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Committee on Technical Barriers to Trade

MINUTES OF THE MEETING 21-23 JUNE 2023[1]

CHAIRPERSON: MS. ANNA VITIE

Note by the Secretariat[2]

[1] This document was re-issued on 5 April 2024 to correct some minor typographical errors.
[2] This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights and obligations under the WTO.

1 ADOPTION OF THE AGENDA

1.1. The Committee adopted the agenda contained in WTO/AIR/TBT/26.

1.2. The representative of Ukraine informed WTO Members about activities in the field of technical regulation. For 16 months, Ukraine had fought against Russian aggression. The war, initiated by another WTO Member, had led to the loss of thousands of lives, destroyed critical infrastructure and residential buildings, and disrupted trade routes and supply chains. Despite these challenges, Ukraine took steps to ensure the proper functioning of its technical regulation system, and continued work in the areas of standardization and metrology under wartime conditions. They made every effort to maintain transparency of TBT measures even under martial law. Ukraine had adopted 46,191 national standards, of which 39,268 (or 85%) were international standards that had been integrated as national ones. The National Standardization Program for 2023 planned for the development of 1,843 draft national standards, of which 1,133 (or 61%) would be harmonized with international standards. At that moment, 165 technical standardization committees were operating in Ukraine across various sectors of the economy, collaborating with representatives from public authorities, businesses, educational institutions, and more. The infrastructure of designated conformity assessment bodies was made up of 69 accredited organizations that conducted full conformity assessments in various regions of Ukraine. Among these, 12 bodies were tasked with ensuring the conformity of measuring instruments with the technical regulations in the field of metrology. Additionally, 75 authorized verification laboratories performed metrological activities. However, in some regions, centers for standardization, metrology, and certification had suffered damages from Russian missile strikes. Kherson, Luhansk, and Donetsk regional centers, which had halted their operations, were yet to restart their activities. On 9 March of that year, the day a TBT Committee meeting took place, a national research center for standardization was hit and heavily damaged by a Russian missile.

1.3. Russia continued its attacks on Ukrainian infrastructure, with the recent destruction of the dam at the Kakhovka Hydroelectric Power Plant becoming one of the largest ecological and humanitarian disasters in Europe in recent years. To combat the damages caused by Russia's military invasion, Ukraine worked diligently to restore its infrastructure by adhering to relevant technical regulations and international standards. This focus was especially on those standards necessary for security, defense, and essential societal functions, like quality management systems and environmental management systems. Ukraine saw harmonized international standards as a vital tool for future recovery. Despite wartime conditions, Ukraine continued notifying Members about its legislative changes. Since the beginning of that year, Ukraine had shared 72 notifications, 50% of which pertained to technical regulation measures (with 36 notifications being as of 18 June 2023). They also responded regularly to WTO Members' enquiries on TBT issues, having provided 26 responses by that date.

1.4. The representative of the European Union praised Ukraine's efforts to maintain a proper functioning system of technical regulation and to continue its work in the field of standardization and metrology under these difficult conditions. The European Union particularly appreciated the efforts to submit notifications and replies to comments from WTO Members despite the war. This clearly demonstrated Ukraine's strong commitment to the WTO. The European Union condemned in the strongest possible terms the Russian Federation's unprovoked and unjustified military aggression against Ukraine, as well as the illegal attempted annexation by Russia of certain regions of Ukraine. This aggression deeply violated international law and undermined international security and stability. War crimes committed against Ukrainians, of which there was growing evidence, and the continuous destruction of civilian infrastructure, were flagrant violations of international law. The European Union called on the Russian Federation to immediately end its acts of aggression, withdraw its troops from Ukraine, and fully respect Ukraine's territorial integrity, sovereignty, and independence within its internationally recognized borders. The European Union stated it would stand firmly with Ukraine and its people for as long as it took.

1.5. The representative of the United States thanked Ukraine for its statement and joined the sentiments of the Members who had spoken today in condemning Russia's aggression on Ukraine. The delegation of the United States expressed its heartfelt support to Ukraine and said that it stood in solidarity with the Ukrainian people in these unprecedented times. The United States also expressed its appreciation to the diverse group of WTO Members who were taking action to support the Ukrainian people in their valiant and courageous defence of their country, as reaffirmed in the recent MC12 joint statement from many WTO Members, including the United States, in rejecting

Russia's illegal and unprovoked invasion of Ukraine. Meanwhile, Ukraine continued to notify its regulations to the WTO despite the unimaginable conditions they faced at home. The United States commended Ukraine's commitment to transparency and this organization. The United States added that their important work together would continue.

1.6. The representative of Canada thanked Ukraine for its continued act of engagement with the work of this Committee. Ukraine's commitment with the multilateral trading system and upholding the rule of law while under attack was commendable. Canada continued to unequivocally condemn Russia's illegal, unprovoked, and unjustifiable invasion of Ukraine – it was a clear violation of international law and the rules-based international system. Canada's support for Ukraine and its people was unwavering and it would work to find ways to use trade to support Ukraine as it rebuilt its economy and society. Canada once again called on Russia to immediately cease all hostile actions against Ukraine.

1.7. The representative of the United Kingdom reaffirmed its unwavering support to Ukraine and aligned itself with the recent remarks made by other colleagues. It had been over a year since Russia's continued war of aggression and illegal invasion of another sovereign nation, and the impacts of this brutal act continued to be felt. The United Kingdom admired the courage and bravery of Ukraine who, despite the dire circumstances, continued to stand firm against Russia and even more so, continued to uphold their obligations under the TBT Agreement. The United Kingdom thanked the representative of Ukraine for his update. The consequences of Russia's actions spanned across the globe and were directly felt in the multilateral trading system as well - not to mention the huge cost on civilian's lives. Ukrainian exporters were also directly affected, with destructions on infrastructure and supply-chain disruptions resulting directly from this illegal war. Over the last year, the United Kingdom and allies had continued to outline the enormous global impact of Putin's actions, and the United Kingdom would do so for as long as it took. Importantly, the United Kingdom thanked its colleague from Ukraine for his update in the field of metrology, standards and technical regulations. The United Kingdom applauded Ukraine's resilience, bravery and efforts to uphold its obligations under the TBT Agreement.

1.8. The representative of Moldova extended its appreciation to Ukraine for its update in this Committee and thanked Ukraine for keeping up the good work on harmonization of international standards, despite the continuous attacks launched on a daily basis by Russia on its territory. In this context, Moldova added its voice of support along with Ukraine and other Members who had spoken on condemning Russia's war. The economic and social repercussions of this war were strongly felt in and around Ukraine, including in Moldova, from the trade and transportation perspective. It should be noted that due to the war initiated by Russia against Ukraine, Moldavian economic agencies and exporters had lost access to an important share of market, and their transit routes to Asian partners had been blocked. Moreover, some of Moldova's exports had been totally blocked from the traditional markets, and Moldova had fully or partially lost its exports which had been exacerbated by the energy crisis and high inflation which had picked up to 30%. Moldova concluded by reiterating its strong support to Ukraine and the Ukrainian people and noting that it would continue to stay by Ukraine's side for as long as it took.

1.9. The representative of Japan strongly condemned Russia's aggression against Ukraine and its attacks against civilian infrastructure and cities across Ukraine. As the only country to have ever suffered atomic bombings during wartime, Japan absolutely could not accept Russia's nuclear threats, let alone its use of nuclear weapons under any circumstances. Japan strongly urged Russia to stop the aggression and withdraw its forces from the territory of Ukraine within its internationally recognized borders, immediately. Japan would also continue to work firmly on the two pillars: imposing strong sanctions against Russia and providing robust support to Ukraine in cooperation with the international community.

1.10. The representative of Switzerland condemned Russian military aggression on Ukraine in the strongest possible terms. This was a serious violation of international law. Russia's actions violated the prohibition of the use of force and the territorial integrity and sovereignty of Ukraine, as enshrined in international law. Switzerland called on Russia to respect its international obligations and to reverse its actions as well as withdraw its troops and contribute to the de-escalation. Switzerland called on all actors to respect international law, including international humanitarian law.

1.11. The representative of the Republic of Korea expressed its appreciation for Ukraine's continued efforts in the transparency area provided by its notifications and presentation today despite devastating circumstances. Korea joined others in strongly condemning Russia's invasion against Ukraine. Ukraine's sovereignty, territorial integrity and independence should be respected. Reaffirming its strong commitment to the rules-based international order, Korea would be standing together with Ukraine for the peace and prosperity of the Ukrainian people.

1.12. The representative of Australia thanked Ukraine for its intervention and update to the Committee. Australia acknowledged the challenging circumstances in which Ukraine continued its efforts to meet its WTO obligations. Australia particularly welcomed Ukraine's advice about the harmonization of its domestic standards with international standards. In this broader context of the challenges facing Ukraine, Australia echoed others and reiterated its condemnation of Russia's unprovoked and illegal invasion of Ukraine, which was a gross violation of international laws, including the Charter of the United Nations. Australia strongly supported Ukraine's sovereignty and territorial integrity and called on Russia to cease its attacks and withdraw its forces from Ukrainian territory. Russia's war on Ukraine was exacting a catastrophic humanitarian toll.

1.13. The representative of New Zealand condemned Russia's aggression. New Zealand recognized and commended Ukraine's efforts to ensure the proper functioning of its technical regulation systems, despite the massive disruption from war-time conditions. Russia had massively destructed global production and trade through its illegal and unprovoked attack on one of the leading food producers, as well as its destruction of Ukraine's civilian infrastructure and the blockading of Ukraine's ports. These Russian actions had a clear and devastating impact on both Ukraine and the global economy. New Zealand stood shoulder to shoulder with Ukraine in supporting its sovereignty and territorial integrity. New Zealand continued to call on Russia to end its war.

1.14. The representative of the Russian Federation noted that Article 13 of the TBT Agreement stipulated that the present Committee met "for the purpose of affording Members the opportunity to consult on any matters relating to the operation of this Agreement or the promotion of its objectives, […]". Therefore, he believed the bulk of the interventions the Committee had heard were not relevant to its mandate. Russia had repeatedly pointed out that discussions concerning regional or global security, and adherence to the UN Charter, did not fall within the purview of the WTO committees, including the current one. Such discussions, Russia argued, were the domain of specialized UN bodies and agencies. It was within these entities that Russia communicated its stance on the rules and justifications for its special military operation and addressed the issues that arose during its conduct. Concurrently, Russia denounced the disinformation campaign that attributed the destruction of the Kakhovka dam to Russia when it was, according to them, the act of Ukrainian forces. They suggested that one intent behind the statements the Committee had recently heard was to validate the unilateral measures some Members had implemented against Russia, in apparent breach of WTO commitments. These actions, Russia asserted, impacted global trade and the world economy. Such repercussions could have been avoided if the WTO Members who had spoken earlier had adhered to WTO rules. As the Committee planned to discuss ways to enhance its operations, one recommendation for increased efficiency was for Members to abstain from addressing topics that intentionally overstepped the Committee's mandate. Russia called on relevant delegations to refrain from occupying the Committee's time inappropriately.

2 ELECTION OF CHAIRPERSON

2.1. The incoming Chairperson, Ms Anna Vitie (Finland), recalled that her election as Chairperson was formalized via a written procedure earlier in June. She expressed her gratitude to the Members for placing their trust in her. Acknowledging the critical role of the TBT Committee, she shared her humility and honour in assuming the chairmanship. Eagerly anticipating her tenure, she hoped for the unwavering support and proactive participation of the Members. Furthermore, she extended her appreciation to her predecessor, Mr. Anwar Hussain Shaik from India, for his commendable leadership throughout the previous year.

2.2. The outgoing Chairperson, Mr. Anwar Hussain Shaik (India), conveyed his best wishes and congratulations to the incoming Chairperson as she undertook the pivotal role of leading the TBT Committee. He emphasized the significant responsibilities shouldered by the Committee, especially when compared to several other WTO bodies. The TBT Committee had demonstrated remarkable efficiency, a testament to which was the CTG's report on the performance of various committees. He was optimistic that the incoming Chairperson would uphold and further this legacy of efficiency.

Representing India and presiding over this esteemed Committee had been a privilege for him. With a commitment to efficiency, he always aimed to conclude the agenda without dragging the meetings into weekends. He expressed satisfaction over the cooperation of many Members who, upon his request, had abbreviated their oral remarks, pointing to their detailed written statements for official documentation. This collaborative approach greatly assisted in managing the agenda promptly. Mr. Anwar Hussain Shaik extended his gratitude to the Members, hopeful that such cooperative practices would persist. Lastly, he acknowledged the instrumental support of the Secretariat team in his role and extended his thanks to the interpreters.

3 IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

3.1 Specific Trade Concerns

3.1.1 Withdrawn concerns

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

- United States - State of Maine, Public Law c. 477, An Act To Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution and 06-096 Chapter 90: Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances
- Brazil - General Requirements to Product Certification
- India - Approved models and manufacturers of solar photovoltaic modules order, 2019 (ID 742)
- Angola - Decreto Executivo n°186/22 by the Ministerio das Finanças (ID 776)

3.1.2 New Specific Trade Concerns

3.1.2.1 Ireland - Draft Regulations Under Section 12 of the Public Health (Alcohol) Act 2018, G/TBT/N/IRL/4 (ID 794[3])[4]

3.2. The representative of the United States provided the following statement. The United States supports Ireland's objective of combatting harmful alcohol consumption and communicating important health information to consumers to assist more informed decision-making about alcohol consumption. We would like to thank Ireland for notifying its Public Health (Alcohol) (Labelling) Bill as G/TBT/N/IRL/4 to the WTO on 6 February with a 90-day comment period. However, the United States is deeply concerned that Ireland finalized this measure on 22 May 2023; a mere two weeks following the end of the WTO comment period. The United States reminds Ireland and the European Union of the importance of taking WTO Members' comments into account prior to the finalization of a measure. This process helps to reduce unnecessary trade barriers and increase the effectiveness of technical regulations. How should exporters to the EU navigate member State requirements that may not be compatible with EU law? For example, Ireland's notified regulation contains requirements to report alcohol content in grams, whereas EU law requires such content to be reported as a percentage of alcohol by volume. How did Ireland or the European Commission account for the European Parliament's recent actions on alcohol drinks labels in promulgating or approving the notified regulation?

3.3. We understand the EU is planning to revise the Food Information to Consumers (FIC) regulation. In this revision, will the EU set uniform alcohol labelling requirements to harmonize discrepancies across EU member States? The United States notes that the example labels, under Schedule 1 and Schedule 3 of the measure, list energy content and alcohol content in grams but do not include clarifying information about the amount of product being measured i.e. full container, 100 ml, or specific serving size. If the energy and alcohol content displayed on the label is supposed to be representative of the full container, has Ireland assessed the utility of this information, particularly for higher alcohol-by-volume (abv) products that are not typically consumed in a single sitting by an individual consumer? Furthermore, we'd appreciate receiving information from Ireland

[3] For previous statements follow the thread under ID 794.
[4] Related to Previously Raised STC ID 516.

on any assessments undertaken related to consumer understanding of labelling alcohol content in grams per container. We look forward to receiving Ireland's response to our comments.

3.4. The representative of Mexico provided the following statement. The Mexican delegation refers to Ireland's Public Health (Alcohol) (Labelling) Regulations 2022, notified to the members of this Committee in document G/TBT/N/IRL/4. The delegation of Mexico also refers to communication 500/ROC/07/2023, sent by the Government of Mexico to the Government of Ireland on 3 April 2023, through which it made comments on the Regulations that focused on: - The Government of Mexico's concern as regards the disruption to the EU's harmonized legislation and the fragmentation in the region's market that the Regulations could generate, thereby hampering international trade. - The divergence between the Irish Regulations and Regulation (EU) No. 1169/2011 in terms of the requirements for declaring energy value and alcohol content. In this connection, the delegation of Mexico asks that the delegation of Ireland: - Communicate the technical and scientific evidence on which the wording of the proposed health warnings in the Regulations is based. - Provide information on any alternatives to labelling alcoholic beverages that were considered as a way of addressing the issue in a less trade-restrictive way. Lastly, the delegation of Mexico asks the delegation of Ireland to reply to the comments shared during the public consultations.

3.5. The representative of the Dominican Republic provided the following statement. The Dominican Republic thanks Ireland for the opportunity to comment on its draft regulations notified in document G/TBT/N/IRL/4, on the labelling of alcoholic beverages. The Dominican Government acknowledges that the objective of the measure proposed by the Irish Government for alcoholic beverages marketed in its territory is to protect human health, ensure that consumers are aware of the health risks of alcohol consumption and provide health warnings on the potential consequences of harmful consumption. We share and promote a similar interest in informing pregnant women about the harm to health caused by alcohol consumption. However, we consider the measures to be more restrictive than necessary to fulfil the legitimate objective pursued, in accordance with Article 2.2 of the TBT Agreement, which states: "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create." Ireland must therefore ensure that its proposed measures are compatible with the commitments assumed under the WTO TBT Agreement. The measures go beyond even the World Health Organization (WHO) Global Strategy to Reduce the Harmful Use of Alcohol. In view of this, we request that the extent of the obligations be brought into line with the public health objective pursued, recalling that there are alternative measures to achieve the same level of awareness as the Government of Ireland intends.

