboratories? If third-party assessment will not be accepted, Canada would request that a rationale be provided on this decision. Finally, Canada would request clarifications on how the new mandatory standards will be enforced for: (i) domestic manufacturers; and (ii) foreign producers and importers. Specifically, Canada would seek clarifications on the steps taken by India to ensure that the new measures will not discriminate foreign products to the benefit of domestic manufacturers. As all 22 notifications provided limited information on the process and rationale for the new measure, Canada looks forward to further engaging with India on this issue in order to ensure transparency, avoid unnecessary impacts to trade, and better understand the objectives sought by India. Canada would also request that the entry into force of the new mandatory standards be delayed until further clarifications have been

[13] For previous statements follow the thread under IMS ID 630 (under dates raised and references).

provided to all interested parties. Canada also look forward to receiving written answers from India on the letter of comments it sent on 31 March 2020.

1.67. The delegation of the European Union provided the following statement. The European Union has concerns on these draft regulations. We sent written comments to India on G/TBT/N/IND/116 in February 2020 and on G/TBT/N/IND/122 in April 2020 and are looking forward to receiving written replies before the adoption of the notified drafts. The EU understands that the authorities of India are proposing to make 72 chemical/ petrochemical standards from the Bureau of Indian Standards (BIS) mandatory by introducing a permitting system and that the two notified drafts are part of this legislative package. The EU would like to remind the authorities of India that in accordance with the TBT Agreement, standards are considered voluntary, whereas mandatory standards are considered as technical regulations. The EU would be grateful if the above-mentioned comments could be taken into account and replied to before adoption of the notified draft.

1.68. The delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu provided the following statement. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu would like to thank India for providing the opportunity to comment on the draft Orders concerning mandatory requirements for chemical and petrochemical substances, which basically involve the bearing of the Standard Mark under a licence from the BIS. We sent our comments on the measure notified by G/TBT/N/IND/124 regarding Terephthalic Acid on 31 March 2020. As the information currently available is insufficient to allow Members to assess the relevant impact, we asked India to clarify the following. Firstly, the practices of requiring a chemical substance, such as Terephthalic Acid, to be certified by a product safety scheme, such as Standard Mark of BIS, are unusual in international practices. We ask India to provide further explanation about the reasons and purposes for introducing the new regulation, namely requiring Terephthalic Acid to be subject to mandatory inspection, and whether relevant international standards are adopted. Secondly, we look forward to the publishing of further information on relevant laws or regulations to implement this draft Order by India as soon as possible, including the testing and inspection procedure, the timeframe required to complete testing and inspection, and acceptance of test reports issued by laboratories outside India. Given the technical complexity of the issues involved, a separate 60-day comment period should be provided after revealing further information. We also call for India to take note and observe the principles of national treatment (NT) and necessity as provided for in the TBT Agreement when developing such regulations.

1.69. Thirdly, if no other implementing laws or regulations will be published, we would like to better understand how the Standard Mark system applied specifically to Terephthalic Acid. Again, answers to the questions concerning testing and inspection procedure, the timeframe, acceptance of test or inspection reports, are needed for assessing the impact. Fourthly, where test reports from testing laboratories are not accepted, we call for India to consider providing opportunities for testing laboratories and relevant inspection bodies from other WTO Members to participate in the intended conformity assessment process with the view of reducing the impact. Due to the potential impact that is likely to occur, we urge India to observe the spirit of the notification mechanism and refrain from enacting the new regulation before WTO Members can fully assess the impact and express their comments. We would be grateful if the above-mentioned comments could be taken into account and replied to before adoption of the notified draft.

1.70. In response, the delegation of India provided the following statement. India welcomes the comments made by the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Canada and the European Union on India's Quality Control Orders for Chemical and Petrochemical Substances. India would like to inform the Members that the said regulation has been notified keeping in view the health, safety and environment and for prevention of deceptive practices. As mentioned in the notification, Indian standard 15030:2001 has been proposed for adoption. On the procedure, testing requirements, guidelines for issuance of licence, etc., Members are informed that the conformity assessment requirements will be governed as per Scheme-I of Schedule-II of BIS (Conformity Assessment) Regulations, 2018 that have been notified with regulation to the WTO (G/TBT/N/IND/124). In this regard, Members may refer to the standard IS 15030:2001 mentioned

in the Regulation. Such information is also available in the public domain and can be accessed from the BIS website at the following weblinks.[14]

1.71. Hence, as of now, India does not envisage issuance of any additional notification to WTO, laying down any separate conformity assessment requirements. On the feasibility of allowing extension of the date of entry into force of the measure, India considers that sufficient time period has been provided for Members to comment upon the new measure and there will not be need for any further extension for its implementation. Similarly, the certification period has been prescribed in the BIS (Conformity Assessment) Regulations, 2018 and would not be feasible to change. Further, Members are informed that the BIS is the certifying body for the purpose of conformity assessment of the product mentioned in the aforesaid draft Quality Control Order. Under the provisions of Scheme-I of Schedule-II of BIS (Conformity Assessment) Regulations, 2018, the testing of samples drawn during the factory inspection is carried out in third-party laboratory. It has been stated therein that the "Third party laboratory" is "a laboratory established, maintained or recognized by the Bureau or Government laboratories empanelled by the Bureau or any other laboratory decided by the Executive Committee of the Bureau". On the use of the national standard i.e., the BIS standard instead of relying on international standard for the purpose, it is informed that because there is no ISO standard available on the subject, IS 15030 and the said standard has thus been formulated taking into account the inputs from the relevant Indian stakeholders. On the concerns raised on the possible discriminatory treatment to foreign products under the measure, it is informed that the new measure does not envisage the same and will not discriminate foreign products to the benefit of domestic manufacturers. India will also be willing to discuss bilaterally any other issue Members may have on this measure.

1.2.12 India – Food Safety and Standards Act, 2006 dated 27 January 2020 regarding operationalization of Food Safety and Standards (Food Products Standards and Food Additives) Amendment Regulations, 2020, G/TBT/N/IND/145 (IMS ID 631[15])

1.72. The delegation of the United States provided the following statement. The United States is very concerned with India's new directive on animal feed, which went into effect on 27 January 2020, part of which was notified to the TBT Committee as G/TBT/N/IND/145 on 27 February 2020. We anticipate that it will have a significant impact on trade for feed ingredients, and possibly on meat and dairy products derived from livestock that is fed in another country and imported into India. The measure of concern was published by the Food Safety and Standards Authority of India (FSSAI) in January 2020 in two parts. Part one, entitled "Direction under 16(5) of Food Safety and Standards Act, 2006 regarding compliance of commercial feeds/feed materials intended for food producing animals with the relevant BIS standards" is available on the FSSAI website.[16] We note that FSSAI initially issued part one on 10 December 2019, and then issued a revised version on 27 January 2020. Neither of these versions has been notified the WTO. Part two of this measure, entitled "Direction under 18(2)(d) read with section 16(5) of Food Safety and Standards Act, 2006 regarding operationalization of Food Safety and Standards (Food Products Standards and Food Additives) amendment Regulations, 2020" is also available on the FSSAI website.[17] The United States notes that the directive states it will come into force after six months from the date of issuance on 27 January 2020. We note that this timeframe is insufficient for comments and review in addition to the need for exporters to adjust to supply changes. We urge India to delay implementation of this

[14] For Indian Standard (IS 15030): www.bis.gov.in >>Standardization>>Published Standard; For BIS (Conformity Assessment) Regulations, 2018: www.bis.gov.in >> About BIS >> BIS Act, Rules & Regulations >> The Bureau of Indian Standards (Conformity Assessment) Regulations, 2018; For Guidelines for Grant of License: www.bis.gov.in >>Conformity Assessment >> Product Certification >> Certification Process.

[15] For previous statements follow the thread under IMS ID 631 (under dates raised and references).

[16] See: https://fssai.gov.in/upload/advisories/2019/12/5def78627ba0eDirection_Feed_Animal_BIS_10_12_2019.pdf. See also: https://fssai.gov.in/upload/advisories/2020/01/5e313047e761aDirection_Meat_Milk_Feed_29_01_2020.pdf. And: https://www.fssai.gov.in/upload/advisories/2020/01/5e32c60fd8801Corrigendum_Direction_Meat_Milk_Feed_30_01_2020.pdf.

[17] https://www.fssai.gov.in/upload/advisories/2020/01/5e31306a72882Direction_FSS_Product_Animal_Feed_29_01_2020.pdf.

directive until it is fully notified, and to provide the opportunity for Member countries to offer comprehensive feedback.

1.73. Part one of the measure appears to make mandatory a guidance document from 2009 entitled, "Indian Standard, Compounded Feeds for Cattle - Specification." According to this 2009 document, India only allows for import of those feed types listed in the document. This list, which appears not to have been updated for many years, omits many commonly used feed ingredients and several types of essential supplemental vitamins. It is unclear whether there is a process by which certain types of feed can be added; we request that India document that process. We request that India clarify if it has consulted with its domestic feed industry when formulating this regulation. The United States understands that India's commercial feed industry representatives have stated that they cannot comply with the current regulation as amended because the regulation excludes so many commonly used feed ingredients. We request that India clarify if this regulation will also apply to domestic farms manufacturing their own feed, and, if so, how Indian regulators will monitor and enforce such requirements. Turning to part two of the directive, we note that the 27 January directive includes language that amends requirements for meat and meat products and dairy products as detailed in the 2011 FSSAI Food Product Standards and Food Additives regulations. We are concerned that India is and has been amending this regulation without notification to the WTO. We note that the last Food Additive compendium is dated 29 March 2019 and includes the text in Part 2, notified to the WTO on 27 February 2020. We ask that India take steps to ensure that any changes to its FSSAI Food Additive requirements that could impact imported products be notified to the WTO at an early and appropriate stage. Finally, we request that India clarify if other countries will be able to export meat to India if that meat is derived from livestock fed with feed ingredients not yet listed as approved ingredients for compounded cattle feeds and, if so, that India explain how it intends to monitor and enforce such requirements.

1.74. In response, the delegation of India provided the following statement. India would like to appreciate the comments made by the United States seeking clarity on the Measure. India would like to inform the Members that the direction under 18(2)(d) read with section 16(5) of Food Safety and Standards Act, 2006 was issued by the FSSAI on 27 January 2020 via File No. 1-95/Std/Misc/SP(L&C/A)/FSSAI-2015-Pt-2 to operationalize with immediate effect the amendment in the Food Safety and Standards (Food Product Standards and Food Additives) regulation, specifying certain requirements in respect of feed meant for meat and milk producing animals. It was duly notified to WTO so as to enable interested Members to become acquainted with it. The amendment regulations as per the direction via File No. 1-95/Std/Misc/SP(L&C/A)/FSSAI-2015-Pt-2 dated 27 January 2020 was notified to WTO via notification G/SPS/N/IND/249 dated 26 February 2020 and G/TBT/N/IND/145 dated 27 February 2020. Pursuant to this amendment regulation, another direction was issued by FSSAI on 27 January 2020 via File No. 1-95/Std/Misc/SP(L&C/A)/FSSAI-2015-Pt-1, specifying the mandatory requirement for commercial feeds intended for cattle to comply with the BIS specifications for Compounded Feeds for Cattle (IS 2052:2009). This direction, superseding the earlier direction of 10 December 2019 (which was issued in similar context) will come into force after six months from the date of its issuance. Hence a time period of six months has already been provided to all stakeholders to comply with the same. However, on request, FSSAI may consider the feasibility of any further extension of this time period in view of the current COVID-19 pandemic and its impact on the preparedness of all stakeholders including WTO Members.

1.75. It is further informed that IS 2052:2009 is the fourth revision of the standard which was published in 2009 and having subsequent amendments to it issued in 2010 and 2016. The standard is reviewed periodically. It was last reaffirmed in 2019. However, in case, the US has any specific inputs on the additional feed ingredients, the US may make it available to BIS along with justification, for their consideration. The amendment in Food Safety and Standards (Food Product Standards and Food Additives) Regulations, 2011 is an enabling provision based on which orders will be issued from time to time for the compliance of feed with the relevant BIS standards, as required, based on consultation with the stakeholders including industries. BIS standards are developed by its Technical Committees with a wider membership of stakeholders. On the issue of the possibility of any differential treatment to imported products, Members are informed that the said measure will be applicable to all commercial feeds intended for cattle, whether manufactured domestically or imported into India as envisaged in the aforesaid direction. Moreover, so far as compounded feeds are concerned, the said direction is in the context of feed for food producing animals and shall be specifically applicable to commercial compounded feeds for cattle whether produced domestically or imported into India.

1.2.13 India – Toys (Quality Control) Order, 2020 (IND/131); Amendment in Policy Condition No. 2(iii) to Chapter 95 of ITC (HS), 2017- Schedule-I (Import Policy) (IND/143), G/TBT/N/IND/131, G/TBT/N/IND/143 (IMS ID 632[18])

1.76. The delegation of the United States provided the following statement. The United States has been raising concerns with India's treatment of imported toys since 2017. With each new requirement, India has made it more difficult for exporters to successfully bring legitimate and safe toys to market. The Quality Control Order for toys was notified on 7 February 2020, with only a 15-day comment period. The United States requested an extension of the comment period to 60 to 90 days, but India rejected that request citing concerns "related to national security, health, safety, environment, and deceptive trade practices". Can India please explain in detail the nature of the urgent problems underlying India's assertion that this exception to India's TBT obligations is warranted for the proposed Quality Control Order? Nonetheless, the United States industry submitted comments to G/TBT/N/IND/131 on 2 February 2020 and to G/TBT/N/IND/143 on 23 April 2020. US industry has also noted numerous concerns in their comments and letters regarding Schedule 2, Scheme 1 of the BIS Compulsory Assessment Regulation of 2018 required by the QCO. Most notably, US industry understands that in order to obtain the licence to apply the Indian Standard Mark, manufacturing facilities will be required to undergo audits overseen by BIS. Industry further reports that importers will face multiple fees and registration requirements and be required to retain an Indian in-country representative, obtain bank guarantees, and provide an indemnity bond. The United States shares US industry's belief that requiring a facility audit, on-site or otherwise, is unnecessary and inconsistent with international product safety practices. Many governments have adopted regulations to ensure that products meet harmonized safety requirements by requiring product testing by a laboratory accredited to ISO 17025 for the relevant tests. Furthermore, international travel restrictions may still be in place in some countries when the QCO enters into force in June, making it impossible for exporters to obtain factory audits and effectively halting toy imports.

1.77. The United States urges India to revise the measure to allow toy importers to rely on Schedule 2, Scheme 2 of the BIS Compulsory Assessment Regulation, which allows for exporters to use self-declaration of conformity. In addition to the QCO, importers are subject to new random import sampling requirements under Notification 33. Toys already tested to the Indian standard by manufacturers in compliance with the QCO can now be subject to random compliance sampling upon importation. Major industry concerns include: uncertainty about who pays for the sampling; the possibility that goods already deemed in compliance with the Indian standard via the QCO may now be denied entry with no recourse for manufacturers; and a delay in goods getting to the point of sale. The United States does not understand the need for this additional testing. Many US companies use harmonized international toy safety standards such as ISO 8124, ASTM F963, and/or EN 71, and conduct product testing at laboratories accredited by the International Laboratory Accreditation Cooperation. The United States urges India to reconsider the full scope of requirements for toys that it is now implementing. The combined burdens of the QCO and Notification 33 may discourage many companies from exporting toys to India. The difficulty complying with both measures is likely to result in an increase in counterfeit and poor-quality toys in the Indian market.

1.78. The delegation of the European Union provided the following statement. The European Union is strongly concerned about India's Toys (Quality Control) Order, 2020 (QCO), and the Amendment in Policy Condition No. 2(iii) to Chapter 95 of ITC (HS), 2017- Schedule-I (Import Policy). The EU outlined its concerns already during bilateral talks with India in the margins of the TBT Committee in February 2020 and submitted written comments on 30 March 2020 and 31 March 2020, respectively. The EU would be grateful if India could respond directly to the concerns referenced below, which are also found in the EU written comments.

1.79. *Complex Scheme-I:* The new QCO obliges conformity assessment by Indian authorities under Scheme-I of Schedule-II of the BIS (Conformity Assessment) Regulations, 2018, which mandates compliance of all toy products with Indian Standard (IS) 9873 /IS 15644. This requirement has been applicable to all imported toys since September 2017 through Policy condition No. 2 to Chapter 95 of ITC(HS), 2017 – Schedule – 1 (Import Policy), notified by India to the TBT Committee through Notification no. G/TBT/N/IND/68 on 7 December 2017. Compliance with these standards is tested by Indian laboratories accredited by the National Accreditation Boards for Testing and Calibration Laboratories (NABL), i.e. laboratories designated for testing such conformity by the Government of

[18] For previous statements follow the thread under IMS ID 632 (under dates raised and references).

India. In addition, as of December 2019, according to the Directorate General of Foreign Trade (DGFT) Notification 33/2015-20, customs officials collect samples on a case-by-case basis from each consignment of imports of toys and send them to NABL accredited laboratories for testing the conformity with the applicable Indian standards. The EU would like to point out that the proposed new measure introduces new burdensome requirements to those already existing as well as a very onerous system, which would seem almost impossible to comply with as further explained below.

1.80. *Grant of Licences*: According to Scheme-I of Schedule II of BIS (Conformity Assessment) Regulations, 2018, manufacturers shall obtain a licence for every factory they own, undergo a factory audit by the BIS and provide a list of all machinery, testing equipment and quality control processes to the BIS. In this context, the EU would like to point out, that:

a. The toy industry is mainly comprised of small and medium scale manufacturers. As compliance under the proposed QCO entails mandatory factory inspections by the Indian authorities before a licence is granted, complying with Scheme 1 would require extra time and eventually lead to a disruption of the production, with a consequential halt of the exports to India;

b. It seems that the requirements envisaged under the proposed QCO do not entirely take into account the business reality of the toy industry, i.e. the seasonal character of the sector, with over half a million different stock-keeping units (SKUs) and multitudes of new SKUs being generated every few months. For the time being, the EU points out that it remains unclear how licences can be obtained, i.e. whether the same licence will be per item, SKU or category. The EU would therefore like to kindly request the Indian authorities to ensure that the licensing requirements are imposed in a way that a single licence, valid also for products newly manufactured during the tenure of the licence, is required per factory for all manufactured products (in compliance with IS 9873);

c. The costs associated with obtaining a licence and, in particular factory audits, will be extremely high for smaller manufacturers. In addition, several of them will not be able to provide the information required;

d. In light of the significant number of SKUs yearly produced by the industry, every six months, the BIS will have to audit and review licence applications of thousands of factories, both in India and elsewhere. The EU would like to express its concerns to the Indian authorities regarding the BIS' resources needed to ensure a smooth implementation of the audits;

e. The costs associated with licensing could dampen the number of SKUs brought to the Indian market, consequently affecting children's access to toys and the growth of the toy retail sector;

f. The requirements set forth in the notified draft are redundant with the international standards on safety and quality management systems manufacturers already comply with (ex: ISO 9001 for quality management system, ISO 9001 & 14001 for activities required for certification).

1.81. Taking the above-mentioned considerations into account, the EU would like to kindly request India to apply Scheme II of Schedule-II of BIS (Conformity Assessment) Regulations 2018 and extend the benefit of self-certification set forth in Scheme II also to toy manufacturers, as it was done for the electronic industry under the Electronic and Information Technology Goods (Requirement for Compulsory Registration) Order. Should Scheme-I be implemented, manufacturers with an ISO 9001 certification should be exempted from factory audits, allowing them to submit a copy of their certification. The EU would also kindly ask the Indian authorities to consider the extension of the validity of licence to up to five years as well as remove the requirement for lists of machinery and equipment. Moreover, the EU would like to point out that, despite the lack of information regarding the Government's timeline to implement the measure, the complexity of the Scheme and the number of licences to be granted make it unlikely that the six-months transition period indicated will be sufficient. An insufficient transitional period may drain the resources of the BIS and lead to significant delays in products to market. To our knowledge, there are also no guidelines yet available in respect to existing stocks and SKUs already in-market. As a consequence,

both an appropriate extension of the transition period and relevant guidelines should be considered by the Indian authorities.

1.82. *Bank Guarantee*: According to Article 5.2.5 of the TBT Agreement: "any fees imposed for assessing the conformity of products originating in the territories of other Members are equitable in relation to any fees chargeable for assessing the conformity of like products of national origin or originating in any other country, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body". The EU would like to point out that the fee structure under the proposed QCO does not comply with the above-mentioned provision of the TBT Agreement inasmuch as, while foreign manufacturers are required to provide a bank guarantee of USD 10,000, no such requirement is applicable to domestic manufacturers. As Scheme-I is factory specific and the various components of a product are often manufactured in multiple factories, prompt compliance with the requirements will be virtually impossible, not only for the industry but also for the BIS. This may also create significant cash flow issues for Member companies operating in the toy industry in India. Additionally, according to Article 5.1.1 of the TBT Agreement Members shall ensure that "conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation". However, despite this provision, the new measure introduces a clear discriminatory element as it only requires the bank guarantee to foreign manufacturers. Therefore, the EU would like to kindly ask the Indian authorities to remove the requirement for a bank guarantee for foreign manufacturers.

1.83. *Fees*: Besides a fee for obtaining a licence and bearing the expenses for Indian authorities to travel to the manufacturing facilities for inspection, manufacturers are required to pay a "marking fee", whose amount has not been determined yet, based on the products on which the standard mark is affixed. In this respect, the EU would like to kindly suggest the Indian authorities to introduce an annual marking fee subscription system as an option for the use of the IS standard marks. This would allow for an unlimited usage of the IS standard marks and would reduce the cumbersome administrative procedures for companies to verify and keep records of the number of IS standard marks used. On a final note, the EU would kindly like to ask India to confirm whether the DGFT Notification 33/2015-20 requirements (notified to the TBT Committee under reference G/TBT/N/IND/143) would be fully replaced with the QCO licensing scheme once implemented.

1.84. The delegation of Canada provided the following statement. Canada wishes to reiterate the importance Canada places on toy regulations that protect the health and safety of children and supports WTO Members that put in place measures to achieve this objective. While India did notify, on 7 February 2020, its new Toys (Quality Control) Order, 2020, Canada was very disappointed that India provided WTO Members with only 15 days, instead of the normal minimum 60 days, to review the new measure, consult with relevant stakeholders, and provide comments. It remains unclear to Canada what rationale India used to allow only two weeks for Members and stakeholders to review the new Order, on the grounds that it was addressing concerns "related to national security, health, safety, environment, and deceptive trade practices". While Canada requested an extension of the comment period to India, which was not fulfilled, Canada still provided comments to India on 6 April 2020, and looks forward to receiving a response from India.

1.85. Canada kindly requests that India provide specific examples of the precise (i) legitimate objectives supporting; and (ii) rationale for the following aspects of the measures: extensive in-country testing and marking that require separate applications for products in the same family, special packaging and/or labelling, and the segregation of products for the Indian market; and the use of technical regulations based on domestic standards, even though India's domestic standards are aligned with international toy safety standards. Can India please specify how consistency with non-discriminatory treatment for imported toys relative to domestically produced toys is maintained under the new requirements, according to which foreign manufacturers must: nominate and retain an in-country Indian representative; obtain a performance bank guarantee; and provide an indemnity bond? Canada looks forward to further engagement from India on this important issue.

1.86. In response, the delegation of India provided the following statement. India would like to thank the United States, the European Union and Australia for their continued interest in the matter. On various issues raised by the Members in their written submissions, India would like to state that Toys (Quality Control) Order, 2020 has been issued under the provisions of BIS Act, 2016 and Rules

and Regulations framed thereunder, which envisages conformity assessment Scheme-I of BIS (Conformity Assessment) Regulations , 2018. Scheme-I has been chosen for the purpose of ensuring stricter monitoring of quality of goods as the objective of the conformity assessment measure (licensing) is to primarily ensure safety of toys for use of children and BIS keeps the same under focus with minimum possible costs involved. The Quality Control Order is equally applicable to foreign manufacturers exporting toys to India as well as the domestic manufacturers. As per the Toys (Quality Control) Order, 2020, every toy shall conform to corresponding Indian Standards specified therein and shall bear the standard mark under the licence from BIS as per Scheme-I of BIS (Conformity Assessment) Regulations, 2018. In this context, it is worth mentioning here that the Indian standard IS 9873 is a revision of standard ISO 8124.

1.87. On the query related to application of international standard, India would like to state that ISO 9001 stipulates only the requirements for Quality Management Systems (QMS). The conformity assessment scheme (Scheme-I) of BIS specified in the QCO is focused at product conformity to the relevant standard (in accordance with type 4 certification scheme of ISO/IEC 17067) through third-party lab testing and verifying requisite quality assurance measures put in place by the manufacturer for regular production to ensure continual conformity of the product through factory inspection. The requirement of list of machinery and test equipment is a part of the evaluation system as per Scheme-I of BIS (Conformity Assessment) Regulations, 2018. Similarly, the packaging requirements are mentioned in the standard itself.

1.88. The date of implementation of the Toys (Quality Control) Order, 2020 is 1 September 2020, as per DPIIT's notification dated 25 February 2020. BIS is working to ensure the implementation of the order. Having said so, based on the facts and data, industry, if required, can always make a request to the Government of India, taking into account the progress made and assessment of need for extension. Under this scheme, BIS licence will be granted to a manufacturer of toys as per the Indian Standard and all varieties (items/models/SKU, etc.) of toys covered in the standard will get covered under the same licence. To cover all the varieties in a standard under the licence, BIS will be issuing grouping guidelines shortly with an aim to specify a minimum number of varieties of toys to be tested, to consider covering a larger number of varieties in the scope of the licence. This will be with an aim of optimum testing to achieve the objective of ensuring safety of all toys for children. BIS has already shared the draft grouping guidelines with stakeholders and sought their inputs before finalizing such requirements.

1.89. As per Scheme-I of BIS (Conformity Assessment) Regulations, 2018, the manufacturers of Toys shall be required to take BIS licence for each factory (manufacturing premises). However, the scheme does not specify any provisions which are likely to have the compliance and cash flow issues expressed by these Members. So far as the validity of such licences under the provisions of Scheme-I of BIS (Conformity Assessment) Regulations, 2018 is concerned, the licence can be granted for a period of minimum one but up to two years and subsequently can be renewed for a period of minimum one but up to five years. BIS is already operating product certification scheme as per Scheme-I for more than 970 products as per BIS (Conformity Assessment) Regulations. It may be mentioned that out of more than 36,000 licences granted by BIS, more than 80% of manufacturers who have taken BIS certification licence, are from the Indian MSME sector. This includes about 60% of licences on voluntary basis. Further, the BIS, on a continual basis, analyses the resources required from time to time and ensures appropriate measures.

1.90. Members have also sought to know the reason for the need of Performance Bank Guarantee (PBG) from foreign manufacturers. In this regard, India would like to inform the Members that PBG is required after Grant of BIS licence through signing of an agreement between BIS and the Foreign manufacturer. The need for PBG from a foreign manufacturer is to ensure that in case of any violation of the BIS Act, Rules and Regulations including non-payment of marking fee dues and breach of terms and conditions of the licence, BIS would be able to enforce the PBG. On the other hand, in case of domestic manufacturers, BIS can approach and seek compensation through domestic courts. PBG will be invoked only when there is any breach and covers civil liability and loss of revenue, if any, that may arise during the tenure of the licence or thereafter. The amount shown against bank guarantee remains with the concerned bank in the form of refundable security and it should not be construed as expenditure. Hence submission and maintenance of PBG by foreign manufacturers should not be construed as discrimination between domestic and foreign companies. Moreover, bank guarantees are also common in international trade with regard to performance of contracts.

1.91. On DGFT Notification No. 33/2015-20 (notified to the TBT Committee under reference G/TBT/N/IND/143) referred by Members in their written comments, India would like to mention that the Guidelines on sampling requirements are as per the instructions issued by the competent authority, in particular, the Customs authority, under Customs Act, 1962 and Regulations framed thereunder. Any denial of entry of goods including toys in India is governed by such provisions with appropriate appeal provisions. It is also informed that the requirements under this DGFT notification would be fully replaced with the QCO licensing scheme, once implemented.

1.2.14 India – FSSAI's Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and the new implementing veterinary certificate for dairy products (IMS ID 633[19])

1.92. The delegation of the European Union provided the following statement. India has in December 2019 adopted a new veterinary import certificate for milk and milk products based on Food Safety and Standards Regulation 2011, that is of great concern to the EU. The provisions of FSSAI's Regulation defines cheese as a "product produced from non-animal rennet or another suitable coagulating agent, which applies equally to both domestic and imported foods" (as reflected in the notification G/SPS/N/IND/236). It was, however, still possible for cheese-containing animal rennet to access the Indian market provided that it was correctly labelled. The new veterinary certificate requires that milk products have not been manufactured using animal rennet. As most European cheese is traditionally made with animal rennet, this means that there is a *de facto* ban for European cheese entering the Indian market. While the EU fully supports the importance of labelling the presence of animal rennet, the EU considers that this new certificate is not proportionate and not in line with the TBT Agreement. Veterinary certificates are to address sanitary (human or animal) health issues. There is no scientific evidence that cheese produced with animal rennet is harmful to health, or more harmful than cheese produced with artificial/vegetal rennet. We therefore would ask India to change the provisions of that veterinary certificate and allow for a label clearly indicating the presence of animal rennet in the cheese, as it was previously the case. This label would allow consumers to make an informed choice.

1.93. In response, the delegation of India provided the following statement. India would like to thank the European Union for their continued interest in the matter. India would like to state that the provision of use of non-animal rennet in the manufacture of cheese has been there in India's Food Safety and Standards Regulations (FSSR) notified in 2011 and the erstwhile Prevention of Food Adulteration Rules as well. Hence this provision is not a new provision. During a recent revision of the milk and milk product standards in FSSR, these provisions were retained as such and continue to be a specified requirement regulation therein. The Department of Animal Husbandry and Dairying had already mandated the need for veterinary certificate for importers of milk and milk products in India. Hence, FSSAI seeking a copy of the veterinary certificate should not be construed as a new requirement introduced by FSSAI. Moreover, the Department of Animal Husbandry and Dairying in the Government of India has recently aligned the Veterinary certificate with India's FSSR in respect of the prohibition on the use of animal rennet.

1.2.15 European Union – EU Commission Regulation (EU) 2019/2013 for Energy Labelling of Electronic Displays, G/TBT/N/EU/610 (IMS ID 634[20])

1.94. The delegation of China provided the following statement. China appreciates that the EU has notified the regulation and supports the EU's efforts to provide customers with transparent and objective information on the energy efficiency of electronic displays. However, China notes that the implementation time of the regulation has brought unnecessary trade barriers to manufacturers. According to the Regulation (EU) 2019/2013, it shall be implemented from 1 March 2021. However, point 1(a) of Article 3 shall be implemented from 1 November 2020. Since the new label regulation EU 2019/2013 has not been comprehensively implemented, detailed test methods and cases have not been given. In the time period between 1 November 2020 and 1 March 2021, manufacturers can only use the test standards and methods specified in the former labelling regulation EU 1062/2010 for testing, while determining the new energy efficiency level according to the calculation formula specified in EU 2019/2013. The switching time for the old and new regulations is not reasonable, which will result in significant discrepancies between the energy efficiency level on the energy efficiency label attached by the manufacturer and the actual energy efficiency level of the

[19] For previous statements follow the thread under IMS ID 633 (under dates raised and references).
[20] For previous statements follow the thread under IMS ID 634 (under dates raised and references).

product. It will mislead consumers. Therefore, China suggests the implementation time of point 1(a) of Article 3 be consistent with the implementation time of the EU 2019/2013 regulation, the relevant test guidelines should be issued as soon as possible, and the test standards as well as test cases should be given in due course.

1.95. In response, the delegation of the European Union provided the following statement. Both Regulations on electronic displays, Ecodesign Regulation (EU) 2019/2021 and Labelling Regulation (EU) 2019/2013, already entered into force. They generally start applying from the same date, i.e. 1 March 2021. However, in accordance with Article 11 of Regulation (EU) 2019/2013, Point 1(a) of Article 3 already applies as from 1 November 2020. This provision refers to the obligation of suppliers to provide the new label for a period of four months in advance of the start of application of the regulation. This is to allow retailers to already display the new label in shops as from 1 March 2021. This indeed means that all test results in principle need to be available about four months in advance of the start of application date, i.e. 1 March 2021. As the new label may only be displayed from 1 March, we do not believe that it will mislead consumers. To this end, an information campaign is also foreseen to explain to consumers the transition to the new labels (a new label will be used for five additional products, from that same date) around the time they are set to appear in shops and in advertisements.

1.96. Notwithstanding the above, we recognize that the deadline of 1 November may turn out to be difficult to meet for some suppliers in a situation where widespread lockdowns due to the COVID-19 emergency has significantly affected production chains and testing activities in many countries. Whereas the EU's regulatory process would not allow changes in the legal timeframe to be formally adopted, as proposed by China, we agree that there may be a need for additional flexibility in light of the current exceptional circumstances. We are therefore currently seeking political approval to issue a formal Commission Notice inviting national market surveillance authorities in EU member States to duly consider the principle of proportionality and the exceptional circumstances when they exercise their discretion on how to enforce the obligations related to the supply of a rescaled label applicable as of 1 November 2020. In practice, such an approach might provide manufacturers with up to four additional months to comply with their obligations, as long as they still comply with the requirement in point 1(a) mentioned above no later than by 1 March 2021. Any such Notice would be published in the Official Journal of the EU.

1.2.16 Kingdom of Saudi Arabia – SASO 2663 Air Conditioner Minimum Energy Performance, labelling and testing requirements for low capacity window type and single-slit, and related certifications, G/TBT/N/SAU/526 (IMS ID 635[21])

1.97. The delegation of China provided the following statement. *The discrepancy in the results of conformity assessment:* The room air conditioners (hereinafter referred to as air conditioners) exported to Saudi Arabia from China have all passed the tests of the relevant Saudi Arabia and international standards, i.e., SASO IEC 60335-2-40 and SASO 2663, and obtained the Standards, Quality, and Metrology Organization (SASO) certification of SGS/TUV/BV. However, the results of sampling tests on the refrigerating capacity and energy efficiency ratio of the air conditioners conducted by Saudi Arabian Customs were quite different from testing results of institutions authorized by SASO in China, generally 3 to 5% lower. Several brands of major air conditioner manufacturers in China encountered similar problems. As Saudi Arabia side failed to provide further information as testing reports or data other than a simple non-conformity result, the export enterprises could not find out the reasons of non-conformity. The testing reports and sufficient data are needed for finding out the reason causing the discrepancy, and hereby correcting the non-conformity. China suggests that Saudi Customs carry out the test comparison with China Customs Air Conditioner Laboratory to study the deviation of test data.

1.98. *Insufficient sampling in random checks*: Saudi Arabia Customs only selected one sample for random checks to determine whether the whole batch of products are qualified or not. In accordance with international practice, when the first test fails, two to three more samples shall be taken to make a reliable judgment. The Saudi Arabian approach seems to be inconsistent with these international practices. According to Article 2.4 of the TBT Agreement, China suggests that the Saudi Arabian side adopts the internationally accepted rules for the random checks.

[21] For previous statements follow the thread under IMS ID 635 (under dates raised and references).

1.99. *Lack of a complaint review procedure*: Saudi Arabian Customs did not accept re-testing applications, the enterprises found it very difficult to identify the problems. Article 5.2.8 of the TBT Agreement provides that "... Members shall ensure a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified." Therefore, China strongly recommends the Saudi Arabian side establishes a complaint review procedure for re-testing the unqualified products.

1.100. *Time limit for the renewal of Energy Efficiency Certification*: The Saudi official registration system provides SASO 2663 energy efficiency certificates one-year validity and the renewal application can only be submitted no more than one month prior to the expiry of these certificates. The short validity of certification and the short period of time allowed for renewal processing greatly hinder the manufacturers from continuous supply, resulting in unpredictability of trade. According to Article 5.1.2 of the TBT Agreement, China suggests that Saudi Arabia extends the validity period for the relevant certificates and revise application period for renewal of the certificates, so that the air conditioner suppliers could meet the requirements of Saudi Arabia and avoid the negative effect on bilateral trade. China thanks once again the attention from the Saudi Arabian delegation and looks forward to an opportunity to work this out in the very near future.

1.101. In response, the delegation of the Kingdom of Saudi Arabia provided the following statement. Saudi Arabia thanks China for raising these concerns regarding SASO 2663/2018 "Air conditioner Minimum Energy Performance – labelling and testing requirements" by mentioning the differences between the testing results issued by the certification body (accepted by SASO) in China and the testing conducted by the accredited labs in Saudi Arabia, among other issues. The Saudi standard for air conditioners allows 5% tolerance based on the values declared by manufacturer which comply with international practices, taking into consideration, the variation in test results between laboratories as well as the production process. It is worth mentioning that all products that are granted a certification from Saber platform can access the Saudi market easily without any obstacles. However, the custom agency entitled to conduct a random check at ports for certain shipments, which aligned with international practices. The supplier or the agent of the manufacturer in Saudi Arabia has the right to obtain detailed data related to the testing report which included the reasons for non-conformity. In case there is any complaint regarding these reports, the competent authorities in Saudi Arabia have a process to tackle the complaint in a bias-free manner. In terms of the time limit for the renewal of Energy Efficiency Certification, SASO allowed the renewal process of the certificate three months prior to the expiry date which gives the importer sufficient time to conduct these processes. SASO welcomes the suggestion of inter-comparisons of test results between the factories and international laboratories located in China with the SASO's laboratories and other accredited labs in Saudi Arabia.

1.2.17 Australia – Maturation requirements for imported alcohol (IMS ID 636[22])

1.102. The delegation of Brazil provided the following statement. Brazil fully supports Australia's legitimate objective to pursue high quality standards for the commercialization of alcoholic beverages in its domestic market. However, we would like to raise concerns about technical requirements for imported alcohol that are more trade-restrictive than necessary to achieve any legitimate objective under the framework of the TBT Agreement. Currently, the Australian Customs Notice Nº 2007/19, following up on Section 105A of the Customs Act 1901, requires that some alcoholic beverages must be matured in wood for a minimum of two years before delivery from Customs control. This covers all beverages under tariff classifications 2208.20.10, 2208.30.00 and 2208.40.00. Even though said Notice only refers directly to brandy, rum and whisky, it encompasses tariff line 2208.40.00 (rum and other spirits obtained by distilling fermented sugar-cane products), under which cachaça is classified in Australia. By granting the same treatment to cachaça and rum, the Australian Government does not allow imports of cachaça that are not matured for at least two years in wood. Such a requirement does not relate to any quality standard or sanitary requirement applicable to cachaça.

1.103. In late 2019, Australian Border Force (ABF) opened a public consultation process to review some provisions related to Customs Act 1901. According to the webpage for the public consultation, it is also our understanding that the final regulation that will follow the public consultation is likely to have implications in terms of labelling requirements. Brazil welcomes Australia's willingness to update its requirements and thanks the opportunity that was granted for our private sector to

[22] For previous statements follow the thread under IMS ID 636 (under dates raised and references).

provide comments. We also thank Australia for the clarifications provided during the last couple of meetings we had on this matter. We encourage Australia to consider properly notifying this public consultation and the next steps of the regulatory process. In light of this concern, could Australia please explain the rationale for the establishment of such maturation requirements applicable to cachaça? In terms of labelling requirements for products other than rum, brandy and whisky, what will the implications of the new regulation be? Could Australia provide timeframes for the publication of the final text? Will Brazilian comments be taken into account? We look forward to continuing our bilateral engagements with Australia on this matter.

1.104. In response, the delegation of Australia provided the following statement. Australia is reviewing its legislative and tariff classification framework for the import of unmatured alcohol products. Australia currently applies equivalent requirements on domestic manufactured products and imported products that are classified as whisky, brandy or rum to be matured in wood for a period of at least two years. Australia's review process is considering an appropriate pathway to enable imports of unmatured spirits such as cachaça without breaching this maturation requirement. Australia acknowledges Brazil's bilateral engagement on the review of Australia's maturation requirements for alcohol. Representatives from the Brazilian Embassy participated in consultation sessions on the review process led by the ABF. The issues raised in those sessions, as well as written submissions, will inform the proposed legislative amendments. The timeframe for the proposed legislative amendments has been impacted by changes to Australia's Parliamentary sitting calendar due to COVID-19. Australia is committed to progressing these amendments as quickly as possible. The ABF will release an exposure draft of proposed amendments for public comment when available.

1.2.18 Russian Federation – Regulation on safety of alcoholic beverages, Technical Regulation TR EAEU 047/2018 (IMS ID 637[23])

1.105. The delegation of Mexico provided the following statement. Eurasian Economic Community Technical Regulation EAEU 047/2018 on safety of alcoholic beverages. The delegation of Mexico refers to Eurasian Economic Community Technical Regulation EAEU 047/2018 on safety of alcoholic beverages, adopted on 20 November 2018, and which will enter into force in 2021. During the February 2020 meeting of the TBT Committee, Mexico held a bilateral meeting with the delegation of the Russian Federation in order to share concerns about this technical regulation, specifically about its scope of application with respect to beverages such as tequila. There has also been an exchange of information with the Eurasian Economic Commission. However, it has not been possible to confirm whether it applies to tequila. Should the technical regulation apply to tequila, Mexico would be interested in beginning a bilateral dialogue with the relevant authorities in the Russian Federation in order to allow it to consider the analysis of the Mexican technical regulation applicable to that product, Mexican Official Standard NOM-006-SCFI-2012: Alcoholic Beverages - Tequila - Specifications, on the following topics. *Definition of tequila*: The Eurasian Economic Community's technical regulation only considers two categories of products and in neither of those categories could tequila be included because of its physico-chemical characteristics. *Consideration of physico-chemical characteristics*: Should the technical regulation apply to tequila, and given that the Russian Federation has recognized tequila as a Designation of Origin since 2012, it would be important to consider the physico-chemical characteristics of tequila set out in NOM-006-SCFI-2012, especially regarding methanol levels. The levels of methanol proposed in the Eurasian Economic Community's technical regulation are below the levels established for tequila in the applicable Mexican regulations.

1.106. During the February 2020 meeting of the TBT Committee, the delegation of the Russian Federation stated that the technical regulation was currently planned to enter into force in 2021, but this could change and be subject to comments and adjustments. In light of the above, the delegation of Mexico respectfully requests the delegation of the Russian Federation to provide the following. *Official confirmation of the scope of the measure*. We request that it be formally confirmed whether Technical Regulation EAEU 047/2018 applies to tequila. Should it not be possible for you to respond, we request to be advised of a person with whom we can communicate within your relevant authority to obtain a response to this request. *Follow-up information*. The delegation of Mexico would appreciate receiving updated information on the date of entry into force of Technical Regulation EAEU 047/2018, as well as on the next steps to be taken and the process of implementation. The

[23] For previous statements follow the thread under IMS ID 637 (under dates raised and references).

delegation of Mexico thanks the delegation of the Russian Federation for considering this statement and the requests made therein.

1.107. In response, the delegation of the Russian Federation provided the following statement. The Russian Federation would like to thank Mexico for its interest in the Technical Regulation on safety of alcoholic beverages. We can confirm that the Technical Regulation covers all alcohol products including Tequila. It enters into force on the 9 January 2021 with the transition period till 2024. During the transition period certificates of conformity issued before entry into force will be valid until 2024. All comments made by Mexico regarding technical characteristics of Tequila as well as request for bilateral meeting will be to the responsible authorities for consideration. We remain open for discussions in any format on this issue.

1.2.19 Colombia – SIC External Circular 002 on Notices for Mobile Device Packaging (IMS ID 638[24])

1.108. The delegation of the United States provided the following statement. We learned from US industry that Colombia's Superintendency of Industry and Commerce (SIC) recently adopted External Circular 002 on Notices for Mobile Device Packaging, which requires producers, suppliers, or retailers of mobile devices to affix mandatory notices to mobile device packaging. These notices must indicate the cellular network supported by the mobile device (2G, 3G, 4G, or 5G), and must be no smaller than 7 cm wide by 3 cm tall. This label size is unique to the Colombian market, and US industry has raised concerns that such labels are unnecessarily large. We ask though the US Enquiry Point on 27 February, 12 March, and 17 April 2020 that Colombia notify External Circular 002 to the WTO as soon as possible, provide for a reasonable period for comments, and consider any comments received for potential amendment of the measure before implementation. To date, we have only received automated responses that the requests have been received and the request has been received and sent to the regulatory authority. We understand that during the brief public consultation on this measure, both US and Colombian industry expressed that the labelling requirement is overly burdensome, is not directed to any perceived market failure, and would not provide a clear benefit to consumers. Can Colombia please explain its objective in issuing mobile device labelling requirements that include information on the cellular networks supported by each device? Did SIC conduct any studies or impact assessments prior to issuing the measure? Can Colombia please explain the basis for the unusually large size requirements of the notification label? US industry has also expressed concerns regarding the lack of an adequate transition period for compliance. We understand that these requirements will enter into force on 20 May 2020. We request that Colombia delay implementation by at least six additional months from the date of the finalization of the measure after a public comment period and consideration of those comments to allow time for producers, suppliers, and retailers of mobile devices to adapt their products or methods of production to these new requirements.

1.109. In response, the delegation of Colombia provided the following statement. We thank the United States for the information submitted relating to Circular 002 of 7 November 2019, which incorporates Point 2.19 into Title II, Chapter 2, of the Single Circular of the Colombian Supervisory Authority for Trade and Industry in order to establish labelling requirements for mobile devices. In this connection, we advise that the Supervisory Authority for Trade and Industry is still reviewing and analysing the comments submitted by the United States. Once we have any developments or information in this regard, we will be able to pass these on. As some decisions of our government authorities have been delayed because of the COVID-19 health emergency, with attention currently focused on this situation, your understanding on this matter would be appreciated.

1.2.20 India – Expansion of BIS Certification to plugs, socket outlets and power cords (IMS ID 639[25])

1.110. The delegation of China provided the following statement. The Ministry of Commerce and Industry of India specified that the plugs and socket outlets and related products, shall bear the standard mark under a licence from the BIS. The new order shall come into effect from 1 June 2020. China finds that the expansion of BIS is not consistent with the WTO rules and negatively impacts Chinese exporters. China thanks India for providing an adaptation period. However, due to the COVID-19, manufacturers need a longer period of time to comply with the new requirements. As

[24] For previous statements follow the thread under IMS ID 638 (under dates raised and references).
[25] For previous statements follow the thread under IMS ID 639 (under dates raised and references).

compliance with this order involves lots of efforts, such as to go through certifications, refit their facilities and equipment in advance, Chinese enterprises are unable to organize production, deliver goods before the scheduled effective date of this June, which will result in substantial negative impacts on the enterprises and the relevant international trade. In light of the above-mentioned situation, we suggest India postpone the implementation for one year so that the importers and exporters are able to cooperate to comply with the new requirements. According to Articles 5.2 and 5.6 of the TBT Agreement, we suggest India to notify the new requirements of BIS certification to WTO/TBT Committee, and clarify the assessment procedures, relevant costs and relevant policies.

1.111. In response, the delegation of India provided the following statement. India would like to thank China for their comments on this issue. In this regard, India would like to mention that the QCO on Plugs and Socket Outlets and Alternating Current Direct Connected Static Prepayment Meters for Active Energy (Quality Control) Order, 2019 was prepared by the Department for Promotion of Industry and Internal Trade (DPIIT) in the Government of India after consultations with several stakeholders including the BIS. Thereafter the draft QCO was notified to WTO (G/TBT/N/IND/86 dated 18 December 2018) and was available to Members for six months, for their comments. DPIIT got no adverse comments from WTO Members. Pursuant to this, it was gazette notified via S.O. 4353(E) dated 4 December 2019 with implementation date with effect from 1 June 2020. The purpose of this QCO is safety of public, environment protection and to stop deceptive trade practices as well as sub-standard products. On account of the difficulties in implementation due to COVID-19 pandemic, DPIIT has extended the implementation date of said QCO for a period of six months, beyond 1 June 2020, after consultation with the stakeholders including the industry, the Consumer Electronics and Appliances Manufacturers Association (CEAMA), Confederation of Indian Industry (CII) and BIS. Now the implementation date will be 1 December 2020. This has been notified in official gazette dated 18 May 2020 and is available on the website of DPIIT.

