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Committee on Technical Barriers to Trade

MINUTES OF THE MEETING 16-18 NOVEMBER 2022

CHAIRPERSON: MR. ANWAR HUSSAIN SHAIK

Note by the Secretariat[1]

Contents

1 ADOPTION OF THE AGENDA

1.1. The Committee adopted the agenda contained in WTO/AIR/TBT/24.

[1] This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights and obligations under the WTO.

2 IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

2.1 Specific Trade Concerns

2.1.1 Withdrawn concerns

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 The Chair reported that the following STCs had been withdrawn from the agenda at the request of the concerned Member:

- European Union - Geographical indications for wine, spirit drinks and agricultural products, and quality schemes for agricultural products
- Thailand - Industrial Standard for Air-Conditioner: Safety Requirement (TIS 1529-2561(2018))
- United States - Energy Conservation Program: Energy Conservation Standards for Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps
- European Union - Regulations on plant protection products sprayed by drones in EU 2009/128/EC and (EU) 2021/ 2115
- European Union - Draft Commission delegated regulation amending regulation (EU) 2019/2144 of the European Parliament and of the Council to take into account technical progress and regulatory developments concerning amendments to vehicle regulations adopted in the context of the United Nations Economic Commission for Europe. (ID 752)
- Indonesia - Import quota and SNI certification requirements (ID 728)
- India - Import Policy of Air Conditioners with Refrigerants (ID 748)

2.1.2 Reported progress on STCs

2.2. The representative of the United States provided an update on Bangladesh's Hazardous Waste (E-waste) Management Rules, ID 620, raised at the June 2022 Committee meeting. During July's meeting, Bangladesh had provided a helpful statement confirming that Bangladesh had revised its list of restricted substances under the Rules, in response to the request of the United States and other Members. Further, Bangladesh confirmed that the restricted substance provisions would not come into effect until 2026, that registration under the e-waste provisions did not have a deadline, and that it would be developing detailed guidelines that would help with implementation prior to then. The US greatly appreciated this update, which directly answered some of the questions they had posed under this STC. Moreover, constructive communication between Enquiry Points and Geneva mission representatives had resulted in Bangladesh notifying the E-waste Management rules as its third notification to the Committee in February of 2020. Communication continued with the full text being received in 2020, and a subsequent comment extension. The United States continued to have questions regarding the Rules which it was hoped could be discussed bilaterally with Bangladesh. For example, the current draft rules did not provide exemptions for critical hazardous substances for products where no technically equivalent substitutes were available for critical uses such as protective uses of lead shielding in x-ray equipment. It was also noted that developing an infrastructure to ensure the appropriate handling of e-waste seemed vital to the success of this measure. The US looked forward to bilateral engagement on these points as Bangladesh further considered policy options, guidelines, and subsequent implementing measures, and thanked Bangladesh for its previous responses in the Committee.

2.3. The representative of the United States went on to highlight a recent positive development and to thank Mexico for its collaboration to work to resolve the concerns raised by the United States and U.S. industry stakeholders. Mexico had notified a draft measure in September 2021 (in G/TBT/N/MEX/502), which aimed to amend the requirements and specifications for safety devices for new light-duty vehicles. Following the notification, the United States and Mexico held several bilateral discussions on the margins of the TBT Committee meetings, and representatives from the US Embassy in Mexico City, participated in a working group convened by Mexico's Ministry of Economy to review public comments submitted on the draft. On 3 October 2022, Mexico published in the Official Gazette, the final version of Official Standard PROY-NOM-194-SE-2021. While still reviewing the latest publication, and consulting industry, the US was pleased to express its appreciation and share its support for modifications made to the NOM in line with US comments, including adjusting the implementation date, continuing acceptance of manufacturers' certification of compliance, and not making certain elements mandatory. The US believed that these bilateral discussions, and its participation in the working group, helped lead to positive procedural developments, and showcase the importance of open dialogue and of meetings like these. The US again thanked Mexico for its willingness to engage on this topic and looked forward to engaging further on this issue.

2.1.3 New Specific Trade Concerns

2.1.3.1 European Union - Proposal for a regulation of the European Parliament and the Council on general product safety, amending Regulation (EU) 1025/2012 of the European Parliament and of the Council, and repealing Council Directive 87/357/EEC and Directive 2001/95/EC of the European Parliament and of the Council (COM/2021/346 - final), G/TBT/N/EU/885 (ID 762[2])

2.4. The representative of China provided the following statement. China would like to thank the EU for the notification. China has made comments within the comment period and unfortunately has not yet received a reply. It is suggested, firstly the EU distinguish the compliance requirements for low-risk and high-risk products, and regularly adjust the catalogue of low-risk and high-risk products to realize dynamic supervision; secondly, the EU provides a well-resourced and cost-effective RSP (responsible person for products) system, ensuring that the manufacturer/importer can bear reasonable financial and administrative burdens of compliance. The EU could consider auditing and keep on record an EU RSP to make sure that the RSP can provide appropriate services and assume corresponding responsibilities. It is mentioned in this regulation that the EU RSP shall conduct general sample tests on all products. If testing obligations need to be retained, it is advised for them to be limited to high-risk products based on specific data; and to EU RSPs who are themselves, manufacturers and importers. If necessary, it should be accepted that all other EU RSPs could provide a test report from an accredited laboratory on request, whether the test is commissioned by the manufacturer or someone else; and they are not responsible for physical testing, but only responsible for the documentation check of the product's compliance. Finally, it is suggested that the EU set up a three-year transition period and provide necessary regulatory interpretation in view of the broader scope and obligations of this system.

2.5. In response, the representative of the European Union provided the following statement. The European Union would like to thank the Delegation of the People's Republic of China for its observations on the proposal for General Product Safety Regulation and their written comments of 6 July 2022. The reply of the written comments is under preparation. The General Product Safety Regulation proposal, if adopted as proposed by the Commission, would apply to products placed or made available on the European market in so far as there are no specific provisions with the same objective in the Union law, which regulate the safety of the products concerned. In this sense, it would complement Regulation (EU) 2019/1020 on market surveillance ("Market Surveillance Regulation") as a safety net. The obligation to have a responsible person established in the European Union, as a condition to place products in the Union market, has been introduced for certain categories of harmonised products (e.g. toys, electric equipment, cosmetic products, machinery, etc.) in the recently adopted Market Surveillance Regulation. This requirement is essential to facilitate market surveillance and help ensuring the safety of products entering the Union market from third countries. In this regard, the proposal extends the requirement to have a responsible

[2] For previous statements follow the thread under ID 762.

person in the European Union laid down in the Market Surveillance Regulation also to non-harmonized products.

2.6. The proposed random testing obligations would ensure that the responsible economic operators carry out sample testing of randomly chosen products made available on the market. It would not require the systematic sample of all products. The objective of such tests is to ensure that products are safe and comply with the general safety requirement. The Commission has carried out a thorough impact assessment of the proposal (including its financial impacts) and published it together with the proposal (SWD(2021) 168 final).[3] The costs and regulatory burdens associated with this proposal have been kept as limited as possible in order to ensure the objective proportioned by the proposal. The Commission proposed a six-month transition period in Article 47 of this proposal. This transitional proposal is considered proportionate given that the General Product Safety Regulation does not create a completely new system, but revises the framework provided under the current General Product Safety Directive. Moreover, it also provides for alignment to the harmonised product area established in the Market Surveillance which is already applicable. The European Commission has launched an EU funded awareness raising project for Chinese manufacturers, exporters, online sellers and other economic operators of the supply and distribution, about safety requirements for non-food consumer products sold in the European Union. The core of the "Safe non-food consumer Products in the EU and China" (SPEAC) project is the systematic approach to address relevant topics of product safety and the EU requirements in the prioritised areas (toys, electrical appliances, childcare articles, etc.) and to customise the trainings to the actual stakeholder needs. For more information please visit the project's website.[4]

2.1.3.2 European Union - Draft Commission Regulation amending Annexes II and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for clothianidin and thiamethoxam in or on certain products, G/TBT/N/EU/908 (ID 763[5])

2.7. The representative of Kenya provided the following statement. On 6 July 2022, EU notified the WTO Members under TBT about lowering MRLs for two Neonicotinoids, with the stated aim to "addresses an environmental concern of global nature, that it is the decline of pollinators worldwide. It concerns the review of all existing Maximum Residue Limits (MRLs) for clothianidin and thiamethoxam to the Limit of Quantification in accordance with Regulation (EC) No 396/2005." The draft regulation sets out details of a proposed measure lowering all MRLs (including Import Tolerances (ITs) and Codex MRLs for insecticides; clothianidin and thiamethoxam in domestic and imported food and feed to the Limit of Quantification (LoQ). While several references are provided in the draft regulation including Inter-governmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) (2016), Kenya notes that the assessment report of the IPBES on pollinators, pollination and food production confirms that one single factor alone cannot explain the pattern of bee colony decline observed in some countries, while bee colonies increase in others. Hence there is no confirmed global environmental risk arising from the two substances. The EU measure therefore raises serious concerns of inconsistency with the TBT Agreement Article 2.2.

2.8. No other data available would underpin the assertion that there is a global environmental risk that would remain unmanaged by the current established risk mitigation measures implemented by the respective regulatory approvals by non-EU countries. Kenya takes cognisance of the fact that environmental protection is a legitimate objective under the WTO TBT Agreement. However, the EU regulations as proposed are more trade restrictive than necessary to fulfil a legitimate objective. It also fails to take into consideration, the Good Agricultural Practices (GAP) for legal uses in non-EU countries. Kenya is an agriculturally based economy, and the products are an integral tool in achieving food security and meeting public health objectives. Technical regulations should be based on international standards where they exist (Article 2.4 of the TBT Agreement), in the assessment of suitability for authorization of active substances. The European Union's policy on regulation of pesticides is in contravention of International Standards and principles of risk analysis (Article 5 of SPS Agreement) and the Risk Analysis Principles applied by Codex, in particular the Codex Committee on Pesticide Residues (CCPR). Kenya is concerned that by this proposed regulation coming into force, it sets a negative precedent for application of similar approaches for regulating

[3] https://ec.europa.eu/info/sites/default/files/impact_assessment.pdf
[4] www.speac-project.eu
[5] For previous statements follow the thread under ID 763.

other substances beyond the borders of the EU based on environmental factors in future. This will have significant impact on international trade.

2.9. The proposed regulation notified under the TBT Agreement affects measures applied under the SPS Agreement which is contrary to Article 1.5 of the TBT Agreement. The proposed regulation acknowledges that existing EU-MRLs and Codex MRLs are safe for consumers; thereby acknowledging that the proposed measures are expanding the scope of the existing EU MRL regulation beyond protection of consumer and animal health. The proposed amendments on MRLs are more stringent than the provisions of the EU MRL Regulation 396/2005. The EU measure raises serious concerns of inconsistency with the TBT Agreement Article 12.3 and GATT 1994: (i) The EU measure has the effect of discriminating against the agricultural exports products from developing countries, since the active substances are in use for agricultural production in these countries; (ii) the EU measure ignores production and regulatory conditions in non-EU countries; (iii) the EU fails to take into account the special development, financial and trade needs for developing country members.

2.10. Products containing clothianidin have been registered as a Seed Dresser Insecticide for the control of Aphids and thrips, for reduction of Maize Lethal Necrosis Disease (MLND). MLND has contributed to the reduction of Kenya's maize production in Kenya, with areas affected recording losses of up to 100%. In Kenya, maize is a staple food that constitutes a significant basis of food security and is cultivated by both large and small-scale farmers. More than 90% of the Kenyan population relies on it for income, human consumption, and raw material for industrial uses. Among the diseases, MNLD has emerged as the single most important production constraint in maize. Kenya requests the European Union to consider the withdrawal of the Regulation as the measure is more trade restrictive than necessary.

2.11. The representative of Indonesia provided the following statement. Indonesia thanks the EU for its notification of "Draft Commission Regulation as regards maximum residue levels for clothianidin and thiamethoxam" to the WTO as G/TBT/N/EU/908 on 6 July 2022 which amended Regulation (EC) No. 396/2005. Indonesia has submitted its comments in response to the EU on 22 September 2022 but has not yet received any response to the question. This regulatory amendment addresses a global environmental issue, namely the decline of pollinators worldwide. Regulation (EC) No. 396/2005 is a regulation directed at consumer protection. However, environmental considerations are not within the scope of Regulation (EC) No 396/2005 as this aspect is fully covered by Regulation (EC) No 1107/2009 for plant protection products reviewed and registered for safe use in the EU. Therefore, data on environmental impacts are usually not required to be submitted in the MRLs application documents. A similar regulatory approach is generally applicable in non-EU countries where environmental data is not part of the procedure for regulating import tolerances, but robust environmental risk assessment standards are in place for the registration and use of pesticides in most countries, including risk assessment for pollinators.

2.12. The agenda for the meeting of the Standing Committee on Plants, Animals, Food, and Feed (SCoPAFF) in April 2022 includes Articles 14(1)(a), 18(1)(b), and 49(2) of Regulation (EC) No 396/2005 as the basis for lowering MRL for the NNIC class of active substances. Regulation (EC) No 396/2005 was found to lack a solid legal foundation for implementing environmental considerations under EU legislation. This regulation does not appear to provide a basis for considering measures to regulate and impact the use of plant protection products registered outside the EU. In Indonesia, clothianidin and thiametoxam are used for both domestic and export crops such as palm oil, cocoa, coffee, tea, and mango. The use of clothianidin and thiametoxam refers to the international standard such as CODEX and pays attention to the application of Good Agricultural Practices (GAP). Lowering the MRL is considered to have a negative impact on agricultural commodity exports to the EU. Finally, the EU's proposed measures could restrict trade in agricultural products that comply with international MRL standards, disrupt production, and affect the livelihoods of small agricultural producers. MRLs are international trade standards that protect consumers. Determining the value of MRLs for environmental reasons contradicts the objectives of the MRLs themselves. If the EU's MRLs, especially clothianidin and thiamethoxam, are implemented, it will have serious implications for farmers in developing countries who export to the EU because it will prevent farmers from using certain technologies that are useful for producing agricultural commodities economically.

2.13. Indonesia already has a regulatory system in place for plant protection products (pesticides), ensuring that the products used by farmers have been registered after meeting the registration

requirements related to human and environmental safety. The EU in this regard, must respect the needs of each country to set consumer and environmental protection standards based on local conditions and in line with international standards. We hope that the EU will take these into account and consider the ability of non-EU countries, especially developing countries, to comply with this regulations.

2.14. The representative of the United States provided the following statement. The United States thanks the EU for its notification of "Draft Commission Regulation as regards maximum residue levels for clothianidin and thiamethoxam", to the WTO as G/TBT/N/EU/908 on 6 July 2022. The United States submitted its comments in response to the EU on 2 September 2022. We share the EU's concerns about pollinator health and are actively working to protect bees and other pollinators in the United States. To date, the global scientific and regulatory community has found that complex interactions among multiple factors affect pollinator health, including the health of bees. Given the critical importance of the pesticides identified in the Regulation as part of integrated pest management, or IPM, programs on crops that are exported to the EU by many countries, the proposed measure appears to pose a significant obstacle to international trade and production of agricultural products.

2.15. Use of pesticide MRLs is intended to manage the food safety risk of treated imported food products upon arrival into a market. MRLs are not intended to be an environmental safety management tool, and their use for this purpose may have unintended consequences that could undermine the development and use of international standards for food safety. In our comments, we noted to the EU that we understand the 2018 EFSA risk assessments for this measure to be limited to studying only a small number of pollinators and food examples. Could the EU explain how the conclusions from these risk assessments support the reduction of MRLs to the limit of determination (LOD) for the impacted products? We further ask the EU to provide any analysis and studies that it conducted to review production systems outside the EU. The United States notes that the studies cited in the 2018 EFSA risk assessments only reviewed European production systems and pollinators found in Europe.

2.16. More specifically, the United States requests that the EU please provide the scientific or technical information that demonstrates how the reduction of these MRLs to the LOD contributes to the objective of the protection of pollinators, including bees. Given the deficiencies in the 2018 EFSA risk assessments outlined above, we are concerned with respect to the objective criteria the EU will use in assessing applications for import tolerances under this Regulation and ask that the EU provide more detailed information on such criteria. In the absence of scientific or technical information indicating how the reduction of MRLs to the LOD on the impacted products contributes to the objective of protection of pollinators, including bees, the United States requests that the EU maintain its current MRLs for clothianidin and thiamethoxam. Global environmental challenges require collaboration across the global community; unilateral approaches based on incomplete science may complicate or further delay meaningful progress on these pressing issues while unnecessarily affecting agricultural production and trade. In place of the EU's proposed regulation, the United States would welcome a collaborative approach to protecting pollinators and the opportunity to contribute resources, scientific expertise, and new ideas.

2.17. The representative of Ecuador provided the following statement. My delegation wishes to express its concern about the measure notified by the European Union regarding the protection of pollinators by lowering the MRLs for neonicotinoids (clothianidin and thiamethoxam), of which this Committee was notified on 6 July 2022. The EU's regulatory proposal would not appear to be properly in line with Articles 2.2, 2.4 and 12.3 of the WTO Agreement on Technical Barriers to Trade and GATT 1994. It infringes on the regulatory policy powers of its trading partners, who sovereignly set the conditions for food production and agricultural activity in their own jurisdictions according to their geographic differences, ecosystem conditions, agricultural output, scientific capabilities and development. Thiamethoxam is effective against nematodes and black aphids in banana production, and against thrips and aphids in flower production. It also leaves significantly less residue in the environment and decomposes much faster than other products. According to the Rainforest Alliance, the risk from the use of thiamethoxam in banana cultivation has been mitigated and there have been no reports of direct harm to bee populations. It also indicates that the transitional period for the development of a new plant protection product should be at least 36 months; a shorter time is not sufficient to comply with the new MRLs, given the harvest periods and the stage at which the agrochemicals are applied. Lastly, as this is a measure that applies to third countries, the European Union needs to carry out an analysis of the impact it would have on farmers in third countries, as

not having these substances as a means to protect their crops would have an adverse effect on small-scale producers. The European Union is invited to address the concerns expressed by a number of Members on this matter, in order to avoid unnecessary restrictions on trade.

2.18. The representative of Australia provided the following statement. Australia thanks the European Union (EU) for notifying Members of the proposed regulation in document G/TBT/N/EU/908 on the draft regulation for the neonicotinoid insecticides clothianidin and thiamethoxam, to which Australia provided comments. Australia reiterates the concerns expressed in our submission. The draft regulation considers environmental impacts in exporting countries when setting maximum residue levels (MRLs) and assessing requests for import tolerances. Australia recognizes the right of WTO Members to regulate agricultural imports in a manner that protects animal, plant and human health and the environment. However, Members are also bound by WTO obligations, particularly in relation to undertaking science-based risk assessments and ensuring that measures are no more trade-restrictive than necessary. Australia does not support using MRLs on imported products to achieve environmental objectives outside the EU's borders. This extra-territorial approach impacts the ability of third countries to implement environmental policies consistent with their unique environmental circumstances.

2.19. National authorities of third countries are best placed to ensure that pesticide application is undertaken in a responsible and sustainable manner in each country, and in accordance with their unique environment. Australia is concerned about the limitations of the 2018 European Food Safety Authority risk assessments cited by the EU in the draft regulation. These studies have been used to support a link between the lowering of MRLs to the limit of determination and pollinator health. We request the EU provides robust scientific evidence in support of this conclusion. Australia also requests the EU provide information on the health of pollinators in all trading countries where the new MRLs are likely to apply. The EU may wish to consider restricting the new MRLs to only those countries where it has robust evidence to support its policy objective. We look forward to continuing to engage with the EU on this important topic.

2.20. The representative of Peru provided the following statement. Peru submits to WTO Members its trade concern regarding the draft amendment to Regulation (EC) No 396/2005, which includes the elimination of maximum residue limits (MRLs) for the molecules clothianidin and thiamethoxam, which would result in a ban on exports to the European Union of agri-food products containing any detectable residues of those molecules. Peru considers that while members of the European Union have the right to apply sanitary or phytosanitary measures that they consider appropriate to their level of protection, such measures should be based on scientific principles and "risk" assessment procedures, not just on the "hazard". Furthermore, the measures adopted should not be more trade restrictive than necessary. It is understood that the current EU regulation for MRLs is based, as internationally agreed, on the protection of the health of food consumers and not on environmental criteria, for which there are other appropriate regulatory frameworks and multilateral forums for discussion and negotiation.

2.21. In addition, the European Union's proposal to use non-tariff barriers to trade to protect the environment ignores and invalidates the adequacy of Peru's regulatory policies, which sovereignly establish the conditions for food production and agricultural activity in the country. The European Union's regulatory proposal goes against Articles 2.1, 2.2 and 12.3 of the WTO Agreement on Technical Barriers to Trade and GATT 1994, as it discriminates against third countries by causing a disproportionate impact and ignoring their regulatory and production conditions; furthermore, nor would the alleged risk of using the active substances outside the European Union cause any risk within the European Union. The same regulatory proposal concedes that both the current European MRLs and those contained in the Codex Alimentarius are safe for consumers. In addition, as part of the environmental risk assessment of the active ingredients clothianidin and thiamethoxam, the environmental authority of the agricultural sector requires that registrants comply with an environmental management plan, which must contain environmental control and contingency measures, which are intended to control identified environmental risks; such companies must have a solid organizational structure at the regional and/or local level and be prepared to address contingencies at any stage of the product's life cycle. Lastly, the measure in question should have been notified for discussion in the SPS Committee, since the purpose of Regulation No. 396/2005, which is set to be amended, is to ensure a high level of protection for the public health of consumers and animal health.

2.22. The representative of China provided the following statement. China appreciates the emphasis placed by the EU on the importance of protecting pollinators including bees. We would like to draw attention to the following points which may need reconsidering for better and more appropriate regulation. Firstly, it is the international community's general agreement that MRLs are in place to protect consumer health and facilitate fair trade of food. However, scientific evidence and consensus are absent that problems like decreasing numbers of bees could be addressed through MRL measures relating the two pesticides clothianidin and thiamethoxam. It's still a matter of academic debate whether neonicotinoid pesticides are the main cause of the decline in bee colonies. Some studies suggest the combination of parasites, pesticides, pollination deficiency, and climate change as the real reason for decreasing number of bees. Currently, revoking or modifying MRLs on the grounds of addressing pollinator decrease would give the impression of arbitrarily creating trade barriers. We recommend that the EU provide data and reports on bees' risk assessment regarding the MRLs of the two pesticides. Secondly, as the EU has previously cancelled the registration requirement for clothianidin and thiamethoxam, it would not affect local producers. However, it would indeed constitute a de facto trade barrier for other Members who are using the two pesticides under scientific risk evaluation.

2.23. The representative of Colombia provided the following statement. Colombia would like to express its concern about the European Commission's draft regulation amending Annexes II and V to Regulation (EC) No. 396/2005 of the European Parliament and of the Council as regards maximum residue levels (MRLs) for clothianidin and thiamethoxam in or on certain products. This is the first time that changes are being proposed to an MRL based on environmental criteria in order to avoid or mitigate the risk of pesticides in food for human consumption, and not based on health criteria. Therefore, the measure should have been notified in the framework of the SPS Committee, as its objective is to ensure consumer and animal health. In the light of the above, we believe that the European Commission's draft regulation should be reassessed in the framework of the WTO's international regulations, in line with international recommendations of the Codex Alimentarius on MRLs. The WHO and FAO jointly assessed the aforementioned substances under the Codex Alimentarius and determined that they posed no risk for consumers. It should also be noted that there are scientific opinions from the European Food Safety Authority (EFSA) suggesting that there are no toxicological aspects in these molecules that could affect human health. Therefore, Colombia believes that the draft regulation on MRLs should take into account scientific evidence and be subject to a definitive risk analysis, which can demonstrate the implied risk of using them and the level of residue at which the compounds would affect consumers.

2.24. In addition, we are of the opinion that the regulatory adjustment related to setting an MRL using environmental criteria constitutes an unnecessary and unjustified barrier to trade, and has a significant negative impact on countries that market products in the European Union, adversely affecting people who earn their living from crop production. Moreover, MRLs are not intended to protect the environment, so this is an ineffective and inappropriate approach to achieving the European Union's objectives. It would be necessary to determine whether there are effective and appropriate international standards for this purpose; in which case, we believe that the European Union should submit the international reference standard or the scientific studies that provide the basis for the aforementioned measure. It should be noted that Colombia is convinced of the need to protect the environment, but it is important that the risk measurement be based on conclusive analyses, following a scientifically validated methodology. Lastly, this process of converting to a sustainable food system seems to ignore the implications of these transformations, as it imposes limitations on the use of pesticides and fertilizers because of environmental factors, depriving farmers of essential tools that ensure the health of their crops. This may result in a substantial reduction in the supply of a crop, affecting its price and, consequently, its consumption. Not to mention the impact on farmers' income, as they will be unable to sell their produce, causing their quality of life to decline. In view of the foregoing, we invite the EU to review this regulatory amendment and to consider other relevant forums for discussions, such as the Conferences of the Parties to the Rotterdam Convention and to the Stockholm Convention, where decisions around including new substances are adopted.

2.25. The representative of Costa Rica provided the following statement. Costa Rica wishes to support this trade concern raised by Kenya and supported by a large number of Members, against the EU proposal to set maximum residue levels (MRLs) as mechanisms for achieving environmental objectives. Broadly speaking, Costa Rica's policy is aligned with the EU's objective of prioritizing environmental protection, the fight against climate change and sustainable economic development, as the only viable path forward for the future of our planet. However, under no circumstances must

achieving these objectives come at the expense of the multilateralism and fundamental obligations that underpin this Organization. The Agreement on Technical Barriers to Trade clearly sets out the objectives that the technical regulations, standards and conformity assessment procedures may legitimately fulfil. We are not sure which legitimate objective could justify revising an MRL, an issue linked to food safety and the protection of human health, which falls within the scope of the SPS Agreement. Therefore, we are struggling to understand EU notification G/TBT/N/EU/908, as although, this notification proposes reducing the MRLs for clothianidin and thiamethoxam , it was submitted to the TBT Committee and not to the SPS Committee. In this notification, the EU states that its motivation is a "an environmental concern of global nature". Among the legitimate objectives of the TBT Agreement, we cannot find global environment concerns as a justification for a measure covered by this Agreement. Addressing environmental concerns of a global nature is also a matter of the utmost importance to Costa Rica. However, it is not clear how this objective falls within the scope of the SPS and TBT Agreements. We would like to thank the EU in advance for its explanations with regard to this concern, which Costa Rica raises along with other Members

2.26. The representative of Canada provided the following statement. Canada, like other Members, is concerned with the European Union's proposal notified to the WTO TBT Committee in July 2022 under G/TBT/N/EU/908, whereby the EU is considering lowering the MRLs for clothianidin and thiamethoxam to the Limit of Quantification (LOQ) based on environmental concerns for the global pollinator population. While Canada supports efforts to protect and maintain the global population of pollinators, we remain concerned with the approach that the EU is proposing to take through this regulation to address the issue. By reducing neonicotinoid MRLs to default values when no dietary risks of concern have been identified, Canada is of the opinion that the European Union is unjustifiably applying their domestic legislation on an extraterritorial basis, which is incompatible with WTO obligations and could unnecessarily restrict trade. If a pesticide does not have dietary concerns and poses no risks to EU consumers, the EU should maintain the MRLs or harmonize with Codex. Canada is also concerned with the EUs use of emergency authorizations for its own member States.

2.27. The EU has stated repeatedly that the main intention of this regulation is to ensure food and feed consumed in the EU does not contribute to the global decline of the pollinator population. However, with the sustained use of emergency authorizations granted in member States for these two pesticides, it is not clear to Canada how the proposed rule would still contribute to that objective, as Europeans will continue to consume food and feed produced using neonicotinoid innovation, whereas imports that use these products will be banned. Canada has a robust regulatory system and is confident in the mechanisms we have in place in Canada to protect consumers and the environment. We protect human health and the environment by conducting rigorous scientific evaluations of the risks associated with pest control products, which is critical to enabling access to the pest management tools necessary to address pest pressures specific to the Canadian climate. Canada has undertaken extensive research and mitigation techniques related to the use of neonicotinoids and as a result, has successfully reduced bee incidents over 80% since 2014.

2.28. The European Union could not only benefit from Canada's best agricultural practices, but could maintain the MRLs for neonics, not unnecessarily restrict trade, and collaborate with Canada and other WTO Members to mitigate the risk to pollinators and address the impact on pollinators globally. Canada reiterates its concern that the EU's intention to impose its own regulations to trading partners does not reflect the unique circumstances of countries, nor is it aligned with the science available from other Members such as Canada. It is our hope that the European Union will take these concerns seriously and work with Canada and other interested Members in finding a science-based, WTO-compliant way to achieve its objective.

2.29. The representative of India provided the following statement. India would like to thank the EU for notifying Members via G/TBT/N/EU/908 on MRLs for clothianidin and thiamethoxam. India understands that the EU is considering lowering existing MRLs for pesticides no longer approved in its jurisdiction due to environmental concerns – such as some neonicotinoid insecticides, to the default value and not considering new requests for import tolerances. This approach is not restricted to this notification, and for many products, the residual pesticide limits have been set at 0.01 mg/kg. EFSA has noted that the default MRL of 0.01 mg/kg applies to nearly 690 pesticides which are not explicitly mentioned in the MRL legislation. As is evident from the comments by other trading partners, there are concerns with the setting of default MRL for many products because it imposes a standard that may need to be sufficiently scientifically founded on imports from other countries. Some of the products not grown in the EU face these thresholds. This disregards the competence of

the other countries' chemical regulators and artificially subjects them to a requirement that is neither scientific, evidence-based, nor practicable to be commercially employed. EU often cites concerns related to protecting its citizens. However, even that remains questionable as citizens of other countries are found to be comfortable without those requirements; at the same time, the studies relied on by the EU are noted to need to be sufficiently representative of the EU citizen pool in some cases. For cases where environmental concerns are cited, India reminds the EU that it is important to respect each Member's right to set its regulations for environmental protection.

2.30. This approach adopted by the EU also fails to recognize the efforts of international scientific panels and standard-setting bodies – such as the Joint FAO/WHO Meeting on Pesticide Residues and the Codex Alimentarius – in establishing a safe and harmonized level of pesticide residues in agricultural products. In these circumstances, India urges the EU to revise its practices and avoid unnecessary trade disruption, ensuring compliance with its obligations under the WTO while setting MRLs and considering requests for import tolerances. India also requests the EU to respect the regulatory authorities of other countries and their positions, especially when more than a few countries share a common understanding and not to impose arbitrary MRL standards preventing unnecessary disruption to trade in safe products.

2.31. The representative of Paraguay provided the following statement. Paraguay notes that the EU intends to use the MRLs for clothianidin and thiamethoxam, not to protect European consumers, but as a means to regulate the use of neonicotinoids in production processes and methods in third countries. In Paraguay's view, the TBT Agreement was not designed to accommodate measures with clearly extraterritorial objectives. Paraguay also has serious concerns regarding the compatibility of the notified EU measure with obligations relating to market access and non-discrimination under WTO rules. Paraguay shares a genuine interest in environmental and biodiversity conservation, and accords primacy to the protection of human, animal and plant health, including protection of pollinators, which also play a key role in global food production and contribute to higher yields of agronomically important crops. However, like Paraguay, each country has particular needs and challenges in its agricultural production, based on its geography, ecosystem, and local scientific capacities, as part of the quest to attain and maintain sustainability in agriculture. This situation is reflected in the evidence-based regulatory frameworks applied to registration processes to assess the risks of pesticides and their uses, including the assessment of risks to the environment and pollinators. By seeking to impose its environmental standards on third countries, the EU ignores and invalidates such local and even regional regulatory policies, threatens the implementation of environmental measures and policies that are compatible with the particular situations of each country in terms of climatic and socio-economic conditions and pest prevention, etc., and fails to take into account common but differentiated responsibilities.

2.32. How does the EU intend to address this and the special financial, trade and development needs of developing and LDC members in accordance with Article 12.3 of the TBT Agreement? Paraguay does not consider MRLs to be a suitable tool to address environmental challenges in other countries, for which there are other appropriate regulatory frameworks and multilateral forums for discussion and negotiation. With regard to these substances there are also different mitigation options to manage potential risks to pollinators from the use of clothianidin and thiamethoxam, ranging from clear and precise instructions on labels to the implementation of good agricultural practices in all processes. Practices, such as applying the substances in the early morning or late afternoon when there is a lower prevalence of pollinators; not using the substances at the flowering stage of crops; removing flowering weeds from the field; reducing dust when planting treated seeds, are effective means of risk mitigation as they limit exposure. Multiple independent studies by scientific regulatory authorities around the world agree that neonicotinoid insecticides can be used responsibly without causing unacceptable risks to bees or other pollinator species in the field. Several specific studies were included in the multiple comments submitted by WTO members to notification G/TBT/N/EU/908.

2.33. Does the EU consider that the reduction of MRLs is appropriately linked to the objective pursued? In particular, bearing in mind that: a crop not treated with these substances may have MRLs above the limit of quantitation (LOQ), for example, if an adjacent field was treated; controlled use of the substances may have no impact on pollinators and still have MRLs above the LOQ. In field 7 of notification G/TBT/N/EU/908, the EU states that an objective of the measure is "to ensure that also commodities imported into the European Union do not contain residues resulting from good agricultural practices based on outdoor uses of clothianidin and/or thiamethoxam". Could the EU clarify how it will identify products with MRLs above the LOQ due to indoor use or other methods

that do not affect pollinators? Imposing restrictions on international trade will, in effect, make farmers in Paraguay and the region less competitive than farmers in Europe who do not have to contend with the same pests and climatic conditions to produce food, and who can also benefit from emergency authorizations to continue using these substances. This can be seen from the emergency authorizations granted for these substances since the ban and the end of the grace period for their use in the EU: Thiamethoxam: 51 emergency authorizations for different crops since the ban and end of the grace period for the substance in the EU (30/04/2019) (Austria, Belgium, Czech Republic, Germany, Denmark, Spain, Finland, France, Croatia, Hungary, Lithuania, Latvia, Poland, Romania, Slovakia), including the most recent one authorized for the period February–June 2023. Clothianidin: 20 emergency authorizations for different crops since the ban and end of the grace period for the substance in the EU (31/01/2019) (Austria, Belgium, Czech Republic, Denmark, Spain, Finland, Poland, Romania), including the most recent one already approved for the period February-May 2023. And these are the ones authorized when the grace period ended; those authorized for use after the grace period are even more numerous, given that some emergency authorizations were granted before 31/01/2019 but their use began after that date. How are these emergency authorizations compatible with the non-discrimination obligation? What is the average approval time for an emergency authorization? What is the average cost of the emergency authorization approval process?

2.34. These questions were repeatedly raised in other committees, but the EU response was limited to noting that emergency authorizations are issued by EU member States, and each member State determines the length of the evaluation process and the costs. We reiterate these questions, however, and hope to receive answers to them, especially since EU members are also members of the WTO in their own right and it may be necessary to start asking questions to each of them separately. The EU insists that, although emergency authorizations are the responsibility of the members, the European Food Safety Authority (EFSA) reviews them and rules on whether they were properly justified. However, we see that there are no restrictions on members that continue to approve emergency authorisations for the same substances, for the control of the same pests, and on the same crops for which the EFSA concluded that the approval was not properly justified. The EFSA further considers that emergency authorizations are justified when the need to avoid pest resistance is proven and if there are no chemical alternatives to control a particular pest. The same arguments are used by Paraguay and other members for whom there is no possibility of emergency authorizations. Lastly, with regard to transparency and the time limit for commenting on draft regulations, Paraguay, like several other Members, submitted comments on notification G/TBT/N/EU/908 within the established deadline but, according to information gathered, on 27 September 2022, only 23 days after the end of the comment period, the Standing Committee on Plants, Animals, Food and Feed (ScoPAFF) of the EU approved the proposal to reduce the MRLs for these substances without modifications, which again leads us to think that notifications and comment periods are merely formalities and not intended to be taken into account.

2.35. The representative of Brazil provided the following statement. Brazil thanks the European Union for the opportunity to comment on the proposed regulation notified as G/TBT/N/EU/908, which withdraws the approval of the active substances thiamethoxam and clothianidin and restricts the maximum residue levels in or on certain products. We would like to refer to the comments we have submitted to the EU. Brazil understands that the EU's current proposal goes against the commitment in Article 2.2 of the TBT Agreement, as it is out of the scope of such Agreement to support unilateral policies aimed at protecting the environment in third countries. Besides the need for further discussion, under sound scientific basis, about the risks that thiamethoxam and clothianidin may have on bees' population worldwide, Brazil understands that one could not expect to extend to all countries of the world trade-restrictive measures that do not consider the variety of local conditions, including climate and soil. Furthermore, there are different needs and challenges posed by agricultural production in each country.

2.36. The EU affirms that its restrictive measure would seek to avoid the transfer of adverse effects on bees from food production in the EU to food production in non-EU countries. However, for Brazil, this approach is not properly considering that many countries, including Brazil, have rigid technical procedures for approving substances. Furthermore, Brazil believes that, due to its extraterritorial effects, the EU proposed regulation goes against the rules and jurisprudence of the multilateral trade system. To highlight how it is unclear for Brazil that the trade restrictions proposed by the EU would be justified, thiamethoxam is one important substance used in control strategies of pests such as the citrus psyllid, an insect that transmits the greening disease. Recognized by the European Food Safety Agency (EFSA) as a priority pest for control in EFSA's List of Priority Pests of October 2019,

greening is a major cause of losses in orange production not only in Brazil, but worldwide. In Brazil, the State of São Paulo is the main citrus juice producer and it is also where 84% of honey production is concentrated. In that state, there is no evidence of a decline in the number of pollinators. On the contrary, honey production in that region has increased by about 136% in the last 15 years.

2.37. We also have a concern that if the current proposal for restricting the use of thiamethoxam and clothianidin becomes the basis for other similar restrictions, farmers in Brazil and worldwide can face serious problems that will affect productivity and their capacity to contribute to global food security. Brazil appreciates the opportunity to discuss this issue with the EU and calls for the European Commission to consider a more balanced approach that harmonizes with the Codex Alimentarius' recommendations for clothianidin and thiamethoxam MRLs. Brazil also appreciates the opportunity to provide comments and we would be grateful if they can be taken into account and replied to before the adoption of the notified draft.

2.38. The representative of New Zealand provided the following statement. New Zealand supports the EU's overarching ambition to mitigate climate and environmental challenges as set out in the policies presented through the Green Deal. However, New Zealand holds concerns that unilaterally imposing prescriptive import measures, without consideration of the variations in geographic and climatic contexts between various countries' production systems may not successfully address global environmental challenges. New Zealand encourages the EU, like all WTO Members, to address global environmental issues, including sustainable pesticide use, by working with trade partners in multilateral fora and recognizing that different production and regulatory systems can deliver similarly desirable environmental outcomes. Such an approach recognizes that there is no "one-size-fits-all" model for addressing global environmental issues and that tailored solutions, accounting for differences in production systems can be more effective and durable in delivering desirable environmental outcomes. We further encourage Members to use measures that are founded on sound science, are risk based, take a least trade-restrictive approach, and which are appropriate to achieve the desired outcome. International limits and guidance should be adopted where available. New Zealand is also interested in understanding the EU's rationale and justification for using an SPS tool to introduce proposed measures with the stated aim of addressing a global environmental concern.

2.39. The representative of South Africa provided the following statement. South Africa thanks all Members that have spoken before us and would like to table comments and clarity seeking questions to the European Union (EU) Regulation on import tolerance regarding Maximum Residue Levels (MRLs) for clothianidin and thiamethoxan (pesticide and active substance) in or on certain products. South Africa appreciates that the EU notified the Committee regarding the proposed measure to lower MRLs for clothianidin and thiamethoxan substance to the limit of qualification in accordance with EU Regulations (EC) No. 396/2005. South Africa understands that the EU intends to address an environmental concern of a global nature namely the decline of pollinators worldwide. South Africa shares the EU Commission's goals for food systems transformation, and the commitment to address climate change and biodiversity loss by continuing to pursue more sustainable and resilient food systems. However, South Africa recognizes that Members have unique sustainability objectives and challenges. Amongst other related climate challenges, South Africa has high pest and diseases pressure due to the combination of heat, humidity and moisture emanating from different weeds, pests and fungi. Addressing these opportunities requires the use of diverse methods, tools and technologies to sustainably meet the world's growing demand for food and feed in the face of climate change. South Africa promotes more sustainable and good agricultural practices and food systems that emphasize the best mix of tools and techniques to achieve more sustainable production depending on a Member's varying location, scale and environment.

2.40. South Africa notes that the lowering of MRLs for clothianidin and thiamethoxan substances expands the scope of existing MRLs regulations beyond consumer protection to environmental considerations. The proposed measure of lowering (MRLs) for clothianidin and thiamethoxan substances will have an adverse effect on agricultural and agri-food exports to the EU. Ultimately, the proposed measure may restrict trade of safe agricultural products, disrupt production and negatively affect the livelihoods of small and rural producers. South Africa supports transparency, science and risk-based decision-making driven by available data to enhance sustainability in agriculture and urges the EU to take cognisance of climate conditions, crop-pest matrices and socio-economic conditions of developing and under-developed economies in the developing and implementation of the measure. Additionally, South Africa requests clarity in the following questions: (i) Confirmation that, if this regulation is enforced, the MRLs will decrease to 0.01 mg/kg for all

products? If not, what are the applicable product specific levels? (ii) Confirmation that the European Union has banned the use of clothianidin or thiamethoxam in all applications, including the use in permanent greenhouses. If not, will these products also have to adhere to the new MRLs? (iii) Since the EU has implemented the ban on the outdoor use of clothianidin or thiamethoxam, what alternatives are used in the EU and what was the cost implications to farmers?

2.41. (iv) The regulations includes the following statement: 5.1. "in order to meet the needs of international trade, applications for import tolerances for clothianidin or thiamethoxam may be submitted pursuant to Article 7 of Regulation (EC) No 396/2005 and should provide relevant information to demonstrate that the Good Agricultural Practices applying for the specific uses of the active substances are safe for pollinators". What is the process to be followed and what is the proposed turn-around time?

2.42. The representative of Uruguay provided the following statement. Uruguay has submitted comments and requests for clarification to the European Union (EU) in relation to the planned reduction of MRLs for clothianidin and thiamethoxam in or on certain products, due to an "environmental concern of global nature", at recent meetings of the SPS, TBT and Market Access Committees, as well as bilaterally, as part of the international public consultation process opened by the EU in notification G/TBT/N/EU/908. We appreciate the opportunity to submit these comments and questions, and we continue to await the responses, but we would be particularly grateful if these submissions were duly taken into account during the regulatory process. In this connection, as was mentioned by Paraguay, we are concerned by the approval, without amendments, of the proposal on 27 September 2022 by the EU's Standing Committee on Plants, Animals, Food and Feed, despite the observations made by various trading partners. Uruguay understands that setting MRLs is the type of measure intended to protect consumer health from the risks arising from ingestion and that it therefore falls within the scope of the SPS Agreement. The international reference body for such issues is the Codex Alimentarius Commission, where health-related issues are comprehensively addressed in relation to the adoption of MRLs. Article 3 (d) of EU Regulation No. 396/2005 on the MRLs of pesticides defines MRLs as: "the upper legal level of a concentration for a pesticide residue in or on food or feed set in accordance with this Regulation, based on good agricultural practice and the lowest consumer exposure necessary to protect vulnerable consumers".

2.43. The EU itself has repeatedly indicated to us – up to March 2022 – that, as a matter of principle, concerns about fixing MRLs for pesticides and any specific issue related to their implementation are matters that must be discussed in the SPS Committee, and not the TBT Committee. In that connection, the European Union has notified the SPS Committee of successive amendments to the MRLS for an increasing number of substances. Uruguay shares concerns about promoting the protection of pollinators, in line with environmental and biodiversity protection, and supports the establishment of regulatory environments based on scientific criteria, so as to avoid putting food security at risk or erecting barriers to trade. Uruguay reiterates its willingness to cooperate with other Members to find mechanisms that can be used to achieve these objectives without unnecessarily restricting trade, while also ensuring preservation of the environment and the protection of human, animal and plant health. It should be noted that, in Uruguay, the plant protection reference products are regulated to ensure the correct, safe and recommended use of such substances, as part of a National Environment Plan focused on good agricultural practices. However, Uruguay has doubts as to both the appropriateness and the legal basis, as per EU regulations and WTO standards, of reducing MRLs to the level of detection on the grounds of "environmental issues of global concern" or other issues unrelated to human health.

2.44. Despite awareness of the importance of the environmental aspects, we understand that these are not included in the process of establishing MRLs as they are addressed by countries individually, on their basis of their own production systems, environmental conditions and policies. This was ratified by the Codex Secretariat, which confirmed that environmental issues are not currently considered in the risk analyses used for plant protection products under the Codex (as indicated in paragraph 35 of the report of the 53rd session of the Codex Committee on Pesticide Residues (CCPR)). In addition, like other delegations, such as Canada and Paraguay, we are concerned that emergency authorizations continue to be granted to producers from EU member States, which would appear to contradict the EU's stated aim when it introduced this measure, as well as being discriminatory in nature. In short, Uruguay is of the view that MRL measures must be established on the basis of a risk assessment with the aim of protecting consumer health and not for environmental protection purposes. Similarly, Uruguay would like to reiterate that the health and phytosanitary measures adopted or implemented by WTO Members, such as the EU, must be

adapted to the objectives set out in Annex A, paragraph 1, to the SPS Agreement, and the other substantive obligations under this Agreement, such as those concerning international harmonization, the avoidance of approaches that unnecessarily restrict trade, and transparency, as well as corresponding obligations under the GATT 1994.

2.45. The representative of Argentina provided the following statement. Argentina fully shares the EU's genuine interest in the strategic importance of pollinators for the global environment, especially bees for ecosystems and biodiversity. Likewise, as a major food producer, it recognizes the significant contribution they make to agriculture and global food security. That is why, like many other countries, we have stepped up measures to provide producers with the tools required to properly protect plant life, which will enable them to continue producing food. At the same time, by adopting good agricultural practices, we are reducing the effects of pollinators from the use of certain products. However, everything seems to suggest that this measure notified by the EU will, rather than protecting the environment or pollinators, create an obstacle that will restrict producer third countries' ability to export to the EU. Various studies from around the world show that the decline in the number pollinators has multifactorial causes and that the neonicotinoids, clothianidin and thiamethoxam, are safe for bees when they are used following good agricultural practices, in addition to being absolutely essential for controlling specific pests in extensive farming. In this case, the notified measures are not based on a risk analysis of the toxicity levels in all of the notified food and feed and the consequent effect of both neonicotinoids on human health and life within the territory of EU member States. Instead, the draft regulation in question appears to be based on assessments of the risk posed by bees being exposed to these neonicotinoids used outdoors, as the EU's stated objective is to address an environmental concern of a global nature, namely the decline in pollinators worldwide. Seen in this light, the draft regulation would be inconsistent with the EU's obligations, as it has failed to provide a scientific assessment under the terms of the SPS Agreement (Articles 2.2 and 5.1) to justify the adoption of the measure in question.

2.46. Irrespective of whether or not the objective being pursued is legitimate, the EU's measures will result in a virtual ban on access to its market for a wide range of food and feed products. This would severely affect any exporters to the Community market that failed to ban the outdoor use of clothianidin and thiamethoxam in their respective territories within 36 months of the new MRLs coming into effect. Therefore, we believe that the trade-disruptive impact that the reduction of the MRLs would have on all the products covered by the measure would not be proportional to the objective being pursued by the EU. In this regard, the draft regulation would be contrary to the obligations set out in Articles 2.1 (to ensure that measures are applied only to the extent necessary), 5.4 (to minimize negative trade effects) and 5.6 (to avoid unnecessary trade-restrictive measures) of the SPS Agreement. Equally of concern to Argentina is that implementing the measure would amount to a disguised restriction on international trade, contrary to the provisions of Article 5.3 of the SPS Agreement. This observation is based on the fact that, on one hand, the performance of pollinators does not depend solely on the two substances prohibited by the EU and, on the other hand, on the fact that the multiple emergency uses authorized by the EU under conditions that could not be extrapolated to third countries, as previously stated by other delegations. This is why we have submitted a number of comments on notification G/TBT/N/EU/908 and are awaiting a reply.

2.47. The representative of Guatemala provided the following statement. Guatemala views with concern the EU proposal to not renew the approval of clothianidin and thiamethoxam and alter the MRLs for those substances on the grounds that they would cause global environmental concerns for pollinators, and therefore it will lower the MRLs to the limit of quantification. We are therefore submitting comments for public consultation within the WTO process. Linking an environmental measure to the use of a pesticide or fungicide is a major concern, as measures increasingly respond to subjective criteria and are not based on a scientific approach. It is important to note that in order to be exported to international markets, agricultural products comply with different standards and good agricultural practices, including the safe use and handling of agricultural inputs. In addition, there are programmes in place to mitigate any risk of poisoning and/or contamination that comply with all the necessary measures and practices to ensure their correct use and an appropriate production plant environment, including integrated pest management and solid agricultural education on the use and effects of agrochemicals. It is also important to note that pollinators are key to the production phase of agricultural products, such as coffee, particularly during the flowering stage. We consider that the European Union has no legal basis to apply environmental measures for products outside the European Union, to change MRLs for substances, without scientific evidence and risk analysis. The MRL change is linked to ensuring food safety, and the environmental issue is not consistent with this legitimate objective, as set out in WTO Agreements. There are currently no

chemicals that can replace it, since alternative molecules, such as ethoprophos or imidacloprid, are also being withdrawn in the EU. There are evaluations of biological alternatives for soil pest control, but the findings do not point to adequate levels of efficiency, affecting the level of production.

2.48. Thiamethoxan is used for different crops, such as coffee, peas and other vegetables, because it is a broad-spectrum insecticide and effectively controls insects resistant to organophosphates, carbamates and pyrethroids. It is important to mention that farmers are using this substance as a substitute for chlorophyriphos, which was also affected by the MRL change. In other words, the European Union is leaving only agricultural producers in third countries without alternative substances. In this regard, Guatemala requests that the European Union provide its legal and scientific basis for this decision and conclusive findings demonstrating that the change in the MRL will sustain the quantification of pollinators. In addition, the impact of the MRL change must be notified to the SPS Committee. Guatemala reiterates how important it is to preserve the environment and natural resources, as it is to preserve the use of good agricultural practices with the aim of allowing a sustainable level of production under the production methods in use. We therefore call on the European Union to base its measures on a critical analysis of the risks and impacts of the approval and renewal of authorizations for the use of crop protection products. We would be grateful if the European Union could indicate what measures it is considering to ensure that this measure is not an unnecessary technical barrier to trade. Guatemala calls for the MRL levels to be maintained until there is an opportunity for dialogue that considers not only the trade implications, particularly for developing countries, but also real time periods in their implementation.

2.49. The representative of Japan provided the following statement. Japan would like to support concerns raised by Kenya and other Members and make requests to EU regarding its draft regulation notified to TBT Committee that proposes to lower the maximum residue levels for clothianidin and thiamethoxam in certain products for a reason to protect pollinators outside the EU. First, the proposed measure by EU lowering the MRLs for the purpose of protecting pollinators outside EU is clearly a deviation from the current principles for setting MRLs which protects human life or health, as well as from the trend of international harmonization on MRLs. When taking a new approach to the measures which affect the third countries, such as the MRLs, it should be thoroughly discussed with the third countries including at the SPS Committee. Second, judging from the impact on the environment and feasibility, it is obvious that the most reasonable and efficient approach to protect pollinators worldwide is not to force a uniform measure set by the EU, but to let each country adopt a tailored measure based on such as each country's own climate and soil conditions and pesticide use. Last but not least, the proposed measure would be more trade restrictive than necessary to fulfill a legitimate objective. Japan would like to request EU to consider Japan's comments on the TBT notification to ensure the measures will be consistent with the WTO rules, based on scientific principles.

2.50. In response, the representative of the European Union provided the following statement. The European Union (EU) would like to thank the intervening countries for providing comments on the Notification G/TBT/N/EU/908 about the "Draft Commission Regulation amending Annexes II and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for clothianidin and thiamethoxam in or on certain products". The EU is carefully studying all the comments received from a large number of trade partners and business associations and it is currently preparing a comprehensive reply to all of the questions raised. All the comments were shared and discussed with the EU member States in preparation of the meeting of the Standing Committee on Plants, Animals, Food and Feed - Section Phytopharmaceuticals, Pesticide Residues (SC PAFF), held on 26-27 September 2022. A summary of the discussion can be found in the report of the meeting.[6] The draft Regulation was endorsed by the member States and will be submitted to the Council and the European Parliament for scrutiny. If no objection is raised, adoption by the Commission is foreseen for early 2023. It will become applicable in 2026 to allow operators in non-EU countries to adapt to the new rules. The EU would like to thank the different countries once again for providing comments on this draft and hopes to provide soon responses that sufficiently clarify the points raised.

2.51. The representative of the United States provided the following statement. The United States respectfully questions the content of the EU's statement especially considering the large number of Members who have raised concerns with this measure. To my count there were more than 18 Members raising concerns today. In its response the EU noted that it was still carefully studying

[6] https://food.ec.europa.eu/system/files/2022-10/sc_phyto_20220926_ppr_sum_0.pdf

Members' comments. However, the SC PAFF Committee and member States have already moved forward in approving this measure, within weeks of receiving WTO Members' comments that were due on 4 September. The SC PAFF Committee report itself that was shared with us notes various WTO Members, EU member States and a plethora of industry members submit comments on this measure. How could this volume of comments have been taken into account in such a short period of time? While the report and the EU note that these were provided well in advance of the SC PAFF Committee meeting, it is unclear how long SC PAFF had to consider these comments, nor what topics were considered during their discussions. Since the measure is currently with the EU Commission, we would ask that the EU confirm that WTO Member comments will be taken into account by the Commission prior to its finalization. Further, have Member comments been shared with the EU Commission?

2.52. The representative of the European Union provided the following statement. As I said, the comments have been taken into account and for the replies we are still having inter-service consulations and the Commission is going to take position on the basis of the comments we received.

2.1.3.3 United States - Protection of Stratospheric Ozone: Listing of Substitutes Under the Significant New Alternatives Policy Program in Refrigeration, Air Conditioning, and Fire Suppression, G/TBT/N/USA/1907 (ID 764[7])

2.53. The representative of China provided the following statement. According to the "Markings" section of the draft regulation (pages 45538, 45540, 45542, 45544, 45546, 45548, 45552, 45554, 45555, 45557, 45558), refrigeration equipment is required to have distinguishing red-colour-marked service ports, pipes, hoses, and other devices, to indicate the use of a flammable refrigerant. We believe that the red marking requirement will increase manufacturing costs in production, which is not required in the given testing standard UL 60335-2-40. According to Article 2.2 of the TBT Agreement, "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", we suggest that red markings be replaced with red labelling so that enterprises could provide required information through labelling without change of the production process. In addition, in order to ensure the consistency between regulations and supporting standards, it is suggested that the US modify the adopted test standard UL 60335-2-40, adding the requirement of red labelling for flammable refrigerants to the standard.

2.54. In response, the representative of the United States provided the following statement. The United States thanks China for its interest in the Environmental Protection Agency's proposed rule, "Protection of Stratospheric Ozone: Listing of Substitutes Under the Significant New Alternatives Policy Program in Refrigeration, Air Conditioning, and Fire Suppression." Thank you for submitting your comments in writing to the United States Enquiry Point on 13 September 2022. The Enquiry Point acknowledged your submission. Those comments were submitted to the U.S. Environmental Protection Agency, which is currently considering comments on the proposed rule. Any final rule from the proposal will be published, and EPA will respond as appropriate to substantive comments from stakeholders in any final decision.

2.1.3.4 India - Public Consultation for declaring two or more prime constituents of the commodity on the front side of the package/Revision of Legal Metrology (Packaged Commodities Rules), 2011 (ID 765[8])

2.55. The representative of the United States provided the following statement. On 16 August 2022, the Department of Consumer Affairs, Legal Metrology Division, circulated a public consultation, titled: I-19//42/2022-W&M, "Inviting Public Consultation for declaring two or more prime constituents of the commodity on front side of the package with the Brand Name/ Logo," which proposed to amend the Legal Metrology (Packaged Commodities Rules), 2011. According to the notice, the Department provided until 31 August 2022 (15 days) for interested stakeholders to provide input. The United States requested notification of the draft amendments on 9 September 2022. We have not yet heard a response to our request for notification from India. Our industry stakeholders provided comment to the consultation through India's domestic process on 31 August 2022. The United States has questions regarding the proposed amendment to India's Legal Metrology (Packaged Commodities) Rules, 2011 that requires new labelling requirements for

[7] For previous statements follow the thread under ID 764.
[8] For previous statements follow the thread under ID 765.

packaged products that contain two or more prime constituents. According to industry, the amendment could change the labelling requirements for many consumer products, including cosmetics. We understand that India's Department of Consumer Affairs published the proposed amendment for a 15-day consultation in August, however the amendment has not yet been notified to the WTO. We ask India to notify the draft proposed amendment to this Committee; provide at least a 60-day comment period; and take any comments received into account before finalizing and adopting the measure. Notably, the proposed text of Rule 6(1)(ba) requires front of pack labelling to list the "prime constituents" of a product as well as information as to the product's "unique selling point" and "unique selling proposition". Will India provide definitions for these terms? Can India confirm which products the proposed amendment would apply to, and specifically, whether the new labelling requirements would apply to cosmetics. If the proposed amendment applies to cosmetics, we note the measure may be duplicative of – or even in conflict with – existing requirements for ingredient labelling and claims in India's Drugs & Cosmetics Act, 1940, which is currently in revision, and India's Cosmetics Rules 2020. We support the overall objective of the amendment, but we are concerned that could be more trade restrictive than necessary, while not providing additional value to consumers. We thank India for consideration of these comments.