3.6. *Exclusive health warnings for the Irish market*.[5] We urge you to reflect on whether the proposed warnings, whose wording is inaccurate, disproportionate and risks sounding alarmist, especially in the light of the evidence concerning responsible and moderate alcohol consumption, are appropriate. Furthermore, the warnings should take account of the fact that the risks to drinkers' health vary substantially depending on drinking patterns, including the speed of consumption, the quantity of alcohol ingested, and the frequency and context of consumption. The link between alcohol and cancer risk is complex and depends on multiple individual factors, such as drinking patterns, which calls for a broader approach that is centred mostly on raising consumer awareness of the health risks associated with excessive alcohol consumption. The proposed warning is more restrictive than necessary and thus violates Article 2.2 of the TBT Agreement, which stipulates that the "available scientific and technical information" must be taken into account when establishing technical regulations to pursue public policy objectives. It is also incompatible with the WHO Strategy, the main objective of which is to reduce the harmful use of alcohol. It should be noted that, in the Dominican Republic's view, the adoption of this measure would undermine efforts by the European Union to ensure that consumers receive harmonized and accurate information based on scientific evidence, including a plan for mandatory health warnings being developed by the European Parliament through the Special Committee on Beating Cancer. Since there is currently no compelling scientific evidence of a direct link between alcohol consumption and fatal cancer, such a claim would lack documentary support and mislead consumers. We therefore invite the Irish Government to consider alternative technologies such as QR codes, a method of providing up-to-date information

[5] Under Section 5(1) and (3), alcoholic beverage containers must display health warnings stating that "Drinking alcohol causes liver disease" and "There is a direct link between alcohol and fatal cancers".

on the complex relationship between health risks and alcohol consumption, as well as information on nutrition and responsible drinking.

3.7. *A major barrier to the free movement of goods within the EU Common Market*. We certainly agree on the importance of addressing the harmful use of alcohol. However, this regulation would also create obstacles to the free movement of goods within the EU Common Market, and disproportionate and unnecessary barriers to international trade. If the proposal is adopted as it stands, exporters of distilled spirits would be forced to relabel or repackage their products destined for the Irish market, significantly increasing their operating costs. It would also violate Article 12.3 of the TBT Agreement by creating unnecessary obstacles to exports from developing country Members of the WTO, such as the Dominican Republic, where spirits – specifically rum – form part of our cultural identity and have a designation of origin.

3.8. *Mutual recognition of existing pregnancy warning pictograms*. We call on Ireland to examine the practices of other EU countries that have warnings similar to pregnancy pictograms, which fulfil Ireland's pursued objective and avoids the exporter having to change the label in order to enter the Irish market.

3.9. *Alcohol content must be given by volume*. Similarly, we urge Ireland to consider maintaining legislative coherence at the Community level in terms of the proposed and required unit of measure. Grams of alcohol is not a measure that consumers understand, and it will create confusion since they are familiar with alcohol strength measured as a percentage of alcohol by volume, not by grams.

3.10. *Alcohol and energy content must be in line with existing requirements*. Under the EU Regulation on Food Information to Consumers, the energy value and the amount of nutrients must be expressed per 100 g or per 100 ml, and may also be expressed per portion or per consumption unit.[6] A standard drink in Ireland is 10 g of alcohol, the equivalent of 25 cl of beer (5% vol.), 12.5 cl of wine (10-12% vol.) or 3 cl of distilled spirits (40% vol.). The requirement to display such information on each bottle or container does not provide consumers with basic information on the alcohol content of a measure/portion of distilled spirit, wine or beer in a way that would allow them to measure or moderate their alcohol consumption and make responsible choices.

3.11. These are, in short, some of the reasons why the Dominican Republic is requesting Ireland to take note of these comments in line with the WTO commitments assumed under the TBT and other agreements, and to ensure that the measures finally adopted do not, in practical terms, constitute a technical barrier to trade. Lastly, we appreciate this opportunity to express our concerns at this important discussion forum that seeks to maintain and boost our trade, while always taking protection of health into account. The Dominican Republic hopes that between us we will be able to arrive at a mutually satisfactory measure. The Dominican Republic thanks the delegation of Ireland for considering this statement and the requests made therein. We also thank the United States and Mexico for submitting the concern in question, Japan, Colombia and Canada for their support, and Cuba for submitting its comments in writing.

3.12. The representative of Japan provided the following statement. Japan supports the concerns raised by the United States, Mexico and Dominican Republic with regard to "Draft Regulations Under Section 12 of the Public Health (Alcohol) 2018" notified to Members in document G/TBT/N/IRL/4. These revised regulations establish requirements above and beyond EU regulations. Therefore, it would create trade barriers within the EU and lead to the fragmentation of the EU as a single market. In particular, Japan has two concerns as follows. First, business operators exporting alcoholic beverages to Ireland will have to deal with labelling that differs from the EU standards, which will inevitably increase costs. Second, the health warnings labelling in these draft regulations ("DRINKING ALCOHOL CAUSES LIVER DISEASES" and "THERE IS A DIRECT LINK BETWEEN ALCOHOL AND FATAL CANCERS.") are inaccurately and inappropriately worded with an overemphasis on risk, and are not accurately based on objective scientific evidences. Taking into concerns of Japan, the United States, Mexico and Dominican Republic seriously, Japan calls for a review of the Irish revised regulations to ensure that they do not create more trade barriers than necessary for liquor businesses.

3.13. The representative of Canada provided the following statement. Canada supports Ireland's public health objective of reducing the health risks and harms associated with alcohol use. However,

[6] Articles 32 and 33 of Regulation (EU) No. 1169/2011.

Canada is concerned by the potential impact these regulations may have on trade in the EU single market. These regulations, once implemented, would impact Canada's trade – and that of other WTO Members – by requiring exporters to produce Ireland-specific labels, creating new costs and impacting their ability to reallocate product within the European market. Unilateral member State initiatives such as these undermine the EU single market by establishing differential treatment of products and creating barriers to trade. Canada highlighted these concerns in a letter to the EU Enquiry Point and Ireland's Department of Health sent in May 2023, ultimately pressing for the EU to coordinate and harmonize alcohol health labelling. Canada notes the European Commission already announced plans to review its policy on alcohol labelling, and intends to propose a mandatory indication of health warnings on alcohol products before the end of 2023 as part of "Europe's Beating Cancer Plan". As Ireland has provided a three-year lead-in time for these regulations to be implemented, Canada encourages the EU to use this time to coordinate and harmonize alcohol health labelling at the EU-level to address regulatory fragmentation and prevent disruptions to trade. Finally, Canada understands Ireland signed its draft regulations into law on 22 May 2023, only 14 days after the official TBT window for comments closed. This indicates Ireland did not intend to take into account comments made through the Enquiry Point and here today. This is of serious concern for Canada, and we urge our partners in the EU and Ireland to respect their obligations under the TBT Agreement, including Articles 2.9 and 3.

3.14. The representative of Chile provided the following statement. The delegation of Chile thanks Ireland for notifying the draft Public Health (Alcohol) (Labelling) Regulations 2022 to the Committee on Technical Barriers to Trade. Our delegation hopes that Ireland will duly respond to the comments sent in good time via Chile's official WTO/TBT enquiry point. We also wish to point out that efforts to fulfil the legitimate public policy objectives, particularly those under Article 2.2 of the TBT Agreement, pursued by the notified Regulations must not result in the creation of unnecessary obstacles to trade. Chile is particularly concerned by the requirements under part 2 of the Regulations, which relate to health warnings. These warnings directly link the consumption of alcohol to the development of deadly neoplastic diseases such as liver cancer, while failing to make any distinctions as regards consumption levels or other risky behaviours associated with the consumption of alcohol. We consider that these provisions excessively obstruct trade, as there is no conclusive evidence that moderate alcohol consumption is the direct cause of liver cancer or other deadly cancers.

3.15. The representative of Argentina provided the following statement. Argentina would like to thank the delegations for including this trade concern on the meeting agenda and Ireland for its notification. Argentina recognizes the importance of informing consumers about alcohol consumption. At the national level, both the National Grape-Growing and Wine Production Institute and the industry have promoted the concept of responsible consumption with the aim of reducing the impact of alcohol consumption on non-communicable diseases, based on the premise that consumer education is the most appropriate tool for achieving this aim. Although Argentina understands that the warnings under the Irish regulations are intended to inform consumers about alcohol consumption, we believe that they may unnecessarily harm trade and that they might not take account of differences between alcoholic beverages, in terms of their alcohol content in particular, but also their composition. We therefore encourage Ireland to consider other strategies to promote moderate and responsible drinking that do not create unnecessary obstacles to trade.

3.16. The representative of New Zealand provided the following statement. New Zealand thanks Ireland for the opportunity to comment on the Public Health (Alcohol) (Labelling) Regulations 2023. New Zealand shares the concerns of other parties surrounding these measures. In particular, we note our concern that the measure requires parties to express a product's quantity of grams and energy on the labelling differently to the European Commission's Regulation 2021/2117, while achieving substantively the same outcome. We seek clarification from Ireland on whether it has considered alternatives to enable the Regulations to be less trade restrictive on imports from Ireland's trading partners. For example, has Ireland considered aligning its Regulations with EU Regulation? New Zealand also wants to highlight for Ireland's continued consideration of the potential for these measures to affect stock in trade from other countries. While New Zealand understands the new measures do not come into effect until 22 May 2026, we note that wine has a very long shelf-life and there may be old, and high-value, stock already in trade (such as from older vintage stock in cellars) that does not display Ireland's required warnings and energy information. New Zealand would appreciate clarification from Ireland on how it intends to ensure these regulations do not unintentionally prohibit trade of such old stock.

3.17. The representative of Colombia provided the following statement. Colombia supports the trade concern raised by the Dominican Republic, Mexico and the United States regarding the draft regulations under Section 12 of the Public Health (Alcohol) Act 2018, notified to Members in document G/TBT/N/IRL/4. On 4 May, Colombia sent comments from its export sector via the contact point, outlining the following points, among others: - Mutual recognition for accepting pregnancy warning labels similar to those used in third countries, including the European Union, without changing the labelling; - Alcohol and energy content in accordance with existing EU regulations; - The scientific and technical basis for the wording of the health warnings proposed in the regulations. We look forward to receiving a response from Ireland to the comments made in the public consultations. Lastly, bearing in mind the concerns outlined by several Members, we hope that there will be flexibility when reviewing the measures in order to avoid unnecessary trade barriers for alcoholic beverages companies.

3.18. The representative of Cuba provided the following statement. On 2 May, the Directorate of Technical Regulations and Quality of the Republic of Cuba's Ministry of Foreign Trade and Investment, the national contact point for the TBT Committee, sent to its Irish counterpart the concerns of Cuban rum producers and exporters in relation to the Irish Public Health (Alcohol) (Labelling) Regulations 2022, notified to the Committee members in document G/TBT/N/IRL/4. In the communication, we thanked the Government of Ireland for notifying its draft regulations to the Committee on Technical Barriers to Trade in accordance with its obligations as a Member of the World Trade Organization under Article 2.9.2 of the Agreement, which establishes that notifications of technical regulations must take place at a stage when comments can be taken into account and amendments can be made to the initial draft. We also explained the impact of these measures on labelling and the obstacles that these Regulations pose to international trade and, more specifically, to exports of alcohol products from Cuba to Ireland. We have yet to receive a response to the concerns outlined in our communication, on which we would be grateful to hear Ireland's views.

3.19. The representative of Australia provided the following statement. Australia recognizes the importance of labelling to promote consumer awareness and support public health initiatives. However, like other Members today, Australia is concerned Ireland's new alcohol labelling regulations could impact trade by introducing labelling requirements that are inconsistent with those of other European Union (EU) member States, undermining the concept of the European single market and potentially creating an unnecessary obstacle to international trade. Ensuring consistency in labelling between Ireland and other EU member States is important in reducing unnecessary barriers to trade. Australia supports concerns raised on this issue and is willing to work with the Government of Ireland to resolve this matter.

3.20. The representative of Guatemala provided the following statement. Guatemala thanks the countries that raised this trade concern, in addition to those that are supporting it. Furthermore, Guatemala supports the objective of the proposal to combat alcohol abuse and ensure that Irish consumers are directly informed of alcohol-related health risks and receive support in making healthier choices with regard to alcohol consumption. Guatemala has raised a number of timely concerns relating to the draft regulations, which, should they be implemented, would constitute a blatant barrier to trade. Guatemala therefore requests that Ireland recognize products that contain similar pictographic pregnancy-related warnings without requiring a change of label. We urge Ireland to ensure that the regulations are based on the information on alcohol content and energy as provided by Regulation (EU) No. 1169/2011 on the provision of food information to consumers. In addition, we ask Ireland to clarify why the quantity of grams of alcohol needs to be provided. We also encourage Ireland to consider other options, such as QR codes or websites, to inform consumers of the risks associated with alcohol consumption. Guatemala would appreciate a response from Ireland to the concerns raised. We also ask Ireland to consider measures that are not more restrictive than necessary.

3.21. A representative from the World Health Organization provided the following statement. Thank you, Chair, for the opportunity to address the Committee on this critical public health issue. Alcohol consumption poses risks to human health. The International Agency for Research on Cancer, which is a WHO body, classifies alcohol as a group 1 carcinogen, with alcohol consumption causing cancers of the mouth, pharynx, larynx, oesophagus, liver, colorectum and female breast. In addition, alcohol consumption is a risk factor for over 200 communicable and non-communicable diseases and can lead to road traffic injuries and harm to self and others. WHO estimates that in 2019, 2.6 million deaths were caused by alcohol consumption, equivalent to tuberculosis, malaria and HIV/AIDS together. Importantly, no level of alcohol consumption can be established as safe for health. At the

international level, countries have committed to reducing alcohol consumption per capita. This is target 3.5.2 of the Sustainable Development Goals. More recently, countries have confirmed their commitment to reduce alcohol-related harm by adopting the WHO Global Action Plan 2022-2030 to effectively implement the Global Strategy to Reduce the Harmful Use of Alcohol as a Public Health Priority. The Proposed Actions for Member States in the Action Plan include to: "Ensure appropriate consumer protection measures through the development and implementation of labelling requirements for alcoholic beverages that display essential information for health protection on alcohol content in a way that is understood by consumers and also provides information on other ingredients with potential impact on the health of consumers, caloric value and health warnings."

3.22. Appendix 3 of the WHO Global Action Plan for the Prevention and Control of Noncommunicable Diseases, adopted by the World Health Assembly, also includes the policy option to: "Provide consumers with information, including labels and health warnings, about contents of alcoholic beverages and the harms associated with alcohol consumption as a public health intervention to reduce modifiable risk factors for noncommunicable disease and underlying social determinants through creation of health-promoting environments." Thank you very much for this opportunity to provide additional information to the TBT Committee, with a view to ensuring coherence across the international system.

3.23. In response, the representative of the European Union provided the following statement. The EU would like to thank the United States, Mexico, Dominican Republic, Japan, Canada, Colombia, (Australia, Argentina, New Zealand, Chile, Guatemala and Cuba) (and the WHO) for their comments on the Irish proposal under Section 12 of the Public Health Act of 2018. Allow me to address the core concerns raised here today by the different WTO Members. First, the EU would like to thank all the members of the TBT Committee who provided written comments on the Irish measure. We had hoped to have the replies out ahead of today's meeting but unfortunately this will only happen shortly after the meeting. Second, the Irish Regulations at issue aim to communicate in simple and direct terms information to the consumer on the content of the alcohol product as part of a series of public health measures. The measure is supported by a body of scientific research. Most of those can be found in the TBT notification made by Ireland. Among other things, the body of scientific research listed in the TBT notification cover the lack of awareness among the Irish population of health risks associated with alcohol consumption. It also covers scientific data on negative effects of alcohol on mortality, liver disease, pregnancy and cancer, and the expected benefits of warning statements to high-risk drinkers. Furthermore, the Covid crisis demonstrated that closing premises where one can consume alcoholic beverages only demonstrated a marginal impact on reducing average alcohol consumption in Ireland.

3.24. In addition, the measure was designed with the aim to minimise the impact on cross-border trade. In fact, the Irish law provides that that the necessary information can be included by a sticker affixed to the container of the alcohol product. This means that alcohol products can be imported without this information on the product, the information can then be added before the product is sold on the territory of Ireland. The mandatory minimum dimensions of the health information and warnings are set small (60mm x 30mm) and the requirement to provide a pregnancy warning can be met by displaying an image without the need for accompanying text. In addition, the draft law provides that for containers which have a surface area of less than 80 square centimetres, the area reserved for the health warnings can be reduced by 25%. Furthermore, there is a three-year transition period for the measure. It won't go into effect until 22 May 2026. This three-year lead-in time is to give businesses the time to prepare for the changes. Finally, the EU has indeed announced its intention to review its food labelling rules under the regulation on Food Information to Consumers Regulation, including the labelling of alcoholic beverages. However, we are still very early in the process. Currently the preparatory work and evidence-gathering are in progress with the preparation of an impact assessment.