1.2.21 Myanmar – Regulation on importation of alcoholic beverages (IMS ID 640[26])

1.112. The delegation of Mexico provided the following statement. The delegation of Mexico refers to the draft procedures on the importation of spirits conveyed by the Government of Myanmar to the Asia Pacific International Wines and Spirits Alliance on 20 June 2019. The Government of Mexico sent official communication 523/01/058/20.IX.2019 on 20 September 2019 to the National Standards and Quality Department of Myanmar and held a bilateral meeting during the November 2019 TBT meeting. The Government of Mexico's main concern relates to the 12-year ageing requirement contained in the draft procedures. This requirement implies that the importation into Myanmar of alcoholic beverages aged less than 12 years will not be permitted. This requirement would represent a barrier to imports of tequila, as none of the types of tequila that are produced under the corresponding technical regulation (Mexican Official Standard NOM-006-SCFI-2012: Alcoholic Beverages-Tequila-Specifications) would be able to meet such a requirement. It is also important to mention that, should this requirement be linked in some way to the quality of the beverages subject to the measure, in the case of tequila, quality is not strictly related to years of ageing. The official communication sent by the Government of Mexico in September 2019 contains further details on this matter.

1.113. The delegation of Mexico would also like to reiterate its concern over Myanmar's failure to comply with the transparency commitments contained in Article 2.9 of the WTO Agreement on Technical Barriers to Trade (TBT Agreement). The draft procedures on the importation of spirits establishes mandatory specifications that must be met for products to be imported into that country, which is why it constitutes a "technical regulation" under the terms of the TBT Agreement and must be notified to the Members of the TBT Committee under the provisions of Article 2.9 of the TBT Agreement. In light of the above, the delegation of Mexico kindly reiterates the following requests to the delegation of Myanmar: (i) it requests a response to official communication 523/01/058/20.IX.2019 or, failing that, follow-up information on the consideration being given to that communication; (ii) it requests clarification on the scope of application of the measure, specifically if it applies to imports of tequila or if it is limited to some categories of alcoholic beverages or spirits; and (iii) it requests that the Members of the WTO's TBT Committee be notified of the draft procedures, and that information be provided on their entry into force, the next steps to be taken and the process for their implementation. The delegation of Mexico thanks the delegation of Myanmar for considering this statement and the requests made therein.

[26] For previous statements follow the thread under IMS ID 640 (under dates raised and references).

1.114. The delegation of Myanmar did not provide a response to the concerns raised. These concerns were subsequently transmitted to the relevant authorities.

1.3 Previously raised concerns

1.3.1 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[27])

1.115. The delegation of the European Union provided the following statement. Regarding the MLPS, the EU would like to refer to its previous comments regarding the draft "Guidelines for grading of classified cybersecurity protection". Together with the wide scope of application of protection Level 3 and above, under the established MLPS, this has led to unwarranted and significant market entry restrictions. The EU's main concerns with regard to the Guidelines are (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 calls for enhanced proportionality and transparency in the implementation of the Cyber-MLPS, instead of introducing burdensome requirements and broadening the scope of Level 3 networks. The lack of access to relevant Chinese standards developing organizations becomes particularly pressing with regard to the Cyber-MLPS, which will draw heavily on a number of mandatory and recommended standards developed by these standardization bodies. The EU notes the recent positive developments in accessing Working Group 3 on encryption of the TC260 standards development organization. However, no semiconductor companies have yet been admitted. We continue to monitor the developments closely. The related industry-level standardization body, the Cryptography Standardisation Technical Committee (CSTC), has only one single foreign industry participant. The EU therefore calls 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. We would also like to request that stakeholders be informed in advance about the entering into force of these measures.

1.116. Moreover, the EU also notes that, last May, the State Administration for Market Regulation released core MLPS 2.0 series of national standards, which took effective last December. To comply with the Cyber-MLPS regulation, these MLPS 2.0 series of standards broadly extend their scope from traditional information systems to network infrastructure, critical information systems, websites, big data centres, cloud computing platforms, mobile internet and other areas. We therefore call on relevant Chinese authorities, including SAMR and relevant standardization bodies, to officially specify the scope of those standards and avoid further unnecessary burdens on foreign industry. We understand that the draft Cyber-MLPS is expected to replace/upgrade the administrative regulations. We hope that our comments will be useful in further developing the draft. In particular, we would like to see the key concepts clarified, relevant standards specified and responsible authorities defined so that complexity, costs and compliance risks can be mitigated. The EU encourages cross-ministerial coordination on cybersecurity legislation and standardization. Finally, we ask that China confirms whether the revised draft will be notified to the WTO for comments to allow for adequate participation of interested parties.

1.117. The delegation of Japan provided the following statement. Japan continues to have concerns regarding the China's "Regulation on the Administration of Commercial Cipher Codes" and "Cyber Security Multi-Level Protection Scheme." Japan would like to refer to the previous statement we made at the last TBT Committee in February 2020. Japan would like to request that China provide relevant information regarding the current revision process and that the regulations would be implemented transparently.

1.118. In response, the delegation of China provided the following statement. In order to implement the requirements of promoting administration in accordance with the law, and to deepen the reform of "streamline administration and delegate powers" in the field of commercial cryptography, China is revising the Regulations on the Administration of Commercial Cryptography in accordance with the legislative spirit of the Law on Cryptography. The revision of the Regulations follows the principles of law-based, open, transparent and on a scientific basis, besides, China will solicit opinions widely and ensure the stakeholders' participation in legislative activities through legal

[27] For previous statements follow the thread under IMS ID 294 (under dates raised and references).

means. Now, the revision of the Regulation is still under study, it will be open for public comments in due course. Regarding the MLPS, with technological developments, in response to more complicated cybersecurity issues, information security multi-level protection scheme needs to be improved. Based on experiences in past years and responding to new development, cybersecurity law requires China to carry out the cybersecurity MLPS, which is completing and improving on information security MLPS. Now, cybersecurity MLPS regulation is under drafting, which will replace the former administrative measures on information security MLPS. This MLPS regulation was open for comments in June 2018.

1.3.2 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, G/TBT/N/EU/44, G/TBT/N/EEC/264, G/TBT/N/EEC/264/Add.1, G/TBT/N/EU/570, G/TBT/N/EU/571 (IMS ID 345[28])

1.119. The delegation of the United States provided the following statement. It is very disappointing that the United States must again raise its concerns with the EU's revisions to its draft regulation on geographical indications and traditional terms for wine; and specifically, our industry's pending applications for traditional terms. The EU's persistent failure to provide any information leaves us no choice. Since the June 2018 TBT Committee meeting, the EU has been saying that the pending applications for traditional terms were still under consideration, but that it could not provide a precise timeline for approval. Why is the EU still unable to provide any estimate or tell us where in the process these applications are after nearly two years? As we indicated at the November 2019 and February 2020 TBT Committee meetings, it would be helpful if the EU could provide some transparency about the status of other applications so that we can see how our applications compare. As requested during the February 2020 TBT Committee meeting, please tell us the following: how many applications for traditional terms have been lodged over the last 10 years; how many of those applications have been approved, rejected, or remain pending; what is the average time between application and a final decision; for pending applications, how long have they been waiting; and how many of the applications have come from member States. We also remain concerned about the EU's efforts to restrict the ability of our producers to use common descriptive tools for labelling and marketing their products, such as restricting the use of the term "barrel aged" and certain bottle shapes, to wines with geographical indications. Now that the EU has notified the revised draft regulation, the United States once again requests the EU to move expeditiously to approve our industry's applications so that we can remove this long-standing item from this Committee's agenda, as well as the agenda of the WTO Council on Trade in Goods. Lastly, can the EU confirm how the processing of these applications has changed, if at all, over the last year following the most recent Parliamentary elections? The United States asked for clarification on this point during the November 2019 and February 2020 TBT Committee meetings but did not receive clarification from the EU.

1.120. The delegation of Argentina provided the following statement. We wish to thank the United States for including this specific trade concern on the Committee's agenda. It is one that we share. Argentina reiterates the concerns expressed at previous meetings of this Committee regarding the discrimination suffered by national wines, which are prevented from using the traditional terms "Reserva" and "Gran Reserva" on their labels. It should be recalled that Argentina duly complied with the substantive procedure provided for in EU regulations for the registration of these traditional terms between 2009 and 2012. However, the EU never sought formal approval, nor did it provide a legal basis for this deliberate omission. In line with previous statements given by our country in the TBT Committee, we once again urge the EU to activate all applications for the registration of traditional terms filed by third countries such as Argentina, which have come to a standstill without any legal justification, thereby constituting a technical barrier to trade.

1.121. The delegation of Brazil provided the following statement. Brazil would like to once again second the concerns raised by the US and Argentina and refer to our past statements on this STC. We kindly ask the EU to share any updated information related to the use of regulated terms for wines exported to the EU in Regulation (EC) No. 607/2009 and Council Regulation (EC) No 479/2008.

1.122. The delegation of New Zealand provided the following statement. New Zealand supports concerns raised by other Members. New Zealand recognizes that Members have the right to protect

[28] For previous statements follow the thread under IMS ID 345 (under dates raised and references).

their consumers from deceptive practices in line with their obligations under the WTO. New Zealand asks that the European Union takes into consideration concerns raised by Members relating to the scope and application of the system of traditional terms, as well as transparency, process, and timelines relating to applications by third countries who wish to use traditional terms in the European Union.

1.123. In response, the delegation of the European Union provided the following statement. The EU understands the continued interest of the United States and other Members in this issue. The EU has completed the revision of its internal legislation on traditional terms which was discussed in previous TBT Committees (Commission Delegated Regulation (EU) 2019/33 and Commission Implementing Regulation (EU) 2019/34). The EU believes that its internal legislation offers a meaningful and transparent system of protection to traditional terms used on wine products from the EU, as well as on products from third countries. In the past, the EU has demonstrated its ability to address specific Members' concerns in this area either via its internal legislation or via bilateral agreements.

1.3.3 European Union – Hazard-based approach to plant protection products and setting of import tolerances, G/TBT/N/EU/383, G/TBT/N/EU/383/Add.1, G/TBT/N/EU/384, G/TBT/N/EU/384/Add.1, G/TBT/N/EU/166, G/TBT/N/EU/166/Add.1, G/TBT/N/EU/166/Add.1, G/TBT/N/EU/263, G/TBT/N/EU/495 (IMS ID 393[29])

1.124. The delegation of Costa Rica provided the following statement. Costa Rica would again like to reiterate its support for the trade concern raised by the United States, Panama, the Dominican Republic and Ecuador. As we have stated on numerous occasions during this Committee's previous meetings, we are concerned about the hazard-based approach taken by the European Union (EU). We again urge the EU to ensure that the implementation of its regulations is based on the use of risk assessments through the application of criteria supported by sufficient scientific evidence, in line with the commitments established in the Technical Barriers to Trade (TBT) Agreement.

1.125. The delegation of the United States provided the following statement. The United States reiterates concerns on endocrine disruptors, which many WTO Members have expressed at previous TBT Committee meetings without any satisfactory response from the EU. The EU has stated that it will conduct risk assessments for MRLs and import tolerances for substances triggering its hazard criteria; however, this does not appear to be the case. The EFSA does not set risk endpoints even for substances for which other authorities, including CODEX, have successfully completed risk assessments and set MRLs. Through its hazard-based approach, the EU continues to restrict the use of pesticides and to lower MRLs to trade-restrictive levels. The EU has stated its commitment to transparency, but it has yet to clarify the legitimate objective that the EU is seeking to achieve or its relationship to the risk of non-fulfilment. As we conveyed previously, we have serious concerns about the scientific underpinnings, non-discrimination, transparency, and predictability in application of the EU's process. We ask the EU for a date when it will respond to our questions, with clarity and specificity, so that this Committee might gain a better collective understanding of how the EU is regulating pesticides and establishing MRLs in a manner consistent with its WTO obligations.

1.126. The delegation of Panama provided the following statement. Article 2.2 of the TBT Agreement clearly states that: "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create." We note however that the EU's measures surpass the requirements for fulfilling its purposes, especially where they deviate from the guidelines set by the Codex Alimentarius and other international organizations under the premise that the studies were inconclusive. Paragraph 7.3 of notification G/TBT/N/EU/625 on the non-renewal of chlorothalonil states that no conclusive results could be reached. Rather than using the principle of risk, as required by the Sanitary and Phytosanitary (SPS) Agreements, this is clearly using the principle of hazard. The principle of hazard has also been used in the EU's other notifications submitted to the SPS and TBT Committees with reference to other substances. We should like to recall that Article 3 of the SPS Agreement states that Members must endeavour to harmonize their measures to improve the predictability of trade. Article 3.4 also states that they must rely on the relevant international organizations. While every Member is free to take the necessary precautions to ensure the safety of its citizens, such measures must not be so needlessly

[29] For previous statements follow the thread under IMS ID 393 (under dates raised and references).

stringent that they adversely affect trade. In addition, conclusive scientific evidence must be used as a basis, as stipulated in Article 5 of the SPS Agreement. We are concerned that the EU's studies, which proved inconclusive, have led to the restriction on active substances, whose use is permitted and regulated by international bodies and is essential in the rest of the world.

1.127. The substance, chlorothalonil, is an organic compound that is crucial to fighting diseases in plantain and banana crops such as black Sigatoka, caused by the *Mycosphaerella fijiensis* (Morelet) fungus. Black Sigatoka visibly attacks the banana and plantain plants, presenting as black spots on the leaves. It later halves plant production, and then in most cases, destroys 100% of sales of the fruit. The disease is aggravated by global warming and by rain and humidity, climatic phenomena observed all year in tropical countries; quite different from the climates of Stockholm or Madrid. Panama has already had to fight this fungus in the past, insomuch as black Sigatoka was known as the "Panama disease" in many parts of the world. We should like to point out that it first appeared in Fiji, however. Phytosanitary measures enabled us to fight it successfully. Nevertheless, we are again under threat in 2020, with the beginning of restrictions on inputs and the highest recorded temperatures worldwide. Alternatives to chlorothalonil are substances such as mancozeb, which the EU also announced as non-renewable in notification G/TBT/N/EU/712. That notification specifically cited studies on tomatoes, potatoes, cereals and grapevines - fruits with flesh less thick than that of bananas. The substance was again restricted despite a lack of scientific evidence on all the products. Let us recall that, unlike tomatoes, grapes and potatoes, banana peels is not to be consumed. Separate studies should therefore be conducted on this type of product taking account of its differences. The fruit is also carefully washed and sanitized in Panama's banana packing plants in line with safety protocols.

1.128. These EU measures could seriously harm the well-being and employment of thousands of families belonging to the Ngäbe Buglé indigenous people, the main source of labour for the banana plantations of Changuinola and Puerto Armuelles. In 2017, the trade in bananas between Panama and the European Union exceeded 17 million boxes, equivalent to USD 180 million, bananas being the main income-producing product in the region. Should this activity be affected it would also set back the country's struggle to improve its production and combat climate change. In terms of transition periods, the EU refers to six-month periods. However, banana production typically takes between 9 and 12 months, besides the fruit's transit time from origin to destination and finally to the point of sale. To put it another way, the process to adjust the crop to the new measures could lead to over a year's losses in production.

1.129. On 12 May 2020, Panama and a dozen other Members presented document G/TBT/GEN/296, requesting Members to suspend the entry into force of the new MRLs for plant protection products during the coronavirus disease (COVID-19) pandemic. We would be grateful to the EU for showing solidarity and addressing this request on a temporary basis. Meanwhile, we can continue our dialogue on how the EU can implement health measures in compliance with the SPS and TBT Agreements, without unjustifiably preventing international trade. Nonetheless, we choose to seek solutions that enable all Members to assist each other with the harmonization of our legislation, in order to safeguard human, animal and plant health, without imposing unnecessary and unilateral trade barriers.

1.130. The delegation of the Dominican Republic provided the following statement. The Dominican Republic thanks the United States for including this agenda item once again, and we agree with the other delegations' statements on this matter. We should again like to express our concern concerning the EU's ongoing measures, since this concern is both trade-related and systematic. The EU has chosen to base these measures on potential hazard rather than on science-based risk assessment, in restricting the use of pesticides and reducing MRLs for import tolerances. These measures are having serious socio-economic consequences in the region, given their impact on the production of agricultural products that producing countries export to the EU. Reducing MRLs to restrictive levels generates negative and unnecessary effects on international trade. We therefore request the EU to avoid implementing this type of unnecessary trade barrier, particularly given the importance of the EU's market to developing countries, including the Dominican Republic, and that such regulations be applied on the basis of sound scientific evidence.

1.131. The delegation of Ecuador provided the following statement. Ecuador notes with concern the EU's continued reduction in the number of plant protection substances authorized in its territory, solely based on the hazard criteria established in its legislation on endocrine disturbers, and without

a risk assessment to establish appropriate MRLs for those substances. During the MRL review process, the European Food Safety Authority (EFSA) published inconclusive reasoned opinions, based on a lack of information. Despite this lack of information, the EU is reducing MRLs to the minimum detection levels, definitively rather than provisionally, which is bringing about a restrictive effect on trade. Consequently, it is necessary to request that the EU ensure its adopted measures are grounded on conclusive scientific findings, in line with the WTO Agreements, thereby providing its trading partners with more predictability and transparency throughout the process. Where information is lacking, we would again request the EU to ensure the EFSA does not issue any MRL recommendations and that the current level be maintained to avoid affecting trade, whenever decisions on regulatory measures are to be supported by conclusive risk assessments that genuinely offer health protection, and avoid creating unjustified technical barriers to trade.

1.132. The delegation of Colombia provided the following statement. Colombia thanks the delegations that have included this item on the agenda and again reiterates its concern with respect to the EU's approach to identifying substances with endocrine-disrupting and carcinogenic properties. We highlight the need to use risk assessment as a methodological tool for making decisions under its three components of assessment, management and communication. A review of the EU's proposal shows that risk assessment is losing ground, with the decision to accept or allow the use of substances being made under a hazard-based approach and neglecting the conditions of use that can define risk scenarios and lead to scientifically-based decisions. In light of the above, Colombia considers that the EU proposal must take into account scientific evidence, production processes and methods, the international recommendations of the Codex Alimentarius, and the relevant ecological and environmental conditions in countries that may be affected by the implementation of the measure, in order to avoid creating an unnecessary technical barrier to trade.

1.133. The delegation of Paraguay provided the following statement. The delegation of Paraguay wishes to express its support for the trade concern raised by various delegations under this item. It is truly concerning that the European Union has taken a series of decisions not to renew the approval of substances and to amend the MRLs of those substances, without considering risk assessments or ensuring compliance with the Codex Alimentarius standards, especially since, due to the lack of assurance as to import tolerance, we are facing a situation in which the EU would appear to be effectively imposing the adoption of its standards on its trading partners. As we stated at the last session of this Committee, and in the SPS Committee, we consider that the use of a hazard-based approach for the regulation of these substances will result in unnecessary barriers to trade and will adversely affect our producers. Conservative estimates put the trade damage for my country at over EUR 850 million, due to the effective or probable non-renewal of several substances that have already been or are about to be reviewed by the EFSA. This economic damage will adversely affect thousands of small producers whose livelihoods depend on agriculture and who already face numerous barriers and difficulties as a result of other protectionist measures and distortions in agricultural trade, climate change and the price depression on the international market. In addition to these problems are the negative economic impacts of the COVID-19 pandemic, which will particularly affect developing countries, which have fewer resources to provide stimuli to help our economies recover and for most of whom agriculture is the main economic driver. We again urge the European Union to perform full risk assessments, avoid unnecessary trade restrictions, and provide reassurance for Members regarding the policy on import tolerances that will be applied.

1.134. The delegation of Guatemala provided the following statement. We thank Costa Rica, the United States, Panama and the Dominican Republic for including this item on the agenda. Guatemala reiterates its concern regarding the matter of endocrine disrupters and the hazard-based approach. The importance of the risk analysis framework needs to be recognized. This includes risk assessment, risk management and risk communication. The precautionary principle is justified when potentially negative effects are identified, the available scientific data is assessed and scientific uncertainty grows. We would like to reiterate the importance of using risk analysis for import tolerances, particularly for tropical developing countries, whose climatic conditions differ from those of the EU in that we do not have a harsh winter to help control pests. Geographical location, namely, the distance and time needed to export a product to the EU, is another factor that should be taken into consideration to avoid applying measures that unnecessarily restrict trade.

1.135. The delegation of Brazil provided the following statement. Brazil would like to refer to its past statements regarding STC ID 393. The EU has systematically refused to take into account concerns raised by many WTO Members regarding notifications G/TBT/N/EU/383 and G/TBT/N/EU/384. We emphasize that regulations on endocrine disruptors should be established

according to sound scientific principles, taking all available data into consideration. Serious evaluations must be able to separate chemicals that have the potential to cause harm due to their endocrine mode of action from those substances that do not pose a threat to human health. The European approach to limit the use of pesticides is more trade restrictive than necessary to fulfil its legitimate objectives under the TBT Agreement. It also disregards risk analyses in the setting of regulatory measures that may have serious impact on trade.

1.136. The delegation of Uruguay provided the following statement. Uruguay would like to thank the United States, Panama, Costa Rica and the Dominican Republic for again including this specific trade concern on the Committee's agenda. We would like to support the other Members' comments and reiterate our trade and systemic concern relating to the EU's use of a hazard-based approach, instead of full scientific risk assessments, when making its regulatory decisions concerning phytosanitary products and when setting import tolerances for substances that meet the cut-off criteria. As we have stated previously, evidence based on the assessment of the actual risks associated with phytosanitary products must play a key role in regulatory decision-making. If not, some of these products might be withdrawn despite their safe use as components of the pest management system. An approach based on hazard rather than on actual risk could have a negative and disproportionate impact on sustainable agricultural production, food security and international trade in food products, contributing little or nothing to the cited aim of protecting public health. Uruguay continues to support any multilateral work undertaken by the Codex Alimentarius to develop a harmonized, risk-based approach for substances with endocrine-disrupting properties that ensures the protection of health while facilitating international trade in food products. In the meantime, we once again urge the EU to give due consideration to the concerns expressed and to reconsider its regulatory approach, with a view to preventing the unjustified proliferation of barriers to international trade in agricultural products and the serious social and economic consequences of such an approach for other Members, in particular developing and least developed countries, for whom this is an important market.

1.137. The delegation of Canada provided the following statement. Today more than ever, safe and sustainable agricultural practices, including the use of plant protection products, must not be overlooked as an effective way to achieve food security. Ensuring access to safe and nutritious food, especially during these uncertain times, is paramount. As stated during past TBT Committees, Canada is concerned with the EU's approach to decision-making for plant protection products, and particularly the impact of these decisions on trade of agricultural commodities and setting of import tolerances. Canada is keen to understand how the procedures laid down in Regulation (EC) No. 396/2005 will be implemented to manage import tolerance requests for active substances falling under the hazard-based cut-off criteria. It also remains unclear whether the EU will take into consideration assessment techniques developed by relevant international organizations. We welcome the EU's commitment to host seminars with third countries and stakeholders. We recognize that timelines to hold these sessions may have been temporarily disrupted due to the current global pandemic, but we look forward to participating in this information exchange when circumstances permit. We trust that these events will provide sufficient detailed information to clarify and address our concerns.

1.138. In the meantime, Canada would welcome any additional information that will help ensure predictability of trade, as non-renewal decisions are currently in the process of being implemented by the EU. Until a clear and predictable process for setting import tolerances is implemented, MRLs for active substances, which are not re-authorized in the EU, should be maintained at existing levels to allow trade to continue. Finally, Canada looks forward to learning more about the EU Farm to Fork and Biodiversity strategies, which we understand will be made public on 20 May, with implementing measures over the course of the next year. We look forward to continuing our engagement with the EU and hope that regulatory changes arising from any new policy will be implemented in a coherent and transparent way that will minimize unnecessary barriers to trade and provide sufficient time to allow producers and exporters to make timely business decisions.

1.139. The delegation of Australia provided the following statement. Australia reiterates its position from previous meetings about the importance of adopting a science and risk-based approach for regulating plant protection products rather than considering only the potential for harm (hazard) due to the intrinsic properties of a chemical. Australia notes that the European Union has recently made several pesticide non-renewal decisions and subsequent changes to relevant MRLs which are impacting Australia's and others' trade with Europe. Australia is concerned about the significant uncertainty surrounding the mechanisms for setting import tolerances, including for substances

falling under the hazard cut-off criteria of Regulation (EC) No 1107/2009. We understand that the European Commission is currently in the process of updating its procedures for handling requests for import tolerances and would appreciate any updates on the timeframe for the finalization of such work.

1.140. Australia would welcome the release by the EU of guidance material on the procedures for handling requests for import tolerances and information sessions with third countries and stakeholders providing details on the import tolerance setting process. These initiatives should be implemented as a matter of priority to provide trading partners with clarity and predictability about the outcomes of their requests for import tolerances. Until a clear and predictable process for setting import tolerance is implemented, Australia requests that MRLs for active substances which were not renewed in the EU be maintained at existing levels to minimize trade disruption and allow producers and exporters to make timely business decisions. Alternatively, Australia requests the setting of temporary MRLs in order to allow any scientific studies necessary for supporting an MRL to be undertaken and evaluated. We thank the EU for its on-going engagement with Australia on these issues and look forward to continuing our constructive engagement.

1.141. In response, the delegation of the European Union provided the following statement. The European Union would like to thank the WTO Members for their interest in the on-going work in the EU on identifying endocrine disruptors for plant protection products. As informed in previous TBT Committee meetings, the scientific criteria to identify endocrine disruptors for plant protection products based on the WHO definition are applicable since 10 November 2018 onwards and included in Regulation (EU) No 2018/605. The European Union is aware of general concerns on the EU policy on plant protection products for the definition of scientific criteria to identify endocrine disruptors. The European Union is also aware of more specific concerns, in particular, on whether import tolerances can be established for substances that are not authorized in the EU, due to the so-called "cut-off" criteria in Regulation (EC) No 1107/2009.

1.142. After having examined the different policy options and taking into account the concerns raised by stakeholders, member States and third countries, the European Union confirms that it has decided to follow the procedures laid down in Regulation (EC) No 396/2005 for the management of import tolerance requests concerning active substances falling under these cut-off criteria. These procedures include a risk assessment by an evaluating EU member State and a scientific opinion by the EFSA. The granting of the import tolerance will then be considered in line with risk analysis principles on a case-by-case basis and taking into account all relevant factors. The EU reiterates its commitment to act in full transparency and will keep Members duly informed about further developments.

1.3.4 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[30])

1.143. The delegation of the Republic of Korea provided the following statement. Korea would like to make some comments regarding this regulation as follows. As mentioned during the previous TBT Committee meeting, Korea requests that China: (i) recognize internationally accredited laboratories or overseas laboratories as certified laboratories for medical devices; and (ii) provide equal treatment to domestic and imported products in terms of the importation and sales of used medical devices. Furthermore, we hope to soon receive replies to our comments and request China to share the expected timeline for the implementation of the regulation and provide a sufficient transition period to avoid creating confusion among medical device exporters.

1.144. In response, the delegation of China provided the following statement. The Regulation for the Supervision and Administration of Medical Devices, which was adopted in 2014, has further simplified the requirements for registration of medical devices. Firstly, to set up and improve the classification management system. Based on the different levels of risks, the medical devices are divided into three categories. The requirements for low-risk products are further streamlined. Secondly, to lower the requirements on clinical trials. Certain products are exempted from clinical trials. Thirdly, to simplify the re-registration requirements. In an implementation notice following the Regulation, one-year transition period and some other transitional measures have been provided. In September 2018, National Medical Products Administration published a new revised list for medical devices exempted from clinical trials; in total, 1,248 medical devices are exempted from

[30] For previous statements follow the thread under IMS ID 428 (under dates raised and references).

clinical trials. For the repeated testing problem raised by Members, China Food and Drug Administration released the Technical Guidelines for Accepting Overseas Clinical Trial Data of Medical Devices in January 2018. The Guidelines provide guidance for accepting overseas clinical trial data as clinical evaluation materials. It helps to avoid and decrease the repetition of clinical trials, accelerating the market access of medical devices.

1.3.5 China – Cyberspace Administration of China – Draft implementing measures for the Cybersecurity Review of Network Products and Services (IMS ID 533[31])

1.145. The delegation of the European Union provided the following statement. The EU has raised the Security Review of Network Products and Services, including the Cybersecurity Review Measures, in this Committee on several occasions, stressing our concerns related to these measures. The EU also submitted written comments last year to the public consultation. We understand that these Review Measures will now enter into force on 1 June. We remain concerned that the measures are quite general and very broad discretionary powers are left to the authorities in charge of the security review, raising concerns for foreign ICT operators. The EU urges China to ensure the clarity, transparency and objectiveness of the security review so that the measure does not become a new market access barrier. The EU is concerned that the Measures do not specify methodologies and standards to be used during the review. Critical Information Infrastructure (CII) operators will be obliged to conduct a preliminary risk assessment and form a report when purchasing network products and services, and to apply for a cybersecurity review under circumstances affecting national security, however some of the elements appear to be quite wide in scope and open-ended. We also note that the non-technical factors among the cybersecurity review have been retained in the final version and would be interested in understanding how China plans to assess these factors, bearing in mind that, from a business perspective, predictability is very important.

1.146. We note Article 16 ensuring confidential business information protection, but at the same time, Article 18 stresses oversight by the Review Office through reports and other means. We reiterate the importance that the EU attaches to the protection of all IPR and confidential business information in this review process and its follow-up steps. Finally, the EU would like to understand how the cybersecurity review will validate new contracts. The measure appears to make the cybersecurity review a market access condition, to a certain extent. For network product and service procurement activities that need to undergo the cybersecurity review, the CII operators should specify, in the procurement documents or the contracts or via other binding means, the obligation of the product and service providers to cooperate with the cybersecurity review, and that contracts should only take effect after the cybersecurity review is passed (Article 6). We would appreciate clarifications to these and to our previous questions from the Chinese delegation in order to make sure that we have the correct reading of the situation.

1.147. The delegation of Japan provided the following statement. Japan has its interest in and concern with regard to the Cyber Security Review Measures and would like to refer to the previous statement we made at the last TBT Committee in February 2020. We recognize that the measures will entry into force on 1 June 2020. Japan would like to request China that the measures would be implemented transparently and in full consideration of the comments and concerns raised by Japan and other Members.

1.148. The delegation of Canada provided the following statement. Canada notes that the final Measures for Cybersecurity Review were promulgated on 13 April 2020, will enter into force 49 days later on 1 June 2020 and that a 2001 WTO Ministerial Decision set this period at six months, unless this would be ineffective in fulfilling the legitimate objectives pursued by the measure. Canada kindly requests China provide a rationale for the 49-day entry into force period. Canada's understanding is that the cybersecurity law, that the measure implements, defines CII as: public communications and information services, power, traffic, water, finance, public service, electronic governance and all other information infrastructure which, if destroyed, damaged or subjected to data leaks, could endanger national security, national welfare and the people's livelihood, or the public interest. As the measure applies to operators of this infrastructure, but does not further define it, could China please provide more information on what CII is so that the legitimate objective of the measure can be clarified and operators can be provided with more certainty?

[31] For previous statements follow the thread under IMS ID 533 (under dates raised and references).

1.149. The final version of the measure requires operators of CII to create a report on the potential security threat of a planned purchase of a good or service, however, the criteria they are to use in assessing security, that were in previous versions of the measure, have been removed instead of clarified. Could China please describe the criteria operators are to use in assessing a security threat and how they relate to legitimate objectives under the TBT Agreement? Article 3 of the measure sets out its broad objectives. Would it be possible for China to add the following TBT Agreement obligations: National Treatment, MFN treatment and the use of international standards? In Article 4, the measure states that: "The cybersecurity review office, which will be established at the Cyberspace Administration of China, will be responsible for formulating the relevant systems and norms for cybersecurity reviews …" Could China please explain when these norms will be published and notified to the TBT Committee?

1.150. In response, the delegation of China provided the following statement. To adapt to the increasingly severe network security situation, protecting national network security, especially supply security of critical information infrastructures, drawing on international practices, Cybersecurity law requires to set up a cybersecurity review mechanism. Cybersecurity Review Measures is to implement Cybersecurity law and will enter into force on 1 June 2020. Measures for security review of network products and services will be abolished. Cybersecurity review mechanism is not to restrict nor discriminate against foreign products and services. Opening up is one of China's basic state policies, China welcomes foreign products and services to enter Chinese market on the premise of observing Chinese laws.

1.3.6 European Union – Transitional periods for MRLs and international consultations (IMS ID 580[32])

1.151. The delegation of the United States provided the following statement. The United States thanks Colombia for again raising this issue. We share the concern that the EU's transition measures do not provide adequate time for producers to modify their pest management programmes to clear the channels of trade. Furthermore, the EU's policies appear to establish arbitrary differences in the treatment of domestic and imported products, and do not appear to account for obstacles posed to imported products compared with generally non-existent risks of non-fulfilment with their described legitimate objectives of human health and safety. Since the last meeting of the TBT Committee, the EU has begun to notify its active substance non-renewal decisions to both the TBT and SPS systems. However, this does not adequately address the inherent problems with the EU's approach to regulating crop protection products and establishing MRLs.

1.152. Trading partners still do not know with certainty the impact of the non-renewal decision on future MRLs, nor can foreign growers make informed decisions on their food production practices in the present. Foreign growers who comply with existing EU MRL standards at the time of production continue to face possible rejection at EU borders – a damaging prospect that EU growers do not face under the current regulatory provisions. The EU has acknowledged that non-EU countries have a shorter time to comply with new MRLs compared to EU member States, but it has not clarified how such shorter timeframes do not arbitrarily or unjustifiably discriminate between its own territory and that of other Members. Once again, the United States reiterates our request that the EU conduct full risk assessments prior to resetting MRLs, and we ask that the EU extend its MRL transitional measures to account for realistic production and processing times for food and agricultural products.

1.153. The delegation of Panama provided the following statement. Through this communication, Panama will address the concerns about STC ID 393: Hazard-based approach to plant protection products and setting of import tolerances; STC ID 580: European Union - Transitional periods for maximum residue limits (MRLs) and international consultations; and STC ID 579: European Union - Chlorothalonil (pesticide active substance). Article 2.2 of the TBT Agreement clearly states that "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary barriers to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create". However, we note that the measures taken by the European Union go beyond what is necessary to achieve their aims, especially when these deviate from the guidelines of Codex and other international organizations under the premise of inconclusive studies.

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

1.154. In its notification G/TBT/N/EU/625 for the non-renewal of chlorothalonil, paragraph 7.3 states that no conclusive results were found. This is clearly the use of the principle of hazard, rather than of risk, as is required in the SPS Agreements. Similar cases of the use of the principle of hazard have appeared in other EU notifications of other substances submitted to the SPS and TBT Committees. We take this opportunity to recall that Article 3 of the SPS Agreement states that Members should try to harmonize their measures to improve the predictability of trade and, pursuant to Article 3.4, they should draw on the support of the relevant international organizations. While every Member is free to take necessary precautions for the safety of its citizens, these measures should not be unduly strict to the point of adversely affecting trade. In addition, there must be conclusive scientific evidence, as stipulated in Article 5 of the SPS Agreement. It is of concern to us that inconclusive European Union studies have resulted in the blocking of active substances, the use of which is permitted, regulated by international institutions and essential in the rest of the world.

1.155. The substance chlorothalonil, specifically, is an essential organic compound for fighting disease in plantain and banana crops, such as black sigatoka, caused by the fungus *Mycosphaerella fijiensis Morelet*. Black sigatoka initially attacks plantain and banana plants visibly, presenting as black spots on the leaves; it later halves plant production, and then in most cases it destroys 100% of sales of the fruit. This disease worsens with global warming, rain and humidity, which are climatic events observed 365 days of the year in tropical countries, a climatic situation that is quite different from that found in Stockholm or Madrid. Panama has already had to fight this fungus before, to the point where in many parts of the world black sigatoka was known as the Panama disease, although we always point out that it first appeared in Fiji. It was thanks to phytosanitary measures that we were able to fight it successfully; however, we are again at risk in 2020, with inputs in use beginning to be blocked and the Earth's highest temperatures being recorded.

1.156. Alternatives to chlorothalonil are substances such as mancozeb, the non-renewal of which the EU also declared in its notification G/TBT/N/EU/712. Studies involving tomatoes, potatoes, cereals and grapes, and all fruit with pulps of lesser thickness than bananas, are specifically mentioned in this notification. Yet again, without obtaining scientific evidence on all products, the substance has been blocked. We recall that, unlike with tomatoes, grapes and potatoes, the peel of a banana is not consumed; individual studies should therefore be made into this type of product, taking account of its differences. Furthermore, in Panama's banana packing plants, this fruit is carefully washed and sanitized following food safety protocols.

1.157. The European Union measures could cause heavy losses and threaten the well-being and employment of thousands of families belonging to the Ngäbe Buglé ethnic group, who are the main source of labour for the banana plantations of Changuinola and Puerto Armuelles. In 2017, the trade in bananas between Panama and the European Union exceeded 17 million boxes, equivalent to USD 180 million, bananas being the main income-producing product in the Ngäbe Buglé region. Moreover, any impact on this activity would mean a step backwards in the country's struggle to improve its production and combat climate change. In reference to transition periods, the European Union talks of periods of six months. However, banana production typically lasts from 9 to 12 months, without taking into account the transit time for fruit from origin to destination and finally to the point of sale. In other words, during the process of adapting cultivation methods to the new measures, losses amounting to more than a year's production could be generated.

1.158. On 12 May 2020, Panama, together with a dozen other Members, submitted document G/TBT/GEN/296, requesting Members to suspend the entry into force of the new maximum residue limits for plant protection products during the COVID-19 pandemic. We thank the European Union for being supportive and responding to this request on a temporary basis. During this time, we can continue discussions on how the EU can take health measures in line with the SPS and TBT Agreements without unduly interrupting international trade. However, our choice is to seek solutions that would allow all Members to support each other in harmonizing our legislation, with the aim of safeguarding human, animal and plant health without imposing unnecessary unilateral barriers to trade.

1.159. The delegation of Costa Rica provided the following statement. As in previous meetings, Costa Rica associates itself with the concern raised by the United States, Colombia, the Dominican Republic, Ecuador and Panama, as well as with the request for extension of the period for compliance with the new tolerances that are being established for various substances, in view of the serious impact that they have on the agricultural production of our countries. The EU's review of the tolerances for various substances used in agricultural production is a source of huge concern

for Costa Rica. As previously stated, it is impossible for agricultural production to adjust to new requirements or tolerances within six months, when the registration of new molecules alone must undergo a complex assessment process lasting much longer than that period.

1.160. Furthermore, in the current historical context in which the international community finds itself due to the COVID-19 crisis, the implementation of certain sanitary and phytosanitary measures that create additional restrictions or burdens on international trade in animals, plants or plant products constitutes a challenge that is hampering worldwide economy recovery efforts, especially in developing countries. In this regard, we would like to reiterate the request made in document G/SPS/GEN/1778 and G/TBT/GEN/296 – Request for the Suspension of the Processes and Entry Into Force of Reductions of Maximum Residue Levels (MRLs) for Plant Protection Products in Light of the COVID-19 Pandemic.

1.161. The delegation of the Dominican Republic provided the following statement. The Dominican Republic wishes to reiterate its concern with respect to this agenda item and associates itself with the statements of other countries regarding international consultation processes and the transition periods granted by the European Union prior to the entry into force of provisions under which the EU no longer approves the marketing of certain pesticide substances and amends maximum residue limits (MRLs). In view of harvest times and the time needed to establish molecules, it is virtually impossible for farmers to be able to find control measures that are reliable enough to replace the molecules, owing to the long process required to obtain substitutes. For this reason, these measures will not provide enough time to amend pest management programmes. This results in significant losses for producers, leading to a direct impact on exports from countries like the Dominican Republic to the EU, especially in cases where even more time is needed to fine alternative substances, when it is normally necessary to wait for ideal production cycles to apply and adapt to measures. We request the EU to extend its transition periods and to consider the need to use risk analysis as a methodological tool for developing standards in order to facilitate international trade, taking into account a more realistic approach to agricultural production times, closely following crop production stages.

1.162. The delegation of Colombia provided the following statement. Colombia wishes to reiterate its grave concern regarding international consultation processes adopted and the transition periods granted by the European Union prior to the entry into force of provisions under which the EU no longer approves the marketing of certain plant protection substances and amends maximum residue limits (MRLs). These concerns are being reiterated because, to date, there is no alternative that would help resolve the problems that short transition periods cause for fruit and vegetable producers in Latin America. In this context, we reaffirm the arguments put forward and compiled in document G/TBT/W/695 of 13 November 2019. In accordance with the provisions of Articles 2.5 and 2.12 of the TBT Agreement, Colombia considers that there should be further discussions at the technical level, with the participation of the Members concerned and taking into consideration the arguments and technical, scientific and economic evidence, to review the time periods for bringing into force the regulatory changes to MRLs, taking into consideration international consultation forums, in order to prevent them from becoming unnecessary barriers to trade.

1.163. The uncertainty faced by agricultural producers related to short transition periods raises concern. These measures create additional burdens for producers, who need to make decisions on the use of crop protection products a year or more before the final product arrives on the European market. This is particularly complex for products with long production, harvest, storage and distribution cycles. The same challenges arise in processed and frozen foods. For such products, short transition periods can create situations in which imported products are discriminated against in favour of domestic products, as goods produced in accordance with the EU standards in force at the time of production may no longer be eligible to enter the EU by the future date on which they arrive at the border. Moreover, the situation arising from the COVID-19 global health emergency has forced the health and scientific authorities of all countries, including Colombia, to focus attention on that crisis. By the same token, key sectors such as food producers, organizations and associations are having to make significant efforts to ensure biosecurity controls in the fruit and vegetable supply chain. This is reducing their capacity to analyse draft regulatory measures and adjust production methods, creating additional burdens on international food trade, which is hampering worldwide economy recovery efforts, especially in developing countries.

1.164. In line with the statements made in communication G/TBT/GEN/296 of 12 May, we request the EU to suspend for a period of 12 months all review processes of market approvals for plant

protection substances, the processes currently under way to establish new MRLs, and the entry into force of regulations in these areas, planned for 2020. Furthermore, Colombia maintains that notification of transition periods or MRLs to the WTO should not be conducted as a simple formality within the regulatory process, but should provide a real forum for Members to submit substantive observations and comments for genuine consideration by the Committee that could lead to adjustments to proposed regulations. Therefore, within the framework of this Committee, we do not believe it is enough for the European Union to state that as soon as the EFSA recommendation and PAFF Committee opinion are known, countries should be able to "predict and make the relevant adjustments", given that this information has not been notified to the WTO and therefore the public consultation period has not expired. Colombia once again welcomes the opportunity to express its concerns on this issue and looks forward to a response from the European Union.

1.165. The delegation of Ecuador provided the following statement. Ecuador reiterates its concern about the transition periods granted by the EU for implementing its measures relating to the non-renewal of the use of substances and the reduction of MRLs, as they fail to provide sufficient time for producers to adapt without affecting their access to the European market. Farmers need more time to adapt to MRL requirements because it takes 36 months on average to develop a new phytosanitary pest control product. In order to establish reasonable transition periods, it is also necessary to consider harvesting periods and the times when agrochemicals need to be applied to ensure they are effective. In addition, the time it takes from the time producers plan their harvest to the time it reaches European borders must be considered. Our farmers are making the necessary efforts to comply with the EU's requirements because they cannot afford to lose their access, but it is physically impossible in such a short period of time. This is particularly true in the context of the COVID-19 pandemic, which has had a devastating impact on Ecuadorian society and has depleted the resources of our producers, especially the smallest producers. We therefore once again urge the European Union to consider a period of at least 36 months, which would be a more suitable period to make the necessary adjustments in production and would enable developing countries to ensure compliance with the conditions laid down in the European regulations.

1.166. The delegation of Paraguay provided the following statement. We wish to thank the delegations that included this topic in the agenda and express our support for this trade concern. In this regard, we consider that the length of the transition period granted for the implementation of amended MRLs is not sufficient for our producers to adjust production methods in order to adapt to these new standards, which we also consider run counter to harmonization because they do not conform to international standards. We are concerned that the European Union has been continuing with the process of reviewing substances with the consequent reductions of MRLs to the limit of detection in recent months, during which all Members have been affected by extraordinary circumstances that have affected our capacity to monitor and respond to these measures, including being able to take part in the international consultation process, due to national efforts being primarily focused on fighting the COVID-19 pandemic. In this connection, Paraguay, together with 12 other Members, circulated a communication addressed to the EU, but extended to all Members, requesting the suspension of the processes for reviewing and amending MRLs for plant protection products for a period of 12 months. This request was circulated under document symbols G/SPS/GEN/1778 and G/TBT/GEN/286, and has arisen from the lack of capacity at present to monitor the measures and exercise our rights effectively because, in addition to response capacity, the meetings and work of the delegations in Geneva have also been affected by the suspension of WTO meetings. We would greatly appreciate it if the EU would consider this request, in light of the extraordinary circumstances that all Members are experiencing and which we will continue to face in the post-pandemic recovery period.

1.167. The delegation of Guatemala provided the following statement. We thank the United States, Panama, Costa Rica, the Dominican Republic and Colombia for including the topic in the agenda. Guatemala wishes to reiterate the importance of the European Union granting transition periods that closely follow the stages of crop production, in particular for crops grown in tropical countries. The productive sectors require a longer adaptation time, in particular to look for alternative substances, which in some cases means having to wait for suitable cycles in production to commence application and testing. We are concerned that our ideas for discussions on finding solutions have not been heard and accepted. The trade concern on this issue focuses on safeguarding agricultural producers and exporters exporting to the European Union, which will be affected by the European Union's change in conditions. We would be grateful if the European Union could: (1) establish genuine dialogue to discuss this issue; (2) extend the transition period, with a view to ensuring that trade is not obstructed any more than is necessary and giving time for tropical developing countries to adapt;

and (3) provide clarification on why our comments on this process in the WTO are not taken into account within the regulations.

1.168. The delegation of Uruguay provided the following statement. Uruguay wishes to thank the United States, Colombia, Panama, Costa Rica and the Dominican Republic for including this item in the Committee's agenda. In this regard, there is agreement that, in view of harvesting periods, the stages at which plant protection products are applied, and the time required for the development and registration of alternative substances, the transition periods granted by the European Union in the provisions amending maximum residue limits (MRLs) for active substances do not give enough time to make the necessary adjustments to production and ensure that agricultural products comply with the new MRLs; even more so in the case of processed or frozen products. Uruguay once again calls on the European Union to adopt regulatory decisions based on internationally accepted standards or to provide conclusive scientific evidence when it is strictly necessary to depart from these standards in order to meet its legitimate objectives, as provided for in the relevant WTO Agreements. Even in cases where the European Union decides, based on a comprehensive risk analysis, that it is necessary to reduce the MRLs for active substances used in the agricultural production of other Members, we encourage it to take into consideration the concerns expressed by various delegations regarding the insufficient length of the transition periods granted to make the relevant adjustments.

1.169. The delegation of Brazil provided the following statement. Once again, Brazil would like to support the concerns raised by the United States, Colombia, Panama, Costa Rica and the Dominican Republic. We respectfully bring to the attention of the EU its obligations under Article 2.12 of the TBT Agreement, which relate 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 is 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 are "inconclusive" or only indicate a "suspected risk". Last year, for instance, the EU defined a grace period of three months for accepting the presence of MRLs for chlorpyrifos in the EU, following on TBT notification G/TBT/N/EU/682. Such period is incompatible with the production period of an orange crop, when plants have already been sprayed with chlorpyrifos. It is also incompatible with the production process, given that a significant part of the juice is exported frozen. This issue is especially important to small farmers, which had already used chlorpyrifos complying with EU regulations in force. In bilateral meetings, we have consistently tried to expand the transitional period for chlorpyrifos MRLs, but no progress has been achieved. Therefore, we urge the EU to provide a transitional period of at least six months, following on past decisions of this Committee.