2.56. In response, the representative of India provided the following statement. India has taken note of the concern of the USA regarding of Legal Metrology (Packaged Commodities Rules), 2011 and thanks the USA for its interest in this matter. The concerned raised has been shared with capital and is being examined.

2.1.3.5 European Union - Draft Commission implementing regulation laying down rules for the application of Regulation (EU) 2019/2144 of the European Parliament and the Council as regards uniform procedures and technical specifications for the type-approval of fully automated motor vehicles with regard to their automated driving system (ADS), G/TBT/N/EU/884 (ID 766[9])

2.57. The representative of China provided the following statement. Annex 2, part 7.1.1 hasn't provided a method to clearly define the acceptance criteria for safety. Is the "acceptance criteria" a specific numerical value? If it is, the regulation clearly says that the determination of "acceptance criteria" highly depends on the relevant parameters regarding the accident data, manually driven vehicle performance data, etc. of the actual transport scenario in the EU member States, but the regulation hasn't indicated the ways for the manufacturers to obtain those essential data. The manufacturers are not able to understand how to satisfy the requirement. As the regulation is officially published, it is suggested that the EU follow the transparency and national treatment principles of the TBT Agreement and issue additional implementation guidelines to: (i) define the term of "acceptance criteria" , and if it is a specific numerical value, provide the calculation formula and the meanings of each parameter; (ii) and to provide non-EU members with the channels to fairly obtain the relevant necessary information about accident data, performance data of the manually driven vehicle, etc. of all the EU member States. In the case a of 1.3.2 in Part 1 of Annex III, the speed directions of the self-vehicle and target vehicle are different. The formula hasn't specified whether Ve and Va are vectors or absolute values, which may lead to different calculation methods between the manufacturer and the Type Approval Authority and thus different calculation results, eventually causing unnecessary obstacles for enterprises to carry out product type approval. It is suggested that the EU clarify whether Ve and Va are vectors or absolute values, and further explain the physical significance of the formula. 5.8 of Annex 3, Appendix 1 Part 2 "Certificate of Compliance for Safety Management System" describes how to apply for SMS certificate but doesn't define the requirements that SMS shall comply with, which may make manufacturers unable to find any steps to start with and limits to follow, and lead to inconsistent adoption of evaluation standards among different Type Approval Authorities. It is suggested that the EU add detailed technical requirements and reference standards for SMS.

2.58. In response, the representative of the European Union provided the following statement. Thank you to the delegation of China for their comments on the Commission implementing regulation laying down rules for the application of Regulation (EU) 2019/2144 of the European Parliament and the Council as regards uniform procedures and technical specifications for the type-approval of fully automated motor vehicles with regard to their automated driving system (ADS). The EU has carefully studied the comments provided by China and feels that these were addressed in the final act. Commission implementing Regulation (EU) 2022/1426 of 5 August 2022 laying down rules for the

[9] For previous statements follow the thread under ID 766.

application of Regulation (EU) 2019/2144 of the European Parliament and of the Council as regards uniform procedures and technical specifications for the type-approval of the automated driving system (ADS) of fully automated vehicles as published in the EU official journal on 26 August 2022, reflects to the most practical extent the comments provide by China and other stakeholders. However, to reassure China, in addition, the European Commission maintains a dialogue with stakeholders in the Motor Vehicle Working Group - subgroup on Automated and Connected Vehicles where an interpretation document on the implementation of Regulation (EU) 2022/1426 is being discussed and prepared. This document is expected to provide the necessary guidelines to manufacturers on how to apply certain provisions of the Regulation. It is planned to finalise the document by the end of this year and make it publicly available. The EU would like to thank the Chinese authorities once again for providing comments on the notified draft.

2.1.3.6 Australia - Water Efficiency Standard AS/NZS 6400:2016, G/TBT/N/AUS/142 (ID 767[10])

2.59. The representative of China provided the following statement. According to the draft standard, in terms of water efficiency requirements, the classification of dishwashers in Australia is based on the number of sets of applicable tableware, which is divided into two categories: dishwashers suitable for nine sets of tableware or more and those suitable for less than nine sets of tableware. Currently, the popularity of small dishwashers is increasing due to their ease of operation, small space requirement, and low water consumption, and they are gradually becoming a global trend in household purchases, among which are sink dishwashers. China believes that the existing classification of dishwashers in Australia in terms of water efficiency requirements may lead to unrepresentative water efficiency test results, thereby constraining the development of the small dishwasher industry. In addition, IEC 60436 singles out small dishwashers with six sets of dishes for which a performance test method has been developed. In order to better regulate small dishwashers on the market and avoid unnecessary obstacles to trade, we suggest Australia develop separate water efficiency star requirements for small dishwashers and set separate water efficiency star requirements for dishwashers with six sets of dishes or less.

2.60. In response, the representative of Australia provided the following statement. Australia thanks China for raising their concerns with Australia on the Water Efficiency Standard AS/NZ 6400:2016 and the Water Efficiency Labelling and Standards (WELS) Scheme. Australia notified the WTO TBT Committee on 3 June 2022 with document G/TBT/N/AUS/142 with the WELS Scheme rating and labelling amendment. Members were provided with 60 days to provide comments to Australia's TBT Enquiry Point. While the date of adoption was listed as 30 June 2022, Australia still welcomed comments beyond this date with entry into force of the amendments on 1 July 2023. The scheme reduces demand for potable water by informing consumers about the water efficiency of household products, including taps, showers, toilets, urinals, washing machines and dishwashers at the point of sale. WELS helps businesses and consumers to make decisions that can reduce their water use, saving them money on water and energy bills while improving national water security and reliability across Australia. We thank China for outlining their concerns regarding the impact of the WELS scheme on dishwasher products. Australia notes there are 71 products of smaller capacity dishwashers, which range in size from three – eight place settings, registered under the scheme. They have all demonstrated a water efficiency of 2.5 stars or more and meet the minimum water efficiency requirement for dishwashers with less than nine place settings. We would encourage makers of the sink dishwasher to register their products in Australia if they intend to supply them to the Australian market. In relation to IEC 60436, we note Australian standard AS/NZ 2007 does refer to this international standard for further guidance on place settings for electric dishwashers for household use. Australia welcomes further dialogue and engagement with China on water efficiency standards and the WELS Scheme.

2.1.3.7 European Union - Draft Commission Regulation laying down ecodesign requirements for mobile phones, cordless phones and slate tablets pursuant to Directive 2009/125/EC of the European Parliament and of the Council, G/TBT/N/EU/918 (ID 768[11])

2.61. The representative of the Republic of Korea provided the following statement. The Republic of Korea appreciates this opportunity to make comments regarding the EU's "Draft Commission

[10] For previous statements follow the thread under ID 767.
[11] For previous statements follow the thread under ID 768.

Regulation laying down eco-design requirements for mobile phones, cordless phones and tablets" (hereinafter, the Draft Regulation) notified to the WTO on 1 September 2022 as G/TBT/N/EU/918 and coming into effect in January 2024. Some of the articles in the Draft Regulation may hinder the introduction of innovative technologies and restrict the consumer's right to choose the latest products and services, by setting criteria that are excessive compared to other eco-design regulations currently in effect for other household appliances such as TVs and refrigerators. So the Korean government would like to convey the following requests to the EU: first, the reliability of the foldable display cannot be guaranteed if the foldable display mechanism is provided as separated spare parts (e.g. Mechanical display folding mechanism, Protective foil for foldable displays, etc.). So Korea requests that the EU either change the spare parts requirements so that "Mechanical display folding mechanism", "Protective foil for foldable displays" and "Foldable display" can be supplied as one "assembly form", or provide a grace period for more than two years for technology development.

2.62. Second, with the latest trend for smartphone/tablet designs, the batteries are fixed or integrated into the devices with adhesive tapes, so it is impossible to satisfy the strengthened disassembly requirements that require manufacturers, from 18 months after the Regulation's entry into force, to ensure batteries can be replaced (i) by a layman, (ii) in a use environment, (iii) using basic tools, (iv) and with fasteners being reusable. Therefore, Korea requests that the EU ease the Draft Regulation to an extent so that battery replacement can be carried out (i) by a generalist, (ii) in a workshop environment, (iii) using commercially available tools, (iv) and with fasteners being removable or reusable. Third, the Draft Regulation stipulates waterproof/dust-grade of IP67 as one of the exception conditions to the requirements of battery replacement and battery availability to end-users as spare parts. However, foldable smartphones (the latest form factor of mobile phones) are impossible to satisfy the dust tight level as required in the Draft due to technical issues. For this reason, Korea requests to subdivide the exception criteria into two (such as IP4X for foldable types, IP6X for the other types, etc.) or add a condition that exempts the waterproof/dustproof rating requirements for foldables.

2.63. Fourth, the common usage scenario of foldable smartphones has not been appropriately taken into account in the test criteria on resistance to accidental drops. Since foldable smartphones are typically used single-handed when folded and double-handed when unfolded, Korea requests the EU to subdivide the test criteria into 100 falls as folded and 10 falls as unfolded. Fifth, delivery of spare parts within five days is overly burdensome because delivery time is highly affected by the transportation circumstances of each country in the EU territories. Since other eco-design regulations stipulate the delivery period of spare parts as 15 days, Korea requests to (i) allow the delivery time of "within 15 days" in the case of mobile devices as well and (ii) also add a clause waiving the obligation in special circumstances caused by external factors such as natural disasters or wars, etc. Lastly, due to the Draft's requirements to provide functionality updates and security updates to the Operating System in relatively short periods of time (which are within four months and two months respectively, after the public release of the source code) and the requirement to provide an OS Rollback option, Korean device manufacturers that outsource the OS software for their smartphone products are concerned that the security and stability of the product might be compromised. So Korea requests that the EU delete the time restrictions for security & functionality S/W updates and the OS Rollback option requirement clause.

2.64. In response, the representative of the European Union provided the following statement. Thank you to the delegation of the Republic of Korea for their diligent comments on the draft Ecodesign measures for mobile phones, cordless phones and slate tablets pursuant to Directive 2009/125/EC of the European Parliament and of the Council. Let me reassure the Delegation of the Republic of Korea that the European Commission is analysing Korea's concerns carefully, and in particular the potential issues related to the new and innovative category of foldable and flexible displays. Unfortunately, the EU is not yet in a position to give extensive substantive feedback on the concerns that were voiced here today. The European Commission is currently consulting the EU member States on the draft measures and the comments that we received in the context of the TBT consultation. Once that is over, we will be able to provide more detailed feedback. However, please note that we are committed to ensure that new product designs will not be hampered by the potential Ecodesign requirements, while at the same time addressing legitimate concerns regarding the durability of products and of their components.

2.1.3.8 Viet Nam - Draft of National technical regulation on the restriction of the use of certain hazardous substances in electrical and electronic equipment, G/TBT/N/VNM/236 (ID 769[12])

2.65. The representative of Japan provided the following statement. Japan appreciates the reference from Viet Nam prior to today's Committee meeting. However, we have serious concerns on this issue. Therefore, we would like to raise this as an STC. Japan shares the following concerns regarding the draft of the National technical regulation on the restriction of the use of certain hazardous substances in electrical and electronic equipment (EEE). This draft technical regulation (hereinafter referred to as the "draft TR") requires restrictions on certain hazardous substances in EEEs, and sets thresholds for each homogeneous material. Although the conformity assessment procedures in the draft TR require analytical testing of specific samples, EEEs are complex products, with tens to hundreds of thousands of homogeneous materials contained in one EEE. Therefore, assessing conformity based on the analytical testing of those huge numbers of homogeneous materials requires a significant workload and cost, and is not feasible for both the conformity assessment body and EEE manufacturers. EEEs are also composed of a lot of parts and materials from a variety of suppliers around the world, including Viet Nam. If such analytical testing is carried out, it will only confirm a specific sample at a given time. Therefore, in order to ensure compliance with the laws and regulations on chemical substances contained in EEEs, where parts and materials are constantly changed, it is essential to have a systematic conformity assessment procedure based on the international standard IEC 63000, which receives information on chemical substances contained from upstream suppliers, prepares and updates technical documents in response to changes in parts and materials, and assesses conformity through a self-declaration of conformity. We therefore request that Vietnam accept the self-declaration of conformity by EEE manufacturers in accordance with IEC 63000, as well as EU RoHS Directive (2011/65/EU) and RoHS type regulations in other countries and regions, as both are already in force and operational and are listed as references in this draft TR.

2.66. We understand that CR marking is currently used for safety and EMC certification in Vietnam. The approach of applying CR marking to products that comply with the draft TR is similar to the approach of CE marking in the EU. However, in EU RoHS, CE marking is applied on the basis of a self-declaration of conformity by the manufacturers, as mentioned above. Therefore, the requirement on marking in the draft TR of Viet Nam should be based on a self-declaration of conformity by the manufacturers, as well as in EU RoHS. Appendix 1 of the draft TR shows the names of the products covered by the draft TR and the 4-digit HS codes corresponding to the covered product names. However, the covered product name and a 4-digit HS code do not necessarily match the scope of the product defined by each. For example, in STT "VIII-1" of Appendix 1, HS code 9022 is described corresponding to the covered product name "radiation therapy equipment," but HS code 9022 is not consistent with the covered product name "radiation therapy equipment" because HS code 9022 includes all X-ray equipment. Similarly, HS code 8423 in STT "IX-4" is not consistent with the covered product name "Measuring, weighing or adjusting apparatus for household or laboratory use." Therefore, Japan would like to request that the product be designated by the name of the covered product or a 6-digit or higher HS code, not by the 4-digit HS code, so that the scope of the draft TR is clear and not expanded beyond what is necessary. Regulating large-scale stationary industrial tools, large-scale fixed installations and photovoltaic panels is considered to be more trade restrictive than necessary for the purpose of protecting human health or safety, in view of the fact that these products are not regulated under the EU RoHS and the RoHS type regulations in other countries and regions. For example, printers that fall under HS code 8443 should be exempt from the regulations if the printer is a large fixed installation. Therefore, Japan would like to request these products be listed on Table 1 of Appendix 2 that lists products not covered by this regulation.

2.67. Appendix 3 contains a list of applications exempted from the draft TR, but it does not include many applications that are exempted from the EU RoHS Directive and the RoHS type regulations in other countries and regions. The applications excluded from the EU RoHS Directive are those that cannot be replaced by current science and technology, and if these applications were subject to regulation, the function of EEEs would not be possible. Therefore, Japan would like to request that all of the applications exempted from the EU RoHS Directive be listed in Appendix 3, and exempted from the draft TR. To ensure that the above concerns are addressed, Japan would like to require that this technical regulation be harmonized with international standards and practices, and that the

[12] For previous statements follow the thread under ID 769.

operation under the technical regulation be quickly clarified to be no more trade-restrictive than necessary to fulfil its legitimate objectives.

2.68. In response, the representative of Viet Nam provided the following statement. Vietnam would like to thank Japan for interest in our draft measure. On 29 August 2022, Vietnam notified "Draft National Technical Regulation on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment" in Notification G/TBT/N/VNM/236. Vietnam received comments from Members and interested stakeholders. After careful consideration of all comments, Vietnam has recently decided to cancel the promulgation of this draft technical regulation.

2.1.3.9 United Kingdom - Designated notice and Designated vendor direction (ID 770[13])

2.69. The representative of China provided the following statement. On 13 October 2022, the UK Government released the final version of the Designated notice and the Designated vendor direction. These two measures discriminate against Chinese enterprises and products, which violates Articles 2.1, 2.2 of the TBT Agreement, create unnecessary trade barriers and have great negative impacts on telecommunication trade and industry. Designated vendor direction requires that after the date this Direction comes into force, not to use any Huawei equipment in its 5G networks if such equipment is procured after 31 December 2020, and not to install any Huawei equipment in any fixed fibre access network if the manufacturing process or supply chain for such equipment has been altered by changes to the United States Foreign-Produced Direct Product Rule; that after 28 January 2023, not to use Huawei equipment or any services delivered by or on behalf of Huawei in mobile networks of locations significant to national security; that after 31 October 2023, not to allow a 35% market share for Huawei equipment in FTTP networks, and other gigabit and higher capable access networks; that after 31 December 2023, not to use Huawei equipment or any services delivered by, or on behalf of, Huawei in the execution of its Core Network Functions; and that after 31 December 2027, not to use Huawei equipment or any services delivered by, or on behalf of, Huawei in any part of its 5G networks. We believe these two documents violate the NT and MFN non-discrimination principle of the WTO and affect free trade in the field of communications. We urge the UK to revise them in the right direction.

2.70. In response, the representative of the United Kingdom provided the following statement. The United Kingdom thanks China for their interest in the Designated notice and Designated Vendor Direction. Unfortunately, we have not received any information on China's concerns in advance of today and were not given any opportunity to engage beforehand, as per Geneva TBT practice. In this context, we are unable to provide a substantive response at this time but look forward to receiving further information on China's concern and we remain ready to respond.

2.1.3.10 United States - Energy Conservation Program: Energy Conservation Standards for Ceiling Fans, G/TBT/N/USA/861/Add.8 (ID 771[14])

2.71. The representative of China provided the following statement. In accordance with Table II.1, the minimum efficacy corresponding to the range larger than equal to 120 lumina is calculated to be 44.63 lm/w (74.0–29.42*0.9983 lm/w). The minimum efficacy corresponding to the range of fewer than 120 lumina is 50 lm/w. There is a big difference between the two, which will cause trouble for products with luminous flux close to 120 lumina. It is suggested that the US reconsider whether the computing method of minimum efficiency is reasonable and give a solid scientific basis for the method.

2.72. In response, the representative of the United States provided the following statement. United States thanks China for bringing to the United States attention your concerns about this draft regulation. The United States has not received any written comments from China through the US Technical Barriers to Trade Enquiry Point, nor has the United States received any comments from China in the US Federal Register Docket or Regulations.gov. If China replies to the notification with comments by the deadline, the United States responds to all comments publicly when issuing the final rule. In addition, having written comments in advance of the WTO TBT Committee aids other Members' understanding of what the trade concerns or questions might be. China repeatedly raised US Department of Energy rules on the TBT Committee agenda, and has seldom provided a comment

[13] For previous statements follow the thread under ID 770.
[14] For previous statements follow the thread under ID 771.

for us to address in the rulemaking process. This seems like a false opportunity to raise an issue against the United States in this forum.

2.1.3.11 Argentina - Decree Implementing Law No. 27.642 on the Promotion of Healthy Eating, G/TBT/N/ARG/435; G/TBT/N/ARG/435/Add.1 (ID 772[15])

2.73. The representative of the United States provided the following statement. The United States supports Argentina's public health objectives of reducing diet-related non-communicable diseases. Argentina published its final Front-of-Pack Nutrition Labelling Law, entitled Decree implementing Law No. 27.642, on 23 March 2022, and notified the measure to the WTO nine days later, on 1 April 2022. The United States reiterates the importance of notifying measures to the TBT Committee with at least a 60-day comment period so that interested parties have an opportunity to submit written comments, discuss these comments upon request, and have comments considered by Argentina before finalizing measures. We understand companies were expected to comply with the new law by September 2022, just six months after publication of the final law. Can Argentina confirm whether the law is being fully implemented at this time? The United States is concerned about the short implementation period of this measure. We understand that Argentina is considering extensions to the implementation period in specific cases. We request that Argentina consider a 24-month implementation period for stage one, until March 2024, to allow sufficient time for industry to effectively comply. Other countries in the region have adopted a 24-month period when implementing similar labelling policies.

2.74. We note that other countries have permitted stickering of labels to provide greater flexibility. Will Argentina consider temporary stickering as an option for compliance during the implementation period? What flexibilities will Argentina provide for label placement to accommodate different sized packaging? The labels may account for a disproportionate surface area on the packaging of smaller, individually packaged items. Has Argentina considered that the Pan-American Health Organization's Nutrient Profile was based on the World Health Organization's nutrient intake goals intended for total diets, rather than profiles more appropriate for individual foods making up total dietary patterns? We raised many of these concerns during our July TBT Committee bilateral meeting and Argentina responded that their Ministry of Health would provide a response. We are still awaiting a response from Argentina.

2.75. The representative of Guatemala provided the following statement. We recognise Argentina's right to protect the health of its population and to provide food information to the consumer. Article 2.2 of the Agreement on Technical Barriers to Trade provides 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 and shall not be more trade-restrictive than necessary to fulfil a legitimate objective. Article 2.9 states that 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 other Members to become acquainted with it, and shall 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. In the case of the two notifications, which address separate technical regulations, Argentina failed to comply with the principle of transparency established by that Agreement, since the notifications were submitted when the texts had already been formally approved by its government, and Members were not given the opportunity to comment on them at an early stage, prior to their final formulation.

2.76. In response, the representative of Argentina provided the following statement. We would first like to point out that Law No. 27.642 on the Promotion of Healthy Eating is designed to ensure the population's right to health and adequate food, through the promotion of healthy eating, by providing simple and comprehensible nutritional information for packaged foods and non-alcoholic beverages. This will promote confident and active decision-making and warn consumers about high levels of sugars, sodium, saturated fats, total fats and calories, using clear, appropriate and accurate information that protects consumer rights, which is the key focus of the law. Under no circumstances can Law No. 27.462 be considered a barrier to trade, as it merely seeks to give people simple and easily understandable nutritional information about the products covered by the Law. Nevertheless,

[15] For previous statements follow the thread under ID 772.

it should be noted that the Agreement on Technical Barriers to Trade recognizes that countries may put in place measures designed to protect public health. This is recognized in the preamble to and in Article 2.2 of the Agreement. Law No. 27.642 was enacted at the end of an extensive democratic process, with wide-ranging discussions in both chambers of the National Congress, where representatives of industry, academia and civil society had the opportunity to put forward their positions. Parliamentary decisions were made during the discussions in the committees, in which a huge amount of relevant scientific evidence was disseminated. Similarly, various sectors were involved in the process of drawing up the implementing Decree. These sectors were given the opportunity to submit proposals and suggestions, which were included to the extent permitted by law.

2.77. With respect to the United States' concern about the time frames for implementing the measure, Law No. 27.642 has a number of implementation phases both for the nutrient profile system, and for large corporations and SMEs (which have different deadlines). In addition, the Law also included an option to request a single six-month extension for the first implementation phase. Deadlines for large corporations: 20 July 2022: deadline for requesting extensions; 20 August 2022: deadline for implementing the first phase / start of the second phase; 16 February 2023: end of the approved extension period for the first phase; 20 May 2023: deadline for implementing the second phase; and 20 May 2024: deadline for approved special cases involving returnable containers. Deadlines for SMEs: Tier one micro-, small and medium-sized companies under Law No. 25.300 (MSMES), as well as cooperatives operating in the popular economy and suppliers of products in the family farming sector, as defined in Article 5 of Law No. 27.118. 20 January 2023: deadline for requesting extensions; 20 February 2023: deadline for implementing the first phase / start of the second phase; 19 August 2023: end of the approved extension period for the first phase; 20 May 2023: deadline for implementing the second phase; and 20 May 2024: deadline for approved special cases involving returnable containers.

2.78. Therefore, it is expected that, by November 2023 (two years after the Chamber of Deputies approved the Law), all products covered by the regulations and produced from that date will have to comply with front-of-pack labelling requirements, irrespective of the production capacity of the company producing them. With respect to placing adhesive labels on packages to provide greater flexibility, national legislation (the Argentine Food Code) provides that, in the case of imported products, self-adhesive labels may be added to adapt the labelling to the regulations in force in the country. In the case of returnable containers with lithographed and/or painted labels, it shall be permitted to add the corresponding warning signs or messages in the form of firmly affixed, heat-seal or heat shrink labels. This will only be permitted for up to 30 months after the Law enters into force, meaning that, from 20 May 2024, the front-of-pack nutritional labelling must be lithographed and/or painted onto all returnable containers.

2.79. With respect to placing labels on packages of different sizes, the size of the label is defined by law: Article 5 states that "the size of each label shall never be less than five percent (5%) of the surface area of the front of the package", with "the front of the package" meaning the part of the label featuring the sales description and the brand or logo, if any, most prominently. Therefore, Appendix II to implementing Decree No. 151/2022 established more than 15 size ratio categories, in order to ensure that small packages comply with the 5% legal requirement. The regulations provide that micro-labels, which cover 15% of the surface area of the front of the packages, can only be affixed to packages with a surface area of less than 10 cm^2. For product packages with a front surface area between 10 cm^2 and 20 cm^2, it was deemed that each warning label should cover 5% of the surface area. For packages with a surface area greater than 20 cm^2 and for products that have more than one label, the implementation handbook proposes an adjustment whereby the "surface area available for labels" is calculated, which is set at 65% of the surface area of the front of the package. Packages bearing a single label, irrespective of their size, must use the label sizes set out in Tables 1 and 2 of the implementing Decree. Moreover, when the surface area of the front of the package is greater than 300 cm^2, the only size of octagonal warning label to be used is 3.9 cm x 3.9 cm, while for rectangular warning labels it is 6.4 cm x 1.6 cm.

2.80. It was decided to apply the correction factor of 0.65 to products with a front of package surface area greater than 20 cm^2, but not to products where it is between 10 cm^2 and 20 cm^2, because applying this factor would result in a front-of-pack surface area of less than 10 cm^2 for this size category. This could contravene Article 5 of the Law, which clearly states that "should the surface area of the front of the package be less than or equal to 10 centimetres squared and should it bear more than one label, the enforcement authority shall determine the suitable position of the

labels". With respect to the Nutrients Profile, we must first point out that the nutrient profiling system (NPS) of the Pan American Health Organization (PAHO) is based on the World Health Organization (WHO) nutrient intake goals for the nutrients assessed. The Food Guidelines for the Argentine Population (GAPA) are based on the same international recommendations which state that the nutrient profile models need to complement and support food-based dietary guidelines in the region in which they are applied. Therefore, the Argentine Ministry of Health carried out a study which evaluated the degree of concordance between eight NPSs used under different regulations (PAHO/WHO, Uruguay, Chile, Peru, Ecuador, Bolivia, the United Kingdom and the NPS proposed by the Food Industry Coordination Committee (COPAL)) with the national recommendations made in the GAPA. The PAHO NPS had the highest overall degree of concordance (almost 80%) in the complete concordance evaluation and, when carrying out an overall evaluation of each NPS, the PAHO model performed the best, corresponding to the national scientific evidence available to date. This suggests that this nutrient profile is the best option for assessing the food sold in our country. Moreover, Law No. 27.642, which is the product of a wide-ranging legislative discussion, with the participation of all sectors involved, clearly states that the Nutrient Profile Model of the Pan American Health Organization shall be used, without any possibility of changing this.

2.81. To conclude, we would like to reiterate that preventing malnutrition includes, among other measures, providing warnings about high levels of critical nutrients, such as sugars, sodium, saturated fats, total fats and calories, in packaged foods and non-alcoholic beverages, using clear, appropriate and accurate information that protects consumer rights, which is the key focus of Law No. 27.642 on the Promotion of Healthy Eating.

2.1.3.12 Spain - Barcelona labelling classification requirements for squid (ID 773[16])

2.82. The representative of China provided the following statement. Squid exported from China is mixed in terms of breeds, usually consisting of three breeds that are extremely similar in appearance and taste, weighing 6-8 grams individually. At present, even extremely skilled fishermen can hardly distinguish them by the naked eye, and neither can machine sort them out automatically. Furthermore, it is not reasonable and feasible to check DNA for classification. We suggest Spain re-evaluate the rationality of the classification of squid labels, develop testing methods and standards that are compatible, and remove the existing classification requirements until reasonable standards are set.

2.83. In response, the representative of the European Union provided the following statement. Indeed, as China explained, the Spanish authorities have rejected the entering of several containers of squid from China during border health checks. The reason for this decision is the non-compliances and divergences found between the species declared in the required documentation for customs clearance, including the respective health certificate; and the outcome of the checks carried out at the EU border by the authorities of the EU member States in accordance with the provisions of EU regulations. These sanitary controls carried out at the Spanish Border Control Posts on products of animal origin, such as squid, have their legal basis in existing EU legislation: - Regulation (EC) 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. (G/SPS/N/EEC/110) - Regulation (EU) 2017/625 on controls and other official activities performed to ensure the application of food and feed law, animal health and welfare, plant health and plant protection rules. (G/SPS/N/EU/43) - Implementing Regulations (EU) 2020/2235 and 2019/2130, which regulate the documentation, identity and physical checks to which these products must be subjected. (G/SPS/N/EU/345)

2.84. One of the objectives of these controls, prescribed in the previously mentioned legislation, is to verify that the products inspected correspond to what is declared in the official certificates and other accompanying documentation, including verification of the species, and may require the need to use laboratory tests to determine the correct species of the product. If there are discrepancies on this and other none-compliances, the introduction into the territory of the Union cannot be accepted. Consequently, the Spanish authorities have proceeded in accordance with EU legislation regarding to border controls and requirements to be met by products of animal origin intended to be introduced into the EU customs territory. Spain does not have specific legislation on these matters. This is why

[16] For previous statements follow the thread under ID 773.

it has not been possible to notify any text to the WTO, nor is there any publication in the Spanish Official State Gazette (Boletín Oficial del Estado), as requested by the Chinese authorities.

2.1.3.13 India - Safety requirements with respect to the Rechargeable Electrical Energy Storage System (REESS) for electric power train vehicles, of AIS-038 and AIS-156 (ID 774[17])

2.85. The representative of the Republic of Korea provided the following statement. The Republic of Korea appreciates this opportunity to make comments on India's amended "AIS-038 and AIS-156, Safety requirements with respect to the Rechargeable Electrical Energy Storage System (REESS) for electric power train vehicles," which were announced on 27 September 2022 through the website of the Ministry of Road Transport and Highways and will be implemented in phases from 1 December this year. The Indian Automotive Industry Standards AIS-038 and AIS-156 (hereinafter, the Automotive Standards) stipulate specific requirements applied to (L, M, N category) vehicles using electric powertrains, and Korean companies are endeavouring to comply with the Automotive Standards of India. However, the companies have raised concerns about the difficulties in complying with some of the requirements amended in September as they are excessive compared to the relevant international standards. Thus, Korea would like to make the following comments: first, requirements regarding "temperature sensors", "audio-visual alarm", "active paralleling circuits", and "cell-to-cell spacing distance", specified in Annex 8K of AIS-156 and Annexure IX-K of AIS-038 are not stipulated by the relevant UNECE regulations. Moreover, the "no evidence of fire and explosion" requirement in the modified Clause 6.11.4.1 of AIS-156 is also more stringent than the relevant requirement in Clause 23A.2.(b) of UN GTR 20. Korea would like to request India to consider revising these overly burdensome requirements in line with the current relevant international standards.

2.86. Second, Clause 2 of the aforementioned Annexures stipulates certification requirements per Indian Standard (IS) 16893-Part 2 and Part 3 for cells used to make REESS. However, because most of the tests in Part 2 are also covered in Part 3, the requirement places the unnecessary burden of duplicative tests on manufacturers. Since IS 16893-Part 3 stipulates clear safety criteria, Korea would like to request that India modify Clause 2 so that the cells can be certified in accordance with IS 16893 Part 3 only. Third, it is not appropriate to limit the charge-discharge testing conditions for the battery cell formation to the C/3 current rate conditions. Charging and discharging conditions may vary depending on the cells' chemical properties and the design. Moreover, if the charge-discharge operation is performed at a constant speed, it will be difficult to carry out performance tests under particular conditions, such as fast charging. Therefore, Korea would like to request that India consider revising the Automotive Standards to allow charge-discharge tests to be carried out under the conditions declared by the manufacturers as suitable for each cell product. In addition, as the technical contents of the mandatory Automotive Standards deviate considerably from relevant international standards, Korea would like to request that India notify other Committee Members, receive comments from them, take their comments into consideration and improve the Standards in accordance with the WTO TBT Agreement.

2.87. The representative of the European Union provided the following statement. The EU welcomes India's efforts on improving safety of its electric vehicles' fleet. In this regard, India's increasingly proactive involvement in the work of the UN's informal working group on safety of electric vehicles, in the recent years, is particularly lauded. The EU was pleased to learn that India was preparing revision 2 to the AIS 038 standard, which was largely based on the requirements of UN GTR 20. The latter have been judiciously developed to support continuous technological development of different battery architectures and solutions, while ensuring the highest levels of vehicle and battery safety; and EU manufacturers were working to meet these implementation deadlines. However, the EU would like to remind India about the obligation to notify to the WTO any amendments to the AIS 038 standard, to ensure that all concerned stakeholders get the opportunity to send comments. The EU understands that during 2022 a series of incidences of battery related fires primarily in the two-wheelers vehicles have been reported. This unfortunate development has led India to introduce amendments of the proposed revision 2 of the AIS 038 standard that will significantly deviate from the internationally agreed rules, i.e. UN GTR 20.

2.88. India failed to notify to the TBT Committee the amendments 2 and 3 to the revision 2 of the AIS 038 standard, thus going against Article 2.9.2 of the TBT Agreement that requires Members to

[17] For previous statements follow the thread under ID 774.

notify at an early appropriate stage, when amendments can still be introduced and comments taken into account. Given that the amendments in question will have a significant effect on trade, the EU calls on India to suspend the planned entry into force of amendment 3 currently planned for 1 December 2022 for Phase 1 requirements, and 31 March 2023 for Phase 2 requirements, and to notify to the WTO allowing Members customary 60 days to present their comments in writing and take these written comments into account. The EU finds amendments 2 and 3 to the revision 2 of the AIS 038 standard highly problematic, since they are design restrictive and require drastic changes to the design of battery systems over an impossibly short period of time, which will lead to additional development efforts/cost for vehicle manufacturers without adding safety benefits. Moreover, the logic of applying specific safety performance requirements that are meant to address the difficulties encountered on the market of two-wheelers to a category of motor vehicles (four-wheelers), at the least as far the EU production is concerned, seems highly inappropriate. The EU kindly requests India to fully align the revision 2 of the AIS 038 to UN GTR 20, to reconsider the lead times imposed on the industry, and to consider accepting type approvals and test reports that are based on the provisions of UN GTR 20 (e.g. UNR 100.03).

2.89. In response, the representative of India provided the following statement. India has taken note of the concerns raised by Korea and the EU today on the Indian automotive industry standards. These concerns are currently being examined in the capital. India will be reverting on the issues raised in due course.

2.1.3.14 United States - Energy Conservation Program: Test Procedure for Television Sets, G/TBT/N/USA/677/Rev.1 (ID 775[18])

2.90. The representative of China provided the following statement. According to the draft regulation, the stability criteria of the standby mode measurement is 240 minutes, i.e. six hours. However, when the calculation of AEC is performed, hours per day spent in on mode is prescribed as five hours, which seems unreasonable. We recommend to modify Table III.2 via adjusting hours per day spent in on mode to six hours to be consistent with the requirements for stability. According to 5.2.4 of the draft regulation, the calculation of On Mode Power Consumption has been modified to use the average of the power consumption in the default SDR, brightest SDR, and default HDR10 preset picture setting. We propose to retain the provision of the current standard with only the default SDR preset picture setting power as the on mode power consumption since most users are used to choosing the default SDR preset picture setting as the daily watch mode. In addition, even if the power of SDR brightest and default HDR10 preset picture setting need to be included in the power calculation of on mode power consumption calculation, they cannot have the same weighting factor as the default SDR preset picture setting power, as the brightest SDR and default HDR10 preset picture setting are relatively not frequently used. For example, the power weighting factor of the brightest SDR and default HDR10 preset picture settings should be defined as 0.2, the power weighting factor of the default SDR preset picture setting be defined as 0.6, and the calculation equation of On Mode Power Consumption should be modified accordingly. Finally, there are three power values respectively listed in sections 5.2.1.2, 5.2.2.2, and 5.2.3.2 of the draft regulation, which are required to be tested respectively but not referenced in Appendix H, which will increase unnecessary test burdens to enterprises. We suggest the US cancel the three power values mentioned above.

2.91. In response, the representative of the United States provided the following statement. United States thanks China for bringing to the United States attention your concerns about this draft regulation. The United States has not received any written comments from China through the US Technical Barriers to Trade Enquiry Point. nor has the United States received any comments from China in the US Federal Register Docket or Regulations.gov. If China replies to the notification with comments by the deadline, the United States responds to all comments publicly when issuing the final regulation. In addition, having written comments in advance of the WTO TBT Committee aids other Members' understanding of what the trade concerns or questions might be. China repeatedly raised US Department of Energy rules on the TBT Committee agenda, and has seldom provided a comment for us to address in the rulemaking process. This seems like a false opportunity to raise an issue against the United States in this forum.

[18] For previous statements follow the thread under ID 775.

2.1.3.15 Angola - Decreto Executivo n°186/22 by the Ministerio das Finanças (ID 776[19])

2.92. The representative of the European Union provided the following statement. On 10 March 2022, Angola published the Executive Decree n°149/22 introducing the obligation to affix High Security Tax Stamps on certain products including beverages (beer, wine, spirits, soft drinks) and tobacco in order to fight smuggling. This decree was supposed to enter into force on 10 April 2022. On 8 April 2022, the Angolan authorities published the Executive Decree n°186/22, which suspended the mandatory affixing of high-security tax stamps on all alcoholic beverages. There is so far no revised decree, but the entry into force seems to be currently around April 2023. Angola has not yet notified this draft measure to the TBT Committee and we request Angola to notify as soon as possible, so that all members can provide their comments on the draft measure well ahead of the adoption and entry into force. The EU was having different concerns with the draft measure: Lack of consultation and early information of economic operators. Many elements were unclear, both in terms of requirements for economic operators (certification, registration on the economic platform) and in terms of preparatory work by the Angolan authorities (creation of electronic platform, of the digital forms etc.). For example, economic operators would have had to order and buy tax stamps on the economic platform provided by Prosefa, for which prior registration would be required, but the platform itself was not ready. Also experience so far is that this registration/certification processes in Angola are very slow.

2.93. There was no flexibility foreseen on where to affix the stamp (i.e., either at production site or bonded warehouses) for imported beverages, which represented a significant source of administrative burden for imported beverages. Each retail package must have this tax stamp. International products cannot be re-packed in Angola, so they must have the stamp from the origin country. Absence of a proper transition period following publication of the decree. Such a transition period should last at least one year, and a stock exhaustion clause should be foreseen. However, in the previous text, products produced or imported before entry into force of the regulation were only going to be authorized on the market for a maximum period of 6 (six) months and no stock exhaustion clause was foreseen. Very high cost of tax stamps compared with other countries in the region. The measure did not seem justified for low value drinks such as soft drinks or beer as they are not very likely counterfeited and the relative cost of marking is very high. We ask Angola to inform us what their plans are for next steps. It is very important to notify a new draft decree to the WTO TBT committee well in advance and to consult with all relevant stakeholders and take their comments into account. In any case a transition period of at least one year as well as a stock exhausting clause should be foreseen. We would be grateful if Angola could take these concerns into account. We are ready to engage in bilateral discussions in order to clarify the issue further.

2.94. In response, the representative of Angola provided the following statement. The Executive Decree no. 149/22 of the Ministry of Finance, which establishes the procedures applicable to the use of High Security Tax Stamps, suspended by Executive Decree no. 186/22, derives from the approval and publication of Presidential Decree no. 216/19 of 15 July which creates the National Programme for High Security Tax Stamps (PROSEFA) and establishes the mandatory affixing of High Security Tax Stamps on liquids and alcoholic beverages, tobacco and its manufactured substances, as well as Law n. 16/21 of 19 July, the Excise Tax Law, which in turn extends the affixing of Tax Stamps to sweetened and carbonated beverages. It should be noted that the High Security Tax Stamps, under the terms of the aforementioned Presidential Decree, are intended to combat smuggling and counterfeiting of covered products, protect revenue due to the State, and ensure the reliability of products introduced into Angolan territory.

2.95. In this context, following the referred suspension, which resulted from a consultation with the economic operators on February 2022, who claimed to need a period of one year to adjust their factory structures to the requirements of the obligation in question, the Angolan government continued the Accompanied Implementation Programme with the economic operators who voluntarily expressed an interest, visited manufacturing units at national and international levels, especially in the Portuguese, Brazilian and South African markets, taking into account the volume of products imported from those countries, to assess the respective conditions for compliance with this requirement. However, we remain available to provide the necessary assistance to other importing companies and markets within the scope of this process. As a result, and with a view to improving the functionality of the programme under analysis, following the suspension of Decree 149/22, the Angolan government has realized the need to introduce relevant content to the new proposed

[19] For previous statements follow the thread under ID 776.

Regulation, namely the provisions on the registration of economic operators on the PROSEFA platform and the process of requisition, a strong reduction on the price of tax stamps, the possibility of local producers and importers to choose the type of tax stamps to acquire, an increase from 1 to 3% in the quantity of unused stamps that can be justified under the Simplified Procedure, the exceptionality of imported products being able to be stamped in national territory, transitional provisions, the supply, return and destruction of tax stamps, among others, having even shared the respective proposal with interested parties, mainly the economic operators registered in our tax data base, for their respective contributions, a process that is currently being concluded for subsequent submission for approval purposes.

2.96. Regarding the transitional period of six months after publication and entry into force of the Regulation on Compulsory Sealing, we consider this period to be more than sufficient, as the average transitional period for similar programmes implemented in other countries is three months. Additionally, we inform that the aforementioned provision has been improved, and the issue of products in stock produced before the entry into force of the obligation has been taken into account. Thus, we propose that the products in stock which are not sold after the transitional period should have the tax stamps affixed, in order to boost the achievement of the objectives proposed by PROSEFA. With regard to the price of tax stamps, considered by the EU to be high compared to other countries in the region, we inform that following the consultation process with economic operators, combined with benchmarking on the prices applied in other countries around the region and the respective tax obligations, the revised Proposed Regulation includes an updated price of tax stamps, which reflects a 54% reduction compared to the amount initially provided, positioning Angola as the country with the lowest tax burden on the products covered. It should be noted that the smuggling and counterfeiting of alcoholic beverages, as a whole, has become a problem on a global scale, also affecting Angola, where this phenomenon is extensive to beers and ciders, according to evidence obtained in the national informal market. Nevertheless, assuming that beers and ciders are considered to be low risk for smuggling and counterfeiting, this measure will necessarily help to reduce these levels, discouraging their increase and providing a fair commercial environment between the national and imported products involved, thereby safeguarding the public interest in terms of unfair competition and protecting the revenue owed to the State, among other benefits.

2.1.3.16 European Union - Proposed reduction of Chromium VI concentration from 3mg/kg to 1mg/kg in leather and textile items (ID 777[20])

2.97. The representative of India provided the following statement. India expresses serious concern over the EU's proposed reduction of Chromium VI in leather and textiles items from the present limit of 3 mg/kg to 1 mg/kg. In general parlance, it is known that some 85% of global leather manufacture is carried out using Chromium III salts. Chromium tanning is preferred for cost, speed of production and the properties of leather produced. Other tanning chemistries are available, including synthetic tannages (syntans) and tanning with vegetable extracts (vegtan). However, these chemistries produce leathers with different properties and cannot necessarily be used as a substitute for chromium tanning. Moreover, testing methods are not available to accurately measure Chromium VI below 3mg/kg. The current ion-chromatography method (which could be more accurate) requires expensive analytical equipment and appropriately trained operators. As such, the manufacturers are either unable to test chrome-tanned leathers or almost certainly increased testing costs.

2.98. In this regard, the Committee for Socio-Economic Analysis (SEAC), European Chemicals Agency also considers that a 1 mg/kg limit may not be technically feasible as the currently applied standard for sampling and analyses EN ISO 17075 does not support reliable quantification lower than 3 mg/kg'. With this understanding, the proposed regulation on reducing Chromium VI concentration in leather and textile items seems technically infeasible and scientifically baseless. India reminds the EU that any regulation must be based on sound scientific evidence and should be practicable in terms of commercial viability. In light of this common understanding shared across the globe, India requests the EU to withdraw the proposed reduction of Chromium VI concentration in leather and textile items from 3 mg/kg to 1 mg/kg as the same stands without sufficient scientific evidence; and to consequentially avoid causing unnecessary disruption to safe trade.

2.99. In response, the representative of the European Union provided the following statement. Thank you chair and thank you to India for pro-actively raising their concerns. At this moment in time, the EU is still exploring the appropriateness of such a measure at technical level. This is why

[20] For previous statements follow the thread under ID 777.

the measure has not yet been notified to the WTO. If, and when, such a measure is proposed, the European Commission will consult the WTO Members, in accordance to its obligations under the TBT agreement. The European Commission takes note of India's concerns, and invites India to submit their concerns in writing if and when such a measure is notified. As is usual, the EU will duly take India's concerns into account and it can expect a response in writing on any written concerns raised in the context of the TBT consultation.

2.1.3.17 Indonesia - Draft decree regarding Minimum Energy Performance (SKEM) and Energy Saving Label for various products, G/TBT/N/IDN/141; G/TBT/N/IDN/142; G/TBT/N/IDN/143; G/TBT/N/IDN/144; G/TBT/N/IDN/145; G/TBT/N/IDN/146; G/TBT/N/IDN/147; G/TBT/N/IDN/148; G/TBT/N/IDN/149 (ID 778[21])

2.100. The representative of India provided the following statement. India would like to thank Indonesia for notifying Members via G/TBT/N/IDN/141 to G/TBT/N/IDN/149 regarding the Minimum Energy Performance (SKEM) and Energy Saving Label of various products. As the technical documents are in Indonesian, India requests Indonesia to share the officially translated versions in English at the earliest. India understands that the draft decree requires domestic manufacturers and importers to submit a report regarding the application of Minimum Energy Performance Standards to the Director General of New, Renewable Energy and Energy Conservation periodically every three months, which includes brand, type, variant, or model, capacity, power and amount. India is concerned that this frequent reporting not only imposes a significant burden on the manufacturers and importers but also has cost implications with limited added value. India, therefore, requests Indonesia to review this frequent reporting requirement and ensure smooth trade in compliant goods.

2.101. In response, the representative of Indonesia provided the following statement. Indonesia would like to thank India for raising this issue although we have not yet received any questions or enquiries from India WTO TBT Enquiry Point regarding any substantive or technical issues of this notification. Nevertheless, we will try to explain about Minimum Energy Performance Standards (SKEM) and energy saving labels on products. The Indonesian Energy Conservation Program aims to provide users with information on the selection of energy-efficient equipment for specific energy uses. This policy regulates the obligation to include Minimum Energy Performance Standards (SKEM) and energy saving labels on products. Minimum Energy Performance Standard (SKEM) is a specification that contains a number of minimum energy performance requirements under certain conditions to limit the maximum permissible amount of energy consumption of a product. Energy Saving Label is a label that certifies that the product of energy use equipment has met certain energy saving requirements. The standards and conformity assessment procedures used in the implementation of this programme have referred to the relevant international provisions. Indonesia will take into consideration all comments received during the open comment period of the notification (until 2 December 2022) and respond the comments respectively.

2.1.3.18 Morocco - Conformity assessment, G/TBT/N/MAR/28 (ID 779[22])

2.102. The representative of the European Union provided the following statement. On 18 December 2019 Morocco notified to the WTO TBT Committee the verification of conformity of certain imported industrial goods under reference G/TBT/N/MAR/28. The EU sent comments in January 2020 and also followed up with a bilateral discussion and two letters. Despite these discussions concerns remain on the EU side. As regards the conformity control system for industrial products, Morocco informed us that the legislative framework does not make a distinction on the basis of the typology of economic operators (importers or local manufacturers) or the origin of the products. However, in the light of the information available to the EU and based on feedback from our industry, it appears that the arrangements for checking compliance vary depending on whether imported or local products are concerned. Since the introduction of the new system in February 2020, checks on imported industrial products have been outsourced and appear to require the systematic obtaining of a certificate of conformity issued by one of the approved bodies, which is very burdensome and costly. On the other hand, checks on local products are carried out on the basis of a national market surveillance plan, and risk-based according to the products in question, so not on a systematic basis. This difference in treatment seems problematic to us.

[21] For previous statements follow the thread under ID 778.
[22] For previous statements follow the thread under ID 779.

2.103. The TBT Agreement (Article 5.1) provides that conformity assessment procedures should be prepared, adopted and applied so as to grant access to suppliers of like products originating in other Members under conditions no less favourable than those accorded to suppliers of like products of national origin, in a comparable situation. The Moroccan conformity assessment procedure for the respective products creates an unnecessary obstacle to international trade as the procedures seems more strict than necessary to give Morocco adequate confidence that products conform with the requirements set out in technical regulations. In this respect some aspects of the procedures need to be clarified, like whether there is any possibility for importers to avoid repeating the conformity assessment procedure for any shipment to Morocco, which seems to be unnecessarily burdensome in particular for less risky products. Moreover, for Morocco's technical regulations that impose the use of Moroccan standards corresponding to international and EU standards, Morocco should accept EU certificates that are based on the same international and EU standards and done by ILAC laboratories like a lot of countries are doing world-wide. Another important problem that we face is that some Moroccan regulations depart from international standards without providing an adequate justification for it. The standardization process and the subsequent transformation of the national standards into compulsory technical regulations also raises questions of transparency. We would be grateful if Morocco could take these concerns into account and work on the review of their conformity assessment system. We are ready to engage in bilateral discussions in order to clarify the issue further.

2.104. The representative of Morocco did not provide a response to the concerns raised.

2.1.3.19 India - Order related to requirement of Health certificate accompanied with imported food consignment of Milk and Milk Products, Pork and Pork Products & Fish and Fish Products, G/TBT/N/IND/233 (ID 780[23])

2.105. The representative of the European Union provided the following statement. In relation to the Order that introduces three new health certificates to accompany the imported food consignments of milk and milk products, pork and pork products and fish and fishery products, the European Union would like to start by welcoming the notification of India ref. G/TBT/N/IND/233 of 18 August 2022, while asking India to please reply in written to the EU comments, given the importance of providing exporting countries with clarity and certainty about India's import requirements; and the two months postponement, pursuant to the FSSAI Order of 27 October 2022, of the entering into force of the new health certificates – from 1 November 2022 to 1 January 2023. However, given the: (i) disruption to trade associated to the new certificates, even if they are not associated to new sanitary measures; (ii) number of unanswered questions by India; (iii) duplication of certificates requested by different authorities in India; (iv) different products/food categories associated to the three certificates and to the registration of foreign food manufacturing facilities; and (v) importance of the competent authorities and companies in the exporting countries to have sufficient time to adapt, the EU would like to ask India to: Further postpone the date of entering into force for, at least, 12 months; Clarify the meaning of "entering into force", i.e. whether it corresponds to the "date of arrival of the consignments to India" or the "date of departure of the consignments from the exporting countries"; Provide a list of HS product codes with, at least, 4 digits, and the risks associated to each of the products/food categories; Make easily accessible, at all times, the import sanitary measures of India (Regulations), which are applicable to each of the types of products associated to the three health certificates; Clarify the modalities related to "regular inspections/monitoring of checks in accordance with the FSS Act, 2006", as mentioned in the three certificates; Consider avoiding the duplication of sanitary measures in different certificates for the import of the same products, which are required by different competent authorities of India; Consider negotiating with the EU "harmonized model certificates" that would be applicable for exports from the entire EU, i.e. that would be signed by the competent authorities of all EU member States; Notify, well in advance, its measures related to the new health certificates also to the WTO SPS Committee. Finally the EU would like to thank India for its willingness to meet to discuss all these matters.

2.106. The representative of New Zealand provided the following statement. New Zealand would like to thank the Food Safety and Standards Authority of India (FSSAI) for the discussions to date on this new requirement and extending the implementation date. We seek confirmation that a single health certificate will be accepted for affected commodities by FSSAI, the Department of Animal Husbandry and Dairying, and the Department of Fisheries. New Zealand is concerned with the

[23] For previous statements follow the thread under ID 780.

requirement to provide assurances that operators comply with Indian domestic regulations and standards, as outlined in the new requirements. We note that the WTO SPS Agreement provides for the recognition of the regulatory system and controls of the exporting country as achieving the sanitary criteria and objectives required by the importing country. New Zealand encourages India to recognize that the food safety regulatory system of an exporting country can achieve the food safety outcomes of India's regulations and standards. We are also concerned that there is limited time to agree and implement revised certification which meets the needs of FSSAI, the Department of Animal Husbandry and Dairying, and the Department of Fisheries by the 1 January 2023 deadline. We request that existing certification continue to be accepted while India negotiates revised certification requirements with its trading partners and that a transition period be provided to enable implementation of any revised certification.

2.107. The representative of Canada provided the following statement. Canada is concerned that India's measure will result in the duplication of health certificate requirements and create unnecessary regulatory and administrative cost for these commodities. Canada strongly encourages India to streamline certification requirements, and have a single integrated certificate incorporating food safety related requirements and attestations accepted by FSSAI. Therefore, Canada welcomes India's recent decision to allow FSSAI's new requirements to be integrated into existing certificates so that a single certificate can be issued, as indicated on the 26 September 2022, clarification notice. However, Canada remains concerns on the implementation of a proposed single certificate. Canada looks forward to India's response to our comment letter submitted on 17 October 2022, including on the timeline for India providing the requested details. For example, Canada would appreciate clarification from India regarding the impact of this measure with certificates that are currently under negotiation with India's Department of Animal Husbandry and Dairying. Canada will avail itself of the opportunity to negotiate with India on revised certificates incorporating food safety related requirements and attestations according to international standards. However, Canada notes that this will take time. While Canada appreciates that FSSAI has delayed the implementation date of this order to 1 January 2023, Canada urges FSSAI to further delay implementation until the revised single certificates are finalized. In closing, Canada requests India to notify these new requirements to the SPS Committee given that India's proposed regulation covers food safety measures aimed at protecting human health and safety.

2.108. The representative of the United States provided the following statement. The United States supports the concerns raised by the European Union regarding India's new health certificate for milk, pork, and fisheries products to this meeting's agenda. We look forward to receiving a response from India to the comments we submitted on 18 October 2022.

2.109. The representative of Japan provided the following statement. Japan shares the concerns expressed by EU regarding India's Order related to requirement of health certificate accompanied with imported food consignment of milk, pork, fish and related products. According to the India's TBT notification, the final date for comments was set as the middle of October 2022, and proposed date of adoption and entry into force of the Order was advised as 1 November 2022, which was just two weeks after the closing date for comments. Our concern is that the Indian authority would not have sufficient time to consider any comments put forward before the implementation. In addition, as late as 27 October, only five days before the scheduled date of entry into force of the new rules, India announced that it would be extended by two months (i.e., 1 January 2023). Although Japan appreciates India's decision on the extension, it should have been announced well in advance to avoid any unnecessary confusion and a negative impact on trade. Moreover, in order to allow time for exporting Members to adapt to the new health certificate forms, Japan requests India to allow a reasonable interval between their publication and entry into force. Japan would like to thank India for its willingness to discuss this issue bilaterally. Last but not least, Japan notes that one of the objectives of India's Order is to ensure the safety of imported food products into India. If that is the case, Japan considers that India should notify the Order under the SPS Agreement as well.

2.110. The representative of Australia provided the following statement. Australia shares the concerns raised by the European Union and supported by New Zealand, Canada, United States and Japan on this issue. We would like to refer India to the comments Australia submitted on notification G/TBT/N/IND/233 on 17 October 2022. We welcome India's response to our concerns.

2.111. In response, the representative of India provided the following statement. The requirement of export certificate for categories of food products as specified by the Food Authority is one of the mandatory requirement as per the regulatory provision prescribed in Chapter "Risk based framework

for import clearance" under Clause 11.2(b) of Food Safety and Standards (Import) Regulations 2017. In view of the above, to envisage robust food safety and monitoring system, FSSAI has notified the requirement of Health Certificate to be accompanied with all imported consignments of Milk and Milk products, Pork and Pork products, and Fish and Fish products which was to be enforced from 1 November 2022. Further, the major purpose of providing this requirement is to ensure that the product is manufactured in accordance with the requirements/provisions of the Food Safety and Standards Regulations. The requirement was notified in WTO-TBT for comments/inputs from the Members. Various concerns regarding the number of certificates and extension for implementation of the same was received from Member countries. To address the concerns raised by Member countries, the enforcement of requirement for Health certificate was extended till 1 January 2023 vide FSSAI order dated 27 October 2022. Further, FSSAI vide order dated 26 September 2022 issued a clarification stating that an integrated/single certificate incorporating all food safety related requirements/attestations as specified in the format notified on 3 August 2022, would also be accepted by FSSAI at the time of import clearance. The requirement of Health certificate is a pre-import requirement, which is only an assurance provided by the Competent Authorities of exporting countries that the food products (as notified) are in compliance with safety requirements as specified by FSSAI.