3.1.2.2 European Union - Proposal for a regulation on horizontal cybersecurity requirements for products with digital elements, G/TBT/N/EU/936 (ID 795[7])

3.25. The representative of China provided the following statement. 1. For chapter 1, 1/2/1, it is recommended to clarify the definition of "products with digital elements". Chapter 1 1/2/1 defined the scope of CRA regulation as below, "This Regulation applies to products with digital elements whose intended or reasonably foreseeable use includes a direct or indirect logical or physical data

[7] For previous statements follow the thread under ID 795.

connection to a device or network". This regulation does not clearly define "products with digital elements". Manufacturers cannot evaluate the scope of products according to the existing requirements of the regulation. The EU should clearly define "products with digital elements" or provide relevant guidelines, such as whether various application APKs and security components are included in the scope. It is recommended that services (as mentioned in the recital) such as SaaS and open-source software exempted from this regulation should be explicitly excluded from the scope.

3.26. 2. For Chapter 1, 1/3/1, it is recommended to further clarify "software components to be placed on the market separately". Chapter 1 1/3/1 defined the "product with digital elements" means any software or hardware product and its remote data processing solutions, including software or hardware components to be placed on the market separately. Firstly, the concept of software components to be placed on the market is vague. Consumers can download and use software from websites, app stores, etc.. anywhere in the world, so it is difficult to judge whether the software components are placed on the market or not. Secondly, the NLF has not provided conformity assessment requirement for pure software products yet. Finally, if any software components to be placed on the market separately shall be conducted conformity assessment to comply with CRA, it is a great burden for small and medium-sized enterprises.

3.27. 3. For Chapter 1, 1/6/5, it is recommended to add a provision on the identification of "highly critical products with digital elements" pursuant to transparency manner. Chapter 1 1/6/2 specifies the European Commission is empowered to adopt delegated acts to define the "highly critical products with digital elements". The identification elements (a) & (b) of the "highly critical product" set out in this article contain obvious non-technical judgments, including whether the product is used by the essential entities referred to (EU) 2022/2555 NIS2 and the security of the supply chain. It is recommended to add a provision on the identification of "highly critical products with digital elements" pursuant to transparency manner. The Commission shall identify products as "highly critical products with digital elements" based on the principles of impartiality, non-discrimination, and transparency.

3.28. 4. For Chapter 2, 2/11/1, it is recommended that the manufacturer shall notify ENISA any actively exploited vulnerability within 72 hours. Chapter 2 2/11/1 specifies the manufacturer shall, without undue delay and in any event within 24 hours of becoming aware of it, notify ENISA of any actively exploited vulnerability contained in the product. The requirement for the 24-hour vulnerability notification is strict. In view of after the actively exploited vulnerability is discovered, it is necessary to collect information, verify the vulnerability, and identify the scope of affected products immediately. Meanwhile, international enterprises are limited by the time difference, it will take more time to deal with the vulnerability. It is recommended that the vulnerability reporting time could be changed to 72 hours, which is consistent with the requirements of (EU) 2022/2555 NIS2 Directive.

3.29. 5. For Chapter 2, 2/11/2, it is recommended to modify the scope of security incidents to be notified and requirements of the reporting time, moreover, to exempt manufacturers reporting obligations of incidents in B2B scenarios. Chapter 2 2/11/2 specifies the manufacturer shall, without undue delay and in any event within 24 hours of becoming aware of it, notify to ENISA of any incident having an impact on the security of the product. As specified in the (EU) 2022/2555 NIS2, within 24 hours of becoming aware of the significant incident, an early warning needs to be submitted to the CISRT or the competent authority; and within 72 hours, an incident notification needs to be submitted to the CISRT or the competent authority. It is recommended that the requirements of incident notification could keep consistent with the (EU) 2022/2555 NIS, modifying this requirement to "Early warning is submitted within 24 hours and incident notification is submitted within 72 hours for the significant incident". Regarding to the B2B application scenarios, there is a high probability that security incidents will occur in the operation, therefore, it is more reasonable that the entities referred in the (EU) 2022/2555 NIS2 shall fulfill the reporting obligations and (if applicable) collaborate with the manufacturer. It is recommended to exempt manufacturers from reporting obligations of incidents in B2B scenarios.

3.30. 6. For Chapter 5, 5/46, it is recommended that the transition period could be extended to 48 months; the RED DA will be repealed when the CRA Act comes into force, but RED DA certificates which have been issued will continue to be valid. Article 57 of Chapter VIII specifies that this regulation shall apply from "24 months after the date of entry into force of this Regulation". As the scope of CRA regulation is very wide, all products covered by the regulation must be subject to

conformity assessment before they are put into the EU market. Considering the time for developing the harmonized standards, implementing regulations, and the time for the economic operator and Notified Body to prepare after CRA was issued, it is recommended that the transition period could be extended to 48 months, and the transition period for the manufacturer's vulnerability reporting obligation could be extended to 30 months. It is recommended to repeal the Directive (EU) 2022/30 RED DA after the entry into force of the CRA, but product certifications obtained under the (EU) 2022/30 RED DA before the entry into force of the CRA can still remain valid to avoid duplicate certifications.

3.31. 7. For Annex I, 1(2), it is recommended to change "without any known exploitable vulnerabilities during product delivery" to "without publicly known exploitable vulnerabilities within XX days before the product delivery", using the European vulnerability database as the main basis for determining whether "vulnerabilities" are "publicly known exploitable vulnerabilities", and adding necessary exemption clauses. It is specified that "Products with digital elements shall be delivered without any known exploitable vulnerabilities" in paragraph 1 (2) of Annex I. Generally, the product delivery time is restricted by the contract. However, the occurrence of vulnerabilities is unpredictable. To avoid breach of contract, it is recommended that "Products with digital elements shall be delivered without any known exploitable vulnerabilities" in paragraph 1 (2) of Annex I could be changed to "No publicly known exploitable vulnerabilities within XX days before the product delivery". (EU) 2022/2555 NIS2 has defined that ENISA will develop and maintain a European vulnerability database. Therefore, it is recommended that vulnerabilities published by the vulnerability database could be used as the main basis for determining whether vulnerabilities are publicly known vulnerabilities. Some vulnerabilities cannot be fixed on the original product. It is recommended that appropriate exemption clauses could be provided for these vulnerabilities. For example, WFA released WPA3 technical specifications to fix WPA/WPA2 vulnerabilities in newly developed Wi-Fi products. For the interests of consumers, WFA still allows WPA/WPA2-enabled products to be phased out naturally. In addition, some chip vulnerabilities are difficult to exploit and repair. Once they are manufactured and cannot enter the market, chip manufacturers' costs will be greatly increased, and technological innovation will be suppressed. The market generally adopts the product iteration method to naturally eliminate old products. It is recommended that appropriate exemption clauses could be provided for such vulnerabilities.

3.32. In response, the representative of the European Union provided the following statement. At the outset, the European Union would like to reassure China that it will provide a detailed written response to China's written comments received in March 2023. The response is currently in the final phase of the internal EU consultation process and will be sent through the Enquiry Point very soon. The EU would like to provide a brief reply to China statement as follows. As regards the recommendation to provide the definition of products with digital elements, the EU would like to inform China that the EU regulatory approach is to have rules that provide legal certainty and are accordingly as detailed as possible but at the same time sufficiently flexible so as not to stifle innovation and ensure that rules remain future-proof. As regards the request to clarify the notion of "software components to be placed on the market separately", the list of definitions in the proposed Regulation includes the concept of "placing on the market", which refers to the first making available of a product on the Union market, and clarifies the notion of "making available". The EU considers that these two definitions, combined, clarify the concept of "placed on the market".

3.33. As to the identification of "highly critical products with digital elements", the EU would like to indicate that Article 6(5) establishes the criteria the Commission has to take into account when preparing a delegated act. The criteria both provide legal certainty and take into account, in an objective manner, the evolving technology and threat landscape. As to extension of the time delay for reporting incidents to 72 hours and the exemption from reporting of incidents in B2B scenarios, the EU observes that the notification expected from the manufacturer is not a comprehensive report, but shall only include details concerning that vulnerability and, where applicable, any corrective or mitigating measures taken. The EU also observes that the reporting obligations in NIS2 Directive only concern significant incidents and for services by the entities in the scope of NIS2 Directive. It does not concern actively exploited vulnerabilities in products or incidents having an impact on the security of a product, as is the case for the proposed Regulation. As to the provision of a longer transition period, extended to 48 months, the EU considers that the two-year transition period is a standard transition period to allow the development of harmonized standards. The proposal also includes a grandfathering clause according to which the products with digital elements that have been placed on the market before the date of application of the new regulation shall not be subject to its requirements. Finally, the EU is of the opinion that delivering products with digital elements

without any known exploitable vulnerabilities or providing security patches or updates to products with digital elements free of charge is necessary to achieve the general consumer safety and cybersecurity objectives pursued by the proposed Regulation.

3.1.2.3 United Arab Emirates - Technical Requirements for Electric Vehicle, G/TBT/N/ARE/572 (ID 796[8])

3.34. The representative of China provided the following statement. China noted the United Arab Emirates notified the technical requirements for electric vehicle and this standard covers all electric vehicles with a speed of more than 25km/h and takes in consideration the compatibility with relevant Gulf standards and regulations and it is the first time for China to raise the concern. China has submitted 13 comments from technical aspects during the comment period and have not received any response so far so we would like to use this opportunity to communicate with the counterparts from the United Arab Emirates to get feedback.

3.35. According to Article 2.4 of the WTO/TBT Agreement, "Where technical regulations are required and relevant international standards exist or their completion is imminent, members shall use them. or the relevant parts of them, as a basis for their technical regulations ...", China suggests that: (1) The UAE refer to the relevant scope provisions of the UN regulations to further clarify the scope of application of this regulation. The scope of application of this regulation is supplemented as follows: "This standard is applicable to electric vehicles with a speed exceeding 25km/h and a maximum total mass less than 3500kg." (2) It is recommended that technical regulations be consistent with the requirements of the UN regulations, specifying that connectors shall not be opened, separated, etc. except for those without the use of tools. When relevant requirements are met, connector separation is allowed; and adding protection level requirements for live parts. (3) It is recommended that technical regulations be consistent with the requirements of the UN regulations, adding that when connectors are separated, they must meet the corresponding protection level requirements; regarding the requirements of "meeting the corresponding protection level requirements when the connector is separated", "equipped with a locking mechanism", and "within 1 second after the connector is separated, the voltage of the live parts becomes equal to or less than 60 V DC or equal to or less than 30 V AC (rms)" , meet one or more of these requirements can be considered as meeting the regulations; remove the requirement of "Connectors shall locate under the floor". The relevant requirements in the Chinese standard GB 18384 are consistent with UN UNECE R100. It is recommended that the UAE consider equivalent recognition of the Chinese regulation GB 18384.

3.36. (4) It is recommended that the technical regulations of the UAE be consistent with the requirements of the UN regulations, and the chapter "3.2.1.2.1 Protection against Electrical Shock" be split into two chapters: "Absence of high voltage" and "Low electrical energy". And clarify that meeting one or more of the requirements of "Absence of high voltage", "Low electrical energy", "Physical protection", and "Isolation resistance" can be considered as meeting regulatory requirements; The relevant requirements in the Chinese standard GB 31498 are consistent with UN UNECE R94, and it is recommended that the UAE consider equivalent recognition of the Chinese regulation GB 31498; (5) It is recommended to maintain consistency between the technical regulations of the UAE and the requirements of the UN regulations, and to supplement the resistance value requirements in the case of "any two exposed conductive parts that can be reached simultaneously". (6) To avoid confusion for enterprises in response, it is recommended that the technical regulations of the UAE be consistent with the requirements of the UN regulations. Clarify that the resistance tested in "the resistance shall be less than 0.1Ω" is an equipotential resistance; If the resistance tested in "the resistance shall be less than 0.1 Ω" is an equipotential resistance, it is recommended to delete the requirement of "the resistance shall be less than 0.1 Ω" to avoid duplicate authentication; The relevant requirements in the Chinese standard GB 18384 are consistent with UN UNECE R100. It is recommended that the UAE consider equivalent recognition of the Chinese regulation GB 18384.

3.37. (7) It is recommended to allow the label content in section 6.1.3 to have other similar expressions such as "FOR USE WITH ELECTRIC VEHICLES"; Alternatively, it is recommended that the label content in section 6.1.3 be consistent with the label content in section 6.2.1. (8) To avoid confusion for enterprises, it is recommended to clarify the quantitative standards for the anti-electric shock requirements of electric vehicle couplers, or explain whether this requirement is consistent

[8] For previous statements follow the thread under ID 796.

with the electrical performance requirements of the entire vehicle. If it is consistent with the electrical performance requirements of the entire vehicle, it is recommended to delete this requirement. (9) It is recommended to add "If the user can externally charge the on-board ESS, the vehicle should not be able to move through its own propulsion system when the external power supply is connected to the vehicle end socket" in section 3.1.4 and delete section 6.1.6. (10) It is recommended to clarify the definition of listed system, or modifying "listed system of protection against electric shock of person" to "system of protection against electric shock of person" to avoid manufacturers' misunderstanding of regulations.

3.38. (11) It is recommended to clarify objects with clear requirements: 1) If the object is overcurrent protection, it is recommended to follow the following regulations: the power supply equipment detects the actual working current of the on-board charger. When i) the maximum power supply current corresponding to the PWM signal of the power supply equipment is ≤ 20A, and the actual working current of the on-board charger exceeds the maximum power supply current+2A and remains for 5 seconds, or ii) the maximum power supply current corresponding to the PWM signal of the power supply equipment is>20A, when the actual working current of the on-board charger exceeds 1.1 times the maximum power supply current and remains for 5 seconds, the power supply equipment should terminate the charging process within 5 seconds. Reason: For example, if the minimum limit for overcurrent protection in the original text is 125% of the maximum load of the electric vehicle power supply device, and the current reaches 7.5A when it is 6A, it is defined as the overcurrent protection state. Therefore, external factors such as grid fluctuations and internal factors such as detection errors may lead to frequent overcurrent protection, affecting the user experience. When the current is 63A and reaches 78.75A, it is in the overcurrent protection state, and at this time, it may have exceeded the product's load-bearing capacity and lost the significance of overcurrent protection. 2) If the object is a switch, it is recommended to change the required object in the original text to a switch.

3.39. (12) It is recommended that the UAE clarify the implementation requirements of the standards listed in Appendix 1 and Appendix 2 in this draft, as well as the certification and non-certification requirements, so that vehicle manufacturers can understand how to prepare. (13) Considering promoting trade facilitation among WTO Member countries, it is recommended that the UAE, Saudi Arabia, and other Gulf countries uniformly recognize Gulf electric vehicle witness test reports to avoid duplicate testing and certification of the same projects.

3.40. The representative of the United Arab Emirates did not provide a response to the concerns raised.

3.1.2.4 India - Footwear (Quality Control Order), 2020, G/TBT/N/IND/172 (ID 797[9])

3.41. The representative of the United Kingdom provided the following statement. The United Kingdom thanks India for our bilateral engagement on notification G/TBT/N/IND/172, which sets out quality control requirements for footwear made from leather and other materials. Like India, the UK acknowledges the importance of implementing high standards for footwear to ensure consumer protection. Nevertheless, we encourage India to base their relevant footwear regulations on applicable international standards, which provide an adequate means of ensuring product quality and safety. We encourage India to continue its participation in the ISO/TC 216 Footwear and ISO/TC 94 Foot Protection Committees and recognise that conformity with ISO relevant standards would fulfil Indian quality control requirements. It is our understanding that, for the purpose of these new regulations, the Bureau of Indian Standards would be the only body authorized to provide certification for the entire Indian market. UK industry has requested clarity on the rationale behind mandating third party testing and certification for products, which already conform to ISO international standards. The UK is concerned that these additional procedures will result in delays and unjustified costs to commercial operators. Furthermore, the UK believes there would be other less trade restrictive options available and would be interested if any alternatives were considered.

3.42. The UK is also concerned that these regulations could stifle creativity and innovation in fashion footwear, particularly in a growing market. No other country extends mandatory certification to fashion footwear where products evolve based on consumer demand and use innovative materials. Moreover, given that India forms a considerable part of the complex global footwear supply chain, it is likely that manufacturers will have to manufacture to two different standards. This measure will

[9] For previous statements follow the thread under ID 797.

therefore lead to significant adverse impacts on trade flows and the footwear industry more broadly. Did India undertake an impact assessment of this measure, and, if so, would India be able to share its findings? Finally, we thank India for delaying this measure by at least six months to allow Member concerns to be responded to. We encourage India to respond to our questions submitted to the Enquiry Point and re-consider the implementation of this measure.