1.170. The delegation of Canada provided the following statement. Canada would like to reiterate its concern with the EU's transition periods for MRLs. Currently, transition periods do not apply to third countries, making it very difficult for exporters to adapt to the new requirements. The current approach does not acknowledge the reality of agricultural supply chains such as multi-year inventory and extensive shelf life, including in foreign countries. At a time when ensuring food security is paramount, the EU's transition periods for MRLs must take into account the need for exporters to adapt to new requirements, as it has done for its domestic producers.

1.171. In response, the delegation of the European Union provided the following statement. The EU thanks the WTO Members for raising this issue. As clarified in previous TBT Committees, as a matter of principle, the EU considers concerns on the setting of MRLs for pesticides – and any details regarding their implementation – to be a matter for discussion at the SPS Committee, rather than at the TBT Committee. Further to requests by some Members, and in the interest of transparency, the EU has decided to notify all draft measures on pesticide active substances that are relevant for the TBT Committee additionally also to the SPS Committee. In practice, it means that future draft acts on the non-approval or restriction of approval of an active substance will be notified to both Committees. However, in the interest of efficient proceedings in both Committees, and in line with the respective Agreements, the EU continues to consider that matters on approvals 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.

1.172. The EU fulfils all its obligations under both the TBT and the SPS Agreement, including notifying its trading partners about planned measures that fall within the scope of either of these agreements. Information and comments received in response to these notifications are duly

considered and taken into account before final decisions are taken, as explained in EU replies to trading partners. As regards possible transitional periods when MRLs are lowered, the EU would like to remind the Committee about two key provisions of such measures. First, following the formal adoption, publication and entry into force of an act lowering MRLs, a deferred date of application is set. The date of application is the date from which the new/lower MRLs are effectively enforced. The length of the deferral is six months after entry into force, in the vast majority of cases. This deferral of the application date permits, *inter alia,* third countries and food business operators to prepare themselves to meet the new requirements that will result from the modification of the MRLs. 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 shows that a high level of consumer protection is maintained. This is regularly not the case where MRLs are lowered because the safety of consumers could not be demonstrated.

1.3.7 India – Air Conditioner and its related Parts (Quality Control) Order, 2018, G/TBT/N/IND/74, G/TBT/N/IND/110 (IMS ID 598[33])

1.173. The delegation of the United States provided the following statement. On 28 October 2019, India notified its Air Conditioner and its related Parts, Hermetic Compressor and Temperature Sensing Control (Quality Control) Order, 2019 (Air Conditioners QCO) to the WTO. US industry submitted comments on 22 November 2020 through the United States Enquiry Point to the Indian Enquiry Point. We have received no acknowledgement that the comments were received. The proposed measure requires exclusive use of Indian standards for air conditioner (A/C) energy efficiency; applies separate energy efficiency requirements to component parts; and requires certification by the BIS. Can India state whether the Indian standards in the Air Conditioners QCO are based on existing international standards? The United States notes that the TBT Agreement makes clear that more than one relevant international standard can serve as the basis for a technical regulation. Many US companies use relevant international standards developed by the Air-Conditioning, Heating and Refrigeration Institute (AHRI) to verify the energy efficiency of their products, which are accepted in foreign markets and used extensively by the heating and cooling industry. The United States suggests that, to expedite availability of A/C equipment with documented verification testing records, BIS should also recognize, without further testing, equipment for which AHRI's Product Performance Certification Program has verified energy efficiency. The United States notes that AHRI standards can provide greater specificity in energy efficiency evaluation than the comparable ISO standards for energy efficiency calculations. For example, AHRI standards define a specific testing approach related to test set-up and execution. By comparison, the ISO standards testing approach is less specific, which can cause testing results to vary widely due to variations in test set-up.

1.174. The United States also notes that applying separate energy efficiency requirements to A/C component parts, including temperature sensors and hermetic compressors, does not accurately measure the energy efficiency of A/C systems. Fully-assembled A/Cs are designed to work as integrated systems to achieve energy efficiency targets, with the performance of each component impacting the performance of the other components, as well as the energy efficiency of the overall system. Thus, the stand-alone energy efficiency rating is not an accurate indicator of a component's energy efficiency when part of the overall A/C system. The United States understands that the choice of components in finished products is already a major consideration for manufacturers when designing products to meet energy efficiency requirements. Further, according to US industry, no other markets or relevant international standards apply separate energy efficiency requirements to component parts as a method of energy efficiency evaluation. Finally, the United States reiterates its support for a six-month grace period to comply with the requirements for A/C systems, particularly given concerns that there may not be enough laboratories to complete the testing in India before the deadline. Additionally, if India continues to apply separate requirements to component parts, the United States requests that India provide a one-year grace period to comply with the requirements for component parts.

1.175. The delegation of the Republic of Korea provided the following statement. Korea would like to make some comments regarding this regulation as follows. This regulation will be enforced after 1 June 2020; a finished product of air conditioners as well as the related parts will be obligated to comply with the BIS standards and place the BIS certification mark. According to the regulation, manufacturers operating manufacturing facilities in India should take the BIS certification mark and

[33] For previous statements follow the thread under IMS ID 598 (under dates raised and references).

the products must be tested by the designated laboratories in India. However, manufacturers are having difficulties in complying with this regulation due to the absence or insufficiency of designated testing laboratories. The current status of designated testing laboratories in India as of 25 May 2020, for three types of air conditioning finished products, it is confirmed that only one test laboratory has been designated for "unitary" and "split" type, and that a test laboratory for "package" air conditioners is still absent. In the case of air conditioning parts, the "temperature sensing control devices" can be tested at two designated laboratories, but the laboratory for the "hermetic compressor" and "heat exchanger" is not designated.

1.176. The Korea has raised the issue of compliance with this regulation during regular meetings and bilateral meetings through two WTO TBT Committee Meetings (the third WTO TBT Committee meeting in 2019, the first WTO TBT Committee meeting in 2020). The Indian government has answered to convey our opinion to the relevant authority at the first regular meeting of the WTO TBT Committee in 2020, however Korea has not received any response so far. In this regard, once again, Korea would like to request the Indian government as follows. First, Korea would like to request the relevant authority to designate testing laboratory for all areas of finished product and related parts and guarantee their capacity for the testing and certification, as well as to ask to grant a sufficient grace period after testing laboratories are operational.

1.177. Second, if the sufficient number of testing laboratories are not designated or operational before the enforcement date, please provide alternative measures such as accepting the internationally recognized test reports. In addition, since the regulation stipulates that manufacturers should use certified parts in order to take the certification for the finished product, more sufficient grace period is required for finished products. Furthermore, Korean companies have recognized that the implementation date has been postponed to January 2021 for related parts and July 2021 for finished products, as announced by the competent authority, the DPIIT, through attending a public meeting hosted by the Indian CEAMA; however, there is no official relevant information available. Accordingly, Korea would like to ask for India to provide an environment that will make it easier for companies to comply with this regulation and to take an official position on our request above.

1.178. In response, the delegation of India provided the following statement. India would like to thank the United States and the Republic of Korea for their continued interest in the Air Conditioner and its related Parts (Quality Control) Order, 2018. As regards availability of laboratories for the products mentioned in the QCO, it is informed that recognition of Labs under Laboratory Recognition Scheme (LRS 2018) is a continuous and on-going process. At present, one OSL (Outside Laboratory) has been recognized by BIS under its laboratory recognition scheme (LRS 2018) for testing as per IS 1391 (Part 1): 2017 Room Air Conditioners and IS 1391 (Part 2): 2017 Room Air Conditioners: Part 2 Split Air Conditioners. Two OSLs have been recognized for IS 60730 Part: 2 Sec: 9 Year: 11 – Automatic Electrical Controls for Household and Similar use Pt-2 particulars requirements Section 9 Temperature sensing controls. The recognition of foreign laboratories will be carried out on a reciprocal and mutually beneficial basis. Details of the OSLs are available in BIS website. Under the provision of BIS (Conformity Assessment) Regulations, 2018, the conformity of the product to relevant Indian Standards can also be verified through testing in factory and BIS licences can also be granted on factory-testing basis. Therefore, there is no lack of necessary testing facility, as alleged.

1.179. DPIIT has issued Air Conditioner and its related Parts, Hermetic Compressor and Temperature Sensing Controls (Quality Control) Order, 2019 under the provisions of BIS Act, 2016 which envisages Conformity Assessment Scheme-I of Schedule-II of BIS (Conformity Assessment) Regulations, 2018. Inspection at factory premises and testing of product in factory as well as in third-party BIS-recognized laboratory are mandatorily requirements of Scheme-I. The testing of samples drawn during the factory inspection is carried out in third-party BIS-recognized laboratory. However, under the provisions of BIS (Conformity Assessment) Regulations, 2018, the conformity of the product to relevant Indian Standards can also be verified through testing in the factory provided the manufacturer has complete in-house testing facility as per relevant Indian Standard. IS 1391 (part 1 and 2) are based on ISO 5151 Non-ducted air conditioners and heat pumps — Testing and rating for performance. IS 8148 is based on ISO 13253: 2017 Ducted air conditioners and air-to-air heat pumps — Testing and rating for performance and ISO 16358 (Part 1): 2013 Testing and calculating methods for seasonal performance factors of air-cooled air conditioners and air-to-air heat pumps — Part 1: Cooling seasonal performance factor. In IS 10617 considerable assistance has been taken from IEC 60335-2- 34: 2012 Household and similar electrical appliances

— Safety — Part 2-34: Particular requirements for motor compressors. IS 11329 for heat exchanger is an indigenous standard. There are no Energy Efficiency requirements mentioned in the Indian standards. The standards deal with the evaluation needed to confirm the specification published by the manufacturer for performance and safety. The fact that system standards may not be able to cover evaluation of individual components for performance and safety, countries have published performance/safety standards for critical components like compressors, heat exchangers, etc. for the air conditioner.

1.180. Members are informed that taking into account the request made by certain Members and other stakeholders to extend the implementation date of Air Conditioner and its related Parts, Hermetic Compressor and Temperature Sensing Controls (Quality Control) Order, 2019, DPIIT in the Government of India has extended the implementation date by seven months beyond the schedule date of 1 June 2020. Hence the said QCO will come into force with effect from 1 January 2021. This has been notified in official gazette dated 18 May 2020 and is available on the website of DPIIT. For any other additional clarity required by the interested Members, India is ready to discuss the issues bilaterally.

1.3.8 Turkey – Draft Amendment of the Regulation on Cosmetics (IMS ID 603[34])

1.181. The delegation of the United States provided the following statement. Since May 2019, the US Government has engaged with Turkey, via the US Embassy in Ankara, as well as the TBT Committee, noting concerns with the Draft Amendment of the Regulation on Cosmetics. US industry is concerned that between 2017 and 2018 the Ministry of Health (MoH) introduced new requirements for cosmetics products via changes to the requirements for submission of product registrations in the new online filing system. Turkey introduced the filing system at the end of 2017. These new requirements are highly disruptive to trade and put companies' Confidential Business Information (CBI) at risk. We understand that Turkey has not published these new requirements as final measures, nor did Turkey notify these new requirements to the WTO. In December 2018, Turkey held a domestic public consultation in Turkey on a Draft Amendment to the Cosmetics Regulation, which included most of these new requirements, but the Draft Amendment was never published as final, nor did Turkey respond to comments submitted by the Personal Care Products Council via the domestic consultation. In June 2019, Turkey indicated to the US Government that it would notify the Draft Amendment to the WTO, with a 60-day comment period, but it still has not done so. When does Turkey intend to notify the Draft Amendment and the other new requirements? We hear from US industry that exporting cosmetics products to Turkey has become even more challenging since we first raised these concerns with Turkey. US companies report Turkey subjects products to additional inspections and other requirements, if the companies do not provide all the information requested in the new online filing system. We urge the MoH and Ministry of Trade (MoT) to issue an official statement suspending implementation of any new, unpublished requirements for cosmetics until Turkey notifies the measure to the WTO. Turkey needs to conduct an additional public consultation for all of the new requirements since 2017 for at least 60 days following that notification, and adopt a final rule taking into account comments received during the public consultation. Further, we request that the MoH and MoT also meet with US industry and the US Embassy staff in Ankara to discuss industry's concerns. Turkey's cosmetics exports to the US are growing, up 66% from 2017 to USD 42.7 million in 2019. However, since 2017 when these new requirements were first introduced, US cosmetic exports to Turkey have dropped by 39% (change in US exports from 2017 through 2019).

1.182. In response, the delegation of Turkey provided the following statement. Turkey would like to thank the United States for its comments on the draft amendment of the regulation on cosmetics. We would like to inform the Committee that we have an on-going internal coordination on the draft regulation taking into consideration the raised concerns by our trade partners. As we have stated previously, the Cosmetic Regulation of Turkey is one of the areas where harmonization with the EU legislation is continuing as a requirement of the EU-Turkey Customs Union Agreement. Therefore, both the MoT and the Ministry of Health have been evaluating the EU Commission's comments on the draft Cosmetic Regulation. In this regard, the Turkish authorities have been working on the regulation being in line with EU legislation and do not intend to create unnecessary barriers to trade. In addition, Turkey is planning to make an official TBT notification allowing a 60-day comment period to WTO Members after re-drafting the amendment. Turkey would like to reiterate its willingness to

[34] For previous statements follow the thread under IMS ID 603 (under dates raised and references).

communicate and work together with the interested Members, as in the past, to address any specific concerns they may have on Turkey's Cosmetic Regulation.

1.3.9 United States – Modernization of the Labelling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages, G/TBT/N/USA/1429, G/TBT/N/USA/1429/Add.2 (IMS ID 601[35])

1.183. The delegation of the European Union provided the following statement. Referring to the detailed written comments sent on 26 June 2019 as regards the draft Modernization of the Labelling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages, the EU would like to welcome the Final Rulemaking of the Alcohol and Tobacco Tax and Trade Bureau (TTB) notified as an addendum to the original notification on 3 April 2020, which addresses some of the comments. The EU also welcomes the decision of the TTB as regards not to adopt certain proposals pertaining to spirits. The EU would like to draw attention to its remaining concerns, notably important questions regarding the labelling of wines, labelling of spirits, use of the term organic and provisions that relate to appellations of origins and names of geographic significance that may be covered by Chapter 3 of the TRIPS Agreement. The EU would like to ask the US for clarification as regards the expected timeline for these specific concerns, as well as confirmation that the US will notify its Regulation to the Council for TRIPS, in accordance with the undertaking in Article 63 of the TRIPS Agreement.

1.184. The delegation of Japan provided the following statement. While initially supporting the concerns raised by the European Union during Phase 2 of the Written Procedure, Japan subsequently said it withdrew from supporting these concerns during Phase 3 of the Written Procedure.

1.185. In response, the delegation of the United States provided the following statement. The United States thanks the European Union for its interest in its proposed rulemaking concerning the modernization of its alcohol beverage labelling regulations. On 3 April 2020 the United States submitted an addendum to its original notification as G/TBT/N/USA/1429/Add.2, which announced the final rule. TTB has finalized certain liberalizing and clarifying changes that were proposed, and that could be implemented quickly and provide industry members greater flexibility. TTB has also identified certain other proposals that will not be adopted, including the proposal to define an "oak barrel" for the purposes of aging distilled spirits, the proposal to require that statements of composition for distilled spirits specialty products list components in "intermediate" products and list distilled spirits and wines used in distilled spirits specialty products in order of predominance, and the proposal to adopt new policies on the use of cross-commodity terms. TTB continues to consider the remaining issues raised by comments it received that are not addressed in this document. TTB plans to address those issues in subsequent rulemaking documents. The regulatory amendments in this document will not require industry members to make changes to alcohol beverage labels or advertisements and instead will afford them additional flexibility to make certain changes if they wish.[36]

1.3.10 Ecuador – Energy Efficiency Requirements for Clothes Dryers for Domestic Use, G/TBT/N/ECU/439, G/TBT/N/ECU/439/Rev.1, G/TBT/N/ECU/439/Rev.1/Add.1 (IMS ID 599[37])

1.186. The delegation of the Republic of Korea provided the following statement. Korea would like to make some comments regarding this regulation as follow. First of all, thank you for agreeing with us about requests raised by Korean side in the last WTO TBT Committee meeting and for the decision to review the draft. To remind Korea's request in the last WTO TBT Committee, according to the Ecuador's energy efficiency requirements for clothes dryers, a range of energy efficiency classes for sale of dryers is limited to A and B. Including international standards for IEC 61121 that applied by your country, countries around Latin America such as Chile and Peru have no restrictions on sales as per minimum energy classes. In addition to this, A and B classes, which restrict the sales in your country, are too high to meet the standards. Thus, it is estimated that it may be difficult for all dryers to enter into the Ecuadorian market. This is because the class for all dryers that are currently sold globally are estimated to be Class C or lower under this amendment. In this regard, Korea would

[35] For previous statements follow the thread under IMS ID 601 (under dates raised and references).
[36] The full text of the final measure and substantive replies to comments can be found here: https://www.govinfo.gov/content/pkg/FR-2020-04-02/pdf/2020-05939.pdf.
[37] For previous statements follow the thread under IMS ID 599 (under dates raised and references).

like to ask once again Ecuador to withdraw the clause for the minimum allowable classes for sale in this regulation and to share the timeline of the amendment process.

1.187. In response, the delegation of Ecuador provided the following statement. With regard to the trade concern raised by the Republic of Korea concerning the revision of Technical Regulation RTE INEN 111, which has been in force since 2015, Ecuador wishes to reiterate its comments from the previous meeting of this Committee. The draft revision of this Technical Regulation was notified to the WTO on 20 May 2019, giving a period of 60 days for Members to submit comments, as required by the Agreement on Technical Barriers to Trade. The draft revision was subsequently amended in light of the comments made by interested parties. Furthermore, as a result of the meeting requested by the Republic of Korea on 16 December 2019, Ecuador explained the process for updating the Regulation and reported that no comments had been received from Korea during the official comment period. It should be noted that in order to avoid creating unnecessary obstacles to trade, Ecuador established a new comment period running until 5 January 2020. For its part, the Republic of Korea sent its comments on 3 January this year. Following the respective review and analysis by the competent authority, it was decided that it would be necessary to request additional information.

1.188. Therefore, on 30 April this year, additional documents were requested from the contact point of the Republic of Korea. We are still waiting for these documents in order to continue our technical analysis. This matter aside, Ecuador wishes to point out that its energy efficiency policy seeks to increase the efficient use of energy throughout the supply chain and by end users. The policy is in line with the country's international commitments, which include those under the Paris Agreement and the 2030 Agenda for Sustainable Development. This responds to the need to provide the country with energy security and sufficiency, while reducing greenhouse gas emissions; indeed, energy efficiency is considered the most cost-effective way of mitigating climate change and protecting non-renewable natural resources. Lastly, Ecuador reiterates its commitment to addressing in a timely manner Members' concerns and comments regarding its various draft technical regulations. Proof of this is our flexibility regarding the amount of time given for Members and, in particular, the Republic of Korea, to submit their comments.

1.3.11 Kingdom of Bahrain, State of Kuwait, Qatar, Kingdom of Saudi Arabia, Oman, United Arab Emirates, Yemen – GCC Technical Regulations for the Restriction of the use of certain Hazardous Substances in electrical and electronic equipment, G/TBT/N/BHR/518, G/TBT/N/KWT/400, G/TBT/N/OMN/350, G/TBT/N/QAT/517, G/TBT/N/SAU/1048, G/TBT/N/ARE/407, G/TBT/N/YEM/120 (IMS ID 572[38])

1.189. The delegation of the United States provided the following statement. The United States understands that GCC members are reviewing the GSO draft "Technical Regulation for the Restriction of the use of certain Hazardous Substances in Electrical and Electronic Equipment" and plan to approve the final regulation in May 2020 with a one-year transition period. Since receiving the GCC's reply to US comments on the measure in March 2019, the United States and US industry still have concerns that the two levels of conformity assessment procedures are overly burdensome, as they include a self-declaration of conformity and an additional pre-market testing and model inspection certification scheme that must be updated annually. This approach would be a significant deviation from and significantly more burdensome than common international practice in other markets to rely on self-certification for Restriction of Hazardous Substances (RoHS) regulations.

1.190. US industry would support the GCC and GSO aligning the conformity requirements to the widely used EN 50581/IEC 63000 standard. Following the associated conformity and risk assessment process identified in that standard would significantly reduce the scope, and thus the added burden, of the proposed requirement for mandatory annual testing. The GCC clarified in response to US comments that producers are responsible for registering and labelling products with the GCC Mark. However, US industry remains unsure which entity in the supply chain bears responsibility to affix the GCC Mark to the product. To definitively resolve such uncertainty, we request that this responsibility be clearly stated in the regulation as the producer's obligation. Additionally, US industry requests that the GCC not require product-specific QR codes, which could impede the time to market or product availability.

[38] For previous statements follow the thread under IMS ID 572 (under dates raised and references).

1.191. The United States also requests information on how the GCC and GSO plan to harmonize the acceptance of the same test results across each GCC member state. US industry is concerned that the United Arab Emirates and Oman are already taking different approaches in preparing to implement the regulation of hazardous substances, and that GCC member states may vary in accepting or rejecting the identical test results despite the GCC's stated intention for a harmonized technical regulation and conformity assessment procedure. The United States also asks that GCC members re-notify this measure to the WTO in the future if there are any substantive updates to the regulation or to the implementing guidelines for the conformity assessment procedures according to the TBT Committee Recommendation on Coherent Notification Formats (G/TBT/35).

1.192. The delegation of the European Union provided the following statement. The European Union would like to express support to the comments made by the United States. The EU would like to ask about the status of the draft GCC Technical Regulations for the Restriction of the use of certain Hazardous Substances in electrical and electronic equipment, notified to the TBT Committee in March 2018, and the expected timeframe for its adoption. The European Union commented on the draft text, to which the GSO responded in July 2018. However, there are still uncertainties in terms of requirements as well as timing of adoption and entry into force. These include: uncertainty about the process and timelines to transpose requirements into national legislation. The EU would like to know when the measure would be transposed in each individual country, and whether it would replace existing regulation and how the uniform application of the regulation would be guaranteed.

1.193. The EU would like a clarification on whether conformity assessment results accepted in one GCC member state would also be recognized in other GCC countries. If this were not the case, the EU would invite the GCC to ensure the mutual recognition of conformity assessment results in GCC countries. The EU would like to ask for a sufficiently long transition period that would ensure a smooth implementation and adaptation for economic operators. There remains uncertainty regarding the requirements for the declaration of conformity. The proposal appears to include a mandatory third-party conformity assessment, including pre-market testing model certification. This would deviate from common international practice, followed also by the European Union, that relies on self-declaration of conformity. The EU therefore urges GCC members to consider limiting the conformity assessment requirements to self-declaration of conformity, in order to avoid the administrative burden and costs of approval by third-party assessments. Finally, we are concerned by the lack of clarity regarding the scope. Annex 1 seems to provide an exhaustive list but this has not been confirmed. The European Union would like the GCC members to clarify these uncertainties as soon as possible. We would also to invite GCC members to notify any potential substantive amendments to this measure in the future.

1.194. In response, the delegation of the United Arab Emirates, on behalf of the Kingdom of Bahrain, the State of Kuwait, Oman, Qatar, Kingdom of Saudi Arabia and Yemen, provided the following statement. The delegation of the United Arab Emirates, in its capacity as the current coordinator of the GCC countries, would like to submit the following response on behalf of the Kingdom of Saudi Arabia. Saudi Arabia thanks the United States and EU for raising this concern regarding the technical regulation to ban hazardous substances in electrical appliances and equipment. Since this technical regulation is still at the commenting stage, we will discuss these comments deeply along with other GCC members. We would also like to strongly advise the US and the EU to raise these concerns to GSO, which is the common platform for all GCC countries.

1.3.12 China – Draft Administrative Measures for Registration of Overseas Producers of Imported Foods (IMS ID 611[39])

1.195. The delegation of the United States provided the following statement. The United States is very concerned with China's draft "Administrative Measures for Registration of Overseas Producers of Imported Foods" (Administrative Measures) and urges China to reconsider putting in place such a restrictive and burdensome regulation. The measure appears to affect all food products, including both low-risk products and products that are already accompanied by health and safety certificates issued by US authorities. Furthermore, the measure requires foreign competent authorities to confirm that manufacturers are in continuous compliance with China's laws, regulations, and standards. Such requirements may impose additional burdens on foreign competent authorities that exceeds the resources and expertise available. We anticipate that the draft measure, if implemented, would likely create major trade disruptions for every country that exports food and agricultural

[39] For previous statements follow the thread under IMS ID 611 (under dates raised and references).

products to China, including for developing countries whose competent authorities may have limited capacity to meet China's proposed requirements. During the February TBT Committee meeting, China indicated that it would notify the measure to the WTO SPS and TBT Committees, respectively, to allow for comprehensive feedback from China's trading partners, but has not done so thus far. Does China have a timeline for notifying this measure to the WTO? Further, we request that China seriously consider the concerns expressed in feedback submitted during the domestic comment period.

1.196. The delegation of the Republic of Korea provided the following statement. Korea would like to make some comments regarding this regulation as follows. China's draft "Administrative Measures for Registration of Overseas Producers of Imported Foods" (Administrative Measures) announced in December 2019 stipulates that all overseas producers of imported foods shall report to the Chinese government and requires those of high-risk products to submit dossiers such as an annual audit report. We share China's deep concerns and deliberations regarding the safety of imported foods. However, the measure appears to impose an unnecessary burden on exporters to China and constitute trade barriers for several reasons, which include the following: (i) the delay in the registration process caused by the expansion of registration scope; and (ii) the ambiguity of the registration process and the regulation. Furthermore, we believe that the measure should be carefully reviewed since it could place an enormous administrative burden on competent authorities of exporting countries. Korea delivered its comments on the measure through the Korean Embassy in China in December 2019. In the comments, Korea requested a reply from China, including information on the measure's scope of application, registration standards and requirements, detailed processes. Hence, we would like to enquire about the assessment results of the measure, subsequent developments, and the timeline for its notification. We also look forward to China's reply to Korea's comments made on 24 December 2019.

1.197. The delegation of Switzerland provided the following statement. Switzerland would like to reiterate its concerns made previously in this Committee and in writing to the competent Chinese authorities regarding the proposed registration of overseas manufacturers of imported food. Switzerland understands and supports China's objective to ensure that only safe food is imported. However, we regret that China has not taken the opportunity to respond to our questions and comments. Hereby, we would like to raise our concerns once more over the potential impact for Swiss businesses and their exports to China. First, the Administrative Provision proposes to expand the registration of overseas manufacturers to include all food categories irrespective of their risk-profile. Without further justification or explanation, the measure seems to restrict trade more than necessary and thereby to contradict the TBT Agreement. Second, the measure may create significant trade disruptions at a time when the coronavirus pandemic is already putting supply chains under considerable strain and causing significant challenges to businesses around the world. Delays in the evaluation procedure of overseas food manufacturers are likely to occur, thereby negatively affecting the availability of imported products in China. Third, the measure will put foreign exporters at a disadvantage over their Chinese competitors, since the measure is directed exclusively to overseas manufacturers, raising concerns over China's obligation to bestow "no less favourable" treatment to like products irrespective of their origin (under Article 2.1 of the TBT Agreement). We call on China to consider other ways and means on how to ensure the importation of safe food products. We stand ready to engage with China on this matter and look forward to receiving detailed answers to our questions and comments.

1.198. The delegation of Mexico provided the following statement. The delegation of Mexico hereby refers to the draft Administrative Measures for Registration of Overseas Producers of Imported Foods that were published by the General Administration of Customs of China (GACC) on 26 November 2019 (hereinafter "draft measures"). The administrative measures seek to replace Decree No. 145 on "administrative measures for registration of overseas producers of imported foods", issued by China's General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ). The measures in question establish registration requirements for producers and importers of food and food products, including a recommendation by the competent authority in the country of origin, a risk assessment of the products to be imported, and possible onsite visits or inspections of exporting enterprises.

1.199. Mexico's concerns are based on the following: (i) *Definition of scope*: The scope of the draft measures is unclear. The measures do not establish any categories or include a list of the products covered; (ii) *Labelling requirements*: The draft measures also include labelling requirements for a "minimum sales package", but do not specify the scope of the products covered or explain the

meaning of "minimum sales package"; and (iii) *Additional procedures for competent authorities in countries of origin*: The draft measures require the competent authorities in the country of origin to follow an additional certification procedure in order to ensure compliance with Chinese regulations. This would represent an additional procedure for the Mexican authorities and for exporters, who would have to certify their products twice. The first procedure would involve ensuring compliance with the export requirements contained in domestic regulations, while the second would involve ensuring compliance with requirements for exports to China. This procedure would impose burdensome workloads on exporters and the Mexican authorities, and may therefore contravene the principle of proportionality provided for in Article 2.2 of the WTO Agreement on Technical Barriers to Trade (TBT Agreement) by constituting an unjustified measure that would affect trade. *Risk assessment*: the draft measures require that a specific risk assessment be carried out for the product before importers may be registered, but include no information on the scientific or technical basis for the determination of the proposed assessment. China needs to identify whether the required risk assessment is based on an international standard. *Transparency*: the draft measures were not notified to the members of the WTO TBT Committee. This prevents the effective implementation of Article 2.9 of the TBT Agreement, particularly in terms of providing TBT Committee members with the opportunity to make comments and participate in the development of the measures concerned.

1.200. In light of the foregoing, the delegation of Mexico kindly requests the delegation of China to clarify the scope of the draft measures, and the labelling requirements covered by these measures. If alcoholic beverages are covered by these regulations, Mexico would be interested in engaging in bilateral dialogue with the Chinese authorities to discuss a less restrictive procedure for tequila imports, and would like to propose the acceptance of a certificate of authenticity. Explain how the proposed measures are effective and proportionate in terms of meeting China's legitimate food safety objective. Share the technical and scientific information and international standards on which these measures are based. More specifically, we would like to know the justification for requesting risk assessments for the products covered. Notify the measure to the WTO TBT Committee so that Members can participate in the public consultation process. Also, provide information on the date set for entry into force, subsequent steps, and the implementation process. The delegation of Mexico thanks the delegation of China for giving its consideration to this statement and to the requests made therein.

1.201. The delegation of the European Union provided the following statement. The EU is also very concerned about this measure as this will have a serious impact on importers into China. The delegation of the EU in China commented extensively on the proposals in December 2019. We understand that China Customs received many comments similar to ours. As presented, the measure would bring substantial additional administrative burden for companies, competent authorities including China Customs. The already long and time-consuming registration process will be further extended. The EU shares China's concerns as regards to food safety. Nevertheless, measures have to avoid unnecessary constraints. They should be in conformity with WTO Agreements and Codex Alimentarius guidelines.[40] Accordingly, inspection systems should be applied to particular commodities and processing methods in proportion with the associated risks. The measure covers all food and beverages imported into China. This suggests that the rules proposed are applicable regardless of the risk associated with the products concerned. It will thus have a serious impact on the transaction costs of our trade, and very little impact, if any, on its safety. In other words, this measure appears highly disproportionate for products that are currently traded under a self-registration regime. The EU kindly requests China to explain the objective of this proposal and stands willing to discuss any legitimate concerns in order to find consensual solutions. The first step towards such a dialogue would be an official notification by China through WTO channels in order to frame our discussions.

1.202. The delegation of Japan provided the following statement. Japan shares the concerns on China's draft administrative measures for registration of overseas producers. Japan has been seriously concerned that the China's proposed measures would create unnecessary trade barriers and have negative impacts on food trade between China and WTO Members. The measures would require foreign competent authorities to inspect and supervise manufacturing companies in accordance with Chinese laws and regulations, and confirm their compliance with the Chinese laws and regulations, covering all food products imported into China. However, China has not provided

[40] i.e. CAC/GL 20-1995 on principles for food import and export inspection and certification.

any scientific assessment to rationalize the scope of the measures, in terms of the risks of each food product. The measures could be overly trade restrictive without scientific evidence.

1.203. If the measures are implemented, the range of overseas manufacturers required to register will be expanded, which will increase the costs, including labour and time, and cause negative impacts on Chinese consumers due to cost pass-throughs. In addition, since the information disclosure standards in China are unclear, China's competent authorities may perform arbitrary operations, which may result in a barrier to entry for foreign manufacturers. Japan requests that China's proposed measures be suspended. Japan would like to request China to notify the measure in question to the WTO TBT and SPS Committees in a timely manner, provide relevant information on this matter as appropriate, and properly address the concerns of the WTO Members.

1.204. The delegation of Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu provided the following statement. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu would like to thank China for confirming, at the previous meeting, that a draft of the administrative measure will be notified to the Committee when it is ready. We are interested in knowing the current status of the draft and the timeline of its legislative work. We look forward to the opportunity of commenting on the draft measure again.

1.205. In response, the delegation of China provided the following statement. We would like to thank the relevant WTO Members for their attention to China's revision of the "Administrative Measures for Registration of Overseas Producers of Imported Foods". The implementation of registration of overseas producers of imported food is based on the requirement of the Food Safety Law of the People's Republic of China. With China's further opening up, both the trade volume of imported food and the number of foreign food production enterprises registered are growing significantly, the former registration administrative measures can no longer meet the requirement of the current situation. Therefore, China is revising the "Administrative Measures for Registration of Overseas Producers of Imported Foods", with the aim of effectively implementing the legal provisions and improving the management system. The revision follows the principle of classified management on the basis of risk analysis, the core of which is to further optimize the registration procedures, clarify the responsibilities of all relevant parties and facilitate the registration and trade. At present, the revision of the "Administrative Measures for Registration of Overseas Producers of Imported Foods" is still at the drafting stage. Once the drafting is completed, China will make notification to WTO according to the relevant notification procedures and will welcome comments and suggestions from all Members.

1.3.13 France – Mandatory Labelling of SAR Radio Equipment, G/TBT/N/FRA/184, G/TBT/N/FRA/185 (IMS ID 617[41])

1.206. The delegation of China provided the following statement. China thanks France for notifying the Draft decree on the displaying of the specific absorption rate of radio terminal equipment and Draft order on consumer information regarding radio terminal equipment (G/TBT/N/FRA/184, G/TBT/N/FRA/185) on 3 April 2018. Although we fully respect the EU's legitimate objective of protecting human health and safety, the measures are 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. China sent our comments to the French TBT Enquiry Point on 28 May 2018; unfortunately we have not received a reply till today. However, we learned that the act would take effect on 1 July 2020. Since our concerns have not been resolved, we have to reiterate our comments as follows. Firstly, we suggest France to cancel the requirement of displaying the values of the specific absorption rate (SAR). Under the European Union's Radio Equipment Directive (RED), which has been transposed into French law, one of the mandatory requirements is adherence to the SAR limits. If a RED-compliant device obtains the CE mark, it means that the product complied with the SAR limits and deemed to be safe for people. Therefore additional displaying of the SAR values is unnecessary and will add extra cost to manufacturers. In addition, whether the SAR value tested according to the relevant EU standards is "the lower, the better for consumers", is still controversial. The measures may mislead the consumers to think the marked value to be the electromagnetic radiation injury value to human body.

1.207. Secondly, if the requirements cannot be cancelled, it is recommended that relevant specific guidance documents be issued as soon as possible and the implementation be postponed for 12

[41] For previous statements follow the thread under IMS ID 617 (under dates raised and references).

months because the transitional period is too short for the manufacturers to perform relevant compliance tests with the proposed requirements. On one hand, the relevant test methods are incomplete. The current EU SAR test standards currently do not have limbs SAR test method for handheld devices in addition to limbs SAR test method for wearable devices. On the other hand, an implementing guidance seems to be necessary. According to the new requirements, SAR values of head, body and limbs must be marked. However, the acts do not specify whether all products need to be marked with all the SAR values, nor do they provide any guidance to manufacturers by quoting regulations or standards. Manufacturers' understanding in accordance with the testing practices and product characteristics is that not all products need to display all the SAR values, which has caused confusion for manufacturers. Lastly, we would like to highlight again that the final version was published on 17 November 2019 and will take effect on 1 July 2020. Such a short transitional period will bring great difficulties to manufacturers especially when the relevant test method is still incomplete.

1.208. In response, the delegation of the European Union provided the following statement. Thank you to the delegation of China for its comments on the mandatory labelling for SAR radio equipment notified by France to this Committee on 3 April 2018 under the references G/TBT/N/FRA/184 and G/TBT/N/FRA/185. Although Directive 2014/53/EU on the harmonization of the laws of the member States relating to the making available on the market of radio equipment does not impose compliance with specific technical specifications, Article 17 thereof provides that "the manufacturer shall perform a conformity assessment of the radio equipment with a view to meeting the essential requirements set out in Article 3", in order to be able to place it on the market. These essential requirements include the SAR limit values given in the harmonized standards, resulting from the Council recommendation of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields, which recommends that the member States should aim to achieve compliance with the basic restrictions featured in Annex II. For the 100 kilohertz to 10 gigahertz frequency band, these basic restrictions are expressed as SAR values.

1.209. In France, the values set out in the recommendation were included in Decree No 2002-775 of 3 May 2002 on the limit values for exposure of the general public to electromagnetic fields emitted by equipment used in telecommunication networks or by radio installations and in the Order of 8 October 2003 establishing the technical specifications applicable to radio terminal equipment. The notified draft decree and order are therefore not liable to create any legal ambiguity or insecurity. The objective of the decree is to inform the consumer of the value of the SAR, the measurement of which is provided for by the aforementioned texts. In addition, Decree No 2010-1207 of 12 October 2010 on displaying the SAR of radio terminal equipment and the Order of 12 October 2010 on displaying the specific absorption rate of radio terminal equipment have been in force since 2011. The application of these regulations has not prompted any response from telephone manufacturers and importers, who have not reported any obstacles to placing the equipment in question on the market.

1.210. In France, consumer associations and individuals regularly ask the national authorities about public exposure to radio frequencies particularly because radio equipment is becoming increasingly numerous and because authorities need to respond to public concerns related to future 5G networks. In its opinions, the French Agency for Food, Environmental and Occupational Health and Safety (Anses) has recommended improving public information and making it compulsory to display the SAR: expert appraisal "Radio frequencies and Health", 2013[42] and expert appraisal "Exposure to radio frequencies and child health", 2016.[43] In addition, with regard to the remark on the need for a guidance to manufacturers, France would like to point out that, as of 18 March 2020, the French National Agency of Frequencies issued guidelines on the SAR in both English and French.[44] Finally, on the point of the requested transitional period, France would like to recall that the entry into force of both the order and draft decree are set for 1 July 2020.

[42] https://www.anses.fr/fr/system/files/AP2011sa0150Ra.pdf.
[43] https://www.anses.fr/fr/system/files/AP2012SA0091Ra.pdf.
[44] The guidelines can be found at: https://www.anfr.fr/controle-des-frequences/exposition-du-public-aux-ondes/le-das/le-controle-du-das/.

1.3.14 Russian Federation – Law No. 425 – on Amending Article 4 of Russian Federation Law "On Protecting Consumer Rights" (IMS ID 612[45])

1.211. The delegation of the United States provided the following statement. We are again raising our concerns about the recently adopted amendment to Russia's "Law on Protection of Consumer Rights," which requires pre-installation of Russian software on "technically complex goods" (TCGs) sold in Russia. Since the last TBT Committee meeting, Russia has issued a draft regulation providing some additional information on implementation of the law, including the types of consumer electronics covered by the term "technically complex goods" and certain categories of software that must be pre-installed. We also recognize that Russia has postponed the implementation deadline until 1 January 2021, due in large part to the coronavirus pandemic. Nevertheless, many concerns and questions remain. We presented some of these questions to Russia in writing in March, but have not yet received a response. When we raised this issue in the February meeting, Russia asserted that the measure is not a technical regulation. However, the TBT Agreement provides that a technical regulation is any document "which lays down product characteristics and production methods, including the applicable administrative provisions, with which compliance is mandatory." The measure mandates product characteristics and production methods for TCGs sold in Russia, namely that these devices must contain certain software which must be pre-installed. Law No. 425-FZ therefore certainly appears to meet the definition of a technical regulation. If Russia does not agree, please explain why the requirement is not a technical regulation.

1.212. In addition, it remains unclear what legitimate objective Russia is trying to achieve with these requirements. An Explanatory Note issued by Russia's Federal Antimonopoly Service (FAS) stated the need to ensure non-discriminatory access of Russian software developers to electronic devices. Many of the technically complex goods targeted by this technical regulation already feature software from Russian developers and include app platforms which encourage participation by Russian companies. Does Russia have evidence that Russian developers are being denied access to develop software for technically complex goods? We ask Russia to explain how the requirement is not more trade restrictive than necessary and does not create unnecessary obstacles to trade. We also ask Russia to explain how this measure does not discriminate against foreign software products. As we have stated before, we urge Russia to notify these implementing regulations to the TBT Committee, to allow reasonable time for stakeholders to make comments in writing, to discuss these comments upon request, and to take these written comments and the results of the discussions into account before finalization and implementation. Finally, we request that Russia provide a reasonable period of at least six months between publication of the final regulation and its entry into force. Even the extension of the implementation deadline until 1 January 2021 may not give industry a reasonable interval to adapt to the new requirements.

1.213. The delegation of Japan provided the following statement. Japan would like to share concerns regarding this measure expressed by the US. This proposed measure includes unclear articles regarding definitions of terms, concrete requirements for review and evaluation, and the scope of regulations including covered software list. Japan's concern is that the measures may hamper market access for foreign companies in Russia, depending on the concrete details of rules governing its implementation. Therefore, Japan would like to ask Russia to implement this measure in a non-discriminatory manner and not to make it more trade restrictive than necessary in line with the TBT Agreement. Japan would like to request that Russia notify this measure and the relevant regulations to the TBT Committee to ensure transparency of the procedure.

1.214. The delegation of the European Union provided the following statement. The European Union has concerns on amending article 4 of the Russian Federation Law "On Protecting Consumer Rights". These concern mainly certain discriminatory aspects as well as the proportionality of the measure. On 1 April 2020 the law was postponed from 1 July 2020 to 1 January 2021. We call on Russia to comply with its WTO obligations and notify the measure to the TBT Committee.

1.215. In response, the delegation of the Russian Federation provided the following statement. Thank you for the continued interest in the policy conducted by the Russian Federation. The Russian Federation reiterates its statement made at the previous meeting of the TBT Committee.

[45] For previous statements follow the thread under IMS ID 612 (under dates raised and references).

1.3.15 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 (IMS ID 610[46])

1.216. The delegation of the European Union provided the following statement. The European Union would like to acknowledge the bilateral dialogue held until now with the US, leading to the notification in accordance with the TBT Agreement of the State of New York Act to amend the environmental conservation law, in relation to regulation of toxic chemicals in children's products. On a general note, the EU welcomes initiatives that increase the knowledge about hazardous chemicals in products targeted to consumers, and in particular to vulnerable groups like children. However, the EU is concerned because the Act introduces a further layer of regulation in addition to the regulations on toys that are already in force at Federal and different States' levels. This proliferation of rules and requirements on toys leads to a regulatory fragmentation that renders more burdensome and complex the sales and imports of toys in the United States.

1.217. The EU submitted written comments to the US on 31 March 2020 and have referenced these comments below. Specifically, the European Union notes that the procedures foreseen for the listing of chemicals by the Act are not fully in line with good regulatory practices. The measure does not provide for the ability of stakeholders to participate and be heard in the procedure leading to the listing of chemicals of concern. Could the United States confirm how will stakeholders and industry views be effectively taken into account during this process? Another concern is that the criteria that the newly-created children's product safety council will use to recommend to the department the listing of high-priority and prohibited chemicals are not defined. Moreover, the Act does not clearly establish whether the department will be able to deviate from the recommendations made by the council and, if so, on which basis and under which criteria. Similarly, the Act does not provide for transitional periods for the industry to adapt when new chemicals are to be listed or when such listings are reviewed and updated annually. Will that happen in practice?

1.218. Other than the above procedural issues, the Act also raises a number of concerns on substance. The Act provides for a prohibition of chemicals, which excludes chemicals present as a trace contaminant. The Act defines "trace contaminant" as a trace amount of a chemical that is incidental to manufacturing. However, there is no guidance as to how this "incidental" feature will be quantified and measured, which entails a lack of legal certainty for manufacturers as to whether the presence of a trace contaminant is allowed or not. Manufacturers have to report to the department the use of listed chemicals of concern and high-priority chemicals at the practical quantification limits (PQLs). However, there are no indications or guidance on how high the PQLs for the listed chemicals are. They could therefore vary and differ depending on the testing method or testing facility used, making them a moving target. The European Union considers therefore that these aspects should be fully clarified in the Act or at least that the children's product safety council should provide guidance on the notions of trace contaminants and PQLs in order to ensure clarity and predictability in the implementation of the measure. Finally, the EU expects that any future proposal for the listing of chemicals of concern, high-priority chemicals or prohibited chemicals by the State of New York will be duly notified in accordance with the TBT Agreement, so as to allow WTO Members to comment on the proposed listing within a 60-day comment period.

1.219. In response, the delegation of the United States provided the following statement. Thank you for your continued interest in this state measure. We have been working with New York State and have notified this as G/TBT/N/USA/1581. Thank you for your 31 March 2020 comments. The bill at issue, 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. Prior to signing the bill, the Governor's office reached agreement with the New York state legislature to make changes to the bill and the bill was signed conditioned upon passage of a new bill that incorporates those agreed upon changes. It is our understanding that based on the agreement between the Governor and the Legislature, that the bill will be substantially changed, due in part to the concerns raised by stakeholders.

[46] For previous statements follow the thread under IMS ID 610 (under dates raised and references).

1.3.16 Colombia – Food Prioritized for its Sodium Content, Certification Requirements, G/TBT/N/COL/238, G/TBT/N/COL/238/Add.1 (IMS ID 609[47])

1.220. The delegation of the United States provided the following statement. The United States appreciates the opportunity to share our concerns with Colombia's new sodium level requirements for various agriculture products notified to the TBT Committee as G/TBT/N/COL/238 and requests an update on the status of this proposed regulation. The United States supports Colombia's efforts to reduce hypertension and related non-communicable diseases. As you may be aware, the United States has a similar goal of reducing overall dietary sodium intake. A key concern is that the proposed regulation may not fully consider the technical and the functional role of sodium and relevant international commodity standards. US stakeholders have indicated that they may not be able to feasibly reformulate products while still maintaining shelf-life stability, product safety and palatability for consumers in the timeline proposed in G/TBT/N/COL/238. Therefore, the United States requests detailed information on the sanctions Colombia plans to place on products that exceed the sodium content level. We would also note that Colombia could begin with less restrictive targets as a first phase of sodium reduction for its population. This could result in significant public health gains while industry has time to develop the needed technologies to enable further reductions and consumer taste preferences adapt.

1.221. Another key concern for the United States is the addition of the Certificate of Conformity for nutritional declarations. The United States requests details on the frequency these certificates will need to be issued and information on the inspection and confirmation process of these certificates. Last, the United States would like to learn how this process will be replicated for domestic products in Colombia. We reiterate our interest in having an open dialogue with your Ministry of Health, where we can learn and share information regarding ways to develop evidence-based programs to address Colombia's public health objectives while minimizing negative economic impact.

1.222. The delegation of Ecuador provided the following statement. Ecuador is grateful for its bilateral discussions with Colombia on the draft regulations establishing a maximum sodium limit in prioritized processed foods, and welcomes the replies of the Colombian Ministry of Health to its comments. However, there are still several points of disagreement that lead us to associate ourselves with this concern. The Colombian authority states that the "ban on the sale" of products is not really a ban, but that if a product fails to comply with the established parameters, the responsible company will be penalized. If we analyse this measure adopted by Colombia, it is clear that it will lead to a sales ban, as industries will not want to market products that will result in a penalty every time the established parameters for sodium are not met. There is no ban on marketing, but there will be a penalty: this criterion is considered an obstacle to trade, as it is contradictory.