2.1.3.20 Brazil - 67 notifications issued over the last six months covering chemical and pharma products without adequate timeframe to respond (ID 781[24])

2.112. The representative of India provided the following statement. India would like to thank Brazil for its continued transparency in notifying TBT Committee about various Technical Regulations and Conformity Assessment Procedures. However, India is concerned that Brazil has adopted technical regulations without sufficient time for its trading partners to review, offer comments, or adapt to Brazil's requirements. Brazil issued 82 TBT notifications during the first six months of financial year 2021-22. Of the 82 notifications, in 67 notifications, Brazil needed to provide adequate time for the other Members to offer their comments. It has also been noted that many of the measures adopted by Brazil between May 2022-October 2022 have an average time gap of only one month between their publication date and adoption. Further, the technical documents are available in Portuguese and not English. Limited English reference documents are available for further analysis of the said notifications. Such non-availability of official English-translated versions is causing considerable difficulty in examining the exact contents and requirements of the regulations. Consequently, it is difficult to understand the requirements to be followed by Indian exporters precisely. In accordance with Article 2.12 of the TBT Agreement, Brazil is required to allow a reasonable interval of no less than six months between the publication of the measure and its entry into force. India kindly invites Brazil to ensure compliance with this obligation to ensure that the relevant stakeholders in exporting countries have sufficient time to adapt to the evolving regulatory regime. We also thank the delegation of Brazil for their very constructive engagement this week. We had sought some additional information on this STC and will provide that in the coming days.

2.113. In response, the representative of Brazil provided the following statement. Brazil thanks India for its statement and is keen to open a dialogue on the timeframes of our notifications. We are already discussing this matter bilaterally in order to clarify the reasons for this STC. We would just like to note, however, that we can only convey a preliminary reaction at this point, as we do not have a specific list of the 67 notifications about which India raised this issue. As the top 3 Member in terms of number of TBT notifications, Brazil would like to reaffirm its commitment to transparency and assure that we follow the good regulatory practices recommended by the WTO. As a general rule, we open and notify public consultations about proposed technical regulations with reasonable time for other Members to make comments, as prescribed in Article 2.9 of the TBT Agreement. Considering these general and preliminary comments, Brazil would like to invite India to provide more information about its STC, including specific notifications or regulations which need to be clarified.

[24] For previous statements follow the thread under ID 781.

2.1.4 Previously raised concerns

2.1.4.1 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) (ID 294[25])

2.114. The representative of Japan provided the following statement. Japan continues to have concerns regarding China's Regulation on Commercial Encryption Products and Cybersecurity Multi-Level Protection Scheme. Japan would like to refer to the previous statement we made at the last TBT Committee in July 2022. Japan would like to continue to request that China provide relevant information regarding the current revision process of the Regulation on Commercial Encryption Products that was subject to public consultation up to 19 September 2020, and the current drafting process of the Cybersecurity Multi-Level Protection Scheme that China described at the last TBT Committee, and that those regulations are to be implemented transparently.

2.115. The representative of the European Union provided the following statement. Regarding the Multi-Level Protection Scheme (MLPS), the EU would like to refer to its comments raised at previous TBT Committee meetings, specifically concerns around the unwarranted and significant market entry restrictions, including by demanding that all networks above Level 3 be subject to certain legal obligations that were originally destined for Critical Information Infrastructure (CII). The EU calls for enhanced proportionality and transparency in the implementation of the Cyber-MLPS.

2.116. In response, the representative of China provided the following statement. With regard to the management of commercial encryption products, China has cancelled the approval of varieties and models of commercial encryption products from 1 January 2020, and established a unified certification scheme for commercial cryptography. The management of commercial encryption products fully reflects the principles of non-discrimination and fair competition. It treats domestic and foreign products and companies equally. China implements mandatory testing and certification on commercial encryption products that involve national security, national economy, people's livelihood, and public interest, and implements voluntary testing and certification on other commercial encryption products. To protect China's network and data security, in 2007, China enacted Measures for the Administration of Classified Protection of Information Security and began to implement the Classified Protection of Information Security (now called Classified Protection of Cybersecurity) system. In 2016, the Cybersecurity Law of China stipulates that the state shall implement the system for classified protection of cybersecurity, thus establishing the legal status of the system. The system for classified protection of cybersecurity has become a basic national policy and system in the field of cybersecurity in China and has played an essential role in the maintenance and protection of cybersecurity.

2.117. As required by the system, the protected objects, such as information systems, are divided into five levels based on respective importance and the harm when damaged. Operators for level II and above shall file records to the public security authority. Operators shall determine the level based on relevant national normative documents, technical standards, and objects' own actual situation, and implement different protection strategies respectively, to effectively strengthen protection for the network and data. This is consistent with common international practices.

2.1.4.2 China - Cyberspace Administration of China – Draft implementing measures for the Cybersecurity Review of Network Products and Services (ID 533[26])

2.118. The representative of Japan provided the following statement. Japan continues to have interest in and concerns regarding the Cybersecurity Review and would like to refer to the previous statement we made at the last TBT Committee in July 2022. China enforced the amendment of the Measures for Cybersecurity Review in February 2022. It is unclear whether the definition and scope of "Critical Information Infrastructure Operator" refers to the definition of "Critical Information Infrastructure" provided under the Regulations on the Security Protection of Critical Information Infrastructure, and there is no definition for "Network Platform Operator." Therefore, it is uncertain what kind of businesses could be subject to the Measures for Cybersecurity Review. Japan would

[25] For previous statements follow the thread under ID 294.
[26] For previous statements follow the thread under ID 533.

like to request that China operate the regulations transparently for predictability without hindering business.

2.119. The representative of the European Union provided the following statement. The EU has raised the Security Review of Network Products and Services, among many aspects of the Cybersecurity Review Measures, in this Committee on several occasions, stressing our concerns related to these measures, which entered into force on 1 June 2020, were subsequently amended in January 2022, and entered into force on 15 February 2022. 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 Amended Measures contain few explanations of the issues we raised before and new issues have arisen since then. The EU regrets that the Measures were adopted without a longer grace period, of at least 12 months, so that companies would have sufficient time to prepare for compliance with the Amended Measures. The Amended Measures have also significantly increased the scope of application and many operators need time to understand their compliance obligations and the related business impact.

2.120. The Measures expand the scope of the application from Critical Information Infrastructure Operator's (CIIO) purchase of network products and services, to online platform operators carrying out data processing activities. A newly imposed requirement is that online platform operators holding personal information of more than one million users, and that are newly listed on foreign markets, must report for review. The Measures include very broadly defined triggers, such as security, openness, transparency and diversity of supply sources, as well as "political, diplomatic and trade factors". The review is perceived as being lengthy and untransparent, and may subject suppliers to exposure of trade secrets. The EU considers that, in this environment, domestic companies may be favoured over international ones. It remains unclear who would be a "data processor" or when they would be engaged in "data processing activities". Article 3 of the Data Security Law has something of a definition of "Data processing" but the definition states "data processing includes but is not limited to…" so therefore remains unclear. Understanding the scope of a data processor engaged in data processing activities would be necessary to the extent that it determines if and when an application would have to be filed. The EU urges China to clarify if "a data processor carrying out data processing activities" applies only to a data processor registered in China and processing data in China, and excludes overseas data processors that process data outside of China.

2.121. The EU seeks clarification on the following points: 1. Based on the previous draft, entities subject to Cybersecurity Reviews have changed from "data processors" to "online platform operators". The final Measures do not define "online platform operators", but the Draft Regulations define it as "data processors who provide Internet platform services such as information publishing, social networking, transaction, payment or audio-visual services". The EU urges China to clarify if the scope of "online platform operators" is narrower than "data processors", which was used previously and excludes self-operated e-commerce services of fast-moving consumer goods companies that do not provide online platform services. The vagueness of "online platform operators" leaves room for interpretation by regulators. 2. Neither "core data" nor "important data" are clearly defined. Both Article 21 of the Data Security Law and Article 19 of the Outbound Data Transfer Security Assessment Measures include "etc.", which makes any definition even more vague. The Measures include important telecommunication products as one kind of "network products and services". However, the Measures still do not provide a specific scope of "network products and services". Article 21 of Cybersecurity Review Measures is still much too vague. This leads to the definition of "important communication product" being even more unclear. The EU urges China to clarify these terms as soon as possible. Overall, the EU urges China to ensure clarity, transparency and objectiveness in the security review so that the Measure does not become a market access barrier.

2.122. In response, the representative of China provided the following statement. The Chinese government administers the Internet in accordance with its laws and regulations. In April 2020, the Cyberspace Administration of China and 12 other departments jointly formulated the Cybersecurity Review Measures, which took effect on 1 June 2020. The Measures for Cybersecurity Review of products and services, which came into force on 1 June 2017, was repealed at the same time. In 2021, the Cyberspace Administration of China and 13 other departments jointly revised the Cybersecurity Review Measures, which took effect on 15 February 2022. The cyber security review of the procurement of network products and services by the operators of critical information infrastructure has been carried out in accordance with the National Security Law and the Cyber Security Law. Conducting cybersecurity review is necessary to safeguard cybersecurity and national

security. It is also a common practice of all Members, and many Members have taken legal and administrative measures in this regard. Opening up is a basic policy of China. China will, as always, welcome foreign products and services to enter the Chinese market in compliance with the requirements of Chinese laws and regulations.

2.1.4.3 India - Quality Control Orders for Chemical and Petrochemical Substances, G/TBT/N/IND/116, G/TBT/N/IND/121, G/TBT/N/IND/122, G/TBT/N/IND/123, G/TBT/N/IND/124, G/TBT/N/IND/125, G/TBT/N/IND/126, G/TBT/N/IND/127, G/TBT/N/IND/128, G/TBT/N/IND/129, G/TBT/N/IND/130, G/TBT/N/IND/132, G/TBT/N/IND/133, G/TBT/N/IND/134, G/TBT/N/IND/135, G/TBT/N/IND/136, G/TBT/N/IND/137, G/TBT/N/IND/138, G/TBT/N/IND/139, G/TBT/N/IND/140, G/TBT/N/IND/141, G/TBT/N/IND/142, G/TBT/N/IND/144, G/TBT/N/IND/150, G/TBT/N/IND/151, G/TBT/N/IND/152, G/TBT/N/IND/153, G/TBT/N/IND/154, G/TBT/N/IND/175, G/TBT/N/IND/176, G/TBT/N/IND/177, G/TBT/N/IND/186, G/TBT/N/IND/187, G/TBT/N/IND/191, G/TBT/N/IND/193, G/TBT/N/IND/199, G/TBT/N/IND/201, G/TBT/N/IND/202, G/TBT/N/IND/203, G/TBT/N/IND/204, G/TBT/N/IND/205, G/TBT/N/IND/206, G/TBT/N/IND/208 (ID 630[27])

2.123. The representative of the United States provided the following statement. We remain concerned by India's Quality Control Orders (QCOs), and as such, have submitted a document summarizing most of our concerns. Please refer to the "W" document we issued with Canada and Chinese Taipei on India's Quality Control Orders in G/TBT/W/774, as we will not reiterate all those concerns here. India's Ministry of Chemicals and Fertilizers has notified 44 QCOs to the WTO TBT Committee, each identifying chemicals and petrochemicals for which India intends to mandate compliance to standards set by the Bureau of Indian Standards. We continue to reiterate US industry's concerns regarding the Polyethylene Material for Molding and Extrusion QCO 2020, notified as G/TBT/N/IND/191. US industry remains concerned about the measure's labelling requirement which mandates markings that must include "designation codes" identifying an array of technical information, including melting point, density, processing method, and application. Can India explain the objective and audience for these labels? We remain interested in understanding how India has considered industry input on alternative, cost-effective, and mutually beneficial ways to fulfill India's regulatory objectives. How has India considered these proposed alternative options? We continue to report US industry's concern that, as proposed, requiring the labelling and affixation of information in print, with alphanumerical code unique to India, will impose administrative burdens leading to inefficiencies, delays, and additional costs for exporters.

2.124. The representative 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 reiterate its concerns about the Order issued by India's Ministry of Chemicals and Fertilizers on phthalic anhydride and n-butyl acrylate, and terephthalic acid, which were notified by G/TBT/N/IND/116, G/TBT/N/IND/123 and G/TBT/N/IND/124. We would like to first thank India for postponing the enforcement date of the products concerned until 22 December 2022. While there were practical difficulties in carrying out the on-site inspections for our businesses that have applied for BIS certificates due to our previous quarantine requirements for incoming arrivals. The quarantine requirements for all arrivals were cancelled starting 13 October. Hence, we suggest that India's BIS inspectors conduct on-site inspections as early as possible so that our manufacturers can complete the mandatory certification requirement before the enforcement date of the order. We have been following closely India's quality control orders on various products due to the significant impact on our exported products. We urge India to refer to G/TBT/W/774 circulated on 11 November 2022, and consider implementing these measures in accordance with the WTO obligations.

2.125. The representative of the European Union provided the following statement. The European Union would like to support the delegations of the United States and Chinese Taipei. The increasing number of Quality Control Orders (QCOs) across sectors is sending worrying signals to EU industry, EU investors, and EU member States as the majority of QCOs introduced by India appear to have protectionist orientation and raise question in relation to their compliance with the WTO's TBT Agreement obligations. The EU is deeply concerned by the fact that QCOs usually prescribe Indian specific standards where international standards already exist. Furthermore, they make mandatory conformity assessment procedures that are more restrictive than necessary to fulfil their legitimate objective. The QCOs, in many cases require on-site audit at manufacturers' premises by an auditor

[27] For previous statements follow the thread under ID 630.

of the Bureau of Indian Standards (BIS) for products manufactured in third countries to receive the approval/licence for exports to India. In view of the huge backlog of applications following COVID-19 pandemic, the audit exercise is still slow and often results in delays in issuance of licences, which has economic impact on trade, as goods cannot be placed in the Indian market without the ISI mark. The EU would therefore like to take this opportunity to request Indian authorities to consider preparing rules for international recognition of laboratories by the BIS, as foreseen by legislation in place. This would speed up audits, and lower the cost of mandatory testing for foreign manufacturers.

2.126. The QCOs cause extra burden and economic cost to the EU industry that has to undergo cumbersome procedures, including obligatory testing in Indian laboratories, to obtain necessary permissions and/or licences for products already tested and certified under established international standards. Furthermore, the foreign manufacturers have to make necessary modifications in their tooling systems to incorporate the ISI mark. This causes temporary shutdown of production lines to make necessary changes and results in disruption of plant activities as well as in the financial loss for the plants during the period of closure. In this context, the QCOs add little value for Indian consumers, making the reason of their introduction not evident. The EU systematically takes note of all Indian TBT notifications pertaining to Quality Control Orders (QCOs) for chemical and petrochemical substances. As already stated in this Committee, some QCO notifications do not have a determined date of entry into force. The EU reiterates its request to India to provide structured information regarding the planned time for the adoption of these measures, as well as to provide an updated list of chemicals and petrochemicals, which have already been implemented and of those that are yet to be implemented, together with copies of relevant Quality Control Orders. The European Union recalls its request for clarifications explaining the reasons for establishing India-specific Quality Control Orders when these chemical and petrochemical products already comply with internationally recognized standards. In accordance with the TBT Agreement, standards are considered as voluntary, whereas mandatory standards are considered as technical regulations. Article 2.2 of the TBT Agreement, 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. The EU would also like to encourage India to align the BIS standards with well-established and recognized international approaches.

2.127. The representative of Indonesia provided the following statement. Indonesia thanks India for its notification on the Implementation of (Quality Control) Order for Acid Oil, Coconut Fatty Acid, Lauric Acid, and Palm Fatty Acid to the WTO as G/TBT/N/IND/220, G/TBT/N/IND/221, G/TBT/N/IND/223 and G/TBT/N/IND/224 in November 2021. The Department of Chemicals and Petrochemicals, Ministry of Chemicals and Fertilizers of India has issued standard regulations on four export products, namely IS 10931.1984; IS 12029.1986; IS 12067.1987; and IS 12069.1987, where the products must be certified according to Indian Standards and the manufacturer is required to undergo certification by the Indian Standards Bureau (BIS) under Foreign Manufacturer Certification (FCMS), before the product is allowed to enter the Indian market which is valid 181 days from the date of its issuance, i.e. 24 October 2022. Indonesia appreciates India for the delaying the implementation date of the regulation until 24 April 2023, which was announced on 21 October 2022 in the India Gazette.

2.128. However, the delay time is still insufficient for producers to be able to meet the requirements set out in the QCO. With the large number of regulated products, the need of physical testing, and the factory inspection requirements at production sites, we are concerned about possible queues and backlogs of product certification applications coming into the BIS, which could slow down the certification process and hinder the export process. In this regard, we request India to postpone the implementation of this QCO until 23 October 2023. Indonesia suggest India to open the option of international recognition for conformity assessment result and/or conformity assessment bodies (inspection bodies) from the country of origin to not only speed up the audit and certification process, but also reduce the cost of certification. In addition, we hope India can refer to the latest international standards regarding the technical requirements as well as the required testing methods. The existence of up-to-date technology used in this standardized testing method may make a difference to the results performed in the country of origin and India. We hope India will consider these comments and postpone the implementation of the QCO.

2.129. The representative of Singapore provided the following statement. Singapore would like to echo the concerns raised by other Members, and would like to reiterate our concerns expressed at the previous meetings of this Committee. In this regard, we note the document circulated by Canada,

Chinese Taipei and the United States under G/TBT/W/774, and would like to express our support for the concerns that are highlighted within the document, many of which are shared by Singapore. Singapore remains concerned that India's Quality Control Orders for chemical and petrochemical substances could affect foreign chemical manufacturers' access to the Indian market, given the onerous requirements for industry stakeholders to comply with the new measures, some of which are not aligned with international standards. We note that some industry players and other Members of this Committee have put forth alternatives that can be adopted to smoothen the operational implementation of the Quality Control Orders, and would like to encourage India to positively consider these suggestions, to ensure that the mandatory requirements are not too burdensome for the industry to comply with. We also respectfully urge India to consider accepting relevant international standards, where possible, to avoid duplicative requirements, reduce the industry's compliance costs, and ensure that the measures imposed are not more trade-restrictive than necessary to fulfil India's regulatory objectives.

2.130. The representative of Canada provided the following statement. In previous Committee meetings, Canada raised concerns over the approach taken by India to make mandatory the use of Indian Standards on the regulation of a series of chemical substances. Canada remains of the view that the notification process followed by India to inform interested parties of its "Quality Control Orders" (QCO) is problematic, and that a number of systemic issues persist with respect to the QCO framework. In this context, Canada joined the room document G/TBT/W/774 which serves to highlight these key concerns. We hope that India will be able to address these concerns and that India will ensure that the implementation of these measures is conducted in ways that are consistent with India's WTO obligations.

2.131. In response, the representative of India provided the following statement. We thank the delegations of Chinese Taipei, the US, the European Union, Indonesia, Singapore and Canada for their comments. The document on India's QCOs shared by the delegation of the US is currently under review by the capital. On this specific issue, we would like to highlight the following: The QCO requires the products covered to bear a Standard Mark under a valid licence from BIS as per Scheme-I of the BIS (Conformity Assessment) Regulations, 2018. Under this Scheme, factory inspection is a mandatory requirement for the grant of licence. Licence to use the Standard Mark on a product is granted after assessing the manufacturing and testing capabilities through factory inspection of the manufacturing premises. During this visit, conformity of the product to the requirements of the relevant Indian Standard is also established through in-house factory testing or testing at a third-party testing laboratory or a combination of both. At present, there is no provision in BIS (Conformity Assessment) Regulations, 2018, to undertake virtual inspection for conformity assessment activities as an alternative. As the COVID-19 restrictions have eased out, BIS has started carrying out inspection where confirmation for travelling of fully vaccinated BIS officers has been received. As on date more than 350 preliminary inspections have already been carried out. However, if in some cases inspection are being delayed, it is due to difficulty in getting the visa. In accordance with the Code of Good Practice of WTO-TBT Agreement and as a policy, BIS tries to align Indian Standards with International Standards of ISO and IEC, where available and to the extent possible, considering the specific climatic/environmental conditions and technological development in the country. Around 94% of Indian standards, for which corresponding ISO or IEC standards are available, are harmonized with their ISO or IEC counterparts.

2.1.4.4 India - Indian standards and import restrictions in the automotive sector (Quality Control Orders): wheel rims, safety glass, helmets, G/TBT/N/IND/118, G/TBT/N/IND/147, G/TBT/N/IND/167 (ID 649[28])

2.132. The representative of the European Union provided the following statement. The EU would like to make a reference to STC No 27 [29]which contained our position on Quality Control Orders as issued by India. This part of our statement and our position on QCOs is also applicable to this specific trade concern. The EU acknowledges the deferment of implementation on QCOs on safety glass and wheel rims. However, the EU would like to recall that safety glass and wheel rims manufacturers in the EU are subject to a rigorous certification process, in line with established international standards, which are not much different from the Indian ones introduced by relevant QCOs. The EU reiterates its suggestion to keep the BIS marking as optional for components which are already in compliance with the UN marking requirements. The EU would like to ask India if it would be ready to accept

[28] For previous statements follow the thread under ID 649.
[29] India - Quality Control Orders for Chemical and Petrochemical Substances (ID 630).

provisionally UN type approvals and markings. In light of this, the EU would like to request India to reconsider the introduction of the QCOs on automotive safety glass and wheel rims. The EU also recalls its earlier suggestion to keep the BIS marking as optional for component that are already in compliance with the current marking requirements. The EU deeply regrets that India did not consider meaningful alternative options to foreign audits such as audits contracted by internationally recognized third agencies/entities. The EU would therefore like to reiterate its request to Indian authorities to consider preparing rules for international recognition of laboratories by the BIS as foreseen by legislation in place. This would speed up audits and lower the cost of mandatory testing for foreign manufacturers. The EU understands that licence has a validity of not less than one year and up to two years. The EU would like to ask India to explain the process of licence renewal as it remains unclear. The current procedure is already unduly cumbersome and costly. Requiring a renewal every two years adds to the difficulty of doing business. At a time when businesses across the world have been heavily impacted by the SARS COV-2 pandemic, it would be important to facilitate trade. The EU would like to know whether India considered the possibility of extending the validity of authorization beyond two years

2.133. In response, the representative of India provided the following statement. We thank the European Union for their statement. We also thank the EU for the acknowledgement that the proposed entry into force of the concerned QCOs for wheel rims, safety glass and helmets were delayed. The QCOs are being issued for products under mandatory certification as notified by the concerned Line Ministries (Regulator) of the Government of India. As per the provisions of the QCO, the products specified therein shall bear a Standard Mark under a valid licence from BIS as per Scheme-I of the BIS (Conformity Assessment) Regulations, 2018. Under this Scheme, factory inspection is a mandatory requirement for the grant of licence. At present, there is no provision in BIS (Conformity Assessment) Regulations, 2018, to undertake virtual audits for conformity assessment activities as an alternative. More than 350 preliminary inspections have already been carried out. However, if in some cases inspection are being delayed, it is due to difficulty in getting the visa. Further, the BIS has already granted 9 (nine) licence for safety glass, and 7 (seven) licences for wheel rims after the COVID-19 period. We have conveyed the comments made by the EU to the capital.

2.1.4.5 China - Commercial Cryptography Administrative Regulations (ID 644[30])

2.134. The representative of the European Union provided the following statement. The EU remains concerned about this implementation measure of the Cryptography Law, and sent comments to the State Cryptography Administration (SCA) in September 2020. Specifically, concerns relate to (i) the scope of the law; (ii) the protection of intellectual property; (iii) the imposition of pre-market and export controls; (iv) the vague requirements around testing and certification, and the turning of voluntary certification requirements into de facto market access prerequisites; (v) the imposition of additional "national security reviews"; and (vi) the use of domestic standards, along with the lack of meaningful access to pertinent Chinese standards development organisations. The EU urges the SCA to address these concerns in the further development of the draft regulations in order to ensure that legal and regulatory requirements are applied in a non-discriminatory manner, do not favour specific technologies, do not limit market access and do not lead to forced transfers of intellectual property. Additionally, the EU encourages the SCA to open up, in practice, the Working Group 3 on Cryptographic Technology of the National Information Security Standardisation Technical Committee (TC260) and the "Cryptography Industry Standardisation Technical Committee" (CISTC) to foreign-invested industry based in China. The EU would appreciate its comments being taken into consideration and invites China to notify the draft regulations to the WTO.

2.135. In response, the representative of China provided the following statement. China welcomes the EU's interests in China's commercial cryptography regulation. The Revised Regulations on the Administration of Commercial Cryptography have been included in the State Council Legislation Plan for 2022. The revision of the regulations follows law-based, democratic, and scientific principles. It will be open and transparent.

[30] For previous statements follow the thread under ID 644.

2.1.4.6 Mexico - Conformity Assessment Procedure under Mexican Official Standard NOM-223-SCFI/SAGARPA- 2018, "Cheese Names, Specifications, Commercial Information, and Test Methods," published on 31 January 2019, G/TBT/N/MEX/465, G/TBT/N/MEX/465/Rev.1 (ID 678[31])

2.136. The representative of the United States provided the following statement. The United States remains highly concerned with the revised measure. Could Mexico provide a timeline for when it will respond to WTO Member comments? Could Mexico please provide an update on the status of this measure and an estimated timeframe of when the revised measure will be notified to the WTO? The United States reiterates its request that Mexico consider allowing fatty acid analysis to be voluntary rather than mandatory. Currently, there are no internationally well-accepted biomarkers to differentiate milk fat from vegetable fat. Additionally, there are no relevant Codex or other international standards available for this type of analysis. The United States is concerned this measure may conflict with the ongoing redrafting of the corresponding cheese standard. How will Mexico harmonize its update to the NOM-223 cheese standard with the NOM-223 cheese CAP notified to the WTO on 8 February 2022?

2.137. Once finalized, will implementation of the measure move forward based on Mexico's Quality Infrastructure Law or the law it replaced, the Federal Law on Metrology and Standardization? Could Mexico provide clarification on the different roles that each Ministry will play in the monitoring, compliance, and verification activities listed in the draft measure? Has Mexico considered extending its eventual timeline for implementation of the measure to a period of 12 months or more? If Mexico proceeds with implementation of the current measure, the United States (Government and industry) would need at least one year to launch systems to comply. The United States urges Mexico to indefinitely delay implementation of the measure and consider less trade-restrictive alternatives as previously proposed by the US Government, other WTO Members, and industry stakeholders.

2.138. The representative of New Zealand provided the following statement. New Zealand welcomes the opportunity to again speak in support of this specific trade concern raised by the United States. New Zealand considers that the conformity assessment procedures that Mexico has set out for cheese under NOM-223 are more trade restrictive than necessary, with some aspects of the conformity assessment procedure creating unnecessary obstacles to international trade and likely to cause difficulties for New Zealand exporters. We support the request for Mexico to consider less trade-restrictive alternatives to the measures. We look forward to receiving a response from Mexico to the concerns raised, and an update on the status of any revised version of the Conformity Assessment Procedure.

2.139. The representative of Australia provided the following statement. Australia would like to reiterate its concerns that Mexico's measure notified as G/TBT/N/MEX/465 and associated revision appears discriminatory and more trade restrictive than necessary. Australia recognizes the original objectives of the proposed measures and welcomes the review of the procedure in light of Mexico's international commitments. We look forward to receiving Mexico's reply to our comments on its revised notification. We kindly request an update for the release date of the new version of the procedure for public consultation.

2.140. In response, the representative of Mexico provided the following statement. As mentioned at the previous meeting of the Technical Barriers to Trade Committee in July 2022, Mexico reaffirms its commitment to transparency under the Agreement on Technical Barriers to Trade and the free trade agreements to which it is party and advises that the competent standard-setting authorities are currently in the process of analysing the comments received during the public consultation period. Once the authorities have exhausted this process, the final version of the measure will be duly shared and notified to WTO Members.

2.1.4.7 European Union - Chemical strategy for sustainability (implementation of the European Green Deal) (ID 690[32])

2.141. The representative of Kenya provided the following statement. The European Commission on 14 July 2021 adopted a set of intermediate proposals that aim to cut greenhouse gas emissions by 55% by 2030 as part of a broader European Green Deal (EGD). While the EGD is mainly an

[31] For previous statements follow the thread under ID 678.
[32] For previous statements follow the thread under ID 690.

internal EU policy instrument, its potential for global spill-overs are likely to have significant impacts on production and trade for developing countries. Kenya is therefore concerned that this measure has not been notified. Kenya is greatly concerned by one of the proposals that have been cited as one of the key deliverables of the European Green Deal policy that was enacted in 2020. This is the EU Proposal on Corporate Sustainability Due Diligence. Published on 23 February 2022, the EU proposal on Corporate Sustainability Due Diligence poses significant barriers to trade between Kenya and the EU owing to the scope of its provisions. The proposal requires that EU companies work with exporters in identifying and preventing/mitigating adverse impacts of their activities on human rights (child labour, exploitation of workers etc.) and on the environment (pollution, biodiversity loss etc.). The EU claims that the objective of the proposal is to foster sustainable and responsible corporate behavior throughout the global value chains. Kenya's concern is premised on the fact that developing countries are already struggling to meet international standards, technical regulations and conformity assessment procedures necessary for international market access. Imposing additional sustainability requirements as prerequisites for market access will be burdensome (in both financial costs and technical capacities) to value chain actors across the developing world, including Kenya. There is also a further concern that these private standards are often developed without the input from the developing countries, yet they are expected to comply/implement them without any clear commitment for technical support. Kenya therefore welcomes a comprehensive dialogue with the EU and other Members of the WTO on this matter, prior to advancing to further stages in the development of this policy.

2.142. The representative of the Russian Federation provided the following statement. As our concern remain unaddressed, the Russian Federation reiterates the statements made during the previous meetings of the present Committee and expresses deep concern on the chemical strategy developed by the EU as an element of implementation of the European Green Deal. The strategy implies potential restriction and even prohibition of materials that are classified as hazardous regardless of whether the scientific basis for that has been provided or not. We understand that the core legal act for classification of chemicals and substances of the EU is the CLP Regulation. Currently, this regulation allows to make strict classification decisions without sufficient scientific data or any other analysis in accordance with the precautionary principle. One recent example of this practice is cobalt classification under the 14th ATP to the EU CLP Regulation. Such approach can lead to unjustifiable prohibition of essential materials. We also note worryingly that one of the aims announced by the strategy is to "identify strategic dependencies" of the EU and "propose measures to reduce these dependencies". This aim is protectionist by nature and discriminative against imports.

2.143. We urge the EU to implement the strategy only to the extent compatible with its WTO obligations. Moreover, Mr. Chairman, it is regrettable that the EU have chosen not to engage with WTO membership, specifically with Russia, on this issue as it has been refusing to respond to present concern for several meetings in a row. This situation is of systemic concern. Transparency is the important pillar of this organization and provision of explanations on various measures and policies in this Committee is the part of the mechanism. Refusal to respond to the raised trade concerns is in stark contrast to the EU's rhetoric about the importance of transparency in this organization.

2.144. In response, the representative of the European Union provided the following statement. The European Commission would like to stress that the Chemical Strategy for Sustainability is not a technical regulation in the meaning of the TBT Agreement. It is only a communication document from the European commission addressed to the EU member States and stakeholders outlining future policy for the purpose of transparency. Therefore, we are not in a position to give substantive feedback on this specific trade concern.

2.1.4.8 European Union - Draft EU Batteries Regulation (implementation of the European Green Deal), G/TBT/N/EU/775 (ID 685[33])

2.145. The representative of China provided the following statement. China supports the EU's efforts for better regulation of batteries and waste batteries. China would like to raise concerns as follows: Firstly, we would like to know the progress in formulating calculation methods for carbon footprint and recycled content by the EU side. And we would like the EU to allow participation in the above method-making process from other Members. Secondly, it is recommended for the EU update timely the carbon footprint database and adopt data from non-EU institutions as necessary and

[33] For previous statements follow the thread under ID 685.

appropriate. Thirdly, we would like to remind the EU that the requirement on relevant technical documents may result in the disclosure of commercial secrets. The required information such as the content of cobalt, nickel, lithium contained in batteries, and carbon emission date in the production process of electrolyte and isolation membrane, involves multiple core business secrets. To disclose such information in the technical documents poses a risk of secret leakage. It is recommended to set relevant protection clauses or cancel the disclosure of the technical documents containing commercial secrets when the regulatory objectives could be satisfied otherwise

2.146. Fourthly, regarding point 3 of Article 9, it is recommended to phase out the non-rechargeable portable batteries in accordance with their types, for example, to phase out the non-rechargeable, non-lithium portable batteries of general application. We believe that without safety issues and serious pollution, the elimination of a certain type of portable battery should be achieved by the market, technology development, and users, not by legislation. Finally, regarding the requirement for manufacturers' registration in articles 46 and 47, it is recommended to allow producers to register in only one EU member State, for example in the country of the importer, which is the main importation country, rather than in all EU member States. We suggest the EU consider establishing a single EU regulatory system where producers could identify one EU member State as the main target market and perform their procedural responsibility only once.

2.147. The representative of the Russian Federation provided the following statement. As our concern remain unaddressed, the Russian Federation reiterates the statements made during the previous meetings of the Committee on TBT with regard to the proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries. We appreciate efforts in the fields of environment protection and fighting climate change. However, we do believe that these shall be done respecting international obligations. Specifically, as stated previously by setting minimum level of recycled materials in the battery the draft regulation discriminates imported primary materials vis-à-vis domestically remanufactured, and aims to substitute imported primary metals for the like domestically recycled ones. We reiterate request to clarify if the European Union considered less trade restrictive measures to stimulate recycling of nickel, lithium, cobalt, copper and lead rather than such administrative measure as minimum level of recycled materials in the battery. If yes, name the measures that the EU has considered and reasons why these measures haven't been employed or proposed for implementation.

2.148. Russia is also concerned with the lack of scientific data and international standards as a basis for proposed conditions for access to the EU market as well as material recovery targets for waste batteries. Many elements of the European Green Deal and implementing legal acts are of concern to us. One of the objectives of the Deal is import substitution which goes against spirit of the WTO. We urge the EU to conduct its trade-related climate policy in compliance with the WTO rules. Finally, as the EU have chosen not to respond on present trade concern to Russia we note that this situation is of systemic concern. Transparency is the important pillar of this organization and provision of explanations on various measures and policies in this Committee is part of the transparency mechanism. Refusal to respond to the raised trade concerns is in stark contrast to the EU's rhetoric about the importance of transparency in this organization.

2.149. In response, the representative of the European Union provided the following statement. The EU has taken good note of the points raised by the Chinese Delegation. In relation to the progress in formulating calculation methods for carbon footprint and recycled content, we would like to inform you that the preparatory work for this is in the very early stages. The EU would like to reassure that such implementing and delegated acts that will be developed under the notified draft will involve consultation of stakeholders, though the exact way in which this will be done is to be determined in each case. Drafts of those implementing measures and delegated acts will be notified to the WTO in accordance with the TBT Agreement. The application dates for some of the provisions in the notified draft are relatively soon. This is because significant developments in the battery sector are taking place in the near future. However, the EU would like to clarify that the indicated application dates are provisional, because it will depend on the time needed for the regulatory process to adopt the notified draft. In fact, it is clear that at least some of the application dates need to be reassessed, because the regulatory process is still ongoing. The European Parliament and the Council have concluded their respective positions in March this year. The aim is to conclude this process soon.

2.1.4.9 United States - Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program and the Competitive Bidding Program, G/TBT/N/USA/1771 (ID 714[34])

2.150. The representative of China provided the following statement. The draft violates the WTO principles of non-discrimination and transparency as it only targets five Chinese enterprises and identifies Chinese products as security threats, which is not based on technical standards. China would like the US to inform the progress in making the relevant rules as soon as possible. For the newly added 47 CFR 2.903, it is recommended to revoke it. This part prohibits the authorization of certain telecommunications equipment and services under provision 47 CFR 1.50002, but 47 CFR 1.50002 lists only five Chinese companies, which violates the non-discriminatory principle. For Section III. A of the draft regulations, it is recommended to provide technical standards for judging the national safety threats and to authorize the products that comply with the safety technical standards for national safety. The draft regulations prohibit the authorization of certain telecommunications equipment and services under provision 47 CFR 1.50002, on account of national security threats. We believe that identifying products of Chinese companies as security threats without open technical standards constitutes a violation of the transparency principle of the TBT Agreement. It is recommended to provide such standards and notify WTO Members, and, provide opportunities for Members to make comments.

2.151. Section III.A.3 of the draft regulations seeks comments on whether to revoke any of the authorizations that have been previously granted for "covered" equipment on the Covered List (47 CFR 1.50002). It is recommended not to revoke the authorizations. The equipment authorizations that have been previously granted are obtained strictly in accordance with the then-effective regulations, through the process of TCB certification or SDOC by the FCC. There is no violation of the situations mentioned in provision 2.939 of section III.A.3.

2.152. In response, the representative of the United States provided the following statement. The United States notified the proposed rules, "Protecting Against National Security Threats to the Communications Supply Chain Through the Equipment Authorization Program and the Competitive Bidding Program," to the WTO on 3 September 2021. This action is a Notice of Proposed Rulemaking (NPRM) (ET Docket No. 21-232) by the United States Federal Communications Commission (FCC), adopted on 17 June 2021, in which the FCC proposes to revise rules related to its equipment authorization processes to prohibit authorization of any "covered" equipment on the recently established Covered List, included in PUBLIC LAW 116–124 Secure and Trusted Communications Networks Act of 2019, enacted by U.S. Congress 12 March 2020. The FCC accepted formal comments on the Equipment Authorization Notice of Proposed Rulemaking until 18 October 2021, and China's comments were submitted on 18 September 2021. In total, the FCC has received nearly 250 comments, including from China. All of the comments are available to the public and can be found on the FCC's website. United States appreciates China for its comments. The final rule will include information on all substantive comments received, and how the comments were taken into account. Information on any rule changes - once they are publicly available - will be notified to the WTO as an addendum to the original notification.

2.1.4.10 China - National Standard of the P.R.C., Lithium Ion Cells and Batteries Used in Portable Electronic Equipments - Safety Technical Specification, G/TBT/N/CHN/1576 (ID 706[35])

2.153. The representative of the Republic of Korea provided the following statement. The Republic of Korea fully understands the importance for China to amend the "National Standard of the P.R.C., Lithium Ion Cells and Batteries Used in Portable Electronic Equipments - Safety Technical Specification (GB 31241)" in order to protect consumers, and Korean companies are making efforts to faithfully comply with the standard. However, the Korean industry has continued to voice difficulties in regulatory compliance, so Korea would like to reiterate its concerns raised at the last July 2022 WTO TBT Committee meeting. According to the document of opinions published on the Chinese government website on 23 September 2022 as "General Office of the State Council issuance [2022] No. 31", lithium-ion batteries and battery packs have been included in the list of products subject to compulsory certification management. Korea would like to enquire China whether or not this compulsory certification for lithium-ion batteries and battery packs will be implemented under

[34] For previous statements follow the thread under ID 714.
[35] For previous statements follow the thread under ID 706.

the Draft for Approval of GB 31241:20XX. It is concerned that the Draft's marking requirements in clause 5.3.1 are not harmonized with the relevant international standard (IEC 61960-3). Accordingly, should the compulsory certification follow the GB 31241 Draft for Approval, manufacturers will be forced to replace production facilities and rework existing products only for exports to China, which will be quite costly and time-consuming, laying an excessive burden on the relevant industry.

2.154. If China considers that cell body marking is necessary for product tracking and identification purposes, Korea requests that China consider changing the marking requirements for all cells to be the same as the requirements for cells with a maximum surface area of below 4cm2 (as in Draft clause 5.3.1). This way, only the minimum necessary information (such as polarity) can be marked on the cell body, while all the rest of the information (rated capacity, date of manufacture, batch number, etc.) can be indicated with a Manufacturer's Code, which is elaborated by the means of minimum packaging or battery specification sheet. In the event that the Draft for Approval is to be implemented as is, Korea requests that a sufficient grace period of more than one year be given in consideration of the time required for the industry to adapt to the new regulation. Korea would also like to request that China provide information, if available, regarding the compulsory certification's date of entry into force, the implementation procedures for compliance and the relevant national standards.

2.155. In response, the representative of China provided the following statement. The identification is very important for the safe use of cells and batteries. As an important component of the battery, without necessary identification information, cells cannot be traced or identified effectively. Cells without identification have caused much confusion in market regulation in recent years. Therefore, through investigation and extensive consultation during the formulation, GB 31241-20xx proposed relevant requirements for cell body identification. China will not consider deleting exceptions.

2.1.4.11 European Union - Proposal for a regulation of the European Parliament and the Council laying down harmonised rules on artificial intelligence (Artificial intelligence act) and amending certain union legislative acts (ID 736[36])

2.156. The representative of China provided the following statement. China supports the EU's governance on artificial intelligence, however, from the perspective of not creating unnecessary trade barriers, China would like to raise concerns as follows: For Article 43.3, we would like to stress that it is not appropriate to determine whether an AI system needs a third-party Notified Body to participate in the conformity assessment according to the requirement in Annex II A. For example, for radio equipment defined as AI systems, even if the provider has used all the harmonized standards related to AI regulations, but when the radio frequency standards relating to their products are not harmonized, a third-party Notified Body is still required in accordance with the RED Directive. It is recommended that the conformity assessment for AI systems in Appendix II A could be in line with article 43.1. For article 71, we would like to stress, the penalties and the fines should be proportionate to the actual performance. Article 71 stipulates a fine of up to 2% of its total worldwide annual turnover, which we believe is higher than is appropriate. China recommends reassessing and resetting the penalties.

2.157. For article 5.2 in Annex VII, it is recommended to clarify the scope of the "necessary information" to be shared by the provider, for the sake of providers' legal certainty. Finally, it is recommended to extend the transition period to 48 months. Providers need to wait for the publication of the harmonized standards before they can carry out the ex-ante conformity assessment mentioned in Title II, Chapter 2. It usually takes more than 36 months for standards bodies to lay down new standards, and another 12 months for providers to adjust products and systems, conduct conformity assessments and prepare all required documentation. The given transition period of 24 months in this regulation is not enough.

2.158. In response, the representative of the European Union provided the following statement. The EU regrets that China did not make its statement on this trade concern available on e-Agenda ahead of this meeting, and therefore the EU cannot provide a reply to concerns expressed here today. The EU therefore refers to its previous statements on this measure. The EU would like to thank China for their comments on proposed Artificial Intelligence Act. On 8 July 2022, the EU provided a detailed written response to the comments received. As concerns expressed here today

[36] For previous statements follow the thread under ID 736.

represent a repetition of concerns expressed by China in its comments to notification G/TBT/N/EU/850, the EU makes reference to its replies provided on 8 July 2022.

2.1.4.12 China - Recommended National Standard (GB/T) for Office Devices (Information security technology – Security specification for office devices) (ID 761[37])

2.159. The representative of Japan provided the following statement. Japan raised concerns regarding China's National Standard on office devices including multifunction peripherals and printers at the last TRIMs Committee meeting and the last Market Access Committee meeting. At the Market Access Committee meeting, China responded that China has no plans to revise the Recommended National Standards related to printers and copiers in the near future. However, as posted on the website of the National Information Security Standardization Technical Committee, TC260, on 2 November, it was revealed that the Technical Committee is in the process of drafting a revision to the Recommended National Standards. Japan is confused by this inconsistency with China's statement at the TRIMs Committee meeting and the Market Access Committee meeting. Japan requests China to share its intention on the revision of national standards, and the contents of the draft national standard, including (i) the coverage, especially the definition of "critical information infrastructure operators", (ii) the requirement to design and produce office devices and their components in China and (iii) the requirement to provide information to verify that they are designed and produced in China.

2.160. As pointed out at the last TBT Committee meeting and other WTO meetings, regarding office devices procured by critical information infrastructure operators, in case the national standard requires on a de-facto basis that office devices and their components are developed, designed, produced and manufactured in China and information to prove office devices and their components are done so is provided disclosed, there are concerns on (i) discriminatory treatment of foreign products, (ii) creating unnecessary obstacles to international trade, and (iii) causing forced technology transfer. Therefore, the national standard would be inconsistent with TBT Agreement Articles 2.1, 2.2 and 5.1.2, GATT Article III.4, and China's WTO accession protocol Article 7.3, etc. Japan strongly requests China not to amend the national standards, or to establish systems or guidelines relating to them, in a form containing such matters of concern. Besides, Japan strongly urges China not to take the same or similar measures in other industrial sectors or products.

2.161. The representative of the European Union provided the following statement. In its reply to the STC, initially raised at the July TBT Committee, China noted that the recommended national standard was not being revised but if it were, public opinion would be solicited. However, now it seems that the standard is being revised by the National Information Security Standardisation Technical Committee (TC260). Based on the information received about the revised requirements, if enacted, they would rule out the possibility for overseas office device providers to participate in government procurement in China, as most of their products rely heavily on overseas components. The EU would like to emphasise that all office equipment cannot be classified as critical information infrastructure. Indeed, this highlights even more the urgency of having a clear and specific definition of critical information infrastructure operator. The EU also urges China not to take similar measures in other sectors or products.

2.162. In response, the representative of China provided the following statement. Regarding the revision of the recommended national standards related to printers and copiers concerned by Japan and the EU, the administrative department for standardization under the State Council is responsible for organizing professional examination and assessment institutions of national standards to evaluate the national standard projects. For the proposed national standard project approved after the examination and assessment, the administrative department for standardization will publish a notice of project approval through the National Public Service Platform for Standards Information. During the process of the revision, China will solicit public comments, and all interested Members including Japan will have an opportunity to make comments at that time. Regarding the information provided by Japan, I would like to say that at the last Committee meeting, Japan raised this issue for the first time without early notice in advance and China made a written response to Japanese colleague after that meeting. It is a bit of a surprise that Japan continues to raise this issue at TRIMs Committee meeting, and also Market Access Committee meeting. China has always been kept open and transparent in the process of establishment and revision of national standards. This national standard is at a very early stage, and we would like to contribute to bilateral consultations with the

[37] For previous statements follow the thread under ID 761.

two Members. Regarding the information mentioned by Japan, it would be very helpful if Japan could provide written comments to us and provide more detailed information on the text you have got.

2.1.4.13 Canada - Proposed Prohibition of Certain Toxic Substances Regulations, 2022, G/TBT/N/CAN/673 (ID 753[38])

2.163. The representative of Japan provided the following statement. We appreciate Canada's comments on our opinions after the last TBT Committee. However, Japan continues to have the following concerns regarding the proposed DBDPE restriction in the Proposed Prohibition of Certain Toxic Substances Regulations, 2022. DBDPE is widely used in electrical and electronic equipment, automobiles, aircraft, medical equipment, industrial equipment, social infrastructure equipment, agricultural machinery, industrial machinery, construction machinery and industrial vehicles. DBDPE is an alternative to decaBDE, a globally banned brominated flame retardant, and is not restricted by international conventions or other jurisdictions. In addition, since there is no equivalent flame retardant for many applications that can be used as a substitute for DBDPE currently, we are concerned that there will likely be significant and serious impacts on the trade and distribution of the above equipment in the case that the use of DBDPE is prohibited. We understand that the Canadian government seems to be considering the introduction of the regulations carefully. However, due to potential impacts on important instruments that support industries and citizens' lives in Canada such as medical equipment, industrial equipment and transport equipment, Canada should be particularly cautious about considering alternatives to DBDPE, including safety assessments and establishing a grace period for implementation, with additional hearings from stakeholders. It should also be noted that the risk of exposure to humans and the environment is limited because these devices are usually collected under strict control after use and properly recycled or disposed of.

2.164. Canada cited the protection of endangered whales and belugas as the main reason for regulating DBDPE. Although we understand the objectives of the policy, Japanese industry reports that DBDPE contained in articles poses a very low risk of adverse effects on humans and the environment, including these endangered species. Therefore, in order to ensure that the proposed DBDPE restriction is not more trade restrictive than necessary to achieve its legitimate objectives, Japan would like to request that Canada undertake the following: (i) conduct a more thorough risk assessment on the effects of DBDPE contained in articles on human health or the environment, while taking into account the consistency with results of risk assessments from other countries and regions; (ii) conduct a realistic feasibility study on alternatives to DBDPE; and (iii) based on the risk assessment and the feasibility study, consider whether to introduce the DBDPE restriction, and the introduction schedule including a grace period.

2.165. In response, the representative of Canada provided the following statement. In 2019, Canada published the screening assessment for Decabromodiphenyl ethane (DBDPE) , which concluded that there is a risk of harm to the environment due to the persistence and widespread occurrence of DBDPE in the environment along with the potential for bioaccumulation and toxicity of its transformation products. On 14 May 2022, Canada published in Part I of the Canada Gazette, the Proposed Prohibition of Certain Toxic Substances Regulations, 2022. Publication of the proposed Regulations opened a 75-day comment period for stakeholders. The measure was notified to the WTO TBT Committee on 18 May. We appreciate the comments received by Japan and other Members. Canada is carefully reviewing and analysing all public comments received during the comment period, in consideration for the development of the final regulations. Currently, in Canada, there are some controls on DBDPE through the New Substances Notifications Regulations (Chemicals and Polymers). The proposed Regulations would introduce restrictions on the manufacture, use, sale and import of DBDPE.

2.166. The proposed regulation aims to reduce the risk of toxic substances entering the Canadian environment, contributing to the protection of Canada's environment and wildlife. The proposed regulation would repeal and replace the Prohibition of Certain Toxic Substances Regulations, 2012, which prohibit the manufacture, use, sale offer for sale and import of certain toxic substances and products containing them, with a limited number of exemptions. It is expected that the proposed Regulations will result in an improvement in environmental quality by contributing to a reduction of these substances and ultimately their release to the environment over time. For example, the proposed Regulations would help the Government in meeting its commitments under the Whales

[38] For previous statements follow the thread under ID 753.

Initiative by addressing threats to the Southern Resident Killer Whale and St. Lawrence Estuary Beluga, which are both endangered species. The preservation of both species is valuable to Canadian society, particularly Indigenous people who have cultural and spiritual connections to these species. Specific exemptions, such as for parts used in the automotive, aerospace, and electrical and electronic sectors, are proposed for DBDPE. These exemptions take into account socio-economic factors, the demonstrated absence of suitable alternatives, and consideration of the international context and risks to the environment, and are time limited in most cases. While a number of specific exemptions have been proposed, a permit process provides an additional mechanism to address unforeseen challenges. The Regulations would not apply to a manufactured item, such as wires and cables containing DBPDE, that is in transit through Canada. The proposed Regulations also include administrative changes to simplify the regulatory text and to further clarify the intent of certain sections of the Regulations. Again, we appreciate Japan's interests and comments on this proposed measure and would welcome the opportunity to address additional questions or issues bilaterally.

2.1.4.14 China - Measures for the Administration of Data Security in the Field of Industrial and Information Technology Sectors (For Trial Implementation) (ID 751[39])

2.167. The representative of Japan provided the following statement. Japan has concerns about the Measures for the Administration of Data Security in the Field of Industrial and Information Technology Sectors, especially referring to that the unclear relationships still exist among many articles of the measures, the Cybersecurity Act, which was open for public comment in this September and the related provisions of the Cybersecurity Act. The Japanese government has already submitted comments including this point on the second public consultation in February 2022. Moreover, the definitions of "general data", "critical data", and "core data" do not provide objective and specific criteria for classification. Japanese industry has voiced concerns, and we would like to ask about the status of the measures. In addition, although Article 7 of the measures stipulates that the Ministry of Industry and Information Technology (MIIT) is to formulate a detailed inventory of "critical data" and "core data", depending on the specifics of the detailed inventory and related regulations, it may have a significant impact on the businesses involved in the industrial information field. Therefore, Japan would like to request that China utilize transparent procedures in formulating the detailed inventory, so that the opinions of stakeholders including foreign companies can be widely heard and reflected, and ensure that undue burden is not placed on business operators.

2.168. In response, the representative of China provided the following statement. The Measures for Data Security Management in the Fields of Industry and ICT, which are now under review, are for better implementation of the Data Security Law of China. Combining the characteristics of industry and ICT, the policy has refined the administrative requirements for data classification and gradation, security management of important data and core data, data monitoring, early warning, and evaluation in relevant fields, and clarified the requirements of data life cycle security protection. The policy will provide more operational guidance for data processors in industry and ICT fields to fulfill their data security protection obligation.

2.1.4.15 China - Key Points and Judgment Principles of GMP Inspection for Cosmetics; Safety and Technical Standards for Cosmetics (2022); Technical Guidelines for Children's Cosmetics, G/TBT/N/CHN/1673; G/TBT/N/CHN/1674 (ID 749[40])

2.169. The representative of the United States provided the following statement. At the July TBT Committee meeting, the United States raised concerns with China's recently notified CSAR measures, the Key Points and Judgment Principles of GMP Inspection for Cosmetics ("GMP Inspection Points") (G/TBT/N/CHN/1673) and the 2022 Safety and Technical Standards for Cosmetics (G/TBT/N/CHN/1674), as well as the not-notified Technical Guidelines for Children's Cosmetics. Regarding the latter, we note that despite the measure's title, we requested notification of the Technical Guidelines because they appear to include new requirements for children's cosmetics. As China was unable to provide a response in the last meeting and has yet to address prior US comments on these concerns, we bring this STC before the Committee again. In July, the United States asked that China: ensure sufficient time to take into account comments received on the WTO notifications, prior to the GMP Inspection Points' adoption; delay implementation of the GMP Inspection Points, giving industry at least two years to adapt their products and methods of production; and clarify whether there will be flexibility in implementation, such as allowing

[39] For previous statements follow the thread under ID 751.
[40] For previous statements follow the thread under ID 749.

companies to utilize international standards, if appropriate, to demonstrate conformity with China's requirements.

2.170. It appears that China has yet to publish the finalized GMP Inspection Points; the Safety and Technical Standards for Cosmetics and the Technical Standards for Children's Cosmetics. We also note China opened a second domestic public consultation for potential updates to the Safety and Technical Standards for Cosmetics, without having clarified the status of the 2022 version it notified to the TBT Committee in April. Could China please provide an update as to the status of these three measures, and in particular, clarify its plans for implementation of the Safety and Technical Standards for Cosmetics? In regard to new measures notified since July, we thank China for notifying the Provisions for the Supervision of Cosmetics Sampling and Testing (G/TBT/N/CHN/1682) and the Provisions for the Supervision of Cosmetics Online Distribution (G/TBT/N/CHN/1699). We note the concern of US industry that the Provisions for the Supervision of Cosmetics Sampling and Testing offer limited options to address any perceived defects in a way that is appropriate to the potential risk to consumer health and safety. We ask China to consider the 12 September written comments submitted by the United States and US industry, on the Sampling and Testing measure. We note that companies need sufficient time to respond to test findings as to the safety of their products and the ability to engage with both NMPA and its agents on options for remediation.

2.171. Are China's microbiological testing limits in accordance with international standards? If not, we would also ask that China, in line with its commitments under Article 2.9.3 of the TBT Agreement, identify how and why these limits deviate from international standards. As noted in prior comments by the United States and US industry, we maintain concerns that China does not identify when new cosmetics standards, including those standards included in the update to the 2022 Safety and Technical Standards for Cosmetics (G/TBT/N/CHN/1674), are not in accordance with international standards. We thank China for its consideration and look forward to responses to our questions.

2.172. In response, the representative of China provided the following statement. The Key Points and Judgment Principles of GMP inspection for cosmetics are formulated for the purpose of regulating the cosmetic production licence, supervision, and inspection, and guiding the cosmetic registrants and entrusted production enterprises in implementing the "Cosmetic Production Quality Management Standard". There are no new obligations for the cosmetic registrants and entrusted production enterprises. As for the retention samples of imported cosmetics, overseas cosmetics registrants shall retain samples of each batch of products imported to China after 1 January 2022. The samples and records shall be kept by the responsible person within China. If the same batch of products is imported from China more than once, the sample shall be retained at least once at the time of the first importation. At present, safety and technical standards for cosmetics have been open to the public for comments. The revision process has fully considered all kinds of relevant regulations and standards of cosmetics, including those of ISO standards based on the actual situation of China's cosmetics industry and supervision.

2.173. In order to strengthen the technical guidance for the research and development of children's cosmetics products, and promote better regulation on the registration of children's cosmetics, China has issued the Technical Guidelines for Cosmetics based on existing regulations on cosmetics, taking into consideration public opinions. In the drafting process, we stick to the principle of "openness, transparency, and extensive participation", take into account relevant technical guidelines at home and abroad, solicit opinions from industry associations, and make corresponding revisions for improvements. In order to increase operability and provide technical guidance for the research and development of enterprises, the guidelines integrate and clarify the requirements in the Regulations and supporting legal documents on children's cosmetics, but do not add new requirements.

2.1.4.16 European Union - Hazard-based approach to plant protection products and setting of import tolerances, G/SPS/N/EU/166, G/SPS/N/EU/166/Add.1, G/SPS/N/EU/263, 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/495 (ID 393[41])

2.174. The representative of Australia provided the following statement. Australia remains concerned about the significant uncertainty surrounding the mechanisms for setting import tolerances for substances falling under the hazard cut-off criteria. We would welcome the release by the EU of guidance material on the procedures for handling requests for import tolerances. Australia

[41] For previous statements follow the thread under ID 393.

reiterates its position from previous meetings about the importance of adopting a risk-based approach for regulating plant protection products rather than considering only the potential for harm due to the intrinsic properties of a chemical. We remain available to discuss our approach to pesticide regulation with the EU and look forward to continued and constructive engagement on this issue, including in the SPS Committee.

2.175. The representative of Costa Rica provided the following statement. Costa Rica is concerned about the hazard-based approach adopted by the European Union given that, under the obligations of the multilateral system, all technical requirements must be aligned with the international reference standard or a risk assessment that provides the scientific basis for the measure. Costa Rica reiterates its request to the European Union to ensure that its regulations are based on risk assessments, by applying criteria supported by sufficient scientific evidence, in line with the obligations under the TBT Agreement.