3.43. The representative of the European Union provided the following statement. The European Union would like to support the United Kingdom. The EU recognises the importance of high standards for footwear regarding product and chemical safety, however standards must not become restrictive on companies that already apply high safety standards. The EU remains deeply concerned by the increasing number of quality control orders issued by India across many sectors. The EU would like to recall that the majority of QCOs introduced by India appear to have a protectionist orientation and consequently raise questions regarding compliance with the WTO's TBT Agreement. The EU is particularly concerned by the fact that QCOs usually prescribe India-specific standards where international standards already exist. In fact, while dealing with QCOs, the procedures involved pose a greater hurdle than complying with the technical standards. The EU would like to remind India that Article 2.4 of the TBT Agreement requires Members to use international standards where they exist as a basis for technical regulations except where such international standards or relevant parts would be ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

3.44. India's notification sets out quality control requirements for footwear made from leather and other materials. Although the notified standard is to apply to all footwear entering the Indian market, both India-made and imported, it will put exporters in a disadvantaged position as the QCO will have an effect that will restrict imports. The EU would therefore like to recall that international standards should be used to facilitate trade and to limit the costs incurred by footwear manufacturers. Additionally, footwear imported into India should be allowed to be tested in laboratories outside of India. Testing only in India causes delays and additional costs. The EU would like to suggest to India to allow those brands which meet EU standards in footwear reproduction to export to India based on self-certification. Finally, the EU welcomes India's decision to defer the entry into force of some QCOs by at least six months until 1 January 2024. The EU would like India to consider further deferment of this measure.

3.45. In response, the representative of India provided the following statement. India has taken various initiatives to improve the quality of footwear and QCOs are an important component in this regard. However, level playing field has been ensured for foreign and domestic manufacturers. India has its own quality standards developed by BIS and import of footwear and leather items to Indian territory has to follow these standards. Being one of the largest consumer markets, India has to protect the consumer's rights. As per the BIS Act, 2016, Leather and Footwear QCOs come under scheme-I (ISI Mark Scheme) for which self-testing is not allowed to prevent the risk to human life and safety. We thank the UK for the ongoing engagement on a bilateral basis on this STC.

3.1.2.5 European Union - The PFAS Restriction Proposal under the Registration, Evaluation, Authorisation and Restriction of Chemicals (ID 798[10])

3.46. The representative of Japan provided the following statement. Japan understands the regulatory objectives of protecting human health and the environment. However, Japan has concerns about the proposal to newly restrict perfluoroalkyl compounds and polyfluoroalkyl substances (PFASs) under the REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) regulation, published by the European Chemicals Agency (ECHA) in February this year. Although some PFASs are considered to have high risk, there are considerable differences among PFASs in terms of their direct and harmful effects and properties, which are not recognized as common to all PFASs. In fact, the proposed restriction itself also acknowledges that "for most PFASs there are insufficient data to adequately assess their effects on human health and the environment". Some PFASs are used only in enclosed spaces where the amount of exposure to the environment is very limited, and the risk posed by such uses of PFASs to human health and environment are even lower. Since many PFASs are used in a wide range of sectors and no alternative substance has been

[10] For previous statements follow the thread under ID 798.

identified for many PFASs, a full ban on their use, trade, etc. across all PFASs would be extremely trade restrictive.

3.47. Japan understands the regulatory objectives of protecting human health and the environment. However, the proposed restriction which would introduce a uniform restriction on the use, trade, etc. of all PFASs, including PFASs that have not been proven to pose unacceptable risk and PFASs that pose less risk depending on their uses, would be inconsistent with Article 2.2 of the TBT Agreement as the proposed restriction lacks sufficient scientific and rational basis and is more trade-restrictive than necessary to fulfil the regulatory objectives. We believe that the EU will provide a sufficient grace period in accordance with Article 2.12 of the TBT Agreement when introducing the proposed restriction, but in light of the above, we would like to request that the EU appropriately consider and examine the comments submitted by industries and other stakeholders, and limit the scope of the restriction to an appropriate range for the objectives of the REACH regulation, which are protection of human health and the environment.

3.48. The representative of the Republic of Korea provided the following statement. Korea appreciates this opportunity to convey the following comments and concerns from our industries on the "PFAS Restriction Proposal under the REACH Regulation", which is currently under a consultation process by the European Chemical Agency (ECHA). PFAS is used extensively throughout industries, including electrical and electronics, automotives, displays, and semiconductors to name a few, but among the various individual PFASs, only a fraction have been identified as hazardous. Moreover, there are currently no known alternative substances that can properly replace PFASs. As such, we are concerned that an indiscriminate ban on the use of all PFASs could lead to other kinds of serious environmental problems such as an increase in product safety risks, or hindrance to the development of eco-friendly industries like electric vehicles. Therefore, Korea requests the European Union that, before adopting the regulation, the regulatory scope of PFAS be defined clearly, based upon scientific evidence and international standards, such as the CAS Registry Numbers for PFAS and/or reports of hazards to human health and the environment.

3.49. Second, we request that the relevant regulation enters into effect at the point where sufficient discussions on alternative materials to PFAS have been made and the alternatives become available for use. Third, for certain groups of products, like rechargeable batteries, the use of PFAS is unavoidable in the manufacturing process. Therefore, Korea requests that the EU carefully review provisions that stipulate exemptions or regulatory exceptions concerning such products or industries. Finally, it is hoped that international discussions and consultations with respect to the hazards of individual PFASs and the regulations thereof could be sufficiently conducted.

3.50. In response, the representative of the European Union provided the following statement. The EU would like to thank Japan and Korea for raising the issue of a possible PFAS restriction under EU REACH legislation. Pollution from PFAS (per- and polyfluoroalkyl substances) is a serious human health and environmental concern, considering the large number of cases of soil and water contamination across Europe - including drinking water. At the same time, PFAS are needed in critical applications, for example in the digital and energy sectors (e.g., semiconductors, electrolysers and membranes for green hydrogen production). Within the framework of the REACH Regulation, five national authorities (from the Netherlands, Germany, Denmark, Sweden and Norway) have proposed a broad ban with some derogations on the use of PFAS. This proposal is currently undergoing an independent scientific assessment in the European Chemicals Agency (ECHA) Scientific Committees. As part of this assessment, the ECHA's Scientific Committees will also carefully consider the need for derogations for specific applications. That is why we would like to invite all stakeholders, especially the stakeholders in Japan and Korea, to participate in the public consultation that has been launched and will run until 25 September 2023. It is very important that stakeholders provide their input because this will directly feed into the identification of derogation needs for particular uses or products. Of course, the EU will notify the measure to the TBT Committee once it has a legal proposal to share.

3.1.2.6 India - Geo Textile and Protective Textile (Quality Control Order), 2022, G/TBT/N/IND/242, G/TBT/N/IND/243 (ID 799[11])

3.51. The representative of Indonesia provided the following statement. Indonesia would like to thank India for its notification related to the Geo Textiles (Quality Control) Order, 2022 as

[11] For previous statements follow the thread under ID 799.

G/TBT/N/IND/242 and Protective Textiles (Quality Control) Order, 2022 as G/TBT/N/IND/243 on 8 February 2023 to the TBT WTO Committee. Referring to the notifications, the India Ministry of Textiles has issued 31 standard regulations on textiles export products, under which the products must be certified in accordance with Indian Standards, and the manufacturers are required to undergo certification by the Indian Standards Bureau (BIS) under the Foreign Manufacturer Certification (FCMS), before the products are allowed to enter the Indian market with effect from 180 days from the date of issue. Previously, Indonesia had sent inquiries seeking clarification on the legitimate objective of this regulation. However, India's response was that this regulation has been enacted on 12 April 2023 and has not provided any explanation regarding Indonesia's concerns. In this regard, we would like to seek further clarification on the following matters.

3.52. First, the legitimate objective of the Quality Control Order (QCO). As we understand that the purpose of this provision is to improve standard and quality of geotextiles and protective textiles in India. However, the requirement of certification and inclusion of Standard Marks to the 31 products will be an unnecessary barrier to trade and increase costs for companies engaged in international trade with India. Second, the transition time of the regulation is insufficient for producers to be able to meet the requirements set out in the QCO. With the large number of regulated products, the need for physical testing, and the factory inspection requirements at production sites, we are concerned about the possibility of queues and backlogs of product certification applications coming into BIS, which could slow down the certification process and hamper the export process. In this regard, we request India to postpone the implementation of this QCO at least 12 months after promulgations. Third, Indonesia suggest that India open the option of international recognition for conformity assessment results and/or conformity assessment bodies (inspection bodies) from the country of origin to speed up the audit and certification process and reduce the cost of certification. Fourth, Indonesia urges India to notify the stipulated technical regulations to the secretariat, in accordance with Article 2.9.2 of the TBT Agreement.

3.53. In response, the representative of India provided the following statement. We thank the representative of Indonesia for their interest in this issue. We are currently examining the statements made. We will provide a response after due examination of the issues raised.

3.1.2.7 India - Battery Waste Management Rules, 2022 (ID 800[12])

3.54. The representative of the Republic of Korea provided the following statement. Korea respects India's efforts to protect the environment through its waste management regulations and the Korean industries are endeavouring to faithfully comply with them. However, the relevant Korean industry has experienced difficulties in complying with the "Battery Waste Management Rules" (S.O. 3984(E), 2022), enforced on 24 August 2022, and Korea submitted comments regarding the Rules to India through the TBT Enquiry Point on 23 February and 10 May 2023. Since there has been no response from India, we would like to convey them again by raising this STC. First, the Rules stipulate waste battery collection of 100% against the total weight of the battery placed in the Indian market during each compliance cycle (i.e., 7, 10 and 14 years) prescribed by the type of battery, apart from the minimum collection target rate by each year. The collection target per cycle is a stringent requirement that has not been implemented in other countries, and the related Korean industries are suffering great difficulty in complying with the regulation. Accordingly, we would like to request that the corresponding requirement be withdrawn from the Rules. Second, to meet the obligation of "the minimum use of domestically recycled materials in new Battery" stipulated in item 4. (14), the production process of batteries for exports to India must be managed separately from those bound for other countries. It is expected that such separation will impose excessive costs on the related Korean companies and reduce productivity. Therefore, we would like to request an exemption from applying the minimum use of domestically recycled materials requirement to batteries produced outside India.

3.55. In response, the representative of India provided the following statement. We thank the representative of Korea for their interest in this issue. We are currently examining the statements made. We will provide a response after due examination of the issues raised.

[12] For previous statements follow the thread under ID 800.

3.1.2.8 United States - Energy Conservation Program: Test Procedure for Dishwashers, G/TBT/N/USA/1817/Add.1 (ID 801[13])

3.56. The representative of China provided the following statement. According to Article 2.2 of the WTO/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," in order to avoid unnecessary obstacles to trade caused by misunderstandings between the two sides, China suggests that the U.S. clarify the definition of "soiling application".

3.57. In response, the representative of the United States provided the following statement. Thank you for your comments and for the bilateral today. As we discussed, we do not have a record of any comments coming from China on that measure during the comment period. If you have evidence of that please let me know but we are unable to take your comment into account if you do not submit in a timely manner.

3.1.2.9 China - Data Security Law (ID 802[14])[15]

3.58. The representative of the European Union provided the following statement. The EU would like to note at the outset that this is not a new concern but was previously raised under the STC on Cybersecurity (ID 526). For coherence, we are separating issues under China's Data Security Law and Cybersecurity Law. The EU would like to refer to its statements at previous TBT Committees with regard to the Data Security Law[16] and related legislation. The concerns raised in those previous statements remain and have already had a negative effect on business confidence. Considerable uncertainty remains around key definitions of the Law and related legislation, including, but not limited to, "industrial data", "important data", "core data" and "data transfer". This in turn gives rise to uncertainty for foreign companies as to which legislation is applicable to them. The EU remains concerned about the Outbound Data Transfer Security Assessment Measures and their implementation. There is uncertainty regarding the triggers for assessment, such that they may potentially be triggered by normal cross-border commercial activity. In addition, the assessment process is proving to be lengthy, giving rise to considerable uncertainty. The EU is particularly concerned that these measures put foreign operators at a disadvantage compared to domestic ones. In addition, there are considerable concerns regarding the protection of trade secrets during the assessment process.

3.59. The EU also continues to be concerned about the lack of clarity surrounding the sectoral scope of application of the Measures for Data Security Management in Industry and Information Technology (for Trial Implementation). The EU encourages China to clarify the scope of key legal definitions and to define them in as narrow a manner as possible. In particular, the EU encourages China to define sectoral catalogues of important and core data as soon as possible.

3.60. In response, the representative of China provided the following statement. The Data Security Law of China aims to regulate data processing activities, ensure data security, promote data development and utilization, protect the legitimate rights and interests of individuals and organizations, and safeguard national sovereignty, security and development. The Data Security Law clearly establishes and improves data classification and classification protection, risk monitoring, early warning and emergency response, data security review and other systems, and makes provisions on measures to support and promote data security and development, and promote public data security and openness, so as to ensure development with security and promote security through development.

3.1.2.10 Angola - Executive Decree No. 64/2023: Implementation of high security tax stamps on alcoholic beverages and liquids, tobacco and its substitutes (ID 803[17])

3.61. The representative of Mexico provided the following statement. The Mexican delegation refers to Angolan Executive Decree No. 64/2023 on the implementation of high security tax stamps on alcoholic beverages and liquids, tobacco and its substitutes. This Decree entered into force on its

[13] For previous statements follow the thread under ID 801.
[14] For previous statements follow the thread under ID 802.
[15] Related to Previously Raised STC ID 526.
[16] 数据安全法.
[17] For previous statements follow the thread under ID 803.

date of publication of 12 May 2023 and was not notified to WTO Members. Mexico considers that this Decree contains requirements that mean it can be classed as a technical regulation under the WTO TBT Agreement, so the lack of notification and the entry into force of the Decree constitute a contravention of Articles 2.11 and 2.12 of the Agreement. Moreover, the Decree establishes that tax stamps will become obligatory from 12 July this year, that is, 60 days after the publication of the Decree. However, this time frame is insufficient for producers exporting Mexican spirits to register and obtain the tax stamps required. Accordingly, we ask the Government of Angola to grant an extension to the transitional period provided under Article 18 of the proposal, to at least six months. The Decree also provides for an 180-day period for operators to recover products currently on the market without a stamp, so that they can affix a tax stamp to these products. However, this measure would be too burdensome and complicated for producers, hampering international trade. The Government of Mexico therefore suggests that an exhaustion clause be included for products already on the market, with the aim of maintaining trade flows.

3.62. Furthermore, the Decree establishes that, once 30 days have elapsed since its publication, operators must declare to the General Tax Administration the quantity of goods, both domestically produced and imported, in stock. In practice, this leads to a complicated process and producers need to be granted enough time to carry out these operations. The measure establishes that the stamping of imported products must occur at the place of origin, so operators will have to affix the stamps in the country of production, putting them at a disadvantage compared to local operators. The Government of Mexico therefore suggests that greater flexibility be granted as regards the physical location at which tax stamps may be affixed. Lastly, given that Angola published the Decree in the Official Journal without notifying it beforehand to the WTO TBT Committee, we ask that it carry out this procedure, thereby giving Members the opportunity to submit comments.

3.63. 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. On 12 May 2023, Angola published a new decree n° 64/2023 replacing previous decrees 149/22 and 186/22. 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.

3.64. The EU supports the main objective of the Decree - the eradication of illicit trade, smuggling and counterfeiting of alcohol products, taking into account both public health considerations and the objective of combating tax evasion. However, we have serious concerns with some of the provisions of this decree, especially regarding: The foreseen timelines for entry into force, which are not realistic and could lead to significant trade disruption. The currently foreseen deadline for tax stamps to become compulsory is 60 days – this is far too short. A transition period of at least six months is needed, considering the time needed to register and obtain tax stamps as well as the shipping time, which is currently 90 days on average from Europe to Angola. The absence of a stock exhaustion clause, which is very problematic given the long shelf life of the concerned products. The decree foresees a 180-day period for unstamped products currently on the market, which is not realistic, especially if third parties are involved. Furthermore, according to the new decree, after 30 days from the publication, operators must declare to the General Tax Administration the quantities in stock, locally produced and imported. This deadline is unrealistic and should be extended.

3.65. The lack of flexibility in terms of location where the tax stamps can be affixed. There should not be a requirement for operators to be AEO-accredited in Angola to authorize them to affix tax stamps in bonded warehouses. In addition, getting the flexibility to affix tax stamps in bonded warehouses in third countries logistics hubs would help. Current provisions mean that the vast majority of EU operators would be forced to affix tax stamps in the country of production, placing them at a disadvantage with local operators. It is important that the elements mentioned are addressed by Angola as a matter of urgency. The shortcomings of the new decree have already led some brands to stop exporting to Angola. We would be grateful if Angola could take these concerns into account as well as consult stakeholders concerned before finalising the decree. We are ready to engage in bilateral discussions in order to clarify the issue further.

3.66. In response, the representative of Angola provided the following statement. The 60 days before the entry into force of the measure that we proposed on Executive Decree 64/2023 is, we believe, time enough for the registration of the operators, the acquisition of the tax stamps and the delivery of the tax stamps to the operators. This time was actually defined after a study that we made about the process and we find it comfortable and actually the experience we had since 12 May when it was published, we have been able to supply tax stamps to the international operators that were registered since then. So we still believe and the experience that we have since then recommends us to keep that time in force. According to the 180 days of the transitory dispositions on number 3 of the article 18, we also asked that a study be made on that process to many other different geographies where this program was implemented. What we have realised is that for the transitional period they also had less time: some countries had a month, other countries had three months and we have given six months so we do not find it uncomfortable, we actually find it useful. According to the decree being published in Angola before it was notified to the TBT Committee, unfortunately we prepared all the procedures to standard and unfortunately it did not go to the destination in time. We understand that the documents were prepared on the tax administration and were about to be sent to the Trade Ministry in which we have the focal point that was responsible to notify to the TBT Committee. We are sorry for that.