1.223. The Colombian health authority also mentions that a study was conducted using statistical methods and theories and disseminated throughout the sector. Thanks to information obtained from Colombian manufacturers that export to our country, Ecuador is aware that when this policy to reduce sodium was first drawn up, it was supposed to be voluntary; then the Colombian Ministry of Health requested that it become a mandatory regulation and it was submitted for public consultation for the first time in 2017. In 2019, the draft was once again submitted for public consultation with minor changes and a regulatory impact analysis, but there is no evidence to suggest that it was widely disseminated among the manufacturing sector or foreign industry stakeholders. Colombia must disseminate and share this type of draft, with the appropriate technical backing, not only with stakeholders from the Colombian industry, but also with the foreign industry that markets products in Colombia. In addition, the policy established by Colombia should be backed by technical references to other standards, such as those in the Codex Alimentarius, in order to establish values that do not create barriers to trade while protecting people's health. Lastly, Colombia has indicated that the sodium limit established only refers to added sodium and not to the total amount of sodium in the product. Ecuador requests that this be clarified throughout the document, as the distinction is not made in the Colombian draft.

1.224. The delegation of Costa Rica supported concerns on this measure.

1.225. The delegation of Guatemala provided the following statement. Guatemala wishes to thank the United States for including this item on the agenda. We recognize the legitimate objective of the Colombian authorities to ensure human health and, in accordance with the technical regulations

[47] For previous statements follow the thread under IMS ID 609 (under dates raised and references).

notified, to establish a maximum sodium content for certain processed foods. However, we share this concern for the following reasons. Firstly, with regard to conformity assessment, the submission of first party declarations of conformity will no longer be possible as from the date of publication of the accreditation of the first body certifying the analytical method, under Article 8.2 of the notified draft regulations. Article 8.1 provides that for imported products, the certificate of conformity must be attached to the import licence or registration. We consider this to be a rather restrictive measure on international trade. Secondly, as to the February meeting, Colombia has clarified that the sale of food exceeding the maximum content for year 1 and year 3 will not be prohibited. Article 11 provides that penalties will be established following the procedure set forth under the law. Such penalties will result in the inability to sell food, as they will prevent the company from continuing to operate normally. Guatemala thus reiterates its concern at this measure. Thirdly, for small economies such as Guatemala's, the lack of harmony among provisions of standards and regulations at the international level, compounded by the lack of measures to facilitate international trade, hinders the ability of small and medium producers to enter the international market.

1.226. The delegation of the European Union provided the following statement. The European Union would like to thank Colombia for its reply of March 2020 to the EU written comments of November 2020 and would appreciate any updated information on the status of the draft regulation. The objective pursued by Colombia to reduce overall sodium intake in an attempt to contribute to the reduction of high blood pressure and other associated diseases is one the EU fully supports and shares. The European Union would like to ask Colombia for some clarifications with regard to the Certificate of Conformity for nutritional declarations and more specifically on the period of validity and the verification process for said certificate. The EU also notes that the certificate can only be issued by certain bodies and that sodium content can only be determined by laboratory analysis. The European Union would like to ask Colombia under which conditions certificates issued by foreign laboratories would be recognized. Furthermore, the EU would welcome clarifications as to the type of sanctions that would be imposed following the date of entry into force of the regulation to products that would not comply with the technical specifications stipulated therein.

1.227. In response, the delegation of Colombia provided the following statement. We would like to thank the United States for its comments, as well as several Members for their active participation and interest in this regulatory process. The Colombian Ministry of Health and Social Protection has submitted the latest draft of the draft regulations, which takes into account the comments and concerns expressed during the international public consultation. These draft regulations are the result of a public health measure and are part of a comprehensive strategy called the National Strategy for the Reduction of Sodium/Salt Consumption 2012–2021, which covers not only sodium content in processed foods, but also other sources of sodium, such as the salt added to preparations in restaurants, at home and in institutions. The strategy seeks to reduce mortality attributable to high blood pressure and cardiovascular disease by gradually reducing salt consumption from food sources until the WHO recommendation for 2021 has been achieved: 5 grams of salt or 2 grams of sodium per person per day.

1.228. With regard to concerns about the technical and functional role of sodium in the production of prioritized foods, Colombia wishes to reiterate that this was analysed at all of the technical meetings for the 12 categories of food, involving industry, academic and government representatives, leading to an agreement and dissemination of the draft regulations. Moreover, the penalties envisaged in the draft regulations are those contained in Article 577 of Law No. 9 of 1979. As to the deadlines and levels prescribed in the draft regulations, these are based on the recommendations of the World Health Organization (WHO) regarding the establishment of gradual targets. The draft regulations established two targets, each spaced by two years, for a total period of five years, which should give the industry enough time to develop technologies needed to reduce sodium content and consumers' tastes to adapt. However, with regard to the concern about the addition of the certificate of conformity for nutrition claims, it should be noted that the certificate of conformity is not about nutrition claims, but about compliance with technical regulations. It should also be noted that this document is the same for domestic and international companies. As to time-frames for issuance, inspection and confirmation, these are established by the certification body and are not laid down in the technical regulations.

1.229. Foods were prioritized using a set methodology based on: eating habits; the frequency of consumption increases the level of salt intake, according to data obtained from domestic food and nutrition surveys, such as ENSIN 2010; sodium content, based on information provided by companies on nutrition labels; high-consumption foods among vulnerable groups of the population,

especially children; foods that are consumed frequently, even when their sodium content per serving is not very high (such as bread); and foods that are marketed as ingredients in premixed products used by the baking industry to make bread, baked goods and soup bases for restaurants. As part of the technical meetings, producers sent information on the addictive elements, ingredients and formulation associated with the technological conditions that make it difficult to meet the target and the production stage that is critical for this addiction. Therefore, Colombia requests that they indicate which foods, which could undermine the meeting of targets, should be analysed and the technological grounds for each, so that the technical team can analyse the difficulties. Similarly, during the preparation of these draft regulations, a regulatory impact analysis was conducted, taking into consideration the commercial and economic effects of the regulations, the costs for the industry and the costs for government. This analysis involved a wage range of stakeholders and showed that the benefits in terms of public health outweigh the associated costs of implementation.

1.3.17 China – Draft revised Encryption Law of the People's Republic of China by the Office of State Commercial Cryptography Administration (OSCCA) (IMS ID 534[48])

1.230. The delegation of the European Union provided the following statement. The EU would like to reiterate its concern on the Cryptography Law published by the OSCCA. We understand that the new Cryptography Law has entered into force from the beginning of this year. The EU remains concerned 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 will negatively impact business confidence. The EU notes with concern that the new law does not recognize China's previous commitment made in 2000 that the cryptography-related regulation would only apply to products whose core function is that of providing encryption – the so-called "Year 2000 Clarification" by the SCA.

1.231. The EU calls on China to ensure that legal and regulatory requirements are based on a non-discriminatory basis, do not favour specific technologies, do not limit market access and do not lead to a forced transfer of intellectual property. Regulatory procedures related to products containing cryptographic components should be transparent, predictable and consistent with international practices. The EU urges China to guarantee the possibility for foreign invested enterprises (FIEs) to participate on an equal footing with domestic companies in the production, research, development and sale of cryptography products on its market. In this context, the EU would like to draw 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). The EU also invites China to notify the draft Cryptography Law to the TBT Committee, as set out in Article 2.9 of the WTO's TBT Agreement. We would be interested in learning whether China plans to issue any implementing regulations to support this law and if so, what is the timetable for these.

1.232. The delegation of the United States provided the following statement. The United States would like to support the concerns of the EU and Japan. We outline our concerns for this measure in our intervention on China's Cybersecurity Law (STC ID 526).

1.233. The delegation of Japan provided the following statement. Japan continues to have concerns regarding the China's "Encryption Law" that entered into force on 1 January 2020 and would like to refer to the previous statement we made at the last TBT Committee in February 2020. Japan would like to request that China consider comments from Japan and other Member countries when drafting related regulations and that China's regulation not hamper foreign companies' activities or market access to China.

1.234. The delegation of Canada provided the following statement. Canada would like to refer to its statement made at the November 2019 TBT Committee meeting, as recorded in paragraph 2.90 of document G/TBT/M/79. Canada continues to kindly ask China to confirm whether the implementing regulations will be notified to the TBT Committee and improve upon the law by ensuring: adherence to TBT obligations, including those related to legitimate objectives, transparency and the use of international standards; and the scope of application is limited to goods involved in cryptology.

1.235. In response, the delegation of China provided the following statement. The Law on Cryptography of China took effect on 1 January 2020. The Law clearly stipulates that the governments at all levels and relevant departments shall follow the principle of non-discrimination,

[48] For previous statements follow the thread under IMS ID 534 (under dates raised and references).

and treat all the organizations equally including foreign-invested enterprises that engage in commercial cryptography research, production, sales, service, importation and exportation, etc. The State encourages commercial cryptography technical cooperation based on voluntary principle and commercial rules in the process of foreign investment. Administrative agencies and their staff are prohibited to force any transfer of commercial cryptography technology by means of administrative measures.

1.3.18 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/116, G/TBT/N/VNM/116/Add.1, G/TBT/N/VNM/116/Add.2, G/TBT/N/VNM/140 (IMS ID 549[49])

1.236. The delegation of the European Union provided the following statement. Due to recent developments concerning Decree 116, the EU does not consider this as a specific trade concern any longer. The EU would like to express its appreciation for the efforts of the authorities of Viet Nam to solve this issue. The EU will continue to follow this matter closely.

1.237. The delegation of Thailand provided the following statement. Thailand would like to reiterate concerns raised in the previous TBT Committee meeting regarding the Decree 116 including its revision as Decree 17. Despite the fact that Viet Nam has implemented the Decree 17 in order to ease the restrictive procedures for imported cars, some of its conformity assessment requirements still leave negative impact on foreign importers. For instance, Viet Nam should accept UNR or other internationally accepted COP as alternatives to certificate based on Vietnamese requirements and inspection which impose additional costs to exporting countries. At the last meeting, Viet Nam explained that it was in the process of notifying the Decree 17 to the TBT Committee. Nevertheless, Thailand is still concerned that, up to now, Viet Nam has not yet notified the Decree 17 as well as its implementing circulars which did not comply with the transparency provisions established under the TBT Agreement. In light of concerns raised, Thailand wishes to remind Viet Nam of its obligations under Article 5.6 of the TBT Agreement to notify other Members of its proposed conformity assessment procedures at an early appropriate stage when comments can be taken, and amendments can be made. Furthermore, particularly under Article 5.9, Viet Nam shall allow a reasonable grace period for exporting Members to adapt their products or methods of production to introduced requirements. Thailand, moreover, would like to respectfully ask Viet Nam to share any updated information on the raised concerns.

1.238. The delegation of Japan provided the following statement. Japan would like to share concerns regarding Decree 116 expressed by Thailand and the EU. We welcome the amendment of the Degree 116/2018 (the Degree 17/ 2020) and Circular 3/2018. Japan would like to request that Viet Nam ensure that operation of these revised regulations will not be more trade restrictive than necessary.

1.239. In response, the delegation of Viet Nam provided the following statement. Since the implementation of Decree 116/2018/NĐ-CP and Circular 03/2018/TT-BGTVT, Viet Nam Government had received many comments from foreign institutions and seriously took them into consideration for making appropriate adjustments. Accordingly, we have shortly amended and promulgated Decree 17/2020/NĐ-CP and Circular 05/2020/TT-BGTVT in order to remove difficulties for importers. The Decree 17/2020/NĐ-CP was notified to WTO Members on 28 April 2020 in notification G/TBT/N/VNM/Add.2, which clearly indicates that the amended and supplemented provisions of Decree 116/2018/NĐ-CP shall enter into force from 5 February 2020. For detailed guidance and implementation of provisions on technical safety and environmental inspection for imported and domestically assembled and manufactured automobiles, WTO Members are advised to refer to Circular 05/2020/TT-BGTVT of 26 February 2020. Currently, UNECE certificates are recognized under Decree 116/2017/NĐ-CP and Circular 25/2019/TT-BGTVT. The specific guidance for recognition of imported car parts with these certificates are provided in Item đ Clause 2 Article 6 of Circular 25/2019/TT-BGTVT. In near future where EVFTA is officially implemented, car parts manufactured in EU countries and imported with UNECE certificates shall be considered for recognition without testing under the provisions as signed by EU and Viet Nam.

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

1.3.19 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[50])

1.240. The delegation of the European Union provided the following statement. On 28 April 2018 the Russian Government adopted decision № 792-R, listing goods which will be subject to mandatory marking, along with the dates of introduction of these labelling requirements for each product category. It will cover tobacco, perfumes, tyres, different categories of clothing, footwear, cameras, dairy, and pharmaceutical products. The EU has very serious concerns on the proportionality of the measure: individual labelling and registration creates significant burden and cost, well beyond the cost of the individual labels. This may be justified for some products of high value and with a high record of counterfeit or tax evasion, such as tobacco products or furs. However, it seems more trade restrictive than necessary in the case of lower value products without such a negative record, such as towels, bed linen or tyres. Therefore, the EU requests that Russia reviews the scope of products covered by the measure so that this focuses on high-value products for which there is evidence of a high level of counterfeit and/or tax avoidance.

1.241. Though we commend the Russian government in its efforts to tackle counterfeiting, this measure includes technical regulations and will have a significant impact on imports from the EU and from other WTO Members to Russia. According to the Decision of 1995 of the TBT Committee, "Members are obliged to notify all mandatory labelling requirements that are not based substantially on a relevant international standard and that may have a significant effect on the trade of other Members". Therefore, this measure should have been notified under the TBT Agreement before its adoption to give the opportunity to other WTO Members to provide their comments and allow sufficient time for industry to adapt. The European Union would therefore like to urge the Russian Federation to notify this measure in accordance with the TBT Agreement. Furthermore the European Union would like to request the Russian Federation authorities to prepare a comprehensive guideline providing exhaustive information on technical details such as: timetable of goods to be labelled until 2024, deadlines, references to legislation, information contact points, Q&A part where the most frequent issues would be explained, etc. Such a guideline would significantly facilitate situation for majority of economic operators, both European and Russian.

1.242. The Russian government adopted Resolution No 515 on 26 April 2019 on the "marking of goods subject to mandatory labelling by means of identification". Of course, this measure also falls within the scope of the TBT Agreement and needs to be notified to the WTO, to open the period for comments. In accordance with the TBT Agreement, sufficient time shall be provided to industry to adapt to the requirements necessary for placing products on the market of the Russian Federation, which is in general 6 months. Taking into account that such requirements are still being developed, the European Union requests an adaptation of the deadlines for implementation, especially for products supposed to be labelled very soon. Some deadlines have been postponed, but an unclear situation remains on the ground. Current deadlines seem to be the following: Footwear – 1 July 2020; Medicines- 1 July 2020; perfumes and eau de toilette – 1 October 2020; photo cameras – 1 October 2020; tyres – 1 November 2020; textiles – 1 January 2021; dairy- 20 January 2021 and 1 October 2021. These postponements for different categories seem to be largely linked to the system not yet being operational. Operators need additional time to ensure that all products to be placed on the market of the Russian Federation can comply. It can take long for a product to reach its final consumer, meaning that companies have to introduce necessary changes along their chain of production months before the date of implementation, which is a particular concern for current stocks. In addition, introducing these changes in the production cycle ahead of the implementation date is difficult, as crucial information on the exact requirements is still lacking. Moreover, the manufacturers have recently been considerably affected by the outbreak of the COVID-19 and all corresponding consequences, such as lockdowns, availability of employees, transport disruptions, etc. Therefore, especially for footwear and medicines, labelling of which is supposed to start on 1 July, further postponement would enable manufacturers to prepare properly for the exercise. We ask the Russian Federation to take into consideration the European Union's comments, to ensure that the implementation of this measure is not unecessarily trade restrictive, in accordance with the WTO TBT Agreement.

[50] For previous statements follow the thread under IMS ID 567 (under dates raised and references).

1.243. The delegation of the Republic of Korea provided the following statement. Korea would like to make some comments regarding this regulation as follow. This regulation stipulates to attach traceable special labels to the products in order to prevent the manufacture of counterfeit goods and to protect consumers in Russia. However, the compulsory labelling scheme is subject to WTO TBT notification, but Russian Federation did not comply with the obligation of the WTO TBT notification. In this regard, the Korea has requested the WTO TBT notification procedure through the 1st WTO TBT Committee meeting 2020, and implementation date of footware item has been postponed to September 2020. Korea is grateful for the measures Russia has taken, however, with regard to this regulation Korea would like to request Russia to take measures to make sure of the compliance with the notification procedure in accordance with Article 2.9 of the WTO TBT Agreement, so that comments can be fully collected from the WTO Member states including Korea.

1.244. In response, the delegation of the Russian Federation provided the following statement. The Russian Federation reiterates its statements made during the previous meetings of the TBT Committee and sticks to the position that the measure at issue cannot be considered as a technical regulation due to the fact that the system does not meet the requirements stipulated in the TBT Agreement for technical regulations. The labelling requirements in technical regulations refer to fulfilling the technical requirements indicated in technical regulations, i.e. if the product does not comply with the requirements on any indication the relevant label will not be put on it and its supplying will not be allowed. We emphasize that the track and trace (T&T) system is not aimed at fulfilling the requirements stipulated in the relevant technical regulations. Besides, the labelling requirements under the technical regulations should contain the information about the product characteristics in a form of inscriptions or the uniform labels as "EAC" or "CE". T&T does not apply to the product characteristics or their related processes and production methods. The legislation and comprehensive guidelines regulating the T&T, whether effective or drafts, are publicly available in the information system of "Chestniy Znak" as well as the information about planned pilots and the volume of issued data-matrix code in respect of each type of products covered by the regulation. The system is transparent and information on it is available for all stakeholders in the Russian and English languages.

1.245. Moreover, we do not consider the system as disproportionate or burdensome as the concept in respect of each type of products has been elaborated in collaboration with the companies involved in manufacturing, supplying and importing the products covered. In this regard, the mechanism of the system should be approved by the business before entry into force. In addition, the price of one data-matrix code is approximately half of a ruble which is less than one US cent. For this reason, the measure will not cause additional costs. In addition, according to the statistics made by the Operator of the System approximately 10 billion codes have been issued for tobacco products, 2 billion codes for shoes, 900 million for pharmaceuticals, about 3.5 million codes for textiles. Taking into account these figures, we state that market participants adapted to the system, its functioning is stable, for this reason all the negative forecasts in respect of disruption of traditional trade flows due to the T&T System are not confirmed. Moreover, the great volume of smuggled tobacco products has been recorded in the internal market of the Russian Federation. The relevant analytical companies considering the data from 600,000 online cash registers made a conclusion that the illicit market of cigarettes is developed in many regions of the Russian Federation. The average price of smuggled cigarettes is lower and the circulation of such products is not surveilled. This situation causes the negative impact on both consumers, and faithful suppliers, due to the fact that smuggled products have the relevant competitive price advantages that increase demand on such cigarettes. The T&T System is aimed at eliminating such kind of practice and encouraged to clean the market.

1.246. We note hereby the current timeline of entry into force of T&T for next products: for shoes T&T enters into force from 1 July 2020; for pharmaceuticals the system enters into force from 1 July 2020; for cameras the date of entry into force is 1 October 2020; for tyres the System is supposed to enter into force since 1 November 2020; for textiles the T&T is currently supposed to enter into force from 1 January 2021; for perfumes from 1 October 2020. Till 30 September 2021 the stocks should be coded; dairy products from 20 January and 1 October 2021. We note hereby that the guidelines for each type are available on "Chestniy Znak". As for challenges faced by small enterprises, we note hereby that importers ensure appliance T&T in respect of products either at any stage of supply chain from production to imports or at the customs warehouse when products are placed under the customs procedures. In this regard, importers and exporters of products to the territory of Russia determine the mechanism of application of the System.

1.3.20 European Union – Chlorothalonil (pesticide active substance), G/TBT/N/EU/625 (IMS ID 579[51])

1.247. The delegation of Costa Rica provided the following statement. Costa Rica reiterates the request raised in documents G/SPS/GEN/1778 and G/TBT/GEN/296 – Request for the Suspension of the Processes and Entry Into Force of Reductions of Maximum Residue Levels (MRLs) for Plant Protection Products in Light of the COVID-19 Pandemic.

1.248. The delegation of Panama provided the following statement. Through this communication, Panama will address the concerns about STC ID 393: Hazard-based approach to plant protection products and setting of import tolerances; STC ID 580: European Union - Transitional periods for maximum residue limits (MRLs) and international consultations; and STC ID 579: European Union - Chlorothalonil (pesticide active substance). Article 2.2 of the TBT Agreement clearly states that "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary barriers to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create". However, we note that the measures taken by the European Union go beyond what is necessary to achieve their aims, especially when these deviate from the guidelines of Codex and other international organizations under the premise of inconclusive studies.

1.249. In its notification G/TBT/N/EU/625 for the non-renewal of chlorothalonil, paragraph 7.3 states that no conclusive results were found. This is clearly the use of the principle of hazard, rather than of risk, as is required in the SPS Agreements. Similar cases of the use of the principle of hazard have appeared in other EU notifications of other substances submitted to the SPS and TBT Committees. We take this opportunity to recall that Article 3 of the SPS Agreement states that Members should try to harmonize their measures to improve the predictability of trade and, pursuant to Article 3.4, they should draw on the support of the relevant international organizations. While every Member is free to take necessary precautions for the safety of its citizens, these measures should not be unduly strict to the point of adversely affecting trade. In addition, there must be conclusive scientific evidence, as stipulated in Article 5 of the SPS Agreement. It is of concern to us that inconclusive European Union studies have resulted in the blocking of active substances, the use of which is permitted, regulated by international institutions and essential in the rest of the world.

1.250. The substance chlorothalonil, specifically, is an essential organic compound for fighting disease in plantain and banana crops, such as Black Sigatoka, caused by the fungus *Mycosphaerella fijiensis* Morelet. Black Sigatoka initially attacks plantain and banana plants visibly, presenting as black spots on the leaves; it later halves plant production, and then in most cases it destroys 100% of sales of the fruit. This disease worsens with global warming, rain and humidity, which are climatic events observed 365 days of the year in tropical countries, a climatic situation that is quite different from that found in Stockholm or Madrid. Panama has already had to fight this fungus before, to the point where in many parts of the world Black Sigatoka was known as the Panama disease, although we always point out that it first appeared in Fiji. It was thanks to phytosanitary measures that we were able to fight it successfully; however, we are again at risk in 2020, with inputs in use beginning to be blocked and the Earth's highest temperatures being recorded.

1.251. Alternatives to chlorothalonil are substances such as mancozeb, the non-renewal of which the EU also declared in its notification G/TBT/N/EU/712. Studies involving tomatoes, potatoes, cereals and grapes, and all fruit with pulps of lesser thickness than bananas, are specifically mentioned in this notification. Yet again, without obtaining scientific evidence on all products, the substance has been blocked. We recall that, unlike with tomatoes, grapes and potatoes, the peel of a banana is not consumed; individual studies should therefore be made into this type of product, taking account of its differences. Furthermore, in Panama's banana packing plants, this fruit is carefully washed and sanitized following food safety protocols.

1.252. The European Union measures could cause heavy losses and threaten the well-being and employment of thousands of families belonging to the Ngäbe Buglé ethnic group, who are the main source of labour for the banana plantations of Changuinola and Puerto Armuelles. In 2017, the trade in bananas between Panama and the European Union exceeded 17 million boxes, equivalent to USD 180 million, bananas being the main income-producing product in the Ngäbe Buglé region.

[51] For previous statements follow the thread under IMS ID 579 (under dates raised and references).

Moreover, any impact on this activity would mean a step backwards in the country's struggle to improve its production and combat climate change. In reference to transition periods, the European Union talks of periods of six months. However, banana production typically lasts from 9 to 12 months, without taking into account the transit time for fruit from origin to destination and finally to the point of sale. In other words, during the process of adapting cultivation methods to the new measures, losses amounting to more than a year's production could be generated.

1.253. On 12 May 2020, Panama, together with a dozen other Members, submitted document G/TBT/GEN/296, requesting Members to suspend the entry into force of the new maximum residue limits for plant protection products during the COVID-19 pandemic. We thank the European Union for being supportive and responding to this request on a temporary basis. During this time, we can continue discussions on how the EU can take health measures in line with the SPS and TBT Agreements without unduly interrupting international trade. However, our choice is to seek solutions that would allow all Members to support each other in harmonizing our legislation, with the aim of safeguarding human, animal and plant health without imposing unnecessary unilateral barriers to trade.

1.254. The delegation of El Salvador provided the following statement. El Salvador shares the views expressed by other delegations regarding the negative impact that this measure will have on exports of Salvadorian agricultural products and those of many developing countries to the European market. We would also like to register our concern about the various European Union draft technical regulations on maximum residue limits. We urge the EU to ensure that these are based on technical evidence and do not result in unjustified restrictions on trade. Lastly, we refer to the communication that has been circulated as document G/TBT/GEN/296, sponsored by the delegations of Costa Rica, Guatemala, the Dominican Republic, Colombia, Argentina, Panama, Ecuador, Paraguay, Peru, Nicaragua, Honduras, Israel and El Salvador, in which the European Union is requested to suspend, for a period of 12 months, MRL review processes under way and the entry into force of all reductions of MRLs planned for 2020.

1.255. The delegation of the Dominican Republic provided the following statement. The Dominican Republic wishes to reiterate its concern and add to the statements of other Member States on this item of the agenda, on the measure notified by the European Union through document G/TBT/N/EU/625, relating to the non-renewal of the authorization for the active substance chlorothalonil. These measures will cause serious problems for our exports, mainly for banana, mango and avocado exports, which represent around 20% of total annual food exports, with the countries of the European Union being their main market. These types of measures have a direct socioeconomic impact not only in the Dominican Republic but throughout the region. We consider that this measure was adopted without taking into account that this substance is used in many of the producing countries and the European Union has so far been unable to produce conclusive scientific evidence to demonstrate that chlorothalonil represents any risk to health or the environment, contrary to the provisions of Article 2 of the TBT Agreement. It must be remembered that the WTO's TBT Agreement provides that any measure introduced by a Member State cannot be more trade-restrictive than necessary and must not become an unnecessary barrier to trade. It is for these reasons that we request the EU to maintain the registration of chlorothalonil. We request the EU to re-establish the registration of this substance and to carry out an appropriate risk assessment to demonstrate its true effects on public health, or to abide by the provisions of Codex Alimentarius, which establishes MRLs for chlorothalonil for various agricultural practices.

1.256. The delegation of Colombia provided the following statement. Colombia wishes to reiterate its concern regarding the measure notified by the European Union in document G/TBT/N/EU/625 relating to the non-renewal of the approval of the active substance chlorothalonil. This substance is key to pest control for a wide variety of crops, particularly bananas, since it is used for the control of Black Sigatoka, a fungus that devastates banana crops. The EU has been adopting measures leading to the non-approval of the use of products for plant protection that is affecting the exports of its trading partners. The measures for the suspension or non-approval of the marketing of a number of active substances, and the subsequent reduction of their MRLs to the minimum detection level, are being taken without any solid scientific evidence and without demonstrating that they are the least trade-restrictive means of achieving an appropriate level of protection for consumers. In Colombia, the use of certain active substances such as chlorothalonil is indispensable in agricultural production for the protection of crops against pests and diseases, and for maintaining the quality and safety of products during storage, transport and distribution, before they reach consumers on the European market.

1.257. It is important to note that, regarding the review of substances, EFSA has published, as it has done more and more frequently, reasoned opinions stating that, owing to insufficient information, the risk assessment for active ingredients is inconclusive. This situation has been wrongly interpreted by the European Commission (DG SANTE), which, as a precaution, has not renewed the marketing permits for the substances. Contrary to the provisions of the WTO's TBT Agreement, the EU's decisions are not provisional and do not demonstrate any effort to obtain the further information necessary to conduct a more objective risk assessment. The foregoing constitutes a violation of Article 2.2 of the TBT Agreement, which stipulates that "technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective". As indicated, there is insufficient information to establish criteria for acceptance or rejection of the chlorothalonil compound, given that, from a scientific point of view, its effect on health has not been clearly determined.

1.258. We reiterate that it is essential for the EU to use a risk-assessment approach in decision-making to determine marketing approvals for active substances, as the EU has stated in a similar context, given that there is insufficient scientific evidence to identify the various toxicological aspects that may affect human health, or the environment in the case of chlorothalonil. Any measures adopted must be based on scientific evidence and international standards and take account of the biodiverse agriculture of countries such as Colombia, which cannot be compared with that of European latitudes, where the climatic conditions and seasons are very different. This is in accordance with the terms of the WTO's TBT Agreement, which provides that any measures established should not be more trade-restrictive than necessary or create unnecessary barriers to trade.

1.259. In May, in compliance with the standard published by the EU, the transition period for the marketing of the substance chlorothalonil expires, and can no longer be used, despite the fact that various Members have been raising concerns in this Committee for over a year, to which we have received no response from the EU. Moreover, the situation arising from the COVID-19 global health emergency has forced the health and scientific authorities of all countries, including Colombia, to focus attention on that situation. By the same token, key sectors such as food producers, organizations and associations are having to make significant efforts to ensure biosecurity controls in the fruit and vegetable supply chain. This is reducing their capacity to analyse draft regulatory measures and adjust production methods, creating additional burdens on international food trade, which is hampering worldwide economy recovery efforts, especially in developing countries. In line with the statements made in document G/TBT/GEN/296 of 12 May, we request the EU to suspend for a period of 12 months all review processes of market approvals for plant protection substances, and the entry into force of regulations in this area, planned for 2020, including the non-renewal of the active substance chlorothalonil.

1.260. The delegation of Ecuador provided the following statement. We would like to refer Members to documents G/TBT/W/649, G/TBT/W/688 and G/TBT/W/717, which contain the statements made by Ecuador on this matter during the meetings of this Committee held in June and November 2019 and February 2020. As has previously been stated, the non-renewal of the approval of the active substance chlorothalonil in the European market, as well as the subsequent reduction of maximum residue levels (MRLs) for this product, will have a serious impact on the production and marketing of bananas. Despite agribusiness being considered a strategic sector of the economy that can continue its operations in Ecuador, the health emergency has had an impact on the banana sector. In addition to the high number of people who have become ill and been hospitalized by COVID-19, government measures imposing mandatory confinement and restrictions on movement to reduce the number of infections also create complications across the logistics chain due to staff shortages, and have an impact on production and export volume. All of this has had an economic impact, causing cash-flow problems for some producers and exporters. It is worth noting that 78.5% of the Ecuadorian banana sector is made up of small producers, which have been more heavily affected by the emergency.

1.261. EU measures limiting the use of key phytosanitary tools such as chlorothalonil pose an additional challenge to existing difficulties caused by the coronavirus. It is a problem that falls on producers and exporters, putting at even greater risk their ability to maintain levels of production, comply with delivery programmes as per contracts, guarantee the supply of fruit in the different markets and ensure employment in the sector. This month, the transition period for the marketing of chlorothalonil in the EU comes to an end, and it will no longer be possible to use the substance. In the context of the health emergency, the process of looking for replacements for chlorothalonil

will take longer because field tests are being hampered by infection prevention protocols. Given that there is currently no effective alternative, this could potentially lead to a 10-15% wastage in fruit due to pests.

1.262. Ecuador submitted comments on EU notification G/TBT/N/EU/625. In its reply, dated 5 February 2019, the EU indicated that the assessment conducted by EFSA did not provide conclusive scientific data showing that metabolites of chlorothalonil will contaminate groundwater or have genotoxic effects on consumers. As a result, and to avoid unnecessarily disrupting food production in developing countries, Ecuador once again requests that the EU, prior to making a decision to reduce MRLs for any plant protection product, including for chlorothalonil, conduct a risk assessment in accordance with the provisions of the Agreement on Sanitary and Phytosanitary Measures and maintain current MRLs until there is full scientific data to support the setting of MRLs different from those established by Codex Alimentarius. We also reiterate the content of the joint statement that was circulated to this Committee and to the SPS Committee as document G/TBT/GEN/296 on 12 May, through which a group of developing Members urged the EU to suspend for a period of 12 months its measures under way to restrict the use of plant protection substances, including chlorothalonil.

1.263. The delegation of Nicaragua provided the following statement. The delegation of Nicaragua associates itself with the concern raised by other Members regarding the measure notified by the European Union in document G/TBT/N/EU/625, of 4 December 2018, referring to the non-renewal of the approval of the active substance chlorothalonil. This substance is used by farmers as a fungicide to control certain pests that have a significant impact on food production. Nicaragua recognizes the right of any Member to determine the appropriate level of sanitary or phytosanitary protection necessary to protect the health and lives of humans, animals or plants. In this regard, priority and impetus should be on the establishment of measures that are science-based and do not create unnecessary barriers to trade. Nicaragua also reiterates the relevance of Codex Alimentarius as the relevant body for a fair and safe food trade. It therefore urges the European Union to ensure that the measures established are based on scientific evidence and international standards, in accordance with the WTO's TBT Agreement.

1.264. Nicaragua associates itself with the request to maintain the approval of chlorothalonil in the European Union and with the other concerns previously expressed by other Members. The implementation of these measures will have a negative impact on national production sectors, which would face difficulties if the authorization for chlorothalonil was not renewed, and it would also affect the export of products to the European Union. In addition, we co-sponsored with other Members document G/TBT/GEN/296 "Request for the suspension of the processes and entry into force of reductions of maximum residue levels (MRLs) for plant protection products in light of the COVID-19 pandemic". Through this document, we respectfully request the European Union to suspend for a period of 12 months the application of its new MRL regulation(s), taking into account the negative impact that the current pandemic has had on global supply chains, food production and the economies of farmers in developing economies.

1.265. The delegation of Paraguay provided the following statement. We would like to thank the delegations that included this topic in today's agenda and to reiterate our concern. As we have already stated on previous occasions, in my country, chlorothalonil is classed as a low-risk pesticide and is sold freely. It is used in several key export products as part of the rotation of substances to avoid resistance to other main substances. One of the alternatives currently available to replace chlorothalonil is mancozeb, which is the subject of another specific trade concern today because the EU has decided to treat it in the same way as chlorothalonil. We do not share the EU's criteria for not renewing the of use of substances because studies are inconclusive, and we urge the EU to complete such studies and carry out a risk assessment, in accordance with international principles and standards on the subject. Furthermore, we once again urge the European Union to comply with the international commitments that it has undertaken within this Organization and to ensure import tolerances.

1.266. The delegation of Guatemala provided the following statement. We would like to thank Costa Rica, Panama, El Salvador, the Dominican Republic and Colombia for including the topic in the agenda. Guatemala wishes to express its support for the concern, especially because there is no information on the scientific evidence of the damage caused to human health as a consequence of consuming fruits and vegetables produced in particular in Latin America, and that is why it is important to carry out a risk analysis. The European Union has previously mentioned that it has

identified potentially adverse health effects of the substance. However, the European Union has not sent to the countries concerned information on the contamination of imported products that have been assessed using available scientific information.

1.267. We wish to make clear that our concern over the substance is not because we are producers of the substance. Our concern is about the use of the substance for the control of fungal diseases. There is no other fungicide on the market that is as effective in fungi control, in particular for the control of Ascochyta, Anthracnosis, Black Sigatoka, brown spot and leaf spot, downy mildew, early blight, late blight, grey mould and fruit rot, which affect the production of snow peas, bananas, coffee, melons, cucumbers and tomatoes. We would therefore appreciate it if the European Union would consider the particular circumstances of tropical countries when implementing measures, until it has conclusive studies and has aligned itself with the provisions of Codex.

1.268. The delegation of Brazil provided the following statement. Brazil would like to support this STC and refer to its past statements on the issue. We oppose 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 by the EU did not duly consider that it is currently authorized in more than 100 countries, and that the MRLs allowed by CODEX could reach up to 70 mg/kg. In light of this, we reaffirm our concerns with the fact that some hazard-based analyses conducted by the EFSA led to the non-renewal of certificates and subsequently to the reduction of MRLs limits. The Brazilian National Health Agency has set MRLs for this substance for more than 30 different crops. The case of chlorothalonil affects Brazil's exports of agricultural products, such as banana, coffee, citrus fruits, papaya, watermelon, among other crops that use this substance for pest control.

1.269. In response, the delegation of the European Union provided the following statement. The EU thanks WTO Members for raising this issue. As explained at previous TBT Committee meetings, the EU proposed not to renew the approval of chlorothalonil and notified third countries of the draft Regulation via the TBT procedure. The measure did not lead to immediate disruptions in trade, as it does not amend the MRLs and provides for a grace period. The possibility for granting transitional measures will be considered when proposing any changes to existing MRLs, which will not take place before expiry of the grace period. Furthermore, it is important to reiterate that any action to reduce MRLs in the future will be subject to a separate notification under the WTO/SPS procedure. As previously explained, chlorothalonil was evaluated in accordance with Regulation (EC) No 1107/2009 on the placing of plant protection products on the market[52]. The conclusion[53] by the EFSA on chlorothalonil, following assessment by the "rapporteur" member State and an extensive peer review process, was published in January 2018. During this peer review process, the approval criteria provided for in Article 4 of the Regulation were not satisfied with respect to one or more representative uses of at least one plant protection product.

1.270. During the assessment: a critical concern was identified by the authority in relation to the contamination of groundwater by certain metabolites of chlorothalonil[54], the authority could not exclude a genotoxicity concern for residues to which consumers will be exposed and identified a high risk to amphibians and fish for all the uses evaluated, several areas of the risk assessment could not be finalized due to insufficient data in the dossier, and it was noted that chlorothalonil is classified as carcinogen category 2 in accordance with Regulation (EC) No 1272/2008 of the European Parliament and of the Council, while the conclusion of the Authority indicated that chlorothalonil should be classified as carcinogen category 1B. In light of the above, the EU proposed not to renew the approval of chlorothalonil in accordance with Article 20(1)(b) of the plant protection products Regulation. On 29 April 2019, the Commission adopted Implementing Regulation (EU) No 2019/677[55] concerning the non-renewal of the approval of the active substance chlorothalonil. Grace periods shall not be set beyond 20 May 2020. Import tolerance requests however remain possible

[52] http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489747880535&uri=CELEX:32009R1107.

[53] EFSA 2018 Conclusion on the peer review of the pesticide risk assessment of the active substance chlorothalonil. EFSA Journal 2018;16(1):5126: http://www.efsa.europa.eu/en/efsajournal/pub/5126.

[54] In particular, metabolites R417888, R419492, R471811, SYN507900, M3, M11, M2, M7 and M10 are predicted to occur above the parametric value of 0.1 µg/L in all pertinent scenarios for all proposed uses of chlorothalonil.

[55] OJ L 114, 30.4.2019, p. 15.

and will be assessed on a case-by-case basis by the "rapporteur" member State and the EFSA. Such requests would have to be supported by substantial new data addressing the concerns.

1.3.21 China – Cosmetics Supervision and Administration Regulation (Draft) and Regulation for Notification of Non-special Cosmetics (Draft), G/TBT/N/CHN/1310, G/TBT/N/CHN/1311, G/TBT/N/CHN/1331 (IMS ID 576[56])

1.271. The delegation of the United States provided the following statement. We understand that the State Council passed the Cosmetics Supervision and Administration Regulation (CSAR) draft in January 2020. Our industry is pleased that China has chosen to modernize its cosmetics regulations as they believe the resulting reforms could promote the rapidly growing cosmetics trade between the US and China. When do you anticipate that the State Council will publish the Regulation? As China develops the CSAR implementing measures, we would appreciate that China continue to notify all draft and final measures to the WTO and engage with US industry. This will help to ensure that CSAR promotes innovation and trade while meeting the National Medical Products Administration's (NMPA) mandate to ensure safe products. We understand that the Draft Measures for the Registration and Filing of Cosmetics, notified in G/TBT/N/CHN/1311, may have been amended, without notification, to require that certain special-use cosmetics undergo testing in China, even when there is test data available from international labs that follow good laboratory and clinical practices. We ask 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.

1.272. We also trust that China is considering the concerns US Government and US industry have raised regarding China's proposed conformity assessment requirements for imported non-special-use cosmetics notified in G/TBT/N/CHN/1331 and will take these comments into account when finalizing the measure. We would welcome a discussion that brings together NMPA, the State Administration for Market Regulation, and the Ministry of Foreign Trade and Commerce with US Government officials and US industry to better understand China's concerns and to find a solution that is not more trade restrictive than necessary. The success of China's cosmetics and personal care industry is important to the United States given both the number of Chinese products used daily by American consumers, as well as the economic opportunity China represents to US companies seeking to serve China's growing consumer base. The industry provides an example of the potential for the expansion of our bilateral trade, given robust exports from both countries.

1.273. The delegation of the Republic of Korea provided the following statement. Korea would like to make some comments regarding this regulation as follows. Korea supports China's objectives of assuring the quality and safety of cosmetics through the revision of this measure. However, Korea remains concerned that some of the provisions within the regulations being drafted could create unnecessary obstacles to trade. The concerns from our industry are as follows. First, Korea has continuously been requesting China to reconsider the disclosure requirement that mandates companies to publish evidence for efficacy claims, which includes CBI. However, we found that our comments have still not been reflected in the recently drafted regulations. Thus, Korea would like to request China to allow companies to submit evidence for efficacy claims to the Chinese regulatory authority only when necessary, or to grant exemption from the disclosure requirements. Second, the proposed revision requires over-labels in Chinese to be consistent with the original labels. Korea therefore would like to ask China that its labelling requirements be aligned with international practices as under the current practice which requires compliance with the labelling requirements of the exporting country.

1.274. Third, the regulation stipulates that test results required for the registration of cosmetic products must be issued by testing laboratories that have obtained CMA in compliance with the regulation. However, only laboratories in China are known to have obtained CMA. Thus, Korea would like to request China to offer flexibility to foreign laboratories in granting CMA and to recognize test results issued by foreign laboratories or internationally recognized laboratories, including test reports submitted for the registration of cosmetic products. Fourth, under the draft of "Cosmetics Supervision and Administration Regulation," the licence for special-use cosmetics has validity periods. The licence issued by most of the countries including Korea, the US, and European states do not have a determined validity period. To harmonize cosmetics regulations, Korea requests that China reconsider setting the validity periods of the licence for special-use cosmetics. Korea invites China to give full consideration of our comments in reviewing the draft regulations and looks forward

[56] For previous statements follow the thread under IMS ID 576 (under dates raised and references).

to China's response on this matter. We also would like to ask China to share with us the enforcement date of this proposed regulation and provide sufficient transition period to allow time for the Korean industry to prepare for the new regulation. Lastly, we understand that the revised regulation was adopted by China's State Council on 3 January 2020 and request the information about when the regulation will be published.

1.275. The delegation of Australia provided the following statement. Australia reiterates that we would welcome an update from China on the CSAR. We would particularly welcome details with respect to the status of the CSAR, timelines for implementation and how it would work in practice. We have seen reports that China's State Council formally passed the CSAR on 3 January 2020. Could we please see a copy of the latest text of the CSAR and will China publish and formally notify WTO Members prior to publication of the CSAR? Does it remove, or provide an alternative to, the requirement for imported cosmetics to be tested on animals? What certification requirements does China envisage for imported cosmetics? We are interested in knowing more about the concept of mutual recognition as mentioned by China at the November 2019 TBT Committee meeting. China should provide equal treatment for Chinese and foreign cosmetics products, and be no more trade restrictive than necessary when implementing any measures to ensure the safety of cosmetics. We would urge China to notify the final version text of the CSAR through the WTO, noting particularly our interest in understanding any new measures that other WTO Members would be required to comply with. We would welcome the opportunity to engage bilaterally in discussion on cosmetics regulation and alternatives to animal testing.

1.276. The delegation of Japan provided the following statement. With respect to China's proposed amendments to "CSAR" and related detailed regulations, we continue to have the following concerns. Regarding disclosure of new ingredients and efficacy testing materials, Japan requests that the scope of disclosure be clarified so as to exclude confidential corporate information. Regarding the labelling content requirements, it is provided that the information written on added Chinese labels shall be consistent with the original labels. However, the original labels are designed to comply with regulations in the country of origin and it is natural that their contents do not always comply with China's regulations. In the draft, multiple stakeholders, such as "cosmetics producers and operators" and "cosmetics registrants or filers", are noted as the persons responsible for quality and safety of cosmetic products. In order to avoid confusion, Japan requests that the amended regulation clearly establish only one legally responsible person (a legal or a natural person) and considers that the label should indicate a single responsible person.

1.277. Furthermore, Japan still has concerns related to the "Regulation on Cosmetic Inspection in Registration and Filing". We would like to reiterate the following three points. Regarding testing laboratories China's regulations do not recognize test results obtained by in-house or foreign laboratories. Japan requests a more flexible framework in which test results obtained by in-house or foreign laboratories through internationally recognized practices such as ISO can be accepted. As for the efficacy evaluation, China has not provided detailed information regarding test methods required for whitening products. Since whitening tests take a long time to complete, Japan requests that test results obtained by in-house or foreign laboratories be accepted and the grace period be adequately extended. As we mentioned at the last TBT meeting, in terms of requirements for animal testing, there are conflicting descriptions between "Regulation on Cosmetic Inspection in Registration and Filing" and "Regulation for Notification of Non-special Cosmetics". Japan requests that China ensure consistency between those regulations.

1.278. Moreover, regarding "Interim Measures on the Administration of Overseas Inspections of Cosmetics", Japan would like to continue to express concerns on the following three points. The draft measures appear to lack a concrete legal basis and a specifically stipulated purpose for overseas inspections. Japan would like to request that China clarify which laws and regulations authorities are to use to determine conformity and specific purposes for conducting inspections. Japan also asks that China ensure that inspections will not be more trade restrictive than necessary, ensuring that the legitimate objectives under the TBT Agreement are fulfilled. The coverage of the inspection including product development stage is broader than necessary. In Article 10 and Article 32 of this draft, the main purpose of the inspection seems to be to ensure product safety. Information related to research and development is not necessarily essential for product safety assurance, while it is the most confidential information for companies and therefore Japan requests that the scope of this information be limited to essential items. In addition, extensive inspections with unclear objectives can place unnecessary burdens on companies, since various companies are involved in the process from research and development to sales. Therefore, R&D departments of companies should be

excluded from the coverage of overseas inspections. Furthermore, inspections for Chinese domestic companies are only conducted on production sites. Japan would like to request that China provide equal treatment to both domestic and overseas companies. Japan requests that China ensure that confidential information will not be disclosed to anyone other than those who are necessary for the legitimate purpose of the inspection, since production sites also contain the confidential information of companies.

1.279. Finally, we would appreciate it if China could provide the detailed timeline for these revision processes. Japan requests that China 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. We also hope that China will notify the latest revised regulation to the TBT Committee as China stated at the previous meeting that they had made some adjustments to the draft regulation taking into account WTO Member comments.

1.280. In response, the delegation of China provided the following statement. The CSAR aims to ensure the quality and safety of cosmetics, safeguard the customers' health and promote the development and innovation of this industry by regulating cosmetic production and operation activities, strengthening the administration and supervision of cosmetics management. This regulation was notified to WTO in December of 2018 and has been adopted by China State Council on 3 January 2020. Regarding the Regulation of Notification of Non-special Cosmetics, the technical requirements and safety standards are the same on imported and domestic products, both are subject to consistent supervision management. Since 10 November 2018, the method of approval administration of the imported non-special cosmetics has been adjusted to recordation administration. China will further strengthen information exchange and cooperation with Members and improve the cosmetics supervision system.

1.3.22 Qatar – Ministry of Public Health Circular regarding shelf life for cheese (IMS ID 602[57])

1.281. The delegation of the European Union provided the following statement. The European Union would like to recall its concerns with regard to the Qatar Ministry of Public Health Circular of 30 May 2019 establishing new import requirements for UHT milk and white cheese that entered into force the following day, on 1 June 2019. The EU regrets that Qatar did not notify these requirements to the WTO under neither the TBT nor the SPS Agreements. The implementation of these rules is causing serious disruptions to EU exporters as compliance with these requirements is not feasible for certain cheeses and milk products. As a consequence, EU products covered by the measure cannot be exported to Qatar anymore. The EU is particularly concerned about the stringent restrictions on the shelf life that disadvantage imported products in comparison to local products, but also about certain product characteristics for UHT milk and white cheeses, in particular obligatory addition of vitamins to milk and low-fat-only requirement for certain white cheeses.

1.282. These requirements are not in line with Codex Alimentarius relevant international standards, are not science-based and do not guarantee the safety of imported products. The measures therefore appear to be more restrictive than necessary to fulfil the legitimate objective of public health protection. In this context, the EU would like to refer to Articles 2.1, 2.2 and 2.4 of the TBT Agreement. The EU would like to invite Qatar to suspend the application of the measure without further delay, align it to the WTO rules and comply with its notification obligations. The EU would like to thank Qatar for bilateral exchanges during the past months, which unfortunately have not yet resulted in an effective solution. The EU is prepared to continue to work constructively with Qatar to resolve this important issue.