2.176. The representative of Ecuador provided the following statement. Once again, Ecuador reiterates its support for the trade concern raised by Costa Rica and Australia and shares the points and doubts set out in the statements of previous speakers. Ecuador shares the genuine interest in the importance of protecting human and environmental health; however, we consider that regulatory decisions adopted on the basis of hazard-based criteria are not consistent with international risk-assessment practice. Ecuador urges the EU to take into consideration the relevant scientific information emanating from international specialized agencies recognized by the WTO, such as the Codex Alimentarius, which has relevant information on pesticides. This, in order not to be more trade-restrictive than necessary to fulfil a legitimate objective, in accordance with Article 2.2 of the TBT Agreement. Lastly, Ecuador again enjoins the European Union that, in cases where scientific information is lacking, the EFSA not make a recommendation on the MRL, since decisions on regulatory measures must be based on conclusive risk analyses that offer real conditions for health protection so as to avoid becoming a technical barrier to trade.

2.177. The representative of Brazil provided the following statement. Brazil would like to refer to its previous statements regarding STC 393. 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. A solid risk analysis, consistent with Codex guidelines, is important to ensure transparency and predictability in the regulatory processes regarding plant protection products and MRLs. In the last TBT Committee meeting, EU mentioned that granting import tolerance would make its regulation adherent to the risk analysis principle. This very principle is indeed one of the issues that has been raised in this STC over recent years. EU concedes emergency authorization to its national member States and deny import tolerances to third countries where the same conditions prevail. Brazil believes that the European approach to limit the use of pesticides is more trade-restrictive than necessary to fulfill its legitimate objectives under the TBT Agreement. It also disregards risk analyses in the setting of regulatory measures that may have a serious impact on trade.

2.178. The representative of Canada provided the following statement. Canada would like to take this opportunity to once again echo the concerns raised by many other Members regarding the European Union's (EU) hazard-based regulation for active substances in plant protection products and the setting of import tolerances. We encourage the EU to take an approach which does not unnecessarily limit the availability of all crop protection tools for growers. Regulatory decisions based on assessments of both hazards and risks for all active substances are the best means to achieve the right balance between grower and consumer safety on one hand and food security and reduced waste on the other. Canada does not favour or promote the use of any one production method over another and we share the objective of ensuring that pesticides are used only as necessary. We have in place an effective regulatory regime to monitor the safe use of chemical solutions when needed, including clear labelling requirements.

2.179. Farmers need to have access to a wide range of effective and affordable plant protection products, including both chemical and biological options, to ensure plant health and minimal waste. Using integrated pest management approaches, we support farmers in their own assessment of what is needed according to growing conditions, market demand and other factors. Canada's rigorous regulatory requirements, including scientific assessments and monitoring programmes, ensure the health and safety of consumers where pesticide residues can be a factor, as well the health of the

environment. The EU has stated that it will be changing how requests for import tolerances are established in the context of their current policy objectives, including the hazard-based cut off criteria and other (unspecified) considerations. Canadian growers and exporters have yet to be convinced of the real-world feasibility, commercial viability and compliance with international obligations of the EU's proposed approach for setting import tolerances when a plant protection product has met the hazard-based cut-off criteria. Finally, Canada once again requests that the EU consider maintaining MRLs for substances that do not pose unacceptable dietary risks and import tolerances be authorized based on dietary risk alone. We recognize that a dietary risk assessment as part of the re-authorization process would likely be needed, regardless of the results of the hazard screen.

2.180. The representative of Guatemala provided the following statement. Guatemala remains concerned about the EU's approach to the precautionary principle, without a risk analysis that includes risk assessment, risk management and risk communication. This categorization means that regulations on "endocrine disruptors" must be based on sound scientific principles. Risk analysis consistent with Codex guidelines requires that chemicals be considered at supported risk levels. The application of a near-zero tolerance in MRLs without a supported scientific basis is considered potentially more trade restrictive than necessary to fulfil legitimate objectives as envisaged in the TBT Agreement. Agricultural producers and exporters in developing countries with tropical climates are concerned about this new decision because access to active substances is subject to climatic conditions, safe use and good practice measures, which guarantee plant health. These substances are used due to differences in conditions, distance and transport of agricultural products in order to preserve their safety.

2.181. The representative of Argentina provided the following statement. Argentina once again reiterates its concern regarding this matter and stresses the importance of ensuring that all Members implement measures based on risk assessments, taking account of the risk assessment techniques developed by international reference bodies. The latter include the principles for establishing pesticide MRLs, as well as the many risk analyses that, over the decades, the Codex Alimentarius has conducted to ensure safety in terms of MRL recommendations for different substances and crops. Argentina joins the other delegations and reiterates its request to the European Union 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 TBT Agreement.

2.182. The representative of Uruguay provided the following statement. We support the comments made by the preceding Members and reiterate our systematic trade concern relating to the European Union's use of a hazard-based approach, instead of an approach based on comprehensive scientific risk assessments, when adopting regulatory decisions concerning the authorization of active substances used in plant protection products, and when setting import tolerance levels for substances that fall below the cut-off criteria in Regulation No. 1107/2009. We wish to once again emphasize the need to base such determinations on conclusive scientific evidence, gathered from an assessment of actual risks, to avoid the withdrawal, despite their safe use, of certain active substances that continue to be important components of the pest-management system. This is because an approach based on hazard rather than actual risk may have negative and disproportionate impacts on production, thereby contributing little or nothing to the stated aim of protecting public health. Uruguay continues to support any multilateral work undertaken by the Codex Alimentarius to develop a harmonized, risk-based approach to the treatment of plant protection products that would ensure the protection of health, while also facilitating international trade in food products. In the meantime, we once again call on the European Union to listen to and address the concerns expressed by many Members, and to reconsider its regulatory approach with a view to preventing the unjustified proliferation of barriers to international trade in agricultural products and potential socioeconomic consequences of such an approach for other Members, in particular developing and least developed countries.

2.183. The representative of Paraguay provided the following statement. Paraguay reiterates its position and refers to its previous statements, while stressing the importance of adopting a scientific approach to the regulation of phytosanitary products based on the risk and not just on the hazard arising from the intrinsic properties of a chemical.

2.184. In this regard, Paraguay once again requests that the European Union take into consideration information on pesticides provided by the specialized agencies recognized by the WTO, such as the

Codex Alimentarius; reconsider its approach; base its decisions on conclusive scientific evidence and real risk weightings, in accordance with international standards and principles; ensure import tolerances and, where necessary, provide sufficient transitional periods.

2.185. The representative of Kenya provided the following statement. The European Commission has notified on the hazard-based approach to plant protection products and setting of import tolerances. A risk-based approach would involve establishment and adoption of mechanisms for the evaluation of risks on the basis of the probability of their occurrence and the extent of any resulting damage together with the subsequent derivation of suitable measures. This is the most preferred approach/best global practice. In a hazard-based system**,** the presence of a potentially harmful agent at a detectable level in food is used as a basis for legislation and/or risk management action. Adoption of the hazard-based system by the EU has the potential to create unnecessary barriers to trade. Kenya wishes to support the other delegations that have raised this issue, since the Measure is deemed to be more trade restrictive than necessary contrary to Article 2.2 of the TBT Agreement.

2.186. The representative of Chile provided the following statement. The delegation of Chile reiterates the position it expressed in previous meetings of this Committee on the importance of adopting a scientific and risk-based approach to regulating phytosanitary products, instead of only considering the hazardousness of agrochemical products, given the importance of this sector to Chilean exports.

2.187. The representative of El Salvador provided the following statement. There is no question that El Salvador shares concerns about protecting the environment. However, technical requirements must respond to an international standard and be based on scientific evidence, beyond a mere risk assessment, so that applying them does not constitute an unjustified restriction of trade. We therefore share the concerns expressed by other delegations on the focus of this measure and we will continue to monitor this issue.

2.188. In response, the representative of the European Union provided the following statement. The European Union thanks WTO Members for their interest in the ongoing work in the EU on identifying endocrine disruptors for plant protection products. The EU reiterates that the scientific criteria to identify endocrine disruptors for plant protection products based on the WHO definition are applicable since the 10 November 2018 onwards and included in Commission Regulation (EU) No 2018/605.[42] This is complemented by a guideline from the European Food Safety Authority (EFSA) and the European Chemicals Agency (ECHA), providing more details on how to interpret these criteria.[43] We are aware of general concerns on the EU policy on plant protection products for the definition of scientific criteria to identify endocrine disruptors and on the establishment of import tolerances for substances not authorized in the EU, due to the so-called "cut-off" criteria in Regulation (EC) No 1107/2009[44] on plant protection products. As previously explained, the European Union decided to follow the procedures of Regulation (EC) No 396/2005 for the management of import tolerance requests concerning active substances falling under these cut-off criteria, which include a risk assessment by an Evaluating EU member State and a scientific opinion by the European Food Safety Authority (EFSA). The granting of the import tolerance is then considered in line with risk analysis principles on a case-by-case basis and taking into account all relevant factors. During the thematic session on Trade Facilitating Approaches to Pesticide MRLs, in the margins of the SPS Committee of 22 March 2022, the EU provided an overview of the methodology used in the EU for pesticide residues risk assessment.[45] The EU reiterates its commitment to act in full transparency and keep Members duly informed about further developments.

2.1.4.17 China - Cybersecurity Law (ID 526[46])

2.189. The representative of Canada provided the following statement. Canada would like to refer to its statements at previous TBT Committees and continues to have significant concerns with China's

[42] Commission Regulation (EU) 2018/605 of 19 April 2018 amending Annex II to Regulation (EC) No 1107/2009 by setting out scientific criteria for the determination of endocrine disrupting properties. OJ L 101, 20.4.2018, p. 33.

[43] https://doi.org/10.2903/j.efsa.2018.5311

[44] Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC. OJ L 309 24.11.2009, p. 1.

[45] https://www.wto.org/english/tratop_e/sps_e/thematicsession220322_e.htm

[46] For previous statements follow the thread under ID 526.

suite of cybersecurity and cryptography/encryption laws and related implementing regulations. Canada would also like to reiterate its concerns with the multiplication of implementing measures, which creates confusion and complicates businesses' ability to comply with all of them, due to their unclear scope, interaction and adherence to the principles of the TBT Agreement, namely: the Practical Guidance of Cybersecurity Standards—Technical Specifications for Certification of Cross-border Handling of Personal Information; the Critical Information Infrastructure (CII) Security Protection Regulations; the Cybersecurity Review Measures; the Draft Regulations on Network Data Security; and the Draft Measures for Security Assessment of Cross-Border Data Transfer. In response, while failing to address Members' concerns, the Chinese delegation notes that the Cybersecurity Law "does not restrict foreign enterprises, technologies and products from entering the Chinese market, nor does it restrict the lawful, orderly and free flow of data". We respectfully disagree with this statement. Canada would like to urge China to recognize the concerns that have been raised by Members on these measures since 2017 and we reiterate our long-standing request for a notification of these measures, only one of which has been duly notified to date to this Committee.

2.190. The representative 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 July 2022. In this September, a draft amendment to the Cybersecurity Law was published. We would like to refer that we have submitted comments on the draft. In particular, Article 65, which has been changed in the proposed amendment, stipulates penalties for critical information infrastructure operators who use network products or services that have not undergone "cybersecurity review" or have not passed "cybersecurity review". However, if the conformity assessment procedure is established based on China's own standards for this "cybersecurity review," depending on the contents of the conformity assessment procedure, it may cause unnecessary obstacles to the market entry of relevant foreign vendors and service providers, which may violate Article 5.1.2 of the TBT Agreement. We request that the content of the "cybersecurity review" be consistent with the TBT Agreement in its operation.

2.191. In addition, if the conformity assessment procedures to be established do not comply with the technical content of the guidelines by the International Organization for Standardization, etc., and may have a significant impact on the trade of WTO member states, we request that it be notified in accordance with the provisions of Article 5.6 of the TBT Agreement. We are also aware that the Cross-border Data Transfer Security Assessment Measures, a subordinate regulation of the Cybersecurity Law, has been in effect since this September. The scope of critical data that must be examined when exporting data out of the country and the definition of cross-border transfer are unclear, and industry has raised concerns about the possibility of excessive restrictions on cross-border data flow. The period from the promulgation of this law to its enforcement was quite short (approximately two months), and it is difficult to say that foreign businesses have had sufficient time to prepare to comply with this law. From a business perspective, predictability is important, and we would like to request that the system be administered in a transparent manner so that this law does not become an obstacle to business.

2.192. The representative of the European Union provided the following statement. The EU would like to refer to its statements at previous TBT Committees with regard to the Cybersecurity Law. The EU requests more clarity regarding several of the implementing measures of China's Cybersecurity Law. For example, the National Information Security Standardisation Technical Committee (also known as TC260) has released the draft of a short (non-binding) guideline on the identification of "important data" (the Identification Guideline). The concept of "important data" was first introduced by the Cybersecurity Law and has more recently been adopted into the Data Security Law. However, the term has still never been comprehensively defined. Under the Data Security Law, regional and sectoral regulators have already been tasked with formulating catalogues of "important data" for their respective sectors. The Identification Guideline, released on 13 January 2022, was the first step towards implementing this national classification system for "important data". The EU urges China to proceed with these guidelines as soon as possible and take into account the EU comments submitted during the public consultation.

2.193. The EU has also taken note of the publication of the Outbound Data Transfer Security Assessment Measures by the Cyberspace Administration of China (CAC). Several issues have been identified. Firstly, once the regulatory security assessment is triggered, the data handler may no longer be able to resort to signing a standard contract or to being certified for cross-border handling of personal information, transferring data across borders, even when it comes to low-risk scenarios,

such as the intra-company transfers of employees' personal information by large MNCs. Secondly, for those that handle large amounts of personal information, even if only one piece of such information is transferred abroad, a regulatory security assessment will still be triggered, unnecessarily. Thirdly, it would be beneficial for the CAC to clarify that, as the Measures only concern the cross-border transfer of data, any thresholds they define are irrelevant to local data storage obligations under the Personal Information Protection Law. Finally, the grace period for implementation is too short. Conversely, the EU seeks confirmation that under the Outbound Data Transfer Security Assessment Measures a localization requirement is not imposed. Additionally, we are concerned that they put foreign operators at a disadvantage compared to local ones. The scope of some of the provisions remains unclear and it is not possible to determine which types of data and which kinds of transfers would be covered by the measure. While these terms may be defined in other pieces of legislation, the concerns we have raised there would also apply here. For example, those subject to interpretation, in particular, the vague concepts of "important data" and "critical information infrastructure". It would be important to address these issues to ensure legal certainty. The EU urges China to take on board its comments provided.

2.194. The EU has also taken note of the Critical Information Infrastructure Security Protection Regulation, which became effective as from September 2021. The Regulation provides long-awaited details about how critical information infrastructure operators will be designated and what their responsibilities will be, in order to protect the security of the networks that they build and operate. Since the Cybersecurity Law came into effect in 2017, EU companies have faced uncertainty about whether or not they and/or their customers would be deemed critical information infrastructure operators and therefore face regulatory obligations in data security, procurement, cross-border data flows and other areas. However, the new Regulation does not resolve the overlap between the Ministry of Public Security (MPS)-administered system for network security, known as the Multi-Level Protection Scheme (MLPS, now MLPS 2.0) and the critical information infrastructure protection regime. The EU urges China to clearly distinguish between the compliance obligations – especially with regard to product and service procurement – applicable to Critical Information Infrastructure on the one hand, and to networks above MLPS Level 3 on the other, as in reality, these two sets of obligations are becoming increasingly equal. The EU calls on China to implement the provisions in a non-discriminatory manner, respecting the principles of proportionality, necessity and technology neutrality, and ensure adequate protection of intellectual property (IP). The EU requests that China notify draft measures concerning any sectoral implementation to the WTO.

2.195. The representative 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 sometimes general in scope, and sometimes sector specific. Our numerous, long-standing concerns are clearly laid out in our past statements to this Committee and remain unaddressed. Additionally, the United States reiterates its serious concerns regarding China's Cryptography Law, which went into effect on 1 January 2020. The United States is concerned that this law codifies potentially far-reaching, highly trade restrictive cryptography-related constraints on foreign ICT products.

2.196. 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. 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 the Cryptography Law. We look forward to continuing this important dialogue with you.

2.197. The representative of Australia provided the following statement. Australia reiterates our previous position regarding China's Cyber Security Law and related laws, including the Personal Information Protection Law and Data Security Law. As we set out in Australia's submissions to China's consultation on the then proposed laws, we welcomed a number of revisions to both these draft laws. Nonetheless, Australia still has concerns around extra-territoriality, trade retaliation, compliance costs for firms and the overall scope. These concerns have still not been addressed in the latest draft changes to the law. We remain concerned about the lack of clarity when it comes to definitions, jurisdiction and a number of other fundamental elements. We continue to urge China to take into account the concerns of business and Members in the implementation of these measures and development of future measures. We look forward to working closely with China on these issues.

2.198. In response, the representative of China provided the following statement. Cyber Security Law came into effect on 1 June 2017. It is China's first basic, framework, and comprehensive law in the field of network security. The total of seven chapters and 79 articles comprehensively and systematically establishes obligations and responsibilities in cybersecurity protection for relevant authorities, network operators, and network users. Basic systems have been established to ensure the security of network products and services, network operation, network data, network information, network security monitoring, early warning, and emergency response. The network security supervision and management system have been further clarified. The Cyber Security Law provides a legal basis for maintaining the security and development of cyberspace, and plays an important role in ensuring the security of cyberspace, purifying the cyberspace environment, and promoting the development of the cyber industry. Since the implementation of the law, the public's awareness of cyber security has been enhanced, the legal system of cyber security has been improved, the law enforcement capacity in cyberspace has been strengthened, and cyberspace has become cleaner and more orderly.

2.1.4.18 European Union - Transitional periods for MRLs and international consultations (ID 580[47])

2.199. The representative of Costa Rica provided the following statement. We reiterate our support for this trade concern. As it has done in previous meetings, Costa Rica reiterates its request for an extension of the transition periods for compliance with the new tolerances established for agrochemicals, the approvals for use of which have not been renewed, in view of the impact they have on agricultural production in our countries. The usual six-month period is insufficient when replacing an agrochemical being used, given the need to assess the possibility of longer transition periods for countries that produce and export fruit and vegetables.

2.200. The representative of Colombia provided the following statement. Colombia again raises its concern about the international consultation processes adopted by the European Union (EU) and the planned transition periods 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 has been no response to the requests for suitable transition periods, nor have the comments made during international consultation periods been taken into account. Regulatory changes on the use of plant protection substances, coupled with such short periods of transition, create difficulties and uncertainty for fruit and vegetable producing countries. They also create additional burdens for agricultural producers, who need to make decisions on the use of crop protection products a year or more before the goods arrive on the European market. This is particularly complex for products with long production and harvest cycles, as well as for processed and frozen foods, as, despite complying with European standards at the time of sowing, they may face regulatory changes that prevent exports at the time of harvest and distribution. Furthermore, Colombia maintains that notification to the WTO regarding the non-renewal or the MRLs to be applied, as well as the transition periods, should not be made by the EU as a simple formality within the regulatory process.

2.201. As provided for in Articles 2.9.2 and 2.9.4 of the TBT Agreement, the notification must be submitted within a time frame that allows the Members concerned to submit substantive observations and comments for genuine consideration. In that connection, we would like to know how the EU has taken into account the comments submitted by Members at different stages of the consultation process. Are there cases in which regulatory changes or adjustments have been effectively introduced using the information submitted by stakeholders during the consultation

[47] For previous statements follow the thread under ID 580.

process? How have comments been used to determine the transition periods for the implementation of standards? In addition to these questions, which we have raised previously, there are the questions that we have raised in other settings about the use of emergency authorizations, which benefit producers in the EU and in some non-EU countries, but which are not accessible on equal terms to all other countries. We invite the EU to follow the recommendations for good regulatory practices, under which standards must be based on clear and objective information, and which promote open dialogue with stakeholders, transparency and the minimizing of market distortions.

2.202. The representative of the United States provided the following statement. We continue to raise concerns regarding the European Union's (EU) practices related to the enforcement and reduction of pesticide maximum residue levels (MRLs). We recall longstanding concerns that the United States and our trading partners do not know with certainty what the impact of the EU's active substance non-approvals or restricted approval decisions will be on future MRLs. We have noted that EU MRLs and import tolerances are often reduced or withdrawn following a non-approval or restricted approval decision. The United States continues to request that the EU complete, in its entirety, its science-based risk assessments prior to setting new MRLs. The United States also asks the EU to provide an opportunity in advance of the formal WTO notification comment period for third-country data contributions. Such an approach will allow the EU to take all available evidence into account, prior to making an MRL decision. We have experienced instances where the review of additional data is only considered after the EU notifies its intention to not approve a renewal or to approve a renewal on a restricted basis. Further, we seek confirmation that the EU will allow for longer, more reasonable transition times for MRLs where the EU has not identified risks to consumers based on dietary exposure. We would have serious trade concerns if MRLs and import tolerances are lowered or withdrawn in a manner that is disproportionate to the level of risk to human health, and which, without clear scientific justification, may be more trade restrictive than necessary.

2.203. The United States reiterates its request that the EU retains existing MRL levels while import tolerances are under consideration. A recent EU draft regulation now states that it will only consider import tolerance applications on a case-by-case basis dependent upon meeting its definition of "environmental criteria". The EU's proposed new approach lacks clarity and predictability for farmers and growers. To prevent food waste and to enhance food security, we request the EU extend the transition periods for MRLs where the EU has not identified risks to consumers based on dietary exposure. This will facilitate adequate time for the United States and third-country producers to move lawfully produced food products through the channels of trade, including products with long shelf lives. The EU's policy of enforcing MRLs in effect at the time of importation for imported goods rather than at the time of production, as it applies for the EU's domestic goods, is inconsistent and causes disruptions in trade for products destined for the EU market. Trading partners have found themselves racing to move shipments through customs to prevent rejections or turning back orders because a product that previously complied with an existing EU MRL at the time of production could potentially be rejected at EU borders. EU growers are not required to adhere to the same timelines under the current regulatory provisions, and the United States requests that MRLs for all products, both domestic and imported, be enforced based on the date of production.

2.204. The representative of Ecuador provided the following statement. My delegation once again reiterates its concern with regard to the procedures concerning the "transitional periods" adopted by the European Union for implementing its measures relating to the non-renewal of the approval of substances and the reduction of tolerances. By Ecuador's understanding, in order to establish reasonable transitional periods, it is necessary to consider harvesting periods and the times when agrochemicals are applied. Farmers need more time to adapt to MRL requirements, as it takes at least 36 months to develop or register a new phytosanitary pest-control product, and that when new alternatives have been identified. It is estimated that around 20% to 40% of the world's crops are lost to pests each year. Of that loss, about one third is caused by fungal diseases. Crops such as bananas are particularly vulnerable to such pests, which include black sigatoka or, even worse, Fusarium R4T. With the policy of prohibiting substances such as imazalil, chlorothalonil, mancozeb and metiram, growers are left with no viable alternatives for countering these pests. In view of the above, Ecuador urges the EU to consider the comments of third countries before resolving to reduce the minimum detection level of an active ingredient, particularly when the use of the substances is key for the control of pests or diseases typical of tropical and subtropical climates, conditions that differ from those of the members of the European economic bloc. Lastly, we would like to reiterate our request to the EU for information on how the member State that has received an emergency authorization for the use of prohibited substances is complying with the existing MRL regulations

and how the EU verifies, in the case of non-compliance with the MRL regulations, that the products containing the prohibited substances have not been marketed in other EU member States.

2.205. The representative of Brazil provided the following statement. Brazil supports the concerns raised under STC 580 and would like to refer to our previous statements on this agenda item. 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 that the EU provides adequate transitional periods, 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". Transitional periods should also be compatible with the production processes, so as to allow producers – and especially small farmers – to adapt to the new regulations. In the last TBT Committee meeting, EU referred to its statement for the May 2020 meeting. By consulting the minutes of that meeting, the Brazilian delegation found out that there the EU explains its views on what falls within TBT or SPS scope and provided some details of EU regulation procedures. We thank EU for these clarifications, but indeed, we would like the EU to explain how its authorities deal with uncertainty, indicating if inconclusive evidence leads to suspension or prohibition of substances and which actions are taken to review these decisions, as they are based on inconclusive opinions.

2.206. The representative of Canada provided the following statement. Canada would like to reiterate its concern with the EU's approach to transition periods for maximum residue limits. Canada considers the sudden deletion of MRLs to be disproportionate to the level of risk to human health and more trade-restrictive than necessary. Canada is of the view that the EU's approach has yet to acknowledge the reality of agricultural supply chains such as the time required to ship product, multi-year inventory and extensive shelf life, including in foreign countries. Sufficient transition periods will allow trade to continue uninterrupted, while providing adequate time for producers and exporters to adapt to the new EU requirements. At a time when ensuring food security is of high concern, Canada urges the EU to extend transition periods for MRLs to third countries, as it has done so for its domestic producers, taking into account the need for exporters to adapt to new requirements.

2.207. The representative of Uruguay provided the following statement. In view of harvesting periods, the stages at which plant protection products are applied, and the time required to develop and register alternative substances, in practice, the transitional periods granted by the European Union in the provisions amending the MRLs for active substances are, in most cases, proving to be insufficient to make the necessary adjustments to production and ensure that agricultural products, especially processed or frozen products, comply with the new, lower MRLs. Six months is not enough time for this. In our view, any changes should be gradual, and a reasonable period of time should be granted to raise awareness in the productive sector and among technical advisers, and to make available on the market effective substitutes for the active ingredients for which the MRLs are to be reduced. It is inappropriate to make drastic changes to the rules in the middle of a harvest season, given the impact this may have on international and domestic marketing. My delegation reiterates the call for Members to adopt regulatory decisions based on internationally accepted standards or to present conclusive scientific evidence when it is strictly necessary to deviate from those standards to meet their legitimate aims, as provided for in the relevant WTO Agreements. Even in cases where the European Union determines, on the basis of a full risk assessment, that it is necessary to reduce the MRLs of active substances used in agricultural production by other Members, we urge it to consider the need to grant adequate and sufficient transition periods in order to make the relevant adjustments. Lastly, we share the concerns raised by Colombia on the practical operation of the European Union’s international consultation process on this issue, and we reiterate the questions asked by that delegation on how the comments of other Members have been taken into account in the regulatory process, including on whether these comments have resulted in regulatory changes or adjustments.

2.208. The representative of Kenya provided the following statement. Kenya raises its concern regarding the European Union's process of the transition period granted prior to the entry into force of (default) Maximum Residue Limits (MRLs) after the withdrawal of authorization of use of plant protection substances. The changes in the non-authorization of use have affected third countries and in particular Kenya's production system. The non-authorization of some plant protection substances has made it difficult for Kenyan producers, who are mainly small holder famers to change production practices in the middle of the production cycles, especially given the short period given

for the entry into force of default MRLs. Kenya wishes to support the other delegations who have raised this issue and urges the EU to provide longer transition periods on the entry into force of default MRLs before to avoid disruption of trade due to non-compliances of products destined to the EU market. Kenya would also request clarity on the matter with regards to rationale on transition periods of MRLs and urges the EU to follow recommendations on good regulatory practices.

2.209. The representative of Panama provided the following statement. We endorse the statements made by the delegations that have already taken the floor. As in previous meetings, Panama would like to express its concern about transitional periods for compliance with the new tolerances being established. We urge the European Union to extend the transitional period to enable small exporting producers to adapt to the regulations imposed as the current timeframe is insufficient.

2.210. The representative of Guatemala provided the following statement. Following the lowering of maximum residue levels (MRLs) notified by the European Union, Guatemala wishes to reiterate the need for transitional periods consistent with the stages of crop production and the time needed for efficiency tests to be carried out for the evaluation of alternative substances and for them to be effective, in particular for crops grown in tropical countries. The productive sectors require more time to adapt and, in particular, to find alternative substances, which in some cases means having to wait for suitable production cycles to commence application and testing. This can take up to three years depending on the crop. Some sectors are currently testing new active substances and organic methods. For example, the banana sector started testing a substitute substance in January 2022. However, the results on its effectiveness will only be available at the end of 2023 and, depending on those results, the time required for its full assessment in production will have to be extended. This test has resulted in a 20% loss of production in the testing area this year, due to the ineffectiveness of alternative substances. However, the test needs to be completed to determine its actual effectiveness. This is to provide a real-world example of evidence of why we have said that six months is not enough time — although it is not a short time either — for productive sectors to prepare. Real timescales are required to allow productive sectors to adapt according to their production chain and seasonality.

2.211. The European Union must consider not only the climatic conditions of its trading partners, but also the challenges that these regulatory changes impose on producers and rural communities in tropical countries, as they put at risk people's incomes and food conditions, not to mention the added costs of transitioning to an effective alternative substance, assuming one exists. We would be highly grateful if the European Union would consider the following: launching a genuine dialogue to discuss the importance of establishing transitional periods that closely follow the stages of crop production, following the lowering of MRLs for active substances that are commonly used for the phytosanitary treatment of these crops; extending the transitional period, with a view to not raising barriers to trade, and giving developing countries with tropical climates time to adapt; and providing an explanation as to how the comments of the Organization's Members are taken into account in the process and decisions on European regulations.

2.212. The representative of Paraguay provided the following statement. As with other similar concerns and as stated in previous meetings of this and other committees, we are concerned that the European Union's approach to limiting the use of substances is more trade-restrictive than it needs to be for it to achieve its legitimate objectives under the TBT Agreement. The pursuit of such policies will cause significant trade damage to the economies of developing countries and jeopardize their ability to achieve the Sustainable Development Goals, including those related to food security. We urge the EU to reassess its approach and, where MRL reductions are duly justified, provide adequate transitional periods that take into account the realities of the production processes and geographical locations, including distances, of its trading partners. With regard to international consultations, we thank the EU for the notification of measures of this type; however, we echo the questions raised by Colombia regarding how the EU has considered comments submitted by Members at different stages of the consultation process and whether there are cases where regulatory changes or adjustments have indeed been introduced based on information submitted by those concerned in the process since, as we have said with regard to other trade concerns, the limited time between the end of the comment period and the approval of the drafts without modifications leads us to believe that these notifications and comment periods are mere formalities and comments are not intended to be taken into account, and in fact are not taken into account.

2.213. The representative of Argentina provided the following statement. We once again reiterate our concern about the EU policy of removing import tolerances for substances that are no longer

used in the EU, which is clearly a more restrictive measure than necessary and goes beyond the acceptable level of risk set by the EU. The approach taken by the EU to establish transitional periods for MRLs is hasty and does not take into account the needs and adaptive capacities of third countries. The transition period clearly needs to be longer, and Argentina therefore calls for a review of the transition periods.

2.214. In response, the representative of the European Union provided the following statement. The European Union thanks the WTO Members for raising this issue. The EU has provided detailed information on transitional periods for Maximum Residue Levels (MRLs) at previous TBT Committees, in particular, at the TBT Committee meeting in May 2020 and July 2021. The EU considers that measures lowering maximum residue levels due to concerns for human health, fall under the remit of the SPS Committee and should be discussed in that context. On the contrary, all measures concerning the non-approval or restriction of active substances used in plant protection products in the EU and a limited number of very specific measures lowering MRLs, due to environmental issues of global concern (e.g. clothianidin and thiamethoxam), are notified to the TBT Committee. These measures do not have direct consequences on SPS-related matters. In the interest of transparency and, further to requests by some Members, when notifying these measures under the WTO/TBT notification system, the EU additionally informs the SPS Committee of the submission of these notifications. In practice, both Committees are informed about draft acts on the non-approval or restriction of approval of an active substance in the EU. However, comments should only be submitted via the TBT notification system in these cases. The EU would like to point out in this context that the commenting deadlines are always respected and that the comments received within those deadlines are duly taken into account in the EU's decision-making process.

2.215. In the interest of efficient proceedings in both Committees and, in line with the respective Agreements, the EU would invite Members to raise matters on approvals of active substances and measures dealing with MRLs in view of environmental issues of global concern exclusively in the TBT Committee, while matters relating to MRLs for pesticides due to human health concerns should be raised exclusively in the SPS Committee. Issues concerning transitional periods for MRLs should therefore generally be raised at the Committee to which the original notification was made, which would be, in most cases, the SPS Committee.

2.1.4.19 European Union - Chlorothalonil (pesticide active substance), G/TBT/N/EU/625 (ID 579[48])

2.216. The representative of Costa Rica provided the following statement. Once again, Costa Rica supports Colombia's comments and we refer to previous statements expressing concern about the measure notified by the European Union in document G/TBT/N/EU/625, in relation to the non-renewal of the approval of the active substance chlorothalonil. Costa Rica thanks the EU for its willingness to hold a dialogue on agrochemicals policy, taking into consideration international obligations on foreign trade and the agricultural and environmental policy objectives of the member countries of the international community, together with the commitment to leave no one behind in the implementation of its Green Deal policy.

2.217. The representative of Colombia provided the following statement. Colombia again raises its concern regarding the measure notified by the European Union (EU) in document G/TBT/N/EU/625 relating to the non-renewal of the approval of the active substance chlorothalonil. Despite the technical and scientific comments submitted within the consultation period, the regulation blocking renewal of the market approval for this substance entered into force. Furthermore, Commission Regulation (EU) 2019/677 of February 2021, which set the MRL or the limit of detection, entered into force in September 2021. In this case, the EU has also failed to take into consideration the technical comments submitted and the requests for a longer transition period to adapt production processes, which, as we know, are particularly complex in the agricultural sector. Not only are these measures being taken in a manner that is inconsistent with international standards, such as those of the Codex, but they are also being applied inequitably, as, in practice, their implementation and authorization for use differentiate between domestic and foreign producers. This is so in the case of "emergency authorizations", which allow EU producers to continue to or resume use of this substance. While Colombia recognizes the health and environmental protection objectives, these measures have been adopted without any proof that they are indeed the least trade-restrictive means of ensuring an appropriate level of protection, which constitutes a violation of Article 2.2 of

[48] For previous statements follow the thread under ID 579.

the TBT Agreement. The measures adopted must be based on scientific evidence and international standards and take account of the biodiverse agriculture of tropical countries such as Colombia. To conclude, we note that producers and exporters have questions and concerns regarding the inspection and control mechanisms and procedures for demonstrating compliance with the requirements, about which we do not have sufficient clarity for foreign trade operations to be predictable.

2.218. The representative of Ecuador provided the following statement. Ecuador reiterates its concern in relation to notification G/TBT/N/EU/625 on the non-renewal of the approval of the active substance chlorothalonil. Chlorothalonil is mainly used for controlling black sigatoka in bananas, as a fast-acting fungicide with a multi-site mode of action, meaning that the risk of fungal resistance is low. Controlling black sigatoka (*Mycosphaerella fijiensis*) is the main challenge for banana production in Latin America. To control the disease, strategies of rotating fungicides with different modes of action are pursued to avoid fungal resistance to these compounds. The climate in Ecuador is tropical, so pests and their behaviour are different from those in the European Union. Certain active substances and their formulations are indispensable in agricultural production to prevent crop losses and resulting harmful economic and social effects. Therefore, Ecuador urges the European Union to consider the particular circumstances of tropical countries when implementing the measures adopted and to take a more balanced approach in line with the Codex Alimentarius. Ecuador understands that for an MRL to be established, banned or lowered there must be conclusive scientific information demonstrating a real health impact. Reducing the MRL for chlorothalonil could have a very significant economic impact on small-, medium-, and large-scale producers in Ecuador. This is because the banana sector provides jobs for 2.5 million people. Exports of this product account for a significant share of the country's foreign exchange earnings (2.1 billion). This equates to 2% of GDP and 35% to agricultural GDP. Lastly, we wish to reiterate that no substitute or similar plant protection products with the same environmental or toxicological profile are currently available, since the alternatives to chlorothalonil (mancozeb, metiram) are also under review by the EU.

2.219. The representative of Brazil provided the following statement. Brazil supports STC 579 and refers to its previous statements on the matter. We believe that 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 is inconsistent with WTO rules. 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. We stress our systemic concern with the fact that some hazard-based analyses conducted by the European Food Safety Agency (EFSA) led to the non-renewal of approvals of some substances and subsequently to the reduction of their MRLs. The Brazilian National Health Agency has set MRLs for chlorothalonil applied to more than 30 crops. The case of chlorothalonil is particularly harmful towards Brazil`s producers of banana, coffee, citrus fruits, papaya, watermelon, among others.

2.220. The representative of Paraguay provided the following statement. This concern and the non-renewal of the approval of chlorothalonil and other substances were already discussed extensively both in this Committee and in the SPS Committee because of the subsequent reduction in the MRLs. Paraguay therefore refers to its previous statements and requests that its statement at the previous meeting be reflected in full in the minutes of this meeting. We once again request that the European Union take into consideration information on pesticides provided by the specialized agencies recognized by the WTO, such as the Codex Alimentarius, reconsider its approach and base its decisions on conclusive scientific evidence and real risk weightings, in accordance with international standards and principles, and ensure import tolerances.

2.221. *Statement from June 2022 meeting, in full.*[49] This concern and the non-renewal of the approval of chlorothalonil and other substances was already discussed extensively both in this Committee and in the SPS Committee because of the subsequent reduction of MRLs. Paraguay therefore refers to its previous statements and requests that its statement at the previous meeting be reflected in full in the minutes of this meeting. We once again request that the European Union take into consideration information on pesticides provided by the specialized agencies recognized by the WTO, such as the Codex Alimentarius, reconsider its approach and base its decisions on conclusive scientific evidence and real risk weightings, in accordance with international standards and principles, and ensure import tolerances.

[49] G/TBT/M/87, para. 2.332.

2.222. The representative of Guatemala provided the following statement. Guatemala maintains its position on this trade concern regarding the use of chlorothalonil because there is currently no information on scientific evidence of the possible harm to human health caused by consuming fruits and vegetables, particularly those produced in Latin America, and because no molecule on the market is currently as effective for controlling the Ascochyta fungus, above all in vegetables. Alternative substances to chlorothalonil include mancozeb, azoxystrobin, pyraclostrobin, sulphur and difenoconazole. The registration of four of these alternative substances was not renewed for marketing in the European Union, and, as a result, MRLs have been reduced to almost zero tolerance, leaving Guatemalan agricultural production with no options that can effectively combat diseases of fungal origin. In view of this situation, Guatemala reiterates its request to the European Union to consider the similar circumstances of tropical countries when implementing measures, until it has conclusive studies and has aligned itself with the provisions of the Codex Alimentarius. Guatemala therefore requests that the risk assessment approach and scientific evidence be considered and that MRLs be set that correspond to the reality of tropical countries. Tropical countries cannot be required to use the same treatments as European countries, since their climatic conditions are different For this reason, we ask that the MRLs for chlorothalonil be reviewed, taking into account that no chemical substance on the market can replace this compound.

2.223. In response, the representative of the European Union provided the following statement. The EU thanks WTO Members for raising this issue once more. As explained at previous meetings, the EU proposed not to renew the approval of chlorothalonil through Commission Implementing Regulation (EU) No 2019/677[50], adopted on 29 April 2019 and previously notified to the TBT Committee. Following the non-renewal of approval decision, the EU prepared a draft Regulation lowering the Maximum Residue Limits (MRLs) for chlorothalonil, which was notified to the WTO/SPS Committee (G/SPS/N/EU/394). In view of the concerns identified by the European Food Safety Authority (EFSA), the EU lowered all MRLs for chlorothalonil to the relevant limits of quantification through Commission Regulation (EU) 2021/155[51] of the 9 February 2021. The new values are applicable to all food products since the 2 of September 2021. Since then, there has been no further developments in the EU on this substance, as no new data were received. Import tolerance requests, which need to be supported by substantial new data addressing the concerns, remain possible and will be assessed on a case-by-case basis by the "rapporteur" member State and the EFSA.

2.1.4.20 Peru - Supreme Decree No. 015-2019-SA, which amends the Manual of Advertising Warnings approved by Supreme Decree No. 012-2018-SA (ID 618[52])

2.224. The representative of Brazil provided the following statement. Brazil regrets having to once again express its concerns regarding labelling requirements expressed in the Manual of Advertising Warnings approved by Supreme Decree 012-2018-SA (notified under G/TBT/N/PER/7/Add.1) and amended by Supreme Decree 015-2019-SA (unnotified). The use of stickers is a widespread practice internationally, as it does not affect the provision of reliable information to consumers. Codex standard CODEX-STAN 1-1985 for pre-packaged goods, Articles 8.1.1 and 8.2.1, explicitly allows for the possibility of using additional labels or stickers, 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. Brazil shares Peru's endeavour to ensure the highest health standards through technical regulations that help to better inform consumers. Despite Peruvian legitimate concerns with deceptive practices, advances in labelling technologies allow for their safe affixation. We acknowledge that, according to Supreme Decree 005-2022-SA, the entry into force of the prohibition on stickers was delayed until 31 December 2022. However, Brazil would like to respectfully ask Peru to permanently align its labelling requirements with current international standards established under the Codex and withdraw the prohibition of stickers for the products under the scope of the Manual of Advertising Warnings. Brazil considers such postponement a provisional solution and will

[50] Commission Implementing Regulation (EU) 2019/677 of 29 April 2019 concerning the non-renewal of the approval of the active substance chlorothalonil, 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 Commission Implementing Regulation (EU) No 540/2011. OJ L 114, 30.04.2019, p. 15.

[51] Commission Regulation (EU) 2021/155 of 9 February 2021 amending Annexes II, III and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for carbon tetrachloride, chlorothalonil, chlorpropham, dimethoate, ethoprophos, fenamidone, methiocarb, omethoate, propiconazole and pymetrozine in or on certain products. OJ L 46, 10.2.2021, p. 5.

[52] For previous statements follow the thread under ID 618.

continue to raise this STC until Peru permanently removes its burdensome requirements for food labelling.

2.225. The representative of Colombia provided the following statement. Colombia would again like to raise this trade concern regarding the use of adhesive advertising warning labels as outlined in the Manual of Advertising Warnings of Supreme Decree No. 012-2018-SA. In fact, in accordance with Decree No. 005-2022, as of 1 January 2023, labels cannot be used and warnings must be printed directly onto the product's packaging. On previous occasions, it has been suggested that the use of adhesive labels does not distort the purpose of the standard, since the warnings, whether included on adhesive labels or printed directly on the packaging, will continue to be clear, legible, prominent and comprehensible. In fact, with current technology, self-adhesive labels can be printed which do not peel off the packaging, thus guaranteeing that they will remain affixed, despite not being printed directly onto the packaging. It is therefore in our interest, and surely that of other countries as well, to use adhesive labels indefinitely. Furthermore, we believe that the policy under which this regulation is adopted, even though it is designed to protect public health, should be implemented in a manner that does not create an unnecessary obstacle to trade. For Colombia, initial trade association estimates indicate that this measure particularly affects small and medium-sized businesses, which have exported approximately USD 53 million worth of processed foods to Peru. It has also created logistical distribution-related issues, as establishments generally require compliance with standards in advance so that at the time of sale to end consumers compliance is guaranteed. At the same time, this measure is affecting product competitiveness, as it increases costs, because producers must install different packaging lines or contract third parties to package products separately depending on the country of export. Lastly, we welcome the bilateral talks that have taken place at different levels and invite the parties to continue working in a coordinated manner and to take the above-mentioned considerations into account, allowing the use of adhesive labels indefinitely.

2.226. The representative of the European Union provided the following statement. The European Union (EU) appreciates that Peru further extended the possibility for imported products to use stickers for compliance with labelling requirements for processed foods, until 31 December 2022. However, the EU would like to repeat once again the urgent invitation to Peru to provide for a permanent possibility for imported products to use stickers. The repeated and unforeseeable extensions of the deadline severely disrupt trade because retailers in the Peruvian market stop buying products with stickers several months before each deadline. Such disruptions represent significant losses for importers and producers, as well as disruption of trade flows and unavailability of the affected products in the Peruvian market. The EU recognizes that reliable information to the Peruvian consumer and protection of public health are legitimate objectives. Nevertheless, the obligation to print information on the product package is unnecessarily trade-restrictive and represents a disproportionate burden for foreign producers, in particular SMEs. In the EU and in most countries around the world, stickers are allowed for food products, provided that the information is accurate and the stickers are not easily removable. We invite once again Peru to bilaterally work with the EU on this issue.

2.227. The representative of Costa Rica provided the following statement. Costa Rica wishes to maintain its trade concern regarding the process to implement the draft regulation established under Supreme Decree No. 015-2019-SA, which amends the Manual of Advertising Warnings approved by Supreme Decree No. 012-2018-SA of Peru. Costa Rica would like to thank Peru for extending the deadline for using adhesive labels. However, this temporary solution does not provide our exporters with legal certainty and clarity about the regulations applicable to trade in food in Peru. Progress needs to be made on an amendment to the final regulation, which would allow the use of self-adhesive labels for an unlimited period. 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 and 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. Costa Rica respectfully requests that the Peruvian authorities consider permitting the use of adhesive labels on a reciprocal basis, given that these labels may be used on Peruvian food products to be marketed in Central America. We request the Peruvian authorities to provide information on the status of this regulation, whether the intention is still to ban the use of stickers on labels and the timing of the regulation's entry into force.

2.228. The representative of Chile provided the following statement. The delegation of Chile would like to thank the delegations of Brazil, Colombia and the European Union for including this specific trade concern on the agenda. Our delegation urges the regulatory authority of Peru to allow the permanent use of adhesives on the packaging of food products and thereby avoid creating an unnecessary technical barrier to trade. Finally, we would like to thank Peru for the bilateral discussions that we have had on this topic.

2.229. The representative of Paraguay provided the following statement. As stated at previous meetings, Paraguay supports Peru's objective of protecting public health and considers that the provision of information to consumers through labelling is an appropriate strategy. However, we share and support the concerns expressed by other Members with regard to the time limit established for the use of supplementary labels. It should be noted that the use of labels of this kind is widely recognized internationally, as such labels achieve the same public health protection and consumer information purposes achieved by permanent labels. Not accepting them is therefore more trade-restrictive than necessary. As regards the grace period granted to allow the use of such labels until 31 December 2022, not only will it expire soon, but the temporary extensions do not provide legal certainty for exporters. Therefore, we ask Peru to allow the use of this type of adhesive labels indefinitely and to bear in mind the provisions of Article 2.2 of the TBT Agreement.

2.230. The representative of Guatemala provided the following statement. We reiterate the recognition of Peru's right to protect people's health and to provide the consumer with information on foods. Supreme Decree No. 005-2022-SA published on 31 March 2022 in the Official Gazette, *El Peruano*, extended the deadline to 31 December 2022 for the use on imported products of stickers displaying advertising warnings as provided for in the Manual of Advertising Warnings approved by Supreme Decree No. 012-2018-SA, in the framework of the provisions of Law No. 30021 on the Promotion of Healthy Eating for Children and Adolescents, and its Regulations approved by Supreme Decree No. 017-2017-SA. Peru is again requested to reconsider the use of a supplementary label, as its use is widely recognized at the international level, as specified at previous Codex Alimentarius meetings and in Codex CXS 1-1985, because it allows the same objective of public health protection and consumer information to be achieved. There is an international standard, which will ensure that trade is not hindered more than necessary, and so we call on Peru to apply this measure because the sticker fulfils the same function and achieves the legitimate objective pursued by Peru. For the record, Guatemala reiterates its statements made at previous meetings of the Committee. We would be grateful if Peru could keep this Committee informed of developments and changes in this regulation.

2.231. In response, the representative of Peru provided the following statement. In this regard, Peru reiterates that it is committed to its work to protect the health of its citizens and vulnerable groups, such as children and adolescents, through public policies aimed at achieving this goal, in accordance with the country's international trade commitments in this area. In this connection, Peru is seeking to ensure that the information contained in the Manual of Advertising Warnings (MAP) reaches consumers clearly and effectively to enable them to make informed choices. In response to the concerns expressed by some Members, Peru, in accordance with what it indicated at the previous meeting of the TBT Committee, through Supreme Decree No. 005-2022-SA, extended until 31 December 2022, the period during which the use of adhesive warning labels is allowed, as provided for in paragraph 8.3 of section 8 of Supreme Decree No. 012-2018-SA approving the MAP under Law No. 30021 on the promotion of healthy eating among children and adolescents. In this regard, as has already been mentioned on previous occasions, we are coordinating with the Ministry of Health of Peru in order to be able to have a definitive response on this issue. We also reiterate 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 trade.

2.1.4.21 India - Order related to requirement of Non-GM cum GM free certificate accompanied with imported food consignment, G/TBT/N/IND/168 (ID 651[53])

2.232. The representative of the United States provided the following statement. This is the fifth TBT Committee in a row that the United States must raise its concerns with India's measure mandating "non-GM (genetically modified) origin and GM free certificates" for certain agricultural imports into India, notified on 2 September 2020, as G/TBT/N/IND/168, and a later notified entry-into-force date of 1 March 2021. To date India has not responded to our questions regarding its

[53] For previous statements follow the thread under ID 651.

rationale for requiring a non-GM certificate on a consignment basis. India has previously referenced its Environment Protection Act (1986), Rules 1989, and the absence of Genetic Engineering Approval Committee (GEAC) approvals for the 24 crops listed in the Order as evidence that the non-GM requirement is neither new nor trade restrictive. The United States must stress that while India's authority to regulate "GM" foods is neither new nor in question, the requirement of a non-GM certificate from a competent authority on a consignment basis was first ordered in 2020 and caused trade disruptions to US apple and rice shipments in 2021. The absence of approvals from GEAC highlights the lack of transparency and inefficiency in the approval process, compounding the burden India is placing on its trading partners. The United States has previously proposed technical cooperation and dialogue with the Government of India on numerous occasions. We once again request that India engage with the United States and trading partners to find a less trade-restrictive alternative.

2.233. The representative of the European Union provided the following statement. The European Union would like to refer to its previous statements on this matter. The EU submitted comments to the TBT notification asking for further clarification which have not been replied to and the Order already entered into force. The EU considers that the India requirements go beyond what is necessary to achieve the stated objective and put an additional burden and costs on EU exporters. The EU would invite India to explain why it considers necessary to impose such a burden on trading partners with a high prevalence of non-GM food on their domestic market and a robust regulatory regime governing the use of GMs. In addition to the fact that only a limited number of the food crops referred to in the Annexure are authorized to contain GMs, there are very strict traceability and labelling requirements applicable to food that contains GMOs. The EU would like to ask India to waive the requirement to attach the certificate for food items.

2.234. The representative of Japan provided the following statement. Japan reiterates that the measure which requires 24 agricultural products imported by India to be accompanied by a certificate stating that they are not of genetically modified origin and do not contain genetic modification, is not based on scientific principles or proper risk assessment, and is more trade-restrictive than necessary and could have negative impact on agricultural trade between India and other WTO Members. In Japan, under domestic laws, the import, distribution, cultivation, and other general uses of genetically modified agricultural products for human consumption are subject to safety evaluations, and agricultural products that are not approved by the evaluation process could not be imported nor distributed domestically. If certain items are already under appropriate control in the origin country, there is no scientific rationale to require non-GM origin and/or GM free certificates for those items. Japan requests India to withdraw the requirement to the attachment of certificates for foods that are properly controlled in the origin country.

2.235. The representative of Australia provided the following statement. Australia thanks India for its ongoing engagement and cooperation regarding the use of the "non-GM origin and GM free certificate", as well as India's previous responses provided in the TBT Committee. Australia shares the view that GM use in agriculture needs to be safe, and we are strong supporters of robust, risk and science-based regulation of GM. Australia reiterates that it is common international practice to maintain regulatory oversight and controls on agricultural crops subject to genetic modification. Requiring GM assurances on a consignment-by-consignment basis does not improve regulatory outcomes. In order to ensure that trade is not subject to unnecessary costs and additional regulatory burdens for both Australian exporters and Indian importers, Australia requests that India implements alternative arrangements, which recognize the existing regulatory systems in place by countries to control GM exports. Australia maintains appropriate regulation of GM-crops and is able to provide assurances of which crops are and are not subject to GM. Australia will work with India to seek a mutually agreeable solution that facilitates free and open trade, in accordance with the principles of the recently signed Australia-India Economic Cooperation and Trade Agreement (AI-ECTA). Australia looks forward to further collaborative engagement with India on this matter.

2.236. The representative of Canada provided the following statement. Canada would like to reiterate concerns raised at previous TBT Committee meetings, SPS Committee meetings, and the Council for Trade in Goods regarding the implementation of India's August 2020 Order, which mandates that a non-genetically modified (or GM free) certificate accompany imported consignments of 24 imported food products. As detailed in Canada's comments submitted through India's TBT Enquiry Point in October 2020, we are concerned that India's Order will disproportionately impact the ability of GM-producing countries to export to India and unnecessarily restrict international trade. Canada welcomed India's decision to accept Canada's attestation for non-GM certification on bean

exports. However, Canada continues to encourage India to consider a less burdensome approach to meeting the Order's stated food safety goals.

2.237. The broad scientific consensus is that food products derived from biotechnology that have undergone a rigorous scientific safety assessment according to internationally accepted guidance and standards are considered as safe as their conventional counterparts. Until a satisfactory solution is found and to minimize potential trade disruptions, Canada again requests that India suspend the implementation of this measure and that trade be permitted to continue without a certificate requirement. This would allow for further engagement with Members to discuss and consider an alternate, less trade-restrictive measure to meet India's intended objective. Finally, given the Order's stated objective "to ensure the safety and wholesomeness of articles of food imported into India", Canada reiterates its request that India notify the non-GM Order to the SPS Committee. We remain available and would welcome the opportunity to pursue further discussions on this issue in a bilateral setting.

2.238. The representative of Uruguay provided the following statement. Uruguay recognizes India's right to take measures to guarantee food safety and the health of its population. However, Uruguay would like to recall the existing international consensus that genetically modified products, approved by exporting countries on the basis of Codex recommendations in relation to the risk assessment methodology, are equivalent to their conventional counterparts. Therefore, and with due regard for the responses already provided by India, in our view, there would not appear to be any technical justification for the implementation of the proposed certification measure proposed by India, taking into account the legitimate objective, as stated in the relevant Indian standard, of ensuring the safety and wholesomeness of imported foods. In view of this objective, we would like to ask why the delegation of India continues to fail to notify the WTO SPS Committee of the reference measure, despite having notified the TBT Committee, as requested by Uruguay and various other Members. Uruguay would like to reiterate how important it is for Members to establish measures based on scientific principles, and, in particular, for these measures to be implemented with the objective of minimizing negative trade effects, in line with the provisions of the TBT and SPS Agreements. We remain attentive to any comments and replies of the delegation of India in relation to the concerns of Members, as have been expressed for almost two years by numerous delegations, including Uruguay, in both Geneva and New Delhi.

2.239. The representative of Paraguay provided the following statement. Paraguay reiterates its concern that this measure may create an unjustified assumption that GM food products evaluated and authorized on the basis of sound regulatory processes are less safe than non-GM food products. GM products have undergone rigorous scientific safety assessments in accordance with international standards, guidelines and recommendations to ensure that they are considered as safe as their conventional counterparts. We look forward to India's replies to the questions posed in both Geneva and New Delhi, and join others in requesting that this measure also be notified to the SPS Committee given that its objective, according to India, is health and food safety.

2.240. The representative of Argentina provided the following statement. With regard to this measure, Argentina reiterates its concern and again stresses that the measure has no scientific explanation to support it. In this connection, we echo the statements made before us. Argentina is concerned that this requirement would set a precedent and could be a barrier to trade, which in the future could extend to other products or even their derivatives. We therefore request India to consider reviewing this measure.

2.241. In response, the representative of India provided the following statement. We would like to make the following points: The Environment Protection Act (1986) and its Rules prescribe that no person shall import or export genetically engineered organisms/substances or cells except with the Genetic Engineering Approval Committee (GEAC). DGFT Notification No.2 (RE-2006)/2004-2009 dated 7 April 2006 on "Import of Genetically Modified Food" stated that import of GMOs/LMOs for food will be governed by the provisions of the Environment Protection Act, 1986 and Rules 1989. The GEAC has so far not approved any of the crop varieties of genetically modified/engineered origin listed on the Order mentioned above. As of date, exporters from several trade partners like the US, UK, Australia, Canada, Turkey, Iran, China, EU including Italy, Germany, and France and Thailand, are already providing requisite certificates. Hence, in our assessment, this order is not trade-restrictive. On similar lines, India also issues such certificates for its own exports to other countries. The Government of India has authorized the Export Inspection Council (EIC) as the nodal agency for issuing Non-GMO certificates for export consignments. The EIC has issued more than 9,000 non-

GMO certificates for the export of primary food crops as well as processed food products for export to several countries. With this background, we would request the interested delegations to share specific issues being faced with respect to this order.

2.1.4.22 India – Draft Food Safety and Standards (Import) Amendment Regulation, 2020, G/TBT/N/IND/180 (ID 667[54])

2.242. The representative of Mexico provided the following statement. The delegation of Mexico refers to its statement at the previous meeting of this Committee in July 2022, where it raised a concern for the second time regarding the draft Food Safety and Standards (Import) Amendment Regulation, notified by the Government of India to the Members of this Committee on 25 November 2020 in document G/TBT/N/IND/180. In this regard, the Mexican delegation reiterates its concern about the proportionality and scope of the measure, specifically with regard to alcoholic beverages. At the July 2022 meeting of the Committee, the delegation of India indicated that the detailed guidelines with information on procedures and guidance were still under consideration and that the Food Safety and Standards Authority of India was in the process of developing guidelines, in relation to which sufficient time would be provided for compliance. We would therefore be grateful if any updated information in this regard could be shared with us, in order to be able to follow it up in a timely manner, considering its great importance for Mexico's industry and Government.