3.1.2.11 China - Packaging requirements for Edible Agricultural Products, G/TBT/N/CHN/1715 (ID 804[18])

3.67. The representative of India provided the following statement. India note with concern the China's Notification No. G/TBT/N/CHN/1715 dated 3 February 2023 related to Packaging Requirements for Edible Agricultural Products. India finds the packaging requirements as restrictive and excessive. India requests China to provide the detailed scientific assessment underlying the determination for various parameters including - number of packaging layers, inter-space ratio and weight ratio, as specified in the proposed standard. Further India requests China to provide rational for limiting the cost of packaging at 20% of the sale price of the product. India also requests China to indicate the objective sought to be achieved through the proposed standard and how the proposed measures help in fulfilling the objective.

3.68. In response, the representative of China provided the following statement. The "requirements of restricting excessive package-Edible Agricultural Products" has been approved for revision, and during the commenting period in China and notification in WTO, we have not received comments from India. (1) Background of the development of this standard. Article 68 of the Law of the China on the Prevention and Control of Environmental Pollution by Solid Wastes clearly stipulates that "relevant standards shall be formulated in accordance with the national economic and technical conditions, the prevention and control of environmental pollution by solid wastes and the technical requirements of products to prevent environmental pollution caused by Overpackaging." The development of the mandatory national standard "Restricting Overpackaging of commodities requires eating agricultural products" is a specific measure to implement the requirements of the law. (2) Scope of the standard. The standard applies to edible agricultural products with sales packaging, including fresh agricultural products such as meat, vegetables, fruits, eggs, and aquatic products, and does not apply to gifts or unsold products.

3.69. (3) Main content of the standard. 1. Sales packaging. The term "sales packaging" in the standard refers to packaging that is primarily intended for sales and arrives in the hands of consumers along with edible agricultural products. It does not include logistics protective packaging or cooling supplies or water added due to the preservation and liveliness of agricultural products. 2. Calculation of Void Rate of Products. Packaging porosity refers to the percentage of the necessary space occupied by edible agricultural products removed from the packaging compared to the total volume of the packaging. 3. Number of packaging layers. The number of packaging layers refers to the number of layers that completely wrap edible agricultural products and can be physically separated. Complete packaging refers to the packaging method in which a complete layer or combination is used to prevent the scattering of edible agricultural products. When calculating, the packaging that directly comes into contact with edible agricultural products is the first layer, and so on. The outermost packaging is the Nth layer, where N is the number of layers of packaging. The standard stipulates that the packaging layers for meat, fruits, and aquatic products should not exceed 4 layers, and the packaging layers for vegetables and eggs should not exceed 3 layers. 4. Packaging costs. The packaging cost reflects whether the packaging is luxurious and excessive.

[18] For previous statements follow the thread under ID 804.

In order to limit the trend of luxury, this standard imposes restrictions on the packaging cost of edible agricultural products. The packaging cost in this standard is the percentage of the total cost of selling packaging to the selling price of the product. The standard drafting group has conducted extensive market research and considered the development status of the industry to determine the limit requirements for packaging costs. 5. Judging rules. If there is one item in the commodity packaging that does not meet the limit requirements of three technical indicators, like packaging porosity, packaging layers and packaging cost), this kind of package will be judged as excessive packaging.

3.1.3 Previously raised concerns

3.1.3.1 India – Draft Food Safety and Standards (Import) Amendment Regulation, 2020, G/TBT/N/IND/180, G/TBT/N/IND/667 (ID 667[19])

3.70. The representative of the United States provided the following statement. The United States remains concerned with India's facility registration measures, notified to the WTO TBT Committee as G/TBT/N/IND/180 and G/TBT/N/IND/237. We appreciate India's confirmation that trade will continue uninterrupted as exporting countries strive to meet India's facility registration requirements. However, we note that additional clarity is needed as to how the measure will be implemented by India, including information regarding the treatment of shipments from unregistered facilities that enter ports in India, as exporting countries strive to comply with the measure. For greater clarity, could India please provide a list of HS Codes for products subject to these facility registration requirements so that their scope is clearly understood by all parties? In addition, we would be interested to know how India's new registration system has led to any demonstrative change or improvement in food safety oversight.

3.71. Furthermore, the United States remains concerned with India's draft measure, Food Safety and Standards (Import) Amendment Regulation, 2020 (G/TBT/N/IND/180). The measure 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 still concerned about the lack of information regarding the scope of this proposed technical regulation, and hope that India will provide any scientific and technical information that is used to determine the specific "risk" for food product categories, as well as information on audit processes. We look forward to receiving further information and clarification from India on these two concerning measures.

3.72. The representative of the European Union provided the following statement. The European Union would like to refer to its previous statements on the India's import requirements related to the registration foreign food manufacturing facilities. The EU would like to note that several facilities have not yet been registered in the new India's Registration of Foreign Manufacturers - ReFoM online system. Given the possible disruption to trade associated to delays in listing registered facilities, even if the registration is not associated to new sanitary measures; given the absence of any specific criteria to define the risks associated to the listing or delisting of facilities, which may go beyond the India legislation; and, finally, given the fact that there are different authorities in India regulating imports of the same products, the EU would like to ask India to: Clarify the modalities related to audits to the exporting countries, inspections of facilities, border checks and health certificates associated to the registration of foreign food manufacturing facilities, if and when these requirements will be made obligatory by any of the India authorities; 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 them updated; Consider avoiding that the competent authorities of the export countries sign more than one certificate with the same sanitary measures. The EU would like to repeat its request to India to notify these amendments and future measures related to the registration of food manufacturing facilities to the WTO SPS Committee. Finally, the EU reiterates its availability to cooperate with the competent authorities of India to enhance mutual understanding and avoid unnecessary and unjustified disruptions to trade.

3.73. The representative of Canada provided the following statement. Canada would like to reiterate concerns raised at previous TBT Committee meetings 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, which has

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

been implemented as of 1 February 2023. 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. Canada remains concerned and would like to seek clarity on India's measures for targeted commodities, audit rates, compliance actions and appeals, and implementation plan. We are of the view that India's approach in these areas could create unnecessary obstacles to trade.

3.74. Canada thanks the Food Safety and Standards Authority of India for its prompt registration of Canada's food manufacturing facilities and publication of list of establishments. While some of Canada's questions have been answered, a number of questions remain regarding these requirements and we look forward to India's response to our comments submitted to India's Enquiry Point in January 2023. 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.

3.75. The representative of New Zealand provided the following statement. New Zealand would like to thank FSSAI for its flexibility on the implementation of this new requirement. We understand the registration requirement, along with the new certification requirements and the completion of a country questionnaire, is FSSAI's new approach to ensuring food safety requirements are met by exporting country manufacturers. While we support this approach to ensure both food safety and faster clearance at the Indian border, we believe that the registration requirements could be simpler, yet remain robust. Currently, countries need to register/list manufacturers and the particular products that each manufacturer wishes to export to India. New Zealand would like to suggest that, given food safety practices at a manufacturer will be the same for all products produced, India should only require manufacturer listing, for the commodity type they produce, without the requirement to specify each individual product type and associated HS codes.

3.76. The representative of Japan provided the following statement. Japan would like to express its concerns regarding India's Order related to requirement to register foreign food manufacturing facilities. According to the India's TBT notification, the final date for comments was set as the middle of January 2023, and proposed date of adoption and entry into force of the Order was advised as 1 February 2023, which was just two weeks after the closing date for comments. We would like to express strong doubt that the Indian authority would not have had sufficient time to consider any comments put forward before the implementation. Moreover, although Japan submitted lists of food manufacturing facilities in accordance with the Order on 10 October 2022, India has not yet registered some of the facilities on the list.

3.77. Japan requests India the following: Suspend implementation of the Order and give the exporting Members sufficient time to adapt to the newly introduced requirements, meantime, allow imports of designated food products without registration of the facilities; Specify the HS codes for the designated food categories subject to the Order: milk and milk products; meat and meat products including poultry, fish and their products; egg powder; infant food; and nutraceuticals; Clarify the details on how to apply for the registration of foreign food manufacturing facilities; and Respond to the unanswered questions posed by Japan.

3.78. 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 wishes to thank India for accommodating streamlined and simplified establishment details for registration approval, reducing the administrative burden on competent authorities to comply with the new registration requirements. As noted in previous statements, Australia would appreciate information on India's risk assessment which concluded that additional measures required the registration of food manufacturing facilities with FSSAI, particularly for those which have not previously required registration in order to export to India. Australia's export and domestic food production systems are underpinned by a robust legislative framework, which provides confidence to trading partners that exported products are safe, traceable and meet importing country requirements.

3.79. Australia thanks India for its prompt actioning and publication of establishments for registration and discretion to allow food business operators to continue their export operations while registration submissions were finalized. However, Australia remains concerned that this regulation imposes an unnecessary barrier to trade for products where establishment registration has not

historically been required. Australia appreciates India's clarification on the use of the establishment registration list and how exporting countries may amend the list of registered establishments in future. Australia is happy to work with India to support a more risk and outcomes-based approach to food safety.

3.80. 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. Further, section 22 of Food Safety and Standards Act, 2006 envisages that no person shall manufacture, distribute, sell or import any novel food, genetically modified articles of food, etc. and such other articles of food which the Central Government may notify in this behalf.

3.81. Accordingly, to envisage robust food safety and monitoring system, FSSAI has notified 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. This regulation is intended to ensure traceability, including access to operations, of an overseas facility manufacturing high risk foods in order to verify implementation of appropriate measures at the source facility that enhance food safety. The Draft regulations were also notified at WTO TBT Committee 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.

3.82. 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 manufacturers desirous to export such article of food to India shall register with the Food Authority before exporting to India. For the registration purpose, to be done by FSSAI, 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. The practice of Listing/Registration of Foreign Establishment is already prevailing in many countries and similar procedures are being in place. India being a developing nation 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.

3.83. FSSAI notified the requirement for registration of High Risk commodities to facilitate trade. The registration or listing of Foreign Food Manufacturing Facilities (FFMF) is not trade prohibitory but to create a database of foreign food manufacturing facilities which are exporting food products of these categories into India. Further, it may be noted that as on date, the FFMF which are not registered or listed at FSSAI portal are also able to export their food products to India without any trade hindrance. So FSSAI has initiated the process of listing of FFMFs with the positive intent to facilitate trade.

3.1.3.2 Canada - Proposed Prohibition of Certain Toxic Substances Regulations, 2022, G/TBT/N/CAN/673 (ID 753[20])

3.84. The representative of the Republic of Korea provided the following statement. Regarding Canada's 'Proposed Prohibition of Certain Toxic Substances Regulations,' which were notified to the WTO Members on 18 May 2022 as G/TBT/N/CAN/673, Korea submitted comments to Canada in July 2022 requesting to postpone and reconsider the enforcement, and Korea also expressed support for the specific trade concern raised by Japan in the previous Committee meeting of March 2023. Though we thank Canada for its reply to our comments last August and its response to the STC at the TBT meeting in March this year, relevant Korean industries remain concerned about the proposed restriction of DBDPE, so we would like to reiterate our previous statements. Due to its excellent and cost-effective flame-retardant features, decabromodiphenyl ethane, or DBDPE, is used as an intermediate material in various industrial sectors such as in the manufacture of electrical and

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

electronic products, automobiles, construction equipment vehicles, agricultural machinery, etc., substituting the once commonly used decaBDE.

3.85. Korea shares the view with Canada on the need for environmental protection measures. However, if the restriction on DBDPE is enforced without considering the availability and development of alternatives to DBDPE, it is deeply concerned that such measures would not only be more trade-restrictive than necessary but also put human safety at risk. We are aware that the proposed regulations include specific time-limited exemptions for electrical and electronic products, vehicle parts and pellets or flakes used in manufacturing wires and cables. However, if no adequate alternatives were found even after the exemption period is over, consumer safety risks would increase significantly due to the absence of flame-retardants or the low flame-retardant quality in products. Therefore, Korea requests that Canada thoroughly reconsider product safety before enforcing the DBDPE restriction and postpone the regulations indefinitely until alternative materials on par with DBDPE in cost and performance are developed for manufacturers' use.

3.86. In addition, the Department of Environment and Climate Change Canada (ECCC) concluded that DBPDE is harmful to marine life such as orcas and belugas on the basis that DBDPE acts as a substitute for the decaBDE by the same flame-retarding principle. However, the two substances have different chemical structures, and the Canadian government's findings differ from those of international research, such as a study from the National Academy of Sciences (NAS) that classifies DBDPE and decaBDE into different sub-classes of flame-retardants. Accordingly, the Stockholm Convention and the Great Lakes Water Quality Agreement (GLWQA) have not designated DBDPE as a prohibited substance. Moreover, Canada has also noted in its Chemicals Information Sheet that DBDPE is not harmful to human health. Therefore, to help manufacturers clarify the issue, Korea requests Canada for internationally accepted and scientifically justified evidence that DBDPE and decaBDE are equal hazards, besides the studies cited in the proposed regulations.

3.87. The representative of Japan provided the following statement. Japan appreciates Canada's comments at the last TBT Committee meeting in March that "the proposed Regulations provide time-limited exemptions for parts and products of certain industrial sectors, such as the automotive sector and electronic and electrical equipment", and that "comments and concerns from all stakeholders with respect to the proposed controls for DBDPE are being considered in the development of the final Regulations." However, Japan continues to have concerns regarding the proposed DBDPE restriction in the draft revision of the Regulations, especially its impact on industries and citizens' lives in Canada.

3.88. DBDPE is widely used as an alternative for decaBDE, which is a brominated flame retardant that has been internationally prohibited in EEE, automobiles, aircraft, medical equipment, industrial equipment, social infrastructure equipment, agricultural machinery, industrial machinery, construction machinery and industrial vehicles. DBDPE has not been restricted by international conventions or in other countries or regions. Regarding DBDPE prohibition, there are many use cases where there is currently no alternative flame retardant equivalent to DBDPE. Therefore, the period of exemption proposed in May 2022 is not sufficient for developing alternatives to DBDPE and completing substitution through the entire supply chain. Accordingly, it will highly likely have significant and serious effects on the trade and distribution in Canada of the various types of equipment noted above. In particular, medical equipment and industrial equipment are important not only for supporting Canadian industries and infrastructure but also for the effect they have on citizens' lives in Canada. Therefore, we reiterate our request for setting a sufficient grace period for the examination and introduction of DBDPE alternatives through conducting additional stakeholder consultations and deliberate consideration.

3.89. Canada indicates contribution to the protection of the Canadian environment and wildlife as the main objectives of DBDPE restrictions. We understand the objectives of the regulations, however, according to Japanese industries, DBDPE contained in products poses a very low risk of harmful effects on humans and the environment, including wildlife. The screening assessment published by the Environment and Climate Change Canada elaborates this as follows: "OECD (2009) identifies potential volatility to atmosphere from service life for generic OFRs in plastics, estimated at 0.05% over lifetime for indoor or outdoor use; however, this generic value may be an overestimate for a very low volatility OFR like DBDPE. Environmental release of the substance from plastic polymers via leaching is considered possible, albeit low. The potential release of OFRs from plastics during service life to water is estimated at 0.05% over lifetime if the substance is for indoor use or 0.16% over service life for outdoor use (OECD 2009). The large majority of DBDPE containing products

would be enclosed or used for indoor use; the release rate of 0.05% is therefore most applicable and may likely be an overestimate since contact with water is not expected." We would appreciate if Canada would indicate its rationale that the scope of the Regulations includes DBDPE contained in products. Based on the above, in order to ensure that the draft revision of the Regulations would not be more trade restrictive than necessary to achieve its legitimate objectives, Japan would like to request the following things to Canada: 1) To conduct a more thorough risk assessment for the effects of DBDPE contained in articles on human health and the environment, 2) to take into account consistency with risk assessment results from other countries and regions, and 3) to re-examine the necessity of restrictions on DBDPE in articles and a grace period for such through conducting a practical feasibility study on alternatives to DBDPE.

3.90. The representative of China provided the following statement. Canada's prohibition on DBDPE lacks scientific basis, fails to fulfil legitimate objectives, creates unnecessary obstacles to trade, and it is inconsistent with the TBT Agreement. China suggests that the prohibition on DBDPE should be suspended. First, the ban lacks scientific basis and does not contribute to the fulfillment of legitimate objectives. DBDPE has been scientifically proven to hardly produce potentially toxic substances and is low toxic to mammals and marine life. In addition, a major reason why DBDPE is listed as a hazardous substance is that DecaBDE is used as a surrogate for DBDPE in hazardous assessment, and this is problematic. US National Academies of Sciences (NAS) released a study report in 2019, holding that OFRs used in consumer products should not be assessed as a single group of hazards; instead, they should be sorted into 14 subgroups based on chemical structure, physic-chemical properties, and predicted biologic activity. It is noteworthy that in the study, NAS grouped DBDPE and DecaBDE into separate sub-classes. A ban on DBDPE and products containing DBDPE could not fufill the legitimate objectives of the Canadian regulator.