1.283. The delegation of the United States provided the following statement. The United States remains concerned over Qatar's dairy product regulation, published by the Ministry of Public Health on 30 May 2019, which restricts the reconstitution of milk and shelf life of cheeses, among other things. The United States is also concerned with Qatar's adoption of this measure without notifying it to the WTO, providing trading partners the opportunity to comment, or a reasonable implementation period. The United States understands that the measure may in fact be considered a temporary measure. In light of this new information as well as the US request to suspend or amend the measure, can Qatar provide additional details regarding the plans to withdraw or update the measure, including any plans Qatar has to notify it to the WTO? Despite Qatar's willingness to meet

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

with the United States bilaterally, US exporters continue to face market uncertainty due to the enforcement of this measure, indicating that they are unable to obtain future contracts and are expecting to lose their business in Qatar as soon as current contracts and supplies end. The United States therefore reiterates our request for Qatar to continue its engagement with the United States on this measure and work to immediately resolve the market uncertainty this non-notified measure has created.

1.284. The delegation of Canada provided the following statement. Canada would like to join the United States and the European Union to reiterate its concerns with Qatar's shelf-life requirements for identified milk and cheese products established by the Ministry of Public Health on 30 May 2019. As stated in the previous TBT Committee meeting, Canadian exporters of paneer cheese are unable to fulfil existing contracts with Qatar importers due to the overly restrictive shelf-life requirements for paneer cheese. The 50-55 day ocean transit from Canada to Qatar effectively makes it impossible to comply with these new 45-day shelf-life requirements. We remain concerned that these stringent shelf-life requirements effectively encourage the domestic or close proximity sourcing of these products which potentially leads to the discriminatory treatment of imported products.

1.285. Canada once again encourages Qatar to notify this measure to the WTO, pursuant to the WTO's transparency obligations, in order to provide trading partners with the opportunity to comment. Until then, we respectfully request that Qatar suspend its implementation. Subsequent to the last TBT Committee held in February 2020, Canada submitted its detailed questions through Qatar's Enquiry Point on 26 March 2020 to obtain additional clarifications on the measure and to highlight our specific concerns. We recognize that existing processes could be temporarily disrupted due to the current global pandemic. When circumstances permit, we would appreciate if Qatar could acknowledge receipt of our questions and inform when a response can be expected. In the meantime, Canada will continue to follow these discussions closely, and looks forward to continued engagement with Qatar.

1.286. In response, the delegation of Qatar provided the following statement. Qatar has taken note of the continued concern of the United States, the European Union, and Canada regarding Qatar's Ministry of Public health circular on shelf life for cheese and thanks them for their interest. We are following this matter with the competent authorities in Doha. We would like to take this opportunity to reconfirm that these measures have been adopted to ensure the quality of products available in Qatar, and that the protection of consumers is of primary importance to the Government of the State of Qatar with its international obligations under the WTO Agreements, including the TBT Agreement. Also, we would like to assure Members that the relevant measures apply equally to domestic and imported products and are therefore non-discriminatory in nature. Furthermore, any impact that such regulations may have on trade will not be more than necessary to contribute to the fulfilment of the legitimate objective of protecting consumers. In this respect, we would like to emphasize that product-specific requirements applied in the State of Qatar do not prevent the importation and sale of any products that meet quality standards and thus do not have a significant effect on trade. This being said, we will share the concerns expressed here with our capital and will provide replies to the questions we have received as soon as possible. Also, we remain available to continue our constructive discussion with the interested members to provide additional explanation where necessary.

1.3.23 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, G/TBT/N/MEX/178/Add.9, G/TBT/N/MEX/178/Add.10, G/TBT/N/MEX/179/Add.11 (IMS ID 608[58])

1.287. The delegation of the United States provided the following statement. The United States supports Mexico's public health objective of reducing diet-related non-communicable diseases and appreciates Mexico's notification of NOM-051, "General Labelling Specifications for Pre-Packaged Foods and Non-Alcoholic Drinks – Commercial and Health Information." We appreciate the bilateral discussions we have had with Secretary of the Economy, Undersecretary de la Mora, her staff, and the authorities of the Dirección General de Normas (DGN), Comision Nacional de Mejora Regulatoria (CONAMER), and Comisión Federal para la Protección contra Riesgos Sanitarios (COFEPRIS). We are very concerned that phase one of implementation for these requirements is currently scheduled to begin on 1 October 2020, approximately six months after the final regulation was published. We

[58] For previous statements follow the thread under IMS ID 608 (under dates raised and references).

request that Mexico allow for a transition period of at least two years prior to initiating phase one of implementation. We emphasize the need for an extended transition period in light of the COVID-19 global pandemic, which has placed significant pressure on the food and beverage industry to maintain supply of safe and affordable food and manage complex global supply chains. More flexibility in food production and labelling is needed at this time rather than diverting critical resources to comply with labelling rules aimed at longer term public health goals. A delay in the implementation of these rules to allow a two-year transition period would enable the industry to remain focused on manufacturing during this crisis.

1.288. The United States Government and nine trade associations provided comments on the draft regulation through the United States Enquiry Point. We were disappointed to see that the US government's concerns were not addressed in the final revised measure. The United States remains concerned that the revised regulation, intended to address public health, may be more trade restrictive than necessary to meet Mexico's legitimate health objectives, may not be based on robust scientific evidence, does not appear to consider the relevant international standards, and may contribute to consumer confusion. Among our many concerns for this measure, we would like to highlight some of them today. We continue to be concerned that Mexico has chosen more stringent nutrient thresholds than the thresholds set by other countries. For example, the proposed threshold for sodium is lower than the thresholds set by Uruguay and Chile. Mexico has derived its thresholds from the World Health Organization's Population Nutrient Intake Goals to Prevent Obesity and Related Non-Communicable Diseases. The WHO goals relate to an individual's total diet. When applied to individual foods the threshold may be more conservative than necessary. This application may discourage intake of food groups important to recommended diet patterns, which may lead to skewed dietary patterns and potentially lead to deficiencies of essential nutrients.

1.289. We understand that per Chapter 9 of the regulation, while products must comply with the regulation and standards, conformity assessments will be voluntary. Can Mexico please confirm that label approval and conformity assessment of all products subject to the regulation is intended to be voluntary? We note that Mexico's definition of dietary fibre in this measure includes non-digestible carbohydrate polymers (including those that are synthetic or that have been isolated or purified from food raw material) which "have been shown to have a beneficial physiological effect on health through generally accepted scientific evidence." Can Mexico clarify whether the definition of dietary fibre in NOM-051 is intended to include non-digestible carbohydrate polymers that show a beneficial physiological effect with between three and nine monomeric units, or only non-digestible carbohydrate polymers with 10 or more monomeric units? Given that this measure could affect up to USD 3.4 billion in trade from the United States to Mexico, we hope you continue to consider government and stakeholder input before implementing the regulation.

1.290. The delegation of Costa Rica provided the following statement. Costa Rica wishes to support the trade concern raised by the European Union, the United States, Switzerland and El Salvador regarding Mexico's proposed front-of-pack nutrition labelling for food products. In recent years, Costa Rica has very much believed in, and defended, the importance of the work carried out within the Codex Alimentarius framework, and has given equal importance to scientific justification for the measures adopted by each country, whether they be based on the Codex itself or on other technical or scientific evidence, as required by the Agreement on Technical Barriers to Trade. Given that the Codex Alimentarius is currently developing working materials on front-of-pack nutrition labelling, Costa Rica wishes to request once again that the Mexican delegation clarify its position regarding the work carried out in the Codex in this area.

1.291. With regard to the measure itself, and bearing in mind that the classification parameters according to which a product is considered to contain excessive calories, sugar, saturated fats, trans fats or sodium are not Codex-based, we reiterate the request made to the Mexican delegation at this Committee's previous meeting, to indicate the scientific basis or international reference standard used to define the key parameters for Mexico's classification and to provide relevant justification for the use of the front-of-pack warning sign as supplementary nutrition information. Regarding the consumption by children of products containing added caffeine or sugar substitutes, Costa Rica requests the delegation of Mexico to refer to the international reference standard used, or the risk analysis, which establishes the risk posed to children by the consumption of products containing these ingredients. Costa Rica believes that the measure adopted by Mexico could generate inconsistencies with TBT Agreement obligations, in particular those established in Article 2.2 and 2.4. It is Costa Rica's view that as things currently stand worldwide in light of the COVID-19 pandemic, the implementation of certain sanitary and phytosanitary measures that create additional

restrictions or burdens, without prejudice to the power that Members have to adopt them if considered necessary, constitutes a challenge that hampers economic recovery efforts, especially in developing countries like ours. In light of the foregoing, we would be grateful if the Mexican delegation could inform us about the progress of this regulatory draft.

1.292. The delegation of the European Union provided the following statement. The European Union would like to thank Mexico for the opportunity to send written comments on the notification G/TBT/N/MEX/178/Add.9 Draft Amendment to Mexican Official Standard NOM-051-SCFI/SSA1-2010: General specifications for the labelling of pre-packed food and non-alcoholic beverages. The EU notes that the final measure was published on 27 March 2020 and appreciates the publication of the reply to the comments received on the draft amendment. The European Union supports and shares the objective of Mexico to inform the consumers clearly and truthfully of the content of critical nutrients presenting health risks in excessive consumption. However, to minimize negative impact on trade, the European Union would like to reiterate its main concerns. The EU notes that phase one of implementation of the measure should begin on 1 October 2020. EU food producers report that this period would not be sufficient to adapt their production and labelling practices to the new requirements. The European Union would like to ask Mexico to consider allowing for a longer transition period of at least two years prior to initiating phase one of implementation.

1.293. The definition of "dietary fibre" mentioning "three or more monomeric units" is not fully in line with the definition in section 2 of the Codex Guidelines on Nutrition Labelling mentioning "ten or more monomeric units". Therefore, the EU proposes to bring the definition in line with the CODEX guidelines. Furthermore, section 4 of the notified draft provides specific requirements concerning the indication of sugars in the list of ingredients. These requirements do not provide the same flexibility as set out in the Codex General Standard for the Labelling of Prepackaged Foods (CXS 1-1985). The sugar content is also indicated in the mandatory nutrition declaration required by the notified draft. The EU would suggest that Mexico maintains the flexibility provided for in the CODEX standard to list the ingredients in descending order of weight, without introducing further specific requirements for the indication of sugars in the list of ingredients.

1.294. The notified draft also provides that substitute products must add the statement "SUBSTITUTE PRODUCT" to the upper left of the main surface of the label. In the EU, a different approach has been taken to ensure that the consumers are properly informed, while at the same time leaving a certain flexibility for the operators. Regulation (EU) No 1169/2011 on the provision of food information to consumers[59] requires that "In the case of foods in which a component or ingredient that consumers expect to be normally used or naturally present has been substituted with a different component or ingredient, the labelling shall bear – in addition to the list of ingredients – a clear indication of the component or the ingredient that has been used for the partial or whole substitution: (a) in close proximity to the name of the product; and (b) using a font size which has an x-height of at least 75% of the x-height of the name of the product and which is not smaller than the minimum font size required in Article 13(2) of this Regulation." The EU would like to ask Mexico to align the nutrients to be declared to the Codex Guidelines on Nutrition Labelling. The CODEX guidelines do not foresee the mandatory declaration of added sugars, trans-fat and dietary fibre.

1.295. With regard to the proposed mandatory requirement to indicate the added sugars content on the label, and the proposed definition of "added sugars", the EU would like to invite Mexico to provide clarification regarding the rationale for this mandatory requirement and for choosing this definition. With regard to the proposed mandatory requirement to indicate the trans-fat content on the label, please be informed that the EU does not impose such indication in the nutrition declaration. Instead, establishing a legal upper limit for the content of industrial trans-fat in food appears to be the most effective measure in terms of public health and consumer protection. Therefore, in the EU, Commission Regulation (EU) 2019/649 lays down maximum limits for the content of trans-fat in food. The content of trans-fat, other than trans-fat naturally occurring in fat of animal origin, in food intended for the final consumer and food intended for supply to retail, shall not exceed 2 grams per 100 grams of fat.

1.296. The notified draft sets out a mandatory front-of-pack nutrition labelling system indicating that the products are in "Excess" of certain nutrients for prepacked foods whose content of energy, sugars, saturated fats, trans-fats and sodium exceed certain parameters. The EU recognizes the

[59] https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1576075844891&uri=CELEX:02011R1169-20180101.

importance of the close relationship between diet and health and acknowledges that providing the most important elements of the nutrition information front-of-pack can be a useful tool for consumers to assist them to see the essential nutrition information when purchasing foods. Notwithstanding this, the EU has taken a different approach to empower consumers to make informed choices when adopting Regulation (EU) No 1169/2011 on the provision of food information to consumers, which came fully into application at the end of 2016. This Regulation imposes an obligation to provide nutrition information. However, its placing on the front-of-pack is not prescribed. In order not to confuse consumers, Regulation (EU) No 1169/2011 clarifies which particulars of the nutrition declaration may be repeated on the front-of-pack (on a voluntary basis), either the energy value alone or the energy value together with the amounts of fat, saturates, sugars and the sodium content expressed as salt.

1.297. Regulation (EU) No 1169/2011 notes the recent developments through the use of graphical forms or symbols and acknowledges that such additional forms of expression and presentation may help consumers to better understand the nutrition declaration and allows for different forms to be developed on the basis of criteria established in the Regulation itself. Among these criteria are the requirements that the additional forms are based on sound and scientifically valid consumer research and do not mislead the consumer; that they aim to facilitate consumer understanding of the contribution or importance of the food to the energy and nutrient content of a diet; that they are supported by scientifically valid evidence of understanding of such forms of expression or presentation by the average consumer; and that they are objective and non-discriminatory.

1.298. The EU considers that individual warnings such as "Excess calories", "Excess sugars", "Excess saturated fats", "Excess trans fats" and "Excess sodium" do not reflect the objective of front-of-pack nutrition labelling as described in Section 5 of the Codex Guidelines on Nutrition Labelling, i.e. "to increase the consumer's understanding of the nutritional value of their food and to assist in interpreting the nutrient declaration". Indeed, such individual warnings do not allow the consumer to understand the complete nutritional status of the food product, but only to draw the consumer's attention to (a) single nutrient(s) in high quantity. In this context, the EU would like to recall Article 2.2 of the TBT Agreement, which states that: "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create".

1.299. The EU would also like to recall Article 2.4 of the TBT Agreement which states 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 regulations". While it is the EU's understanding that the proposed measure would apply without difference to domestic and foreign producers, the impact will be particularly strong for foreign operators, which would have to adjust their production and labelling practices to comply with the draft resolution. At the 44th session of the Codex Committee on Food Labelling (CCFL44) of October 2017, the Committee agreed to start new work to develop guidelines on the use of front-of-pack nutrition labelling. Work is ongoing under the leadership of Costa Rica and New Zealand. The EU considers that it would be more appropriate for Mexico to await the outcome of further discussions in Codex before considering the mandatory front-of-pack nutrition labelling model proposed in the notified draft.

1.300. The delegation of Switzerland provided the following statement. Switzerland would like to reiterate its concerns regarding the amendment of the Mexican Official Standard NOM-051-SCFI/SSA1-2010 "General specifications for the labelling of pre-packaged food and non-alcoholic beverages - Commercial and health information", which was notified to the WTO TBT Committee on 14 October 2019 and published in the Official Journal on 27 March 2020 as a final measure. The on-going coronavirus pandemic has further amplified our concerns. The coronavirus pandemic is putting integrated supply chains under considerable strain and causing significant challenges to businesses around the world. Changes to the national labelling requirement will only add to these challenges at a time when producers, importers and retailers are trying to ensure the uninterrupted supply of food and beverages to the Mexican market. It is therefore with some urgency that we call on the Mexican authorities to delay the entry into force of the amendment of the Mexican Official Standard NOM-051-SCFI/SSA1-2010 to a later date.

1.301. Switzerland welcomes the detailed written responses by the Mexican authorities, which were circulated in document "Respuestas PROY NOM 051 SCFI SSA1 2010" on 1 April. There remain, however, some aspects where further clarifications are welcomed. Despite Mexico's efforts to explain that the amendment is in line with international guidelines, we do not see how this can be the case since the Codex Guidelines on Nutrition Labelling do not foresee the use of warning labels as proposed by the amendment. We also note that no explanation is given regarding the second part of our question concerning the motivation behind choosing a label with warnings such as "exceso en". As mentioned previously, consumers may come to believe that these foods should be avoided altogether, while they can be part of a balanced diet. It remains unclear whether the Mexican authorities have considered alternative, less trade-restrictive measures. We therefore would like to reiterate our call to consider a voluntary approach that would bring on board the food and beverage industry. In the case of Switzerland this has proven to be a workable approach that has yielded positive outcomes.

1.302. Switzerland looks forward to engage further with the Mexican authorities and to deepen its bilateral cooperation in line with Article 10 (2) of the EFTA-Mexico Free Trade Agreement, which calls on the Parties to "strengthen their co-operation in the field of technical regulations" and "to facilitate the mutual exchange of information and assistance in this field and cooperate during the development of standards, technical regulations or conformity assessment procedures." In light of these comments, Switzerland encourages Mexico to review the amendment of the Mexican Official Standard NOM-051-SCFI/SSA1-2010 and to delay its entry into force to a later date in order to ensure an adequate supply of food and beverages to the Mexican market during the COVID-19 pandemic.

1.303. The delegation of El Salvador provided the following statement. El Salvador wishes to express its concern regarding Mexico's notification in document G/TBT/N/MEX/178/Add.9 of 14 October 2019, which concerns an amendment to Mexican Official Standard NOM-051-SCFI/SSA1-2010: General specifications for the labelling of pre-packaged food and non-alcoholic beverages - Commercial and health information, published on 5 April 2010. The amendment was subject to public consultation for 60 calendar days until 10 December 2019. El Salvador submitted a number of comments on the amendment to the above-mentioned Standard, pointing out that while one of the aims of the amendment, according to Mexico, is to prevent and control obesity, there is, to date, and in El Salvador's view, no technical and scientific proof of a direct link between the establishment of a warning label and a reduction in, or the control of, this disease. It is therefore questionable whether these measures would achieve any legitimate health-related objective. In addition to this, there are other factors, such as sedentariness, which play a more prominent role in obesity. The warning label is not a comprehensive solution to the problem and would have serious implications for trade.

1.304. El Salvador recognizes that another of Mexico's objectives is to provide consumers with accurate information so that they can make good nutritional decisions with a view to preventing non-communicable diseases such as obesity. Nevertheless, El Salvador considers that the use of front-of-pack labelling will not necessarily help consumers to make good choices regarding what they consume. On the contrary, such choices are linked, in many cases, to consumers' socio-economic standing and level of education. We therefore reiterate that warning labels lack a sound scientific basis for meeting the legitimate objective pursued, and diverge from applicable international standards in this area, in particular the Codex Alimentarius. El Salvador is also concerned to see that the front-of-pack labelling system proposed by Mexico is based largely on the Pan American Health Organization's Nutrient Profile Model, which lacks the appropriate scientific basis to be used as a suitable document for setting maximum nutrient parameters for the specific diet of the Mexican population and does not reflect international standards and guidelines, thus not ensuring the promotion of more healthy diets. Furthermore, Mexico's proposed front-of-pack labelling system covers only processed products, and excludes non-processed products, which are produced domestically, thereby implying clear discrimination.

1.305. El Salvador recognizes the efforts made by the Government of the Republic of Mexico to gather together all the comments on the above-mentioned Standard and to respond to them in the document notified in G/TBT/N/MEX/178/Add.10 of 16 March 2020. However, given the length of that document, it is quite difficult to identify the individual responses to each of the comments made. El Salvador therefore requests that, in accordance with Article 2.9.4 of the TBT Agreement, Mexico provide it with the specific responses to the comments made, so that it has greater clarity and can convey the responses to the national production sector. For this and other reasons, El Salvador

considers it appropriate to discuss this Mexican Standard at the next TBT Committee meeting and believes that such discussion should take into account the scientific rationale provided by relevant international bodies and forums.

1.306. The delegation of Guatemala provided the following statement. We thank the United States, Costa Rica, the European Union, Switzerland and El Salvador for including this item on the agenda. We recognise Mexico's legitimate objective to protect the health of its population and to provide information to consumers. Nevertheless, we reiterate that, pursuant to Article 2.2 of the TBT Agreement, measures must not be more trade-restrictive than necessary to fulfil that objective. Guatemala submitted comments in December 2019 during the public consultation period. Having reviewed the new version of Mexican Official Standard NOM-051-SCFI/SSA1-2010, as notified, Guatemala wishes to make a number of comments, including the following. The limits set for nutrients on labels reflect the thresholds established by the WHO on the basis of the global daily diet of an individual, a parameter that was transferred proportionally to the specific product, when it is not a parameter established within the Codex Alimentarius framework. It should be taken into account that each food product brings different nutrients to a diet, i.e. a food product may contain one specific nutrient, but not another. The values established in the WHO criteria should not therefore define a characteristic of a specific food or beverage.

1.307. The new labelling regulations refer to when a product is an "imitation". In Guatemala, we consider this measure to be inconsistent with the Codex Alimentarius, which establishes adequate provisions for ensuring that consumers are properly informed about the true nature of a product. Furthermore, we believe that establishing typographical characteristics for the denomination "imitation" constitutes an unnecessary restriction on international trade. Regarding the warning "Contains sweeteners, avoid consumption by children", it is considered, from a toxicological viewpoint, that CODEX STAN 192-1995 establishes an acceptable daily intake based on the scientific assessment of the Joint FAO/WHO Expert Committee on Food Additives (JECFA), and it is therefore deemed that this warning does not have the scientific backing to prove that the product does indeed harm children over the age of three.

1.308. The restriction on the use of children's characters limits the use and enjoyment of an intellectual or industrial property right (e.g. mark, caricature, cartoon) and not only inhibits the intellectual development of creators, but also prevents any contribution to ensuring distinctive elements between products for consumers, as provided for in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). We also wish to express our concern regarding the discontinuation of the use of adhesive labels in order to ensure compliance with the requirements set out in the Mexican Official Standard following the transition period. Paragraph 8.2.1 of Codex Standard CXS 1-1985: General Standard for the Labelling of Prepackaged Foods, states 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", while paragraph 8.2.2 states that "In the case of either relabelling or a supplementary label the mandatory information provided shall […] fully and accurately reflect that in the original label". With the provision established in the current Standard, Mexico is departing from the international reference standard.

1.309. It is important to note, within the Codex Alimentarius framework, that at the 44th Session of the Codex Committee on Food Labelling in October 2017, the Committee agreed to begin new work to develop a guide to the use of front-of-pack nutrition labelling. This work is coordinated by Costa Rica and New Zealand. For small economies like ours, new regulations containing labelling requirements generate concern because they create a lack of harmonization among such provisions worldwide, making it difficult for small and medium-sized producers to gain access to the international market because of different labelling requirements and restrictions. We request Mexico to cancel the discontinuation of the use of adhesive labels, as this measure is more trade-restrictive than necessary. We reiterate that consideration must be given to the provisions of the Codex Alimentarius and to respect for the evidence provided by the relevant scientific bodies. The aim of the Codex Alimentarius is to ensure international harmonization and the elimination of trade barriers.

1.310. The delegation of Canada provided the following statement. Canada thanks Mexico for its 1 April 2020 addendum to notification G/TBT/N/MEX/178 informing Members that the amendment to Mexican Official Standard NOM-051 SCFI/SSA1-2010 has been published. Canada appreciates that Mexico has kept Members informed through each step of its process to amend NOM-051. Mexico has demonstrated that it takes its transparency obligations under the TBT Agreement seriously.

Canada also notes that Mexico has taken a phased approach to the application of the changes to NOM-051. The first stage of enforcement is from 1 October 2020 to 30 September 2023. A 1 October 2020 enforcement date provides producers six months to comply with the amended measure. While this six-month coming-into-force period is recognized and applied as the minimum reasonable interval between the final publication of a measure and its entry into force, it will be very difficult for Canadian producers to fully comply with the new labelling requirements by October 2020 due to the significant nature of the changes. This difficulty is further exacerbated by the current situation as a result of COVID-19. Consequently, Canada respectfully asks Mexico to consider delaying the coming into force period for Stage 1 of the amendments to NOM-051 by at least 12 months to provide operators additional time to comply with the changes.

1.311. In response, the delegation of Mexico provided the following statement. Mexico thanks the delegations of Canada, Costa Rica, El Salvador, the United States, Guatemala, Switzerland and the European Union for their comments, submitted through the TBT Committee's written procedure, on the final amended version of Mexican Official Standard NOM-051-SCFI/SSA1-2010: General specifications for the labelling of pre-packaged food and non-alcoholic beverages - Commercial and health information (hereinafter NOM-051), published in the Mexican Official Journal (*Diario Oficial de la Federación*) on 27 March 2020 and notified to WTO Members on 1 April 2020 in document G/TBT/N/MEX/178/Add.11. The amendments to NOM-051 seek to provide Mexican consumers with clear, truthful and accurate information on critical nutrient content and commercial information via the labelling of pre-packaged food and non-alcoholic beverages, with a view to helping them make better informed decisions. The amendments to NOM-051, which are based on the Regulatory Impact Analysis presented before the National Commission on Regulatory Improvement, constitute one of the most important elements of the comprehensive strategy developed by the Government of Mexico to address health problems related to non-communicable diseases such as obesity and excess weight gain.

1.312. At present, labels attached to pre-packaged food and non-alcoholic beverages marketed in Mexico must adhere to the Guideline Daily Amount-based front-of-pack labelling system. This labelling system has not had the desired impact in terms of the Mexican population's understanding of information concerning critical nutrient content. The amendments to NOM-051 therefore seek to ensure the fulfilment of legitimate public health objectives and to prevent consumers from being misled. Details of the technical and scientific evidence that underpins NOM-051 can be found in Chapter 11 of the Standard (Bibliography), which lists the 157 bibliographical references used for the final version of this technical regulation. Given that no existing international standard covers the aspects that the amendments to NOM-051 seek to address, the Government of Mexico has devised and adopted the measures that it considers appropriate for ensuring the fulfilment of its legitimate objectives in light of current public health challenges. On the basis of the above, Chapter 10 of the amended version of NOM-051 (Concordance with international standards) states that the Standard is not equivalent to the Codex Alimentarius standards cited therein.

1.313. Following an analysis of the international standards linked to the objectives of NOM-051, it was concluded that some of the concerns leading to the amendment of NOM-051 were not addressed by international standards, particularly in respect of the following: imitation products; product names; sugar and allergen declarations in the list of ingredients; the use of images, characters, drawings and other elements aimed at children in products containing excess critical nutrients; the use of recommendations from professional associations that promote the consumption of products without an analysis of the health characteristics thereof; and the use of nutritional and health properties of products containing excess critical nutrients. Furthermore, and given that existing international standards do not address matters pertaining to "substitute" or "imitation" products, and in view of the Government of Mexico's aim to provide consumers with clear, truthful and accurate information, it is considered appropriate to include wording that informs consumers when a component or ingredient normally used or naturally present in the end product has been substituted.

1.314. Transitional articles provide for a phased entry into force of NOM-051. Phase 1 relating to the front-of-pack labelling system (stamps and warnings) will enter into force on 1 October 2020, more than six months after the publication of the measure in the Mexican Official Journal (DOF). From 1 October 2020 to 31 March 2021, the requirements of the front-of-pack labelling system may be met by using stickers or any other form of adhesive label that can be attached to the existing product label. The use of adhesive labels is a temporary measure to facilitate transition to the requirements of the newly amended NOM-051. However, by 1 April 2021, labelling must comply with all the established requirements. This means that the parties concerned have more than a year

from when the final version of NOM-051 was published in the DOF, to fully comply with all of its provisions. Regarding the comments received during the public consultation process, which ran from 12 October to 10 December 2019, all the comments received, from both within Mexico and abroad, were examined and given equal consideration. As a result of that review, the relevant changes were made to the draft amendment to NOM-051.

1.315. In view of the fact that there is currently no international standard on nutritional profiles and consumption limits for a healthy diet, the nutritional profile set out in the amendment to NOM-051 is based on technical and scientific elements compiled by the Pan American Health Organization, and deemed appropriate for contributing to the strategy to address the public health challenges currently faced by the Mexican population and for informing consumers about excess critical nutrients commonly linked to excess weight gain and obesity. Paragraph 3.22 of the final version of the amendment to NOM-051 defines dietary fibre as carbohydrate polymers with ten or more monomeric units, which are not hydrolyzed by endogenous enzymes in the small intestine. In this light, the specification regarding the monomeric units that carbohydrate polymers need in order to be considered as dietary fibre applies to the three categories listed in paragraphs 3.22(a), (b) and (c) of the final version of the amendment to NOM-051.

1.316. The inclusion of warnings concerning the use of sweeteners and caffeine is considered necessary given that the products covered by NOM-051 may be consumed by vulnerable population groups, such as children. In the specific case of sweeteners, their inclusion was based on the technical and scientific evidence included in Chapter 11 (Bibliography), which ranks Mexico as one of the countries with the highest rates of excess weight gain and obesity in children in the world. Furthermore, it should be made clear that in the specific case of warnings concerning sweeteners, they are included not for toxicological purposes, but simply for informative reasons. Regarding caffeine, the technical and scientific information included in Chapter 11 (Bibliography) of the final version of the amendment to NOM-051 bases the inclusion of this additive on the effects that it can have on children. As noted by several of the members of this Committee in their statements, there is currently no international reference standard that may be used as a basis for establishing front-of-pack labelling. Discussions are, however, taking place within the Codex Alimentarius framework. Lastly, Mexico's position regarding the work currently under way in that forum was expressed at the 45th Session of the Codex Committee on Food Labelling, held from 13-17 May 2019 in Ottawa, Canada. At that meeting, the delegation of Mexico expressed its support for work on the paper on "criteria for the definition of 'high in' nutritional descriptors for fats, sugar and sodium".

1.3.24 Peru – Supreme Decree No. 015-2019-SA, which amends the Manual of Advertising Warnings approved by Supreme Decree No. 012-2018-SA (IMS ID 618[60])

1.317. The delegation of Costa Rica provided the following statement. Costa Rica wishes to reiterate its concern about the Peruvian regulations included in Supreme Decree No. 015-2019-SA, which amends the Manual of Advertising Warnings approved by Supreme Decree No. 012-2018-SA. Under the proposed amendment to the Manual of Advertising Warnings, the use of stickers or adhesive labels to meet the Manual's labelling requirements for advertising warnings will no longer be permitted in Peru as of June 2020. We would like to reiterate what our food industry has said about the negative repercussions that such provisions have on trade, as purchases of products not permanently labelled at origin have already decreased to ensure that there will be no stocks when the use of adhesive labels is banned. It should be noted that the use of adhesive labels is widely recognized internationally, as such labels achieve the same public health protection and consumer information purposes achieved by permanent labels. At the CODEX level, for example, Articles 8.1.1 and 8.2.1 of CODEX-STAN 1-1985, General Standard for the Labelling of Prepackaged Foods, permit the use of supplementary or adhesive labels, as long as it is guaranteed that they will not become separated from the container, or in cases where the language on the original label is not acceptable to the consumer for whom it is intended.

1.318. Furthermore, we note that countries with labelling schemes requiring the use of high fat, sodium or sugar content warnings, similar to Peru's, have considered supplementary labelling using stickers, which not only provides the required level of protection, but also makes it easier for exporters to comply with non-harmonized international requirements. Peruvian food products sent to the Costa Rican market are able to comply with domestic labelling requirements through the use of supplementary adhesive labels, instead of having affix permanent labels in the country of origin,

[60] For previous statements follow the thread under IMS ID 618 (under dates raised and references).

exclusively for the Costa Rican market. This undoubtedly fosters trade and is proportionate to the level of protection sought. We therefore ask for reciprocity of treatment. Moreover, other Peruvian instruments, such as Supreme Decree No. 007-98-SA adopting the regulations on sanitary surveillance and control of food and beverages, permit the use of stickers to meet labelling requirements, given that this is an appropriate means for the fulfilment of the proposed legitimate objectives. The fact that Peruvian legislation, in other instruments, permits the use of an adhesive or additional label no doubt shows that there are less trade-restrictive measures through which it is possible to fulfil the proposed legitimate objectives, in accordance with the obligations regarding technical barriers to trade established in the relevant World Trade Organization Agreement and in the existing Agreement between our countries.

1.319. With regard to the commitments made by Peru under the Agreement on Technical Barriers to Trade, we note that the measure giving rise to this trade concern does not appear to have been notified. We therefore ask the Peruvian delegation to confirm whether the notification was made in accordance with the provisions of this Agreement. We are also of the view that, in light of the foregoing, the measure in question may incompatible with the obligations assumed by Peru under Articles 2.2, 2.4 and 2.9 of the TBT Agreement. Lastly, Costa Rica would like to emphasize once again, as it has already done before this Committee, that in light of the current situation faced by the world as a result of COVID-19, international cooperation in all areas is crucial for tackling the crisis and laying the groundwork for a swift economic recovery post-pandemic, through the promotion of trade-facilitating measures, as opposed to measures that might create technical barriers to trade and hinder economic recovery. For all of the reasons above, we respectfully request that the Peruvian authorities amend the provisions of the Manual of Advertising Warnings to allow the use of adhesive labels with no time-limit.

1.320. The delegation of Brazil provided the following statement. Brazil supports Peru's pursuit of higher health standards through technical regulations that help better inform consumers. However, Brazil would like to manifest its concerns regarding labelling requirements expressed in the Manual of Advertising Warnings approved by Supreme Decree No. 012-2018-SA (G/TBT/N/PER/97/Add.1) and amended by Supreme Decree No 015-2019-AS (unnotified). According to the current requirements, as of June 2020, stickers and adhesive labels will no longer be permitted for foods and beverages under the scope of said Manual. Foreign companies will then have to produce a specific label according to the requirements of the Peruvian legislation, which will unnecessarily impose greater costs to producers and consumers. The use of adhesive labels is common practice at the international level, as it does not affect the provision of reliable information to consumers. In fact, Codex standard CODEX-STAN 1-1985 for pre-packaged goods, Articles 8.1.1 and 8.2.1, explicitly allow for the possibility of using additional or adhesive labels, as long as they are attached to the packaging and if the language of the original label is not necessarily that of the consumer for whom it is intended.

1.321. Since such regulation was first brought to our attention, Brazil sought to solve our concerns bilaterally. We acknowledge Peruvian concerns with deceptive practices that could be related to adhesive labelling. Yet, advances in labelling technologies allow for safe affixation of labels. Brazil would be willing to share with Peru its regulatory experience related to such labelling requirements. In early 2020, our private sector warned that global companies that export to Peru were already facing the negative impacts as of a consequence of these burdensome and unnecessary requirements. In our bilateral meetings, Peru failed to provide a timeframe for possible amendments to the regulation, which creates greater uncertainty for our private sector to take on informed market decisions. Brazil would like to respectfully ask Peru to align its labelling requirements with current international standards established under the Codex and withdraw the prohibition of adhesive labelling for products under the scope of the Manual of Advertising Warnings. We also urge Peru to notify any further update to this regulation, following its obligations under Articles 2.1, 2.4 and 2.9 of the TBT Agreement.

1.322. The delegation of the United States provided the following statement. The United States supports the interventions of Costa Rica and Brazil. Can Peru provide an update on when it will modify the provisions established in the Manual, so as to allow compliance with labelling requirements through an extended use of stickers? Peru confirmed it would continue to allow stickers for front-of-pack food labelling at the February 2020 WTO TBT Committee, but we have not seen an updated TBT notification or addendum confirming stickers can continue to be used.

1.323. The delegation of Ecuador provided the following statement. Ecuador shares and expresses concern about Peru's intention to no longer permit, as of 15 June 2020, the use of stickers on packaged products for the advertising warnings prescribed by the Manual of Advertising Warnings. This ban on stickers is of concern to the Ecuadorian industry, as it would significantly affect trade with the Republic of Peru. My country's industry has submitted the following comments on this measure. (i) Factories ship a small volume of between 0.02% and 8.8% of their total production for the Latin American region to Peru. As of 15 June, these enterprises will not be able to bear the cost of producing special packaging, which already includes warnings, for Peru, due to the small volume of production. (ii) Other countries in the region permit the use of adhesive labels under their labelling requirements for foods and pre-packaged products. (iii) In Peru, the use of stickers to indicate the name of the product, the business name and the address of the importer is already permitted under Supreme Decree No. 007-98-SA adopting the regulations on sanitary surveillance and control of food and beverages. (iv) In Peru, enterprises are already obliged to ensure that stickers are legible at the point of sale, under the supervision of INDECOPI, in accordance with Article 10.2 of the Consumer Protection Code (Law No. 29571). Ecuador therefore proposes the following wording in paragraph 8.3 of the Manual of Advertising Warnings approved by Supreme Decree No. 012-2018-SA: "All food and beverages must contain advertising warnings, where appropriate. The use of indelible and permanent stickers with advertising warnings is permitted as from the entry into force of this Manual." The Ecuadorian food industry considers this proposal appropriate because: it does not distort the purpose of Law No. 300213, as the warning requirement is upheld; the current Peruvian regulations already permit the use of stickers; and permitting the use of labels for warnings is the least trade-restrictive measure and allows Peru to fulfil its desired objective.

1.324. The delegation of Colombia provided the following statement. Colombia welcomes and appreciates the Peruvian Government's desire to adopt a public policy measure that seeks to effectively promote and protect the right to public health, human growth and sound development, through educational activities, the strengthening and promotion of physical activity, and the monitoring of advertising, information and other practices related to food and non-alcoholic beverages aimed at children and adolescents, in order to reduce and eliminate diseases linked to excess weight or obesity and chronic non-communicable diseases. However, Colombia wishes to reiterate its concern regarding the provisions of Article 2 of Supreme Decree No. 015-2019-SA, which amends the Manual of Advertising Warnings approved by Supreme Decree No. 012-2018-SA, as it considers that they are more restrictive than necessary and may become an unnecessary obstacle to trade, violating Article 2.2 of the Agreement on Technical Barriers to Trade (TBT Agreement), which states: "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create."

1.325. It should be noted that Article 2 of Supreme Decree No. 015-2019-SA stipulates that the use of stickers with advertising warnings is to be permitted for one year, a period that will expire in June 2020. Therefore, as of June 2020, processed foods will no longer be able to enter the Peruvian market by using stickers to comply with labelling requirements. Colombia considers that allowing the use of stickers does not distort the purpose of the Healthy Food Law No. 30021, its implementing regulations (Supreme Decree No. 017-2017-SA) or the Manual of Advertising Warnings (Supreme Decree No. 012-2018-SA), as the warnings, whether included on stickers or printed directly on the packaging of the products, will continue to be clear, legible, prominent and comprehensible, as required by the regulations. A technical measure on labelling that is so specific to a particular country, which must be implemented at the country of origin and does not allow the use of stickers with the required information, is a technical barrier to trade, and constitutes a major barrier to access for producers in countries such as Colombia, especially for enterprises whose current and projected sales volumes in Peru cannot justify the expense of making a "factory" label designed specifically to comply with the regulation. Peru engages in international trade with many trading partners and enterprises with different economies of scale; the enterprises whose economies of scale and volumes of trade do not warrant the increased expense of developing special packaging for trade with a country that imposes an unnecessary barrier of this nature will be most affected.

1.326. Furthermore, imposing this type of unnecessary trade-restrictive measure runs counter to international labelling practice and the Codex Alimentarius, such as Article 8 on Presentation of Mandatory Information of CODEX-STAN 1-1985 (Revised in 2018), General Standard for the Labelling of Prepackaged Foods. It also runs counters to Article 2.4 of the TBT Agreement, which refers to the preparation, adoption and application of technical regulations and reads: "Where

technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems." In light of the above, Colombia once again requests that Peru allow the use of stickers with warning icons and messages on food packaging to avoid creating an unnecessary technical barrier to trade such as the one envisaged in the Supreme Decree.

1.327. The delegation of Guatemala provided the following statement. Guatemala wishes to thank Costa Rica, Brazil and the United States for including this item on the agenda. As of June 2020, processed foods with advertising warnings will no longer be able to enter the Peruvian market with adhesive labels. This means that food and beverages must be labelled in accordance with the requirements in the country of origin, increasing costs and thus preventing small and medium-sized enterprises from exporting to the market, as it would be difficult for them to provide different labels for each market. Adhesive labels offer a solution and enable compliance with the necessary information requirements. Article 8.2 of CODEX CXS 1-1985, General Standard for the Labelling of Prepackaged Foods, states that a supplementary label containing the mandatory information in the required language may be used and shall fully and accurately reflect the information in the original label.

1.328. Guatemala reiterates its concern over the growing lack of harmonization of front package labelling, at the global level, and the associated nutrient profiles. For small and medium-sized enterprises trying to internationalize their operations, these are complex measures that limit trade. While we recognize Peru's legitimate objective of protecting human health and providing consumer information, we consider the measure to be more restrictive than necessary. We reiterate that the provisions contained in the CODEX should be taken into consideration, such as the General Standard for the Labelling of Prepackaged Foods, which allows the use of supplementary labels, as other trading partners have done. We request that adhesive labelling be permitted to prevent the creation of unnecessary barriers to trade.

1.329. The delegation of the European Union provided the following statement. The EU would like to support the other Members in raising the Peru measure on labelling requirements for processed foods. The proposed measure is causing concerns also for the European Union and it would cause an unnecessary obstacle to trade for EU importers. The EU would like to invite Peru to allow stickers for the purposes of compliance with the labelling requirements for the products concerned. We are committed to working with Peru on this issue and we are confident that a solution can be found.

1.330. In response, the delegation of Peru provided the following statement. The delegation of Peru would like to thank the delegations of Costa Rica, Brazil, the United States, Ecuador, Colombia, Guatemala and the European Union for raising this trade concern once again. As mentioned at the meeting of the previous Committee, Peru wishes to reiterate that it is committed to fulfilling the legitimate objective of protecting the public health of its citizens, particularly the health of its most vulnerable groups, such as children and adolescents, in accordance with its international trade commitments in this domain. Peru seeks to ensure that the information contained in the Manual of Advertising Warnings reaches consumers clearly and effectively, so that they can make informed choices. Despite the current health emergency that has been demanding our attention, Peru, taking into account the trade concerns expressed by some partners, is analysing alternatives that would be suitable for fulfilling the objective of information being pursued. Lastly, we would like to emphasize once again that Peru wishes to honour its WTO commitments and therefore reaffirms its commitment to not preparing, adopting or applying technical regulations that may create unnecessary barriers to international trade, as established in the Agreement on Technical Barriers to Trade.

1.3.25 Kingdom of Saudi Arabia – Electrical Clothes Washing Machines – Energy and Water performance Requirements and labelling (IMS ID 619[61])

1.331. The delegation of the Republic of Korea provided the following statement. Korea would like to make some comments regarding this regulation as follows. Saudi Arabia has publicly issued a notice using a "pop-up" form in the SASO homepage on 14 January 2020. Korea has delivered our concerns on this regulation through a bilateral meeting between Korea and Saudi Arabia and in

[61] For previous statements follow the thread under IMS ID 619 (under dates raised and references).

discussions on STCs during the 1st WTO TBT Committee meeting in 2020. In this regard, Saudi Arabia responded that "the notification is easing the required conditions a little bit" through a letter on the bilateral meeting at the 1st WTO TBT Committee meeting on 27 February 2020, and we understand that Saudi Arabia has expressed its position that this issue is not subject to a WTO TBT notification. Against this backdrop, Korea would like to outline the hardship this notice is causing for washing machine manufacturers as well as the rationale for requiring a WTO TBT notification.

1.332. First of all, the minimum water temperature condition stipulated in the notice is used as a basis for measuring energy efficiency as well as washing performance. In general, washing at high temperatures is advantageous in terms of washing performance provided the maximum temperature is not exceeded. However, the energy efficiency rating is calculated by measuring the amount of energy used at the same time. Because both washing performance and energy efficiency are measured in one test, manufacturers have to design separately manufacturer's unique optimized washing programmes based on International Standards (IEC 60456) to achieve the best result for both tests. For this reason, many global manufacturers try to test washing machines by optimizing other conditions such as water usage, washing time, etc. at lower water temperature rather than raising the water temperature during the washing cycle in order to achieve the best results for both tests. In these circumstances, the notice effectively constrains the manufacturer's autonomous washing programme design. This may result in forcing a significant change to the energy efficiency rating of existing products. Therefore, the notice is not "easing" the required conditions, as Saudi Arabia has claimed, but instead makes them "severely stricter". In addition, not only the International Standard (EN, IEC 60456) cited in this regulation, but also on a global scale no country restricts the minimum temperature while stipulating a maximum temperature under the conditions for the washing test. For this reason, in accordance with Article 2.9 of the WTO TBT Agreement, Korea requests to notify the changes to the WTO TBT Committee and proceed in accordance with the notification procedure.

1.333. Korea would like to request if by any chance the relevant authorities can provide a reasonable background of its implementation and scientific grounds in relation to the minimum water temperature conditions. In addition, as the notice requires that manufactures include additional data on the instruction sheet or user manual, this change is also subject to the WTO TBT Notification in accordance with Article 2.9 of the WTO TBT Agreement. The Korea respects the efforts of the Saudi Arabian government to provide information and to protect the environment, though Korea would like to ask Saudi Arabia to review our request positively so that the manufactures can comply with this regulation.

1.334. The delegation of Mexico provided the following statement. The delegation of Mexico refers to the communication from the Saudi Standards, Metrology and Quality Organization (SASO), circulated on 14 January 2020, giving notification of significant technical amendments to technical regulation SASO 2885/2018 relating to energy efficiency of washing machines. Although the Government of Saudi Arabia circulated this communication, the amendments have not been notified to the Members of the WTO's Committee on Technical Barriers to Trade (TBT Committee).

1.335. Mexico wishes to express the following concerns. *Temperature-related changes in the drum*: the amendments refer to the temperature measuring requirement for washing machines that do not have a water heater feature. In general terms, the requirement is for top-loading washing machines without a water heater feature to be assessed at higher temperatures (60°C - 40°C). The previous requirement for temperature measurement was between 60°C and 15°C. By amending the temperature measurement requirement in this way, the Kingdom of Saudi Arabia would appear to be indirectly limiting its imports of washing machines by allowing only front-loading washing machines to meet these new criteria. Without a scientific and technical basis for these changes, this measure would appear to constitute an unjustified barrier to trade under Article 2.2 of the WTO Agreement on Technical Barriers to Trade (TBT Agreement).

1.336. *Coexistence of energy efficiency classes*: countries have allowed technologies to coexist in their technical regulations on these products in order to address the differences between existing systems. However, with this proposed change, the Kingdom of Saudi Arabia would seem to be preventing this coexistence that was previously permitted under its technical regulations. It is important to know whether the Kingdom of Saudi Arabia has a specific concern that justifies the ban on the coexistence of different systems or whether this change is due to a problem that arose during the regulatory regime that allowed for the coexistence of technologies. *Use of international standards*: in line with Article 2.4 of the TBT Agreement, the basis on international standards of the

proposed amendments or reasons for choosing to deviate from the relevant international standards must be known. *Principle of transparency*: the content of the measure in question makes it compatible with the TBT Agreement's definition of "technical regulation" and it must therefore comply with Article 2.9 of that instrument. However, no notifications have been identified relating to these latest amendments to technical regulation SASO 2885/2018. *Entry into force*: Mexican industry informed us that the proposed amendment entered into force the day immediately after its publication. Should this be the case and considering that the measure does not constitute an emergency technical regulation, the measure could violate Article 2.12 of the TBT Agreement and Article 5.2 of the Ministerial Declaration adopted by WTO Members on 20 November 2001, regarding the reasonable interval for the entry into force of technical regulations.