2.243. The representative of the United States provided the following statement. The United States remains concerned with India's draft measure, notified to the WTO TBT Committee as G/TBT/N/IND/180. As the United States has stated in the past five TBT Committee meetings, this draft regulation leaves many unanswered questions for foreign food manufacturing facilities, competent authorities, and other stakeholders. The draft regulation states that India may identify categories of "risk" for food products "from time to time … for which inspection or audit of foreign food manufacturing facilities producing such categories of foods shall be mandatory." We are concerned about the lack of detail regarding the scope of this proposed technical regulation and the scientific and technical information India will use to determine the specific "risk" for food product categories. During the July 2022 Committee meeting, India noted that "procedural information and guidance" was being developed for this measure. Will such procedures and guidance be notified, and does India have a timeline for notification of this information?

2.244. The representative of the European Union provided the following statement. The European Union would like to refer to its previous statements on this matter. At the outset, the European Union recalls that it awaits a written reply to the comments it had sent in February 2021 to the notification G/TBT/N/IND/180. We again respectfully ask India to reply in writing to the EU comments, given the importance of providing exporting countries with clarity and certainty about India's import requirements. Referring to the FSSAI Order of 10 October 2022, we would like to thank India for clarifying, even if only in general terms, the scope of products/food categories subject to the registration of foreign food facilities, and for postponing the entering into force of the new requirements to 1 February 2023.

2.245. However, given the: disruption to trade associated to the new registration of facilities, even if they are not associated to new sanitary measures; generic nature of the list of products/food categories; absence of any criteria to define the risks associated to the mentioned list; number of unanswered questions by India; and finally, importance of the competent authorities and companies in the exporting countries to have sufficient time to adapt, the EU would like to ask India to: Further postpone the date of entering into force for, at least, 12 months; Clarify the meaning of "entering into force", i.e. whether it corresponds to the "date of arrival in India" or the "date of departure from the exporting countries"; Provide a list of HS product codes with, at least, 4 digits, and the risks associated to each of the products/food categories; Define the term "facilities"; Make easily accessible, at all times, the import sanitary measures of India which are applicable to each of the products/food categories subject to the registration of facilities; Clarify where and to whom the lists of facilities already registered will be made available by India; Clarify the modalities related to inspections (and audits) of the facilities by India and by the competent authorities of the exporting countries; Provide written guidance to the exporting countries and companies on how they should register the facilities and send the lists of facilities to India, and to maintain it updated; Consider avoiding that the competent authorities of the export countries have to sign more than one certificate with the same sanitary measures; and, finally, to notify, well in advance, its measures related to the

[54] For previous statements follow the thread under ID 667.

registration of establishments also to the WTO SPS Committee. The EU would like to thank India for its willingness to meet to discuss all these matters.

2.246. The representative of New Zealand provided the following statement. New Zealand would like to thank India for verbal information shared to date on this draft requirement and the recent order that clarifies the products for which manufacturer registration is required. However, New Zealand believes the registration and auditing of foreign manufacturing premises creates unnecessary trade restrictions and that this should be managed by the exporting country's competent authority rather than the importing country. Notwithstanding these concerns, New Zealand remains interested in seeing detailed written guidance on this proposed requirement including the implementation process as well as criteria for audits, before it is brought into force. New Zealand also has concerns with the level of proposed detail required for registration which currently includes product names and HS codes, rather than just product type.

2.247. The representative of Australia provided the following statement. Australia recognizes the right of the Indian Government to take measures necessary to protect public health. Australia thanks India for clarifying that this regulation only applies to five food categories. This is in line with FSSAI's previous advice that the proposed regulations would not apply to all food establishments. Australia would appreciate information on India's risk assessment which concluded that additional measures were required for the registration of food manufacturing facilities with FSSAI. Australia can further advise that it has specific legislated export control measures for those categories of food mentioned in India's revised regulation. Australia would appreciate the opportunity to streamline the process so as to reduce the level of administrative burden for all our industries. We suggest India consider the food safety systems of its trading partners in applying the regulation. Australia is happy to work with India to support a more risk-based approach to food safety.

2.248. The representative of Canada provided the following statement. Canada would like to reiterate concerns raised at the TBT Committee since February 2021 regarding India's draft amendment to its Food Safety Standards (Import) Amendment Regulation pertaining to the registration, inspection and/or audit of foreign food manufacturing facilities producing food products destined for India. While Canada recognizes India's right to take necessary measures to protect public health and safety, a number of elements contained in India's proposed amendments remain ambiguous. As previously stated, it is unclear what criteria would be used to determine the level of risk for food products imported into India and what circumstances would instigate an audit or an inspection of a foreign manufacturing facility. In addition, Canada remains concerned with the measures on target commodities, implementation plan, audit rates, compliance actions and appeals. We are of the view that India's approach in these areas could create unnecessary obstacles to trade. Canada notes that India has yet to respond to comments submitted to India's Enquiry Point on 21 January 2021. We would appreciate if India could inform when it expects to provide the requested details. In closing, Canada recalls its request to India to notify these amendments to the SPS Committee given that India's proposed regulation covers food safety measures aimed at protecting human health and safety.

2.249. The representative of Argentina provided the following statement. We reiterate the concerns raised at the last meeting of this Committee. As we have already stated, Argentina has a number of doubts about giving effect to and implementing the provisions of the regulation, particularly in relation to the products covered and the provisions on registering, inspecting and auditing exporting establishments. All our questions have been duly submitted through India's TBT Focal Point. They have also been sent in a timely manner to a range of relevant competent authorities. We have yet to receive the corresponding clarifications. We hope to receive them as soon as possible and also hope that these new standard does not become an unjustified restriction, in order to ensure that trade with India, a highly important trading partner for Argentina’s agricultural sector, is not affected.

2.250. In response, the representative of India provided the following statement. Food Safety and Standards Authority of India is a statutory body for laying down science-based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith. In pursuance to the section 25 of the Food Safety and Standards Act, 2006, FSSAI regulates and ensures the safety of food being imported in the country. Accordingly, to envisage robust food safety and monitoring system, FSSAI has notified Draft Food Safety and Standards (Import) Amendment Regulations, 2021 dated 3 November 2021 which provides the legal framework

for registration and inspection of foreign food manufacturing facilities. Further, as per the regulations, the registration and inspection of such facilities will be based on risk of food categories as specified by the Food Authority from time to time. The Draft regulations were also notified at WTO portal for inviting comments. The comments have been received from various member countries with respect to procedures and the list of commodities for which manufactures need to give details for registration.

2.251. To address all such issues, FSSAI vide order dated 10 October 2022 notified that the registration of foreign food manufacturing facilities falling under Milk and Milk Products, Meat and Meat Products including poultry, fish, and their products, Egg powder, Nutraceuticals, Foods for Infant Nutrition and manufacturer desirous to export such article of food to India shall register with the Food Authority before exporting to India. For this purpose, the Competent Authorities of the exporting countries are requested to provide the list of existing manufacturers and of those intended to export such food products to India. Further, some countries have already started providing the list of manufacturers intend to export these products to India. Since, as of now India requested the competent authorities of the exporting countries to provide list of manufacturers intent to export India, there is no requirement of any SOP/Guidelines as of now for registration of foreign food manufacturers for the current mechanism as it is open and transparent. The practice of Listing/Registration of Foreign Establishment is already prevailing in various countries like EU, Korea, Canada, USA and similar procedures are being in place. India being a developing country and one of the biggest food market in world, ensuring safety and quality of food is utmost needed and under the mandate of Food Safety and Standards Act. This provision will ensure the safety and quality of foods being manufactured for import into India and also help to reduce time taken for the inspection and clearance at ports.

2.1.4.23 Egypt – Halal Certification Measure, based on Egyptian Standard ES 4249/2014 General Requirements for Halal Food According to Islamic Sharia, G/TBT/N/EGY/313, G/TBT/N/EGY/313/Add.1, G/TBT/N/EGY/313/Add.2 (ID 718[55])

2.252. The representative of Canada provided the following statement. Canada joins the United States, the European Union and other intervening Members to raise its continued concerns with Egypt's new halal certification requirements for all imported food and beverage products. Canada understands Egypt's objective to ensure that Egyptian consumers are confident that they are buying and consuming Halal-certified products in agreement with Islamic Sharia. However, we also believe that such measures should not create unnecessary barriers to international trade or be more trade-restrictive than necessary to fulfil that objective. While Canada appreciates Egypt notifying this measure to the WTO TBT Committee in December 2021, it failed to do so prior to the implementation date of 1 October 2021. Members have an obligation to provide trading partners with adequate time to comment on a given measure (at least 60 days) and have those comments taken into consideration prior to that measure being finalized. As per WTO obligations, a six-month period between the notification of the final measure and its entry into force is considered a reasonable amount of time to provide industry time to adapt to the new requirements. While Canada appreciates the additional clarification provided in the notification of this measure to the WTO TBT Committee in August of 2022, Canada is seeking further clarification on the timeline for the implementation of this measure.

2.253. Although Canada appreciates Egypt's delayed implementation of the Halal certification for dairy products, Canada still remains concerned with the lack of details, documentation and specificity on how these requirements will be implemented and how specific products will be impacted. Canada encourages Egypt to reconsider this measure considering the degree of uncertainty, lack of clear implementation protocol, and unnecessary added cost and administrative burden. For example, the proposed new regime only specifies one Egyptian certification body that will have the authority to certify halal products for the Egyptian market. It is our understanding that this has already significantly raised the halal certification fee which will have to be borne by exporters of halal products to Egypt. The new measure could result in a certification process that is overly burdensome, costly and more trade restrictive than necessary to achieve Egypt's stated objective. Canada strongly encourages Egypt to have open and transparent discussions with trading partners to share information, further clarify the requirements under this new measure and consider the impact it may

[55] For previous statements follow the thread under ID 718.

have on trade. Until then, we respectfully request that Egypt suspend the implementation of the measure.

2.254. The representative of Kenya provided the following statement. Kenya's concern on this regulation is that the Egyptian authorities insist that only their firms can carry out Halal certification. Kenya has a Halal Certification Body that Egypt can partner with to meet their halal objective. This measure is deemed to be more trade restrictive than necessary when Egypt requires that it is only ISEG Halal Egypt that can certify exports from other countries. It is also contrary to the principle of national treatment by restricting who can carry out Halal certification. This is contrary to Articles 2.2 and 2.1 of the TBT Agreement, respectively. This measure will be too expensive for Kenya's exports to the Egyptian market hence making Kenyan products uncompetitive. Kenya requests that Egypt should work with the Kenyan Halal certification bodies

2.255. The representative of the European Union provided the following statement. The European Union would like to express concerns with regard to the requirements on Halal certification as of 1 October 2021 based on the Egyptian Halal standard 4249/2014. The EU industry is worried about the negative impact of this measure on food and beverages imports to Egypt. The EU regrets that Egypt notified to the TBT Committee the requirements for the importation of meat, poultry and their products, milk and dairy products only on 1 December 2021, after their entry into force for milk and dairy products on 1 October 2021, and that the notification did not include the text of the measure. The EU appreciates that the requirement for dairy products was then suspended until 1 October 2022; further suspension of the requirement would be welcome until the issues regarding certification process and costs are fully clarified as explained below. The EU recalls that, according to Article 2.9.4 of the WTO TBT Agreement, Members shall allow a reasonable time (at least 60 days) for other Members for written comments on their draft measures, so that comments can be taken into account. In any case, the EU submitted written comments on 26 January 2022 and would welcome a reply by the Egyptian authorities. In this context we would like to appreciate the Egypt's notification from August, addendum to the notification 313 (G/TBT/N/EGY/313/Add.3), providing more HS codes of covered products, information on relevant procedures and on labelling requirements.

2.256. Nevertheless, a number of important and practical information for economic operators is still missing, such as deadlines for issuance of certificates by IS EG Halal, details on audits, etc. Finally, EU comment regarding the monopolistic position of the IS EG Halal, does not seem to have been taken into account either. The EU would like to thank Egypt for useful bilateral contacts. We welcomed the facilitating measures notified to the TBT Committee on 4 April 2022, which extended, until 30 September 2022, the period in which imports of milk and dairy products were accepted in Egypt without a Halal certificate. However, some of those facilitation measures were only temporary and affected companies need more time to adapt to the new certification and labelling requirements. Therefore, the EU would urge Egypt to postpone the implementation of this measure and to provide for a reasonable adaptation period of at least one year between the publication of the measures - updated rules on Halal certification and labelling requirements - and their entry into force, in accordance with Article 2.12 of the TBT Agreement.

2.257. The EU would like to invite Egypt to reconsider the decision to grant the right to certify the compliance with Halal requirements to a single company, IS EG Halal, and to provide for a Halal certification system that would allow multiple, well-established certification entities, in accordance with the international best practices. Re-certification by IS EG Halal of products from establishments already certified by other companies is an unnecessary duplication and would lead to longer time to market and higher costs for consumers, while Egypt is suffering food security problems. The EU would welcome clarification on whether multiple Halal certification entities, including from third countries, would continue to be allowed for imports, as it is understood from point 6 of the original TBT notification form. The EU would like to ask Egypt to consider keeping the Halal certification and labelling voluntary for dairy products, in order to pursue the legitimate objective of ensuring reliable information without unduly hindering trade flows. Consumers should be able to decide whether to buy Halal-certified food or not, based on clear labelling. The EU would appreciate if Egypt would consider further trade facilitating measures, such as requiring Halal certification for the product and not per container, as well as proportional costs of Halal certification that take into account the international practice and correspond to the service rendered.

2.258. The EU understands that the new requirements on Halal certification will certify the compliance with Egyptian standard ES 4249/2014 on General requirements for "Halal" food products

in accordance with the provisions of Islamic Sharia. According to the available information in the TBT notification form G/TBT/N/EGY/313/Add.3, this standard is updated and will be notified to the WTO TBT Committee. The EU provided comments on the draft updated Halal standards via the EU delegation in Cairo and would appreciate they are taken into consideration. Finally, the EU would like to ask Egypt about the concrete steps envisaged to provide comprehensive information about the new measures and clear written and publicly available guidance to stakeholders, including a detailed description of the certification procedure, its duration, costs, and required documents, as well as the process for registration of suppliers. The EU would also like to know whether Halal certificates will be required for products that are not 100% milk, but which contain milk or milk ingredients amongst others. The EU is ready to work with Egypt on solutions that would prevent the negative impact this measure would have on food and beverages imports to Egypt.

2.259. The representative of the United States provided the following statement. The United States recognizes Egypt's right to assure its consumers of certain products' compliance with the precepts of Islamic Law through a halal certification. The United States appreciates Egypt verbal commitment to delaying implementation of its new halal requirements for three months (1 January 2023) following US requests; the United States also requests that Egypt notify this change in an addendum notification to the TBT Committee so that Egypt's trading partners are aware of this change. This present delay in implementation, and the delays preceding it, have not resolved the United States' underlying concerns. We understand that Egypt's halal standard, ES 4249, is intended to serve as the basis for its halal requirements; however, the current standard does not provide adequate information for producers to understand, nor comply with, this measure. To date, Egypt has not notified the implementing procedures necessary for compliance. This uncertainty has negatively impacted agricultural trade, which is particularly concerning during a period of global food insecurity. Specifically, we respectfully request that Egypt consolidate all implementing procedures into a draft technical regulation and notify this measure to the WTO. These should include a clear product scope, specific halal criteria that producers must meet, conformity assessment procedures, fee structures, audit procedures (if audits are to be required), and other details necessary for overseas producers and certifiers to meet these new import requirements.

2.260. In regard to product scope, we note that the product scope Egypt has outlined in its latest notification that would be covered under the halal certification would seem to also include "crude milk;" a product that has been explicitly exempted from halal certification requirements in the same notification. We request that Egypt clarify the product scope and define "crude milk", along with harmonized system (HS) codes associated with the product that would be excluded. Until these procedures have been notified, the United States requests that Egypt suspend enforcement of any new halal requirements and requests a reasonable implementation period of at least six months after finalization of this measure to allow producers to adapt their production methods to meet Egypt's new halal requirements. The United States further requests that Egypt notify the criteria it will use to approve overseas halal certifiers. In Egypt's latest notification, G/TBT/N/EGY/313/Add.3, it noted that there is only one certifier approved to provide halal certification services. Since 2019, when halal certification was granted to one company, certification fees for US beef products to Egypt have increased by approximately 1,000%. Given increasing food prices and global supply chain disruptions, the United States requests that Egypt allow certifiers, which meet its criteria, to provide halal certification under this measure. The United States looks forward to Egypt's response and toward continuing to work with Egypt to ensure that its consumers have access to affordable and nutritious halal food products.

2.261. The representative of New Zealand provided the following statement. New Zealand would like to thank Egypt for ongoing dialogue on their proposed Halal standard and the recent further extension for the inclusion of dairy. New Zealand continues to respect Egypt's desire to ensure Egyptian consumers can be assured of the Halal status of their imported food, but remains concerned with aspects of the proposed Halal requirements including having only one approved Halal certification body. In addition, the inclusion of all dairy products requiring halal certification does not follow globally accepted norms for food products. New Zealand understands, by their nature, dairy products are intrinsically Halal and should not require Halal certification (other than dairy products with added non-dairy animal product ingredients). New Zealand asks for Egypt to please clarify this and issue a final regulation with Halal registration requirements that includes a sufficient notification period to implement any new requirements once the new standard is finalized and formally notified. Will the additional registration requirements as noted as free text in G/TBT/N/EGY/313/Add.3 be part of legislated requirements, or a guidance document? We note our understanding that any registration requirements for manufacturers or exporters will not be required before the final Halal

standard enters into force. New Zealand encourages Egypt to apply the least trade restrictive requirements in relation to Halal and welcomes further engagement with Egypt on this matter.

2.262. The representative of Australia provided the following statement. Australia recognizes Egypt's right to implement religious requirements to ensure that Egyptian consumers can identify and purchase products which meet their needs. Australia also thanks Egypt for ongoing bilateral communication and engagement on the implementation of new Halal certification requirements. We welcome Egypt's third addendum to G/TBT/N/EGY/313 on 15 August 2022 which clarifies products that require Halal certification as an Egyptian import requirement. We also welcome the additional information related to the procedures exporting slaughterhouses and factories must undertake to export to Egypt. However, Australia respectfully requests that information of this nature, including further procedural information, be provided as part of a draft technical measure for notification to the WTO, as opposed to an addendum document. Australia notes that it provided written comments to G/TBT/N/EGY/313 in January 2022 and would welcome a response from Egypt. Australia invites Egypt to separately notify the TBT Committee of the revised Egyptian Standard 4249 "General Requirements on Halal Food according to Islamic Sharia" as advised in addendum three before finalization and publication. Australia welcomes ongoing discussion on the implementation of Egypt's new Halal certification measures to ensure they meet Egypt's policy goals while also ensuring measures are not more trade restrictive than necessary.

2.263. The representative of Switzerland provided the following statement. Switzerland continues to follow this matter with interest. We support the concerns raised by other Members with regard to the requirements on halal certification based on the Egyptian Halal standard 4249/2014. While Switzerland recognizes Egypt's legitimate objective of providing consumers with reliable information on the halal integrity of certain products, we are concerned over the potential negative impact of these measures on bilateral trade. We believe that such measures should not be more trade restrictive than necessary to ensure legitimate objectives are met. In this respect, we call on Egypt to provide flexibility for the continued recognition of foreign Halal certification bodies and to clarify the details and criteria for the acceptance of foreign Halal certificates. In our understanding, the current proposal grants the right to certify the compliance with Halal requirements only to one single company. As in the previous meetings of the WTO TBT Committee, Switzerland invites Egypt to comply with the notification obligations under the TBT Agreement and provide detailed information about the implementation of the new measure.

2.264. The representative of Argentina provided the following statement. Argentina reiterates its concern about this measure and the lack of detailed and complete information on it. The postponements of the entry into force of the new regime are not a solution and do not allay concerns and worries about it. These concerns relate mainly to the lack of transparency and predictability, as there is no information on the certification procedures or other regulatory details. In this regard, we again request Egypt to provide the necessary information and that the measure not be implemented until this detailed information is available.

2.265. The representative of Paraguay provided the following statement. We regret to have to continue to support this concern but, despite repeated submissions, we still do not have the requested information. Paraguay shares Egypt's interest in providing its consumers with certainty regarding the purchase and consumption of halal-certified products, but the lack of clear information and details on application procedures prevents operators from being able to adapt to comply with them. Paraguay again requests Egypt to suspend the implementation of new halal certification requirements until members have all the requested information and business operators have sufficient time to adapt in order to comply.

2.266. In response, the representative of Egypt provided the following statement. Egypt would like to thank Canada, Kenya, the European Union, the United States of America, New Zealand, Australia, Switzerland, Argentina and Paraguay for their comments and continued engagement on the Halal certification requirements for the imports of the products specified in G/TBT/N/EGY/313 and its addenda. Since its first notification in December 2021, Egypt has been keen to respond to the comments and concerns of Member countries and its trading partners through numerous formats including bilateral exchanges, the Egyptian TBT Enquiry Point or through notifying further Addenda to the original notification in order to address the issues of common concern. I would also like to note that it has been almost a year since the original notification was made and in the interim Egypt has delayed the entry into force of the requirement of imports of milk and dairy products to be accompanied by the halal certificate. Noting that to date no imports of milk and dairy products have

been denied entry into Egypt if not accompanied by a halal certificate. The substance of the requirement and the implementing procedures through which it is implemented as set by the General Organization for Veterinary Services (GOVS) have not changed since the initial notification. Hence, the delay introduced by Egypt has provided the economic operators with the appropriate period of time to adapt to the requirement. It is also noteworthy that Egypt's import data of dairy products indicate that the flow of trade has not been disrupted as a result of the requirement. In fact, comparing the volume of Egypt's imports of dairy products from the world during the first seven months of 2021 and 2022, there has been a minor decrease that cannot be attributed to the halal certification requirement. The impact of the multiple crises faced by our countries on prices and hence on demand should be taken into account.

2.267. In its latest addendum G/TBT/N/EGY/313/Add.3, Egypt was keen to clarify the points raised by Members during the previous TBT Committee meetings and bilaterally: the scope of the products has been defined in HS code as requested by all countries. In this respect, I have to stress that the scope is limited and confined to the specified products as notified. The original notification and its addenda never contained a reference to requiring a halal certificate for imports of all agricultural products. Since the original notification it was meat and poultry and their products and milk and dairy products (except for crude milk). The latest addendum also clarified the procedures involved in Halal certification as applied by the currently approved certification body by GOVS. It also clarified the labelling requirements that are issued by the currently approved and recognized certification body by GOVS. Furthermore, responding to Members' questions on the status of the revision of ES 4249 "General requirements on Halal food according to Islamic Sharya", the latest addendum noted that the final draft has been finalized and available for comments from Egypt's TBT Enquiry Point. Indeed, a number of countries have provided their comments during the 60 days comment period and have been replied to.

2.268. ES4249 comprises 9 Articles and two tables that cover: the scope; definitions and terminology; the general requirements for Halal Food; instruments, vessels and production inputs; storage, display and transport; cleanliness, health and safety conditions; Inspection and approval; display in the markets; and Halal Labelling. The two tables included in the standard provide for: (i) Categorization of what is not Halal; (ii) The food products that shall have a Halal Certificate according to product label and its ingredients. It is also important to clarify that the Egyptian standard (ES) 4249 does not and shall not provide for any supervision requirements for a specific certification body. The relevant authority is the one to recognize the certification body that certifies compliance with halal requirements that is currently ISEG Halal. In case of approval of other certification entities, it will be duly notified. Finally, Egypt would like to express its appreciation and readiness to continue engagement with all members on this topic.

2.1.4.24 Indonesia - Government Regulation 28 of 2021 – Implementing Regulation (for the Manufacturing/Industry Sector) to Law No. 11 of 2020 the "Job Creation Act" (ID 724[56])

2.269. The representative of the United States provided the following statement. The United States continues to have serious concerns with the Government of Indonesia Regulation No. 28 of 2021, which is the Implementing Regulation (for the Manufacturing/Industry Sector) to Law No. 11 of 2020 of the "Job Creation Act" (GR28/2021). We refer Indonesia to our previous three statements - from November 2021, and March and July 2022. Many of our concerns remain unanswered. Without reiterating them, we ask Indonesia to respond, and we again strongly request Indonesia to ensure that all domestic conformity assessment bodies are continuing certification of foreign products. What is the status of the Ministry of Industry implementing regulations? Will Indonesia fulfill its transparency obligations by notifying these regulations in draft form to this Committee prior to finalization? What is the justification for requiring conformity assessment testing to be conducted by Indonesian citizens residing in Indonesia? How do these requirements relate to the ability to perform conformity assessment? Why is Indonesia not allowing remote factory inspections, given travel restrictions and disruptions that may prevent onsite inspections? Does Article 38 require that conformity assessment bodies must also operate their own testing laboratories for all products required to be certified to SNIs? We again urge Indonesia to immediately communicate to Indonesian conformity assessment bodies that certification of foreign product shipments can, and should, continue while MOI prepares the implementing regulations.

[56] For previous statements follow the thread under ID 724.

2.270. The representative of the European Union provided the following statement. The European Union is seriously concerned by Government Regulation No.28 of 2021 and new requirements for Indonesian National Standard (SNI) certification. This Regulation is one of the implementing regulations of the Omnibus Law on Job Creation (Law 11/2020). Government Regulation 28/2021 aims to increase the competitiveness of Indonesia's national industry and mainly outlines measure related to raw materials. It also introduces new requirements with regard to product certification bodies (Lspros). The new requirements affect in principle all products subject to SNI certification and it is very complex and burdensome to export to Indonesia. In addition, due to lack of guidelines, the situation has not progressed and industry continue to report serious difficulties. Certain sectors appear to be particularly concerned, this is the case of toys, tyre and machinery industry. The European Union refers for the records to its previous statements, respectively in November 2021, March 2022 and July 2022 and notes that the majority of the issues remain unanswered. The European Union invites Indonesia to respond to our concerns and in particular to make sure that the conformity assessment bodies will continue certificating foreign products without unnecessary delays and complex procedures. The European Union also invites Indonesia to notify to the WTO the Government Regulation 28/2021 before going ahead with its implementation; and to provide adequate time for consultation with the industry considering the sweeping changes at issue. We remain available to discuss the issue also bilaterally.

2.271. The representative of Canada provided the following statement. Canada joins the United States and the European Union to raise its concerns with this measure, referring to our statement at the previous TBT Committee in paragraphs 2.402-2.404 of G/TBT/M/87. Some Canadian industry stakeholders have reported that the situation remains the same and the various requirements of this measure continue to represent unnecessary barriers to trade with Indonesia. Canada kindly asks that Indonesia provide the Committee with a response that specifically addresses concerns raised today by the US, EU and Canada.

2.272. In response, the representative of Indonesia provided the following statement. Indonesia would like to refer to its last statement at the TBT Meeting in July 2022, and in our bilateral discussions. Indonesia will response all the concerns through formal written letter sent to the Enquiry Point of the concerned Members. With regard to the provisions for conformity assessment bodies to conduct SNI certification as regulated in this regulation, Indonesia is of the view that such provisions are a general requirement. The certification process for technical regulations based on SNI in the industrial sector is carried out in accordance with the provisions contained in the related Ministerial Regulation. All provisions regarding standard and conformity assessment scheme apply equally for both domestic and foreign manufacturers. Indonesia will notify the TBT Committee on the technical regulations regarding the mandatory implementation of SNI for each industrial product and will take into consideration all the comments. Indonesia accepts testing results from accredited foreign testing laboratories under the mutual recognition arrangement framework and the availability of technical regulatory agreements between Indonesia and its partner countries.

2.1.4.25 South Africa - Regulations Relating to the Labelling of Alcoholic Beverages - revision, G/TBT/N/ZAF/48/Rev.2/Add.1 (ID 754[57])

2.273. The representative of Mexico provided the following statement. The delegation of Mexico refers to its statement made at the previous meeting of this Committee in July 2022 on the Regulations relating to the composition, production and labelling of wine and spirits intended for sale in the Republic of South Africa, notified to the Members of the Committee on 20 December 2021 in document G/TBT/N/ZAF/48/Rev.2/Add.1. In this regard, Mexico kindly requests the Government of South Africa to consider the requests to grant tequila and mezcal their own class and to recognize the specifications for their production, as set out in the applicable Mexican standards for each. This, in order to differentiate them from the "100% Agave" class included in the South African Regulation in order to avoid misleading practices, which may mislead or confuse consumers. The South African Government is also requested to provide the relevant justification for the rejection of export certificates for tequila and mezcal that demonstrate compliance with the applicable Mexican regulations for both beverages, as well as for using the name "100% Agave" in its Regulation for a class that excludes beverages from Mexico, taking into consideration that these words undoubtedly evoke Mexican beverages and are linked to the designation of origin of tequila. We also request South Africa to comply with WTO transparency obligations and to allow a reasonable interval between the publication of technical standards and their entry into force (i.e., six months). Lastly,

[57] For previous statements follow the thread under ID 754.

we appeal to the good offices of the South African delegation to consider Mexico's request to hold a bilateral meeting with the South African authorities as soon as possible and to allow the participation of tequila regulatory authorities in Mexico, in order to follow up on this Regulation, as well as on the concerns raised in this statement

2.274. The representative of the European Union provided the following statement. The EU thanks South Africa for notifying their proposed revisions to their alcohol beverage composition, production, and labelling regulations in December 2021. The EU sent written comments on 16 February 2022. The EU – through a letter sent on 21 October 2022 by the Ambassador to South Africa - also on behalf of several EU member States' Ambassadors to South Africa - to the Director General of the Department of Agriculture, Land Reform and Rural Development – also requested clarifications and raised concerns with specific aspects of these regulations. This was furthermore supported by a letter of the Italian Ambassador to South Africa's Minister Didiza sent on 25 October 2022. Our key concerns relate to the following South African categories: spirit aperitif, gin, description of pot still brandy and vintage brandy. The amended regulation related to the composition, production and labelling of wine and spirits intended for sale in the Republic of South Africa was published on 15 July 2022. These new regulations will enter into force in December 2025 for products already approved on the South African market, but seem to apply already for products not yet approved prior to 15 July 2022. South Africa has already started to block products not yet approved by South African Authorities which do not meet the criteria set in the new rules. This does not apply to products that had received an approval from South Africa prior to publication of the new rules in the Gazette, as we understand, as the new rules will only apply to them in December 2025, but is still concerning and impacts a number of EU products.

2.275. While some of our concerns concerning the new spirit aperitif category have been taken on board (including safeguards on how the name of the spirit used for production of this drink can be used and displayed on the label and comments in relation to gin), there are some important issues with the new rules which result in products being excluded from the South African market. While local producers will be able to reformulate in line with the new rules, EU producers will not, for economic reasons. The category of "spirit aperitif" with its minimum and maximum alcoholic strength together with the existing minimum alcohol limits set for other "defined" classes in South Africa (example whiskey) could result in a number of EU spirit drinks no longer having the right to be marketed in South Africa. We suggested that South Africa creates a new category "spirit drink" for products that do not fall under South African categories due to their alcohol content. Without the flexibility that a "spirits drink" category could offer, many EU products will no longer be exportable to South Africa. Moreover, the European Union would like to continue the discussion on aligning the minimum maturation period with the one set in Cognac product specifications. We would be grateful if South Africa could take these concerns into account as a matter of urgency, given the blockages of products. Reformulating is not an option for imported spirits, and the rules should therefore be adapted to allow EU spirits to be sold in South Africa.

2.276. In response, the representative of South Africa provided the following statement. South Africa would like to confirm the receipt of the documentation regarding the European Union and Mexico's STC and have met bilaterally with Mexico on the matter at hand, including the European Union. After full consideration of the STCs by the EU and Mexico, including the United Kingdom, South Africa is off to prioritise the matter and continue to discuss with the departments and regulators responsible for labelling of alcoholic beverages regulations for the purposes of resolving the STC. We are optimistic that the discussion will produce concrete proposals and actions to resolve the STC and thereafter provide feedback to the EU, Mexico and United Kingdom. In this regard, South Africa will conduct the EU, Mexico and as well the United Kingdom to bilateral engagement as soon as the proposals and actions to resolve the STC is sought. Should the proposal and action be not sought prior next TBT Committee meeting, South Africa shall provide the progress reports to the EU, Mexico and United Kingdom through bilateral means or at the next TBT Committee meeting if required.

2.1.4.26 India - Pneumatic tyres and tubes for automotive vehicles, G/TBT/N/IND/20, G/TBT/N/IND/20/Add.1, G/TBT/N/IND/40, G/TBT/N/IND/40/Rev.1 (ID 133[58])

2.277. The representative of Indonesia provided the following statement. The Indonesian government is grateful to India for responding to the concerns conveyed by Indonesia regarding the

[58] For previous statements follow the thread under ID 133.

policy of import restrictions on tire products at the TBT Committee meeting in July 2022. Further, Indonesia sent enquiries to the Bureau of Indian Standards (BIS) through letter number 901A/BSN/D1-d1/09/2022 dated 1 September 2022. However, Indonesia regrets that until now it has not found an adequate solution to overcome these problems. The Government of Indonesia has studied the amendments to the tyre import policy from "free" to "restricted" issued by the Government of India as contained in Letter No.12/2015-2020 issued by the Directorate General of Foreign Trade of the Ministry of Trade and E-Commerce India on 12 June 2020. In addition, we perceive that the current import policy in India has become more stringent, where every container business actor sent to India needs to be sampled for customs purposes and fulfill the provisions related to warehouse registration where imported tyres will be stored.

2.278. Indonesia realize that with the enactment of this policy, importers are required to make a separate statement by e-mail regarding import restrictions for certain types and size categories that can be produced by domestic producers in India and are required to fulfill warehouse registration requirements where violations of this will be subject to criminal sanctions under the FTDR Act 1992. In addition, Indonesia sees discriminatory treatment in the application of the said policy, where the policy is applied selectively by targeting certain Member countries that have the potential to become competitors and disrupt market access for domestic tyre products. The de facto implementation of this policy has created unnecessary trade barriers in tyre products from Indonesia and limited the types of products that can be exported given the wide variety of tyre sizes produced in India as one of the world's major producers.

2.279. In addition, Indonesia also intends to ask for further clarification regarding the application of a royalty policy or marking fee on tyre products that use the IS Mark. Indonesia is of the view that the imposition of the IS Mark marking fee on tyre products to be exported to third countries is not a common policy and has the potential to burden business actors and create unnecessary trade barriers to international trade. The imposition of such marking fees has no valid justification and has no connection with the protection of human health, safety or prevention of fraudulent practices. Indonesia views the implementation of some of these policies as inconsistent with the principle of non-discrimination and has the potential to create unnecessary barriers to international trade as stipulated in Article 2.1 and Article 2.2 of the TBT Agreement. In this regard, Indonesia hopes that India can provide further clarification on the matter in question and asks India to be able to notify and review the implementation of the policy to ensure its conformity with the applicable provisions of the WTO TBT Agreement.

2.280. In response, the representative of India provided the following statement. India wishes to reiterate that its non-automatic licensing requirements for tyres are administered in a manner consistent with the rules of the WTO Agreement on Import Licensing Procedures, including with respect to the timeframes for the granting of import licences. Furthermore, the licensing procedure in question is being administered in a fair manner, as reflected in the fact that a number of licences have been granted following their approval by the Exim Facilitation Committee. Similarly, in previous meetings, India had answered the question on the marking fee charged by the Bureau of Indian Standards (BIS) in its Product Certification Scheme, as per the BIS (Conformity Assessment) Regulation, 2018 under the BIS Act, 2016. India considers that this process is in conformity with the WTO's regulations, including the granting of national treatment in the way that the certification scheme is administered.

2.1.4.27 China - Regulations for the Supervision and Administration of Medical Devices (Order No. 650 of the State Council), G/TBT/N/CHN/1022, G/TBT/N/CHN/1023, G/TBT/N/CHN/1024, G/TBT/N/CHN/1025, G/TBT/N/CHN/1026, G/TBT/N/CHN/1029, G/TBT/N/CHN/1313 (ID 428[59])

2.281. The representative of the Republic of Korea provided the following statement. The Republic of Korea recognizes China's efforts to protect the health of its people by enhancing the efficiency of supervision and management of medical devices life cycle, and strengthening corporate responsibility through the Regulations for the Supervision and Administration of Medical Devices. However, as the Regulations are, in part, vague in its wording, Korean medical device companies are experiencing difficulties in trade. Korea therefore requests China to address our concerns by providing clarifications. To explain in detail, in the July TBT Committee meeting, China replied that, and I quote, "According to article 75 of the Regulations, only the inspection institutions recognized

[59] For previous statements follow the thread under ID 428.

by the certification, accreditation, and drug authorities can carry out the inspection of medical devices," end of quote. Pursuant to Article 14 of the Regulations, China requires companies to submit a test report issued by a "qualified testing laboratory" when applying for marketing authorization. Korea would like to know if the definition or scope of "qualified testing laboratories" is identical to the aforementioned response China gave in the last meeting.

2.282. Moreover, Korea encourages China to include, in its definition of "qualified testing laboratories," "internationally accredited testing laboratories" that are equipped with appropriate facilities and manpower in accordance with relevant international standards and regulations. We view that our request is in line with China's intention to promote innovation in its domestic medical device industry by simplifying China's pre-market review process to enable swift market access of novel high-quality medical devices. To this end, as per Articles 6.1, 6.3 and 6.4 of the WTO TBT Agreement, Korea requests China to include "internationally accredited testing laboratories" or "overseas testing laboratories" to its definition of "qualified testing laboratories."

2.283. In response, the representative of China provided the following statement. The newly revised Regulations on the Supervision and Administration of Medical Devices came into effect on 1 June 2021. According to article 75 of the Regulations, only the inspection institutions recognized by certification and accreditation authorities and drug authorities can carry out the inspection of medical devices. Therefore, to carry out medical device testing, overseas laboratories can contact the above-mentioned authorities to get the necessary qualifications.

2.1.4.28 Indonesia - Halal Product Assurance Law No. 33 of 2014 and its implementing regulations, G/TBT/N/IDN/123, G/TBT/N/IDN/131, G/TBT/N/IDN/131/Add.1, G/TBT/N/IDN/134, G/TBT/N/IDN/139, G/TBT/N/IDN/140 (ID 502[60])

2.284. The representative of the United States provided the following statement. The United States acknowledges Indonesia's goal to provide reliable, relevant information regarding the halal integrity of certain products to consumers and we have sought to work with Indonesia, bilaterally and in multilateral settings, since 2015 to ensure that the objective is achieved in a way that is consistent with Indonesia's WTO obligations. We urge Indonesia to continue bilateral engagement with WTO Members and industry stakeholders. Unfortunately, many of our long-standing concerns remain unanswered. We refer Indonesia to our previous statement from previous TBT Committee meetings, as well as outstanding questions submitted as G/TBT/W/761. We ask Indonesia to respond to all the questions and concerns laid out in the Working Document and past statements. As such, we will not repeat all of our outstanding concerns here. Can Indonesia confirm whether there are further implementing regulations for the Halal Law forthcoming, and if so, what is the expected timeline for notifying those regulations? We understand there may be further clarifying guidance related to manufacturing, storing, and transporting halal goods forthcoming. We ask that Indonesia notify these regulations when drafts become available, before they take effect, and take stakeholder comments into account before the draft regulations are adopted and implemented.

2.285. We understand that foreign halal certifying bodies are undergoing the process of accreditation. From our understanding, during this process, each halal certifying body will negotiate a list of products that they are able to certify with BPJPH. We have heard from industry stakeholders that foreign halal certifying bodies will be allowed to certify finished products, in addition to constituent ingredients. Can Indonesia please confirm whether foreign halal certifying bodies will be allowed to certify constituent ingredients and finished products? To allow US industry time to adjust to these new requirements, and to allow Indonesia time to adequately clarify and answer WTO Members' outstanding questions and concerns, we request that Indonesia postpone commencement of the Halal Law phase-in until Indonesia finalizes all of the relevant implementing regulations related to the Halal Law. We remain committed to working bilaterally with Indonesia to address the aforementioned concerns, and those raised by other Members in this Committee, and to ensure that Indonesia's halal measures do not create unnecessary obstacles to international trade.

2.286. The representative of the European Union provided the following statement. The European Union reiterates its serious concerns on the Indonesian Halal Product Guarantee Law No 33 of September 2014 and its implementing provisions, which require mandatory Halal certification and labelling for a very wide range of products to be placed on the Indonesian market, resulting in significant obstacles to EU trade with Indonesia. The EU regrets that, contrary to Article 2.9 of the

[60] For previous statements follow the thread under ID 502.

WTO TBT Agreement, Indonesia failed to notify to the TBT Committee the Halal Product Guarantee Law. As regards recent implementing provisions, the EU regrets that, on 6 January 2022, Indonesia adopted Regulation N° 2/2022 on International Cooperation on Halal product assurance (G/TBT/N/IDN/139), which entered into force that same day, before the expiration of the 60-day commenting period at the TBT Committee. In a similar way, Indonesia adopted Decree 1360/2021 on materials excluded from the Halal certification obligation (G/TBT/N/IDN/140) on 27 December 2021, even before the notification to the TBT Committee on 6 January 2022, without respecting the period for comments.

2.287. Indonesia is required to notify any relevant technical measures when still in draft form and to leave sufficient time for comments, as provided in Article 2.9.4 the WTO TBT Agreement. In addition, Indonesia is required, in accordance with Article 2.12 of the WTO TBT Agreement, to allow a reasonable interval of no less than six months between the publication of the measure and its entry into force, except if this would be ineffective for fulfilling the legitimate objectives pursued. The EU acknowledges the recent notifications by Indonesia of the final texts of the Regulation on International Cooperation and the Decree on materials excluded from Halal certification, via Addendum, respectively, on 27 April 2022 and 14 June 2022. The EU kindly invites Indonesia to provide a written reply to its comments of 12 May 2020 on Regulation 31/2018 on Processed Food Labelling (G/TBT/N/IDN/124). The EU thanks Indonesia for the consolidated general written reply of 7 March 2022, at the informative session of 7 March 2022, covering several Members' comments on several implementing Halal measures.[61] Nevertheless, we invite Indonesia to reply in writing to the EU specific comments for each of these measures. The EU stresses the excessive restrictive impact on trade of the adopted Halal law and implementing provisions, and invites Indonesia to consider less restrictive alternatives to the current, wide-ranging mandatory Halal certification and labelling, in order to pursue the legitimate objective of ensuring reliable information for consumers without unduly hindering trade flows. Among the main issues of concern for the EU in the Halal Law and implementing measures are the "non-Halal" information requested for non-Halal products or the extension of Halal requirements to products other than food and beverages.

2.288. Furthermore, in order to ensure the workability of the system for foreign operators, there is a need for more clarity and a pragmatic approach as regards the requirements for recognition by Indonesia of foreign Halal certificates. In particular, the pre-condition of a specific government-to-government mutual recognition arrangement for recognition by Indonesia of foreign Halal certification bodies and certificates would appear unduly complex, represent an excessive burden for economic operators and not allow for smooth trade relations. The EU looks forward to exploring more feasible and agile options with Indonesia. The EU encourages Indonesia to recognize the EU-Indonesia Partnership and Cooperation Agreement (EU-Indonesia PCA) as the umbrella or framework agreement to meet the requirements for a Government-to-Government Agreement with the EU and its member States, in recognition of the EU as a single market of its 27 member States. Similarly, the EU encourages Indonesia to continue to allow Halal certification bodies (FHCBs) in a given EU member State to certify products in other EU member States, as this is in line with the functioning of the EU single market. Clarification on transitional provisions for existing certificates would also be welcomed.

2.289. Meanwhile, the exclusion of end-products from the coverage of foreign certification and the additional registration requirement for Halal certifications of certain products by foreign Halal certification bodies also appears to be unjustified, costly and duplicative. In addition, the EU is concerned about the possibility for Indonesia to impose much higher Halal certification fees for goods and services from foreign business. The EU would also appreciate further clarifications on the criteria used for the list of materials excluded from the Halal certification obligation and the procedure to review the list. The EU stresses the importance of ensuring the continued possibility to place non-Halal products on the Indonesian market and urges Indonesia to review the Halal measures with a view at adopting a more trade-friendly approach that does not create unnecessary obstacles. Notably, the EU firmly calls upon Indonesia to: - limit Halal requirements to food and beverages; - avoid the excessively burdensome requirement for mandatory "non-Halal" information as regards non-Halal products, and - clarify its approach to international cooperation on Halal and provide for

[61] (i) Draft Government Regulation (RPP) 39/2021 on Halal Product Assurance implementing the Omnibus Bill on Job Creation (G/TBT/N/IDN/131); (ii) draft Decree regarding types of products and consumer goods to be Halal-certified (G/TBT/N/IDN/134); (iii) Regulation on Halal fees (G/TBT/N/IDN/138); (iv) draft Regulation on international cooperation on Halal product assurance (G/TBT/N/IDN/139) and, (v) draft Decree on the materials excluded from the Halal certification obligation (G/TBT/N/IDN/140).

a flexible and pragmatic process for the recognition of foreign Halal certification bodies and acceptance of foreign certificates, building on existing bilateral cooperation and working arrangements on Halal certification, provide information on the timeline for adoption and publication of the remaining measures to fully implement the Halal Law. The EU reiterates its willingness to continue further discussion and cooperation on Halal issues with Indonesia, with the aim of finding a practical way forward and solve trade concerns.

2.290. The representative of Australia provided the following statement. Australia welcomes ongoing discussions on the Indonesian Halal Product Assurance Law no.33 of 2014 (Halal Law). Australia thanks Indonesia for the informative fourth International Halal Dialogue on 7 October 2022. We encourage Indonesia to continue to facilitate an open and transparent dialogue with its trading partners to allow foreign businesses and their valued Indonesian importers to remain adequately informed of the Halal Law implementation regulations. Australia would appreciate clarification from Indonesia on whether our existing halal assurance processes will continue to be recognized when the grace period for Law 33/2014 ends in 2024. Further opportunities to engage with Indonesia's Halal Product Assurance Organising Agency (BPJPH) on accreditation and certification would be beneficial. We welcome Indonesia's list of natural products that are exempt from the halal certification requirement, including fresh fruits, vegetables, grains, and some dairy products. Australia would appreciate an update from Indonesia as to whether it will provide an updated list of products that do not require halal certification under the Halal Law. It is currently unclear why some natural products are either included or excluded. There is also uncertainty on processed products and food products from animals that are not slaughtered. We would welcome an opportunity to hold further technical discussions with Indonesia to clarify which products are exempt from halal certification. Australia thanks Indonesia for their recent confirmation at the Indonesia-Australia Comprehensive Economic Partnership Agreement Joint Committee Meeting that this agreement a government-to-government agreement under the Halal Laws. We welcome further dialogue on the Halal Law to ensure its implementation is clear and no more trade restrictive than necessary.

2.291. The representative of Canada provided the following statement. As noted previously, Canada would appreciate if Indonesia could provide written responses to its comment letters on G/TBT/N/IDN/139 and G/TBT/N/IDN/140, as this would allow more positive and constructive engagement on the way forward. Without full and complete information, it will be difficult for Canadian exporters to ensure their production processes fully comply with all the ramifications of Indonesia's halal regime. Canada appreciates the information session given on 7 March 2022 by Indonesia that provided answers to some of the common questions that trading partners asked about the Halal Product Assurance Law No. 33 and its implementing regulations. While this event did provide some clarity, it is understandable that Indonesia would not have been able to answer every single question posed by all trading partners in such a short timeframe. Therefore, while Indonesia has taken steps to clarify the scope of products that will require halal certification, confusion and lack of consistency remains, for instance with respect to HS codes for products that require halal certification, application of the measure to frozen seafood, and which genetically modified plant products may require halal certification. It is important that Canada and WTO Members obtain answers to these questions so its exporters can comply with the new halal regulatory requirements. Finally, Canada would like to remind Indonesia of its WTO transparency obligations to provide trading partners with adequate time and information to review and comment on a given measure, and to ensure that adequate time is provided between the publication of a final rule and its entry into force, so that exporters in Canada and other WTO Members can adapt, and therefore avoid unnecessary obstacles to trade.

2.292. The representative of Switzerland provided the following statement. As in previous meetings of the TBT Committee, Switzerland is following this matter with interest. We share the concerns expressed by other Members regarding the Indonesian Halal Product Guarantee Law No 33 of 2014 and its implementing provisions, which require mandatory Halal certification and labelling for a large range of products. While Switzerland recognizes Indonesia's legitimate objective to ensure reliable information for consumers related to the halal integrity of certain products, we expect Indonesia to fully meet its WTO obligations. We believe that the Halal implementing provisions should not be more trade restrictive than necessary to ensure that the legitimate objectives are met and the products fulfill the Halal requirements, as prescribed by the Islamic Law. Switzerland reiterates its concerns about the requested "non-Halal" information for non-Halal products or the extension of Halal requirements to products other than food and beverages. We ask Indonesia to reconsider the respective provisions of its recently adopted regulations. Furthermore, Switzerland refers to previous statements encouraging Indonesia to provide flexibility for the recognition of foreign Halal

certification bodies and the acceptance of foreign Halal certificates. Finally, Switzerland ask Indonesia to notify any relevant technical measures when still in draft form and to provide sufficient time for comments, in accordance with the WTO TBT Agreement.

2.293. In response, the representative of Indonesia provided the following statement. Indonesia would like to appreciate and thank the United States, the European Union, Australia, Canada, and Switzerland for their continued interest on Halal Product Assurance Implementation in Indonesia. Indonesia once again wants to reaffirm its openness and transparency towards international cooperation in the Halal Assurance System based on the principle of mutual cooperation, mutual recognition, and mutual acceptance of conformity assessments in accordance with international regulations and practices. With regard to the legal umbrella for the implementation of halal international cooperation, Members may use any bilateral agreements in the field of political, economic, social, cultural, and any other fields, as the basis for the cooperation. Indonesia opens the opportunity for Members to discuss further bilaterally regarding the implementation of Law No. 33 of 2014 and its derivative regulations. Further, Indonesia will response all the concerns through formal written letter sent to the Enquiry Point of the concerned Members.

2.1.4.29 India - Mandatory Certification for Steel Products, G/TBT/N/IND/32, G/TBT/N/IND/32/Add.1, G/TBT/N/IND/32/Add.2, G/TBT/N/IND/32/Add.3 (ID 224[62])

2.294. The representative 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 remain concerned about the application procedures of IS 17404:2020 (electrogalvanized hot rolled and cold reduced carbon steel sheets and strips) certification under the Steel and Steel Products (Quality Control) Order, 2020. Since IS 17404:2020 came into force, our companies have faced difficulties in receiving on-site inspection by BIS officials due to ongoing impact of COVID-19 and its associated quarantine policies. Our border controls are relaxed starting from 13 October. All travellers are not required for quarantine or RT-PCR test upon arrival only with seven-day period of self-initiated prevention. India is our fourth largest exporting market of steel products. Indian industry has been enjoying high quality steel and steel products from Chinese Taipei. Our manufacturers are ready to meet the Order. We urge the Indian government to schedule the on-site inspection with our manufacturers as soon as possible to reduce the impact on bilateral trade in steel and steel products. We urge India to refer to G/TBT/W/774 circulated on 11 November 2022, and consider alternative measures to facilitate on-site inspection requirements as well as accepting conformity assessment results from accredited bodies under the ILAC MRA framework.

2.295. In response, the representative of India provided the following statement. We thank the delegation of Chinese Taipei for the continued interest in this issue. At present, there is no provision in BIS (Conformity Assessment) Regulations, 2018, to undertake virtual inspection for conformity assessment activities as an alternative. As the COVID-19 restrictions have eased out, BIS has started carrying out inspection where confirmation for travelling of fully vaccinated BIS officers has been received. To date more than 350 preliminary inspections have already been carried out. However, if in some cases inspection are being delayed, it is due to difficulty in getting the visa.

2.1.4.30 China - Encryption Law of the People's Republic of China by the Office of State Commercial Cryptography Administration (OSCCA) (ID 534[63])

2.296. The representative of Canada provided the following statement. Canada reiterates the following points from previous meetings of the Committee. We request a response from China to Canada's written comments on China's State draft of Cryptography Administration's cryptography regulations, which Canada provided in September 2020. We also seek further clarity, transparency and predictability in China's regulations and laws related to Encryption and Cryptography, including the definition of terms; clarification that international standards will be used; and further precision on the measures' scope. Finally, we seek China's notification of the draft regulations to this Committee.

2.297. The representative of Japan provided the following statement. Japan continues to have concerns regarding 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 July 2022. In addition,

[62] For previous statements follow the thread under ID 224.
[63] For previous statements follow the thread under ID 534.

China's Encryption Law has an article that prohibits requests for disclosure of source code, etc. We would like to request that the law prohibit not only the requests for disclosure of source code, but also the requests for disclosure of algorithms. Japan would like to request that China's regulation not hamper the activities of foreign companies or market access to China.

2.298. The representative of the European Union provided the following statement. The EU would like to reiterate its concerns relating to the Cryptography Law that came into force on 1 January 2020. The EU remains concerned about the wide scope of the law. These factors have already negatively impacted business confidence. The EU also 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 State Cryptography Administration (SCA). The EU calls on China to ensure that legal and regulatory requirements are non-discriminatory, do not favour specific technologies, do not limit market access and do not lead to forced transfers of intellectual property. 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, including participation by chipmakers in standardization bodies, including Working Group 3 of the TC260 and the SCA's own Cryptography Industry Standardisation Technical Committee (CISTC). The EU requests that applications to these bodies be replied to in a timely manner.

2.299. The representative of the United States provided the following statement. Our concerns about this Encryption Law are contained in our statement on the Cybersecurity Law, so I am just noting that and we support the concerns raised by other Members.

2.300. In response, the representative of China provided the following statement. The Encryption Law of China came into force on 1 January 2020. The law clearly stipulates that the governments at all levels and relevant departments shall follow the principle of non-discrimination, and treat all organizations equally including foreign-invested enterprises that engage in commercial cryptography research, production, sales, service, import, export, etc. China encourages commercial cryptography technical cooperation on a voluntary basis and according to commercial rules in the process of foreign investment. Administrative agencies and their staff are prohibited to force any transfer of commercial cryptography technology by administrative means.

2.1.4.31 European Union - Regulation (EC) No 1272/2008 (CLP Regulation), G/TBT/N/EU/629, G/TBT/N/EU/826 (ID 539[64])

2.301. The representative of the Russian Federation provided the following statement. As our concern remains unaddressed, the Russian Federation reiterates its statements made during the previous meetings of the WTO Bodies with regard to the cobalt classification as a carcinogen 1b for all routes of exposure. We stress that this measure was adopted in the absence of sufficient scientific justification neither laboratory nor epidemiological ones, without taking into account grounded comments and opinions of the WTO Members and businesses. At the same time, we appreciate efforts of the EU on the adoption of the gastric bioelution protocol at the EU and the OECD levels. However, the EU has not adopted this methodology and has not incorporated its use into the CLP Regulation as a regular practice of classifying alloys and compounds that will allow to exclude many cobalt-containing products from the scope of further restrictions which will be developed within the framework of implementation of this classification decision. We urge the EU to adopt this methodology as soon as possible. Finally, it is regrettable that the EU has chosen not to engage on this issue as it has been refusing to respond to present concern for several meetings in a row. This way STCs can be hardly resolved. The situation is of systemic concern. Transparency is the important pillar of this organization and provision of explanations on various measures and policies in this Committee is the part of the mechanism. Refusal to respond to the raised trade concerns is in stark contrast to the EU's rhetoric about the importance of transparency in this organization.

[64] For previous statements follow the thread under ID 539.

2.1.4.32 China - Cosmetics Supervision and Administration Regulation and Regulation for Notification of Non-special Cosmetics, G/TBT/N/CHN/1310, G/TBT/N/CHN/1311, G/TBT/N/CHN/1331, G/TBT/N/CHN/1453, G/TBT/N/CHN/1454, G/TBT/N/CHN/1459, G/TBT/N/CHN/1460, G/TBT/N/CHN/1515, G/TBT/N/CHN/1524, G/TBT/N/CHN/1525, G/TBT/N/CHN/1526, G/TBT/N/CHN/1527, G/TBT/N/CHN/1539, G/TBT/N/CHN/1615, G/TBT/N/CHN/1626 (ID 576[65])

2.302. The representative of the Republic of Korea provided the following statement. Specifications for Cosmetic Efficacy Claim Evaluation, Specifications for Registration and filing of New Cosmetic Ingredients, Specifications for Cosmetic Registration and Filing , and Cosmetics Supervision and Administration Regulation (G/TBT/N/CHN/1526, G/TBT/N/CHN/1528, G/TBT/N/CHN/1524, G/TBT/N/CHN/1310) The Republic of Korea appreciates China's response to Korea's comments on the Cosmetics Supervision and Administration Regulation (CSAR) and its implementing regulations. We hope to continue cooperation to share information on cosmetic regulations. Korea reiterates our previous concerns as China's response remains limited to explaining how the measures are implemented, and as Korea's concerns were not duly addressed in China's finalized specifications and regulations. To begin with, China's regulations states that test reports required for cosmetic product registration must be issued by testing laboratories that have obtained the China Metrology Accreditation (CMA) certificate. In the last two TBT Committee meetings held this year, China replied that a number of foreign inspection institutions in China has obtained the CMA certification. However, Korea requests China to adopt more flexible measures by recognizing test reports issued by qualified foreign laboratories located outside of the country. Second, as per Article 13 of the New Cosmetic Ingredients Authorization and Registration Regulation, China requires companies to prove equivalence of test results derived from alternative test methods to the results of *in vivo* toxicity testing method, or animal testing. With respect to this, Korea requests China to recognize alternative test methods approved by the OECD or other international organizations without requiring the submission of equivalence evidence. Although China replied that such requirements are applied to both imported and domestic cosmetics, Korea would like to stress that our comment under this STC is asking China to recognize internationally approved alternative test methods in its Regulations.