3.91. Second, the replacement technology of DBDPE is not mature, and the replacement cycle is long. If immature alternatives are used, the flame retardant level of the product may be reduced, thereby amplifying the risk of fire, threatening the life and property of consumers. Third, international practice should be followed, and there is no precedent in the world for controlling DBDPE separately. The EU REACH assessment of DBDPE is still in progress and it should be comprehensively evaluated from the perspectives of hazards, feasibility of alternative technologies and impact on the industry.

3.92. In response, the representative of Canada provided the following statement. The responsible regulatory body is currently analyzing the comments received during the consultation period with the objective of publishing a final version of the regulation in the summer of 2024. Since the Chemicals Management Plan (CMP) was launched in 2006, Canada has taken a robust approach to risk assessment to determine whether a substance presents or may present a risk to the environment or to human health. Decisions are based on a weight-of-evidence approach and precaution to determine the potential for risk posed by a substance, which considers both the hazardous properties of the substance (such as toxicity to aquatic organisms or cancer-causing properties) and the nature and extent of the exposure of Canadians or the environment to the substance. In 2019, the Government of 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. The conclusions from the screening assessment for DBDPE reflect a weight-of-evidence, which considers lines of evidence, the relevance and robustness of available information, and accounts for uncertainties. All information received by the Government of Canada, including studies on transformation for DBDPE, have been carefully evaluated and considered as part of the weight of evidence.

3.93. The screening assessment considered analogue evidence for certain characteristics of DBDPE for which limited information was available. Selection of analogues was based on scientific judgement and followed the internationally-recognized Guidance on Grouping of Chemicals, Second Edition, published by the Organisation for Economic Co-operation and Development (OECD). 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. The proposed regulation aims to reduce the risks 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.

3.94. With respect to DBDPE, the proposed Regulations provide time-limited exemptions for parts and products of certain industrial sectors, such as the automotive sector, and electronic and electrical equipment. Comments and concerns from all stakeholders with respect to the proposed controls for DBDPE are being considered in the development of the final Regulations, expected to be published in summer 2024. Canada does not specify alternative flame-retardant substances for industry. It is contingent upon industry to identify and transition to appropriate alternatives. Flame retardants such as DBDPE are generally used to meet performance-based flammability requirements. These performance-based requirements do not specify which chemical flame retardants need to be used; rather they may require a product or component to pass a laboratory test such as a cigarette smolder or open flame ignition test (ASTM 2014). Using chemical flame retardants such as DBDPE in their products is one means through which companies can achieve flammability requirements for their products. Alternate substances, as well as non-chemical-based alternatives, may also be used to replace the use of DBDPE as a flame retardant in various applications.

3.1.3.3 China - Recommended National Standard (GB/T) for Office Devices (Information security technology – Security specification for office devices) (ID 761[21])

3.95. The representative of Japan provided the following statement. As Japan has pointed out at successive meetings of the Committees, Japan has heard that the proposed national standard requires office devices including their components procured by critical information infrastructure operators to be developed and manufactured in China, and also requires information disclosure to prove that the development and production are carried out in China. If the national standard with the above requirements is introduced and operated in a de-facto mandatory manner, importation and use of finished products and components of multifunctional printers, etc., will not be allowed, and the use of components made in China will be forced. Therefore, there are concerns that foreign products including Japanese products will be treated discriminately and that trade will be more restricted than necessary. It may violate Articles 2.1, 2.2, and 5.1.2 of the TBT Agreement, Article 2.1 of the TRIMS Agreement, and Article 3.4 of the GATT. There are also concerns that the national standard could force de facto technology transfer depending on its operation if, for example, it requests businesses to provide technical information to China in order to develop and manufacture. It may violate Article 7.3 of China's Protocol of Accession to the WTO.

3.96. Japan understands that the process for revision is still ongoing under the direction of the National Information Security Standardization Technical Committee (TC260). However, Japan would like China to share the information on the proposed national standard including the current status of the consideration, the timing of the public comment process, the schedule to be adopted, the scope of application, the definition of the critical information infrastructure operators, the requirement of the development and production of office devices and their components in China, and the requirement of information disclosure to prove that they were developed and manufactured in China. Japan would like a sincere response from China to our enquiries. China has not provided any convincing explanations to the specific concerns raised by Japan and related countries at the successive meetings of the TBT Committee, the Council for Trade in Goods, the Market Access Committee, the TRIMS Committee and the Committee on Government Procurement. About the draft revision, Japan hopes that the related concerns raised at this meeting will be firmly addressed and then a sufficient period of time will be made available for the public comment process allowing the stakeholders to fully express their comments. Japan strongly requests China not to adopt the national standard, which contains the discriminatory treatment of foreign products and the possibility of de-facto forced technology transfer, in a form causing with concerns. Besides, Japan strongly urges China not to take the same or similar measures in other industrial sectors or products.

3.97. The representative of the Philippines provided the following statement. The Philippines shares the concerns raised by Japan and the European Union on China's Recommended National Standard for Office Devices. We also request China to notify the draft measure and provide clarifications particularly on 1) the definition of critical information infrastructure operators, and 2) the possible discriminatory treatment of foreign products vis-à-vis the requirement for critical information infrastructure operators to procure office devices and their components that are produced in China.

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

3.98. The representative of the European Union provided the following statement. The EU would like to echo the concerns raised by Japan and the Philippines regarding the draft Chinese recommended national standard for office devices. 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. 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.

3.99. In response, the representative of China provided the following statement. SAC has approved the revision plan of this standard. During the comment period on the revision plan, we did not receive any comment, especially no comment from Japan. At present the revision work is at the drafting stage, and the content of the standard is under studying and discussed, especially complying with WTO regulations, so as soon as finishing drafting, it will be entered into public comment stage and will be considered to notify to WTO Members. Anyone will be welcome to raise comments to these standards, including stakeholders from Japan. As we know, a standard is a very useful tool to achieve better market order and regulate healthy competition, and it should be developed based on the wide range of coordination, so we welcome the stakeholders from Japan to keep on paying attention to this standard and we are willing to help Japanese companies communicate with SAC/TC 260 to enhance communication.

3.100. The representative of Japan provided the following statement. China explained the "pre-public comment" process for the revision of this national standard which was conducted during the period from 22 December 2022 to 5 January 2023. However, Japan has not got any information on this process. China said there were no opposing comments on the plan of the revision of the standard. However, according to stakeholders, any agencies in China, not limited to Japanese ones, have not got any information from China's relevant websites. Therefore, Japan encourages China to be more transparent on this matter.

3.101. The representative of China provided the following statement. I would like to respond more about Japan's concern. In China, the development of a standard has several stages, including the approval stage, drafting stage, comment stage, and so on, which is consistent with the ISO/IEC Directives. So as soon as the development of a standard enters into the drafting stage, it will be organized by a technical committee SAC/TC, the same as ISO/TC. If you want to know more about the information it is better to contact the SAC/TC to handle the information issue because the information might be updated very soon and the updated information will be delivered to you if you contact the TC260.

3.1.3.4 South Africa - Regulations relating to the composition, production and labelling of wine and spirits intended for sale in the Republic of South Africa, G/TBT/N/ZAF/48/Rev.2/Add.1 (ID 733[22])

3.102. 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 as well as letters sent in 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. Many of the amendments under the new regulations will enter into force in December 2025 for products already approved on the South African market, with derogations possible until then for products not yet approved prior to 15 July 2022. 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.

[22] For previous statements follow the thread under ID 733.

3.103. The maximum ABV (alcohol by volume) set for spirits aperitifs (30%) seems to be the biggest issue for EU spirits producers. Many products, such as flavoured vodka, aperitifs or pastis will be left without a home, as they have an ABV between 30 & 43% and no corresponding category under South African law. The best way of taking care of these shortcomings would be for South Africa to create a spirits drink general category for products that otherwise do not have a home, similar to what exists under EU legislation. Failing that, the maximum ABV for spirits aperitifs should be increased well above 30% ABV – and we want to stress that the proposed increase to 35% would be far insufficient for EU products such as flavoured vodka (which usually have an ABV that can reach up to 38%). South Africa has also proposed three classes of gin. However, the use of colouring additives would only be permitted for compound gin. This is not in line with international standards. The best solution would be to allow the use of colouring additives for all classes of gin, with the exception of the denomination "London gin"/ "London dry gin" (permitted denominations within the "distilled gin" class).

3.104. In addition, we have made the following recommendations to improve the brandy, pot still brandy and vintage brandy categories definitions and remove market access barriers for Cognac: Request to lower the minimum ageing period to 2 years instead of 3; Raise the maximum limit of copper to 6mg/L; Raise the maximum limit of sugar to 20g/L. We would be grateful if South Africa could take these concerns into account. 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 after December 2025.

3.105. In response, the representative of South Africa provided the following statement. South Africa thanks the EU for their continued interest in the amendment to the regulation relating to the composition, production and labelling of wine and spirits intended for sale in the Republic of South Africa. South Africa is reconsidering the contents of the notification in line with specific trade concerns and comments received from WTO Members, including unintended consequences from our amendment to the regulation. Proposals for amendments have been drafted, but still in the process of domestic consultations. In the interim, all importers who wanted to continue importing their liquor products in terms of the old "Spirit Aperitif" category have applied for a concession until 31 December 2025. At this moment, the amendments do not have a negative impact on trade.

3.1.3.5 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, G/TBT/N/BRA/1145/Add.1, G/SPS/N/BRA/2033 (ID 712[23])

3.106. The representative of the European Union provided the following statement. The European Union would like to thank Brazil for submitting notifications G/TBT/N/BRA/1145/Add.1 and G/SPS/N/BRA/2033 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 comments could be taken into account and replied to before adoption of the notified draft. The European Union asked for clarifications concerning both requirements for maximum limit on the alcohol content of spirits and definitions such as liqueur, rum, whiskey, vodka, gin and aquavit. The EU also made specific proposals to better align the relevant requirements and definitions with international practice to avoid potential unnecessary obstacles to trade. The European Union continues to closely follow the situation and invites Brazil to notify to the TBT Committee a potential new draft following TBT consultations. The EU would like to thank again Brazil for its cooperation in this matter.

3.107. 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/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. 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.

[23] For previous statements follow the thread under ID 712.

3.1.3.6 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[24])

3.108. The representative of the Republic of Korea provided the following statement. Korea would like to convey its comments regarding the EU's "Draft ecodesign measures for mobile phones, cordless phones and slate tablets," notified to the WTO Members on 1 September 2022 as G/TBT/N/EU/918, its texts modified at the end of January 2023, and scheduled to come into effect on 6 January 2024. Korea would like to express our gratitude to the EU for reviewing and accepting some of our previous requests that were submitted via a letter on 26 September and the STC at the November TBT meeting in 2022. However, our follow-up requests, which were delivered this year via the STC at the previous TBT meeting and a letter on 21 March, remain unanswered because the EU's latest reply dated 24 May regarded only the previous requests submitted in 2022. Accordingly, we request that the EU carefully reconsider the following four requests. First, for foldable devices, it is requested that the 'foldable-related spare parts' (i.e. the Hinge assembly, the Mechanical display folding mechanism and the Battery(-ies)) may be supplied as combined with the Display Assembly. If the device passes folding-unfolding durability test of over 150,000 cycles, meets IP47 rating, and its battery demonstrates at least 83% of the rated capacity after 500 full charge-discharge cycles, supplying related spare parts as combined in precision with a higher-level assembly will better ensure the durability and reliability of the folding feature.

3.109. Second, for foldable devices, it is requested that the dust tight rating requirement be scaled down to IP47. Due to the inevitable slits for movability, the current commercialized foldable devices can guarantee dust tight ratings up to IP4x. Third, it is requested that the minimum criteria in ensuring the process for replacement of parts and batteries be relaxed so that the requirements be changed to "workshop environment" and to "generalist", respectively. In order to properly repair EEEs designed with embedded batteries, such as smartphones and tablets, an appropriate working environment and technical proficiency are essential. Lastly, for functionality updates of Operating Systems (OS), it is requested that either the mandatory provision period be shortened to three years, or the commencing point of the mandatory period be changed to the market release date. Excessive requirements on the OS update period may delay the introduction of new innovative technologies or cause unnecessary price increases of the physical device, limiting consumers' right to choose from a wide range of the latest products and services.

3.110. The representative of China provided the following statement. 1. For Annex II B/D 1.1 (5) (a), it requires that the process for replacement of display assembly shall, as a minimum, be able to be carried out by a generalist, while 1.1 (5) (b) requires 1 (c) the spare parts except for the battery needs to be replaced by layman, and the list of spare parts in 1 (c) contains the display assembly again. The two requirements are contradictory. We recommend that the EU further clarify the requirements and, in view of the professionalism of the replacement display assembly, we recommend following the 1.1 (5) (a) requirements. 2. For Annex II B/D 1.1 (6), "accessible" is not defined in the draft, which is easy to misunderstand. Manufacturers have doubts about which form of representation can be identified as "accessible". To facilitate enterprise compliance, please further clarify. 3. For Annex II B 1.2 (6)(a) and Annex II D 1.2 (5)(a), it sets out that "Operating system updates: (a) from the date of the end of placement on the market to at least five years after that date, manufacturers, importers or authorized representatives shall, if they provide security updates, corrective updates or functionality updates to an operating system, make such updates available at no cost for all units of a product model with the same operating system". This clause has caused some confusion for the enterprise.

3.111. (1) We suggest that the EU further clarify whether it is not mandatory for manufacturers to provide operating system upgrades, but only that if there are updates to an operating system, the upgrade service should be available at no cost. (2) For the statement "security update, correction update, or functionality update", it is recommended that the EU clarify whether the manufacturer can provide only any of the update services to meet the requirements. (3) We suggest that the EU further clarify the definition of "the same operating system". The draft only defines "operating system", but it is not clear how to define "the same". In addition, for the Android system, in practical application, even if different product models use the same version of the operating system, due to differences in the software and hardware of the products themselves, updates are not applicable to

[24] For previous statements follow the thread under ID 768.

all products. We suggest that the EU modify it to a compatible product model for free upgrade. (4) The premise that the update service can be performed is the technical support of the operating system and chipset platforms. It is recommended that the EU clarify whether Eco-design regulations also binding on operating system and chipset platforms suppliers.

3.112. 4. For Annex II B 1.2(6)(f) and Annex II D 1.2(5)(f), with regard to maintaining the same performance after the upgrade, the hardware of the device will definitely age during the life cycle. After the version is updated, the software has higher requirements on the hardware, and it is unreasonable for the performance to remain the same performance. Therefore, it is recommended to delete this clause, and only require the updated device to comply with the EU requirements. 5. For Annex II B/D 1.1(1), the latest draft regulation extends the period of availability of spare parts from five years to seven years after the date of the end of placement on the market, which is helpful to improve serviceability. But considering the seven years' requirement, manufacturers will have to store a large number of spare parts. Due to the storage life of spare parts, long storage will create unusable spare parts, which will only result in additional electronic waste. It is recommended that the EU shorten the provision period of spare parts. 6. For Annex II B/D 1.3, it requires the use of appropriate standards marking for plastic components. It is recommended that the EU could clarify relevant standards, facilitating the implementation of the industry.

3.113. In response, the representative of the European Union provided the following statement. The EU would like to thank the delegations of the Republic of Korea and China for their continued interest in the Ecodesign measures for mobile phones, cordless phones and slate tablets pursuant to Directive 2009/125/EC of the European Parliament and of the Council. The additional comments received are detailed, and require technical interpretation, so it will be difficult and time-consuming to address them here on the floor at the TBT Committee. However, the EU will certainly reply to the follow-up questions received and we also remain available to explain the measure bilaterally. In fact, after publication of the Ecodesign measure in the Official Journal of the European Union (currently expected in Q3 this year), the EU will most likely set up a dialogue with manufacturers to clarify any point on the Regulation that is needed. Korean and Chinese companies are welcome to join this discussion.

3.1.3.7 China - Interim Regulation on Radio Management of Wireless Charging (Power Transmission) Equipment, G/TBT/N/CHN/1711 (ID 784[25])

3.114. The representative of the United States provided the following statement. The United States would like to express continued concerns today with China's Interim Regulations on Radio Management of Wireless Charging Equipment. We understand this regulation specifies the technical requirements and radio frequencies that will be mandatory for a variety of wireless charging equipment produced or used in China, such as mobile devices, smartwatches, and electric vehicles. We received an update from US industry that China published the final regulation earlier this month, which is concerning given our unresolved questions. Will there be additional implementing measures forthcoming? The United States and US industry would again like to highlight several of our concerns, given the significant impact this measure may have on international trade.

3.115. First, China's TBT notification states that the objective and rationale for issuing this draft is for quality requirements and harmonization. However, one of the frequency ranges China proposed to adopt is not included in the relevant ITU-R standard (SM.2129). Can China please explain why it has included this additional frequency range (13553-13567kHZ) that is not in the published international standard? China indicated in March that its rationale for allowing only the three specified frequency bands stems in part from a lack of compatibility analysis between those bands and others to ensure the avoidance of harmful interference but that the regulation is subject to future adjustments per advancement of industry and technology. Both ITU-R and the Wireless Power Consortium have examined interference issues as part of the development process for the SM.2129 and Qi 2.0 standards, respectively. Will China commit to reevaluating additional frequency ranges that may be included in these standards, once they are finalized? We are concerned that China is moving forward despite unresolved questions from WTO Members about the rationale for selecting the frequency ranges in the regulation.