1.337. The delegation of Mexico therefore submits the following requests to the delegation of the Kingdom of Saudi Arabia: (i) share the technical and scientific rationale behind the amendments made to technical regulation SASO 2885/2018 on washing machines and energy efficiency. In the absence of this information, it is requested that the amendments be reconsidered, given that this measure would constitute an unjustified barrier to trade of the products covered; (ii) indicate the alignment of this measure with the relevant international standards; and (iii) notify the measure in accordance with the transparency obligations contained in the TBT Agreement, and provide for a reasonable interval for its entry into force. The delegation of Mexico thanks the delegation of the Kingdom of Saudi Arabia for giving its consideration to this statement and the requests therein.

1.338. In response, the delegation of the Kingdom of Saudi Arabia provided the following statement. Saudi Arabia thanks Republic of Korea and Mexico for raising this concern regarding SASO2885/2018 "Electrical Clothes Washing Machines – Energy and Water performance Requirements and labelling". Saudi Arabia always committed to transparency as one of the main principles of WTO/TBT Agreement, which is clearly shown through numbers of notification that have been raised via our national TBT Enquiry Point. SASO would give information about SASO 2885/2018 – as requested in the above concerns – especially regarding the temperature condition, as per in clause A.2, the testing conditions at full load is 60°C and for half load is both 60°C and 40°C. However, the notification which has been published recently is relaxing this condition that applied for washing machines without heaters. Please see the table below which illustrates how to calculate the required temperatures.

	Unit	Cotton 40℃ ½	Cotton 60℃ ½	Cotton 60℃
Cold water consumption during man wash	L	30.00	10.00	10.00
Hot water consumption during man wash	L	30.00	50.00	50.00
Supply cold water inlet temperature	℃	15.0	15.0	15.0
Supply hot water inlet temperature	℃	60.0	60.0	60.0
Water temperature calculated	℃	37.50	52.50	52.50
Minimum allowable temperature	℃	25	45	45

1.3.26 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. 10-15/2009-AS.III/Vol.II/(Pt.)/(30) (28 July 2010) and accompanying template, "Security and Business Continuity Agreement"), G/TBT/N/IND/66 (IMS ID 274[62])

1.339. The delegation of the European Union provided the following statement. The European Union appreciates the clarifications and explanations given by India at previous meetings. We note that mandatory testing and certification of telecom equipment entered into force on 1 October 2019 for a limited range of products and also a limited range of tests. We also note that a one-year exemption from submission of test reports for specific parameters has been granted. Could India provide

[62] For previous statements follow the thread under IMS ID 274 (under dates raised and references).

additional information on the next steps? India had published several notifications that specify products for which in-country testing and certification will be made mandatory. The European Union stresses the need to allow adequate time before the entry into force of these requirements in order for affected stakeholders to have an opportunity to review the final requirements, including any applicable standards, specifications, testing methods and procedures. On the recognition of test results carried out outside India, the European Union would like to reiterate its concerns that mandatory in-country testing means duplication of testing/certification processes on products. Other WTO Members accept products through mechanisms such as the declaration of conformity or ILAC-accredited labs, as has India up to now. These mechanisms are less trade-restrictive means of achieving India's legitimate objectives of both safety and security, objectives which are shared by the EU. We would note that all equipment tested in the EU meets the highest standards in terms of safety and electro-magnetic radiation according to the legal framework in place in the EU.

1.340. While we appreciate the previous announcement by India that it would continue to recognize foreign ILAC-accredited laboratory results, which was only until end of March 2020, we would like to know the current status of recognition. We want that the recognition continues for products accredited by ILAC-certified laboratories. In any case, we want to stress the importance of a permanent recognition. Furthermore, the timeline of extension of testing and certification process for telecom equipment is unclear. We would like to know about the current status. Moreover, we have also learnt that India is soon going to introduce security testing for the equipment as well. We would like to know about the timeline of security testing and about any evaluation done about its possible impact on the supply chain.

1.341. The delegation of Canada provided the following statement. Canada notes that, as per Telecommunications Engineering Centre Procedure no. TEC/10/2018-TC Pt. dated 5 July 2019, ILAC-accredited laboratory results were to be accepted up to 31 March 2020. Canada kindly requests that India indicate the current status of procedure no. TEC/10/2018-TC Pt. Canada continues to seek the replacement of in-country testing requirements, under the "Mandatory Testing and Certification of Telecom Equipment" procedures, with the acceptance of appropriately accredited foreign test results.

1.342. In response, the delegation of India provided the following statement. India would like to thank the European Union and Canada for their continued interest in this measure. India had provided detailed response to various queries raised by the Members on this issue during previous TBT Committee meetings and hence would not repeat the same here. However, India would like to provide certain additional information to the Members for further clarity. Taking into consideration the concerns of the industry, MTCTE scheme is being implemented in a phased manner. Certification for the products covered under Phase-I was made mandatory from 1 October 2019 (date of entry into force for MTCTE Phase-I). Proposal for launch of Phase-II of MTCTE is under consideration. It is reiterated that adequate time would be given before certification for products covered under MTCTE Phase-II becomes mandatory (date of entry into force for MTCTE Phase-II). Test results from ILAC-accredited labs were acceptable up to 31 March 2020. Considering the fact that sufficient in-country testing infrastructure is now available in respect of Equipment Safety and EMI/EMC related test parameters, the proposal for extension of acceptance of test results from ILAC-accredited labs beyond 31 March 2020 is under consideration only in respect of technical test parameters. Department of Telecommunications (DoT)/TEC has an MRA scheme for mutual recognition of labs. To avoid duplication of testing as well as to facilitate trade, DoT/TEC would be willing to enter into MRA agreement with countries for mutual recognition of labs. The period of exemption from submission of test reports for specific parameters had been modified from one year to two years via Notification dated 5 July 2019 for Revision of MTCTE Procedure. For any other additional clarity required by the interested Members, India is ready to discuss such issues bilaterally.

1.3.27 Russian Federation – Draft Technical Regulation on Alcohol Drinks Safety (published on 24 October 2011), G/TBT/N/RUS/2 (IMS ID 332[63])

1.343. The delegation of the European Union provided the following statement. In 2012, the Russian Federation notified a draft technical regulation on alcohol products safety. The EU submitted detailed comments to Russia and has since asked for updates on the status of the measure and whether the EU's comments had been taken into consideration. Despite these requests, Russia did not inform us of any developments on the measure, until it officially announced in December 2018 that a new

[63] For previous statements follow the thread under IMS ID 332 (under dates raised and references).

version, in a form of a technical regulation of the Eurasian Economic Union, of the measure had been adopted. In light of transparency and considering the trade implications of this regulation, we would like to ask Russia to notify the revised text to the TBT Committee, in line with the TBT Agreement and relevant TBT Committee decisions and recommendations.[64] The technical regulation also contains provisions covered by the Agreement on trade-related aspects of intellectual property rights. The EU would like to invite Russia to notify the regulation to the Council for TRIPS, in accordance with Article 63.2 of the TRIPS so that the discussion can take place there, as some of these provisions, in particular impacting geographical indications, raise serious concerns for the EU.

1.344. The European Union would like to express the following concerns with the new version of the measure. Physical and chemical requirements laid down in the regulation in some cases contain more stringent limits than those set in the recommendations of the OIV, of which Russia is Member. The application of these diverging requirements would represent an obstacle for the importation of these products. The EU is concerned by the mandatory labelling requirements set out in the regulation, which are not in line with international practice, by requiring for example, information such as date markings and storage conditions The EU would like to ask Russia to refer to CODEX standards as regards the indication of date markings and storage conditions, which are strictly linked to each other. Could Russia confirm that the use of stickers is allowed, according to CODEX STAN 1-1985?

1.345. Finally, alcoholic beverages must prove conformity with the rule set out in the regulation in order to be marketed in the EAEU territory. The conformity assessment is conducted by a state entity and covers a wide range of requirements such as documentation and laboratory analysis, which represents a disproportionate burden and cost for producers. Could you please confirm that the conformity procedure will apply to imported products and that EU accompanying documents will be considered as sufficient to establish the compliance of EU products with the notified technical regulation? Moreover, it appears that Russia has adopted a measure "Federal Law Nº 468 of 27.12.2019 on wine making and wine growing in the Russian Federation". This measure has not been notified to the WTO.

1.346. This Federal law contains several provisions that amount to obstacles for the importation of wine and wine-based products into the Russian Federation territory (i.e. prohibition to use imported bulk wine for further processing, inconsistency with OIV labelling and winemaking rules, inspection of EU facilities by Russian officials, disqualification of wine-based products, etc). This is coupled with an extremely short deadline impossible to meet, lack of any transitional period nor stock-exhaustion clause as well as a successive legislative change in a short period of time. The EU is very concerned that wine business operators may have to simply stop marketing their products in the Russian Federation as from its entry into force in June 2020. In addition to the issues posed by the Federal law itself, some of its requirements coincide with the technical requirements set out in the EAEU TR on alcoholic products, but some do not. For example, the federal law states that for wine the content of ethyl alcohol must be between 7.5 to 18%, whereas the EAEU TR sets the range between 8.5 to 18%. Therefore the EU would like to ask how the Russian Federal Law and the EAEU TR relate with regard to mandatory technical requirements applicable to wine; whether discrepancies between the EAEU TR and the Russian Federal Law are intended or accidental; whether the EAEU TR is directly applicable in Russia or not and, if not, whether Russia intends to adopt similar national measures applicable to other alcoholic products than wine covered by the EAEU TR but not by the above referenced Federal Law.

1.347. Lastly, it seems that the Federal Law also contains provisions covered by the Agreement on trade-related aspects of intellectual property rights. The EU would like to invite Russia to notify the measure to the Council for TRIPS. In view of these inconsistencies, the EU asks the Russian authorities to postpone the entry into force of this measure (planned for 26 June 2020) by at least one year, and grant a transitional period to further discuss the standards and explore whether business operators can progressively adapt them. The European Union would like to ask Russia to take these comments into consideration and to renotify the new version of the measure as well as to notify the new wine measure, under the TBT Agreement as well as under the TRIPS Agreement.

1.348. In response, the delegation of the Russian Federation provided the following statement. The Russian Federation would like to thank the European Union for its continued interest in the Technical

[64] See notably G/TBT/1/Rev.10 and G/TBT/35, Coherent Use of Notifications Formats, Recommendation of the Committee on Technical Barriers to Trade Adopted at the meeting of 18-19 June 2014.

Regulation of the EAEU on safety of alcoholic beverages. The Technical Regulation has been adopted in December 2018 and enters into force on 9 January 2021. As for notifying the adopted text of the technical regulation, the Russian delegation notes that the WTO transparency provisions require to notify draft technical regulations and conformity assessment procedures which Russia did. As for notification in the Council for TRIPS, we note that Article 63 of the Agreement on TRIPS requires notifications of the legislation in a sphere of intellectual property protection. The technical regulation as defined by the Annex I of the TBT Agreement cannot be referred to such kind of legislation. Technical Regulation on safety of alcoholic beverages do not restrict right holders to register and use their GIs in Russia. As for physical and chemical requirements, we note mostly these requirements are already incorporated in the Russian national legislation and therefore would not represent something new for market players of the Russian alcohol market. Meanwhile, we would appreciate it if the European Union specify what particular physical and chemical requirements are of concern.

1.349. With regards to mandatory labelling requirements, we reiterate statements made over previous meetings of the TBT Committee. Requirements to inform consumers on the storage conditions and date of marking and bottling are used for consumer safety to avoid alcoholic intoxication or even fatal outcome. Stickers are not prohibited by the Technical Regulation. Conformity assessment procedures are set in the Technical Regulation and applied to all alcoholic beverages both domestic and foreign. Mostly conformity assessment procedures do not change comparing to the one that are currently in place in Russia. As for the Federal Law № 468 of 27 December 2019 on wine making in Russia, we note that according to the paragraph 2 of article 52 of the Treaty on the EAEU, the technical regulations of the EAEU are directly applicable in the territories of its member States. In this regard, product characteristics or their related processes and production methods with which compliance is mandatory as well as conformity assessment procedures are set by the Technical Regulation of the EAEU on safety of alcoholic beverages.

1.3.28 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.4, G/TBT/N/IND/44/Add.5, G/TBT/N/IND/44/Add.6, G/TBT/N/IND/44/Add.7, G/TBT/N/IND/47, G/TBT/N/IND/47/Add.1, G/TBT/N/IND/47/Add.1/Corr.1, G/TBT/N/IND/47/Add.2, G/TBT/N/IND/47/Add.3, G/TBT/N/IND/58 (IMS ID 367[65])

1.350. The delegation of the United States provided the following statement. We understand that India's Ministry of Electronics and Information Technology (MeitY) has expanded the product scope covered under the Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order (CRO) to include an additional 12 new items as part of its CRO Phase IV. We recognize and appreciate India's 22 April 2020 notification to the WTO regarding the additional 12 items as part of CRO Phase IV (G/TBT/N/IND/44/Add.7). The United States requests that India provide a stakeholder comment period of at least 60 days. The United States understand that the BIS is developing an Indian Standard based on IEC 62368-1 and seeks to migrate to IEC 62368-1 by the end of 2020. To avoid duplication of compliance efforts and minimize burdensome compliance costs, the United States requests that India defer the rollout of CRO-IV until India adopts new standards based on IEC 62368-1. The United States also requests that India share an update on its timeline and its plans to finalize the expanded product scope. India's CRO requirements continue to raise additional concerns, including the requirement that product testing be done only by Bureau of Indian Standards-accredited labs located within India; and the failure to recognize test results from internationally accredited labs.

1.351. The delegation of Canada provided the following statement. Canada appreciates India's notification G/TBT/N/IND/44/Add.7 of 22 April 2020 indicating the addition of 12 new products to the list of goods covered by the Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012. Canada seeks India's assurance that 60 days will be afforded to Members to comment on this modification to the measure. Canada continues to seek: the use of international standards (e.g. ISO/IEC 17025 and ISO/IEC 17065); and the recognition of conformity assessment bodies accredited to international standards, except in specific circumstances where MRAs are needed to address particular risks, such as radio interference, before international conformity assessment bodies can be recognized.

[65] For previous statements follow the thread under IMS ID 367 (under dates raised and references).

1.352. In response, the delegation of India provided the following statement. India would like to thank the United States and Canada for their continued interest in the matter. India had provided response to various queries raised by the Members on this issue during previous TBT Committee meetings and hence would not repeat the same here. However, India would like to provide certain additional information to the Members for further clarity. The "Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order, 2012" mandating Indian safety standards for the notified goods has been notified for the safety of the consumers. Product categories are added to the Schedule of the Order in a phased manner following due consultation with the stakeholders. Recently, 12 additional product categories have been notified under the schedule of the "Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order, 2012" vide Gazette Notification No. S.O. 1236(E) dated 01.04.2020. The Order has also been notified to the WTO TBT Committee. There is no change in the provisions of the Compulsory Registration Scheme and the Compulsory Registration Order. Further, minimum six months' time period has been given to the industry for compliance to the provisions of the Order from the date of publication of the regulation in the official gazette. It was published on 1 April 2020.

1.3.29 China – Registration Fees for Drugs and Medical Device Products (IMS ID 466[66])

1.353. The delegation of the Republic of Korea provided the following statement. Korea would like to make following comments with respect to this regulation. Korea has continuously expressed its concerns over China's registration fees for medical devices. According to China's response from the previous TBT Committee meeting in February 2020, it has incurred higher registration fees on imported medical devices due to the on-site inspection of foreign establishments. However, under Chinese laws, on-site inspection is not required for all overseas establishments of medical products. China's authorities also claimed that registration fees were determined mainly by the cost of conformity assessment, along with minor differences in the cost of manufacturing, workload, and the various price levels of the labour sector. According to our understanding, this does not explain why registration fees for imported products are roughly twice as high as those of domestic medical devices. During China's trade policy review in 2016, China mentioned that the registration fees are adjusted every five years based on re-evaluation results. Since five years have passed since the last adjustment, Korea anticipates seeing substantial progress on this matter this year. We kindly request China to take our comments into account during the revision process, share information on revision plans, and notify the revision to the WTO. Further, we request that China share any information pertaining to the revised implementation rules.

1.354. The delegation of Australia provided the following statement. Australia maintains an on-going interest in developments in China's regulation of drugs and medical devices. Australia continues to look forward to constructive bilateral discussions with China on a range of health technology topics of interest to both sides, and to further cooperation and information exchanges. The Australian Government welcomes the opportunity to build its relationship with the NMPA and the Pharmaceuticals Division of the Chinese Ministry of Industry and Information Technology (MIIT).

1.355. In response, the delegation of China provided the following statement. The registration fees for drugs and medical devices were determined mainly by the cost of the conformity assessment. The minor difference in the registration fees between imported and domestic products was due to the different costs of manufacturing.

1.3.30 Indonesia – Halal Product Assurance Law No. 33 of 2014, G/TBT/N/IDN/123 (IMS ID 502[67])

1.356. The delegation of the European Union provided the following statement. The European Union would like to reiterate its serious concerns on the Indonesian Halal Product Guarantee Law No 33 of September 2014, which requires mandatory Halal certification and labelling for the products under its very wide scope to be placed in the Indonesian market. The European Union stresses that, contrary to Article 2.9 of the TBT Agreement, neither the Halal Law nor the first Implementing Regulation PP No 31 of 2019 were notified to the TBT Committee. We acknowledge the notification, on 14 October 2019, of a draft second Implementation Regulation and thank the Indonesian authorities for their reply of 13 March 2020 to our comments of 6 December 2019. We have expressed further concerns in our follow-up comments of 27 April 2020. In December 2019,

[66] For previous statements follow the thread under IMS ID 466 (under dates raised and references).
[67] For previous statements follow the thread under IMS ID 502 (under dates raised and references).

Indonesia notified to the TBT Committee a Regulation on Processed Food Labelling, relevant for the implementation of the Halal Law. The EU would like to stress that the proposed Halal measures would have a restrictive impact on trade flows and firmly calls upon Indonesia to reconsider its approach and keep Halal certification and labelling voluntary, limiting its effects to the legitimate objective of ensuring reliable information. In accordance with the relevant provisions on transparency in the TBT Agreement (Article 2.9), the EU invites Indonesia to notify to the TBT Committee any measures adopted for the proper implementation of the Halal Law, for instance on the certification fee, and to allow reasonable time for comments, as well as a reasonable interval between their publication and enforcement.

1.357. Regarding substantial aspects, we would like to refer to several points. In line with Implementing Regulation PP No 31 of 2019, all products produced, imported and distributed in Indonesia claiming to be Halal must be Halal certified. The European Union acknowledges the possibility to place "non-Halal" products in the Indonesian market and, in this respect, the fact that there is no obligation for "non-Halal" products to be certified. However, neither the Halal Law nor the implementing provisions specify clearly the list of Haram products. Moreover, the EU considers that the requirement for "non-Halal" information is unnecessary and unpractical and creates an excessive burden for operators. In the absence of a Halal claim from the producer, no labelling/information obligations are justified. The EU insists that there should be also coexistence of "Halal" and non-"Halal" products without a time limitation for medicines, biological products and medical devices.

1.358. Since 17 October 2019, the Halal Law is in its first stage of application, under which food and beverages derived from animal raw materials, including fresh and processed food, are required to obtain Halal certification and labelling. The EU considers that the grace period of five years expiring on 17 October 2024 for food and beverages to comply with the Halal Law is a huge challenge for economic operators and certification bodies, taking into account the operations involved (i.e. auditing, storage, transport) and would like to ask for an extension. The European Union invites Indonesia to respect the provisions included in the "Codex Alimentarius Guidelines" for the use of the term "Halal" in food labelling, which permit the processing of "Halal" and non-"Halal" products within the same premises and their transport in the same facilities, provided that appropriate cleaning measures are taken to prevent any contact between them. In addition, the European Union is of the view that the extension of Halal requirements to products other than food and beverages would be disproportionate. In any case, we would be interested in having further practical information on the gradual implementation of the Halal Law for the different sets of products covered and on the "Memorandum of Understanding" recently signed by the Indonesian authorities on enforcement.

1.359. The EU takes note that products with recognized foreign Halal product certification and distribution permits in Indonesia do not need to re-register for new Halal certification until expiration of the existing certificates. However, the requirement to have a cooperation agreement between foreign Halal certification bodies and the Indonesian Halal Products Assurance Agency (BPJPH) – as a pre-requisite for recognition of Halal certificates – is cumbersome and not proportionate. The EU also regrets that, in the absence of this cooperation agreement, manufacturers need to go through the full Halal certification process in Indonesia, which for a foreign company is excessively burdensome in terms of duration and administrative effort. The additional registration requirement with BPJPH for Halal certifications issued by foreign bodies appears to be duplicative, time consuming and impractical and the EU invites Indonesia to consider less cumbersome and non-discriminatory practical solutions to allow products certified Halal by foreign bodies to enter and circulate in the Indonesian market. The EU insists that Indonesia accepts test reports from EU laboratories accredited by an accreditation body member of the international arrangements for mutual recognition of the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF).

1.360. The delegation of the United States provided the following statement. The United States recognizes the importance for Indonesian consumers to know whether products are halal. We want to work with you to ensure that the law achieves your objective without creating any unnecessary barriers to trade. We thank Indonesia for its response to the US Government and US industry comments on the Ministry of Religious Affairs (MORA) Regulation on Implementation of Halal Product Assurance, which it notified to this Committee in G/TBT/N/IDN/123. We understand, however, that Indonesia finalized and issued another implementing regulation of the Halal Law in early May, Government Regulation 31 of 2019 on "Implementation Provisions of Law 33/2014 regarding Halal

Product Assurance," which Indonesia has not notified to this Committee. We again ask that Indonesia notify this measure, and any additional implementing measures, to the Committee. Furthermore, we understand that the Halal Product Assurance Agency is starting to develop implementing measures and guidance for specific product categories. Can you confirm the following list of products are in the scope and the envisioned timeline for the requirements to go into force: October 2024 for "food and beverage products"; October 2026 for "traditional medicine and health supplements," "cosmetics, chemical product and genetically engineered products," "clothing, headgear and accessories," "household appliances, Muslim worship equipment, stationery and office equipment," and "goods for medical devices risk class A"; October 2029 for "medicines" and "goods for medical devices risk class B"; October 2034 for "prescription drugs, excluding psychotropic" and "goods for medical devices risk class C"?

1.361. We also await clarification about the status of proposed legislation connected with the following category: "Medicinal product, biological product and medical equipment made from non-Halal raw material or non-Halal processing," as listed in the notification to this Committee. We ask that Indonesia specify what is the envisioned process and timeline for notifying and soliciting public comment on the implementing measures regarding the certification, packaging, and labelling requirements for each of these product categories. In developing these requirements, we ask that Indonesia consider the comments we submitted expressing concerns as to the feasibility and necessity of requiring that all categories of covered products have separate manufacturing, processing, storage, packaging, distribution, and sale facilities for Halal versus non-Halal products. We remain concerned by Indonesia's explanation at the February 2020 TBT Committee meeting that "naturally Halal" food and beverage products considered exempt from the new Halal Law did not include fresh fruits and vegetables that had been frozen. Can Indonesia explain why the process of freezing would require a Halal certification? Further, we continue to seek clarity on the status of bulk shipments.

1.362. We request further information regarding Indonesia's response to US Government comments regarding required labelling for non-Halal products. Can you refer us to the applicable laws and regulations from Indonesia's National Agency of Drug and Food Control (BPOM/NADFC) that are referenced in Indonesia's response? As that refers to requirements for food and cosmetic products, what will be the requirements for other product types? We request that Indonesia provide sufficient transition time for stakeholders to understand and comply with the requirements in these regulations. We understand that the MORA implementing regulation will allow for phased implementation of mandatory Halal certification requirements and that Indonesia will continue to allow the sale of non-certified products. Can Indonesia confirm our understanding? We would like to thank Indonesia for extending the recognition of foreign Halal certification bodies so that halal-certified agricultural products can continue to enter Indonesia uninterrupted during this transition time. For the United States, the current recognition of our five US-based Halal certifiers will begin expiring on 5 June 2020. To ensure the continuation of trade, we request that Indonesia extend recognition of the current five US-based Halal certifiers for two years to prevent trade disruptions for Indonesian industry while the Halal Product Assurance Agency (BPJPH) streamlines its recognition application process. We understand these five certifiers have started the application process but received minimal feedback on their applications.

1.363. We remain concerned with the mandatory requirement that both "Halal" and "non-Halal" products be labelled. Mandating labels for both Halal and non-Halal information will create confusion for consumers and will be costly and challenging for companies, both foreign and domestic, to implement. We understand there is also a registration requirement for each foreign Halal certificate included in the implementing regulations, including a requirement that the certificate registration numbers be included on the product label. As written, the registration requirement for importers is cumbersome, duplicative, and has the effect of restricting trade. Further, we do not see how the same registration requirements would apply to local products. We request that Indonesia modify this registration requirement to reflect the fact that Indonesia's Halal Product Assurance Agency ("BPJPH") will already be conducting verifications of foreign Halal agencies issuing Halal certificates for imported goods. We ask that Indonesia provide greater specificity as to which medical devices will be subject to the Halal Law's implementing regulations. We also ask Indonesia to clarify their response to the US medical device industry request to exclude *in-vitro* diagnostic products made of animal material, which are not exposed to the human body from the scope of the Halal Law. We are encouraged by Indonesia's notification of the MORA regulation and urge Indonesia to notify all previous and forthcoming implementing regulations in their draft form prior to their finalization and

again request transparency as these rules are developed to provide adequate transition time, and an opportunity for stakeholder comments.

1.364. The delegation of Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu provided the following statement. Indonesia implemented the Halal Product Assurance Law on 17 October 2019. Although Indonesia has fulfilled its obligation to notify the TBT Committee, it has not yet announced detailed implementation rules. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu stakeholders and certifying bodies hope to be informed so that they can respond accordingly. We are equally interested in this case along with other Members and would like to request Indonesia to provide information on the mechanism of mutual recognition between Indonesian Halal Product Assurance Organizing Agency (BPJPH) and foreign halal institutions so that our Halal products can successfully enter the Indonesian market.

1.365. The delegation of Canada provided the following statement. Canada would like to thank Indonesia for its engagement on this issue. However, we would like to reiterate that Canadian exporters still require additional information on how the Halal Product Assurance Law will be implemented in order to successfully comply with its requirements. We appreciate receiving confirmation that fresh plant ingredients, such as grains, fruits and vegetables, will not need to be certified under the Halal Product Assurance Law unless as they are considered "toxic" to people who consume it. Canada looks forward to receiving additional clarification from Indonesia on what the term "toxic" means. We would like to reiterate our concern regarding the mandatory requirement for the labelling of Halal and non-Halal food, which, in our view, could be confusing for consumers and difficult for manufacturers to implement.

1.366. Canada is still waiting for clarification of how this law will apply to frozen food. It is our understanding that fresh seafood is exempt from the Halal certification and labelling requirements but that frozen plant products and seafood are considered "processed" under the regulation and will therefore require Halal certification and labelling. Canada is concerned that fresh crabs exported to Indonesia will not need to be Halal certified but if those same crabs are frozen certification will be required. Canada understands that this certification applies to all frozen single-ingredient products like fruit and vegetables. This requirement could disadvantage imported products that must be frozen in order to maintain freshness during transport and cause confusion among consumers. Canada exported almost CAD 43 million worth of frozen crabs to Indonesia in 2019. Can Indonesia explain how the freezing process makes a crab or blueberry non-Halal?

1.367. The product accreditation process for foreign Halal certifying organizations also remains unclear. Does Indonesia intend to publish further guidance on the Halal certification process certifying organizations must follow before the Halal Product Assurance Law and implementing regulations are fully in force? Can Indonesia explain why the Halal Products Assurance Agency will require a cooperation agreement? This requirement would be difficult for countries that do not have a mandate for Halal food. Is Indonesia taking this into consideration as further implementing measures area put in place? Will further guidance be notified to the TBT Enquiry Point? Will a public comment period be provided? Canada encourages Indonesia to provide timely information as further implementing regulations are developed to provide trading partners with sufficient time to comment and seek clarifications as needed.

1.368. On the accreditation of foreign certification bodies, we understand that Indonesia has extended the recognition of foreign bodies whose recognition was still valid but has a future expiry date. However, this does not apply to foreign bodies whose recognition has already expired. Can Indonesia confirm that the outstanding applications of certification bodes whose recognition has expired will be processed as soon as possible? Canada would like to express serious concern over this long outstanding issue as the application of a Canadian certification body has been outstanding since 2016. As a result of this delay a shipment of certified halal beef was rejected on 3 February 2020.

1.369. The delegation of New Zealand provided the following statement. New Zealand supports concerns raised by other Members. New Zealand would again like to thank Indonesia for the timely and informative response to our enquiries on the draft regulation of MORA regarding the implementation of Halal Product Assurance notified under G/TBT/N/IDN/123. In reference to Article 29 para (2), New Zealand continues to seek further guidance on the timeframe for release of the draft ministerial decree that will stipulate the type of products that must be Halal certified. We ask for some clarity on the status of Halal Certification Organisations whose certification will soon expire

or has already expired with MUI, and whether there are any transitory arrangements in place for them to continue to certify before the release of the ministerial decree noted above and the conclusion of Mutual Recognition Arrangements or other agreements. We appreciate any further information from Indonesia as to whether there are any other regulations relating to Halal under development, in addition to the Minister of Religious Affairs' regulation noted in your response. We understand that the Halal certification fees will need to be set in a Ministry of Finance regulation and welcome any further clarification on this. We also understand that the latest version of the Omnibus Bill on Job Creation may include revisions to the Halal Law 33/2014. Can Indonesia provide any further guidance on what these proposed changes may include and how they will affect the proposed Halal Assurance system.

1.370. The delegation of Brazil provided the following statement. Brazil supports the concerns raised by the EU, Canada, the US and Chinese Taipei. In the process of implementing Halal Product Assurance Law 33 of 2014, Brazil encourages Indonesia to fully comply with its transparency obligations under the TBT Agreement. For instance, regulation 31 on "Implementation Provisions of Law 33/2014", which came into force in May 2019, has not yet been duly notified to the WTO. Could Indonesia please confirm if it intends to notify new measures related to Halal Product Assurance Law 33 of 2014? As far as we can ascertain, Indonesian regulations have not yet established the list of international certifiers authorized by the Indonesia's Halal Product Assurance Organizing Agency (BPJPH). Neither have they defined certification requirements for specific types of products. Until there is a clear definition of such requirements, we understand that Law 33 and its subsequent regulations will not be implemented. Can Indonesia either confirm or deny this understanding? We would also like to ask Indonesia to provide a timeframe for the publication of future regulations related to Halal certification, as well as to notify such measures to the WTO accordingly. Finally, Brazil thanks again Indonesia for having partially clarified that "non-Halal" labelling for products containing "non-Halal" substances would not be necessary. We kindly ask Indonesia to further clarify this understanding on its new legislation, as well as the possibility of coexistence of Halal and non-Halal products.

1.371. The delegation of Australia provided the following statement. Australia thanks Indonesia for the positive exchange to date. We are looking forward to continuing collaboration with Indonesia on the implementation of its new Halal Law.

1.372. In response, the delegation of Indonesia provided the following statement. Indonesia thanks the USA, the EU, Canada, Chinese Taipei, Brazil, and New Zealand for raising the issue on Halal Product Assurance Law No. 33 of 2014. Indonesia stresses that Halal certification aims to guarantee the integrity of Halal products circulating in Indonesia to enable consumers to make informed decision on dietary choices based on religious believe. This is also based on consideration that Indonesia has the largest Muslim population in the world. Indonesia would like to reiterate its last statement in February meeting that the Halal law will not either ban the sale of non-Halal products in Indonesia nor require non-Halal products to be certified. Non-Halal products are only required to provide information of its non-Halal ingredients in the package of the product.

1.373. As mentioned in the draft of the implementing regulation (Draft Decree of Minister of Religious Affairs regarding The Implementation of Halal Product Assurance, notified in G/TBT/N/IDN/123), products that use ingredients from and/or containing pork must be separated from products that will undergo Halal certification process. In the situation where products that want to be Halal certified use the same production facilities with products that do not require Halal certificate and do not contain pork and/or its derivatives then it can provide the following documents: name and type of the products, list of products and materials used, product processing and washing or tanning at production facilities that are used together.

1.374. Provisions on Halal labelling and non-Halal information for pre-packaged food are subject to the Regulation of National Food and Drug Agency of Indonesia as notified in G/TBT/N/IDN/124. Indonesia reaffirms its openness to international cooperation with foreign halal institutions or authorities. Cooperation with foreign Halal institutions will prioritize the principle of mutual recognition and mutual acceptance in accordance with international regulations and practices. The implementation of this collaboration will begin with government to government cooperation. Indonesia acknowledges Halal certificates issued by foreign Halal certification bodies that have cooperated with BPJPH, meaning that all Halal certificates issued by those foreign Halal certification bodies can be accepted as compliance with Halal requirements in Indonesia. All Halal certificates from foreign Halal certification bodies must be registered to BPJPH before the products are

distributed in Indonesia. This procedure is a requirement that must be met as compliance to import process.

1.3.31 Russian Federation – Rules of cement certification, G/TBT/N/RUS/48, G/TBT/N/RUS/49 (IMS ID 497[68])

1.375. The delegation of the European Union provided the following statement. The EU would like to refer to its previous statements in the TBT Committee on this issue. Both Russian notifications 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 is not in line with the provisions of the TBT Agreement (Article 2.9). The EU would like to highlight that its comments on these two measures sent to the Russian Federation in May and June 2016 were never replied to. The EU deeply regrets that Russia continues to adopt restricting measures in the area of cement certification that are 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 the Russian Federation are practically blocked, with the exception of white cement, necessary for Russian industry. In light of the above, the EU welcomed the announcement of the Russian authorities declaring that the 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 the margins of the TBT Committee in November 2019 the Russian authorities confirmed that the new standard on cement would soon be notified in accordance with the TBT Agreement. Given the lack of the notification to this day, the EU would like to ask the Russian Federation to share the updated timing for this notification.

1.376. In response, the delegation of the Russian Federation provided the following statement. The Russian Federation would like to thank the European Union for its continued interest in the rules of cement certification. The measure at issue is aimed at fighting illicit trade in cement and building materials and ensuring the strength of building materials which is of paramount importance for the durability of buildings. Currently, the amendments to GOST – R "Rules of cement certification" are being discussed internally among the relevant Russian authorities and the cement industry. Unfortunately, no precise timeline for the outcome of the discussion can be provided at this stage.

1.3.32 India – Draft Food Safety and Standards (Alcoholic Beverages Standards) Regulations, 2015, G/TBT/N/IND/51 (IMS ID 494[69])

1.377. The delegation of the European Union provided the following statement. The EU would like to reiterate its concerns regarding this measure. The EU welcomes the publication of the regulation on additives for alcoholic beverages in August 2017, though not all our concerns were taken on board. The regulation covering standards for alcoholic beverages was published in April 2018, and is being implemented since April 2019, with the 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 welcomes the notification to WTO in July 2019 of a number of amendments to the standards (G/TBT/N/IND/104). The EU sent comments on 26 November 2019 and would welcome a reply.

1.378. We would like to thank India for having taken most of our comments into account, and for the six-month extension of the deadline for certain provisions to enter into force. However, we still have some concerns with this Regulation. We notably request Indian authorities to consider alignment with OIV standards. In particular, we would appreciate if India could take into account the following. The lack of stock-exhaustion clause (to allow the sale of products already present on the Indian market until stocks are exhausted in order to minimize the impact for economic operators) and transition period. The presence of some technical specifications (maximum alcohol content, sugar content, some wines' definitions) that may not be in line with international standards or with international widely accepted practices and could result in an adverse impact for international trade. This would prevent some EU wines, spirits or beers to enter the Indian market. Some labelling requirements are excessive (residues of additives in the final product) and will potentially trigger additional technical controls that might result in unjustified barriers to trade. The Regulation also includes the need to satisfy excessive analytical parameters that would result in additional technical

[68] For previous statements follow the thread under IMS ID 497 (under dates raised and references).
[69] For previous statements follow the thread under IMS ID 494 (under dates raised and references).

controls (residual extracts, higher alcohol, iron). These additional technical controls might result in unjustified barriers to trade.

1.379. A meeting of the Scientific Panel of FSSAI took place in March 2019 to discuss the most important outstanding EU concerns and rejected most of our requests. Another meeting of the scientific panel took place in the autumn 2019 and discussed the EU request on food additives/colorants used for Campari and Aperol. According to oral information, the panel accepted the colorants but concluded on lower quantities as permitted in the EU. We would welcome to receive confirmation from the Indian authorities that the food additives to be used in Campari and Aperol have indeed been approved by the scientific panel. We would also welcome to learn about the timeline for the entire approval procedure until its final publication in the Gazette. We expect that the EU (and other Third Countries) will have the possibility to comment on the draft legal proposal. We hope that we can continue our discussion and find an acceptable solution to the outstanding issues.

1.380. The delegation of Australia provided the following statement. Australia recognizes the right of the Indian Government to take measures necessary to protect public health compliance with WTO obligations. Australia thanks India for the on-going bilateral engagement on the proposed amendments to its FSSR, and appreciates advice from the FSSAI that the proposed amendments have been revised to address our comments. Australia considers India's proposed amendments to the regulations in relation to alcoholic beverages would restrict the ability of winemakers to adapt to warming climates, both in Australia and India. 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 in fermentation. The addition of water is done in minimal circumstances, for technical necessity, in small volumes to aid fermentation.

1.381. Australia continues to encourage India to permit the addition of limited amounts of water to facilitate fermentation to enable winemakers to effectively respond to "stuck fermentations". Australia thanks FSSAI for inviting Australia to provide alternative wording for the regulations to enable this outcome. Australia also notes the proposed amendment wording to "…declare the range of sugar as specified under these regulations", and is concerned this wording may cause confusion as to whether winemakers should state the sugar content or provide a statement such as "brut", "dry" or "sweet", as proposed in another section of the regulations. Australia would appreciate clarification regarding the above wording, requests confirmation the proposed amendments have been revised to address our comments, and encourages India to re-notify WTO Members of the changes. We thank India for its on-going engagement with Australia on these issues and look forward to continuing our constructive engagement.

1.382. In response, the delegation of India provided the following statement. India would like to thank the European Union and Australia for their interest in the matter. On the issues raised for this measure, India would like to mention a few points as indicated below. The Food Safety and Standards (Alcoholic Beverages) Regulation, 2018 was gazette notified on 19 March 2018. As per this notification, a transition period up to 1 April 2019 was allowed to the Food Business Operators to comply with these regulations. Additionally, as per Direction under section 16 (5) of FSSA Act, 2006 dated 29 March 2019, a time period of six months was given for use of old unused labels and printed cans. Moreover, the alcoholic beverages manufactured prior to 1 April 2019 could be sold in the market up to 31 March 2020 or until the finalization of the amendment regulations incorporating modification mentioned, whichever is later. Further, one-time relaxation by the respective State/UT Governments for fee charged for registration of new/change in label, as required under Excise Act, was also provided.

1.383. So far as clarification sought on issues related to wines are concerned, it is informed that the definitions with respect to wines are being considered for suitable amendment. On the issue related to declaring the sugar range in wine, it has been kept as a part of consumer awareness. Instead of actual sugar content, the range given for different types of wines, i.e. dry, sweet, etc., has to be provided. A clarification in this regard has been uploaded on the FSSAI Website in the form of FAQs on Gazette notified Alcoholic Beverages Regulations, 2018. Further, it is informed that the limit of addition of water in wine has been revised and harmonized with FSANZ. The alcoholic beverages shall conform to all the requirements specified in the Food Safety and Standards (Alcoholic Beverages) Regulations, 2018 and the labelling requirements are to be followed as specified in this Regulation. India does not consider it necessary to renotify WTO Members of the changes in the said Regulation as the draft Notification on Food Safety and Standards (Alcoholic Beverages) Amendment

Regulations, 2019 was uploaded on FSSAI website and notified to WTO TBT Committee in July 2019. If there are any additional issues, India is ready to discuss the same bilaterally for providing further clarity in the matter.

1.3.33 Egypt – Manufacturer Registration System (Decree No. 43/2016 and Decree No. 992/2015), G/TBT/N/EGY/114, G/TBT/N/EGY/115 (IMS ID 505[70])

1.384. The delegation of the European Union provided the following statement. The EU would like to reiterate its concerns with regard to the Egyptian requirements on registration of manufacturers and importers. The EU would like to thank the Egyptian authorities for their efforts to make the registration function more efficiently and for the communication dated 12 February 2020 on the status of EU pending registration requests. Nevertheless, the EU regrets that many pending registration cases known to the EU have not been successfully processed due to expired application documents. According to the understanding of the EU, this concerns 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, the European companies are now confronted with additional costs and administrative burden of updating their registration applications. Moreover, the EU finds it very worrisome that more than half of the non-registered companies happen to be active in the sector of ceramics, and in particular ceramic tiles. The EU ceramics sector has been 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 would appreciate if all the companies, which submit updated quality control system certificates and complete in this way their application documents, are registered without any further delay.

1.385. While the EU appreciates as improvement the creation of the registration committee in the Egyptian Ministry of Trade, this does not resolve the structural problems related to the 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 would therefore like to repeat its invitation to Egypt to suspend or further substantially improve the registration process with a view to liberalizing trade and to refer for details to the statements of the past TBT Committees. Finally, the EU would like to ask Egypt to temporarily suspend the requirement to stamp and legalise documents submitted for registration of exporting factories under Ministerial Decrees 43/2016 2016 and 44/2019, due to the exceptional circumstances caused by the COVID-19 pandemic.

1.386. The delegation of the Russian Federation provided the following statement. The Russian Federation remains concerned with the Egyptian registration procedures under the Decree № 43/2016 and reiterates the statements made during the previous meetings of the Committee on TBT and the Council for Trade in Goods. We continue to receive messages from Russian exporters that the registration procedure is burdensome, time consuming, untransparent and represents a discriminative barrier for trade. Stark example of these words is the case of a Russian exporter of steel reinforcement bars. The company has been trying to get registered since 2016. The damage to the company due to denied market access is estimated at USD 100 million annually which makes compound damage to date up to USD 0.5 billion. Given so lengthy a procedure some of the submitted documents expire. In the case of the particular exporter quality management certificate, environmental management certificate as well as trademark certificate had to be renewed. In this regard, we urge Egypt to provide Russian companies with the market access as per Egypt's commitments in the WTO.

1.387. The delegation of Turkey provided the following statement. We would like to thank Egypt for continuing bilateral discussions on this issue. However, we continue to hear from Turkish exporters that exporting Turkish products to Egypt has become more challenging. According to the recent information, General Organization for Import and Export Control (GOEIC) of Egypt suspended the registration of 672 companies in total and halted export of goods due to expired application documents. We have also been informed that 123 of these companies are Turkish companies. In other words, one of every four companies whose exports are suspended is a Turkish company. While GOEIC has suspended the registration due to the out-of-date documents, the Egyptian authorities have not given any additional information regarding the details of the deficiencies. In addition to this, we have been informed that if the deficiencies are not completed by 31 May 2020, which is a

[70] For previous statements follow the thread under IMS ID 505 (under dates raised and references).

short period of time, the exporting companies have to apply to GOEIC with a new application file starting from very first step of the registration process.

1.388. Besides the suspension of the registrations, there are many companies still awaiting approval since the introduction of Decree 43/2016. Although there have been some progress, around 160 Turkish companies applied for the registration are still waiting for their application to be approved. The list of the companies has been submitted to the Egyptian side on various occasions, but no meaningful progress was achieved. We have repeatedly stated in the previous Committee meetings that the application process is not transparent, and it is still unclear how the applications are evaluated, and whether the completion of the process is subject to any time limits. In addition, no notification is made to companies on the status of their application whether it is approved or not. Therefore, Turkey still remains concerned with this non-transparent registration process. Further, we have also not received any contact information for the new Committee that was established by the Egyptian side for the registration system. In this regard, we expect an improvement and tangible steps from Egyptian side to move ahead.

1.389. In response, the delegation of Egypt provided the following statement. We thank the European Union and Russia for maintaining this item on the agenda, and we would also like to express our appreciation for the bilateral exchanges we have had with a couple of delegations in this respect. Further transparency in the application of the registration system was one of the main concerns raised by our trading partners with regard to Egypt's decrees 43/2016 and 44/2019. And it is in this vein that the GOEIC of Egypt has published on the 22 April on its website a full list of the companies whose registration is suspended due to the incompletion of the required documents, granting these companies a grace period until 31 May to fulfil the needed documentation in order to avoid the need to file a new application. And with regard to the developments of the number of registered companies as well as the company-specific problems conveyed to us by the concerned delegations in Geneva, we are currently following up with Cairo in this respect, noting that the lockdown in our capital as well as the restrictive measures taken by Egypt to contain the COVID-19 pandemic have made the coordination among the different governmental authorities as well as with the mission in Geneva more challenging. Therefore, we would like to thank the Members who conveyed to us the details of the problems faced by their companies, and we shall revert to them bilaterally upon receipt of the feedback on these cases from the capital.

1.3.34 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[71])

1.390. The delegation of the European Union provided the following statement. The EU would like to refer to concerns raised in our several previous statements in the Committee concerning these notifications. The EU understands that there will be one new mandatory standard pertaining to plastic furniture. The EU would like to underline to China the need to notify this standard in accordance with the TBT Agreement. In addition, the EU would like to receive a confirmation from China what, if any, relationship this announced mandatory national standard "Limits of Dangerous Substances for Plastic Furniture" (GB 28481-2012) would have to the standards previously notified to the WTO (G/TBT/N/CHN/1094, G/TBT/N/CHN/1095 and G/TBT/N/CHN/1096). To help further facilitate the timely implementation of furniture-related standards, the EU would also like to know whether the new standard would have implications for any other furniture groups, besides plastic furniture. The EU would like to reiterate that it remains open to hold technical discussions in any suitable manner on issues pertaining to these and any other relevant furniture standards, as originally proposed by China in June 2017. To this end, the EU renews its request for China to designate its contact point for the organization of such meeting. The EU once again would like to respectfully remind China to notify the announced standard in accordance with the TBT Agreement.

1.391. In response, the delegation of China provided the following statement. The standard is still under the process of drafting, which is under the responsibility of the MIIT of China. MIIT is expected to complete the preparation of the draft standard in the first half of 2021 and then will be submitted to the Standardization Administration of China for approval. During the developing process of the standard, we will adhere to the principle of open and transparent, take ISO standards into account and solicit opinions and comments from all sectors of society, including opinions from foreign-invested enterprises and experts.

[71] For previous statements follow the thread under IMS ID 509 (under dates raised and references).

1.3.35 China – Cybersecurity Law (IMS ID 526[72])

1.392. The delegation of the European Union provided the following statement. The EU would like to refer to the comments it has made in previous TBT Committees with regard to the Cybersecurity Law. The scope of the requirements is unclear, as key terms have not been specified in sufficient detail. Concepts such as "critical information infrastructure" and "secure and trustworthy products" are not sufficiently clarified. The EU maintains its concerns about the revised methodology. While references to "source code" have been removed, the mere requirement of providing "relevant materials" to verify the security and controllability of products, could imply source code disclosure. The EU recalls the importance of international standards and notes that the law only makes references to national standards. This 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.

1.393. The EU would like to request more clarity regarding several of the implementing measures following China's Cybersecurity Law. For example, the Cyberspace Administration of China's Cross-Border Data Transfer Measures continue to raise concerns about the broad scope of these regulations, regarding what is considered as Critical Information Infrastructure and which kinds of cross-border data transfers are affected. A definition of critical information appears to cover many commercial activities and whole sectors that have no bearing on national security. Moreover, the list of what is considered important data is 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.

1.394. As regards the certification and security requirements on Critical Information Infrastructure, the EU is concerned that such requirements lead 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". The EU is also concerned about the wide scope of the measure. The EU calls 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 (IP). Moreover, the EU would like to repeat its previous requests for clarifications on the relationship with existing Multi-Level Protection Schemes and the expected implementation timeline. The EU notes with concern that the Cybersecurity law already applies and is enforceable (including possible fines and sanctions), while the implementing measures that would clarify its implementation are still not in place. This creates significant uncertainty for economic operators. Could China inform the Committee when implementing measures will be adopted? The EU requests that China notifies 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.