2.303. Third, regarding the Administrative Measures on Cosmetic Labelling, Korea requests China to align its labelling requirements with international practices. In most countries, cosmetic ingredients are subject to declaration when the substances are at a 1% or higher concentration. However, China's proposed regulation is not harmonized with international practices since it requires substances that are at a 0.1% or higher concentration to be marked, and ingredients with less than 0.1% formula content to be labelled as "other trace ingredients". Fourth, China requires companies to specify the sources and quality data of all ingredients in their applications, which is more stringent than necessary compared to international practices. The required information may contain trade secrets and are more than necessary to fulfill China's legitimate objectives to ensure product safety and compliance to China's domestic market rules. Korea therefore requests China to provide an evidence-based explanation for its measures. Furthermore, according to Appendix 12-14, businesses are required to disclose information on ingredient safety. Korea is concerned that the mandatory disclosure of such information may lead to issues in the protection of intellectual property and commercially sensitive information. In the last TBT meeting, China responded that trade secrets and intellectual property are not damaged and that trade secrets are rigorously protected. With respect to this, Korea requests concrete explanation on how China is protecting trade secrets. In the same vein, under the Specifications for Cosmetic Efficacy Claim Evaluation, it is still mandatory for businesses to disclose summarized scientific evidence that supports cosmetic efficacy claims on NMPA-designated websites. Since this information may contain trade secrets that could affect the businesses, Korea requests China to limit such disclosure requirements. In the last meeting, China responded that trade secrets are protected under the Regulations on the Disclosure of Government Information and that the NMPA will strictly abide by the Regulations when managing the registration and filing of cosmetic products. Regarding this, Korea would like to request China to provide detailed explanation on the measures taken to comply with its regulations.

2.304. The representative of Japan provided the following statement. Japan appreciates China's response on the "Cosmetics Supervision and Administration Regulation" and its implementing detailed regulations in the previous meetings. However, Japan continues to express the following concerns as stated in July 2022, and request that China responds about the following points especially. 1. "Management Rules for Testing required for Cosmetic Product Registration and

[65] For previous statements follow the thread under ID 576.

Notification," which entered into force on 10 September 2019, stipulates that microbiological, physical, chemical, toxicological, and human safety and efficacy evaluation tests relevant to cosmetics registration and filing must be conducted by testing laboratories that obtained CMA (China Inspection Body and Laboratory Mandatory Approval). China's response in the previous TBT Committees that many foreign-funded testing laboratories in China obtain CMA does not meet Japan's requirements to accept the test results of laboratories located in foreign countries. If the purpose of granting CMA is for confirmation of testing capability, the location is essentially irrelevant to testing capability. So regardless of whether the location is in China or outside China, Japan would like to request a more flexible framework in which test results obtained by foreign laboratories with qualifications and abilities equivalent to those of CMA are accepted. 2. The "Management Rules for Testing required for Cosmetic Product Registration and Notification" stipulate that tests should be conducted in accordance with China's national standards or relevant regulations. Moreover, the "Specifications for Registration and filing of New Cosmetic Ingredients" and "Specifications for Cosmetic Efficacy Claim Evaluation" stipulate that priority shall be given to test results in accordance with China's national standards or relevant regulations and that various restrictions and conditions are imposed in the case of conducting a test method which is not specified in the regulations. Japan understands the same restrictions and conditions are imposed on imported and domestic products. However, Japan would like to request that China treat internationally accepted methods such as those from the OECD or ISO as equal to China's national standards or relevant regulations, so as not to be more restrictive than necessary in proving safety and efficacy.

2.305. 3. Especially for the following reasons, the efficacy claim evaluation method required by the "Specifications for Cosmetic Efficacy Claim Evaluation" is a more stringent requirement than necessary for the purpose of guaranteeing the scientific validity and reliability of efficacy claim evaluation and protection of consumer legal interests. Japan would like to request a flexible framework. "Attachment 1, Requirements of Cosmetic Efficacy Claim Evaluation item" specifies four types of evidence. It finely stipulates which evidence could be used for each efficacy claim. However, the types of evidence for each efficacy claim should be judged individually by cosmetics registrants and filers based on the specific wording of claims and scientific validity, as the types of evidence depend on the specific wording of claims. Even if a formula is very similar, the quote of "common efficacy claim" evaluation test data is only allowed in exceptional circumstances such as colorants are different for the same registrants or filers, product lines, and multi-shades makeup products. Even if slight changes in a formula due to regulatory compliance are made, retests are required. This causes heavy burdens on cosmetics registrants and filers. Japan would like to request that China consider expanding the scope of the "Guiding Principles of Equivalent Evaluation", based on international trends and stakeholder opinions. Regarding the evaluation test of freckle-removing/whitening products, Japan would like to request China to adopt the approach of "Read-Across," which allows the evaluation test to be omitted under certain conditions, as was proposed in Article 16 (freckle-removing/whitening effect cross-reference) of the "Specifications for Cosmetic Efficacy Claim Evaluation (Draft for Comments)" announced in September of 2020. Freckle-removing/whitening is affected by active ingredients included in the cosmetics and the Read-Across approach will help shorten the process from application to permission.

2.306. 4. Regarding the submitting of "Cosmetic Ingredients Safety Information" issued by an ingredient manufacturer, Japan appreciates as an alternative proposal to solve the problem that China clarified after the last TBT Committee, in which it accepts Cosmetic Ingredients Safety Information prepared and submitted by cosmetics registrants and filers if there is the authorization of ingredient manufacturers. However, the Cosmetic Ingredients Safety Information includes more detailed information than necessary for the purpose of ensuring the safety and quality of final products and is stricter than regulations in other countries. Requirements for such overly detailed information cause heavy burdens for cosmetic ingredient manufacturers or cosmetics registrants and filers. If the information is not submitted, it is assumed that products already on the Chinese market can no longer be sold or products distributed in other countries cannot be sold in China, possibly leading to a failure to fulfill the demands of Chinese consumers. Japan would like to request an adequate framework to prevent more excessive demands than necessary for a legitimate purpose. Especially regarding existing products for which application for registration or filing has occurred before 1 May 2021, which is the implementation date of registration and notification under the new regulatory scheme, considering the huge number of ingredients to be covered, it is practically impossible to submit the Cosmetic Ingredients Safety Information by 1 May 2023. Japan would like to request that China provide an adequate grace period of at least one year after promulgation of all relevant regulations.

2.307. 5. Japan understands a transition period is set in all relevant regulations. However, we cannot say each transition period is long enough. Especially for existing products, Japan is concerned about the ability to meet the deadline for conducting efficacy evaluation tests, reporting the results, and changing labels. Japan would like to request that China provide an adequate grace period of at least one year after promulgation of all relevant regulations and guidelines, in order to prevent market turmoil and in order for cosmetics registrants and filers to adapt cosmetics to new requirements. The "Specifications for Cosmetic Efficacy Claim Evaluation" stipulate that regarding cosmetics for which application for registration or filing has occurred before 1 May 2021, a cosmetic efficacy claim evaluation must be conducted and the abstract of an efficacy evaluation of products must be uploaded by 1 May 2023. As mentioned in 3, considering that many conditions and restrictions are imposed on evaluation methods, it is practically impossible to complete an efficacy evaluation of products and upload the abstract by the deadline. Japan would like to request that China extend an adequate grace period of at least one year. The "Administrative Measures on Cosmetic Labelling" stipulate that applications for registration or filing of products as of 1 May 2022, must be adapted to the regulations. It also stipulates that products for which application for registration or filing has occurred before 1 May 2022, must be adapted to the regulations by 1 May 2023. However, registrants or filers need detailed rules and guidelines to adapt to the new cosmetic labelling system. Japan would like to request that China provide a grace period of at least one year after promulgation of all relevant regulations.

2.308. 6. Regarding the "Interim Measures on the Administration of Overseas Inspections of Cosmetics," Japan would like to continue to request that China consider the following points. Japan would like to request that China clarify which laws and regulations are used to assess conformity and specific purposes for conducting foreign inspections. Japan also asks that China ensure that inspections will not be more trade restrictive than necessary to achieve the purpose of protecting human health. Moreover, information related to research and development is the most important confidential information for companies, and it cannot be said that it is necessarily essential information for product safety assurance. Furthermore, inspections within China are limited to the production sector. Therefore, Japan requests that China ensure that R&D departments that may hold confidential information should be excluded from the subject of foreign inspections. Japan also requests that confidential information will not be disclosed to persons other than those who are necessary for the legitimate purpose of the inspection. 7. The sales certification that proves the products have been sold on the market in the country of production is only imposed on imported cosmetics. Japan requests that China treat imported products no less favourably than products produced in China, in other words, to abolish the obligation to acquire the sales certification that proves the imported products.

2.309. Regarding the "Administrative Measures on Cosmetic Labelling," which was promulgated on 3 June 2021, Japan would like to continue to express its following concerns.

2.310. 8. In the previous TBT Committee, China explained that the content of the Chinese labels, such as information regarding only product safety and efficacy, must be consistent with the original labels. Japan would like to request that China clarify that the labels stipulated by regulations of the country of origin do not have to be consistent with the content of the Chinese labels, including information regarding product safety and efficacy. 9. Article 7 requires the display of "producers," "cosmetics registrants or filers" or in the case of imported products, a "responsible person in China" in the label. Japan has concerns that multiple company names and addresses on the label may cause misunderstandings on the part of consumers rather than achieving the aims of this article to inform consumers of the persons responsible for product quality and efficacy. In order to avoid confusion among consumers, Japan would like to ask that the label should indicate only a single responsible person ("cosmetics registrants or filers" or in the case of imported products, a "responsible person in China"). Japan would like to request that China delete content that requires the display of producers.

2.311. 10. In the previous TBT Committee, China explained that ingredients of 0.1% or less can be labelled as "other trace ingredients." However, Japan is concerned about deviation from internationally recognized practice. With respect to the rules for labelling of all ingredients in cosmetics, there is an internationally recognized listing practice that ingredients with a compounding amount of 1% or less are allowed to be listed in no particular order without a description. Japan would like to request that China assure that the rules for labelling follow the internationally recognized practice so as not to be more trade restrictive than necessary in showing consumers the safety and efficacy of products. 11. The "Specifications for Registration and filing of New Cosmetic

Ingredients" and "Specifications for Cosmetics Registration and Filing" stipulate about nano ingredients. To follow those regulations, Japan considers that a more detailed and concrete standard is necessary to judge which ingredients fall under the definition of nano ingredients. In addition, Japan would like to request that the standard be formulated in a way that reflects international trends and comments from all stakeholders.

2.312. 12. Japan understands the purpose of the sample retention system explained in the previous meeting. Japan is not against sample retention per se. "Public notice related matters of Provisions for the Supervision and Administration of Cosmetics Production and Distribution" (No. 140, 2021), which was promulgated on 26 November 2021, requires that, regarding products imported to China from foreign registrants or filers, domestic responsible persons retain samples of each batch of cosmetics. Foreign registrants or filers are responsible for the cosmetics. Japan would like to request that China accept that samples do not have to always be retained in China if the testing system can work immediately when problems with imported cosmetics occur. In addition to the above, Japan would like to request that China continue to consider the following points proposed by Japan so far: exemption from submitting toxicological testing documents via certification documents on the quality management system or good manufacturing practice qualifications; restrict use of new toothpaste ingredients during the safety monitoring period only when registrants or filers confirm the use in advance of new cosmetic ingredients; handle an efficacy evaluation report for toothpaste by direct upload to the public website by registrants or filers in the same way as cosmetics.

2.313. The representative of the United States provided the following statement. It is unfortunate that despite the United States and other WTO Members raising significant concerns with the Cosmetics Supervision and Administration Regulation (CSAR) and its implementing measures in the past ten TBT Committee meetings and four meetings of the Council on Trade in Goods, China has not sought to work with the United States and other WTO Members to reach resolution. The United States maintains that it has serious concerns with CSAR and its implementing measures' likely inconsistency with TBT Agreement obligations, including unequal treatment for imports; overly burdensome and disproportionate information requirements; lack of procedures to ensure the protection of confidential and proprietary information; duplicative in-country testing, and continued challenges with transparency. We refer to our previous two US statements for our unresolved concerns and questions. However, we once again raise this specific trade concern (STC) on the agenda today due to the pressing challenges that US industry is facing in trying to understand and comply with China's often unrealistic implementation timelines for CSAR and its various technical regulations, complicated even further by COVID-19 shutdowns. For example, NMPA requires product claims and some safety testing to be conducted at China Metrological Administration (CMA) accredited labs; however, many of these labs have delays of four months or more due to the demand created by CSAR filing deadlines and COVID-19 shutdowns. US companies report that their test samples are also getting stuck when ports shut down.

2.314. We understand that some NMPA provincial offices are allowing companies to apply for individual product extensions, but this appears similarly burdensome, as companies must still meet initial CSAR deadlines and request approval for incomplete documentation. Instead, we ask that China consider extending by two to three years the national CSAR implementation deadlines for the Guidelines for Cosmetic Safety Assessment (1459); Administrative Measures on Cosmetics Labelling (1515); Specifications for Cosmetics Efficacy Claim Evaluation (1526) and the Specifications for Registration and Filing of New Cosmetic Ingredients (1525), including extending the deadlines that have already gone into effect. This will allow companies a realistic timeline to implement the extensive new requirements introduced by CSAR and would align more closely with the transition periods provided in other markets for extensive regulatory updates. We also ask that China consider how it can rely more upon international recognition schemes for conformity assessment to reduce the costs and timelines for companies to comply with the extensive changes introduced by CSAR. For example, NMPA could accept claims and safety testing and documentation from overseas labs that are certified to good laboratory practices or good clinical practices per the ICH (International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use) guidelines. US companies have also requested a means to engage with NMPA on questions arising from CSAR implementation, including regarding the new requirements and use of NMPA's new online platforms for product and ingredient filings. Does China have any plans for this? We request that China continue to consider how these trade concerns expressed by the United States and many other WTO Members may be resolved in the implementation of CSAR.

2.315. The representative of Australia provided the following statement. Australia respects the right of Members to implement technical measures for legitimate policy purposes and in accordance with obligations under the TBT Agreement. Australia wishes to reiterate our concerns that measures under China's Cosmetics Supervision and Administration Regulation (CSAR) and various implementing regulations, which entered into force on 1 May 2021, are more stringent and trade restrictive than necessary. These concerns include testing, registration requirements, government certification requirements and requirements to provide detailed information on production processes and other aspects of their intellectual property. Australia requests that China provide a longer transition period for cosmetics manufacturers to consider the regulation's requirements and adjust their processes accordingly. Australia remains concerned that China has maintained its requirement for mandatory animal testing of children's cosmetics products, regardless of the level of risk presented by individual products. The Australian Government reiterates that we are ready to work with China bilaterally and to discuss the CSAR and our respective systems for cosmetics regulation.

2.316. The representative of New Zealand provided the following statement. New Zealand has raised this issue at the WTO on a number of occasions, including at the July 2022 meetings of both the TBT Committee and the Council for Trade in Goods. We welcome China's endeavours to modernize its regulatory system for cosmetics and appreciate the opportunity to comment on specific elements of China's regulations. We recognise China's intention to improve safety and quality assurance, and at the same time would like to encourage China to ensure that facilitation of trade is considered in the implementation of the regulations. Our concerns in relation to China's regulatory system for cosmetics are well documented. In particular, New Zealand would like China to consider additional measures to allow for: the exemption of animal testing requirements through non-government regulatory authority-issued GMP certification or other trade facilitative mechanisms for providing product assurances; providing flexibility in respect of product testing requirements. In particular, we encourage China to accept test reports from accredited laboratories situated outside of China; and further limitations on product disclosure requirements, particularly in relation to sensitive information, i.e. limited to that which is required to assure product safety in China's domestic market, so as not to compromise intellectual property. New Zealand appreciates our recent constructive bilateral engagement on cosmetics issues and looks forward to engaging further with China on its Cosmetics Supervision and Administration Regulations (CSAR) to address these issues.

2.317. The representative of the European Union provided the following statement. The EU would like to support the delegations of Republic of Korea, Japan, the United States, Australia, and New Zealand. The EU would like to refer to its earlier statements on this topic, as the EU's concerns outlined therein remain unchanged. The European Union supports CSAR's objective of ensuring consumer safety. However, CSAR and its various implementing regulations are more stringent than necessary to ensure the safety and quality of imported cosmetics. The CSAR's requirements go far beyond what is necessary to ensure consumer safety and traceability of the ingredients used in cosmetics. It is also diverging from international practice, as such an extensive level of information is not required elsewhere in the world for notification and registration purposes. The obligation to transmit confidential information on new products and their ingredients to Chinese authorities remains one of EU's most important concerns. According to the EU, the mandatory disclosure of commercially sensitive information required in the notification and registration process, touching on intellectual property rights (IPR) of companies involved, goes far beyond what is required in line with internationally recognized practices. Chinese measures pose significant risks to companies' intellectual property and commercially sensitive information and are not proportionate to the objectives sought.

2.318. Regarding the Specifications for Cosmetic Efficacy Claim Evaluation, the EU cosmetics manufacturers are required to make public a detailed summary of efficacy evaluation, which can reveal business-sensitive information. Additionally, for certain efficacy claims (sunscreen, skin whitening/spot removal, and anti-hair loss), it is still mandatory to use specified Chinese test methods. Such tests must be carried out by specific testing institutions in China. Furthermore, for new efficacies, if methods are not yet established in China, they must be validated in at least two qualified testing institutions in China, to be used to support an efficacy claim in China. The multiple China-specific requirements for efficacy testing will require significant re-testing of products for which the efficacy was already established in a third country. This affects also many thousands of products that already have been placed on the market in China and for which the claim substantiation still needs to be completed.

2.319. In response, the representative of China provided the following statement. Requiring the inspection for cosmetics registration and notification to be carried out by professional institutions aims to protect consumers' rights and ensure the accuracy of the inspection results. Inspection institutions shall obtain the certification of inspection and testing qualification (CMA) in the field of cosmetics. China does not prohibit foreign inspection institutions from getting the certification, and China's Administrative Measures for the Accreditation of Inspection and Testing Institutions do not restrict foreign inspection institutions from getting such certificates either. Based on the non-discrimination principle of the WTO, the Provisions on the Administration of Cosmetics Registration and Notification Data put exactly the same requirements on imported and domestic ordinary cosmetics regarding the alternative program to animal tests for safety evaluation. For both domestic and imported ordinary cosmetics, the toxicological test can be replaced with a safety risk assessment once they have obtained quality management system certification issued by government authorities. The formulation of the specifications for the Evaluation of Cosmetic Efficacy Claims is to further ensure the scientificity, accuracy, and reliability of the evaluation of cosmetics efficacy claims, safeguard consumers' rights, and promote social co-governance and healthy development of the cosmetics industry. The Regulations on the Supervision and Administration of Cosmetics and the specifications for the Evaluation of Cosmetic Efficacy Claims and other supporting regulations clearly require that the claims of cosmetic efficacy should be based on sufficient scientific evidence. Based on the principle of equivalence, the test method of efficacy claim evaluation does not make many limitations in selecting the evaluation methods. Cosmetic registrants may, by themselves or through entrusted competent evaluation institutions, carry out cosmetic efficacy claim evaluation according to relevant requirements set in Cosmetic Efficacy Claim Evaluation Project Requirement and Technical Guidelines for Cosmetics Efficacy Claim Evaluation. The specific requirements for the equivalent evaluation of freckle removal and whitening efficacy have been clearly defined by the contents of "equivalent evaluation of efficacy claim" in relevant documents.

2.320. The information of cosmetics manufacturers includes the relevant information of the manufacturers and their locations, etc. Requiring information about manufacturers is important for protecting consumers' right to know, as well as for promoting social co-governance and cracking down on counterfeiting and shoddy products. The Regulations on the Supervision and Administration of Cosmetics clearly stipulates that the registrant of cosmetics is responsible for the quality and safety of cosmetics. The Measures for the Administration of Cosmetics Labels stipulates that ingredients with weight percentages not exceeding 0.1% (w/w) should be labelled with "other trace ingredients" as indicating words. No descending order of ingredient content or any other specific order is required. Product safety is closely related to the safety of raw materials. It is important for ensuring product safety to require registrants to clarify the relevant information on raw materials safety when applying for registration. Considering that it is common for enterprises to change the raw material manufacturer, the Provisions on the Management of Cosmetics Registration and Notification Data make corresponding requirements according to different circumstances in which the raw material manufacturers of registered or notified products have changed: if the content of the raw materials used in the formula and the type and proportion of ingredients in the raw materials have not changed, it only needs to maintain the raw material manufacturer through the registration and notification information platform; if the content of raw materials in the formula and the content of main functional ingredients and solvents in the raw materials stays the same, and only the type or content of minor stabilizer, antioxidant, preservative and other ingredients added to ensure the quality of raw materials has changed, then only the change-related information shall be submitted, not all the information. In order to facilitate the cosmetics registrant to supply the raw material safety-related information, it is made clear in the Regulations on the Administration of Cosmetics Registration and Recordholder issued by the State Food and Drug Administration that if the raw material manufacturer has already submitted the raw material safety-related information according to the regulations, the registrant only needs to fill in the raw material submission code for information association.

2.321. The procedures and data requirements for the registration and notification of cosmetics and new raw materials are detailed and clear in relevant regulation papers. Requiring registrants to submit safety-related materials is also a common practice aiming at the safety review of health-related products. It is exactly for the purpose of protecting the intellectual property rights and trade secrets of enterprises that the evaluation data required of cosmetics efficacy claims only include the summary of the supporting material of the efficacy claims rather than the full text. The required technical materials of new raw materials only cover the basic aspects, such as the name, registration number, source, composition, physical and chemical properties, the purpose of use, the scope of use, safe amount of use, precautions, storage conditions and best before period, rather than the

complete information. The authorities and administrative staff will strictly protect trade secrets in handling cosmetics registration, as ordered by all relevant laws and regulations.

2.1.4.33 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, G/TBT/N/EU/845 (ID 594[66])

2.322. The representative of China provided the following statement. China appreciates the EU's efforts in promoting the implementation of *in vitro* diagnostic medical devices, however, the EU has not designated the relevant reference laboratories to undertake performance verification, which will have an impact on the certification and marketing of Class D products. We suggest the EU issue the list of reference laboratories as soon as possible. It is also recommended to extend the application time of (EU) 2022/1107 by at least one year from 25 July 2024, or to issue an alternative enforcement guide or detailed rules without reference laboratories.

2.323. The representative of Japan provided the following statement. 1. Since the MDR's implementation dated 26 May 2021, Japanese manufacturers have been unable to ship new products and medical devices with new features to Europe. In the previous meetings, Japan stated, "several companies continue to inform us that not much improvement seems to have been made in the more than two years and three months that have passed since the technical document review started. We would like to request that the EU continue to monitor and make improvements as a regulator." Japan appreciates the EU's response at the last meeting that the MDCG (Medical Device Coordination Group) is closely monitoring the situation of the reviews on the ground. However, we are still hearing from several companies that not much improvement seems to have been made in the more than two and a half years that have passed since the technical document review started. Japan would like to request that the EU continue to monitor the situation and make improvements as a regulator. The expiry date of MDD certificates is 26 May 2024. Products with MDD certificates can also be placed on the market or put in use until 27 May 2025. In view of the delayed certification of the MDR, Japan requests that these expiry dates be extended by one year to 26 May 2025 and 27 May 2026, respectively. Products with a certificate expiry date before 26 May 2024 under the old directive cannot be placed on the market or put in use after the certificate expiry date under the old directive, in accordance with Article 120 (2) of the MDR / Article 110 (2) of the IVDR. Therefore, in order to solve this problem, Japan requests the EU to introduce interim measures that would allow these certificate expiry dates to be extended by the period spent by the notified bodies for the technical document review (from the application date to the certification date), or be extended by a certain period, provided that there are no significant changes in the design or intended use of the products concerned.

2.324. 2. Japan appreciates the sequential publication of the guidance in line with the MDCG Guidance Publication Plan. In line with our statements in the previous meetings, Japan requests that public consultation be carried out prior to the publication of MDCG guidance, and that the published MDCG guidance have a transitional period, and that it be used for reviews by notified bodies after the transitional period has elapsed. Though guidance on post-marketing surveillance and vigilance is also included in the publication plan, Japan requests prompt publication. Japan also requests that the mapping of the EMDN (European Medical Device Nomenclature) and the GMDN (Global Medical Device Nomenclature) is achieved through the EU's active involvement in the WHO's standardized nomenclature for medical devices. 3. Strict clinical evaluation is required even for relatively low-risk medical devices classified as Class I, IIa and IIb under the MDR. Japan requests that the EU consider simplifying the clinical evaluation requirements for low-risk medical devices like Japanese pharmaceutical certification or US 510(k) regulations also from the viewpoint of promoting international harmonization. As requested in the previous meetings, Japan continues to request that the EU consider ensuring that the operation of this is not more trade-restrictive than necessary. 4. In the previous meetings, Japan stated "The publication plan in the EU Official Journal on harmonized standards is not disclosed and they are promulgated abruptly. Therefore, Japanese manufacturers need to develop and respond to their conformity plans urgently after the publication of harmonized standards. We request the release of the plan for the development and publication of harmonized standards for the MDR and IVDR." Japan requests continued consideration on the publication plan and setting an adequate transition period for the MDR and IVDR harmonized standards.

[66] For previous statements follow the thread under ID 594.

2.325. 5. As stated in the previous meeting, Japan welcomes the extension of the transition period for three to five years beyond the date of 26 May 2022 that the IVDR entered into force, for IVD products requiring certification by a notified body, depending on the risk classification of the device, as a result of Regulation (EU) 2022/112 entering into force. However, we are still deeply concerned that many manufacturers will not be able to complete certification by the deadline. The results obtained by the survey on IVDR certification status conducted by the Japan Association of Clinical Reagents Industries in June 2022 for Japanese IVD manufacturers revealed that 12% of IVD devices requiring IVDR certification have been certified, 25% of IVDs are under review, and 63% of IVDs are yet to start being reviewed. In particular, about 80% of Class B devices, which account for about 70% of all devices requiring certification, have yet to start being reviewed. Regarding the review period, the survey revealed that there have been cases where certification has not been received even after 20 months have passed, and more than 70% of companies have experienced delays in certification reviews compared to their original plans. Considering these results and the fact that there are only seven notified bodies for the IVDR as of September 2022, Japan still has concerns about the lack of infrastructure necessary for certification. Therefore, Japan would like to request that the EU make a continuous improvement in the capacity of notified bodies, including an increase in the number of notified bodies, so that certification can be conducted promptly. Meanwhile, the number of guidance documents related to the IVDR has steadily increased since the last TBT committee in July, with the publication of two new documents in September, bringing the total to ten documents. Japan would like to express our deep appreciation for the effort of the MDCG in this regard. Japan continues to request the MDCG to further expand the guidance documents and indicate their availability as soon as possible. Japan also continues to request that newly published guidance documents not be used for reviews by notified bodies immediately after publication, but that there be a transition period of at least one year.

2.326. The representative of the United States provided the following statement. The United States appreciates the European Union's (EU) continued efforts to apply a robust regulatory framework to ensure the safety of medical devices. Many of our concerns from the last meeting remain. Industry continues to inform us that serious implementation hurdles remain that are creating an unpredictable market environment for medical technology manufacturers. These manufacturers report that implementation remains slow, with long delays in securing certificates of compliance. The EU continues to have a lack of sufficient capacity to assess conformity to the MDR in a timely manner. Additionally, with a lack of capacity to assess conformity to MDR even for existing devices already on the market, MDR-designated Notified Bodies do not have the capacity to evaluate new products in a timely manner. We reiterate that we have heard that some companies are considering deprioritizing the EU market as the geography of choice for first regulatory approval of new devices. Has the EU Commission taken any further steps since the last meeting to speed up the conformity assessment process and to resolve the backlog of devices awaiting certification? Have any of the recommendations provided by the Medical Device Coordination Group (MDCG) been implemented? The United States welcomes the implementation of the MDCG recommendations but believes the measures, while positive, would fall short of solving the problem. Is the Commission considering any of the legislative fixes that have been proposed by EU member States?

2.327. We ask the Commission if it has made any additional resources or flexibilities available to currently approved Notified Bodies since the last meeting to ensure these Notified Bodies have sufficient resources to meet existing demand? If so, what resources are being provided? We also once again would like to raise issues with the European Medical Device Nomenclature (EMDN) system. Last time we discussed MDR/IVDR implementation with the EU, the EU stated that there was confusion about the UDI and nomenclature system. The United States respectfully disagrees with this statement. Article 26 of MDR mandates that the Commission is to ensure that an "internationally recognized medical device nomenclature" is available to manufacturers. The United States appreciates that the EU based its UDI system on the IMDRF UDI guidance, but it failed to select a nomenclature system that is internationally recognized – an obligation specifically outlined in Article 26 of MDR. The EU also has said on the floor that it chose EMDN because it "was founded on the need for a sensibly structured nomenclature that is transparent, open, completely publicly accessible and downloadable for free." The United States would like to remind the EU that, contrary to EMDN, which was based on a nomenclature that was developed for procurement, GMDN was developed with the support of ISO and the then-Global Harmonization Task Force (now the International Medical Device Regulators Forum) and is widely adopted by the medical device industry and used by over 100 national medical device regulators to support their activity. GMDN is free and accessible to all and has been since the selection of EMDN. To maintain the strong presence of lifesaving medical technologies currently in the European market and broaden the range of new,

innovative technologies that are able to enter, the United States implores the European Commission to swiftly put solutions in place that resolve these ongoing challenges.

2.328. The representative of Australia provided the following statement. Australia supports the concerns shared by other Members on this issue and would like to refer the European Union to our previous statements made to the Committee.

2.329. In response, the representative of the European Union provided the following statement. As announced in previous Committee meetings, the MDR officially entered into application on 26 May 2021. It is important to remind Members that the shift between the Directives to the MDR is a gradual one, facilitated by a grace mechanism that allows for medical devices in compliance with the Directives to continue to be in circulation until May 2025, in parallel with MDR-certified devices. As regards the IVDR and as of May 2022, a staggered set of transition periods for IVDs was proposed by the European Commission. The proposed amendment to the IVDR has since been agreed upon by the European Parliament and Council. A measure explaining the adapted transitional provisions was also notified to the TBT Committee. The length of the transition periods depends on the risk class of devices, with shorter transition periods for higher risk devices and longer periods for lower risk devices. In addition, the notified draft proposes a deferred application of the requirements for "in-house devices", i.e., those made and used within the same health institution. We are happy to report that as of today, we now have 34 MDR-designated Notified Bodies and seven Notified Bodies under the IVDR, which is eight more since our last update. Furthermore, two additional NBs are expected to complete their designation process under MDR by the end of 2022 and one more under IVDR, latest by January 2023.

2.330. The European Commission is fully aware of the challenges related to the implementation of the new Regulations on medical devices, and regularly cooperates with the EU member States, stakeholders and all interested parties, in particular in the Medical Device Coordination Group (MDCG), to address the concerns of economic operators and envisaging concrete measures to improve the situation. In August 2022 the MDCG adopted a Position Paper entitled Transition to the MDR and IVDR - Notified body capacity and availability of medical devices and IVDs (MDCG 2022-14) (which is available online) with a number of concrete and specific actions aiming at addressing, among others, the issue of capacity of notified bodies and availability of medical devices and *in vitro* diagnostic medical devices, and propose pragmatic approaches within the application of the current legal framework. The MDCG will continue to closely monitor the situation on the ground and has established regular contacts with Notified Bodies and industry in that regard. The Commission remains attentive to concerns expressed and is aware of requests by member States and stakeholders for additional measures beyond those included in the MDCG position paper MDCG 2022-14. The Commission will present clear orientations on the solutions at the next Health Council in December, as agreed by health ministers when the matter was last discussed in the Health Council in June.

2.331. To date, there have been more than 100 published guidance documents, including several key guidance on the transitional provisions and clinical requirements. In addition, the most recent milestone is the positive opinion on the Commission Implementing Regulations on common specifications for products listed in Annex XVI of (EU) 2017/745 and on rules for the application of MDR as regards reclassification of groups of certain active products without an intended medical purpose. As regards the Unique Device Identification (UDI), allow us to underline the fundamental difference between the UDI and the Nomenclature, which are two topics that seem to be intermixed. While the UDI system employed in the EU is based on internationally agreed-upon principles, the Nomenclature, also known as the language of use, is different. In the views of the EU, a nomenclature is viewed similar to a dictionary, where unlimited access only empowers users, patients, regulators and all other actors. The decision to move forward with the Italian National Classification for medical devices (CND) as a basis for the European Medical Device Nomenclature (EMDN) was not taken lightly but only after careful and extensive assessments and consideration by EU member States, jointly with the Commission. Data from 2019 shows that the CND was already implemented by three EU member States (Italy, Portugal and Greece) and utilized by over 15,000 manufacturers from both EU and non-EU countries.[67] The EU is proud to have a nomenclature that is publicly available in its entirety and has a consultation mechanism open to all. In this open system, all codes, terms and hierarchical structures are completely publicly available and downloadable for free. There are currently no other nomenclature systems offering these characteristics. It is

[67] md_cnd_general_principles_en_0.pdf (europa.eu)

important to reiterate that the choice of this nomenclature does not constitute a barrier. The EU is fully committed to ensuring that the new system provides a higher level of patient protection and counts on trade partners to encourage their manufacturers to meet these new requirements to ensure trade continuity.

2.1.4.34 Qatar - Ministry of Public Health Circular regarding shelf life for cheese (ID 602[68])

2.332. The representative of the European Union provided the following statement. The European Union would like to refer again to the Qatar's Ministry of Public Health Circular of 30 May 2019 establishing new import requirements for UHT milk and white cheese that entered into force already in 2019. The scope of these measures was further expanded with Qatar's Council of Ministers instructions issued in August 2021. Regrettably, these measures affected several dairy products exported from the EU to Qatar and the European Union would like to recall the importance of addressing these concerns. During the TBT Committee meeting in March, Qatar informed that the Circular had been suspended, while awaiting an internal review process. On 28 April 2022, Qatar approved a new Circular, which removed some of the proposed restrictions on the shelf life of dairy products. However, these were re-introduced a few days later, on 1 May 2022, by a new Circular. We understand that both Circulars are currently applicable. In general, the EU is concerned about the lack of predictability on the rules that operators need to follow, as well as on the shelf lives introduced which are unnecessarily trade restrictive and are not following the international standards. We would like to appreciate the meeting we had with Qatari authorities in June and September 2022, where we discussed the matter and Qatar indicated it was assessing and re-evaluating the situation of dairy imports and preparing a comprehensive study on the subject. In this context, we would appreciate information on results of such an assessment and the state of play of the said study. At the same time, we would like to urge Qatar to adopt a permanent solution and to withdraw the current trade restrictive measures and to put in place trade measures in line with the WTO requirements. In this respect, the European Union would like to insist on the need to notify any proposed measure at a draft stage to this Committee. The European Union is grateful that we had further constructive exchanges with Qatar on this matter, where Qatar signalled to be working on a solution to be offered in a near future. We stand ready to continue to work constructively with Qatar to resolve this important issue in due course.

2.333. The representative of New Zealand provided the following statement. New Zealand continues to have concerns with Qatar's shelf-life requirements for imported cheese and other dairy commodities as these are trade restrictive, not based on science and not in line with Codex standards. New Zealand continues to request that Qatar use internationally recognised standards such as Codex for the setting of shelf-life requirements.

2.334. The representative of the United States provided the following statement. The United States supports the interventions of the EU and New Zealand.

2.335. In response, the representative of Qatar provided the following statement. Qatar has taken note of the continued concern of the European Union, New Zealand, and the United States regarding Qatar's Ministry of Public health circular on quality standards for certain dairy products and thanks them for their interests in this matter. Qatar has been holding discussions on this matter with the European Union where many issues have been clarified and would continue these constructive discussions. Last meeting was held on 3 November. As it has been clarified, these measures have been initiated by the Ministry of Public Health with a view to ensuring the quality of products available in Qatar. The protection of consumers is of primary importance to the Government of the State of Qatar in accordance with our international obligations. 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 fulfillment 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 have listened carefully to the concerns expressed by the European Union and New Zealand today and will again share them with our capital. Also, we remain available to continue our constructive discussion with

[68] For previous statements follow the thread under ID 602.

the European Union and any other interested Members to provide additional explanation where necessary.

2.1.4.35 India - Air Conditioner and its related Parts (Quality Control) Order, 2019, G/TBT/N/IND/74, G/TBT/N/IND/110 (ID 598[69])

2.336. The representative of China provided the following statement. With this concern, China would like to suggest the following for India's consideration. Enhance the efficiency of factory audits, and guarantee the smooth conduction of overseas factory inspections. Further postponement of the entry into force of the air conditioner QCO in view of the impact on supply chain and travel limitation because of the COVID-19 pandemic. Provide alternative measures during the pandemic, such as temporary factory audit exemption for a limited period or virtual audit, or conducting audits through third-party agencies, to address the difficulties with physical inspection due to international travel restrictions.

2.337. In response, the representative of India provided the following statement. India thanks China for its continued interest in this issue. We would like to reiterate that sufficient capacity for testing room air conditioners is available with the Bureau of Indian Standards recognized laboratories. The Bureau of Indian Standards, under its laboratory recognition scheme (BIS LRS), grants recognition to laboratories for testing of products as per the relevant Indian Standards. Clause 12 of BIS LRS deals with the recognition of overseas laboratories. The decision regarding recognition of overseas laboratories is taken by BIS taking into account the MRA (Mutual Recognition Agreement) with the concerned countries. At present, there is no provision in BIS (Conformity Assessment) Regulations, 2018, to undertake virtual inspection for conformity assessment activities as an alternative. As the COVID-19 restrictions have eased out, BIS has started carrying out inspection where confirmation for travelling of fully vaccinated BIS officers has been received.

2.1.4.36 China - Draft Administrative Measures for Registration of Overseas Producers of Imported Foods, G/TBT/N/CHN/1522 (ID 611[70])

2.338. The representative of Canada provided the following statement. Canada and other Members continue to raise significant concerns and challenges with China's administrative measures for the registration of overseas manufacturers of imported food. Canada would like to refer to its previous interventions on this item, which remain valid. Canada continues to be concerned that the new administrative measures are overly burdensome and unjustified. These measures are broad and overarching in scope and will have a significant impact on Canadian exports to China. Canada notes that the implementation of the online China Import Food Enterprise Registration (CIFER) system, which was not notified by China to the WTO, is unnecessarily having a negative impact on trade, which includes significant financial and resource impacts on both industry and foreign competent authorities. As an example, China's registration and approval process in CIFER requires both the foreign competent authority and Customs China to manually review and approve the information submitted by companies in CIFER. This requires the allocation of significant resources by foreign competent authorities and causes delays in the registration update and renewal process for companies seeking to export to China.

2.339. The registration process in the CIFER system is confusing, substantially hindered by ongoing technical challenges, and lacks clear guidance and defined timelines for both competent authorities and industry. Despite repeated requests from trading partners, there remains limited engagement or guidance from Customs China regarding the implementation of the CIFER system, which is resulting in continued uncertainty and concerns by trading partners. Canada notes that after repeated attempts, none of the Canadian fish and seafood establishments, whose CIFER registrations will expire on 31 December 2022, have been able to successfully obtain approval from Customs China for their applications. Canada strongly urges China to communicate all timelines and decisions related to its review and approval process in CIFER in a transparent manner. Canada urges China to develop clear guidance documents to address the questions and concerns from both industry and foreign competent authorities. As many questions remain regarding the CIFER registration process, Canada calls on China to create separate contact points within Customs China for both industry and foreign competent authorities, or to work directly with companies for the completion and renewal of their registrations in CIFER. Canada remains deeply concerned about the impact these measures are

[69] For previous statements follow the thread under ID 598.
[70] For previous statements follow the thread under ID 611.

having on trade and recalls that in October 2021, China stated that Decrees 248 and 249 and CIFER would not impact trade. Therefore, Canada asks that China commit to improving the efficiency of its registration approval process in CIFER to ensure that trade is not disrupted. In conclusion, Canada calls on China to provide Members with additional information, clarification and flexibility on the requirements under the measures and the CIFER system immediately to avoid further delays in the registration process for Canadian companies and prevent unnecessary trade disruptions.

2.340. The representative of Kenya provided the following statement. China's Customs agency issued new regulations affecting overseas manufacturers of foods that export to China on 12 April 2021. Kenya is concerned that some provisions in the regulation are more trade restrictive than necessary contrary to Articles 2.2 of the TBT Agreement as follows. The regulation imposes new obligations for the government agencies of the foreign nation/region by wading into their regulatory autonomy. According to the Regulations, all overseas manufacturers of foods that export to China are required to register with China's General Administration of Customs (GACC). The foreign food facility registration requirements established are cumbersome and are likely to pose major trade disruptions by mandating documentation and procedures beyond what is currently required for higher-risk products; hence making it more difficult for small and medium enterprises to integrate into the global value chains. Kenya therefore urges China to review these regulations, and possibly revise them to provide among other things, clarity on the scope of their application (transparency), and make them less stringent to comply with, i.e. eliminate the need to have all imported food and food products to be pre-registered with China's General Administration of Customs (GACC).

2.341. The representative of Australia provided the following statement. Australia would like to reiterate our concerns with China's the implementation of measures under Decree 248. We have raised these concerns in previous TBT meetings, including most recently in July 2022. Australia acknowledges China's efforts to facilitate implementation of measures under its Regulation on Registration and Administration of Overseas Manufacturers of Imported Food (Decree 248). Australia nonetheless remains concerned at the resource-and-labour-intensive cost of changes within China's registration system – costs which are borne by exporting countries' competent authorities. Exporters continue to face delays and suffer from a lack of clarity surrounding the registration of food enterprises within China's registration systems. Delays in processing registration renewals and new applications from overseas food producers may lead to imported foods being treated less favourably than China's domestic products. Australia is also concerned with the provision under Decree 248, which allows China to livestream audits of foreign food facilities at short notice and threaten suspension for non-compliance. Australia would like to request that China meets its obligations to provide Members with: transparent timeframes for updates and processing of applications, in line with obligations under the TBT Agreement appropriate guidance and assistance to support enterprises in meeting China's registration processes, and consideration of the difficulties the systems pose to applicants and the need for additional time to address these difficulties. Australia urges China to address these issues promptly and remains willing to work bilaterally with China to minimize trade disruptions.

2.342. The representative of Japan provided the following statement. Japan would like to reiterate its concerns regarding the implementation of Decree 248 by China. The procedures remain uncertain and lack predictability; in particular, frequent, unexpected changes have been made to the China Import Food Enterprise Registration (CIFER) system without prior notice to the Members. As a result, the operation of Decree 248 could have a significantly negative impact on China's trade with Japan and other Members. Japan requests that China improve the operation of the CIFER system, and also make the procedures for implementation of Decree 248 transparent, based on the Members' remarks at this and previous TBT Committee meetings. Specifically, Japan requests that China: (i) Establish a standard processing period for applications made through the CIFER system (i.e., a standard timeline to be followed from application through registration), and make that processing period known to the Members and foreign manufacturers. (ii) Notify the Members promptly of any changes in the operation of the regulations or the CIFER system, including changes to product codes (HS CIQ) used in the system, which will or might affect exports. Should any changes occur, we also ask that GACC provides a reasonable transitional period. (iii) Correct any defects in the CIFER system before the end of this year, including: (a) the fact that the system does not accept changes to information about the legal representatives and addresses of registered manufacturers and does not accept the submission of letters of proxy; (b) the current, considerable delays in the registration process; and (c) the fact that some of the product codes (HS CIQ) are missing from the list shown on the system. (iv) Establish an Enquiry Point for interested parties and competent authorities, and also hold an information session by the end of this year in Geneva for concerned Members regarding

implementation of the regulations. (v) Respond to unanswered questions within a reasonable time. Japan thanks China for its prompt attention to resolving these issues in an appropriate and timely manner.

2.343. The representative of the European Union provided the following statement. The EU must raise this topic again to highlight remaining concerns about the implementation of Decree 248 of the General Administration of Customs of the People's Republic of China (GACC). The EU does not question the right of China to ensure that imported food products come from legitimate sources. Overall, we share and support this objective. However, EU applicants are still facing many issues in the registration process, mostly due to the web-based registration system (CIFER), which still has numerous technical problems, making the electronic submission of documents cumbersome, time consuming and uncertain. Adding to this difficulty, the Customs Administration recently informed EU member States that certain product categories would be exempt from the registration procedure that had previously been included under Article 7 of Decree 248. However, GACC does not clearly identify these products. Due to the unclear scope of the registration and the numerous technical issues with CIFER, EU member State authorities are facing massive difficulties implementing Decree 248. Competent authorities and businesses must consult the CIFER database almost continuously to follow individual registrations and react to unforeseen issues. To avoid food trade disruption, we request that existing approvals remain valid until the renewal process under Decree 248 is properly established. Under the current circumstances, it appears impossible to complete the registration process under Article 7 by the deadline foreseen, which is June 2023.

2.344. The EU urges China to: Provide clear guidance and supporting materials on products falling under Article 7 of Decree 248 and on procedures applicable to products which are not covered; Simplify the data entry and resolve the software problems with the CIFER system; Facilitate amendments/corrections and follow-up to ongoing registrations; and Extend the deadline of June 2023 given the technical problems relating to the registration system and because it is unlikely that all establishments falling under Article 7 of Decree 248 will be able complete their registration on time. The EU would like to thank China for the dialogue so far which helped to address several technical questions related to Decree 248. However, important issues remain to be resolved.

2.345. The representative of The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu provided the following statement. Because there is no progress on this STC and the lack of transparency continues to be an issue, we would like to reiterate our concerns in the previous TBT meetings. Given the wide range of our food industries that have been or may have been affected by this measure, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu has been closely following the implementation of the measure. Many concerns over the measure remain even after it took effect on 1 January 2022. First, the lack of sufficient information about registration requirements, operational guidelines, and updates of the stages of the procedure is one of the biggest difficulties we face. This issue is even more critical for those facilities that need to file the application by themselves. Without sufficient guidance, the facilities are unable to complete registration, and trade may be disrupted as a consequence. To avoid trade disruption, we urge China to designate an Enquiry Point that can provide effective and timely assistance for facilities to contact directly with concerns about the online registration system. Also, we urge China to hold an information session in the WTO for trade partners to learn more about the General Administration of Customs of China (GACC)'s implementation of the measure.

2.346. Second, there are also concerns over the measure's review and approval procedure. Standard or anticipated processing periods are unknown. So is the stage of the application. In addition, some of our facilities were rejected by the GACC without further explanation, while others cannot correct their application in the registration system. Under Article 5.2.2 of the TBT Agreement, Members shall ensure that the standard processing period of each conformity assessment procedure is published to the applicant and, upon request, the applicant is informed of the stage of the procedure. We request that the GACC comply with the requirements set out under the TBT Agreement, including the transparency requirement and informing the applicant in a precise and complete manner of all deficiencies and allowing corrective actions. Third, other difficulties we face include the ambiguity of HS code categorization and the scope of the products subject to this measure. Some of our facilities reported that their products have faced customs clearance suspension for no reason. Ever since China made notification to the WTO in 2020, we have expressed our concerns and sought clarification from China several times through both bilateral channels and this forum; however, we have yet to receive a sufficient and detailed response from China. We therefore once again urge China to offer sufficient and detailed guidelines and designate an Enquiry

Point. Also, as any measure of this magnitude requires far more time for industries to implement, we urge China to offer a longer grace period for implementation, so as to avoid serious trade disruption. We also suggest that China temporarily allow entry of all products from registered facilities. This additional time will allow facilities to accurately enter or update the product information in their online registration.

2.347. The representative of the United States provided the following statement. The United States remains deeply concerned with this measure, published as Decree 248 on 12 April 2021, and implemented on 1 January 2022. We continue to question the food safety and public health benefits of China's burdensome facility and product registration requirements, and whether such benefits are based on science or risk. We renew our repeated requests that China provide the scientific rationale and any risk assessment performed that would justify this measure. The United States notes that the lack of guidance provided by China and China's implementation and enforcement of the measures continues to cause considerable confusion for exporters and competent authorities. The changing application of these administrative measures is directly leading to disruptions in trade. US agencies continue to face administrative burdens as they work to resolve issues with shipments held up at ports in China. The General Administration of Customs of China (GACC) should continue to use existing government-to-government facility registration processes already implemented under bilateral agreements, as envisioned in Article 11 of Decree 248, and not require facilities to provide additional information online. Furthermore, GACC requires foreign competent authorities to approve information and upload inspection reports to China's online system for each registered facility from their country producing certain categories of products. Such a requirement creates tremendous administrative burdens on foreign competent authorities without a clear connection to food safety outcomes. GACC should ensure that all facilities not already registered under existing government to government facility registration processes are able to self-register without foreign competent authority involvement, thereby streamlining the process and facilitating trade.

2.348. China's failure to act in this area necessitates the United States to continue raising these concerns at the TBT Committee until our concerns have been addressed by GACC. We note that GACC's requests for additional detailed information from facilities and competent authorities, such as process-specific food safety plans and photographs on an establishment-by-establishment basis, as part of its pre-import registration requirements do not appear consistent with Codex guidance that allows for the recognition of an exporting country's food control (see Codex Guidelines for Food Import Control Systems - CXG 47-2003 – Paragraph 13). Furthermore, we ask that China hold an informational session in Geneva for trading partners to learn more about implementation of Decree 248. We look forward to China's response to these specific questions and comments.

2.349. The representative of the Republic of Korea provided the following statement. The administrative measures for registration of overseas manufacturer of imported foods (G/TBT/N/CHN/1522) The Republic of Korea echoes the concerns raised by Canada, Kenya, Australia, Japan, the European Union, Chinese Taipei, and the United States under this Specific Trade Concern. Korea respects China's efforts to ensure consumer safety and appreciates its continued cooperation through bilateral channels. However, Korea remains concerned since China's measures still includes low-risk food products provided in Article 7 of Decree 248, which is creating unnecessary obstacles to trade. While Korea is registering newly added product categories in accordance with GACC's requirements, it is taking a significant amount of time for the registration to finalize. Moreover, facilities are rejected without explanation, leading to a negative impact on trade.

2.350. Korea also requests China allow companies of the product categories outlined in Article 7 register their respective establishments on the GACC website themselves. The current requirements are resulting in inefficiency such as having to apply for each category the facilities wants to register and having to submit duplicate data, as facilities are required to apply for registration based on product categories. If China adopts the measure suggested by Korea, China will be able to swiftly process registration applications. Moreover, Korea asks China to utilize previously reviewed data so that registered facilities could export all products of the facilities. Additionally, obligating facilities to register food products that are clearly labelled as a free sample that is not sold or consumed is a measure that hinders mutual growth of Korean and Chinese food industries. Many other countries do not apply such measures to sample products and Korea therefore requests China to ease related regulations. Korea would like to remind China that all WTO Members have the obligation to implement food safety regulations based on sound scientific basis and transparency. As the new measures significantly affects bilateral trade, Korea would like to ask China to provide a response to our statement.

2.351. The representative of Brazil provided the following statement. Brazil would like to support STC 611 regarding new requirements for the registration of overseas producers of imported foods. So far, both bilaterally and at the TBT Committee, the Chinese government has not been able to clarify the risk analysis that grounded such disproportionate requirements for a wide range of food products. We understand that these requirements constitute unnecessary obstacles not only to our private sector, but also to our regulators, which must operate as the Competent National Authority for a much wider range of products. Not only are the regulators facing an unreasonable increase in their burden, but some of them must also make recommendations on products or producers that are actually subject to inspection by authorities of other levels of government. In April 2021, the General Administration of Customs of China (GACC) published Decrees no. 248 and 249, which deal, respectively, with administration of registration of foreign establishments and management of the safety of imported and exported food. Article 5 of Decree no. 248 requires that the food safety management system of the country where the producer is located has passed GACC's equivalence assessment or review. Could China explain how and when it intends to carry out these assessments? Could China indicate the criteria and procedures used to establish such equivalence, especially for regulators of processed foods and "health foods"?

2.352. The representative of Switzerland provided the following statement. Switzerland shares – and supports – concerns expressed by other Members regarding decrees 248 and 249 published by the General Administration of Customs of the People's Republic of China (GACC). Switzerland supports China's objective to ensure that only safe food and food from legitimate sources is imported. However, we regret to note the persisting problems and uncertainties with the CIFER system. Switzerland strongly encourages China to extend the June 2023 deadline for the renewals and the validity of existing approvals of establishments falling under Art 7 of Decree 248 by one year. This additional time would enable GACC to fix the problems related to the CIFER system and allow our authorities as well as the establishments to accurately enter or update product information in their online registration. Finally, we support other Members' call for the creation of contact points for industry and authorities. We look forward to China's response to these comments.

2.353. The representative of Mexico provided the following statement. The delegation of Mexico reiterates its concern regarding Decree 248 notified on 16 November 2020 in document G/TBT/N/CHN/1522, which entered into force on 1 January 2022. Mexico also shares the concerns raised earlier by previous speakers. As mentioned at the July meeting, while efforts have begun to ensure that the registration of Mexican companies exporting to China is carried out in a satisfactory manner, we have identified that concerns remain about potential effects on international trade, since we have been made aware of recent issues in the process for the registration of Mexican companies. In this connection, we reiterate how important it is for the measures adopted by Members of this Committee to comply with the international commitments contained in the TBT Agreement. We also ask the delegation of China to provide a point of contact that may offer assistance to companies that have experienced difficulties in registering. We welcome and support the request made to China to hold briefings in Geneva on the implementation of its Decree 248. Lastly, the delegation of Mexico thanks the delegation of China for giving its consideration to this statement.

2.354. In response, the representative of China provided the following statement. China has on multiple bilateral and multilateral occasions clarified why and how China sets to revise the regulation as instructed by relevant laws and given specific technical guidance to Members' enquiries. China thanks all the Members who have sent their inquiries and suggestions, which have helped us to smooth the registration process. China would like to ensure Members again that the revision has been done in an open and transparent way, compliant with common international rules and practices. The implementation of the regulations has taken into account trade facilitation in addition to strengthening food safety. Before implementing the regulations, GACC issued interpretation of the regulations and guidance on registration, clarified supporting documents and forms for registration, launched the registration information system for overseas enterprises, and formally notified the members which export food to China through diplomatic channels and cooperation mechanisms. As of 27 October 2022, more than 100 Members have provided their list of enterprises recommended for registration, with a total of 79,000 overseas producers successfully registered. So far, the implementation goes well. We understand some Members might still have confusion when registering. They are welcome to contact GACC at any time for timely technical support.

2.1.4.37 Kingdom of Saudi Arabia - Saber Conformity Assessment Online Platform / Saleem Product Safety Program (ID 615[71])

2.355. The representative of the European Union provided the following statement. The implementation of the electronic certification system SALEEM through the web-portal SABER remains a concern for the European Union. Several European industries coincide in reporting the difficulties they are facing and in particular the overly costly, burdensome and time-consuming nature of the conformity assessment requirements. The sector of toys is particularly affected. European toy manufacturers continue to report difficulties related to obtaining a GCC Conformity Tracking Symbol (so-called GCTS) from notified bodies authorized by Saudi Standards, Metrology and Quality Organisation (SASO). The European Union refers to its previous statements delivered respectively in November 2021 and March 2022. Following the constructive bilateral talks we had during this week, the European Union is confident that remaining concerns will soon be addressed by the Kingdom of Saudi Arabia and will ensure efficient and less costly procedures for all products included in the new conformity assessment system.

2.356. The representative of Switzerland provided the following statement. Switzerland would like to support the concerns on the "Saber Conformity Assessment Online Platform". We remain concerned over the negative impact on bilateral trade with the Kingdom of Saudi Arabia and refer to our previous statements in the WTO TBT Committee. The registration and certification process seems to remain non-transparent, complex and time-consuming for our exporters. The industry continues to report that the conformity assessment procedures lead to disproportionate fees and in many cases to unnecessary administrative burden, costs and duplicative requirements. In particular for companies exporting quality products in small quantities, this additional burden is prohibitive to enter the market. Switzerland would appreciate if the Kingdom of Saudi Arabia could ensure that the registration and certification process is not more strict than necessary to give adequate confidence that products fulfil the applicable requirements. Furthermore, we encourage the Kingdom of Saudi Arabia to base the documentation and certification requirements on international standards and practices and to ensure that the requirements are applied in an equal and uniform manner.

2.357. The representative of Canada provided the following statement. As stated in previous TBT Committee meetings, Canada supports Saudi Arabia's efforts to create an integrated system that efficiently assesses the safety of imported products. In a recent communication with us, stakeholders indicated that they have observed some positive movement by the Saudi Standards, Metrology and Quality Organization (SASO), which has acknowledged that the Notified Bodies should be more consistent in administering the conformity assessment procedures. Canada welcomes such progress. However, industry stakeholders continue to be concerned with the implementation requirements established by Notified Bodies, which continue to pose unnecessary administrative burden, costs and duplicative requirements for them. Canada would kindly ask that Saudi Arabia's SASO play a more active role to monitor the notified bodies closely and to ensure that they are consistent and transparent in administering the conformity assessment procedures. Finally, Canada kindly asks Saudi Arabia's consideration of providing more detailed guidance to Notified Bodies on how to implement the SABER platform in order to increase the efficiency of the system, reduce compliance costs and ensure consistency.