3.116. Second, we note that the draft regulation was scoped as non-radio equipment that radiates radio waves, including the energy transmitter connected to the power supply and the power receiver

[25] For previous statements follow the thread under ID 784.

acting on the load. We understand that the final regulation no longer includes receiving devices in its scope. Could China please confirm? We welcome this revision which would address one of our concerns. Third, regarding electric vehicle wireless charging equipment, we note that the SAE International has developed standard J2954, and standard J2954/2. Could China explain how it considered these standards when developing its draft measure? We request that China use these two standards as a basis for its regulation. Fourth, has China conducted a regulatory impact assessment on the potential negative environmental and climate impacts of limiting the frequency ranges? As we understand it, chargers that operate at the frequency range of 315-400 kHZ and 1.7-1.9MHZ for portable devices, which would not comply with the proposed measure, are able to consume less overall energy due to their quick charging ability and are already in use by millions of devices in many markets. Fifth, regarding product labelling, China indicated in its March response that it would allow for "special identification" on outer packaging or in the product instructions under certain conditions. This is helpful, but we urge China to consider allowing for the information to be displayed electronically.

3.117. Sixth, China also indicated in its March response that it will set up a reasonable transition period and will continue to allow the sale of existing products produced or imported until the end of that transition period. We appreciate this additional window, now set to end in September 2024, and thank China for that decision. However, US industry reports that compliance by September 2024 will still constitute a significant challenge given the complexity of the re-engineering that will be required, the breadth of products implicated, the nature of the supply chains for these products, and the divergence from international standards. We hope that China will acknowledge these realities and provide flexibility in its timeline for companies taking good faith steps to comply. We appreciate the opportunity to discuss further.

3.118. The representative of Japan provided the following statement. Japan has ongoing concerns with regard to the China - Interim Regulations on Radio Management of Wireless Charging (Power Transmission) Equipment. The Interim Regulations stipulate the frequencies which wireless charging (power transmission) equipment must comply with. Those are three frequency bands, namely 100-148.5 kHz, 6765-6795 kHz and 13553-13567 kHz. Japan appreciates China's comments at the last TBT Committee meeting that it had specified those frequency bands based on relevant recommendations from the International Telecommunication Union (ITU) and the development status of the industry. However, since Japan's concerns are still not resolved, Japan once again raises this STC. First, although the Qi2.0, the international standard provided by the Wireless Power Consortium (WPC), was already released in April 2023, and the Qi2.0 includes 360 kHz as a frequency for wireless charging, China's interim regulations do not include this frequency band. Also, China's regulations do not include any of the multiple frequency bands such as 315-400 kHz and 1700-1800 kHz, which the ITU has decided to include in its revised international standards. Therefore, it is hard to say that China adequately uses the relevant international standards as a basis for the Interim Regulations, and they would be inconsistent with Article 2.4 of the TBT Agreement.

3.119. Additionally, China explained that the purposes for introducing the Interim Regulations are to regulate the use of wireless charging (power transmission) equipment, to avoid harmful interference to services complying with the law, and to maintain order for radio waves. However, the Qi2.0 of the WPC and the revised ITU-R guidance as international standards are established based on the consensus of Members including China to justifiably maintain order for radio waves, so by complying with the international standards, the purposes of the Interim Regulations given by China can be supposed to be achieved. Therefore, as stated above, since products complying with the international standards can achieve the purposes of the Interim Regulations, the Interim Regulations which prohibit the import, sale and use of products complying with the international standards are likely to be an unnecessarily trade-restrictive measure and may violate Article 2.2 of the TBT Agreement. Japan continues to request China to use international standards as a basis for formulating the Interim Regulations on Radio Management of Wireless Charging (Power Transmission) Equipment so as not to become more trade-restrictive than necessary.

3.120. The representative of the European Union provided the following statement. The EU would like to support the delegations of Japan and the United States. The EU would like to refer to its statement on this topic in the last meeting of the TBT Committee. On 13 January 2023 the EU sent its comments on notification G/TBT/N/CHN/1711 to China which were replied to on 20 March 2023. On 20 April 2023 the EU sent follow-up comments. To date we did not receive China's reaction to these, therefore the EU would like to recall its main concerns expressed therein. As regards the

technical aspects for mobile phones and portable equipment charging, the China regulation foresees that the mobile and portable wireless charging equipment shall work within the frequencies of 100-148.5 kHz, 6765-6795 kHz and 13553-13567 kHz, the rated transmitted power shall not exceed 50W and the radiation parameters shall meet the Specifications of Wireless Charging (Power Transmission) Equipment. Considering the results of the study commissioned by European Commission on wireless charging technologies for mobile phones and similar portable equipment, limiting the lower frequency range to 100-148.5 kHz (instead of 87-205 kHz) would make a number of existing chargers and devices non-compliant. In addition, the EU would like to recall that the Qi technology, the main used worldwide, has a broader range than the one proposed by China.

3.121. Furthermore, given that wireless charging technology is still evolving, over-restricting the technology (such as the frequency range and others) could stifle innovation. It is for this reason that Directive (EU) 2022/2380 introduces technical requirements for wired charging only. Concerning Article 11, the EU would like to recall the trend of portable wireless charging devices is miniaturization. China's requirement to display the sentence "wireless charging equipment" could be problematic due to space constraint. In the EU, manufacturers are requested to display various information on the product, however, this is usually done in a form of pictogram/visual element, not as a sentence or a wording. The EU welcomes that Article 11 of Interim Regulations allows the labelling in the instruction manual due to the small size of the product. However, as there is no specific regulation on the size of the product itself, this provision could lead to unnecessary disputes in the post-supervision links after the implementation of the regulations. The EU would therefore like to suggest to China to either display the sentence as a sticker on the product or on the packaging; or to foresee an exclusion of displaying the sentence for small products, clearly indicating their size; or to allow adding the requested information ("wireless charging equipment") on the packaging instead of placing it directly on the device. The last option was applied in Directive (EU) 2022/2380 to display the charging characteristics (label) and the presence or not of a charger in the box (pictogram).

3.122. Regarding Article 14 of Interim Regulations, the EU requested an extension of transition period to 2 years, to allow for a smooth transition. The global supply chain has been impacted by the pandemic, and many of companies including Chinese companies are currently in the predicament of component shortages. In addition, the life-cycle of re-designing products or the development of new products usually takes years, and destocking is also a long-term process. The EU takes this opportunity to recall that for these reasons that it was decided to have a transition period of 2 years for the proposal on the common charger for mobile phones and similar equipment under the Radio Equipment Directive 2014/53/EU, thus ensuring that industry has sufficient time to adapt. The EU would also like to propose an additional two-year grace period for after-sale service components, which would translate into a total grace period of four years for the manufacturers and importers of after-sale service components. Without the introduction of such additional grace period, many users would suffer losses due to unavailability of after-sale services. Should the Interim Regulations prohibit enterprises from making old product components for after-sale services available, it would result in more waste and additional market access barriers.

3.123. In response, the representative of China provided the following statement. 1. With regards to the frequency ranges of wireless charging equipment, MIIT has specified that mobile and portable wireless charging equipment operates in the 100 -148.5kHz, 6765-6795kHz and 13553-13567kHz frequency bands, based on relevant recommendations from the International Telecommunication Union (ITU) and the development of wireless charging equipment industry. At present, frequency ranges outside these three bands lack of sufficient compatibility and sharing study, which may cause harmful interference to incumbent services and deployed systems. In the future, the relevant contents of the "Interim Regulations" will be adjusted timely according to the industry development and technology evolution. 2. Considering the whole wireless charging (power transmission) contains power transmitting and receiving, "Interim Regulations" includes "receiver" in the definition of wireless charging equipment, but only defines the frequency of the transmitter instead of the receiver.

3.124. 3. Article 11 of "Interim Regulations" stipulates as follows: Enterprises, which produce or import wireless charging equipment, shall mark the "special identification" of wireless charging equipment in a prominent position or display it electronically. If the "special identification" cannot be marked or displayed due to the small size of the equipment, it shall be marked in the equipment's independent external packaging or operation instruction. Moreover, the relevant requirements for "special identification" shall be formulated separately. ---4. In consideration of enterprise R&D and

production cycle, "Interim Regulations" sets the transition period more than 15 months and will be put into effect since 1 September 2024. While wireless charging devices, produced or imported, are still allowed to be sold and used until scrapped. ---5. Regarding the testing method for wireless charging equipment, MIIT is currently developing the related standards, which will serve as the basis for testing.

3.1.3.8 European Union - Proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056, G/TBT/N/EU/893 (ID 783[26])

3.125. The representative of Indonesia provided the following statement. Indonesia would like to thank the European Union for its notification G/TBT/N/EU/893 Proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056 (COM (2021) 709 final) ("the proposal"), which was submitted on 25 May 2022, in the first place. As enquiry from Indonesia, which was sent on 23 December 2022, have not been answered, Indonesia took the initiative to have a dialogue with the Directorate General of Environment of the European Commission and related associations in the EU to seek further clarification on some of the provisions mentioned on the Proposal. For this reason, Indonesia welcomes that the dialogue with representatives of the European Commission has been successfully carried out on 13 April 2023 in Brussels, Belgium. Although the proposal is almost finalized and does not accommodate many of Indonesia's concerns, we kindly request that the EU provide written responses to Indonesia's concerns regarding information of audit process, the application to become a country on The List, and the enforcement of waste treatment regulations by the EU for third countries.

3.126. In addition, Indonesia is also positive to hear that concerning the rigorous national regulations for industries to be eligible to import green listed waste in Indonesia, the EU believes that it would ease Indonesia to fulfil the audit and application requirements that will be regulated in reference to the EUWSR. Indonesia recognizes that the proposal incorporates EU's serious action in minimizing the risks that could endanger public health as well as any environmental impacts that would arise due to unmanaged waste shipments. It is also known that the proposal will replace the current Regulation (EC) 1013/2006 on shipments of waste. This draft Regulation establishes procedures and control regime for waste shipments, taking into account the origin, destination and route of shipment, the type of waste shipped and the type of treatment to be applied to the waste at its destination. It provides procedural rules for the shipment of waste both within, to and from the European Union. However, Indonesia would like to echo the discourse expressed in the TBT Agreement whereby measures put in place to achieve legitimate objectives, should be assumed not to create unnecessary barriers to international trade.

3.127. According to a news release from EuRIC, Europe recovered an average of 54.4 million tons of paper in 2020 and utilised 47.9 million tons of it internally. However, as has been observed over the past few years, there is a persistent disparity between the supply and demand of recovered paper in Europe of around 7 million tonnes. For this reason, exports are crucial for the European paper recycling business since there is no end market for the 7 million tonnes of recovered paper produced in Europe. The one-size-fits-all approach introduced by this proposal, would make all waste streams subject to the same export restrictions without distinguishing between untreated waste and recycled paper compliant with European Standard EN643. This could then lead to long-term negative impacts on the EU recycling industry and hinder the development of a circular economy both in the EU and in third countries. The pulp and paper industry will be one of the sectors heavily impacted by this proposed regulation as their essential raw material, i.e recycled paper, also falls within the scope of the proposed legislation. Indonesia employs recycled paper, some of which is imported from the EU due to insufficient domestic availability, to meet the raw material demands of the national paper industry while maintaining environmental sustainability. The imported recycled paper is then reprocessed into paper in a responsible and environmentally sound manner in accordance with applicable practices and regulations.

3.128. Indonesia shares the same goal of environmental conservation that has become a global issue and the need to increase the application of circular economy, reduction of greenhouse gas emissions (Net Zero Emissions) and others in addressing this issue. The Indonesian government has a strong commitment in managing climate change issues, reducing emissions, and improving

[26] For previous statements follow the thread under ID 783.

environmental aspects. Gradually, Indonesia is committed to increasing its GHG emission reduction target, which will be in line with the Long-term Strategy for Low Carbon and Climate Resilience (LTS-LCCR 2050) policy towards net-zero emissions by 2060 or sooner. Indonesia's GHG emission reduction target with its own capabilities in the Updated Nationally Determined Contribution (UNDC) increases to 31.89%, while the target with international support in the UNDC increases to 43.20% in the Enhanced NCD (ENDC). This commitment is followed by updating national policies related to climate change, such as related sectoral policies, including Indonesia Forestry and Other Land Uses (FOLU) Net-sink 2030, accelerating the use of electric vehicles, B40 policy, increasing action in the waste sector such as the use of sludge installations wastewater disposal (IPAL), increasing targets in the agricultural and industrial sectors, Implementation of Green Industry, Low Carbon Development, and many more. Referring to the above perspective, and to minimize potential technical barriers to trade due to the EU WSR proposal, Indonesia is open to collaborating with the EU in achieving the objectives of the proposed regulation. We look forward to intense communication and dialogue especially to obtain transparent and applicable implementing regulations of the EU WSR so that we can be designated as one of the "Listed Countries" and exempted from the bureaucracy, administrative requirements, and time-consuming and costly certifications.

3.129. The representative of Türkiye provided the following statement. We would firstly like to thank the EU for their cooperation. We have had a chance to meet with the EU delegation on the margins of the November 2022 TBT Committee meeting and in fact in the course of time since then bilaterally. That said, we still have concerns regarding this regulation and we would like to state them today. In fact, Türkiye shares the stated EU objectives with this regulation of supporting the transition to a green and circular economy. However, we believe that the monitoring and inspection requirements and measures envisaged in the draft for waste shipments of especially recycled raw materials of certain industries go beyond the stated legitimate environmental objectives. In this regard, we believe that the trade restrictive nature of these measures might be incompatible with EU's international commitments.

3.130. First of all, the draft lacks clear conditions for "monitoring of export and safeguard procedure" and for the inspection requirements of the importer facilities. These might lead to restriction of waste exports; and might impose additional burden and costs on importers while creating technical barriers to trade. Secondly, the draft legislation does not distinguish potentially hazardous waste streams such as mixed plastic waste from secondary raw materials being used as a raw material of certain industries. This approach undermines the benefit of trade in certain secondary materials, which contribute to low emission production and thus boost global circularity. In this sense, we believe the draft legislation may endanger the supply of raw materials for third countries' recycling facilities, hampering the already functioning circular economy in these countries. For instance, taking into consideration that 53.4% of the ferrous scrap, 52.8% of non-metal waste is imported from the EU, Turkish recycling industry and steel production is highly dependent on the supply received from the EU. On the other hand, it is important to underline that under the Paris Agreement, it is part of an international collective effort to reduce the carbon emissions significantly. Therefore, global cooperation is significant in this regard.

3.131. Furthermore, Basel Convention and related OECD Decision already set the rules for transboundary movements of hazardous waste. In this sense, this draft regulation might be inconsistent with Article 2.4 of the TBT Agreement. In that respect, Türkiye would like to ask information to the EU on the negative environmental impact justifying the need for the implementation of additional requirements in the draft. What constitutes the basis for imposing certain measures to monitor and when necessary restrict trade of ferrous scrap and non-metal non-hazardous waste for environmental protection concerns? Furthermore, Türkiye has been harmonizing relevant EU legislation with regards to waste management. Facilities in Türkiye that manage, recycle and import waste are already subject to licensing and auditing requirements. Therefore, the requirements foreseen by the legislation will bring additional burden for our facilities. In that respect, Türkiye would like to ask whether similar additional monitoring and auditing requirements will be introduced for the EU member States as well?

3.132. In response, the representative of the European Union provided the following statement. The European Union (EU) would like to thank Indonesia and Türkiye for their interest in the "Proposal for a Regulation of the European Parliament and of the Council on shipments of waste and amending Regulations (EU) No 1257/2013 and (EU) No 2020/1056 (COM(2021) 709 final)." As indicated in the notification form, this notification was made for transparency purposes and does not prejudge the

Union's position as to the applicability of the TBT Agreement.[27] The volume of exports of waste from the EU is considerable (33 million tonnes in 2020) and has substantially increased in the last decade (+75% since 2004). Waste shipped across borders can generate risks for human health and the environment, especially when not properly controlled. The notified draft, in line with the EU's commitments under the European Green Deal, the Circular Economy Action Plan and the Zero Pollution Action Plan, aims to ensure that the EU does not export its waste challenges to third countries, seeks to tackle illegal waste shipments and seeks to contribute to the circular economy by facilitating shipments of waste for reuse and recycling in the EU. The EU welcomes that Indonesia indicates that it also shares the importance of a transition to a green and circular economy and the management of waste in an environmentally sound manner.