1.395. The delegation of the United States provided the following statement. The United States remains very concerned about China's suite of cybersecurity and cryptography measures. As we have said in prior TBT Committee meetings, this is 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, in spite of serious and long-standing concerns from the United States and many other international stakeholders. Since then, China has continued to develop, and in certain cases, finalize related implementing measures that are sometime general in scope, and sometimes sector-specific.

1.396. We have many concerns regarding China's Cybersecurity Law and related measures, which impose far-reaching, highly trade-restrictive conditions on foreign ICT products through "secure and controllable" requirements, enforced by cybersecurity review regime checks. Such requirements are largely based on a planned update and expansion of the Ministry of Public Security's MLPS. As one example, China's 25 January 2018 draft measure, "Information Security Technology – Guidelines for Grading of Classified Cybersecurity Protection," appears to repeat and elaborate upon China's MLPS. The United States and other Members at prior Committee meetings have laid out numerous other

[72] For previous statements follow the thread under IMS ID 526 (under dates raised and references).

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

1.397. We also request 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 have raised, it is critical that China act deliberately to collaborate with all interested parties, and take their comments into account before adopting the drafts as written. We will continue to carefully monitor China's implementation of the Cybersecurity law and related measures, as well as movement on the draft Cryptography Law. We look forward to continuing this important dialogue with you.

1.398. The delegation of Japan provided the following statement. Japan continues to have concerns regarding China's "Cybersecurity Law" and would like to refer to the previous statement we made at the last TBT Committee in February 2020. Japan is concerned with related enforcement regulation as well. Japan would like to request that China provide notification of the enforcement regulations to the TBT Committee and consider comments from stakeholders. In addition, Japan would like to request that China provide adequate lead time from completion of these regulations until their enforcement, and to implement these measures in a transparent manner.

1.399. The delegation of Canada provided the following statement. Canada wishes to reiterate the same statement made by Canada on the other related STC to China's cybersecurity measures namely Cyberspace Administration of China – Draft implementing measures for the Cybersecurity Review of Network Products and Services (STC ID 533).

1.400. The delegation of Australia provided the following statement. Australia reiterates our previous position regarding China's Cyber Security Law and related laws, including the Provisions on Internet Security Supervision and Inspection by Public Security Organs. Australia respectfully reiterates our concerns that many details about the Cybersecurity Law remain unclear. Australia notes that, consistent with the TBT Agreement, the measures should be implemented in a non-discriminatory manner and in a way that is no more trade restrictive than necessary. Australia urges China to consider less trade-restrictive alternative measures that are reasonably available to achieve its objectives. Australia notes the entry into force of China's Cryptography Law on 1 January 2020, and would value on-going discussion with China on implementation of the Cryptography Law and other related cyber laws.

1.401. In response, the delegation of China provided the following statement. The drafting and implementation of Cybersecurity Law have fully drawn on common international practices; the purpose of the law is to safeguard national sovereignty in cyber space, national security and public interests, to protect the rights and interests of the citizens, the legal persons and other organizations in China. It is also conducive to the application of information technology and the development of the great potential of the Internet. While it is by no means to restrict the market access of foreign enterprises, technologies and products in China, nor to restrain the orderly free flow of the data in accordance with the law. Unlike China's practice, we noticed that some Members' cybersecurity regulation and risk assessment criteria determine the risk of the vendor in accordance with its ownership and operating location. This approach has constituted *de facto*, non-necessary restriction to the market access of products produced by foreign enterprises, which violated the non-discriminatory principles of WTO.

1.3.36 European Union – Regulation (EC) No 1272/2008 (CLP Regulation) (IMS ID 539[73])

1.402. The delegation of the Russian Federation provided the following statement. The Russian Federation would like to thank the EU for its active work on the gastric fluid bioelution protocol (i.e.

[73] For previous statements follow the thread under IMS ID 539 (under dates raised and references).

EURL ECVAM submission to OECD) and its commitment to incorporate it into the Article 12 of the CLP Regulation (i.e. DG Envi and DG Grow now convening a bioelution expert group under CARACAL to discuss the incorporation of bioelution test data into regulations). We do believe that this approach will be helpful in limiting the negative impact of the current unjustified classification of the cobalt metal on a wide range of cobalt-containing products. At the same time, the Commission has failed to adopt bioelution at the level of OECD. In this regard, application of bioelution and mitigating the negative consequences of such a strict classification of cobalt on alloys and compounds appear to be problematic. Therefore, the measure at issue seems to be more trade restrictive than necessary and will have the negative impact on manufacturing and trade in a wide range of cobalt-containing products upstream and downstream as well as distort the global value added chains.

1.403. The 14th adaptation to technical progress (ATP) was adopted on 18 February 2020 and applies from 1 October 2021. The European Commission rushed this classification without full scientific justification and necessary assessment of its economic consequences, ignoring the comments made by the WTO Members and even disregarding deep concerns raised by the member States of the EU itself. Moreover, the Commission has chosen to ignore the concerns of the global and even its own European industries, which are involved in manufacturing, use, and disposal of the products containing cobalt and titanium dioxide. In this regard, the 14th ATP is yet another example of a highly inappropriate implementation of the CLP Regulation by the Commission as it contradicts the Commission's own communication on the precautionary principle's application. In accordance with COM (2000) 1, section 6.1, item 16 (I quote) "the implementation of the approach based on the precautionary principle should begin with a scientific evaluation, as complete as possible, and where possible, identifying at each stage the degree of scientific uncertainty" (the end of the quote). Indeed, the precautionary principle should be applied in cases where it is not possible to complete a comprehensive risk assessment because there is no sufficient data, and where the regulator therefore makes conservative assumptions about potential hazards of certain chemical. Nevertheless, the precautionary principle can still only be invoked once a full scientific assessment has been made. In the case of cobalt classification, the Commission admits that it has not made a full scientific assessment, as there has been absence of complete scientific data (e.g. oral carcinogenicity study considered together with existing epidemiological data), therefore under the circumstances, any scientific assessment is simply impossible. As a result, the current classification of cobalt for all routes of exposure is not based on a complete set of scientific facts, and has been adopted in direct contradiction to the Commission's own guidelines on the proper application of the precautionary principle. We note hereby that the provisions of the Agreement on TBT explicitly require scientific justification when elaborating, adopting, and applying technical regulations.

1.404. The statement of the Commission that any negative consequences will be largely mitigated by the application of the Generic Concentration Limit (GCL) of 0.1 % is factually incorrect. Firstly, the average content of cobalt impurity in stainless steel is several times higher than that and even in some cases of carbon steel and some alloys, can still be problematic. Secondly, the current GCL of 0.1 % is being set temporarily only and if it is to be revised in favour of the initially proposed Specific Concentration Limit, which was even more stringent than the current GCL by an order of magnitude, the consequences would be even more dire. Moreover, the Commission further admits that the methodology behind the derivation of the concentration limits (I quote) "was considered questionable" (the end of the quote). Besides, the EU notified to the WTO the draft regulation amending Annex XVII to REACH Regulation (G/TBT/N/EU/714). According to the document, cobalt metal was included in the list of CMR category 1 B in order to prevent contacts of the general population with it. We note hereby that the draft legislation does not provide any exemption and steel articles will be covered by these restrictions as the Commission was not able to adopt the gastric bioelution protocol at the OECD, which resulted in it remaining in uncertainty.

1.405. As for economic implications, the adopted cobalt classification will have a significant negative impact on manufacturing, supplying, and recycling of a wide range of products. Apart from cobalt itself, this non-scientific classification directly affects the markets for copper, nickel, alloys, steel, and stainless steel, as these materials contain traces of cobalt. In practical terms, it also makes it impossible to recycle these materials efficiently, which renders ineffective the EU own policies on resource efficiency, energy efficiency, recycling, circular economy, and reduction of waste. The examples of the negative implications of this classification are numerous and they have been provided within the meetings of the Committee on TBT and the Council for Trade in Goods as well as bilaterally by Russia and the industry itself, including the Cobalt and Nickel institutes. However all the presented data have never been considered, nor taken into account, nor even commented on. Basically, data have remained ignored and concerns have remained not addressed.

1.406. We urge the EU to revoke the measure and rely on available scientific data and arguments made by Russia and European and global industries. Currently it is possible to classify cobalt as carcinogen for inhalation route of exposure only. It is necessary to anticipate the results of the study initiated by the Cobalt Institute on carcinogenicity of cobalt for oral route of exposure, not to classify cobalt for all routes of exposure by default, not to create unnecessary obstacles to trade that have a potential to distort global supply of a wide range of products and creation of global value added chains, to postpone amendments to REACH until the issue with bioelution is solved in the EU and the relevant scientific information on carcinogenicity of cobalt is available. Russia stresses that bioelution protocol has been blocked and it makes impossible for the EU to mitigate the vast majority of the negative consequences of the current classification of cobalt, including those directly distorting international trade.

1.407. The delegation of Brazil provided the following statement. Brazil would like to support this STC raised by Russian Federation. In the 14th review of ATP for Regulation (EC) No 1272/2008, the reclassification of cobalt as a carcinogenic level 1B was approved. The classification of cobalt as a carcinogenic product generates a great potential negative impact on nickel production in Brazil, since cobalt is also found in trace amounts within nickel production. Restrictions on the commercialization of cobalt would therefore negatively impact nickel production in Brazil. Brazil is the primary nickel producing country in South America, exporting around 70 thousand tonnes of nickel, according to 2017 figures. According to industry estimates for the same year, the total value of nickel production reaches USD 12,350 million. Around 56% of the nickel mine production in Brazil is at risk with limitations on the trade of cobalt. In light of this concern, we kindly ask the EU to consider revising restrictions on the use of cobalt, while relying on sound scientific analyses to support its technical regulations with significant impact on trade.

1.408. The delegation of Australia provided the following statement. As previously noted in this Committee, Australia recognizes the EU's right to regulate for public and occupational health and safety. We also recognize that appropriate classification and labelling for hazardous substances and mixtures can address legitimate public and occupational health concerns. However, Australia and other WTO Members have raised concerns on multiple occasions in this and other fora that these measures are more trade restrictive than necessary. Our concerns have focused on the potential of these regulations to create unnecessary obstacles to international trade in products containing titanium dioxide and cobalt, as well as the raw materials themselves. While the EU has provided some information on the downstream consequences for TiO2, we have yet to receive a clear response to our concerns regarding products containing trace amounts of cobalt. Despite concerns raised by Australia and other Members, the EU has retained the classification of cobalt as a carcinogen through all routes of exposure, rather than limiting the classification to inhalation only. This means a larger number of products are potentially affected by the regulation, and there is therefore a greater risk of unintended downstream consequences. For example, stainless steel is a common product which may contain trace amounts of cobalt in concentrations greater than the generic limit of 0.1% applied in the regulation. We continue to urge the EU to ensure that regulations to address concerns about the possible hazards associated with TiO2 and cobalt are no more trade restrictive than necessary.

1.409. In response, the delegation of the European Union provided the following statement. Thank you to the delegation of Russia for its comments on the classification of cobalt included in the 14th ATP of the Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and mixtures (CLP Regulation). After its adoption by the Commission, the Commission Delegated Regulation was sent to the Council and the European Parliament. These two EU institutions did not object to the measure and the motion for a resolution tabled by the European Conservatives and Reformists was rejected by the European Parliament. Thus, the Commission Regulation was published in the Official Journal of the EU in the beginning of 2020 and the classification of cobalt will become applicable as of 1 October 2021. We would like to reiterate that, in line with the UN GHS (UN Globally Harmonized System of Classification and Labelling of Chemicals), the classification of any substance is based on a hazard assessment and not on risk assessment.

1.410. With regard to the classification of cobalt for all routes of exposure, the Commission would like to confirm that it is in line with the UN GHS. UN GHS stipulates the following in Table 3.6.2: "state route of exposure if it is conclusively proven that no other routes of exposure cause the hazard". In the case of cobalt, such evidence was not available and a potential re-examination of the classification as regards routes of exposure can only be considered if new and relevant data from scientific studies, demonstrating absence of carcinogenic effects from oral or dermal routes of exposure, become available. In fact, the Commission services have already been informed of the

industry plans to conduct an oral carcinogenicity test for cobalt under REACH, so that new evidence can be generated. In any case, in view of the time needed for such test results to become available, there was no scientific and legal justification at this point in time to exclude the oral route. In case new scientific information becomes available in the future, an amendment could only be envisaged following a revised Risk Assessment Committee (RAC) opinion.

1.411. It should also be noted that classification under CLP is based only on the scientific assessment of the hazards derived from the intrinsic properties of a substance and not on its uses, while potential downstream legal or socio-economic considerations are not part of the principles for hazard classification. Nevertheless, the classification under the CLP Regulation does not in itself restrict the placing on the market of cobalt or cobalt-containing products. When a substance is subject to harmonized classification, only labelling and packaging obligations are triggered for that substance and any mixture containing it, but not for articles (e.g. cutlery or other stainless steel articles). Moreover, it should be taken into account that the Commission considered that the method used to determine the Specific Concentration Limit of 0.01% should be assessed in order to discuss if the method is relevant for inorganic compounds like cobalt. The entry in Annex VI to CLP for cobalt is without such specific limit and the generic limit of 0.1% will therefore be applied.

1.412. Finally, with regard to the transparency of the adoption procedure, the Commission would first like to point out that all comments sent to the TBT Committee by WTO Members were distributed to member States and they were duly taken into account by the Commission and member States in the decision-making process. Moreover, ECHA's RAC committee took into account in its scientific assessment all available data, including the information submitted during the public consultation period. As far as information on meetings of the REACH Committee is concerned, it should be noted that REACH Committee discussions and documents submitted to it are confidential since it is a comitology committee, unless access to documents is granted pursuant to Regulation (EC) No 1049/2001. On the other hand, since 2019 the ATPs of the CLP Regulation are discussed in meetings of the CARACAL expert group, in the framework of which all documents and position papers on CLP are made publicly available.

1.3.37 China – Catalogue of Solid Wastes Forbidden to Import into China, G/TBT/N/CHN/1211, G/TBT/N/CHN/1212, G/TBT/N/CHN/1223, G/TBT/N/CHN/1224 (IMS ID 545[74])

1.413. The delegation of the United States provided the following statement. The United States would like to reiterate its concerns, as expressed during our last meeting in February 2020, regarding the negative trade and environmental impacts resulting from China's import ban, and accompanying measures, on certain recovered materials. China has made certain references to environmental concerns and has invoked an objective of environmental protection as the rationale for the measures. Yet, China has provided no details as to what specific environmental concerns it is hoping to address, much less how these restrictive measures – including a full ban – are intended to alleviate any such environmental concerns. China's current approach appears to have the opposite effect. The most likely outcome of the ban is that reusable materials will be redirected from productive purposes, such as recycling, to the waste stream.

1.414. We have repeatedly requested meetings with experts from China's Ministry of Ecology and Environment (MEE) to understand the environmental concerns China has and why these measures are necessary to address those concerns, and to work cooperatively to ensure that valid environmental concerns are met in the least trade-restrictive manner possible. China has declined all such requests. Instead of attempting to explain its environmental objectives and working constructively to minimize trade restrictions, China moved forward with the implementation of these measures and even expanded the scope of restricted materials. 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 United States is very concerned with the overly broad scope of "solid waste", which can effectively result in an import ban on recyclable materials. The United States is also concerned with what appear to be possible different requirements for foreign and domestic commodities.

[74] For previous statements follow the thread under IMS ID 545 (under dates raised and references).

1.415. Recyclable materials (i) have been separated from the waste stream for recycling as a raw material and (ii) are saleable items traded within a distinct global marketplace (i.e., they have an underlying economic value). These qualities make the classification of recyclable materials as "waste" inaccurate. The United States urges China to provide clarification and more precisely define and distinguish recyclable materials and scrap from "waste" in its laws and measures. Additionally, these policy measures appear to be contrary to the pro-circular economy narrative that China is promoting in the WTO as well as internationally. Specifically, a resource-efficient circular economy requires supply chains to work in reverse, channelling end-of-life products towards recycling. It is this process of recycling – from collection to recycling into scrap materials and finally manufactured into recycled commodities – that closes the loop on waste and creates a "circular economy". The products and intermediaries that move along the reverse supply chain must be sourced from a diffuse customer base and thus need trade policies that facilitate rather than impede their movement. However, as the world's largest processor of scrap materials, these measures hinder China's aspirations to transition to a more resource-efficient, global circular economy by directly impacting global recycling networks with its effective ban.

1.416. While China has asserted that it is up to the importing countries to adjust their domestic recycling processes to meet China's import parameters, the United States would like to underscore that for a vast number of materials outlined in China's ban and import control standards, China has no mandatory commensurate domestic standard in place. Also concerning is the lack of notification of new measures related to the trade in scrap materials, including providing a reasonable interval for notice and comment between adoption, implementation, and entry into force of the final measure. We reiterate our request that China immediately halt implementation of its ban and revise the relevant measures in a manner consistent with existing international standards for trade in scrap materials, which provide a global framework for transparent and environmentally sound trade in recycled commodities.

1.417. The delegation of New Zealand provided the following statement. New Zealand acknowledges and supports the right of all WTO Members to regulate to achieve legitimate domestic health and environmental objectives. New Zealand applauds China's stated proactive policy objectives in relation to sustainable development, and encourages valid actions to limit harmful environmental impacts from contaminated waste inside its borders. New Zealand in no way seeks to question China's right to regulate to protect its environment. However, New Zealand remains concerned that vanadium slag is included in China's catalogue of banned imports under this measure. We reiterate our 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 recalls 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.

1.418. New Zealand would appreciate clarification on how China has ensured that the rules that apply to foreign products are no less favourable than those accorded to domestic products. We would be interested also to hear a further explanation from China on how it has ensured that the import ban on vanadium slag is not more trade restrictive than necessary to achieve China's environmental and health protection objectives. New Zealand thanks China for the recent discussion on this issue, and looks forward to further constructive engagement on this topic to better understand China's approach to distinguishing between waste and non-waste materials.

1.419. The delegation of Canada provided the following statement. Canada supports China's willingness to protect the environment, including by limiting harmful impacts resulting from contaminated waste material. However, we want to raise concerns over the inclusion of wood pellets on the list of banned products. Canadian wood pellets are not contaminated. They are 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 are beneficial for the environment and can contribute to China's goal of enhancing environmental protections. Wood pellets are a renewable, low-carbon resource and switching from coal to wood pellets reduces GHG emissions significantly. In this context, we ask China how it has ensured that its ban on wood pellets is not more trade restrictive than necessary to meet China's environmental and health protection objectives. We urge China to consider other mechanisms to address the very specific problem of contaminated materials, while ensuring that mutually beneficial trade can continue in a predictable manner and fulfilling environmental protection goals.

1.420. In response, the delegation of China provided the following statement. China has been pushing for ecological progress, pro-actively practising the values of "sustainable development" and "green development" in order to meet the Chinese people's ever-growing need for a beautiful eco-environment and aiming to solve significant outstanding environmental problems. Advancing the reform of the solid wastes import administration regime is one of the most important steps that the Chinese government has taken to implement the New Development Ideas and to safeguard the eco-environment safety and people's health. In accordance with internationally recognized principles, each Member has the obligation to handle and dispose of the wastes it has generated on its own. China, as a developing Member with the largest population, must make the inevitable choice of restricting and prohibiting imports of solid wastes while improving its own domestic solid wastes treatment and disposal. Current scientific studies indicate 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. Since solid wastes have already significantly increased the burden on China's eco-environment and had huge negative impacts on human, animal, and plant life and health, China considers that merely reforming the domestic regulation of solid wastes would not be sufficient for achieving our purpose of safeguarding the ecological safety and population health to the maximum extent possible.

1.421. In the process of adjusting the relevant policies, the Chinese government has adequately taken into account voices at home and abroad, and adjusted the Import Waste Management Catalogue in different batches. China has also set a sufficient transition period for the relevant industries and has fulfilled our transparency obligations under the WTO rules. Meanwhile, China allows solid wastes processed into raw materials that meet the relevant national quality standards to enter the country by trade. Over the past decades, enterprises from other WTO Members have exported large quantities of solid wastes to China and derived huge financial gains. We earnestly hope that these Members could also actively fulfil their international social responsibility and make contributions to global environmental protection. At present, not only China, but also every Member should follow the fundamental principle of disposal and absorbing the wastes it has generated on its own. Only on the basis of this principle can we reach a better consensus on managing solid waste pollution and search for a solution to this problem. At the same time, abiding by this principle will also contribute to the promotion of the global green low-carbon circular development, and the creation of a clean and beautiful world.

1.422. First of all, China still allows the trade of raw material processed from solid wastes which meet China's quality and safety standards. Second, over the past decades, enterprises from some WTO Members have exported large quantities of harmful solid wastes to China and derived huge financial gains. Third, scientific studies indicate 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. Fourth, in accordance with internationally recognized principles, each Member has the obligation to handle and dispose of the wastes it has generated on its own. At present, every Member, not only China, should follow this fundamental. Only on the basis of this principle can we reach a consensus on managing solid waste pollution and find a solution to this problem. Last, we earnestly urge the Members especially those who are still exporting harmful solid wastes could also actively fulfil their international social responsibility and make contributions to the global environmental protection.

1.3.38 Viet Nam – Cybersecurity Measures (IMS ID 544[75])

1.423. The delegation of the United States provided the following statement. We are deeply concerned with Viet Nam's Law on Cybersecurity. We are also disappointed that Viet Nam failed to notify the Law to the WTO for a formal notification and comment period while it was still in draft form. We urge Viet Nam to immediately notify the Law and the draft implementing measures that were published on 2 November 2018 to allow all interested parties to provide input. We also urge the Government of Viet Nam to carefully review and consider stakeholder comments when finalizing these measures. We also urge the Government of Viet Nam to work with the US and other stakeholders to resolve concerns with the Law on Cybersecurity and its implementing decree. We encourage Viet Nam to consider using a risk-based approach to cybersecurity that draws from industry best practices, widely accepted definitions, and international standards. We request that

[75] For previous statements follow the thread under IMS ID 544 (under dates raised and references).

you consider the Common Criteria Recognition Arrangement (CCRA) certification process when finalizing the draft implementing measures for the Law.

1.424. The delegation of the European Union provided the following statement. The European Union shares the Member's concerns on the Vietnamese Cybersecurity law, which applies as of 1 January 2019, and expresses concern as regards the potential economic impact of this legislation and the compatibility with Viet Nam's commitments under the WTO. The European Union would like to have an update on the adoption of the draft Implementing Decree on Cybersecurity. The European Union hopes that the Vietnamese Government will seriously consider the concerns expressed by the European Union on the Decree and will continue the dialogue with us to ensure it aligns to international best practices. We would also appreciate obtaining some indications on the intentions of the Vietnamese Government as regards further implementing measures and on the plans for taking into consideration comments from interested parties, including industry and stakeholders. The European Union kindly requests that Viet Nam notifies the draft Implementing Decree, as well as any other planned implementing measures, to the TBT Committee in accordance with Article 2.9 of the TBT Agreement, so that WTO Members can provide comments within a reasonable time limit. The European Union encourages Viet Nam to develop and implement the Cybersecurity 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.

1.425. The delegation of Canada provided the following statement. Canada recognizes the importance of cybersecurity and appropriate measures to preserve it, and appreciates the efforts Viet Nam is undertaking to perfect the measures implementing its Cybersecurity Law. Nonetheless, Canada continues to have concerns regarding the compatibility of Viet Nam's measures with its WTO commitments. In line with our previous statements, Canada continues to seek: Viet Nam's recognition that, as currently drafted, the law and implementing decree could have very extensive product coverage; notification of the law and implementing decree to the TBT Committee; the use of international standards and conformity assessment frameworks including the CCRA certification process; and clarification that this matter does not apply to the private sector. Could Viet Nam please update the Committee on the status of the implementing decree and what steps it plans to take next?

1.426. The delegation of Australia provided the following statement. Australia supports the concerns raised by others on this measure and reiterates its previous statement in the TBT Committee. Australia welcomes an update from Viet Nam in relation to the draft Decree being considered for adoption, and next steps.

1.427. In response, the delegation of Viet Nam provided the following statement. The Vietnamese Law on Cybersecurity and the draft Decree for implementing certain articles of this Cybersecurity Law have not regulated technical requirements with regard to information technology products or equipment. The process through which the Law and its draft Decree were formulated and/or to be enacted has been very open, transparent and fully complies with requirements prescribed in the Law on promulgation of legal documents in Viet Nam. In fact, Viet Nam published all draft legislation in this subject matter on respective government portals to enable all individuals, organizations, domestic and foreign stakeholders to access and provide comments. The draft Decree for implementing certain articles of this Cybersecurity Law has been amended and supplemented to be flexible, suitable to reality, and creates the most favourable conditions for foreign enterprises operating in Viet Nam, without hindering the development of the Digital Economy. It is currently being reviewed for approval by the Prime Minister.

1.3.39 European Union – Amendments to the Directive 2009/28/EC, Renewable Energy Directive (IMS ID 553[76])

1.428. The delegation of Colombia provided the following statement. Colombia wishes to reiterate its ongoing concern regarding Directive (EU) 2018/2001 of the European Parliament and of the Council, which establishes that, as from 2021, first generation biofuels shall account for a share of no more than 7% in the transport sector, and that first generation biofuels posing a high risk of indirect land use change (ILUC) shall have their contribution to the renewable energy share gradually reduced to 0% by 2030. In Colombia's view, these provisions are inconsistent with the national treatment and MFN obligations set out in the GATT 1994 and Article 2.1 and 2.2 of the WTO TBT

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

Agreement. We therefore reaffirm the arguments that have been presented at the TBT Committee meetings concerning this matter, which appear in document G/TBT/W/714 dated 2 March 2020. Colombia once again requests the EU to conduct a thorough review of the delegated act in 2021, in order to adopt an approach that enables sustainable palm oil to contribute to the EU's renewable energy targets. We once again welcome the opportunity to comment on this matter and request the EU to clarify how it reconciles this discriminatory treatment against palm oil producing countries with its WTO obligations concerning national and MFN treatment. We look forward to the EU's response to the concerns raised.

1.429. The delegation of Malaysia provided the following statement. Malaysia regrets having to continue raising our concern on the Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources and the Commission Delegated Regulation (EU) 2019/807 of 13 March 2019 which have negatively impacted the oil palm industry and Malaysia's trade interest. The European Union continues to reiterate that the legislation does not represent an import prohibition of biofuels and bioliquids produced from palm oil. However, this is tantamount to a barrier and *de facto* ban of the use of palm oil as feedstock for the production of biofuels and bioliquids for use in the European Union. The development of such regulation has negatively impacted the oil palm industry and Malaysia's trade interest. This has resulted in several countries to enforce legislation to discriminate biodiesel produced from palm oil against biodiesel produced from other vegetable oils in terms of fiscal incentives without substantiated by scientific evidence.

1.430. The measure is believed to have culminated into a technical barrier to trade that distorts the market and pricing system. This is a measure which is against the principle of free trade that is unfavourable to palm oil. We remain troubled as this creates the arbitrary or unjustifiable discrimination disguised restriction on international trading of palm oil and its products. This is taking into consideration that the delegated regulation creates unnecessary obstacles which are more trade restrictive than necessary and more burdensome for producers of palm oil-based biofuels and bioliquids including Malaysia. We have been engaging with the European Union in all possible fora to provide scientific evidence, facts and information as well as to exchange views to find a mutually beneficial and mutually acceptable way forward to ensure continued market access for Malaysian palm biodiesel.

1.431. Although we appreciate the European Union for their willingness for open discussion and dialogue, the continuous engagements have not translated in a fair treatment for palm oil produced in Malaysia. We urge the European Union to observe the principles of fairness, justice, openness, transparency and non-discrimination in conducting international trade. We also urge the European Union to provide an equitable treatment across all oil crops biofuels and bioliquids in line with the principle of non-discrimination which stipulates that a Member shall not discriminate between "like" products from different trading partners. Malaysia is committed to realising the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals. The Sustainable Development Goals are a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity. In this context, the oil palm industry plays a very important role in contributing positively and constructively towards achieving the Sustainable Development Goals.

1.432. Apart from that, in March 2019, the Government of Malaysia had agreed with the new policy in ensuring that Malaysian oil palm is cultivated in a sustainable manner. The measures included to cap oil palm cultivated area to 6.5 million hectares; to put a stop on conversion of permanent forest reserved area; to halt planting of oil palm in the new peatland area and further strengthen regulations with regard to existing oil palm cultivated on peat; and to make available oil palm plantation maps for public access that demonstrate further transparency in the supply chain. Malaysia wishes to emphasize that the Malaysian oil palm industry is committed to produce palm oil in accordance with sustainable principles and criteria under the Malaysian Sustainable Palm Oil (MSPO) certification scheme, which has been implemented on a mandatory basis since 1 January 2020.

1.433. Malaysia reiterates its commitment made at the Rio Summit in 1992 to retain at least 50% of the land area under forest cover and has put in place policy framework and legislation to ensure sustainable development balancing the protection of the environment and socio-economic development. This is evident through the implementation of various programmes and initiatives for conservation and preservation of forests and biodiversity including among others:

a. The Central Forest Spine covers 5.3 million hectares in Peninsular Malaysia and the Heart of Borneo is a trilateral cooperation between Brunei, Indonesia and Malaysia covering an area of over 20 million hectares. These initiatives help to strengthen the world's resilience to climate change by conserving carbon sinks and creating a huge green lung for the world while at the same time protecting the livelihoods for the forest dependent communities;

b. A survey project that aims to undertake a new population survey of the orang-outan and pygmy elephants in Sabah. This survey will bring together wildlife experts, scientists and researchers to take part in an extensive study on the population of the state's iconic wildlife; and

c. Replanting of one million forest tree species within the next 10 years particularly in degraded lands as well as protecting the wildlife population which the projects will be sponsored primarily by the palm oil industry players. On the other hand, Malaysia is now in the midst of setting up a specific fund for green initiatives, especially for tree planting and wildlife conservation.

1.434. We urge the European Union to acknowledge and recognize the efforts and commitment in sustainable production of Malaysian palm oil as well as our contributing towards protection and conservation of forest and biodiversity. We remain fully open and committed to negotiating in a sincere and constructive manner in ensuring a non-discriminatory treatment against palm products and to prevent the unnecessary barrier for market access of palm products into the European Union. Malaysia will continue to monitor the development and we look forward to the response from the European Union.

1.435. The delegation of Ecuador provided the following statement. We wish to refer Members to documents G/TBT/W/650 and G/TBT/W/718, which contain the statements made by Ecuador on this matter during the meetings of this Committee held in June and November 2019 and in February 2020. My delegation is compelled to reiterate its concern regarding this European Union (EU) regulation and the methodology for calculating indirect land use change (ILUC) upon which it is based, which lacks solid scientific grounds. The EU claims that this regulation is not a ban on the import of palm oil or palm oil based biofuels. However, even if there is no explicit ban, the regulation is designed in such a way that there effectively is one. On the one hand, it leads to arbitrary discrimination between like biofuels, some of which are produced from crops such as rapeseed and sunflower that are less productive per hectare than oil palm, yet are not considered to present a high ILUC risk. This could be inconsistent with obligations under Article 2.1 of the TBT Agreement and Article I:1 of the GATT 1994. On the other hand, it favours the use of raw materials of European origin, which would violate the principle of national treatment contained in Article 2.1 of the TBT Agreement and Article III:4 of the GATT 1994. Any environmental measure for fulfilling the European climate agenda must be compatible with the multilateral trading system. In other words, the measure must not constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.

1.436. The delegation of Guatemala provided the following statement. We would like to thank Colombia for including this item on the agenda. The systemic concern regarding this measure has been noted and will be followed up accordingly.

1.437. In response, the delegation of the European Union provided the following statement. The European Union thanks various Members for raising this issue. The European Union notes that the issue of amendments to the EU Renewable Energy Directive is now subject to WTO dispute settlement proceedings, notably under DS593 (*EU – Certain measures concerning palm oil and oil palm-based biofuels*). In order to preserve the integrity of such proceedings, the European Union will defer all discussions to that forum and accordingly refrain from discussing this matter in this Committee.

1.3.40 Thailand – Certificate of Analysis for the import of alcoholic beverages, G/TBT/N/THA/524, G/TBT/N/THA/548, G/TBT/N/THA/549 (IMS ID 556[77])

1.438. The delegation of the European Union provided the following statement. The European Union would like to thank Thailand for the reply of 24 April 2020 to the comments submitted in December 2019 as regards the notifications G/TBT/N/THA/548 and G/TBT/N/THA/549 notified on 18 June 2019. The European Union welcomes the information concerning the consultation with stakeholders and the meetings held with embassies, including the delegation of the EU in Thailand, prior to the entry into force of the concerned regulations. However, such public consultation does not preclude Thailand from the obligation to notify the draft regulations to the TBT Committee at an early appropriate stage providing a reasonable commenting period to the Members in line with Articles 2.9.2 and 2.9.4 of the TBT Agreement. The European Union understands that Thailand recognizes OIV methods of analysis as "equivalent test methods" for Wine and Sparkling wine made from grapes and fermented liquor insofar as the issuing authority can confirm that the amounts of substances in the products do not exceed the limits set by the Excise Department. If it is not the case, the importer shall submit samples of the wine to the Excise Department laboratory, a Government laboratory or a private accredited laboratory in Thailand. The same reasoning applies for the acceptance of the "EU wine export certificate" in order to show compliance with the new Thai standards. As for the recognition of other "equivalent test methods", the European Union would like to seek further clarification regarding the principles applied by Thailand for the acceptance of test methods accredited according to the ISO/IEC 17025 standards.

1.439. The European Union fully concurs with Thai authorities in the protection of consumer health as the main driver for the establishment of maximum level of substances for liquors. In this respect, the European Union reiterates the recommendation to adopt scientifically based international standards and test methods such as, for wine, those of the International Organisation of Vine and Wine (OIV) that protect consumers' health while avoiding unjustified trade barriers. In particular, we would highlight the specific burden that the analysis of non-typical parameters would represent for small export volumes. The European Union reiterates its willingness to work with Thailand on the review of the Thai standards with the objective of ensuring their alignment with international standards. The on-going work by the OIV on the update of the international standard for certificates of analysis should also be taken into account in this respect. The European Union considers that it is crucial to address the differences between the standards of the Excise Department and internationally accepted practices, which may be an obstacle for future trade flows of safe alcohol products.

1.440. The delegation of New Zealand provided the following statement. New Zealand supports concerns raised by other Members. New Zealand acknowledges and supports Thailand's right to introduce new regulations to address specific public health concerns. New Zealand appreciates that in seeking to address the harmful use of alcohol, the technical regulation is directed towards achieving a legitimate public health objective. However, New Zealand exporters continue to face uncertainty with regards to certification requirements and have concerns about the impact of the additional testing requirements on their ability to gain timely certification for exports. New Zealand would appreciate an update as to whether Thailand has given any further consideration to accepting other recognized industry certification that achieves the stated objectives? New Zealand remains eager to work with the Thai Government to ensure New Zealand exporters meet Thailand's objectives under these regulations through the least trade-restrictive means.

1.441. The delegation of Japan provided the following statement. Japan also has concerns on this issue raised by the European Union. Japan understands that requesting a Certificate of Analysis when importing liquors to Thailand is a necessary measure to ensure the health and safety of consumers in Thailand. However, some of the items required in the certificate include those that are not generally analysed in Japan. Also, submitting a sample to Thailand's Excise Department when applying for importation is a burden on exporters, etc., in terms of costs and procedures, which leads to trade obstacle. Japan requests Thailand to review the measure in the future, taking into account the concerns submitted from the WTO Members, so that exporters can trade with minimal restrictions.

1.442. The delegation of Canada provided the following statement. Canada appreciates the bilateral dialogue with Thailand at the last TBT Committee where Canada had an opportunity to share with

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

Thailand the existing limit differences of some substances between the Certificate of Analysis requirements established by Thai Excise Department and those accepted in Canada. Canada remains very interested in Thailand's consideration of amending the threshold limits of those substances that are difficult to match as currently established in the Thai Certificate of Analysis. Canada strongly encourages Thailand to consider harmonization of Thai's Certificate of Analysis requirements with scientifically based internationally recognized standards to avoid unnecessary and unjustifiable barriers to trade. In particular, Canada is interested in knowing whether Thailand would consider accepting other foreign recognized Certificate of Analysis issued by accredited laboratories such as those accepted in Canada without having to demonstrate that all substance levels match those of Thailand. Canada would like to thank Thailand for the bilateral engagement to date and is keen to continue to work with Thailand to facilitate trade of alcoholic beverages to Thailand for the Canadian industry.

1.443. In response, the delegation of Thailand provided the following statement. Thailand appreciates the comments from the European Union, Canada, Japan and New Zealand that expressed their concerns on Thai liquor analysis standard. In this regard, Thailand would like to inform the WTO Members that the substances specified in Thai liquor analysis standard have previously been found in the imported and domestically produced liquor products in the last five years. In addition, those substances have been tested and the results have been shown that these substances have some adverse effects on Thai people's health. Therefore, to protect Thai people's health and safety, it was deemed necessary to establish the maximum limits for the additives and contaminants based on Codex Standards and maximum limit for the other chemical substance attributes were set according to the Acceptable Daily Intake (ADI) at the level that are suitable for Thai people.

1.444. As Canada and New Zealand expressed their concerns on the acceptance of other recognized industry certification and the Certificate of Analysis issued by the accredited laboratories, Thailand would like to inform that the test method for each individual substance specified in the Certificate of Analysis must be accredited according to ISO/IEC 17025 or recognized by International Organization Standards or Regional Organization Standards. In case of other test methods that are not considered as the equivalent test method based on the above-mentioned standards, the importers can submit the test methods to the Development of Analytical Standard on Excisable Products Committee set up by the Excise Department to consider whether such test methods are equivalent to or can be recognized as the test methods mentioned in the Ministerial Regulation on Liquor Importation Permission and the Notification of Excise Department, which has been amended on 5 June 2019. Finally, Thailand stands ready to work with all WTO Members in order to promote international trade and maintain mutually beneficial trading relationships.

1.3.41 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[78])

1.445. The delegation of the European Union provided the following statement. The European Union would like to thank Brazil for their constructive approach, which resulted in the simplification of the list of certification parameters for imported wine, in particular the removal of some burdensome parameters, sweeteners and colours (adoption of Technical Regulation 75 of 31 December 2019, notified to the TBT Committee as G/TBT/N/BRA/956). Nevertheless, the European Union would like to recall some of the concerns raised in EU written comments and in previous meetings of this Committee that remain relevant. With regard to the list of certification parameters for imported wine, the EU would like to ask Brazil for the reasons for systematic analysis of methanol, which makes imports of small volumes of wine very difficult. Methanol is naturally produced in wine during the alcoholic fermentation and according to scientific studies performed by the EFSA, it does not represent a food safety concern.

1.446. As noted previously, several content limits required by the Brazilian technical regulations are not aligned to the OIV recommendations, in particular maximum limits for total acidity. Other limits, for example for chlorides and ashes are not covered by OIV recommendations. In addition, the OIV non-compliant limits for alcoholic degree would not cover, for example, EU wines covered by

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

geographical indication with alcoholic limits that can go down to 4.5% volume. Finally, as repeatedly raised by the EU, the sugar content limits diverging from OIV are causing long-standing problems for imports of EU sparkling wines. The EU wine importers point out to the lengthy and cumbersome customs procedures in Brazil, including counter-analysis of certification parameters. The divergence of test methods from OIV standards also causes difficulties for imports, as the results may differ from the results in the Certificate of Analysis in origin. The EU would like to ask Brazil for the reasons behind these requirements, which would seem disproportionate for low-risk products such as wine. In conclusion, the European Union would also like to reiterate the invitation to make use to the maximum extent possible of the recommendations of the OIV when revising the relevant technical regulations and to consider accepting imported wines made according to oenological practices authorized by the OIV. The European Union is prepared to work bilaterally with Brazil in this respect.

1.447. The delegation of the United States provided the following statement. During the February 2020 TBT Committee meeting Brazil asserted that the requirements outlined in Normative Instruction No. 75 were previously in force pursuant to Technical Regulations 14, 48, and 67. Further, Brazil indicated during that meeting that it finds the revised requirements to be trade facilitating rather than restricting because the new requirements constitute a reduction from 15 to 7 analytes. The United States thanks Brazil for this reduction in analytical requirements but notes the challenges that exporters continue to face satisfying the existing requirements. The analyses required concerning ash content and methanol, in particular, are unnecessary and cost prohibitive for exporters. The United States notes that the analysis of ash content is uncommon and has become an inherent barrier to trade. Further, it is our understanding that Brazil will require both a Certificate of Analysis and an "Import Inspection Pre-Certification Report" ("Laudo Pre Certificado de Inspeção de Importação") containing several additional analyses apart from those required in the Certificate of Analysis. The Import Inspection Pre-Certification Report would be generated by a Brazilian laboratory upon importation. The United States is not aware of any other market that requires laboratory analysis, and corresponding certification, in both the exporting and importing countries for a single shipment. Can Brazil please explain the rationale for these seemingly burdensome requirements that are likely to restrict trade? Are both certificates always required for all wine imports? We hope for the opportunity to continue to discuss these requirements with you bilaterally so that trade in wine is not disrupted.

1.448. The delegation of New Zealand provided the following statement. New Zealand refers to our previous statements on this STC, which continues to significantly affect New Zealand wine exporters. New Zealand thanks Brazil for the bilateral engagement on this matter.

1.449. In response, the delegation of Brazil provided the following statement. Brazil thanks New Zealand, the EU and the US for their comments. Brazil acknowledges that, upon raising this STC, Members have also referred to Technical Regulation 75, published on 31 December 2019 and notified to the Committee on 14 January 2020 under document G/TBT/N/BRA/956. Brazil considers that the above-mentioned technical regulations (TR 14, 48 and 75) are necessary to guarantee the quality of wines consumed in national territory. Technical Regulation 75, which came into force on 2 January 2020, defines 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. In this context, it is 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 were approved. Among other elements, Technical Regulation 67 requires the presentation of analysis results for the parameters defined in Technical Regulations 14 and 48. It is important to highlight, with regard to these Technical Regulations, that Brazil provided a grace period of 365 days for countries to adapt to the new requirements.

1.450. Technical Regulation 75, on the other hand, establishes the analytical parameters that must be included in the laboratory reports used in the inspection and control of imported and national beverages. These analytical parameters are set out in Operational Standard No. 1, of 24 January 2020. Therefore, the number of parameters is reduced to seven, in comparison with the 15 parameters contained in the provisions of Technical Regulations 14 and 48. TR 75 does not pose new requirements. The practical effect of such measures, by decreasing the ratio of physical-chemical parameters required by Technical Regulations 14 and 48, is to make the technical criteria for imported wine less trade restrictive. It is our understanding that Technical Regulation 75 is a

trade-facilitating measure when compared to past regulations. Brazil is a growing wine consumer and producer, a condition that entails regulatory action for the sector. When developing new regulations on wine, Brazil will continue to abide by WTO rules.

1.3.42 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), G/TBT/N/EU/609 (IMS ID 575[79])

1.451. The delegation of China provided the following statement. The EU notified the draft regulation (Draft Commission Regulation laying down ecodesign requirements for electronic displays (G/TBT/N/EU/609)) on 9 October 2018. After the comment period, the European Commission revised the Regulation and announced a new version on 8 May 2019. On 25 December 2019, EU published the Regulation in the Official Journal (OJ), which was scheduled to take effect on 1 March 2021. Compared with the original one, the latest version added new requirements, especially for prohibiting using halogenated flame retardants; such new requirements have not been notified to WTO. We suggest EU to notify such new requirements to WTO and allow reasonable time for other Members to make comments.

1.452. China raised concerns at the 78th, 79th, 80th, 81st and this TBT Committee meetings, proposing EU to delete the provisions on the prohibition of halogen flame retardants and reduce the requirements on the energy efficiency limit of OLED displays. At the 81st meeting, the European Union replied that "the requirement aims at increasing the yield of recycled plastics once the displays, at their end of life, are treated at recycling plants, because currently the plastics containing any of the halogenated compounds are systematically incinerated." For the concerns about reducing the energy efficiency limit of OLED TV displays, the EU did not respond. We thank EU for reply, but after a careful study of the EU's treatment flow of WEEE plastics, we believe that the reasons given in the reply are not tenable. Based on this and other unresponsive matters, we present the following comments.

1.453. *Exempt "LED displays" from the scope of the Regulation*: According to (EU) 2019/2021 Article 2(5), digital signage display shall include five features, however, RJ45 network cable transmits video signals for the LED display, not the network signal. Therefore, it is not completely consistent with (C) of five features, and LED display should not be judged as a digital signage display. If the LED display is included in the digital signage display for management, it shall conform to the requirements of table 2 in (EU) 2019/2021 C of ANNEX II, that is, off mode 0.3W, standby mode 2.2W, network standby mode 7.7W. However, due to the product characteristics, the single power consumption of the LED display plus the self-power consumption of the receiving card far exceeds the maximum requirement (7.7W), and the current international advanced level can only reach 15W. Existing products and the technology cannot meet the requirements of the regulation, which will impede the LED display from entering the EU market, thereby affecting the use of LED display in various application scenarios such as stage, billboard, touring, etc., and undermine the interests of EU end customers. In addition, the EU's energy efficiency requirements for digital signage display are much higher than international standards. For example, the United States and Japan do not lay down energy efficiency standards for LED display and digital signage display. Therefore, it is recommended that the EU exempt "LED displays" from the scope of the Regulations.

1.454. *Reduce the energy efficiency limit for OLED displays*: We did not receive any reply on this problem at previous TBT Committee meetings. In the Regulation, although the correction parameter is revised to 10 considering the technical characteristics of OLED displays, the standard for calculating the EEI value (energy efficiency index) of OLED displays is still higher than the requirement of most Members, such as the United States and Japan. According to Articles 2.2 and 2.5 of the TBT Agreement, we recommend the EU to further reduce the energy efficiency limit for OLED displays or explain the rationale for the limit.

1.455. *Delete the ban of halogenated flame retardants in D4 Annex II*: The restriction for halogen flame retardants in Annex II D of the Regulation was a significant change that would affect global chemical sectors. According to Article 2.9 of the TBT Agreement, we would like to suggest EU to notify this requirement. Secondly, EU replied at the 81st TBT Committee meeting that the

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

requirement aims at increasing the yield of recycled plastics because currently the plastics containing any of the halogenated compounds are systematically incinerated. However, in accordance with Page 2 of Responsible Recycling of WEEE Plastics Containing Brominated Flame Retardants[80], WEEE plastics containing bromine less than 2000 pm are recycled in EU. As to WEEE plastics containing bromine more than 2000 pm, 92% still can be recycled and only 8% containing restricted BFRs are incinerated, and it also gives the name and thresholds of the restricted BFRs. The treatment flow demonstrates that EERA can soundly treat WEEE plastics containing BFRs in accordance with EN 50625-1 General Treatment and Depollution Standard, which is not all incinerated as mentioned in the reply. Thirdly, the plastics with halogen flame retardants have the unique advantage according to the mechanic process for plastics. ABS plastics added with halogen flame retardants can maintain their original fire safety after four or five times of recycling. This is exactly in line with the aim of the Circular Economy Strategy. In addition, there has never been no international practice as restriction on all halogen flame retardants. Therefore, according to Articles 2.2 and 2.4 of the TBT Agreement, we recommend the EU to reconsider the restrictions for all halogen flame retardants according to scientific basis and delete the requirement of D4 Annex II. If it cannot be deleted, please give the specific names and clarify the thresholds of the restricted halogenated flame retardants.

1.456. *Exempt "status displays and control panels" from the scope of the regulation, consistent with the notification G/TBT/N/EU/609:* We have not yet received any response to this concern from the EU at 79th-81st TBT Committee meetings and a specific reply from the EU side will be highly appreciated.

1.457. The delegation of Brazil provided the following statement. Brazil would like to second some of the concerns raised by China with regard to this STC. We have received complaints from our private sector, which will be particularly affected by the prohibition on the 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". As mentioned in our statement in the TBT meeting of last November, we understand that such requirements are not even in line with the REACH Regulation and the RoHS Directive. The potentially conflicting regulatory requirements between those measures and the Eco-design Directive raise questions about transparency in regulating these products. We acknowledge the EU concerns with the fact that HFRs in enclosures and stands of electronic displays could hinder recycling of WEEE plastics. However, our private sector has indicated that the recycling of brominated flame retardants, for instance, is being well managed by innovative plastics and polymer recyclers. Therefore, Brazil asks the European Union to consider withdrawing such burdensome and trade-restrictive requirements.