2.358. In response, the representative of the Kingdom of Saudi Arabia provided the following statement. "Saber" is an IT Platform that aims to improve the import experience by easing the conformity process/procedure before the shipment arrival. In addition, all Technical Regulations reflected in "Saber" are notified in the WTO through (TBT E-Ping Platform). Furthermore, "Saber" has contributed to facilitating and enhancing trade, reducing the cost and time of custom clearance to one to seven working days compared to 7-15 working days in previous years. As a result, the Kingdom's ranking in the cross-border trade index advanced 72 ranks, confirming SASO's commitment to boosting trade facilitation. The Gulf Standardization Organization accepted many notified bodies worldwide to facilitate the application of the children's toys regulation requirements. On the other hand, the E-platform "SABER" does not require additional certificates of conformity as long as the GSO certificate of conformity is valid. Therefore, processing shipment certificates through the "Saber" platform would be fast and easy. We would also like to point out that, the validity of the GSO conformity certificates lasts for three years, and then the conformity procedure is considered fair. Concerning toys for individuals over 14 years old, which are excluded from the scope of the Gulf regulation, the Supplier Conformity Declaration through "SABER" only is sufficient. In

[71] For previous statements follow the thread under ID 615.

conclusion, Saudi Arabia is always happy to collaborate and engage with all interested countries and stakeholders, in order to address related issues bilaterally.

2.1.4.38 Colombia - Food Prioritized for its Sodium Content, Certification Requirements, G/TBT/N/COL/238, G/TBT/N/COL/238/Add.1 (ID 609[72])

2.359. The representative of Costa Rica provided the following statement. First of all, Costa Rica would like to express its appreciation for the efforts of the Colombian authorities to provide information related to its regulation on the maximum sodium content for a prioritized list of foods. In this regard, we note that we have received information on the reasons and justification for this Colombian regulation. Nevertheless, Costa Rica would like to reiterate its request that Colombia share with us either the Codex Standard setting out the percentages for the maximum sodium content per food, or the risk analysis performed in order to determine these percentages. As is the case with front-of-pack nutritional labelling, there are no international reference standards that form the basis for setting percentages for the maximum sodium, fat or sugar content, above which a specific product cannot be sold in a particular market (as is the case with the list of foods prioritized by Colombia and the maximum sodium percentages) or a stop sign or a black label must be placed on the package in order to discourage people from consuming the product. As a result, there are different regulatory systems for the international trade in processed foods, which makes sectors less competitive and restricts trade more than necessary.

2.360. The representative of Paraguay provided the following statement. Paraguay recognizes and supports the right of Colombia to protect the health of its population by limiting the sodium content of some foods as part of efforts to protect against chronic non-communicable diseases. However, Paraguay is concerned that the provision of lot-by-lot certificates of conformity would be burdensome for importers and more restrictive than necessary to achieve the legitimate objective pursued by Colombia with this measure.

2.361. The representative of Guatemala provided the following statement. Guatemala wishes to thank Costa Rica for including this item on the agenda. We reiterate the recognition of the legitimate objective of the Colombian Government to ensure human health, and the efforts made to lower total sodium intake in Colombia in order to reduce hypertension and other related diseases. Resolution No. 2013 of 2020, by which the technical regulation that establishes the maximum sodium content for processed foods prioritized under the National Strategy for the Reduction of Sodium Consumption and other provisions are issued, provides, in chapter III, that a certificate of conformity to demonstrate compliance with the requirements contained in the regulation, must be obtained and attached to the import licence or registration, as the case may be, at the time of its presentation at the Single Window for Foreign Trade (VUCE). Likewise, it is proposed that once the country has its first accredited certifying entity, the declaration of conformity issued by the manufacturer will accepted, which will be valid for up to 24 months, after which time only certifications issued by the bodies recognized in the regulation will be accepted. Due to the fact that this certificate of conformity must be submitted for each import, Colombia is asked about the actions to be taken if the manufacturing company consistently demonstrates regulatory compliance and the possibility of continuing to submit first-party certificates of conformity. Guatemala reiterates its concern with sodium intake, and reiterates statements made in previous Committee meetings.

2.362. In response, the representative of Colombia provided the following statement. On this matter, Colombia would like to point out that Resolution No. 2013 of 2020 reflects public health policy and is part of a comprehensive strategy that considers both the sodium content of processed foods and other sources of added salt. The strategy seeks to reduce mortality attributable to high blood pressure and cardiovascular disease by gradually reducing salt intake 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. On previous occasions, Colombia has shared documents justifying the measure taken through the aforementioned Resolution on the maximum sodium content in processed foods. Colombia would like to reiterate that our authorities are stand ready to pursue technical discussions with the authorities of the interested countries, in order to clarify the concerns raised around trying to comply with the technical regulations on the maximum sodium content in processed foods. Notwithstanding the foregoing, we would appreciate it greatly if Costa Rica could clarify its concern, as it makes reference to Resolution No. 2013 of 2020, which contains the technical regulation on maximum sodium content notified in document G/TBT/COL/238. However, in its arguments and

[72] For previous statements follow the thread under ID 609.

when addressing the issue, Costa Rica refers to a different matter, in particular, the technical regulation contained in Resolution No. 810 of 2021 on nutrition and front-of-pack labelling, notified in document G/TBT/N/COL/246. In this connection, we reiterate our willingness to keep the matter on the agenda of the relevant authorities, so that we can provide elements which will make it easier to understand the standards and comply with them. We would also like to invite the delegation of Guatemala to send their concerns to us in writing, so that the relevant internal consultations could be undertaken.

2.1.4.39 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 (ID 608[73])

2.363. The representative of Costa Rica provided the following statement. Costa Rica would like to take this opportunity to emphasize the importance of harmonizing food labelling schemes, in particular front-of-pack nutrition labelling, on the basis of Codex regulations (Guidelines on Nutrition Labelling CXG-2-1985, Annex 2, adopted in 2021). In this regard, we encourage the use of the recently approved Codex guidance on the subject as a reference to ensure that regulations are consistent with the international consensus and do not establish unnecessary restrictions on trade. Costa Rica defends the importance of the work done in the framework of the Codex Alimentarius and argues for the need for the adopted food-labelling measures to be based on scientific evidence and on Codex Standards, as set out in the Agreement on Technical Barriers to Trade. To date, the Codex Alimentarius has not determined percentages of sodium, fat or sugar content, above which consumers must be warned through labels with stop signs or black stamps which are designed to discourage people from consuming the product. This lack of harmonization and scientific evidence has resulted in the proliferation of various front-of-pack food labelling schemes, with different content-percentage thresholds at which a warning is required, all of which increases the costs associated with international trade in food, makes businesses less competitive and ultimately introduces unnecessary obstacles to trade.

2.364. The representative of Paraguay provided the following statement. Paraguay supports Mexico's goal of protecting public health and considers that the provision of nutritional information to consumers is an appropriate strategy. However, Paraguay expresses its concern over its enforcement since there is no analytical method for distinguishing total sugars from added sugars in food. Therefore, we would ask Mexico if this would not render enforcement difficult.

2.365. In response, the representative of Mexico provided the following statement. As has been previously mentioned by Mexico, we are aware that international schemes for the labelling of foods exist under Annex 2 to the Codex Alimentarius Guidelines on Nutrition Labelling (CXG 2-1985), adopted in 2021. We should reiterate, however, that at the time NOM-051 was being prepared, there were no international reference standards that could be used as a basis for establishing front-of-pack labelling. The adoption, modification and/or annulment of technical regulations in Mexico are governed by the standardization process, time frames and stages established under the Law on Quality Infrastructure. The Government of Mexico reiterates its undertaking to comply with the international commitments set out in the Agreement on Technical Barriers to Trade and in the free trade agreements to which Mexico is party, while also recognizing the legitimate public policy objective of safeguarding the Mexican population's health generally.

2.1.4.40 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, G/TBT/N/EU/610 (ID 575[74])

2.366. The representative of the Republic of Korea provided the following statement. The Republic of Korea respects the efforts of the European Parliament and the Council to protect the environment. Furthermore, Korean companies are endeavouring to comply with the EU's Ecodesign Requirements for Electronic Displays (hereinafter, the Regulation). Regarding the 8K displays, Korea has recognized the EU's position indicated in the written response on 14 July to our written comments communicated via the TBT Enquiry Points, as well as the EU's response statement provided at the

[73] For previous statements follow the thread under ID 608.
[74] For previous statements follow the thread under ID 575.

last July 2022 WTO TBT Committee meeting. However, it is deeply concerned that enforcement of the Regulation's Tier 2 on 1 March 2023 as scheduled will cause serious damage to the 8K display-related industry and market along with the problem of applying excessive criteria that were established without taking into account the current technological development and relevant empirical data. Korea would like to reiterate the following comments. First, it is technically excessive and unreasonable to apply the same efficiency requirement to the "8K displays" (hereafter, 8Ks) as that on the "4K displays" (hereafter, 4Ks). 8Ks feature four times more pixels compared to 4Ks, and since each pixel needs to be powered, 8Ks require four times more energy than 4Ks typically. Therefore, for 8Ks, it will be technically reasonable to apply a more relaxed energy efficiency criteria, rather than the same one that is applied to 4Ks.

2.367. Second, the period when the EU reviewed the power consumption data of electronic display products on the market to prepare the current Regulation's requirements was even before the 8Ks were first launched in the EU market around the end of 2018. Consequently, it is concerned that the data on 8K products' power consumption level, which is about four times higher than that of 4Ks, were not duly taken into account at the establishment of the criteria. Hence, it is necessary to review the power consumption data for 8Ks and "Micro LED displays" (hereafter, Micro LEDs) appropriately. Third, if the sales of 8Ks and Micro LEDs get restricted by the enforcement of the excessive Tier 2 criteria, EU consumers would lose the opportunity to use those products, and their right to choose would be infringed. The absence of 8K products in the market, should it transpire, might also work unfavourably towards the consumers, as a price-increasing factor for the existing 4Ks. Furthermore, such impacts may be extended to the emerging 8K broadcasting and content industry because the demand for 8K contents will drop sharply in the EU region. Therefore, Korea would like to request that the EU collect the power consumption data for 8Ks and Micro LEDs and review the Regulation until 25 December 2022, as specified in Article 8 of the Regulation and section 7 of the Ecodesign and Energy Labelling Working Plan. In the event that it is difficult to conduct the Review by this date due to the current geopolitical situation, Korea requests that the EU postpone the enforcement date of Tier 2 until the Review is completed.

2.368. In response, the representative of the European Union provided the following statement. Thank you Chair and thanks to Korea for raising this issue. As already indicated in July, this measure was notified to the WTO on 9 October 2018 and allowed for 60 days of comments. The energy efficiency requirements for electronic displays have been known since 2019 and are applicable since March 2021, except for displays with very high resolutions, which benefit from a specific, temporary exemption until 1 March 2023. A review of this adopted regulation is not among the priorities identified in the Ecodesign and Energy Labelling Working Plan adopted on 30 March 2022, given the geopolitical situation and the acute energy crisis in Europe. While we understand that very high-resolution displays have some technological constrains affecting, to a certain extent, their power consumption, the EPREL data submitted by manufacturers under their energy labelling obligations does not confirm that, currently available, 8K displays consume four times more energy than comparable 4K models.

2.369. Recent technical discussions between the European Commission and a Korean display manufacturer confirmed the existence of three yet unexploited low-cost technical options to lower consumption (including addressing a decisive "out-of-the-box" default brightness setting) and a clearer, shared understanding of the current rules. As a consequence, the manufacturer confirmed to the Commission that it will be able to continue placing, at least some, 8K TVs on the EU market after 1 March 2023. From its side, the European Commission will begin a review of the rules in 2023, but given the overall need to increase energy efficiency, also in the medium- and long-term to reach our climate goals, it cannot be taken for granted that the review would lead to laxer requirements – quite the opposite. Postponing the Tier 2 ecodesign application date would above all circumvent the EU consultation and decision-making process involving all stakeholders and EU member States. It would be also unfair towards other manufacturers that might have refrained from marketing such products in view of the requirements applicable as of March 2023. Last but not least, a weakening of the ecodesign requirements is not coherent with the current EU's energy policy objectives. These days, weeks and months, unprecedented measures are being put in place to urgently reduce electricity demand across the Union to minimize the extraordinary hardship already felt by most citizens, SMEs and businesses.

2.1.4.41 European Union - Non-renewal of the approval of the active substance mancozeb, G/TBT/N/EU/712 (ID 627[75])

2.370. The representative of Paraguay provided the following statement. This concern and the non-renewal of the approval of other substances were already discussed extensively both in this Committee and in the SPS Committee because of the subsequent reduction in the MRLs. Paraguay therefore refers to its previous statements and reiterates its cross-cutting concern with regard to the EU's decision not to renew the approval of these substances without a proper risk analysis and without complying with scientific principles. The arguments in favour of the use of this substance have not changed either, and these are shared by the EU, or at least by several of its members, who consider them sufficient to provide emergency authorizations: the lack of available alternatives to protect against some pests, the importance of mancozeb to avoid problems with resistance and, in general, the production and financial losses caused by some pests that only this substance can combat effectively. We have already heard the EU say that the measures are only in place for 120 days, but we recall that there is no limit to the number of times that they can be renewed. We see for example how many of the emergency authorizations for mancozeb are given for approximately the same annual period, probably linked to the threshold of humidity and warm temperatures that increase the prevalence of some of the fungi that are effectively and safely controlled by substances like mancozeb.

2.371. Imagine how much more often these thresholds are reached in subtropical countries like Paraguay with climatic conditions very different from those of the European Union. We also heard the EU explain that emergency authorizations are not intended to facilitate trade, unlike import tolerances, but we have not received answers to repeated written questions on the specific mechanisms used to grant emergency authorizations and to ensure that products with temporary MRLs are kept within the borders of the authorizing Member, and on the consistency between these authorizations and alleged concerns about the use of these substances, in relation to which we note not only the discrimination that exists in practice between EU producers and trading partners but also an inconsistency between the legitimate objective pursued and the actions taken to achieve it. Lastly, we have also heard that, although emergency authorizations are granted by EU members, the EFSA reviews them in case it considers that they are not properly justified. However, we note that even in cases where the EFSA considers that an emergency authorization is not properly justified, there are no restrictions on new emergency authorizations, which continue to be approved by the same members for the control of the same pests on the same crops for which the EFSA concluded that it was not properly justified.

2.372. Paraguay shares the objectives that the EU seeks to meet with these policies but does not share its adopted method for attaining them because it is not based on conclusive scientific evidence and does not consider less trade-restrictive options or valid alternatives for hazard control, which do not exist in this case, as the EU agrees by granting emergency authorizations to its members. We reiterate our question on how the Members concerned by the process can participate in the analysis that the EFSA is conducting on the MRLs for mancozeb; on the current status of the analysis, since an outcome was expected in the first half of 2022; and on how comments submitted by Members will be taken into account. We are also seeking detailed responses to the queries regarding emergency authorizations that were raised in the SPS Committee and were not satisfactorily answered with the statement that it "is the responsibility of the EU member States". We recall that EU members are also members of the WTO in their own right, so perhaps we should address questions to each of them if we continue to receive no response. Lastly, Chair, we cannot fail to recognize the extraordinary efforts that the EU is making in the bilateral/plurilateral and multilateral spheres, including through dual notifications (TBT/SPS). However, what my country and my country's producers need is not a unilateral explanation of the measures but a frank dialogue that allows the legitimate demands we are making to be met while at the same time achieving the EU's legitimate objectives in the least trade-restrictive way possible, in compliance with the rules and principles of the multilateral trading system.

2.373. The representative of Brazil provided the following statement. Brazil would like to convey once again its concerns regarding the non-renewal of the approval of the active substance mancozeb, according to European TBT notification 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.

[75] For previous statements follow the thread under ID 627.

Therefore, restrictions on mancozeb will significantly impact the income of Brazilian farmers. The availability of an alternative to mancozeb in the short to 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 substance for the management of fungicide resistance to control soybean rust. 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. In light of the insufficient transitional period granted by the EU, such crops could not have their treatments changed in time for exportation to the EU market before the entry into force of the regulation. Brazil would like to urge European authorities to consider establishing transition periods that are adequate to the production cycle of the affected crops. Brazil also respectfully asks the EU to align MRLs with limits established under the framework of Codex Alimentarius, to consider less trade-restrictive alternatives that would also safeguard its legitimate policy objective and to grant a treatment for Brazilian farmers no less favourable than that granted to European farmers.

2.374. The representative of Colombia provided the following statement. Colombia reiterates its concern about the measure notified by the European Union relating to the non-renewal of the approval of the active substance mancozeb. As we have already noted, the European Union has adopted measures resulting in the non-approval of the use of certain products, which is affecting international trade, in particular exports from Colombia. Measures to suspend or not approve the marketing of various active substances and the subsequent reduction of their maximum residue levels (MRLs) to the lowest limit of detection, are being taken without any sound scientific evidence and without demonstrating that they are indeed the least trade-restrictive measures to achieve the desired level of protection. As we have already referred to the importance of this plant protection substance at previous meetings, on this occasion, we would like to ask the European Union to provide clarification about the relationship between the notification in document G/TBT/N/EU/712, on mancozeb, and the notification in document G/TBT/N/EU/797 regarding the REACH regulation and substances that are carcinogenic, mutagenic and toxic for reproduction.

2.375. We recall that Article 2.12 of the TBT Agreement provides for 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 line with the above, we understand that the MRLs for mancozeb are covered by the MRLs for the dithiocarbamate chemical family, which the European Union has begun to review. In this regard, and taking into account that the procedure currently being followed by the European Food Safety Authority (EFSA) is different from the international public consultation process that should be followed under the TBT Agreement, we urge the European Union to notify the relevant standards at an early stage and to take Members' comments into account. The foregoing, with the sole aim of guiding actions towards good regulatory practices, under which standards must be based on clear and objective information, and which promote open dialogue with stakeholders, transparency and the minimizing of market distortions.

2.376. The representative of Australia provided the following statement. Australia recognizes the European Union's (EU) right to regulate the manufacture and use of plant protection products in agriculture to address risks unique to its jurisdiction. However, Australia reiterates its concerns raised at previous TBT Committee meetings about the EU's proposed non-renewal of mancozeb and the potential impact on maximum residues limits (MRLs) and effects this may have on trade, including wine exports to the EU. Australia welcomes information on the European Food Safety Authority's scientific opinion on the concerns we have previously outlined. We note our competent domestic authority – the Australian Pesticides and Veterinary Medicines Authority – and Codex have determined MRLs for dithiocarbamates that ensure the continued protection of human, animal and environmental health while allowing trade to continue.

2.377. The representative of Kenya provided the following statement. Kenya wishes to join the rest of the delegations in raising concerns towards EU's proposal for non-renewal of the approval of the active substance mancozeb. The active substance mancozeb is an important molecule in pest control in Kenya. Mancozeb-containing products are used in the agriculture sector for the control of a wide range of fungal diseases found in the tropics. Its use is critical in the flower industry, which is a leading sector in terms of the Kenya's GDP and also employing thousands of Kenyans thus impacting livelihoods. Mancozeb has been an important molecule in relation to fungal pathogens control on a number of vegetable crops including potato, tomato, onions, among others. There are no available alternatives to offer multisite fungicide for control of early and late blight on the above crops; which cause annual yield losses of up to 60-70% on the 4.5-5.5 million metric tonnes (USD 1.9 billion) of

potato, 560,000 metric tonnes (USD 333 million) of tomato respectively produced in Kenya for local consumption.

2.378. Potato is the second largest consumed produce in Kenyan households after maize. Mancozeb has a multi-site contact activity which is a key aspect for resistance management. Kenya wishes to raise this STC since the measure is deemed to be more trade restrictive than necessary contrary to Article 2.2 of the TBT Agreement. Kenya notes that the EU has allowed for emergency use of this active substance to some of its members, owing to lack of alternatives. This is inconsistent with the non-discrimination principle of the WTO and the provisions of Articles 2 and 5 of the TBT Agreement. Kenya requests the European Union to consider the withdrawal of the Regulation as the measure is more trade restrictive than necessary.

2.379. The representative of Ecuador provided the following statement. Ecuador reiterates its concern over the non-renewal of mancozeb. As we have already mentioned on previous occasions, this fungicide is used for many strategic crops produced in Ecuador and the region, including bananas and cocoa, among others. The importance of this plant protection substance has already been mentioned on previous occasions. Therefore, Ecuador is concerned that there are currently no approved alternatives to mancozeb that are duly registered and equally effective as mancozeb. The case of mancozeb is of particular importance not only for bananas, but also for other lesser export crops. Recent research by international bodies, which has been presented to the EU rapporteur states, shows that mancozeb does not produce adverse effects in humans, experimental animals or wildlife at concentrations below those at which effects would be expected as a result of systemic toxicity. In view of the above, it should be noted that, due to the way in which this substance is applied in banana production, the use of mancozeb is one of the most effective and environmentally friendly methods of phytosanitary control of black sigatoka, considering that this disease is the most destructive and poses the greatest economic risk to banana and plantain crops, with the potential to cause yield losses of up to 50%. Therefore, prohibiting the use of this molecule —without effective alternatives— could have a very significant impact on the economy of small-, medium-, and large-scale producers in Ecuador. Ecuador calls on the European Union to consider alternative measures that are less restrictive to trade, to identify substitute substances that enable existing trade to continue, to base its measures on conclusive studies, not only on the precautionary principle, and to establish transitional periods of at least 36 months for the registration of alternative substances, in view of the current shortage of tools available to control pests.

2.380. The representative of Uruguay provided the following statement. Mancozeb is an active substance that is authorized and widely used in many countries, such as Uruguay, where it is used safely to control diseases and pests in various products in the domestic fruit and vegetable sector, such as apples, pears and citrus fruits. Of particular note is its use to control apple scab and pear scab, which are the main diseases affecting apple and pear production and are caused by fungi of the genus *Venturia spp*. In that connection, we share the concerns and requests expressed by other delegations, particularly in view of the possibility that, as a result of the ongoing dithiocarbamate review process, the EU will significantly reduce the corresponding MRLs, even lowering them to the limit of determination, without having any conclusive scientific evidence that substantiates such a decision in line with the SPS Agreement of the WTO. We would appreciate an update on the status of the ongoing review process for these substances, including the predicted end date and the reasons for the apparent delay, as well as the date when a notification of any modification of the MRLs may be submitted to the SPS Committee. In that context, like other Members, Uruguay recalls the importance of taking due account of international standards, guidelines and recommendations, and the scientific information produced by international standard-setting bodies recognized by the WTO, such as the Codex Alimentarius, as well as the value of providing reasonable transition periods in the event that MRL modifications are finally determined

2.381. The representative of Costa Rica provided the following statement. Costa Rica wishes to express its support for the concern raised by Paraguay, Brazil, Australia and Colombia in relation to the draft implementing regulation notified by the European Union, under which approval for the use of mancozeb would not be renewed. We support the statements of the delegations that have joined the proponents of this concern.

2.382. The representative of Chile provided the following statement. The delegation of Chile welcomes the previous statements on the non-renewal of the approval of the active substance mancozeb by the European Union and reiterates the trade concern expressed in this and previous meetings of the TBT Committee.

2.383. The representative of Panama provided the following statement. In the interests of time, we would like to draw attention to our previous comments on this issue. We urge the European Union to reconsider this measure and avoid unnecessarily restricting trade. We also request that the European Union offer a reasonable timeframe that respects the cycles of the agricultural sectors that would be affected by the imposition of the new MRLs.

2.384. The representative of Guatemala provided the following statement. Guatemala maintains its position on the concern regarding the non-renewal of the approval of the active substance mancozeb, because there is no information that scientifically demonstrates the damage the active substance mancozeb could cause to human health. The European Union has mentioned on previous occasions that it has identified potentially negative effects for human health, without bringing scientific evidence to the discussion table. The European Union has notified the Committee on Technical Barriers to Trade of the non-renewal of the approval of the active substance mancozeb. This will lead to a subsequent revision of the current permitted maximum residue levels, which will have a direct impact on agricultural exports to the European Union from countries with tropical climates. Mancozeb is key for the production of a number of strategic agricultural crops that are exported to the European Union, such as fruit (including bananas and plantains) and vegetables, which would also affect other Latin American countries. In the light of the above, we request the European Union not to change the current maximum residue levels for mancozeb so as to avoid affecting the production and exports of Guatemala and other Latin American countries.

2.385. The representative of Argentina provided the following statement. Argentina continued to share the general concern over the hazard-based approach used by the EU as regards regulating pesticides, without identification of risk, which is an unnecessary technical barrier to trade. In the case of mancozeb, this is a broad-spectrum fungicide used for growing fruits, vegetables and extensive crops. Although Argentina shares the EU's concern over strengthening the protection of human health and the environment, we would once again like to underline the importance of complying with Articles 2.2 and 2.4 of the TBT Agreement to ensure that the technical regulations are not more trade-restrictive than necessary to fulfil a legitimate objective. We are particularly concerned by the number of substances banned by the EU Commission, which has been increasing with each passing day. This situation may have serious consequences for various WTO Members, particularly developing countries, whose populations and economies are highly dependent on agricultural exports. It is therefore crucial for the EU to use a risk assessment approach in the analysis of these regulatory changes and to have conclusive scientific studies to determine the various aspects that may affect human health and the environment.

2.386. In response, the representative of the European Union provided the following statement. The European Union thanks WTO Members for raising this issue. We have provided detailed explanations on this issue in previous TBT Committees. 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 (the "EU Plant Protection Products Regulation").[76] The Implementing Regulation (EU) No 2087/2020[77] entered into force on the 4 January 2021. The non-renewal was based on a scientific assessment conducted under the EU Plant Protection Products Regulation by experts from the EU member States and the European Food Safety Authority (EFSA). Since EFSA concluded that mancozeb does not meet the approval criteria as outlined in Article 4 of Regulation (EC) No 1107/2009, the approval of this substance was not renewed.

2.387. EU member States had to withdraw existing authorisations for plant protection products containing mancozeb at the latest six months from the date of entry into force of the Implementing Regulation (by 4 July 2021). Possible grace periods granted by EU member States, in line with Article 46 of Regulation 1107/2009, expired, at the latest, on 4 January 2022, 12 months after its entry into force. The EU would like to inform Members that EFSA has started a review of the existing

[76] Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives79/117/EEC and 91/414/EEC. OJ L 309 24.11.2009, p. 1.

[77] Commission Implementing Regulation (EU) 2020/2087 of 14 December 2020 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, OJ L 423, 15.12.2020, p. 50.

Maximum Residue Levels (MRLs) for dithiocarbamates (a group of substances of which mancozeb is part). We informed Members at the last TBT Committee meeting that interested parties had been invited to actively contribute with relevant information to this MRL review through the main authorization holder, as described in document G/SPS/GEN/1494/Rev.1.[78] The EFSA scientific opinion on dithiocarbamates is expected to be published in the second half of 2022. For advice on alternatives to mancozeb, the EU pesticides database[79] is publicly available and contains information on all active substances, their approval status and their main purpose (e.g. fungicide, insecticide or herbicide). Independently of the situation under the EU Plant Protection Products Regulation, use restrictions of mancozeb have been introduced under the EU Chemicals legislation (REACH[80]), following the classification of the substance as CMR (carcinogenic, mutagenic or reproductive toxicant) 1A or 1B under that same Regulation.

2.1.4.42 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/68, G/TBT/N/IND/131, G/TBT/N/IND/143 (ID 632[81])

2.388. The representative of the United States provided the following statement. In the last five WTO TBT Committee meetings, the United States has urged India to provide a means by which US companies can resume shipments of toys to India. We note the inability to secure factory inspections required by a Quality Control Order (QCO) is not unique to the toy industry. Other Members report that companies in industries including chemicals, paper, and automotive face the same barrier shipping goods to India. The last shipment of toys to India by a US company was more than two years ago and if inspections of toy factories do not begin immediately, US companies are unlikely to ship any toys to India in 2022. Unfortunately, in July, during his monthly "Mann ki Baat" radio address, Prime Minister Modi celebrated the fact that imports of toys have fallen substantively in the last two years. In light of repeated confirmations from India that toy products produced by US-based entities are not the source of safety concerns, we urge India to consider means by which US companies can comply with the QCO without further delaying US companies' exports of toys to India.

2.389. The representative of the European Union provided the following statement. The increasing number of Quality Control Orders (QCOs) across sectors is sending worrying signals to EU industry, EU investors, and EU member States as the majority of QCOs introduced by India appear to have protectionist orientation and raise question in relation to their compliance with the WTO's TBT Agreement obligations. The EU is deeply concerned by the fact that QCOs usually prescribe Indian specific standards where international standards already exist. Furthermore, they make mandatory conformity assessment procedures that are more restrictive than necessary to fulfil their legitimate objective. The QCOs, in many cases require on-site audit at manufacturers' premises by an auditor of the Bureau of Indian Standards (BIS) for products manufactured in third countries to receive the approval/licence for exports to India. In view of the huge backlog of applications following COVID-19 pandemic, the audit exercise is still slow and often results in delays in issuance of licences, which has economic impact on trade, as goods cannot be placed in the Indian market without the ISI mark.

2.390. The QCOs cause extra burden and economic cost to the EU industry that has to undergo cumbersome procedures, including obligatory testing in Indian laboratories, to obtain necessary permissions and/or licences for products already tested and certified under established international standards. Furthermore, the foreign manufacturers have to make necessary modifications in their tooling systems to incorporate the ISI mark. This causes temporary shutdown of production lines to make necessary changes and results in disruption of plant activities as well as in the financial loss for the plants during the period of closure. In this context, the QCOs add little value for Indian consumers, making the reason of their introduction not evident. As stated in previous TBT Committees, the European Union is concerned about India's Toys Quality Control Order (QCO) (G/TBT/N/IND/131) and the certification requirements introduced by the Bureau of Indian Standards

[78] https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/SPS/GEN1494R1.pdf&Open=True

[79] https://ec.europa.EU/food/plant/pesticides/eu-pesticides-db_en

[80] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

[81] For previous statements follow the thread under ID 632.

(BIS). The EU refers to its previous interventions but would like to highlight that European industry continue to report the difficulties to work through the QCO.

2.391. The European industries indicates that the QCO remains challenging and the process is still very burdensome and complex. In addition, a huge concerns is related to the fact that the import policy (G/TBT/N/IND/143) has being applied on top of the QCO. To ensure the continued effectiveness of the Indian toy safety and quality regime under the QCO, the European Union would welcome that the Indian government considers clearly addressing and removing the current possible duplication of tests for QCO and at customs level under the DGFT notification for BIS certified products. According to recent information, we understand that now only the QCO is applicable and that the older regime is no longer in force and therefore there is no need of additional testing at customs anymore. However, we don't have a formal confirmation and we would welcome any further clarification in this regard. The European Union invites India to address the concerns raised and to alleviate the requirement for factory audits overseas. The European Union remains available to have bilateral exchanges to find an adequate solution.

2.392. The representative of Canada provided the following statement. As stated by Canada in previous TBT Committee meetings, the objective of India's quality control order regarding toys, as well as QCOs across many sectors, remains unclear. At the last TBT Committee, Canada was disappointed to hear that India reiterated the same response as in previous TBT Committees failing to address any of Canada's and other Members' concerns. Canada would once again ask India to provide a substantive response and explain what specific actions it has taken since the last TBT Committee to address Members' concerns and what further actions are planned in the near future to have imports of toys into India resume normally.

2.393. In response, the representative of India provided the following statement. As per the provisions of the QCO, the products specified therein shall bear a Standard Mark under a valid licence from BIS as per Scheme-I of the BIS (Conformity Assessment) Regulations, 2018. Under this Scheme, factory inspection is a mandatory requirement for the purpose of granting of licence. As per the product certification scheme of BIS, the availability of in-house testing facilities with manufacturers is required to operate a licence. However, BIS has allowed relaxations for toys manufacturers, including permitting sub-contracting of tests to BIS-recognized laboratories. As per the product-specific guidelines for toys, sub-contracting of tests other than physical, mechanical and electrical safety is allowed. Sufficient capacity for testing of toys is available in BIS laboratories and laboratories recognized by BIS under its laboratory recognition scheme (BIS LRS) for testing as per the relevant Indian Standards. Clause 12 of BIS LRS deals with the recognition of overseas laboratories.

2.394. The decision regarding recognition of overseas laboratories will be taken by BIS taking into account the MRA (Mutual Recognition Agreement) with the concerned nation. Foreign inspections were on hold due to the prevalent restrictions on international travel imposed. As the COVID-19 restrictions have eased out, BIS has started carrying out inspection where confirmation for travelling of fully vaccinated BIS officers has been received. BIS has nominated officers and applicants are asked to remit the inspection charges for carrying out inspection. On receipt of inspection charges, inspections are being planned. To date more than 350 preliminary inspections have already been carried out. However, if in some cases inspection are being delayed, it is due to difficulty in getting the visa. Further, it is to inform that BIS has already granted 24 licences for toys after Covid period.

2.1.4.43 Australia - Maturation requirements for imported alcohol (ID 636[82])

2.395. The representative of Brazil provided the following statement. Brazil continues to follow closely Australia's proposal to amend current regulations dealing with alcoholic beverages, and we would like to thank Australia for its response in the Committee's last meeting and for its engagement in bilateral talks. In past meetings, we have shared our concerns with Australian technical requirements applicable to cachaça, the Australian Customs Notice Nº 2007/19, which 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 sugarcane products), under which cachaça is classified in Australia. By granting the same treatment to cachaça

[82] For previous statements follow the thread under ID 636.

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.

2.396. Following a public consultation in late-2019, the Australian Border Force (ABF) further explored a potential avenue to amend the Customs Act 1901 (Customs Act) that would enable the legitimate importation of certain alcohol products into Australia whilst retaining the maturation requirements for brandy, whisky, and rum. According to a more recent public consultation, the Australian government is developing an approach that is looking to retain Australia's existing maturation requirement for imported brandy, whisky, and rum, but would establish a list of products exempt from this maturation requirement. The proposed list of exempt products would include Cachaça, Pisco and Bourbon. Brazil acknowledges progress in the course of action proposed in the last public consultation. It is regrettable that this issue is already three years long without any technical justification for the requirements. We support the creation of a list of exceptions to the rules set out today in section 105A, thus allowing certain cultural and geographical indications (i.e. Cachaça) that are not traditionally described as brandy, whiskey or rum to be imported into the Australian market.

2.397. In order to avoid any confusion in the Australian market or among Australian consumers, we support that none of the sugar-cane products imported to Australia (matured or unmatured) that are not specifically "rum" should be labelled or marked as "rum". We kindly urge Australia to clarify the following points, which could not be addressed in its previous statements. Could Australia please confirm if this new regulation will also establish new labelling requirements for products other than rum, brandy and whisky? Could Australia provide timeframes for the publication of the final text?

2.398. In response, the representative of Australia provided the following statement. We acknowledge Brazil's continuing interest in Australia's review of maturation requirements for certain imported alcohol products. Australia has convened a whole-of-government working group to consider concerns raised by trading partners regarding the maturation requirements for the importation of certain alcohol products into Australia and the domestic maturation requirements of brandy, whisky and rum. The working group is considering the legislative framework for the importation of certain unmatured alcohol products under section 105A of the Customs Act 1901. The whole-of-government working group is considering the legislative complexities and stakeholder concerns associated with this matter. The working group is comprised of Australian Government agencies to advise on a tried customs taxation and health aspects of imported certain unmatured alcohol products. The Australian Government will notify the Committee of any proposed legislative changes to section 105A of the Customs Act, and any other changes to alcohol import requirements in accordance with Australia's obligation under the TBT Agreement.

2.1.4.44 Panama - Onions and Potatoes Harvest Life and Sprouting Requirements, G/TBT/N/PAN/86, G/TBT/N/PAN/102, G/TBT/N/PAN/102/Add.1 (ID 662[83])

2.399. The representative of the United States provided the following statement. The United States is taking the floor for the eighth and final time in the TBT Committee to share our concerns with Panama's measures affecting onions and potatoes. We are extremely disappointed that Panama finalized and began implementation of these technical regulations. Given our extensive attempts at constructive engagement with Panama on this issue, including through requests made during technical meetings of our US-Panama Trade Promotion Agreement in May 2021, during eight TBT Committee meetings, in three meetings of the WTO Council for Trade in Goods, and at bilateral meetings in Panama, we are concerned that Panama has yet to provide a substantive response, particularly with regard to the lack of scientific and technical justification for these measures. Specifically, we remain concerned with Panama's harvest date requirements and prescriptive storage criteria for both commodities, neither of which appear to be based on science. Through its measures, it does not appear as though Panama has considered international standards and best practices, as suggested by the United States in comments submitted during the development of these technical regulations.

2.400. We, once more, ask that Panama meet its international and bilateral obligations, and we maintain our availability and commitment to work with Panama to refine these measures so that they meet Panama's legitimate objectives while not being unnecessarily trade restrictive. Despite

[83] For previous statements follow the thread under ID 662.

our disappointment, we note that our bilateral engagements led Panama to delay implementation of the potato regulation several times. On one occasion, Panama temporarily extended the harvest time window for onions from 90 days to 120 days. Beyond the measures in question, the United States is concerned that Panama is developing similar technical regulations to protect other sensitive products in Panama. Importation of US onions, potatoes, and other products benefit consumers in Panama by increasing access to affordable and nutritious foods. Moving forward, we encourage Panama to remove unnecessary barriers to its market so that both Panama and the United States can continue to enjoy the mutual benefits of trade between our two countries. The United States will continue to raise its concerns at the WTO Council for Trade in Goods. Additionally, we will continue supporting our trade partners who are also hurt by measures implemented by Panama that appear to lack justification. We reiterate our request that Panama suspend implementation of the potato and onion regulations until we have an opportunity to hold further technical discussions regarding these measures.

2.401. The representative of Canada provided the following statement. Canada would like to once again support this specific trade concern raised by the US regarding Panama's new quality requirements for fresh potatoes established by the Ministry of Industry and Commerce on 20 February 2020. In its last intervention at the July 2022 WTO TBT Committee, Canada indicated that the new quality requirements, which have been implemented, have a direct impact on our ability to export potatoes to Panama. Unfortunately, this situation has not changed. As such, we continue to share the concerns raised by the United States and request that dialogue occur with Panama's Ministry of Commerce (MICI) to explore solutions relating to the restrictive time limits for storage and marketing, as well as the zero tolerance for sprouting. Canada respectfully requests again that Panama pause the enforcement of these requirements to allow for additional technical dialogue to occur and ensure that Panama's quality standards do not create unintended barriers to our mutually beneficial bilateral trade in agriculture.

2.402. In response, the representative of Panama provided the following statement. Panama would like to thank the United States and Canada for their comments; their concerns have been noted. As mentioned by the delegation of the United States, Panama has been receptive to comments from its trading partners, as evidenced by the extension of the measure on onions. Panama reiterates its commitments to transparency and confirms that the Panamanian authorities are currently continuing to address this issue in the capital with all relevant government bodies, including the Ministry of Trade, the Panamanian Food Authority and the Ministry of Agriculture. We would like to reiterate that any update will be duly shared and communicated to this Committee.

2.1.4.45 European Union - Wine labelling requirements – listing of importers for multiple destinations (ID 659[84])

2.403. The representative of Australia provided the following statement. Australia recognizes the EU's right to take measures necessary to protect human health and safety, by ensuring wine is labelled in a manner that is not misleading to consumers. Australia thanks the EU for their engagement to-date in this Committee and for the clarity they have provided around the EU's wine labelling requirements. This issue remains an ongoing concern and barrier for Australia's wine industry, but we note the positive discussions that have taken place in the context of the Australia-EU Wine Agreement and recognize this as an important forum where we may discuss this issue bilaterally. Further bilateral engagement with the EU is appreciated as we continue to work through this issue to ensure a mutually satisfactory outcome.

2.404. In response, the representative of the European Union provided the following statement. The European Union thanks Australia for raising this issue. As explained in previous TBT Committees, according to EU rules, it is not possible to list "importers" for multiple destinations on the same wine bottle label. The EU and Australia may discuss this issue in the context of the EU-Australia FTA and Wine Agreement and explore whether a mutually satisfactory resolution can be found.

[84] For previous statements follow the thread under ID 659.

2.1.4.46 Republic of Korea - Revision of Safety Conformation Criteria for Textile Products for Infants, G/TBT/N/KOR/678 (ID 652[85])

2.405. The representative of the European Union provided the following statement. The EU would like to recall its concerns raised in previous Committee meetings regarding the additional costs of testing infant clothing for the Korean market. The EU acknowledges the importance of safety for infant products but is nevertheless trying to reduce the additional cost burden placed on overseas producers by allowing the conformity assessment of these products to the specific Korean requirement to be carried out closer to their place of production. One example of this cost difference is an infant shirt with plastic buttons. The compliance costs in the KOTITI lab in Korea is five times higher in comparison with the same item for one of the biggest selling markets in the world. We note again that according to Article 22(7) of the Special Act on the Safety of Products for Children, a laboratory may conclude a contract with any domestic or foreign institution, which conducts tests and inspections on the safety of products for children subject to safety verification, to mutually recognize the results of tests and inspections on the safety of these products. According to Article 35 of the Enforcement Rules of the Special Act on the Safety of Children's Products, there are three different ways by which a foreign testing agency could be enabled to conclude a contract to mutually recognise the testing results. Therefore, testing or inspection results carried out by overseas institutions can in principle be recognized. This possibility would allow for product safety verification to the specific Korean requirement for infant clothing to be performed outside of the Republic of Korea by internationally accredited laboratories. The EU urges the Republic of Korea to explore this solution, which would also reduce the environmental impact of shipping tonnes of clothing to Korea for testing.

2.406. In response, the representative of the Republic of Korea provided the following statement. The Republic of Korea would like to thank the EU for its concerns and comments regarding the "Requirements for Textile Products for Infants" of Korea, and we would like to take this opportunity to respond to the request, which was raised by the EU at this TBT Committee. Textile products for infant under 36 months of age must be tested and inspected by a designated laboratory prescribed by the Special Act on the Safety of Products for Children to verify that the relevant product meets the safety standards specific to infant textile products. In such cases, we would like to inform the Committee that a designated laboratory may enter into a contract for the mutual recognition of test results and inspections on verifying the safety of infant's textile products with a foreign laboratory or institution according to Article 22(7) of the Special Act on the Safety of Products for Children and Article 35 of the Enforcement Rule of the Special Act on Products for Children. The contract for mutual recognition is a matter to be dealt with between the designated testing laboratory and a foreign testing laboratory or institution, and we inform you that if discussions between testing laboratories for a contract are made, the Korean government will faithfully fulfill its role under the Special Act on the Safety of Products for Children. If necessary, we hope to have an opportunity to explain to the EU the requirements and procedures for mutual recognition of test results under the Special Act on the Safety of Products for Children. We very much hope to resolve the EU's concerns at this TBT Committee in a mutually beneficial manner.

2.1.4.47 Kingdom of Saudi Arabia - Technical Regulation for limiting and restricting hazardous materials in electrical and electronic equipment, G/TBT/N/SAU/1166 (ID 666[86])

2.407. The representative of the United Kingdom provided the following statement. The United Kingdom thanks Saudi Arabia for the continued constructive engagement on their notification which sets out its technical requirements for the restriction of hazardous substances in electrical and electronic equipment. The United Kingdom welcomes that Saudi Arabian authorities will now accept a Supplier's Declaration of Conformity. If implemented as described, acceptance of Supplier's Declaration of Conformity will be consistent with common international practice. It will also provide businesses with a less burdensome means of demonstrating compliance with the technical regulation than third-party conformity certification. The United Kingdom appreciates that Saudi Standards, Metrology, and Quality Organization (SASO) stated in their previous written response to UK concerns that they will amend the implementation guidelines to reflect the acceptance of a Supplier's Declaration of Conformity. We would encourage Saudi Arabia to also amend the technical regulation

[85] For previous statements follow the thread under ID 652.
[86] For previous statements follow the thread under ID 666.

itself to reflect this change, and notify the updated text of the technical regulation and the amended guidelines to the TBT Committee in an addendum notification.

2.408. Where several regulations that require a Declaration of Conformity apply to a product, it is common international practice that the manufacturer is allowed to merge all these declarations into one document. We would be grateful if Saudi Arabia could confirm that Saudi Arabian authorities will accept a single Declaration of Conformity to cover all relevant legislation. We have also been in touch to seek clarification on the conditions in which the statement of conformity from the supplier is accepted and look forward to receiving this. The United Kingdom thanks Saudi Arabia for their continued productive engagement, and we look forward to future correspondence with Saudi Arabia on this matter.

2.409. The representative of the United States provided the following statement. The United States thanks Saudi Arabia for its continued engagement on the "Technical Regulation for the Restrictions of Hazardous Substances (RoHS)" for electrical and electronic equipment (EEE). As previously noted, we appreciate the decision to provide an extended and staged implementation period for the regulation, which began in July. We were also pleased by Saudi Arabia's July statement in this Committee indicating that a supplier declaration of conformity would be accepted under the RoHS. We would, however, like to see clarification on precisely who may use this declaration. Please further explain Article 5-3 of the regulation and how an importer can utilize a supplier's declaration of conformity that has been submitted by a manufacturer or a manufacturer's legal representative in order to bring a product into the Saudi market. Please clarify whether under the regulation, "manufacturer" includes, in addition to any natural or legal person who manufactures an EEE, an entity who has an EEE designed or manufactured and markets it under their name or trademark. Please clarify whether Annex 1-B is a list of exemptions for use of the hazardous substances in monitoring and controlling equipment, similar to the list of exemptions for use of hazardous substances for other electrical and electronic equipment in Annex 1-A. We look forwarded to continued bilateral discussions with Saudi Arabia as it moves forward with implementation and thank Saudi Arabia for its fulsome engagement - with governments and with private sector stakeholders - and for taking our comments into account.

2.410. The representative of Switzerland provided the following statement. Switzerland would like to support the interventions made by previous speakers on the Kingdom of Saudi Arabia's Technical Regulation for limiting and restricting hazardous materials in electrical and electronic equipment. Switzerland appreciates the Kingdom of Saudi Arabia's recent efforts to allow for a smooth implementation of the measures, such as the postponement of the application of the measures, the phased implementation, the issuance of a guidance document, the useful engagement with interested Members and stakeholders. We do also appreciate the Kingdom of Saudi Arabia's acceptance of suppliers' declaration of conformity under this technical regulation. Switzerland encourages the Kingdom of Saudi Arabia to continue to ensure that these requirements do not create unnecessary obstacles to trade: We would in particular welcome any additional clarifications as to the implementation of the requirements, in particular the modalities to use supplier's declaration of conformity. Finally, Switzerland encourages the Kingdom of Saudi Arabia to continue engaging with interested stakeholders in order to support the implementation of these requirements.

2.411. In response, the representative of the Kingdom of Saudi Arabia provided the following statement. Kingdom of Saudi Arabia would like to thank the United Kingdom, United States, and Switzerland for their valuable comments on the Technical Regulation for Restriction of Hazardous Substances. Saudi Arabia is aiming at protecting human health and safety, and the environment, by regulating to ensure that hazardous substances are not above certain levels in consumer products such as Electrical and Electronic Equipment products. The Saudi Technical Regulations are developed in line with international practices and TBT good regulatory practices (GRP). On 10 August 2022, Saudi Arabia notified TBT secretariat with the addendum notification (G/TBT/N/SAU/1166/Add.2) for the technical regulation of Restriction of Hazardous Substances by accepting self-declaration for manufacturers or their legal representatives as a result of the bilateral engagement with the interested countries. Additionally, Saudi Standards, Metrology and Quality Organization SASO circulated an announcement to all certification bodies (CBs) to apply the self-declaration.

2.412. Regarding the concern about who may use this declaration and how an importer can utilize a supplier's declaration of conformity, we would like to point out that all devices included in the regulation scope are covered by other regulations. Furthermore, RoHS regulation does not mandate a separate certificate, this means the products included in the scope of this regulation are also

included in the scope of other regulations. Therefore, the supplier is mandated to provide the conformity assessment bodies with the self-declaration. In addition, conformity assessment body must issue a single certificate for the product, which includes all the technical requirements contained in the regulations to which the product is subject. It is the responsibility of the accepted conformity assessment bodies to ensure that all requirements are included in the technical file for products subject to more than one technical regulation. Additionally, Annex (1-a) and Annex (1-b) of the Regulation, are exempted from Maximum Permissible Concentration Values by Weight in Homogeneous Materials for Hazardous Substances in Electrical and Electronic Equipment and Devices. In conclusion, Saudi Arabia is always delighted to collaborate and engage with all interested countries and stakeholders, in order to address related issues bilaterally.

2.1.4.48 European Union - Commission Delegated Regulation (EU) 2019/945 on Unmanned Aircraft Systems and on Third-country Operators of Unmanned Aircraft Systems, G/TBT/N/EU/628 (ID 585[87])

2.413. The representative of China provided the following statement. China would like to thank the EU's reply to our concerns. We would like to further clarify why we believe the noise limit 83dBA is safe enough, not noise pollution to people. The pilots who use C1 and C2 drones are exposed to the drones for a longer time and within a shorter distance than those the drones could potentially affect. If it is safe and not noisy for the pilots, it is more so for the latter group of people. Moreover, the flying duration of C1 and C2 drones is normally less than one hour due to battery endurance. So, even if the drone is used in residential areas, the short operation time is a guarantee not to cause a continuous impact on people. We would like the EU to provide the basis or calculating formula for the noise limits of C1 and C2 drones to be set as less than or equal to 81dBA. Currently, we still recommend maintaining the 83dBA limit. We have given our evidence and reasoning at the last meeting. We stand ready for further discussion with the EU.

2.414. In response, the representative of the European Union provided the following statement. Thank you to the Delegation of China for its comments on the draft Commission Delegated Regulation[88] on unmanned aircraft systems, and on third-country operators of unmanned aircraft systems which was notified to the WTO on 9 January 2019 under G/TBT/N/EU/628. Commission delegated Regulation (EU) 2019/945 on unmanned aircraft systems and on third-country operators of unmanned aircraft system and Commission Implementing Regulation (EU) 2019/947 on the rules and procedures for the operation of unmanned aircraft were published in June 2019. Regarding the noise requirement, the EU would like to draw the attention of the Delegation of China to the fact that those requirements apply to a limited number of products (C1 and C2 UAS). The objective of the requirement is not so much to protect the health of the drone pilot as to reduce noise pollution for citizens. Indeed, the societal acceptability of drone operations is essential to allow the development of their applications. It is therefore important to ensure that this development is accompanied by a gradual improvement in the performance of drones. This is why the regulation, starting from the state of the art, imposes a progressive reduction of the noise limits taking into account the technical feasibility, even if this should induce some performance limitation. It is always possible for the manufacturer to put his drone on the market in class C3 for which no limit is set insofar as the operations must be carried out far from people.

2.1.4.49 European Union - Withdrawal of the approval of the active substance alpha-cypermethrin, G/TBT/N/EU/770, G/TBT/N/EU/908 (ID 694[89])

2.415. The representative of Brazil provided the following statement. Brazil would like to express its concerns related to European notification 770 regarding the Commission Implementing Regulation proposal to withdraw the approval of the active substance alpha-cypermethrin. Alpha-cypermethrin is registered in Brazil as an insecticide used against harmful pests that damage a variety of crops, including soy, cotton, corn, citrus, watermelon, peanut, coffee, among other products exported to the European Union. Withdrawal of the register of said substance and automatic reduction of MRLs will significantly affect the income of Brazilian farmers, especially citrus producers. The substance is essential to control greening, a disease affecting citrus orchards worldwide. Greening has been recognized by EFSA itself as a priority pest for control, according to the

[87] For previous statements follow the thread under ID 585.
[88] COMMISSION DELEGATED REGULATION (EU) 2019/945 of 12 March 2019 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems.
[89] For previous statements follow the thread under ID 694.

Commission Delegated Regulation (EU) 2019/1702. The Brazilian citrus industry plays an important role in generating jobs in the countryside. Export of orange juices to the European market represented almost USD 1 billion of exports in the 2019-2020 marketing year.

2.416. Alpha-cypermethrin is also an important component to conduct integrated pest management, once it may be combined with other insecticides to contribute to increase their useful life, ensuring efficient pest control and maintaining the sustainability of crop production. In light of the above, Brazil would like to kindly encourage the EU to adopt MRLs for imported products in accordance with the limits set under the Codex Alimentarius. Also, we would like to consult if the EU may extend the approval of the active substance, which expired on 31 October. Such measure would minimize the impact on Brazilian citrus producers.

2.417. The representative of Kenya provided the following statement. The EU has proposed new regulations withdrawing the approval of the active substance alpha-cypermethrin. Kenya uses this product in plant protection, animal health as well as public health management. The proposed technical regulation will hurt Kenya which uses alpha-cypermethrin in the management of plant pest, vectors of animal and public health importance. This measure, therefore, will undermine Kenya's pursuit of legitimate objectives that is the protection of human health from tropical diseases as well as ensuring food security. Kenya notes that the EU has allowed for emergency use of this active substance to some of its members owing to lack of alternatives. This is inconsistent with the non-discrimination principle of the WTO and the provisions of Articles 2 and 5 of the TBT Agreement. Products containing alpha-cypermethrin have been registered in Kenya and are used for: a. the control of Fall Army Worm (FAW); b. public health use for control of mosquitoes; c. control of common insect pests such as lepidopterans in vegetables; and d. animal health for control of vectors like ticks. Fall armyworm is a threat to maize production and poses an additional threat to food and nutrition security for millions of people. This therefore calls for its control to reduce the menace. Products containing alpha-cypermethrin are widely used to control public health pests such as mosquitoes, cockroaches, flies, etc. Public health remains an important part as it promotes and protects the health of people and the communities. These products, when properly used, have not had any proven negative effects on humans. The EU measure therefore raises serious concerns of inconsistency with the TBT Agreement Article 2.2. The EU does not have sufficient scientific justification for it, and therefore needs to provide scientific justification for the measure. The regulation is more trade restrictive than necessary. The EU measure therefore raises serious concerns of inconsistency with the TBT Agreement Article 2.2. Kenya requests the European Union to consider the withdrawal of the Regulation as the measure is more trade restrictive than necessary.

2.418. The representative of Paraguay provided the following statement. Paraguay wishes to reiterate the importance of this substance in controlling pests that attack crops of great economic importance to the country, such as maize, soybean, sunflower and cotton. In this regard, Paraguay once again requests the European Union to take into account, when reviewing the MRLs for this substance, information on pesticides provided by the specialized agencies recognized by the WTO, such as the Codex Alimentarius, reconsider its approach and base its decisions on conclusive scientific evidence and real risk weightings, in accordance with international standards and principles

2.419. In response, the representative of the European Union provided the following statement. The EU thanks Brazil, Kenya, and Paraguay for raising this issue. As explained in previous TBT Committees, the approval of alpha-cypermethrin had to be withdrawn, as the Commission Implementing Regulation that renewed its approval in 2019 included the condition that the applicant had to submit confirmatory information as regards the toxicological profile of certain metabolites by 30 October 2020. In addition, confirmatory information had been required for three other points by other deadlines. However, in October 2020, the applicant informed the Commission that it would not submit any confirmatory data. Therefore, as the information required in accordance with Article 6(f) of Regulation (EC) No 1107/2009[90] on plant protection products was not submitted and the applicant had clearly stated that he will not fulfil his regulatory obligations, the approval for alpha-cypermethrin had to be withdrawn according to Article 21(3) of Regulation (EC) No 1107/2009.

2.420. As regards Maximum Residue Levels (MRLs), a review of the whole group of cypermethrins is currently ongoing by the European Food Safety Authority (EFSA). Existing Codex maximum

[90] Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC. OJ L 309 24.11.2009, p. 1.

residue limits and import tolerances will be considered in this review. EFSA intends to finalize the review in the second half of 2022. After that, the EU will consider the outcome and follow up on it, if appropriate. If there was a need for a specific measure on MRLs, such a measure would be notified to the WTO/SPS Committee. If Brazil and other Members consider it necessary to ensure that MRLs for alpha-cypermethrin on relevant crops that were based on previous and now obsolete EU uses remain or should be newly set at higher/different levels, they may wish to submit an application for setting import tolerances according to Article 6 of Regulation (EC) No 396/2005[91] on maximum residue levels of pesticides in or on food and feed of plant and animal origin. The EU would like to invite Brazil, Kenya, Paraguay to contact the relevant authorities in Belgium, the Rapporteur member State, and to ensure that the necessary information will be available in due time for the evaluation by the Rapporteur member State and EFSA.

2.1.4.50 Belgium - Draft law introducing additional security measures for the provision of mobile 5G services, G/TBT/N/BEL/44, G/TBT/N/BEL/45 (ID 713[92])

2.421. The representative of China provided the following statement. China thanks the EU and Belgium for the reply. For the latest notification G/TBT/N/BEL/47, China will provide comments soon. For the notification G/TBT/N/BEL/44, we would like to reiterate our core concerns. Firstly, as the core content of the draft law, the risk assessment criteria neither relates to product characteristics nor does it contain objective standards, and therefore is inconsistent with the requirements for technical regulations under the TBT Agreement. Also, Belgium could well have referred to international technical standards for 5G equipment safety as legislation guidance. But they did not, which fails to conform to Article 2.4 of the TBT Agreement that requires using existing international standards as a basis for such technical regulations. Instead, the draft law assesses 5G product security based on the vendors' identity and capacity, which are discriminatory and vague, lacking objectivity and impartiality. It violates relevant obligations set in Articles 2.1 and 2.2 of the TBT Agreement. Secondly, the draft law does not specify the scope and ways in which the high-risk vendors are to be prohibited or restricted, nor does it illustrate a benchmark and legal remedies for high-risk vendors to seek a non-risk accreditation. Such practice denies procedural fairness and deviates from the general principles of the WTO for trade laws and regulations to be enforced in a uniform, fair and reasonable manner. China urges compliance with the basic principles of the WTO and the specific requirements for technical regulations under the TBT Agreement and other relevant WTO provisions, for the 5G equipment security standards and measures to be provided and applied in a fair and reasonable manner based on objective characteristics of the products, taking into consideration existing international standards and good practices in the industry. The vendors identified as high risk should be provided with sufficient ways for legal remedies.