1.458. In response, the delegation of the European Union provided the following statement. The European Union thanks China and Brazil for raising this issue. As regards China's points. Point 1: The Commission confirms that the WTO TBT notification of 8 October 2018 presented the final draft that the Commission proposed to the representatives of member States and that draft represented the Commission position. Comments received within the deadline were examined and taken into due consideration. Points 2.1, 2.2 and 2.4: On 8 October 2018, the Commission notified the draft Regulation and two months were provided for comments. The comments received in due time were considered, the draft requirements amended where relevant, the final Regulation text voted by member States, the Draft Regulation adopted by the Commission and finally published in the Official Journal of the European Union on 5 December 2019. Although the Commission understands that the Regulation may give rise to new and different views and opinions, no further modification is possible at this stage; this would require a restarting of a regulatory process. With respect to the higher ambition of EU regulations compared to other administrations, this is in line with the legitimate policy objective of the EU to mitigate climate change and become a carbon neutral continent no later than 2050.

1.459. However, in respect to the specific issues raised. Point 2.1: The Commission recalls that industry representatives are deeply involved in the preparation and discussion of requirements. No concerns have been expressed by industry, including the biggest worldwide display manufacturers, on the feasibility of requirements that China is mentioning. Point 2.2: A careful reading of the Regulation can reveal that OLED displays get a correction factor, discounting the minimum requirements for OLED displays to be placed on the EU market, until 28 February 2023 (Annex II, point A.1.). Point 2.4: Status displays and control panels are only in scope for material efficiency

[80] https://www.eera-recyclers.com/publications.

requirements. Displays that are components or subassemblies are out of scope. Point 2.3: The Commission consulted EERA and asked confirmation of the understanding of the documentation that China signalled. We confirm, once more, that the EERA documentation[81] indicates that 8% of plastics are incinerated because they contain BFR; the 8% fraction is an average for different products (higher for televisions and other displays) and represents the fraction of plastics containing halogenated flame retardants (generally 10 to 25% in weight for electronic displays such as TVs). As China correctly notes, WEEE plastics containing residual bromine (i.e. less than 2000 ppm), represent, on average, 92% of plastics yield and can still be recycled. However, 8% on average (but far more for displays) of plastics, containing any BFR (restricted or not), are all incinerated. We kindly invite you to more carefully analyse the drawing on page 2 of the document of EERA to which you refer.[82] Consequently, the rationale for the restriction of HFRs in the enclosure and stand, and all evidence collected and summarised in the Impact Assessment, is perfectly in line with the documentation from the recycling industry association that China signalled. Moreover, "possible" presence of HFRs requires a costly selection process that would be otherwise avoided, should the enclosure and stands be HFR-free by design. Thus, the restriction will have the further side effect, in the future, of streamlining the plastics treatment and reducing plastics selections costs.

1.460. With respect to the request of thresholds for residual content, we are pleased to confirm that draft Guidelines are being discussed with relevant stakeholders. In accordance with the limits that RoHS sets for placing plastics in the EU market, including the recycled plastics resulting from treatment of future electronic displays, once at their end of life, we confirm that a threshold of 1000 ppm (or 0.1% in weight for homogeneous materials) is considered, for any halogenated flame retardant, in line with RoHS legislation in force.

1.461. As regards Brazil's points: The Ecodesign requirement in the above-mentioned regulation, in respect to the restrictions on the use of halogenated flame retardants, is complementary and not overlapping with RoHS, REACH and WEEE legislation. Maximum concentration values tolerated of halogenated flame retardants in the enclosure and in the stand of displays are in line with RoHS limits, i.e. 0.1% (1000 ppm) of any halogenated flame retardant for each homogeneous material part. This requirement has been introduced to streamline the selection process by the WEEE recycling industry in the EU for electronic displays in the future and to avoid that a relevant fraction of these plastics (i.e. all those where the content of halogenated flame retardants cannot be reliably and consistently measured below the 1000 ppm threshold) is incinerated, as currently commonly done.

1.3.43 European Union – Medical Device Regulation (MDR) and In Vitro Diagnostic Medical Devices Regulation (IVDR), G/TBT/N/EU/71/Add.1, G/TBT/N/EU/72, G/TBT/N/EU/72/Add.1 (IMS ID 594[83])

1.462. The delegation of the United States provided the following statement. The United States supports the development and enforcement of a well-defined medical device regulatory system that assures the safety and performance of medical devices especially now given the global health crisis we are facing. However, we continue to have serious concerns regarding the implementation of the MDR and IVDR, and our industry remains worried about its continued access to the EU's USD 125 billion medical device market, USD 20 billion of which is supplied by US products. We have been articulating two major concerns: first, there remains an insufficient number of Notified Bodies designated to perform certification activities under the MDR/IVDR; second, the EU has drafted an insufficient number of the implementing acts needed to provide detailed guidance about how industry can ensure their products comply with the new product standards. Given the one-year delay in implementation approved last month due to the global pandemic, what steps does the EU foresee taking to address these concerns to ensure that we are not facing the same difficulties a year from now and there is not a market shortage of medical devices?

1.463. The delegation of the Republic of Korea provided the following statement. Korea would like to make some comments regarding this regulation as follows. Korea supports the legislative objectives of the regulation which is to ensure the safety and quality of medical devices in the EU market. We also appreciate the European Commission's decision to postpone the implementation of

[81] https://www.eera-recyclers.com/files/eera-bfrs-folder-online-2.pdf.

[82] https://www.eera-recyclers.com/files/eera-bfrs-folder-online-3-may-2020.pdf i.e. https://www.eera-recyclers.com/publications.

[83] For previous statements follow the thread under IMS ID 594 (under dates raised and references).

the MDR for one year in order to allow member States, health institutions and economic operators to focus on responding to the global pandemic. However, we would like to reiterate several concerns from the Korean industry that has not yet been addressed regarding the implementation of the regulation. According to our understanding, only 12 Notified Bodies have been designated to perform CE certification activities under the MDR as of now. Considering that there remains an insufficient number of Notified Bodies designated to perform the certification activities in accordance with the MDR, we are concerned whether the demands of exporters could be met. The European Commission has been drafting the implementing acts and guidelines aimed to underpin the implementation of the MDR. However, their provision has been delayed, hampering the Korean industry's effort to prepare for the implementation of the new regulation. Given these concerns, Korea would like to request the EU to designate sufficient number of Notified Bodies as soon as practicable and share any updated information such as the list of newly designated Notified Bodies in order to facilitate the implementation of regulation. Furthermore, we kindly ask the EU to provide a meaningful transition period for Korean exporters to comply with the MDR.

1.464. The delegation of Japan provided the following statement. Japan would like to express its support for the development of medical device regulations setting high standards of quality and safety for medical devices. In addition, Japan welcomes that the adoption of the proposal by the European Parliament and the Council to postpone the date of application of MDR until 26 May 2021 in order to focus on the fight against the coronavirus pandemic. Japan recognizes that the majority of Notified Bodies (NBs) have not yet performed conformity assessment activities under the MDR in Japan. Therefore, regarding the postponement, Japan would like to request that the EU ensure that manufacturers can place new or improved products with new functions on the EU market in accordance with Medical Device Directive until the newly stipulated date of MDR application. Furthermore, Japan continues to request that the EU: (i) ensure that NBs have sufficient capacity to issue certifications in a timely manner, including commencement of evaluation by NB's branch offices in Japan; (ii) issue necessary MDCG guidance quickly; and (iii) share information regarding the legislation plan for implementation laws, so as to enable Japanese manufacturers to ensure compliance with MDR before the revised application date.

1.465. The delegation of China provided the following statement. The EU notified the Proposal for a Regulation of the *in vitro* diagnostic medical devices (G/TBT/N/EU/72) on 23 October 2012, and notified the first reading of the revision of the regulation (G/TBT/N/EU/72/Add.1) on 23 March 2017. On 5 May 2017, the EU issued the regulation (EU) 2017/746 on *in vitro* diagnostic medical devices (IVDR), repealed Directive 98/79/EC (IVDD) and Commission Decision 2010/227/EU, which shall apply from 26 May 2022. China raised concerns at the 80th TBT Committee meeting, proposing EU to speed up the authorization of testing agencies, simplify the certification process and postpone the implementation time. The EU replied that "Based on current information available, estimates indicate that approximately 20 Notified Bodies might be designated under the Medical Devices Regulations by the end of the year. Notified Bodies have increased their resources by an average of 50% for the assessment of medical devices and by up to 200% for the assessment of IVDs". For the concern about simplification of the certification process, the EU did not respond. We appreciate EU for the reply, but after a careful study for the number of NBs, we believe that it is not enough for manufacturers to quickly obtain CE certification.

1.466. Therefore, we present the following comments. *Postpone the implementation of IVDR for 2 years*: According to estimates, about 85% of the *in vitro* diagnostic medical devices entering the EU market must be assessed by Notified Body to obtain a CE certificate for the purpose of compliance with IVDR regulations, rather than in the form of "self-declaration", while the proportion is only 15% for compliance with IVDD regulations. Even a large number of *in vitro* diagnostic devices have obtained valid IVDD certificates, they still need to be re-certified according to the requirements of new products. However, at present, the EU has announced only three NBs, and has neither issued, nor updated the list of EU harmonized standards, nor the more detailed certification guidelines, and no laboratory has been authorized by the EU reference laboratory yet. If such a situation continues, it will be difficult for manufacturers to rectify according to the list of harmonized standards, as well as to conduct tests in authorized laboratories and obtain certificates issued by the notified body in a timely manner. Therefore, we propose to postpone the implementation of IVDR from May 2022 to May 2024.

1.467. *Provide a simplified certification for devices that have been CE certified*: Products (with List B and above risk) that have been on the market or have been in use for many years, have continuous quality and safety assurance, as they have been CE certified according to the IVDD regulations. For

these products, in light of continuity of IVDD and IVDR regulations, we suggest EU to provide a simplified certification so as to ensure a smooth transition of regulations. *Expedite the announcement of laboratory authorization and preparation*: According to the classification requirements of the IVDR regulations, in addition to applying for a CE certificate for exporting high-risk products to the EU, inspection at an authorized laboratory is also required. Therefore, manufacturers need to consider the laboratory resources in advance while applying for product certification. However, the EU has not announced any laboratories that have been authorized. As the certification of high-risk products takes a relatively long time, manufacturers can't choose the suitable laboratory and make corresponding preparations, which will make it more difficult to be certified. *Accelerate the establishment of the EUDAMED medical device database*: According to the requirements of the IVDR regulations, all medical device manufacturers that export to the EU need to apply for SRN (Single Registration Number) in EU medical device database before obtaining the CE certificate. At present, the EU has not confirmed the medical device database and the relevant SRN guidelines for application, which has made medical device manufacturers unable to properly prepare application materials and complete the preparatory work for CE certification.

1.468. The delegation of Mexico provided the following statement. The delegation of Mexico reiterates its support for the development and improvement of regulatory frameworks that promote product quality. However, it is important that such regulatory frameworks and any changes thereto do not generate unnecessary obstacles to trade. The delegation of Mexico therefore reiterates its request for updates on the implementation of the new regulatory framework for medical devices and in vitro diagnostic medical devices (IVDs). The European Union notified this new regulatory framework on 23 October 2012 and on 22 March 2017 in documents G/TBT/N/EU/72, G/TBT/EU/N/71/Add.1 and G/TBT/EU/N/72/Add.1. Mexico's interest in this matter is based on its concern that the time frames, infrastructure and number of certified bodies may be insufficient and affect Mexican exporters. We thank the European Union for giving its attention to this matter and look forward to receiving the information and updates requested.

1.469. In response, the delegation of the European Union provided the following statement. Thank you to the WTO Members for their comments on the MDR and IVDR. The new legislation on medical devices was adopted by the Council and the European Parliament in April 2017. This new framework sets high standards of quality and safety for medical devices and aims at ensuring the smooth functioning of the internal market. The new provisions were scheduled to apply from 26 May 2020 for medical devices and 26 May 2022 for *in vitro* diagnostic medical devices. In view of the exceptional current circumstances of the COVID-19 crisis and, with patient health and safety as a guiding principle, the date of application of the MDR has been postponed until 26 May 2021. This postponement takes the pressure off national authorities, Notified Bodies, manufacturers and other actors so they can focus fully on urgent priorities related to the COVID-19 crisis. The IVDR's[84] corresponding date of application remains the same (May 2022). The Commission continues to monitor the impact of the COVID-19 crisis with regard to this application date.

1.470. The Commission and member States are continuing the work on implementing acts and guidelines under the current circumstances. The new legislation contains about 80 empowerments for different types of implementing acts, but only a few such acts are necessary for rendering the legislation operational. To date, there have been over 45 published guidance documents and several key and much awaited guidance on clinical requirements has been published recently. In addition, the date for the launch of expert panels, as well as the registration module of the EUDAMED database, have been adapted to the new application date and will be in place well before May 2021. The other parts of the EUDAMED database will be made gradually available. The legislation provides, in the meantime, for alternatives to the EUDAMED use.

1.471. To date, there have been 18 designations of Notified Bodies under the two new regulations, 15 under the MDR and three under the IVDR. Notified Bodies designated under the MDR reportedly hold a significant share of the market and have already accepted above 750 applications. The Commission is also expecting a significant increase in the course of this year. Additionally, the grace mechanism to smoothen the transition will remain in place. The new MDR thus continues to recognize, under certain conditions, the certificates issued in accordance with the current EU's Medical Device Directive through the MDR's transition period (i.e. until May 2024), provided the

[84] Regulation (EU) No 2017/746 of the European Parliament and of the Council of 5 April 2017 on in-vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (OJ L 117, 5.5.2017, p. 176).

certificate has not reached its expiry date. We understand that a majority of manufacturers intend to make use of this transitional tool and have renewed their existing certificates to that purpose. As a final resort (in duly justified cases and in the interest of public health or patient health or safety), national competent authorities may authorize within their territory the placing on the market of specific devices which have not fulfilled the conformity assessment requirements. In exceptional cases, the Commission may decide to extend those national measures to the territory of the Union for a limited duration. The EU is fully committed to ensure that the new system provides a higher level of patient protection.

1.3.44 European Union – Concerns on regulations with regard to eco-design requirements for various products in EU, G/TBT/N/EU/606, G/TBT/N/EU/607, G/TBT/N/EU/615 (IMS ID 592[85])

1.472. The delegation of China provided the following statement. China would like to reiterate our concerns on EU eco-design requirements on light sources, and household washing machines. For the eco-design requirements for light sources, in accordance with Article 2.4 of the TBT Agreement, we recommend EU use IEC standards for colour consistency and calculation of lumen maintenance factor of LED lights. We suggest that EU clarify the test method for the "Pst LM" value of "Flicker for LED and OLED MLS" and "SVM" value of "Stroboscopic effect for LED and OLED MLS". For the testing of verification tolerances, we recommend EU use the current international standards such as IEC62717:2014+AMD1:2015 and IEC62612:2013+AMD1:2015+AMD2:2018. We also recommend EU to cancel the tolerance requirement of the "related colour temperature [K]" to avoid unnecessary obstacles to trade. Comparing the light efficiency parameters set by the eco-design requirements and the energy labelling regulation (G/TBT/N/EU/607), there is a major discrepancy. Light sources with the best available technology in terms of efficacy according to the eco-design requirements could only meet the energy efficiency class D of the energy labelling regulation. We therefore strongly recommend EU to adjust energy efficiency rating in the energy labelling regulation.

1.473. We suggest EU give a clearer definition on products subject to the eco-design requirements on washing machines and washer dryers, and clarify whether washing machines without heating function are subject to the regulation. In the notified eco-design requirements on household washing machines, there is a provision that "manufacturers or importers shall deliver the necessary spare parts for household washing machines and household washer dryers to professional repairers within 15 working days after having received the order". There is a similar provision in the ecodesign requirements for household dishwashers. As spare parts delivery is a pure business practice, such requirements would be very difficult for overseas manufacturers, and we strongly recommend EU revoke such requirements so as to avoid unnecessary barriers to trade.

1.474. In response, the delegation of the European Union provided the following statement. The European Union thanks China for raising this issue. As regards household washing machines, from the consultation of stakeholders, 15 working days was considered a balanced compromise between the time required for providing spare parts and the time acceptable for a consumer to wait in order to have a fully-functioning product. In our view, this provision does not create unnecessary barriers to trade given the supply chains of manufacturers and the possibility of using intermediary storage facilities. The ecodesign regulation definition is: "household washing machine" means an automatic washing machine which cleans and rinses household laundry by using water, chemical, mechanical and thermal means, which also has a spin extraction function, and which is declared by the manufacturer in the declaration of conformity as complying with Directive 2014/35/EU of the European Parliament and of the Council or with Directive 2014/53/EU of the European Parliament and of the Council.

1.475. As regards lighting and the use of standards, neither the ecodesign regulation, nor the energy labelling regulation describe or prescribe any testing methods. Furthermore, Annex II of Regulation 2019/2020 and Article 6 of Regulation 2019/2015 provide that measurements and calculations shall be made using "reliable, accurate and reproducible methods, which take into account the generally recognised state of the art", as long as the standards used are specified in the technical documentation. Thus, the regulations are flexible in their approach to testing methods, and do not restrict them to the use of European harmonized standards that are referenced in the Official Journal of the European Union. Other state-of-the-art test standards could be used, provided that they are suitable for measuring the parameters that are regulated. With regard to the use of

[85] For previous statements follow the thread under IMS ID 592 (under dates raised and references).

tolerances in lighting, the ecodesign regulation is consistent with the regulations for other product groups and all take a unified approach under the EU ecodesign framework. All tolerances to be used for market surveilance in the EU are included in the applicable ecodesign regulations. It should be noted that these tolerances refer only to the verification of product parameters carried out by EU member State authorities. They do not refer to other tolerances described in some measurement standards, e.g. tolerances on test conditions or manufacturing tolerances.

1.476. With regard to the energy efficiency index, the energy labelling requirements for light sources were established based on the provisions of the Energy Labelling framework regulation ((EU) 2017/1369). Article 11 lays down the procedure for the introduction and rescaling of labels. Point (9) of that article requires that, for technologies that are expected to develop more rapidly, requirements shall be laid down so that no products would be expected to fall into energy classes A and B at the moment of the introduction of the label. Furthermore, the estimated time within which a majority of models are expected to fall into class A should be of at least 10 years (point 8, same article).

1.477. The studies completed for supporting the adoption of the new ecodesign and energy labelling regulations for light sources showed that a limited number of products comply currently with the requirements of the energy class C. Furthermore, due to technology advances, it is expected that more products would comply with the requirements applicable to class C by the time these new requirements will start to apply, i.e. 1 September 2021.

1.478. *Background on Lighting*: Commission Regulation (EU) 2019/2020 of 1 October 2019 laying down ecodesign requirements for light sources and separate control gears pursuant to Directive 2009/125/EC of the European Parliament and of the Council and repealing Commission Regulations (EC) No 244/2009, (EC) No 245/2009 and (EU) No 1194/2012 was published in the Official Journal of the European Union on 5 December 2019.[86] Commission Delegated Regulation (EU) 2019/2015 of 11 March 2019 supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council with regard to energy labelling of light sources and repealing Commission Delegated Regulation (EU) No 874/2012 was published in the Official Journal of the European Union on 5 December 2019.[87] The full impact assessment accompanying the two regulations was published on the EUR-LEX portal at the same date.[88]

1.3.45 Pakistan – Amendment to Pakistan's Imports and Exports (Control) Act, 1950: Statutory Regulatory Order (SRO) 237 on labelling, shelf life, and halal certification, G/TBT/N/PAK/119 (IMS ID 607[89])

1.479. The delegation of the United States provided the following statement. As our previous statements in November 2019 and February 2020 indicated, the United States requests that Pakistan suspend implementation of its measure on Halal labelling, shelf life and Halal certification and notify the WTO TBT Committee. Please allow 60-90 days for other WTO Members to submit comments and take into account those comments. The United States has also enquired about the additional guidance issued on 31 July by the Pakistani Ministry of Commerce. The memorandum states that raw and semi-processed agricultural products "may not" require Halal certification. We have not yet received clarification on the meaning of "may not" and the exact scope of products that might be exempt from Halal certification. Further, despite requests from the European Union and the United States, Pakistan has yet to make any changes to its policy to allow the use of stickers or complimentary labels, which would make the requirements less burdensome. Finally, we continue to seek clarity on whether Pakistan will exempt products weighing more than three kilograms from Halal certification to enable Pakistan's foodservice sector to access critical inputs. We look forward to continued engagement with Pakistan and to resolution of our concerns.

1.480. The delegation of the European Union provided the following statement. The European Union would like to signal its concerns regarding Pakistan's order on labelling, shelf life, and Halal certification. The EU regrets that regulations establishing import requirements for foodstuff have been adopted without prior notification to the WTO TBT or SPS Committee. The EU stresses the

[86] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.L_.2019.315.01.0209.01.ENG.
[87] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.315.01.0068.01.ENG&toc=OJ:L:2019:315:TOC.
[88] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52019SC0357.
[89] For previous statements follow the thread under IMS ID 607 (under dates raised and references).

importance to notify any future revisions to the WTO in the draft stage, providing WTO Members with opportunity to comment. The conditions laid out with regard to labelling are discouraging for EU importers especially given that the use of stickers, overprinting, stamp or scratched labelling is prohibited. Given the lack of sufficient transitional period, these requirements considerably delay approvals of imported products for Pakistani market and the fact that no change was introduced with regard to labelling and certification clauses in the subsequent Rule i.e. SRO 438 (dated 9 April 2019). Could Pakistan kindly consider suspending the implementation of SROs 237 for at least 18 months to allow adaptation period for the EU exporters?

1.481. In response, the delegation of Pakistan provided the following statement. Pakistan would like to thank the US and other Members for their continued interest in this issue. Discussions in the TBT Committee have permitted Members to comment on earlier versions of SRO 237, and Pakistan has taken into consideration all those comments and observations. The subject SRO 237 has been notified to the TBT Committee on 13 May 2020 circulated by the Secretariat in document number G/TBT/N/PAK/120. Pakistan would like to reconfirm that the welfare of consumers has been the prime objective of these regulatory measures, i.e. to ensure healthy, safe and Halal food products in the market. The measures were introduced after detailed discussions and agreement among all public and private sector stakeholders including FMCG importers. The labelling requirements help consumers to make informed choices about their dietary decisions. The system of Halal certification provides a traceable mechanism of the Halal character of food products.

1.482. The measures are implemented in a completely non-discriminatory manner. They are applied on MFN basis and guarantee National Treatment by equal enforcement on domestic producers as well. Furthermore, to provide sufficient time to overseas manufacturers and suppliers to adjust to the import conditions of the SRO 237, the operation of the SRO was postponed for more than 120 days. SRO 237 was originally enforced on 19 February 2019. However, after expiry of the sunset period (suspension), it was fully implemented from 1 July 2019 through SRO 438(I)/2019 dated 9 April 2019. To further facilitate exporting enterprises to comply with the requirements of the SRO, the operation of clause-iii-d was postponed until 30 April 2020 through SRO 258(I)/2020 dated 26 March 2020.

1.483. To address questions regarding the date of implementation, scope and interpretation of different provisions, the Ministry of Commerce issued three clarifications on 19 March 2019, 31 July 2019 and 10 March 2020. Briefly, the clarifications state that SRO 237 will not apply to those import shipments which were in the pipeline before 19 February 2019. The clarifications also address the application of the SRO on agriculture products, labelling requirements for consumer and bulk packaging, translation of scientific terms on labels, and lastly that, the SRO does not apply to "diabetic food products intended for special medical purposes".

1.484. Concerning the clarifications sought on the requirement of Halal certification it is clarified that it is not required for agricultural products in raw and semi-processed form, i.e. fresh fruits and vegetable, and dried fruits and vegetables (semi processed). However, all edible products and by-products of "animal origin" do require Halal certificate. It is also clarified, as requested, that the condition of an accompanying Halal certificate applies equally (except agricultural products in raw and semi-processed form as explained earlier) regardless of size, weight, or type of packaging. Bulk packaging meant for industrial consumers is exempted only from other labelling requirements. Lastly, the proposal for the use of stickers or complimentary labels was considered but was found to be impracticable at this stage being prone to misuse, and resultantly affecting health and wellbeing of Pakistani consumers. Pakistan hopes that the above notes and clarifications would adequately address the concerns of Members. We remain open to engaging further with concerned Member(s) to address any issues.

1.3.46 Republic of Korea – Ballast Water Management Act (IMS ID 606[90])

1.485. The delegation of the European Union provided the following statement. I take this opportunity to recall that in previous Committee meetings the EU raised its concerns with regard to South Korea's requirements on the certification of ballast water treatment systems (BWTS) manufactured by EU companies for vessels registered under the Korean flag, in particular, regarding the fees requested and the time needed to review tests already performed. South Korea has confirmed that the Ballast Water Management Act of 2017 does not discriminate between foreign

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

manufacturers and domestic producers as regards procedures and costs. However, with reference to Articles 5.1.2 and 5.2.3 of the TBT Agreement on conformity assessment procedures, we note that the measure is acting as a trade barrier for EU companies and the fees appear disproportionate. We take note of the recent information received from the South Korean authorities according to which the European company's application is currently under review, together with other six Korean manufacturers, and should be completed soon. We are looking forward for a swift issuance of the BWMS certificate to the European company.

1.486. In response, the delegation of the Republic of Korea provided the following statement. Korea would like to thank Member countries' interest on this regulation. In response to them Korea want to express the regulatory authority's opinion briefly. The Ministry of Oceans and Fisheries (MOF), which is in charge of addressing maritime-related laws and regulations, has thoroughly reviewed the concerns raised by the EU on its Ballast Water Management Act. In its understanding, the EU is concerned that Korean Administration type approval process takes more costs and time compared to those of the EU. Due to different circumstances in each country, type approval process, including costs and time, is varying from country to country. The Korean government applies its regulations to domestic and foreign manufactures in the same manner. It goes the same for the EU manufacturers. Korea would like to reiterate that there is no trade barrier to particular areas in applying the regulations in the Korea. However, as we have done thus far, Korea will continue to make efforts to facilitate the improvement of the type approval process. Any comments or inquiry will be received by MOF, the competent authority of Korea.

1.3.47 Kingdom of Saudi Arabia – Electrical Clothes Dryers Energy Performance Requirements and Labelling, G/TBT/N/SAU/987 (IMS ID 605[91])

1.487. The delegation of the Republic of Korea provided the following statement. The Korea would like to replace our requests to the one mentioned at the last regular meeting of the WTO TBT Committee. In relation to this issue, Saudi Arabia has informed that Saudi Arabia agreed with our requests and decided to amend the regulation for our proposal by the end of 2020. The Korea would like to thank you for your efforts to harmonize with the international standard and hopes for this regulation to be modified as soon as possible. And Korea would like to ask relevant authority to share the timeline of the amendment process.

1.488. In response, the delegation of the Kingdom of Saudi Arabia provided the following statement. Saudi Arabia thanks the Republic of Korea for raising this concern and Saudi Arabia as we mentioned in our last response to this specific concern agreed to modified SASO 2883 based on the suggestion provided from the Korea side. Thus, tolerance ratios have been modified in the standard to match the tolerance in SASO IEC 60335-1 and the modification draft has been prepared and will be announced soon.

1.3.48 Kingdom of Saudi Arabia – Saber Conformity Assessment Online Platform / Saleem Product Safety Program (IMS ID 615[92])

1.489. The delegation of the European Union provided the following statement. The European Union remains concerned by the difficulties related to the implementation of the electronic certification system Saleem through the web-portal Saber that was recently launched by the Kingdom of Saudi Arabia. These difficulties have a major negative impact on the imports of several products from the European Union to Saudi Arabia. Toys and ceramics are particularly affected, but the system is being gradually extended to other products, many of them exported by EU companies. While the conformity assessment requirements differ depending on the sector, several EU industries coincide in reporting their overly costly, burdensome and time-consuming nature. Notably, EU toy manufacturers continue to report difficulties related to obtaining a GCC Conformity Tracking Symbol (so-called GCTS) from notified bodies authorized by SASO. This requires sending a wide range of technical documentation and payment of duplicated fees – not only to the notified body but also to the GSO that issues the GCTS. Additional administrative steps, requiring further documentation submissions and fees, include the online registration of each shipment and the request of a Shipment Certificate of Conformity (SCoC), and a Product Certificate of Conformity (PCoC) for each HTS code.

[91] For previous statements follow the thread under IMS ID 605 (under dates raised and references).
[92] For previous statements follow the thread under IMS ID 615 (under dates raised and references).

1.490. According to the reports from EU exporters further delays are caused by the lack of sufficient resources and internal guidelines for the processing of applications for GCTS. The European Union respectfully urges Saudi Arabia to simplify the requirements of the new system in order to address in particular the specificities of the toy sector. This should include allowing for an efficient system of grouping several SKUs with similar characteristics under one GCTS, as well as a possibility of adding new products to an existing GCTS covering a similar group. Moreover, requests for documentation during the GCTS certification process should be kept to the minimum necessary to assess the safety of products. No additional certificates of conformity, such as PCoC, should be requested, when the GCTS had already been issued. The registration and renewal costs for GCTS should also be minimized and proportionate to the service provided. There is no justification for the GCTS renewal costs since this is just a formal process, executed online by the manufacturer.

1.491. The European Union would also like to ask the Saudi authorities to ensure the confidentiality in the process. Currently the GCTS public website shows pictures of all products, including products before their release, revealing therefore very sensitive business information to competitors. The ceramic sector is also very significantly affected by recent introduction of significantly stricter conformity assessment requirements by Saudi Arabia that require complex certification by conformity assessment bodies of products that are in their majority considered low risk. EU companies are facing long delays with regard to their on-going applications for the Saudi Quality Mark, reporting difficulties related to communication with authorized conformity assessment bodies and with the Saudi administration, unclear requirements regarding documents to be submitted and disproportionate fees. This has caused in the past several months a *de facto* paralysis of EU exports of ceramics to Saudi Arabia.

1.492. On a more positive note, with regard to ceramic products, the European Union would like to appreciate the fruitful bilateral contacts with the Saudi authorities. The European Union suggested several ways to improve the situation, including, *inter alia,* authorization of higher number of conformity assessment bodies established in the EU. The EU would like to express hope that these discussions will lead to satisfactory solution for EU exporters, and that imports of high-quality EU ceramic products to Saudi Arabia will soon return to normal. In addition, the EU would like to ask Saudi Arabia for a clarification whether it would be obligatory for importing companies to have a legal representative established in Saudi Arabia and if yes, which would be the legal requirements and obligations of such representative. In conclusion, the European Union would like to kindly invite the Kingdom of Saudi Arabia to ensure efficient and less costly procedures for all products included in the new conformity assessment system and looks forward to further cooperation with the Saudi authorities for this purpose.

1.493. The delegation of the United States provided the following statement. Can the Saudi Arabia SASO provide the list of products (using complete HS Codes having 10 digits) for which SASO will require third-party certification and new certificates of conformity instead of self-declarations? Companies are reporting that a significant number of their manufactured products are not certified every year, and therefore, SASO's requirement for valid certificates of conformity within the last 12 months is difficult and costly to meet, creating unnecessary obstacles to international trade. Under Saleem Saber, companies have reported that SASO has imposed additional test requirements for products to enter the Saudi market that were previously not required. One US textile company has reported that the number of tests required increased from one per year to 10 or more per year. US companies have also indicated that their manufacturers and importers have been required to provide accreditation to ISO 17025, a standard for testing labs, as part of the Certificate of Conformity process, even when they use third-party labs for testing rather than their own facilities and are not required to provide this type of documentation in other markets. Would SASO consider exempting companies from this requirement if they use ILAC-accredited third-party labs for testing?

1.494. The United States thanks SASO and the GCC Standardization Organization for working with industry stakeholders to adopt a more effective process for grouping toys. Industry proposals included: (i) allowing one GCTS registration number for a range of similar toys, meaning toys of the same type or HS code, toys covered by the same standards and age range, and when similar toys are produced by the same manufacturer in different countries; (ii) implementing an efficient and inexpensive process that limits the number of documents Notified Bodies need to review for GCTS "groups"; and (iii) making groupings as wide as possible with no limit on the number of SKUs.

1.495. The delegation of Switzerland provided the following statement. Switzerland would like to reiterate its concerns over the implementation of the Saleem Product Safety Programme on the

Saber Conformity Assessment Online Platform. Our industry, in particular the textiles and machinery sector, raised concerns regarding the implementation of the registration and certification process. The requirements of the new system create uncertainty, lack clear and transparent guidelines and seem to be applied differently by the authorities. It also remains unclear for which products a Product Certificate of Conformity (PCoC) needs to be issued. The registration and certification process is costly and burdensome for our exporters. The manner of "grouping" individual products, in some cases under several HS codes, leads to disproportionate costs and documentation requirements which may be prohibitive to enter the market, especially for companies exporting quality and luxury products in small quantities. Moreover, the certificates of conformity are valid only for 12 months, which creates additional burdens to the industry. Switzerland calls on the Kingdom of Saudi Arabia to simply the registration and certification process, to implement clear and transparent guidelines and to ensure that the requirements are applied in an equal and uniform manner. The documentation and certification requirements, as well as registration and certification fees should be kept to what is necessary to assure an effective implementation of the requirements. Switzerland looks forward to further cooperation on this topic and would appreciate if the Kingdom of Saudi Arabia could take these comments into account.

1.496. In response, the delegation of the Kingdom of Saudi Arabia provided the following statement. Saudi Arabia thanks the European Union, United States and Switzerland for raising concerns regarding Saber Conformity Assessment Online Platform / Saleem Product Safety Program. Saleem programme works through the development of an integrated systems of regulations and standards that conform to internationally recognized professional practices by developing a highly efficient system for measuring product safety indicator in the market through mechanisms and procedures that comply with the technical regulations of each product, especially essential requirements for health of human and animals, environment protection, and rationalization of energy and water consumption, as well as the compatibility of products with societal and religious values and ethics, and ensure the effectiveness of the services provided by legislative and regulatory bodies to achieve safety by conformity of those products to SASO Standards. Saber platform was created to ease traceability and to ensure product compliance. Multiple organizations are involved in the process and linked to the Saber platform to assure ease of communication and to improve the services provided to the consumer. Registering in Saber is only for the suppliers and local manufacturers who have Saudi commercial register and the cost of reviewing the technical file and issuing the Certificate of Conformity and the shipment certificate are fixed and known by all certification bodies.

1.497. The validity of the certificate is one year for the Certificate of Conformity and three years for the Saudi quality mark as well as the G-Mark. However, the test report can be valid for three to five years if nothing has been changed in the production line or the composite of the product. In Saber platform, clients can search by six digits select from the results for the nearest description of their product. In terms of GSO toy regulation, GCTS tracking symbol must be issued through GSO platform. Once the GCTS is obtained, the shipment certificates can be easily issued through Saber platform. We strongly advise all toys industries to contact the notified bodies according to the GSO Technical Regulation for Toys scheme (listed in Saber platform) for detailed explanations regarding the test report and GCTS requirements.

1.3.49 Mongolia – Mandatory Requirement for Enrichment of Agricultural Products with Vitamins (IMS ID 616[93])

1.498. The delegation of the Russian Federation provided the following statement. In 2018 Mongolia adopted a Law on the Enrichment of Food Products, which entered into force in December 2019. Mongolia declared that this Law was intended to protect human health and to prevent humans from vitamin and mineral compounds deficiency. The list of products subject to mandatory vitaminization entered into force only in December 2019. And only at the end of December 2019 Mongolia issued a standard on wheat flour enrichment, which defines the complex of vitamins and mineral compounds for the product. According to the standard wheat flour shall be enriched with vitamins B and D, folacin, ferrum and zinc. In light of this, the Russian Federation would like to express its concern with regard to the date of entering the standard into force. The timeframe for producers and exporters of wheat flour to adapt their products or methods of production to new requirements was just one day. Thus, by the absence of prior publication and the failure to provide reasonable

[93] For previous statements follow the thread under IMS ID 616 (under dates raised and references).

timeframe for adaptation Mongolia acted inconsistently with its obligations under the TBT Agreement, in particular, Articles 2.9, 2.11 and 2.12.

1.499. Due to the fact that the WHO recommendation (that Mongolia had been referring to) uses different methodology with respect to the dosage of vitamins and mineral compounds, the Russian Federation is seeking further clarification on whether the current technical regulation conforms to the relevant international standard. In view of this, we would also like to make a point that the rules for production, storage and transportation of enriched food products and labelling requirements, including a particular sign indicating the vitaminization of food products, were put into force only on 30 January 2020, making the following the technical regulation from the day it entered into force impossible. Moreover, it becomes clearer that even now there is no wheat flour with a special vitaminization sign on Mongolian market.

1.500. In this regard, the Russian Federation expresses concern with respect to capability of national producers of wheat flour to follow the vitaminization requirement. The fact that Mongolian producers have the right to sell their unenriched flour, while import of the same product is not allowed, in fact accords less favourable treatment for imported flour and thus contravenes Article 2.1 of the TBT Agreement. Moreover, Russia raises doubts about the proportionality of this measure and considers it might be more trade restrictive than necessary to fulfil legitimate objectives under Article 2.2 of the TBT Agreement. In this regard, we kindly ask Mongolia to give substantive clarifications on necessity for applying additional mandatory requirements in respect of wheat flour. Taking into account all the above, the Russian Federation is looking forward to getting further clarifications regarding the issues raised in our statement today. We will continue to carefully monitor the implementation of this measure in order to examine its compliance with the WTO rules.

1.501. The delegation of Mongolia did not provide a response to the concerns raised. These concerns were subsequently transmitted to the relevant authorities.

1.3.50 European Union – Regulation (EC) No 1107/2009 – non-renewal of approval of the active substance picoxystrobin, G/TBT/N/EU/437 (IMS ID 535[94])

1.502. The delegation of Brazil provided the following statement. In yet another opportunity, Brazil would like to express concerns regarding the EU's non-renewal of picoxystrobin registries. In January 2017, the EU notified to the TBT Committee that the approval of picoxystrobin was not renewed, according to its TBT notification G/TBT/N/EU/437. In January 2019, the EU decided to establish very restrictive MRLs for seven substances, including picoxystrobin and buprofezin, which are important for Brazil's exports of agricultural commodities. We consider that the transitional period provided for producers to adapt to the new MRLs was unreasonable, given that studies conducted by EFSA were inconclusive, not based in due risk analysis and inconsistent with CODEX guidelines. Council Directive 91/414/EEC of the European Commission declared that picoxystrobin was not toxic, the report of the 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 WHO specialists had also concluded that the substance was not genotoxic. This substance is used in more than 65 countries and has been approved by many bodies, such as the US Environmental Protection Agency, the Canadian Management Regulatory Agency, the Japanese Agency and the Brazilian Health Regulatory Agency. Our delegation considers that the MRLs for picoxystrobin was already very low – for instance, for soybeans the default was set on 0.01 mg/kg. Therefore, we kindly ask the EU to consider aligning its decision on renewal of approval of active substances with scientific consensus regarding the safety of substances and their use to protect crops.

1.503. The delegation of Paraguay provided the following statement. We thank the delegation of Brazil for once again including this item on the agenda. My delegation reiterates its concern about the decision made by the European Union not to renew the approval of picoxystrobin, and the criteria used to make this decision. We wish to refer to our previous statement concerning this agenda item made during the March 2019 TBT Committee meeting, as follows. The representative of Paraguay reiterated her delegation's previous concern with the EU decision not to renew the approval of picoxystrobin because the EU had not based this decision on scientific criteria, ignored international consensus, and the opinion of specialized agencies on non-toxicity in the use of these substances. This decision, as well as the new MRLs for this substance notified to the SPS Committee, would have a negative impact on Paraguayan exporters by restricting trade unnecessarily. She noted that at the

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

last SPS Committee meeting, 15 Members had also expressed concerned with these new MRLs established by the EU. In her delegation's view in this other body, showed that these EU measures could adversely affect several WTO Members. Despite these many expressions of concern, the EU had nonetheless decided to approve the amendment of the MRLs for this substance in January 2019, as notified in G/SPS/N/EU/264/Add.1.

1.504. In response, the delegation of the European Union provided the following statement. The European Union thanks WTO Members for raising this issue. As explained in detail at previous TBT Committees, the European Commission 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 were permitted to allow for a grace period until 30 November 2018 at the latest. The European Union 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 does not amend the MRLs and provides for a grace period for use of products containing picoxystrobin. Given the issues identified by the EFSA, the existing MRLs were reviewed in a separate measure in view of their safety to consumers.

1.505. 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 European Union 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 are applicable since 13 August 2019. Import tolerance requests however remain possible and will be assessed on a case-by-case basis by EFSA. Such requests would have to be supported by substantial new data addressing the concerns.

1.3.51 Republic of Korea – Package Recycle Classification Regulation, G/TBT/N/KOR/843, G/TBT/N/KOR/844, G/TBT/N/KOR/857, G/TBT/N/KOR/857/Add.1 (IMS ID 588[95])

1.506. The delegation of Canada provided the following statement. Canada wishes to reiterate its concerns with the Republic of Korea's Package Recycle Classification Regulation, notified under G/TBT/N/KOR/843, G/TBT/N/KOR/844 and G/TBT/N/KOR/857. Korea has already adopted the new regulation, yet the questions sent by Canada via the Korean Enquiry Point in November 2019 remain unanswered. This lingering situation does not foster transparency on, and understanding of, the regulation by interested Canadian stakeholders. Can Korea provide us with an update on when Canada should expect to receive answers to its questions? It is still unclear for us as to why packaging is treated differently based on its use, and not the material from which it is made. A glass bottle containing soju or whisky should have the same degree of recyclability than another bottle – made of the same material – containing a different substance. Can Korea explain why it selected an approach based on the "function" of the packaging rather than on the material itself? What risks of non-fulfilment would Korea face if it were to allow all glass-made containers to be easily recyclable?

1.507. Canada still believes that there were international standards which Korea could have relied upon to achieve the same policy objective and minimize potential trade distortions, and continues to ask if Korea has taken international standards into account in the development of its measure, namely in its distinction of products that are "easy" or "difficult" to recycle. Canada would also note that, at the last Committee meeting, Korea committed to share with all Members the final version of this regulation, including the Package Recycling Classification Regulation. Canadian stakeholders are looking forward to seeing this final version. Can Korea provide an update on when the documents will be shared with all WTO Members? Canada looks forward to receiving written answers from Korea on our letter of comments sent on November 2019, and thanks Korea for its continued engagement on this STC.

1.508. The delegation of New Zealand provided the following statement. New Zealand supports concerns raised by other Members. New Zealand supports measures that focus on legitimate objectives, including those that produce positive environmental outcomes, such as encouraging recycling and reducing waste. However, as an exporter of food and beverage products, New Zealand is interested in understanding how Korea's proposed measures are no more trade restrictive than

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

necessary. We encourage Korea to consider how their measures will impact a wide range of products, including consideration of potential exemptions and flexibility in the scheme. We respectfully request that Korea ensures that transparent and clear guidelines are published on how exporters can comply with these measures. In particular, we ask that such guidelines set out what is and is not classified as "recycle friendly" and the consequences of such classification, to ensure traders can easily comply with the regime and not incur unnecessary barriers or costs to trade.

1.509. The delegation of Mexico provided the following statement. Mexico supports the specific trade concern of Canada and New Zealand regarding the amendment made by the Republic of Korea to the Sub Act on the Promotion of Saving and Recycling of Resources, notified to members of the Committee on Technical Barriers to Trade (TBT Committee) in documents G/TBT/N/KOR/857 and G/TBT/N/KOR/857/Add.1 dated 9 September 2019 and 11 November 2019, respectively. At the TBT Committee meeting in February 2020, the delegation of the Republic of Korea gave a statement regarding this specific trade concern, which indicated the following: Wine and whisky bottles – considered products difficult to recycle – will be excluded from the obligation to indicate "difficult to recycle" on their labels. The final version of this regulation, including the Package Recycling Classification Regulation, would soon be shared with the members of this Committee. Only those products graded the "lowest" as "difficult to recycle" were obliged to indicate the recyclability class on their labels.

1.510. From what was said at the meeting in February 2020, it is difficult to identify the criteria used by the Korean authorities to exclude certain alcoholic beverages from the obligation to indicate the recyclability class on their labels. In the specific case of Mexico, bottles containing tequila that are exported to the Republic of Korea are made from various materials, not all of which could be classed as "difficult to recycle". This complicates our understanding and makes it unclear as to whether the measure would apply to bottles of tequila or whether, in some way, it could be established that tequila is excluded from the obligation to indicate the applicable recyclability class on its labels. In light of the foregoing, Mexico requests the delegation of the Republic of Korea to: confirm whether bottles of tequila would be covered by this regulation or whether they might be excluded from the labelling obligation, like wine and whisky; share the criteria used to determine the exclusion of certain alcoholic beverages from compliance with the labelling requirement; and circulate the final version of the regulation, including the Package Recycling Classification Regulation. Mexico thanks the delegation of the Republic of Korea for giving its consideration to this statement and to the requests made therein.

1.511. The delegation of Australia provided the following statement. Australia recognizes the Republic of Korea's right to implement regulations that promote the reduction of waste and the production of easily recyclable packaging materials. Australia thanks Korea for providing an exclusion from displaying recyclability evaluation results on wine bottles ("labelling exemption"). Australia seeks clarification on whether an exemption similar to the labelling exemption will be provided to wine bottles for the environmental fee attached to products categorized as "difficult" to recycle.

1.512. In response, the delegation of the Republic of Korea provided the following statement. Korea appreciates the interest of the Members in Korea's regulation on packaging materials. The official response from the regulatory authority is as follows. Recently in Korea, public interest in recycling has increased due to limited landfill space and emerging waste disposal issues. A government-led study by an expert group was conducted to establish a clear set of standards for determining recyclability of packaging materials. The standards have been further improved through the consultation process involving more than a hundred relevant industries and professionals from April to June 2019 and this revision work was completed in December 2019. In revising the existing standards, overseas cases and standards of EU (EPBP), UK, Japan and other major countries were taken into consideration.

1.513. The recyclability of packaging could vary depending on their colours and use of detachable connections even if they use same materials. For instance, transparent, green and brown-coloured glass bottles have recycling demands, but other colours are rarely recycled in Korea and mostly discarded resulting in an increase in wastes. Based on observations of the US and European cases, mixed colour glasses were found to have a significantly lower recycling value than those with single colour. Most mixed colour glass bottles end up being recycled only once instead of being continuously reused as bottles. However, as new recyling methods continuously develop and circumstances evolve, the standards could be further revised to accommodate changing reality.

1.514. We understand that Member countries are concerned about discrimination between domestic liquor bottles (such as soju) and other glass bottles (such as wine). However, this is not a policy to discriminate against a certain industry, and does not actually act as a discriminatory factor. The new recyclability classification for packaging materials is the result of a full consideration of the comments from Members. For example, although glass bottles of wine and whisky products are indeed difficult to recycle in Korea, they are to be excluded from the obligation to indicate "difficult to recycle" on their labels. Such additional clause was concluded on 17 February 2020 taking into account that packaging of certain types of products has few available alternatives. The final version of this regulation including the Package Recycling Classification Regulation will soon be notified to the Members. Full information on this final version of the regulation is now open to public and available on Korea's legislation information system.

1.515. Korea's extended producer responsibility (EPR) scheme imposes product manufacturers the obligation to collect and recycle the wastes derived from their products. More detailed evaluation guidelines were provided directly to all affected companies that paid allotted charges of EPR in Korea. And specific details on the EPR allotted charges for the "difficult to recycle" grade will be made in this year, and will be shared with all affected companies. After the entry into force of this regulation, a two-year grace period in total – nine months for classification assessment (from 25 December 2019 to 24 September 2020) and 15 months for labelling (from 25 September 2020 to 24 December 2021) – will be given to ensure the industry is prepared for changing regulatory circumstances. In addition, only those products that are graded the lowest as "difficult to recycle" are obliged to indicate the recyclability class on their labels. Korea will remain accountable and transparent in implementing this recycling regulation.