2.422. In response, the representative of the European Union provided the following statement. Thank you Chair. We thank China for its interest in this measure and we look forward to China's upcoming comments on notification G/TBT/N/BEL/47. As usual, China's comments will be duly considered in line with the recommendations of the WTO and the TBT Committee. Regarding the concerns about notification G/TBT/N/BEL/44, we would like to refer back to our previous statement made during the July TBT Committee of this year.

2.1.4.51 Republic of Korea - Regulation for supporting low carbon solar module product (ID 744[93])

2.423. The representative of China provided the following statement. Regarding the regulation for supporting low-carbon solar module products of the Republic of Korea, China would like to raise the following four points. Firstly, the life cycle assessment reports submitted by Chinese companies in accordance with ISO 14040 have not been recognized by Korea, while the reports based on the same calculation method have been recognized by EU member States. China hopes that Korea could explain its implementation criteria for reviewing LCA reports. If there are no such implementation criteria, the submitted reports should be reviewed in accordance with ISO and other international standards, and the report review process and requirements should be made public. Secondly, we hope Korea could publish the list of qualified third-party certification institutions for companies to

[91] Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC. OJ L 70, 16.3.2005, p. 1.

[92] For previous statements follow the thread under ID 713.

[93] For previous statements follow the thread under ID 744.

choose from. Thirdly, the review time of the report should be comparable to the time other Members take to review similar reports, which means completing approval within 30 days after acceptance, so as to improve efficiency. Fourthly, Chinese companies are required to submit much sensitive or trade secret information, which is unnecessary and unreasonable. We hope Korea could reasonably set the scope of data submission in accordance with international practices.

2.424. In response, the representative of the Republic of Korea provided the following statement. Korea would like to thank the People's Republic of China for its continuous interests and statements regarding the "Regulation for supporting low carbon solar module product" of Korea. Since the STC statement delivered today by China is a repetition of the previous statements, we kindly request China, for the time being, to refer to Korea's answers made at the last July TBT meeting. Further, if China could provide more specific information regarding its difficulties (e.g., actual cases of certification delays, specifics of the trade secret or sensitive information, etc.), we will convey the information to the competent regulatory authority so that more detailed answer will be delivered to China. Korea asks for China's continued interest and cooperation to address this issue in a constructive manner.

2.1.4.52 India - Approved models and manufacturers of solar photovoltaic modules order, 2019 (ID 742[94])

2.425. The representative of China provided the following statement. China believes India's Approved models and manufacturers of solar photovoltaic modules order, 2019 discriminates against foreign producers and products in terms of the review process, the requirement on feedback time, and on sales terms, which places foreign producers in less favourable conditions and protects domestic producers. It is not consistent with the national treatment principle of GATT and Articles 2.1, 5.1, and 5.2 of TBT. China suggests that the Ministry of New and Renewable Energy (MNRE) of India and the National Institute of Solar Energy (NISE) adjust the measures, treat domestic and foreign companies equally, and publicize the audit process and time schedule so as to improve the certification efficiency. In NISE's documentation and during the on-site verification process, the certification standards and rules are not clear, no guidance for the manufacturers, and no effective feedback and communication from the authorities in the ALMM audit application process. It is against the transparency principle of GATT and TBT Articles 5.1, 5.2, and 5.6. Clear certification standards and auditing processes should be publicized.

2.426. After charging Chinese companies high fees for ALMM application and testing, on-site inspection and audit have been delayed due to the COVID-19 pandemic. Considering the pandemic circumstances, particularly the travel restrictions, there should be alternative solutions to on-site inspection of overseas manufacturers, such as entrusting foreign certification bodies to conduct on-site inspection accompanied by necessary remote video monitoring. Besides, we request India to postpone the implementation of the ALMM Act until 8 months after the completion of the on-site inspection. The fees charged for ALMM certification are unreasonable. Currently, ALMM certification fees are charged according to the total production capacity of the manufacturer, which is much higher than the actual export to India. It is against the obligation to control the fees in Article VIII:1(a) of GATT and not to create unnecessary obstacles to trade in the TBT Agreement. It is recommended that India follow the agreement and set a reasonable price standard. The objectives of ensuring the quality of photovoltaic modules could well be achieved by BIS certification. To require ALMM certification is unnecessary, burdensome, and creating an obstacle to trade. It is against Article 2.2 of the TBT Agreement. We suggest India withdraw the ALMM order.

2.427. In response, the representative of India provided the following statement. We have already provided a very detailed response on this STC in previous TBT meetings. This included, *inter alia*, why the proposed rules were neither discriminatory nor trade restrictive. We also explained in detail the GATT-conformance for the proposed rules. The Secretariat is requested to reflect the comments captured in G/TBT/M/87 in paragraphs 2.458 to 2.461 for this meeting as well. The BIS is undertaking onsite inspections where fully vaccinated BIS officers are able to travel and any delays are only due to the delays in procuring visa. The additional comments made today have been relayed to the capital for their consideration.

2.428. *Statement from June 2022 meeting.* 1. The Indian Government vide F.N0.283/54/2018-GRID SOLAR "Approved Models and Manufacturers of Solar Photovoltaic Modules Order, 2019 ('ALMM

[94] For previous statements follow the thread under ID 742.

Order') provides for enlistment of eligible models and manufacturers of solar PV cells and modules complying with the BIS Standards and publish the same in a list called the "Approved List of Models and Manufacturers" (ALMM). The registration process and conditions prescribed are uniform irrespective of the nationality of the manufacturer. In other words, no distinction is made between domestic producers and overseas producers. There are no separate provisions for domestic producers and overseas producers with respect to review and feedback time. There may be some delay with respect to overseas producers due to logistical issues, however, the same cannot be considered as being discriminatory or unreasonable. India requests China to provide more details in this regard. India will review the information and provide its response.

2.429. 2. India has published ALMM Order, Guidelines, Application formats and necessary FAQs on its website.[95] The ALMM Order and Regulations are transparent and clearly spell out the process and the documentation requirements for enlistment under the ALMM List. However, India welcomes any suggestions on further improvement of the certification standard and process and will consider such suggestions with an open mind. 3. Foreign inspection visits were on hold due to restrictions on international travel because of the ongoing COVID-19 pandemic. As the situation of COVID-19 improves and the restrictions are eased, inspections will be planned by NISE. There is no provision in ALMM Order or Regulations for remote assessment or any other means for inspection. 4. Under the ALMM Order and Guidelines, a standard fee has been prescribed for all entities which wish to enlist under the ALMM scheme. The said regulation states as under:

2.430. 3.1 The application fee for one model of module /cell shall be Rs. 5,000/- per MW of the total installed manufacturing capacity for solar PV modules and Rs. 5, 000/- per MW of the total installed manufacturing capacity for solar PV cells, of the applicant. However, as a measure of further facilitation to small manufacturers, for PV module manufacturers having total installed manufacturing capacity less than or equal to 50 MW, the application fee for one model of module is Rs.2,500/- per MW of the total installed manufacturing capacity for solar PV modules, of the applicant. 3.2 The "model" as mentioned in (3.1) above, refers to modules / cells of same nominal power output rating. All BIS approved modules/ cells of the applicant with same nominal power output rating shall be treated as one model. 3.3 In case the application consists of multiple models, the application fee shall be as per 3.1 above for one model and additional 1% of this for every additional model. 4.1 The fee has been determined based on total installed manufacturing capacity as ALMM is intended in respect of manufacturer and total capacity and not actual production or export quota. It is also important to note that the said application fee and other charges are uniform, irrespective of nationality of the producer — whether Indian or overseas producers. 4.2 Article VIII(1) (a) of GATT 1947 states that "All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes." 4.3 As stated above, the application fee charged under ALMM regulations is commensurate with the services provided and is uniform irrespective of nationality of the producer. Thus, the application fee cannot be considered as an indirect protection to domestic products or as charges additional levied only on imports. 4.4 Thus, India considers that the application fee charged under ALMM regulations is consistent with Article VIII (1) (a) of GATT 1947 and the said fee is unlikely to cause unreasonable burden or restrictions on international trade.

2.431. 5. The BIS certification requirement deals with quality control of the solar cells and modules. The ALMM Order provides for enlistment of eligible models and manufacturers of solar PV cells and modules complying with the BIS Standards. While BIS certification is with respect to maintaining the quality of the product per se, ALMM certification intends to enlist eligible models and manufacturers, producing the said solar cells and modules. ALMM is thus, aimed to ensure the reliability of the producers of the enlisted models. Thus, ALMM and BIS certifications are reasonable requirements in the larger public interest to ensure quality of the product as well as ensure reliability of the producer. ALMM intends to plug this aspect to ensure protect consumer interests and ensure larger energy security of the country, which BIS does not provide.

[95] https://mnre.gov.in/solar/manufacturersand-quality-control.

2.1.4.53 India - Plastic Waste Management (Amendment) Rules, 2021 and 2022 (ID 719[96])

2.432. The representative of the United States provided the following statement. We continue to have concerns with India's Plastic Waste Management (Amendment) Rules, 2022 (PMW Amendment Rules). Unfortunately, India did not address our questions as raised at the July Committee meeting, and so we refer India to our previous statement. We are also aware that US stakeholders have requested further clarification on some of the terms, provisions, and categorizations in the PWM Amendment Rules in order to effectively comply with the measure. For example, stakeholders have noted the need for clarification on: (i) reporting obligations of impacted sectors and the corresponding process administered by the Ministry of Environment, Forest and Climate Change; (ii) the Extended Producer Responsibility (EPR) fee calculation, especially in cases in which a company is not able to take back or collect the retail packaging; and (iii) how producers, importers, and brand-owners can meet their EPR obligations pursuant to section 8.3 by purchasing surplus EPR certificates from other producers, importers, and brand owners of the same category and how certain packaging is classified in the four categories listed in section 5 of the measure. For example, what category (I, II, III, or IV) would packaging such as blister packs and shrink/transport wrap film fall under?

2.433. We understand from guidance published by the Ministry of Environment, Forest, and Climate Change that the regulation went into effect on 1 July 2022. While we support India's objective to mitigate pollution caused by plastic waste, we have concerns as to the implementation of this measure given the lack of notification and formal input from stakeholders and WTO Members. At the July Committee meeting, India noted that these rules were not discriminatory and not a barrier to trade, but that is not an exception to India's obligation to notify technical regulations that may have a significant effect on trade. We again urge India to notify this measure to the WTO TBT Committee.

2.434. In response, the representative of India provided the following statement. We thank the delegation of the USA for their continued interest in this issue. The Plastic Waste Management Rules, 2016, provides India's statutory framework for plastic waste management. Rule 4 of the Plastic Waste Management Rules, 2016, provides a minimum thickness requirement for plastic carry bags and plastic sheets used in packaging. Rule 9 casts Extended Producer Responsibility on Producers, Importers and Brand Owners for environmentally sound management of Plastic packaging introduced in the market along with the products. Since 2016, the EPR targets already were 100% plastic packaging introduced in the markets. The EPR targets have been arrived at after undertaking statutory consultation with stakeholders in the country. The EPR targets are achievable given the amount of plastic packaging introduced annually. The EPR Guidelines have provided for establishing a committee that reviews the implementation of EPR Guidelines and can suggest amendments as required. The EPR Guidelines have provided staggered EPR targets as given below: 2021-22: 25%; 2022-23: 70%; 2023-24: 100%. The targets for recycling plastic waste, reuse of rigid plastic packaging and using recycled plastic content are also staggered. The category-wise target for recycling plastic packaging comes into effect in 2024-25. The target for the reuse of rigid plastic packaging and the use of recycled plastic content in plastic packaging comes into effect in 2025-26. Adequate transition time has been given to the industry. The category-wise targets come into effect from 2024-25. This will allow further development of waste management and recycling infrastructure.

2.435. Central Pollution Control Board publishes Annual Report on plastic waste management, which is in the public domain. Requisite assessment has been made while framing EPR targets. The list of registered recyclers is also available in the public domain on the centralized EPR portal. The annual returns will be filed by producers, importers and brand owners through the centralized EPR portal developed by CPCB. The Guidelines for Environmental Compensation concerning Plastic Waste Management are already in place. These are being updated by CPCB and will be notified following due process. The transaction of EPR certificates will be reflected on the centralized EPR portal developed by CPCB. Category-wise classification of plastic packaging is based on physical form and constituents packaging material. The user may make assessments as per definitions notified in Plastic Waste Management Rules, as amended. The roles and responsibilities of State Pollution Control Boards concerning plastic waste management are stated in the rules. The EPR Guidelines are not discriminatory and do not put in place any non-tariff barrier. The requirements apply

[96] For previous statements follow the thread under ID 719.

uniformly to domestic and international companies. It is a measure to reduce pollution caused by littered and unmanaged plastic waste. Many countries have already brought in such measures.

2.1.4.54 Sri Lanka - National Environmental (Plastic Material Identification Standards) Regulations No. 01 of 2021 (ID 711[97])

2.436. The representative of the United States provided the following statement. We appreciate Sri Lanka's statement at the July TBT Committee meeting that the regulation has yet to be finalized, and it is committed to notifying the final regulation and implementing guidelines. We would, however, encourage Sri Lanka to notify the regulation and implementing guidelines at an early enough stage to allow Members and stakeholders to provide their comments and have those comments taken into account before the regulation and implementing guidelines are finalized. We look forward to reviewing Sri Lanka's notification and will continue our conversations outside of this Committee in the meantime. We would like to thank Sri Lanka for sharing its draft implementation guidelines for the PMI Regulation. We appreciate your time working with us.

2.437. In response, the representative of Sri Lanka provided the following statement. Sri Lanka would like to thank the delegation of the United States for its continuous interest on Sri Lanka's regulation on National Environmental Plastic Material Identification Standard No.01 of 2021. As my delegation informed at the previous TBT meetings, though this regulation has been published, it has not yet been enforced since the implementation guidelines are still to be finalized. The Central Environmental Authority has drafted implementation guidelines in consultation with the industrial sector. For this purpose, Sri Lanka has received certain technical assistance, especially from Cefas (Centre for Environment, Fisheries and Aquaculture Science). However, the authorities have informed that they need further technical assistance to frame and finalize the implementation guidelines. Therefore, there is currently an unexpected delay in finalizing the guidelines. Once the guidelines are finalized, Sri Lanka will arrange to notify the final Regulation along with the implementation guidelines to the TBT Committee for Members' comments before its legal enforcement. My delegation has taken due note of the concerns expressed by the delegation of the United States today which will be conveyed to our national focal points for their consideration.

2.1.4.55 France - Decree on the minimum proportion of re-used packaging to be placed on the market annually, G/TBT/N/FRA/223 (ID 758[98])

2.438. The representative of the United States provided the following statement. The United States supports France's objectives of increasing the availability of reusable packaging and reducing pollution caused by packaging waste in the environment. Our industries have expressed strong concerns about the feasibility of complying with this Decree, and the proliferation of member State-specific measures on packaging, labelling, and waste sorting rules that vary across the EU. In our July bilateral meeting, France noted that the Reuse Observatory, within the Ecological Transition Agency, will engage in a dialogue with stakeholders and that implementation guidelines will be released to facilitate compliance with the Decree. Is the stakeholder dialogue open to US industry representatives? We understand that the Decree was adopted on 8 April 2022, and originally was to enter into force on 1 January 2023. However, in the written answers we received to our previous questions in June, France indicated that the implementation guidelines are not expected to be published until the end of 2022. Will the implementation date be delayed to allow Members and industry stakeholders a reasonable time to become acquainted with the guidelines and adapt their products or methods of production to the new requirements?

2.439. It is our understanding that the Decree provides a mechanism for producer compliance through participation in eco-organizations related to packaging. In that case, would it be up to companies to determine which of their products are best suited to reused packaging to meet the target thresholds, or will the eco-organizations mandate which products must have reusable packaging? It is our understanding that the European Commission is working on a revision to its Packaging & Packaging Waste Directive (P&PWD). How would France's measure be impacted by the revised Directive if there are differences between the two measures? Given the limited engagement on our specific concerns on this measure at the last meeting, and the fact that the EU is working on

[97] For previous statements follow the thread under ID 711.
[98] For previous statements follow the thread under ID 758.

revisions to its P&PWD which may impact this final regulation, we will continue our engagement bilaterally instead of on the floor of the TBT Committee.

2.440. The representative of Australia provided the following statement. Australia recognizes France's right to take measures necessary to prevent waste and promote sustainable practices by increasing the availability of reusable packaging. Australia thanks France for notifying Members of this measure in March this year (in G/TBT/N/FRA/223). Australia shares the concerns outlined by other WTO Members in the July Committee meeting and expresses concern around the limited consultation that was conducted. Australia would like to seek clarity on whether this decree will apply to imported products in the same way it will apply to domestically produced products. If it applies to imported products, we would appreciate further detail on the implementation of the decree; in particular, how it will affect trade in wine and whether it will disproportionately impact imported products.

2.441. The representative of Argentina provided the following statement. The Decree by France in document G/TBT/N/FRA/223 establishes the obligation to recycle a certain percentage of containers and packaging, increasing over time, in order to reduce waste and move towards a circular economy. Accordingly, it establishes deadlines and procedures for those within the supply chain to organize themselves to comply with this obligation. The definition of producer includes importers, which is why, although this is not specified, the Decree could affect wines exported to France. Argentina is therefore concerned about this measure and wishes to consult France once again on the scope of this Decree in relation to imported products, how it intends to apply it to imported products and whether this does not amount to an extraterritorial application of a provision that aims to reduce waste and recycle in order to protect the environment.

2.442. In response, the representative of the European Union provided the following statement. The EU would like to thank the United States, Australia, and Argentina for their comments on this notification. To answer the practical questions raised by the United States: The work conducted by the Reuse Observatory to develop guidelines is accessible to all the professional federations concerned by the decree. As such, organizations representing American companies concerned by this decree can participate in this work by simple request to the Reuse Observatory, set-up within the French Ecological Transition Agency. To date, there are no plans to postpone the 2023 targets for companies with an annual turnover of more than 50 million euros. However, as 2023 will be the first year of the entering into force of the decree, any controls will be conducted with a flexible and educational objective in mind. The decree provides that the obligations imposed on a manufacturer in relation to the extended producer responsibilities are transferred to the eco-organization in the event that the manufacturer joins such an eco-organization. The objectives pursuit by the decree are then attributed to the eco-organisation, which must take the necessary measures, in particular regarding eco-modulation criteria, to achieve these objectives. The annual targets for the eco-organisation will then correspond to the sum of the individual targets on each of its member manufacturers. When a new version of the EU Packaging and Packaging Waste Directive is adopted, the provisions of the decree will be adjusted as necessary. Finally, to answer Australia's question: the decree applies equally to packaging produced in France and to imported packaging.

2.1.4.56 India - Alert Regarding Implementation of QR Code for Refrigerators (ID 757[99])

2.443. The representative of the Republic of Korea provided the following statement. The Republic of Korea appreciates this opportunity to make comments on the "Implementation of QR Code for Refrigerators" (hereinafter, the 'Regulation') by the BEE (Bureau of Energy Efficiency) of India. Korea would also like to thank India for its response statement at the last July 2022 WTO TBT Committee meeting. However, Korea would like to reiterate its concerns as the Korean industry still faces unresolved difficulties regarding the Regulation. According to the document published on 31 March 2022 by BEE, the requirement to affix a QR Code below the BEE Star Label on each unit of refrigerator will become mandatory from 1 January 2023. At the last July meeting, Korea commented that India neither notified the WTO of the Regulation nor provided the Members with time to make comments, to which India responded that various stakeholders, including the Korean manufacturers registered with the BEE of India, had been given sufficient opportunities to make comments and participate in discussions and that "No formal notification through other platform is required for implementation of the QR code under S&L (Standards & Labelling) Program."

[99] For previous statements follow the thread under ID 757.

2.444. However, apart from providing such opportunities domestically, we would like to remind India of its obligations under Articles 2.9.2 and 2.9.4 of the WTO TBT Agreement to notify other Members of the proposed technical regulation and allow reasonable time for them to make written comments. Therefore, Korea requests again that India kindly provide the Members with a period for commenting in accordance with the TBT Agreement. Moreover, Korean companies consider that they need at least 12 months to adapt their products for QR Code labelling requirements. Therefore, Korea requests that India first carry out the formal notification and provision of a period for commenting, and then implement the Regulation after a transition period of 12 months from the publication date of the final text. Secondly, India requires the QR Code to be assigned per serial number of each refrigerator unit whereas, other countries such as the EU, UK, Türkiye, China, and Saudi Arabia require the QR Code assigned per product model name. Such requirement unique to India is excessive and overly burdensome for the manufacturers to satisfy. Therefore, Korea requests that India improve the Regulation so that the QR Code labels are generated per the model name rather than per each serial number of the product. Lastly, the QR Code Request & Approval system in BEE's online Portal does not allow the submission of requests for additional QR label generation until the data upload for all of the previously requested QR labels is completed. No other countries apply this kind of submission restriction which makes the Regulation excessive and difficult to comply with. Therefore, Korea requests that India improve the online system so that additional requests can be submitted and processed regardless of the upload status of the previously requested QR labels' data.

2.445. In response, the representative of India provided the following statement. We thank the delegation of Korea for their continued interest in this issue. Since the substance of today's comments are the same as in the last meeting, we refer to our past statement captured in the document G/TBT/M/87 in paragraphs 2.37 and 2.38 and request the Secretariat to reflect the same in today's statements as well. We have conveyed the additional points raised by Korea to the capital and these are currently being reviewed.

2.446. *Statement from June 2022 meeting.* The energy performance benchmarks (star rating levels) under Standards & Labelling (S&L) programme are implemented by Bureau of Energy Efficiency (BEE) in accordance with Section 14 of the Energy Conservation Act, passed by the Parliament of India. The regulatory mechanism of the S&L programme encompasses a provision of Monitoring and Verification, under which, BEE has proposed to implement the secure QR code along with star label on the appliance/equipment in order to enable authenticate/validate the star rating specifications of the label by the consumer himself. The discussion for implementation of QR Code on refrigerators was initiated during the year 2019. In this regard the first meeting of stakeholders including manufacturers of product from various countries including Korea was held on 5 November 2019 wherein, workflow and the effective timelines for 1 March 2020 was announced and circulated to the stakeholders including the Korean manufacturers registered with BEE under S&L programme. However, the implementation timeline of the QR code got delayed due to the COVID-19 pandemic situation. Further, during the year 2021, the new timelines of 1 January 2023 was communicated to all the stakeholders through virtual meetings. Various comments and inputs received from the manufacturers on the workflow of QR code were addressed by BEE from time to time.

2.447. Subsequently, BEE had issued a formal alert during March 2022 on the mandatory timeline for Implementation of QR code with effect from January 2023. This alert was issued based on the request received from manufacturers to issue a formal announcement before eight to nine months from the date of issue of the Gazette notification. The energy performance benchmarks (star rating levels) under Standards & Labeling (S&L) programme are implemented by Bureau of Energy Efficiency (BEE) in accordance with Section 14 of the Energy Conservation Act, which is passed by the Parliament of India. As such, no formal notification through other platform is required for implementation of the QR code under S&L program. Further, it may please be noted that, few manufacturers have successfully completed the pilot run in the month of May 2022. The objective of implementation of QR code is to authenticate / validate the star rating specifications of the label to protect the interest of consumers. It may be noted that, generation of QR code by model name rather than by serial number of each unit of refrigerator may defeat BEE's purpose of validating the credibility of star label affixed on each unit / product of refrigerator being purchased by the consumer.

2.1.4.57 France - Order specifying the substances contained in mineral oils the use of which is prohibited in packaging and in printed matter distributed to the public, G/TBT/N/FRA/216 (ID 756[100])

2.448. The representative of China provided the following statement. China supports France's implementation of its requirements for mineral oil control, but from the perspective of not creating unnecessary trade barriers, China makes the following suggestions. First, we suggest France clarify the detection method of mineral oil. The Order does not prescribe the method of testing mineral oil, so the company has no unified inspection standard for conducting compliance inspections. Whether the results of the test conform to the requirement is therefore questionable. Secondly, clarify the types of packaging. As the regulation does not specify the types of packaging, it may affect a wide range of packaging for food, drug, toy, electronic and electrical products, etc. It is recommended to clarify the packaging types to facilitate better compliance of enterprises. It is also recommended that a guiding document could be issued for the management of packages and printed matters that have already been printed. For printed packaging and printed matter, apart from the ink, packaging and printed materials may also contain mineral oil which can be introduced in the production process. It may be possible that printing inks with mineral oil comply with the requirements of the order, while printed packaging and printed products with mineral oil content exceed the limits of the Order.

2.449. The representative of the United States provided the following statement. The United States supports France's objective of combatting waste and limiting the use of non-recyclable material. The United States also appreciates the continued engagement on this Order. At July's TBT Committee meeting, we urged France to take into account stakeholder comments regarding their ability to meet the proposed timeline. We were therefore pleased to note France's indication that it will delay implementation of certain aspects of this Order until 2025 and will establish a Working Group to consider additional revisions. While we support these developments, we continue to have questions regarding the specifics of the draft regulation and remain concerned that aspects of this Order may be more trade restrictive than necessary to fulfill France's legitimate objective. For example, it is our understanding from industry that it is currently not possible to test for the levels of aromatic hydrocarbons at the mass concentration thresholds that will be permitted in packaging from 1 January 2025 (lower than one part per billion). Has France considered the current technology available for testing and how it plans to enforce the order if the required technology does not yet exist? We ask that France take into account stakeholder comments regarding its ability to meet the proposed timeline. Given that the EU is working on revisions to its Packaging and Packaging Waste Directive, and implementation of this measure has been extended to 2025, we will likely pursue bilateral discussions on this matter for the time being, outside of this Committee.

2.450. In response, the representative of the European Union provided the following statement. Regarding the testing methods, we would like to clarify that the French Order does not prescribe specific test methods to demonstrate conformity. According to Article R.543-49 of the Environmental Code, the demonstration should be based on the production of written or technical documents. Therefore, a working group will be set up in order to identify difficulties as well as available solutions by the 2025 deadline. Appropriate solutions to demonstrate compliance will be discussed as well.

2.1.4.58 European Union - Proposal for a Directive of the European Parliament and of the Council amending 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 (COM/2021/547 final), G/TBT/N/EU/859 (ID 750[101])

2.451. The representative of the United States provided the following statement. The United States and EU have discussed this proposed regulation at length bilaterally, and we raised concerns during the July 2022 Technical Barriers to Trade Committee. Our understanding is that the EU's proposal for a common charger was finalized on 4 October 2022. We note our dissatisfaction around certain elements of what we understand is the final version of this law. In principle, we continue to support technical regulations that allow products to meet existing international standards. The prescriptive nature of this proposal conflicts with manufacturers' ability to choose such standards. We urge the EU to specify technical regulations based on product requirements in terms of performance rather than design characteristics. The EU's inclusion of new products in the proposal's scope late in the drafting process allowed little time for stakeholders to provide input. The TBT Committee

[100] For previous statements follow the thread under ID 756.
[101] For previous statements follow the thread under ID 750.

recommends revised proposed technical regulations to be notified as a revision with a new sixty-day comment period. That way, comments can be considered on the new elements of the draft. Since the measure is final, this will be our last intervention on the floor, and note that our comments that encouraged the use of relevant international standards were not taken into account.

2.452. In response, the representative of the European Union provided the following statement. Thank you to the United States for its continued comments on this notification. As mentioned, the proposal was adopted in first reading by the European Parliament on 4 October 2022 and confirmed by the Council on 24 October 2022. Regarding United States' concern about imposing the integration of the USB Type-C receptacle for certain categories or classes of radio equipment, the EU would like to emphasize again that, for more than 10 years, the European Commission has supported a voluntary approach for industry. This was ineffective in solving the lack of interoperability between radio equipment and chargers still causing inconvenience for consumers. The harmonized charging receptacle (USB-C) is a technology that has been and is developed by a consortium that includes major ICT manufacturers. Their specifications are open and translated into international and European standards, the latter are the ones referenced in the text and will be continuously monitored and updated, if necessary, via an appropriate mechanism. Specifying the technical requirements in terms of design characteristics is the only possible way to achieve full interoperability between radio equipment and chargers (consumer convenience) and reduce the proliferation of unnecessary chargers (environmental benefits). Combining a harmonised charging solution with the unbundling of the external power supply will deliver results only if each category of products covered is equipped with the same receptacle.

2.1.4.59 Viet Nam - Cybersecurity Measures (ID 544[102])

2.453. The representative of Japan provided the following statement. Japan has concerns about the Cybersecurity Law, stipulating unclear standards and requirements for security assurance obligations of devices and systems, which may impose an undue burden on business enterprises. If it is found to be more trade restrictive than necessary to achieve legitimate objectives, it may violate the TBT Agreement. In regard to this point, Japan has submitted comments on this law, which was enforced in January 2019. We are aware that the Decree No.53/2022/ND-CP ("Decree 53") has been in effect since this October. Decree 53 imposes the obligation to store data within Viet Nam on not only domestic enterprises but also foreign enterprises providing online services to users in Viet Nam. Moreover, this Decree obliges such foreign enterprises to establish a branch or representative office in Viet Nam. We are concerned that there is a high possibility that foreign enterprises will be put at a de facto competitive disadvantage compared to domestic enterprises, since foreign enterprises are likely to incur an additional burden related to the installation of servers to store data within Viet Nam and the establishment of branch offices, which Decree 53 requires. Japan would like to request that Viet Nam take appropriate measures to address these concerns, taking into consideration the voices of the industries. In addition, the period from the promulgation of this Decree to its enforcement was quite short (approximately six weeks), and it is difficult to say that foreign enterprises have had sufficient time to prepare to comply with Decree 53. From a business perspective, predictability and transparency of laws and regulations including Decree 53 are very important, and from the perspective of aiming to improve the investment environment, Japan would like to request that Viet Nam implement laws and regulations appropriately, without hindering business.

2.454. In response, the representative of Viet Nam provided the following statement. Viet Nam's Law on Cybersecurity provides obligations to ensure the security of equipment and systems that apply only to information systems important to national security in Viet Nam and not to the system of enterprises, so it does not impose burdens on enterprises. According to Article 26 of Decree no. 53/2022/ ND-CP, which details a number of articles of the Law on Cybersecurity, foreign companies may store data and establish branches or representative offices in Viet Nam only if the services provided by the companies are used to commit acts that violate the Law on Network Security and have been reported by the Department of Cybersecurity and High-Tech Crime Prevention and Control of the Ministry of Public Security and requested in writing to coordinate, prevent, investigate and deal with, but fail to comply or fully comply, or prevent, hinder, disable or override network security protection measures taken by specialized network security forces. This regulation granted companies the right to decide on this issue. Viet Nam believes that the provisions of the Law on Cybersecurity

[102] For previous statements follow the thread under ID 544.

and Decree No. 53 do not impede the flow of data and do not impose an additional burden if enterprises comply with Viet Nam's cybersecurity laws.

2.1.4.60 Colombia – Good manufacturing practices of overseas production establishments, G/TBT/N/COL/242 (ID 697[103])

2.455. The representative of the European Union provided the following statement. The European Union would like to thank Colombia for its reply of November 2020 to the EU written comments and for the extensive bilateral discussions. The European Union notes that Article 3 of the Decree no 162 published on 16 February 2021 refers to the possibility to present alternatives to the Good Manufacturing Practices certificate upon import to Colombia. EU exporters of wines and spirit drinks already comply with the existing obligation to submit Free Sales Certificates for sanitary register. The Free Sales Certificates state that the product is compliant with the EU legislative requirements, which encompass Good Manufacturing Practices. The European Union therefore considers that Free Sale Certificates issued by EU member States would comply with the Colombian requirement to provide Good Manufacturing Practices certificate upon import. Consequently, we wish to reiterate our request to Colombia to accept all EU FSCs for the purpose of GMPs and amend the relevant Decree accordingly as a matter of urgency.

2.456. As the time left for the entry into force of these requirements is getting shorter, the European Union is indeed increasingly concerned about negative impact this measure could have on its exports of wines and spirits, especially from SMEs, should not all its Free Sale Certificates be accepted. Therefore, the European Union is prepared to continue the bilateral work should there be any need for additional clarifications. As a possible temporary solution awaiting the possible amendments to the Decree, INVIMA could instruct its inspectors through internal guidance that all EU FSCs indicating compliance with EU legislation, cover the product and the producer. Lastly, we note that Colombia, by means of Decree 1366/2020, has delayed the entry into force of these certification requirements for its own small producers of alcoholic beverages. Until a final solution is identified, we would kindly request to postpone the entry into force of the Decree 162/2021 till 2025 to avoid any discrimination between foreign exporters and domestic industry.

2.457. In response, the representative of Colombia provided the following statement. With regard to this trade concern, Colombia would like to highlight the work being carried out by the Colombian health authorities in conjunction with the countries concerned to clarify the concerns raised about compliance with Decree No. 162 of 2021, issued by the Colombian Ministry of Health and Social Welfare. It is of the utmost importance to pursue these collaborative efforts, particularly in relation to certificates of good manufacturing practices for alcoholic drinks intended for human consumption. Therefore, and as a result of recent meetings, the Colombian National Food and Drugs Surveillance Institute (INVIMA) has been providing feedback about the certificates it has received from the interested countries, in order to check the status of compliance with the technical requirements. We stand ready to respond to any additional concerns that the European Union or any other interested country may wish to raise. Colombia is more than willing to continue the work that is being carried out and to address this concern.

2.1.4.61 Brazil - MAPA Ordinance No. 208, 26 February 2021 – revision of the Decree No. 6.87 of 4 June 2009 on the standardisation, classification, registration, inspection, production and supervision of alcoholic beverages, G/TBT/N/BRA/1145 (ID 712[104])

2.458. The representative of the European Union provided the following statement. The European Union would like to thank Brazil for submitting notifications G/TBT/BRA/1145/Add.1 and G/SPS/N/BRA/2033 published on 19 and 20 April 2022 and for the opportunity to comment on the draft texts. The European Union provided written comments to this notification on 13 July 2022 and would be grateful if it could receive a reply to them. In particular, the European Union would like to know whether imported beverages will fall under the registration requirement or whether they will benefit from a possible exemption. Furthermore, the European Union suggested removing the requirement to include the expressions "alcoholic strength" or "alcohol content" as envisaged by the notified draft given that the international practice of using terms such as "alcohol", "alc" is sufficiently clear and does not mislead consumers. The proposed changes would cause producers to incur costs

[103] For previous statements follow the thread under ID 697.
[104] For previous statements follow the thread under ID 712.

to replace all labels and those costs do not appear to be justified and could give rise to an unnecessary obstacle to trade.

2.459. The European Union notes that the "bebidas alcoólicas" (alcoholic beverages) category sets an upper limit of not more than 54% of alcoholic strength by volume. The EU would like to ask Brazil to provide justification for setting a maximum limit on the alcohol content of spirits, which may not be in line with international standards. The EU therefore asks the Brazilian authorities to consider not applying the maximum limit of 54.0 % ABV to spirit drinks imported in Brazil, as this limit might create an obstacle to international trade. The European Union asks that Brazil remove the maximum alcohol content in all corresponding articles on spirits, in line with international practice. The European Union also asked for a number of clarifications concerning spirits categories definitions in notified draft such as liqueur, rum, whiskey, vodka, gin and aquavit, which may not be in line with international practice and may cause unnecessary obstacles to trade. In this respect, the EU would like to recall Article 2.2 of the TBT Agreement according to which "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". The European Union would be grateful if the above-mentioned comments could be taken into account and replied to before adoption of the notified draft.

2.460. In response, the representative of Brazil provided the following statement. Brazil would like to thank the EU for its statement and for the comments it submitted in reply to notification G/TBT/N/BRA/1145/Add.1. We also welcome the contributions from other countries to our public consultation. Brazilian authorities are currently reviewing all of them and we would like to assure that they will be duly considered. In the next steps of this regulatory process, we will publish our answers to the comments and also a revised draft regulation of law No. 8,918, of 14 July 1994 (Beverage Law). This revised draft will be notified to all Members, and further comments will be accepted. We appreciate engagement from our trade partners and assure them that the development of this regulation will remain transparent and aligned to our WTO commitments.

2.2 Exchange of Experiences

2.2.1 Transparency

2.2.1.1 Update on the Transparency Working Group

2.461. The Chair recalled that the meetings of the Transparency Working Group were open to all delegations and were held in hybrid mode. Its first meeting had been held on 6 April 2022 and a second meeting was held on 13 October 2022. During its second meeting, in October, the Working Group had discussed two proposals.

2.462. The first proposal from the United States is contained in document JOB/TBT/466; it suggests a possible revision of the regular notification format to better track certain measures being notified, sometimes with a comment period, which would normally fall under the coverage of Article 15.2. During the meeting the US had provided a recap of the proposal and shared a mock-up of a revised regular notification format with an additional tick box under item 3. The US had highlighted that the proposal would not alter Member obligations but would facilitate tracking of changes to overarching policies such as those related to quality infrastructure. Members shared their comments and questions regarding the proposal including South Africa which submitted its comments in writing in the document JOB/TBT/480. Issues raised revolved around the importance of maintaining the balance of rights and obligations under the Agreement.

2.463. The second proposal, from Canada, contained in JOB/TBT/485 focused on a revision of the notification guidelines with the aim of facilitating a better understanding of notified measures, in particular those drafted in languages other than English, French and Spanish. Following Canada's presentation, Members shared questions and comments with respect to naming authorities responsible for undertaking conformity assessment, adding links to international standards, and providing indicative timelines when no date has been set for adopting or entry into force of the notified measure. With respect to the other triennial review recommendations on transparency, the US had volunteered to work with the Secretariat in developing a new format for submitting Article 15.2 notifications through ePing.

2.464. The Chair noted that delegations could consult the Secretariat's presentation, contained in document JOB/TBT/487, which provided an overview of practices and recommendations related to Article 15.2.

2.465. The representative of Canada thanked Members that intervened at the working group meeting with their views and comments on the proposal. He stated that based on the questions and inputs received at the October working group meeting Canada would revise the proposal.

2.466. The representative of the United Kingdom stated that the UK supported both proposals and believed that they would facilitate an improved clarity of the notification process.

2.467. The representative of Australia noted that Australia was supportive of this proposal to improve provisions in the Agreement.

2.468. The representative of China thanked the US and Canada for their proposals. He noted that regarding the proposal from the US, China had comments but would like to continue the discussion within the context of the transparency working group.

2.469. The representative of South Africa noted that his delegation was committed to the work on transparency and expressed an interest to work with the US on developing a template for Article 15.2 statements.

2.2.1.2 Statement from Members on Article 15.2

2.470. The Chair recalled that Article 15.2 requires Members to provide information on measures put in place to ensure the implementation of the Agreement and to notify any changes over time. The Chair reminded delegations that Article 15.2 notifications are accessible through the ePing platform. It was also noted that Egypt had recently submitted a revision of its earlier statement of implementation. This update can be found in the document G/TBT/2/Add.34/Rev.3.

2.2.1.3 Secretariat update on the ePing SPS&TBT Platform

2.471. The Chair recalled that the new version of the ePing platform had been officially launched on Wednesday 13 July, with the participation of senior representatives from the three partner organizations: ITC, UNDESA and WTO. An official record of the launch had been issued by the Secretariat in document G/TBT/GEN/336, including statements from the three organizations as well as comments from Members. Additionally, an ePing information session had been held on 14 November 2022.

2.472. The Secretariat recalled that during the two-hour information session, the Secretariat demonstrated the key functions of ePing and heard from five Members about the various ways they have incorporated ePing into their workflows. At the session the Philippines discussed a national awareness raising seminar where one business pointed out how ePing helps them manage risks and improve supply chain planning. Another example was from Vietnam where the foreign trade university includes ePing in its trade policy courses and translates selected notifications into Vietnamese for the benefit of MSMEs. At the session, Kenya also shared their experience on how they are building on ePing training conducted during the transparency champions program to improve coordination when submitting notifications and increase engagement with national and international stakeholders. The United States also shared their experience regarding how they are transitioning their stakeholders from the Notify US alert system to ePing and how they use ePing's international forum chat functions to communicate with counterparts and other Members. Lastly, Ecuador shared how they utilise ePing to coordinate the preparation of their notifications and communicate with other enquiry point officials. The main challenges raised at the session related to identification of HS codes corresponding to regulated products, access to translations and receiving substantive feedback from the private sector.

2.473. The Secretariat also noted that a virtual information session was planned for 29 November targeting officials who have notification administrator rights on ePing, and an announcement would be sent out for this session. Further, it was noted that for the year ahead there would be dedicated sessions focusing on ePing's communication functions such as the national and international fora

and the chat function. It was reminded that the ePing app was available for smartphones, both Apple and Android.

2.474. The representative of the United States expressed their appreciation and support for ePing and stated that both Members and stakeholders alike had benefited from it. She also recognized that there would be a need for additional resources, such as training materials for stakeholders to benefit from ePing and other electronic tools.

2.475. The representative of Chile echoed the statement of the United States regarding ePing.

2.2.2 Tenth Special Meeting on Procedures for Information Exchange

2.476. The Chair recalled that the TBT Committee had agreed, in 1995, to hold regular meetings for persons responsible for information exchange, including those responsible for enquiry points and notifications. The 9th Special Meeting on Procedures for Information Exchange was held on 18-19 June 2019 and its meeting report can be found in G/TBT/GEN/265. The Chair proposed that the 10th Special Meeting be held on 19 June 2023. It was so agreed.

2.2.3 Conformity Assessment Procedures

2.477. The Chair recalled that in the Eighth Triennial Review of the TBT Agreement, the Committee had agreed to develop guidelines to support regulators in the choice and design of conformity assessment procedures. Subsequently, in the Ninth Triennial Review, the Committee noted progress to date and agreed to finalize this work. The Secretariat circulated a revised elements paper for the CAP guidelines in the document JOB/TBT/438/Rev.1. Additionally, following the 29 June meeting, the Secretariat circulated an Aide-Memoire on the revised elements paper contained in the document JOB/TBT/484 issued on 14 September. An informal meeting was held on 13 October to further discuss work on the guidelines as well as other consultations with Members. The Chair noted that the consultations were open to all interested Members and that specific dates would be communicated at a later stage.

2.2.4 Regulatory Cooperation between Members

2.2.4.1 Report by the Moderator on the Thematic Session on Good Regulatory Practices

2.478. The Moderator[105] for the thematic session on Good Regulatory Practices, held on 15 November 2022 and covering domestic implementation of GRP and GRP in trade agreements, provided his report. The full report is contained in G/TBT/GEN/338.

2.2.4.2 Report by the Moderator on the Thematic Session on Standards Development in Codex

2.479. The Moderator[106] for the thematic session on Standards Development in Codex, held on 15 November 2022 and covering the present work of the Codex Alimentarius commission on standards, recent work in the Codex committee on Food Labelling (CCFL) and exchange of experiences from Members on challenges and opportunities in standards-setting activities of Codex Alimentarius, provided her report. The full report is contained in G/TBT/GEN/339.

2.2.5 Covid-19

2.2.5.1 Updates from Secretariat

2.480. The Chair recalled the TBT Committee's mandate on COVID-19[107], and that the Chairperson had asked the Secretariat to prepare a background document on the work of the Committee to date since the start of the pandemic. The Secretariat presented this background document at the July

[105] Mr. Don Spedding (Australia).
[106] Ms. Lorena Rivera (Colombia).
[107] G/TBT/46, para. 8.4.

meeting which was then circulated in JOB/TBT/458. The Chair also noted that on 31 October the Secretariat published a COVID-19 information note based on the background document.

2.481. The Chair also noted that the Chairperson of the CTG requested that the Chairs of all CTG subsidiary bodies prepare a report on the WTO response to COVID-19 pandemic and preparedness for future pandemics, in light of the MC12 ministerial declaration. The report described activities of the TBT Committee in the context of the pandemic over the past two years aimed at a better understanding of how the Committee adjusted the focus of its work to address pandemic related issues. In light of this the Secretariat circulated a draft of this report to all Members for comments contained in JOB/TBT/490.

2.482. The representative of the United States said that her delegations wished to convey a few minor comments to the Secretariat but overall thought it was a good report.

2.2.6 Other Matters

2.483. On WTO reform the Chair noted that the Chairperson of the CTG had also requested for Chairs of all CTG subsidiary bodies to prepare reports under their own responsibility **on the functioning of their respective committees**. In light of this request the Secretariat circulated a draft of the Chair's report, contained in document JOB/TBT/491, that described the concrete actions taken by the TBT Committee over the past years to improve its work.

2.484. The representative of Brazil thanked the Chair for the report and flagged that in the next steps of this stocktaking exercise, the Committee would have a lot to contribute to reform discussions. He stated that the TBT Committee is one of the best examples of good practice in the WTO and should contribute more to reform discussions and the improvement of the deliberative functions of the WTO.

2.485. The representative of the United States expressed that it was a source of pride that the TBT Committee had lots of good practices that other committees could emulate. She also raised a question on the deadline for delegations to provide comments.

2.486. The representative of the European Union echoed the previous comments by the delegations of Brazil and the US. She stated that this exercise was a good opportunity to highlight the cooperation among Members within the Committee.

2.487. The Chair announced that the Secretariat had issued a **revision of the compilation of decisions and recommendations** adopted by the TBT Committee since 1 January 1995 and can be found in the document G/TBT/1/Rev.15. This latest revision incorporates the decisions and recommendations of the Committee from the 9th Triennial Review concluded at the end of 2021. It also reflects other Committee developments since the issuance of the last version in September 2019, for instance, the revised guidelines on the coherent use of notification formats of the new ePing SPS&TBT platform which has replaced a series of online tools.

2.488. On **thematic sessions** the Chair stated that the topics for the March 2023 thematic sessions would be plastic regulation and climate change. He suggested to begin planning for the sessions with concrete inputs from delegations.

2.489. The representative of Canada stated that Canada had suggested for the Committee to hold a thematic session to share information, best practices and innovative ideas related to technical regulations, standards and conformity assessment procedures that support the attainment of environmental goals and contribute to reducing **climate change** thereby contributing to achieve goals of the Paris agreement while being as least trade restrictive as possible. He stated that Canada was pleased the Committee agreed to hold this session and had already begun to reflect on potential speakers and topics. They also welcomed the interest of other Members who wished to be involved in any preparatory work leading to the March session or who may have suggestions on topics and speakers.

2.490. The representative of the United States stated that as the proponent for the thematic session on plastic regulation, the US was looking forward to working alongside Canada and would help the Secretariat in reaching out to Members on potential topics and speakers for the session.

2.491. The representative of the European Union said that her delegation was paying greater attention to issues pertaining to climate change and would be happy to cooperate with Canada and the US on proposing speakers and topics

2.492. The representative of the United Kingdom said the session was of interest and that they looked forward to working with other Members.

2.493. The Chair recalled that in the 9th triennial review the Committee agreed to hold a thematic session in June 2023 on regulatory cooperation between Members with three separate topics to be covered: **digital products, cybersecurity, and a third topic yet to be defined**. The Chair also recalled that Members agreed to hold a thematic session on current challenges and best practices for addressing issues related to conformity assessment of goods obtained through e-commerce. It had been agreed that the session would consider, *inter alia*, how Members can work to enhance the safety of products purchased online to protect consumer health and safety. The Chair proposed that this should be the third topic in the June thematic session, eliminating the need to assign a future date to hold this session while also being in alignment with the other two topics.

2.494. The representative of the United States stated that as the two topics already proposed were cutting edge topics for the Committee, they anticipated that there would be a lot of interest from the Committee as well as other sections of the WTO, for instance, those focused on services. She asked for greater clarity first on how these discussions would fit into the June schedule before agreeing to another topic to discuss. She also mentioned that sectoral based discussions bring a lot of life to the Committee thus needing to ensure that the two topics have adequate time to be discussed.

2.495. The Chair stated that he would get back to Members at the upcoming informal meeting on how the sessions would fit into the schedule and what options or alternatives there would be. The Chair also brought to attention that from the 9th triennial review, Members agreed to hold thematic sessions in **November 2023 on regulatory cooperation between Members and an as yet undefined second topic**. At the 9th triennial review Members agreed to hold a session key role of national quality infrastructure on Members' regulatory systems and implementing the TBT Agreement as well as another session on how Members incorporate international standards in regulatory processes with respect to conformity assessment. The Chair also noted that a thematic session on technical assistance had not yet been held during the triennial review cycle. He stated that past thematic sessions on technical assistance had proved useful and so would be another topic to consider.

2.496. The representative of Paraguay flagged that from the options provided their preference was for the topic on how Members incorporate international standards into their regulatory processes for the November 2023 thematic session.

2.497. The Chair sought the view of delegations regarding **webcasting of thematic sessions**. He noted that as the sessions cover topics of interest to a broad range of stakeholders, delegations may wish to make these more accessible to domestic constituents and the general public. The link could be made available to delegations in advance so it could be forwarded to interested domestic constituents and following the conclusion of the session, the recording would be made available publicly through the WTO TBT gateway. He also noted that the SPS Committee would webcast all its thematic sessions going forward.

2.498. The representative of the United States expressed their support for webcasting the thematic sessions, however noted that for sessions that were more government focused they would prefer for closed sessions, calling back to the proposal for a thematic session on how Members incorporate international standards into regulatory processes as an example of a more sensitive topic. She stated however that the March sessions for example were well suited to being webcast.

2.499. The representative of the European Union echoed the previous sentiments and stated that it would be beneficial to webcast sessions to have a greater reach outside of the Committee while also being mindful of topics that may have particular sensitivities.

2.500. The representative of Kenya expressed their support to webcast the thematic sessions.

2.501. The representative of Mexico stated that they were largely in favour of webcasting the sessions and suggested that the sessions could also be recorded and then transmitted, or access granted at the end of the meeting. She stated that this option of having the recording accessible after the meeting could also be suitable to sessions covering sensitive topics.

2.502. The representative of the United Kingdom expressed their support to webcast the sessions and echoed Mexico's statement that releasing the recordings after the meeting would enable to determine on a case-by-case basis which sessions are publicized.

2.503. The Chair suggested that, henceforth, the thematic sessions would be webcast unless there were objections going forward. If necessary, there would be consultations before meetings with regard to sensitive topics and if they should be webcast or not. It was so agreed.

2.504. The representative of Türkiye updated the Committee on their side event held on 17 November that hosted the Standards and Metrology Institute for Islamic Countries (**SMIIC**) and the Turkish Halal Accreditation Agency. The SMIIC which had a pending application to be an Observer to the TBT Committee informed participants on its functioning and global role in halal conformity assessment and accreditation. The SMIIC also presented its reasons for why it would like to be an Observer to the Committee and the ways they comply with requirements to become an Observer. This was followed by a presentation from the Turkish Halal Accreditation Agency informing participants about their activities and shared their views on opportunities for international cooperation in halal certified trade, emphasizing the role of trust. The Turkish representative thanked Members for their interest in this event and their valued participation and reminded the membership that these presentations would be shared in a forthcoming room document to be circulated by the Secretariat the following week. She concluded by thanking the Secretariat for their support in organizing the side event.[108]

2.505. The representative of Ukraine provided an update of their TBT activities. She first expressed her delegations' gratitude for the fruitful work of the TBT Committee and thanked Members for their unwavering support and leadership during these difficult times. She stated that Ukraine was doing its best to mitigate consequences to civilians and its economy in light of sustained attacks by Russia to its energy grid. She stated that the power outages continued to undermine economic activity and recovery and that under the current conditions the work of relevant bodies in the field of technical regulations, standardization and metrology faced significant losses. However, Ukraine was taking steps to ensure steady work in these fields and ensure proper functioning of the technical regulatory system. She asserted that even in this difficult period Ukraine remained committed to transparency norms and continued to notify Members on its legislations.

2.506. Since the beginning of 2022 Ukraine had submitted 42 notifications and replied to 35 Members requests related to TBT issues. Ukraine had also designated 76 conformity assessment bodies and 2 recognized independent organizations to ensure conformity assessment procedures with requirements of technical regulations. Currently, 74 of the 76 designated bodies and the two recognized independent organizations located in different regions of Ukraine continued to perform full conformity assessment procedures in their permanent locations however the activity of the other two had been suspended due to security reasons. In some regions, the scientific and production centres for standardization, metrology and certification had been seriously affected, such as in Kherson, Lugansk, and Donetsk where they had also been forced to stop activities.

2.507. She recalled that the WTO was established to promote peaceful cooperation between governments on a variety of trade issues and the acts of aggression of the Russian Federation towards Ukraine had ruined the security framework that countries had been building over the past 70 years; this and neglected the basic principles of the multilateral trading system. She concluded by reiterating Ukraine's gratitude to WTO Members for their overwhelming support and strong solidarity against Russia's brutal aggression.

3 TECHNICAL COOPERATION ACTIVITIES

3.1. The representative of Chile informed the Committee that they would be organizing a technical assistance activity in Santiago in April 2023, in coordination with the Secretariat. This would be to

[108] A room document containing information on the Türkiye's presentation is contained in RD/TBT/374.

train interested parties and regulatory bodies on ePing. He stated that this would be of enormous value, and they would continue to coordinate to ensure its success.

3.2. The Secretariat provided an update on the **Transparency Champions programme**. The first pilot round of the programme began in October with a one-week course in Geneva, in tandem with a similar programme for SPS officials. The course would continue for the following six months with some virtual sessions. The first cohort of Champions included 26 officials from African countries with responsibilities for TBT transparency procedures. The Secretariat thanked Australia, Sweden, Uganda and the United States for supporting the participation of their enquiry points and delegates as mentors in this programme and ARSO for providing a regional perspective.

3.3. The representative of the United States drew attention to an update on US technical assistance activities subsequently circulated in G/TBT/GEN/337.

3.4. The representative of Namibia thanked the Secretariat for the opportunity to share their participation experience in the Transparency Champions programme. She stated that often developing countries face challenges of stakeholder coordination in fulfilling transparency provisions and Namibia shared the same challenge. She stated that through her nomination into the program her outlook had changed on the subject of transparency. Notably, she learned about tools such as ePing which enhance transparency by improving coordination between national notification authorities, national enquiry points, regulatory authorities, and the public and private sector. She stated that these lessons were relevant to Namibia as they aim to strengthen their national TBT coordination and enable the submission, dissemination, and facilitation for domestic and international notifications and comments. This would help facilitate with getting inputs from public and private sectors on their specific trade concerns. She stated that Namibia's National Standards Institute (NSI) successfully implemented various initiatives after the programme such as stakeholder engagement with regulators and businesses, training workshops on ePing and the use of good regulatory practices.

3.5. The national initiative resulted in an increased number of ePing users which enabled them to create a national forum on ePing. She stated that the programme was an exciting period to meet TBT officials from the same region and have the opportunity to share experiences and challenges. They learned that setting up a national functional structure to operationalize TBT offices remains a challenge for regional counterparts.

3.6. The representative of Namibia also expressed appreciation for the mentors from the Enquiry Points of Australia, Sweden, Uganda, and the United States and reiterated that continuous capacity building support remains imperative to enable improved TBT transparency. They concluded by saying they looked forward to the implementation and accomplishment of activities as outlined in their action plans.

3.7. The representative of South Africa thanked the Secretariat for the opportunity to participate in the Transparency Champions programme. He stated that the programme was comprehensive and provided them with content, materials, lessons, and experience relevant to their daily work across the TBT value chain from the enquiry points, national TBT domestic coordination to the policy development level. The programme helped them develop a deeper understanding of the TBT Agreement, in particular the transparency provisions and learning more about digital tools such as ePing. He stated that a unique element of the programme was in how participants could implement what they learnt through actionable ideas in their respective countries.

3.8. The representative of Uruguay thanked the Secretariat for the successful technical assistance activity on TBT that took place earlier in the year (August 2022) and had greatly helped to improve their situation with respect to the implementation of the TBT Agreement in his country.

4 OBSERVERS

4.1 Updates from Observers

4.1. Updates were provided by ISO (G/TBT/GEN/340), Codex (G/TBT/GEN/341), BIPM (G/TBT/GEN/342), ARSO (G/TBT/GEN/343) and OIML (G/TBT/GEN/344).

4.2. The representative of OIML pointed out to Members that, in their written report, there was a section concerning electric vehicle supply equipment and expressed their concern that regulators in various parts of the world are starting to develop metrology regulations for charging equipment for these vehicles for which requirements are not always mutually compatible. The OIML started a project in October the previous year to develop a model technical regulation for this with a guide already available on their website.

5 ANNUAL REPORT (2022) OF THE COMMITTEE TO THE COUNCIL FOR TRADE IN GOODS

5.1. The Chair noted that the Committee submitted a draft of its Annual Report to the Council for Trade in Goods contained in JOB/TBT/486 and was circulated on 13 October 2022. The report was subsequently adopted and circulated in G/L/1445.

6 DATE OF NEXT MEETING

6.1. The Chair recalled that the next meeting of the TBT Committee was scheduled to take place on from 8 to 10 March 2023. The regular meeting would be preceded by thematic sessions on 7 March on regulatory cooperation between Members focusing on the topics of plastic regulation and climate change.