3.133. The EU reiterates that the notified draft does not prohibit international shipments of waste. In order to avoid that exported waste emanating from the EU harms the environment or public health in countries outside of the EU, the notified draft includes provisions designed to ensure that the export of waste from the EU only takes place when there are sufficient guarantees that this waste will be managed in an environmentally sound manner in the country of destination. Waste treated in the EU is already subject to strict rules designed to protect the environment and human health. Waste treatment facilities in the EU are in addition subject to inspections and enforcement measures by national competent authorities in the EU member States. In this context, the notified draft includes provisions which are designed to ensure that waste exported outside the EU is managed in the countries of destination in conditions that are "broadly equivalent" to EU conditions to underpin the environmentally sound management of waste. It therefore aims to achieve the EU's environmental and public health objectives by ensuring there is a coherent regulatory approach to waste treated in the EU and waste exported from the EU to third countries. When assessing "broad equivalence", full compliance with requirements stemming from EU legislation shall not be required, but it should be demonstrated that the requirements applied in the third country of destination ensure a similar level of protection of human health and the environment than the requirements stemming from EU legislation.

3.134. The principle that all waste should be managed in conditions that are "broadly equivalent" to EU conditions when exported outside the EU is already reflected in the current EU legislation on waste shipments.[28] The notified draft is designed to ensure that the provisions on "broadly equivalent conditions" are made fully operational, and is intended to overcome persisting implementation difficulties associated with the lack of clear criteria on this point in the current Regulation. In that respect, the notified draft is necessary to secure compliance with the EU's regulatory regime for waste management. The EU reiterates that the notified draft does continue to distinguish between hazardous and "green-listed waste" relating to the applicable respective procedures for such wastes, but that it considers as well that the environmental objectives can only be met if the requirements relating to the environmentally sound management of waste apply to all types of waste exported from the EU. This principle is reflected in the existing legislation. In that respect, the EU notes that "green-listed waste" can also potentially cause environmental damage if not managed in an environmentally sound manner. The criteria designed to demonstrate that waste is managed in an environmentally sound manner, are laid down in the notified draft.

3.1.3.9 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[29])

3.135. The representative of Kenya provided the following statement. Kenya would like to refer to her previous statement on this Specific Trade Concern. Kenya wishes to join the other delegations that have raised this issue. Kenya takes note of the EU's response given in the March 2023 TBT Committee meeting. The reference made by the EU are guidelines from European Food Safety Authority (EFSA) and European Chemicals Agency (ECHA). However, there is need to cross reference to other international guidelines as well as other scientific literature. The EU's proposed measure is

[27] The notified draft was also notified to the Environment Committee on 2 June 2022.

[28] Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste; OJ L 190, 12.7.2006, p. 1–98 - https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R1013-20210111&qid=1670254090535.

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

on Hazard-based approach to plant protection products and setting of import tolerances whereas in the response issued in the March 2023 TBT Committee meeting, the EU bases their assessment on risk analysis principles on a case-by-case basis which is subjective. A holistic approach to risk analysis consistent with Codex guidelines should be adopted for purposes of consistency and predictability.

3.136. Adoption of the Hazard based system by the EU has the potential to create unnecessary barriers to trade by limiting the availability of crop protection products. This is deemed to be inconsistent with Article 2.2 of the TBT Agreement. In addition, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Kenya reiterates that a risk-based approach is the best global practice that meets the intended objective. The proposed measure would be deemed to be in contravention of Article 12.3 of the TBT Agreement which requires that "Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing country members, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country members". Kenya requests EU to withdraw this measure.

3.137. 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 consider that reduction of allowable residues in imported products to the limit of determination would impose a de facto ban on the usage of those products in trading partners should they wish to export to the EU. The Australian pesticides regulator – the Australian Pesticides and Veterinary Medicines Authority (APVMA) – must consider impact on off-target species in its assessments of products for registration. The APVMA's decisions consider the specific practices and settings of Australian farms and Australian environmental conditions. Australia maintains that the use of food residue limits to pursue domestically set environmental policy outcomes in third countries is inappropriate as it does not account for variations in risk stemming from differences in pollinator species, environmental conditions and chemical use practises around the world. Accordingly, Australia requests that the EU maintain MRLs for substances that do not pose unacceptable dietary risks and import tolerances be authorized based on dietary risk alone.

3.138. Australia 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.

3.139. The representative of Costa Rica provided the following statement. Costa Rica wishes to express its gratitude for the opportunity to raise this trade concern once again, as it is genuinely concerned about the hazard-based approach adopted by the EU when setting its import tolerances for products coming from trade destinations outside of the EU bloc. Under the obligations of the multilateral system, all technical requirements are to be aligned with an international reference standard or a risk assessment providing the scientific basis for the measure. Costa Rica once again urges the EU to ensure that the application of its regulations is based on risk assessments that meet criteria supported by sufficient scientific evidence, in accordance with the obligations set out in the TBT Agreement.

3.140. The representative of India provided the following statement. India reiterates its previously raised concerns regarding EU's hazard-based approach to plant protection products and setting of import tolerances. India notes that EU's implementation of the hazard-based approach with the cut-off criteria puts a significant burden of proof on the registrant, requiring the registrant to establish that the active substance is determined to not have carcinogenic, mutagenic, reproductive or endocrine disrupting properties, and that it is not a persistent organic pollutant. As a result, the registrants are required to definitively prove that their pesticides do not meet any of the cut-off criteria, regardless of the level of exposure a consumer may face from the application of that pesticide on a treated crop. Without identifying the actual risk in question, this approach disregards the fundamental principles of the scientific risk assessment framework for regulatory decision making.

3.141. As stated previously, such a hazard-based approach would not improve public health or environmental protection, but may have adverse consequences for sustainable agricultural production due to the removal of crop protection tools from the market, despite their established safety in use. In this regard, India reminds EU of the tenets of the SPS Agreement including Article 5.1 requiring WTO Members to ensure that their SPS measures are based on an assessment of "risk". Additionally, India reinstates the relevance of Article 5.4 whereby, EU is obligated to take into account the objective of minimizing negative trade effects when determining the appropriate level of sanitary or phytosanitary protection. In light of this, and in light of the importance of risk-based approach for regulating plant protection products as reinforced by other WTO Members as well, India requests EU to reconsider its hazard-based approach to plant protection products and setting of import tolerances.

3.142. 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. The EU affirms 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.

3.143. The representative of Argentina provided the following statement. We would like to thank the delegations for including this trade concern on the meeting agenda and request that Argentina's support be put on record. Argentina once again reiterates its concern 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, including the principles for the establishment of maximum residue limits for pesticides, 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.

3.144. 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 risk-based approach to the regulation of plant protection products, instead of basing it solely on the hazard arising from the intrinsic properties of a chemical. In this regard, Paraguay once again requests the European Union to take account of 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 the relevant international standards and principles; provide sufficient transitional periods, where necessary; and ensure import tolerances.

3.145. The representative of Guatemala provided the following statement. We reiterate the concern regarding the use of a hazard-based approach rather than the recognition of international standards, which are key to harmonizing regulations of this type internationally, particularly because they base their results on a risk analysis, which provides a scientific basis for the measures. We thank the EU for its explanation of the European Food Safety Authority (EFSA) guidelines. However, we urge it to take into account the existing scientific information emanating from the international reference bodies recognized by the WTO, such as the Codex Alimentarius, which has relevant information on pesticides. This is in order to avoid measures being more trade-restrictive than necessary to fulfil a legitimate objective, in accordance with Article 2.2 of the TBT Agreement. The precautionary approach has resulted in approvals of active ingredients being withdrawn due to a lack of data and MRLs being reduced to the limit of detection. Consequently, we would appreciate that, in cases where scientific information is lacking, the EFSA refrain from making 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.

3.146. The representative of Ecuador provided the following statement. As we have done on previous occasions, Ecuador once again reiterates its support for this trade concern and agrees with the importance of protecting human health and the environment. However, we consider that regulatory decisions adopted on the basis of hazard-based criteria are inconsistent with international risk-assessment practice, given that there is no consideration of exposure. As we see it, the European Union's precautionary approach has resulted in approvals of active ingredients being withdrawn due to a lack of data and in MRLs being reduced to the limit of detection. In this connection, Ecuador reiterates its request to the European Union that, when risk analysis studies carried out by the European Food Safety Authority (EFSA) determine that a result is inconclusive as regards the potential impact on health, the European Union recommend the EFSA to conduct more in-depth studies in order to obtain conclusive information that supports the ban or reduction of MRLs. Consequently, my country once again calls on the European Union to ensure that, in cases where scientific information is lacking, the EFSA does 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. My delegation urges the European Union to consider the scientific evidence on pesticides, in line with the commitments established under the TBT Agreement, so that its measures are not more trade-restrictive than necessary to fulfil a legitimate objective, as set out in Article 2.2 of the Agreement.

3.147. The representative of Chile provided the following statement. The delegation of Chile echoes the statements made earlier and, as it has done at previous meetings of this Committee, reaffirms the importance of adopting a scientific and risk-based approach to regulating phytosanitary products, instead of only considering the hazardousness of agrochemical products.

3.148. The representative of Uruguay provided the following statement. Uruguay supports the comments made by the other delegations and expresses its 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, to the adoption of 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 or exclusion criteria established in Regulation No. 1107/2009. We reiterate the need to base such decisions on conclusive scientific evidence, gathered from an assessment of the actual risks, to avoid imposing unjustified restrictions on active substances, which remain important components of pest management systems and are used safely. This is due to the fact that an approach based on hazard rather than on actual risk could have a negative and disproportionate impact on production, while contributing little or nothing to the cited aim of protecting public health. As usual, Uruguay continues to support any multilateral efforts undertaken by the Codex Alimentarius to develop a harmonized, risk-based approach to the treatment of plant protection products and MRLs for foods that would ensure the protection of health and, at the same time, facilitate international trade. In the meantime, we once again urge the EU to listen to and address the concerns expressed by many Members, and to reconsider its regulatory approach in order to avoid the unjustified proliferation of barriers to international trade in agricultural products and their potential socio-economic consequences for other Members.

3.149. 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 10 November 2018 onwards and included in Commission Regulation (EU) No 2018/605.[30] This is complemented by a guideline by the European Food Safety Authority (EFSA) and the European Chemicals Agency (ECHA), providing more details on how to interpret these criteria.[31] Plant protection products and residues in or on those products are regulated in the EU by Regulation (EC) No 1107/2009 and Regulation (EC) No 396/2005. Both Regulations are complementary and are implemented in a coordinated manner to avoid risks and hazards for humans, animals and the

[30] 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.

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

environment in the use of plant protection products. Environmental protection is foreseen in the EU Regulatory framework, and this is applicable to pesticide residues. When taking risk management decisions, all the factors relevant to the matter under consideration shall be taken into account, as foreseen by the relevant EU legislation.[32]

3.150. This includes environmental factors when read together with Article 11 of the Treaty on the Functioning of the European Union requiring that "Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development. "We are aware of general concerns on 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 authorised in the EU, due to the so-called "cut-off" criteria in Regulation (EC) No 1107/2009[33] 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 EU for pesticide residues risk assessment.[34] The EU reiterates its commitment to act in full transparency and keep Members duly informed about further developments.

3.1.3.10 European Union - Transitional periods for MRLs and international consultations, G/TBT/N/EU/682, G/TBT/N/EU/683, G/SPS/N/EU/360 (ID 580[35])

3.151. The representative of Kenya provided the following statement. Kenya would like to refer to her previous statement on this Specific Trade Concern. Kenya raised this as a Specific Trade Concern in the previous TBT Committee meeting and continues to have concerns over the same issue. Kenya takes note of the EU's response given in the March 2023 TBT Committee meeting on the Transitional periods for MRLs and international consultations. The transitional periods for MRLs established by EU are short and do not take into account the needs and adaptive capacities of developing countries which is inconsistent with Art. 12.3 of the TBT Agreement. The transition periods clearly need to be longer. Kenya therefore calls for a review of the transitional periods. Kenya will also continue these discussions in the SPS committee.

3.152. The representative of the United States provided the following statement. As we have stated in multiple prior TBT Committee meetings, the United States has longstanding concerns with the European Union's (EU) practices related to the reduction of pesticide maximum residue levels (MRLs). We have repeatedly noted that following the restricted approval or non-renewal of many active substances in the EU, the EU has subsequently reduced or withdrawn MRLs, including those based on Codex limits or import tolerances. We continue to observe that the EU has often reduced MRLs without a full risk assessment. The United States continues to request that the EU follow science- and risk-based processes, and that the EU completes science-based risk assessments based on a full body of evidence, prior to reducing or withdrawing pesticide MRLs. The United States also expects the EU to take WTO Member comments into account prior to finalizing its draft measures. The United States has observed that the period of time between the WTO comment submission period and European Commission voting on draft regulations on active substance renewals and MRLs can be brief. We look forward to discussing with the EU the possibility of finding additional opportunities for third countries to provide data and other analysis in advance of the formal WTO notification comment period. This would facilitate the ability of the EU to take a full body of available evidence into account prior to finalizing an MRL decision.

3.153. The United States reiterates its request that the EU retain existing MRL levels while import tolerances are under consideration. Recent EU regulation states that import tolerance applications

[32] Regulation (EC) No 396/2005 and Regulation 178/2002.

[33] 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.

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

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

will be considered on a case-by-case basis dependent upon meeting its definition of "environmental criteria." However, the lack of predictability that results from the consideration of import tolerance requests on a "case-by-case" basis unnecessarily increases uncertainty for farmers globally and limits farmers' ability to protect crops from pests and diseases. The United States has also previously shared concerns regarding the European Union's enforcement of MRLs. To prevent food loss and waste and to enhance global 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 at the time of importation for imported goods rather than at the time of production, as currently applied to the EU's domestic agricultural products, causes disruptions in trade destined for the EU market. As currently written in regulations, EU agricultural products and foods can be sold in the EU market even if they no longer comply with the most current MRLs. The United States requests that MRLs for all products, both domestic and imported, be enforced based on the MRLs in place at the date of application of the pesticide. This would resolve the inconsistency of enforcement of MRLs for agricultural goods produced inside and outside the EU.

3.154. The representative of Costa Rica provided the following statement. Costa Rica reiterates its support for this trade concern and repeats its request for an extension of the transition periods for compliance with the new tolerances established for agrochemical inputs whose approval for use has not been renewed, in view of the impact that they have on agricultural production in our country and others around the world. The usual period granted by the EU is around six months, which does not provide enough time to replace an agrochemical being used. As a result, there is a need to assess the possibility of longer transition periods for fruit- and vegetable-producing countries.

3.155. The representative of India provided the following statement. India joins other WTO Members in raising concerns regarding international consultation processes and planned transition periods related to the MRL setting procedures as adopted by the European Union (EU). EU MRLs and import tolerances are often reduced or withdrawn following a non-approval or restricted approval decision, backed by insufficient international consultation and giving limited transition time for exporters from other countries. At the outset, India requests EU to ensure that the risk assessment in question is fully completed before new MRL is set. Secondly, in undertaking this process of MRL setting, India requests EU to grant longer, more reasonable transition time. Sufficient transition time is necessary to allow trade to continue uninterrupted, while providing adequate time for producers and exporters to adapt to the new requirements.

3.156. Further, India requests EU to also ensure that intensive stakeholder consultations are undertaken before any drastic revision of MRL and that the comments provided by WTO members during the stakeholder consultation are taken into account and how the measure in question is revised in light of the inputs received during stakeholder consultation be put in public domain. India reminds EU that if MRLs and import tolerances are lowered without sufficient scientific justification, the approach would be read to be more trade restrictive than necessary and can be questioned under WTO Law. In light of this understanding, India requests EU to reconsider its overall approach to setting off MRLs, including providing sufficient time for international consultations and sufficient transition periods.

3.157. The representative of Colombia provided the following statement. These are topics that we have raised several times in this Committee, and we are reiterating these concerns on this occasion because there have been no adequate changes to the transition period to date, and it is unclear how regulatory changes have been introduced on the basis of the information presented during the international consultations. The problem is exacerbated when maximum residue limits and import tolerances are reduced or withdrawn and the transition period is insufficient for exporters in other countries. It is worth remembering that access to international markets is essential to the livelihoods of many rural families and to the income generation of agricultural producers, especially because the European Union is one of the top markets for producers of bananas, coffee and exotic fruits, among other products. Colombia calls on the European Union to consider the comments made before taking measures regarding the detection level of an active ingredient, conduct comprehensive risk assessments before establishing a different maximum residue level and ensure that transition periods are sufficiently long. Otherwise, we will end up in a situation with measures that unnecessarily restrict and impede trade. We therefore invite the EU to follow the recommendations of good regulatory practices, according to which rules should be based on clear and objective information, and open dialogue with stakeholders, transparency and reduction of market distortions

are promoted, to the benefit not only of developing countries but also the multilateral trading system, which has already been hit hard by this and other measures.

3.158. The representative of Canada provided the following statement. Maximum residue limits (MRLs) regulations were developed to mitigate unnecessary trade barriers. However, these measures can unintentionally become unnecessarily trade restrictive and impede trade when a country imposes a sudden MRL deletion without giving its trade partners sufficient time to adjust. To that end, Canada would like to reiterate its concern with the EU's approach to transition periods for maximum residue limits. Canada is of the view that the EU's approach has yet to acknowledge the reality of international agricultural supply chains such as the time required to ship product, multi-year inventory and extensive shelf life. 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 for its trading partners, as it has done so for its domestic producers, taking into account the need for exporters to adapt to new requirements.

3.159. 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. Brazil would like the EU to explain how its authorities deal with uncertainty, indicating if inconclusive evidences lead to suspension or prohibition of substances and which actions are taken to review these decisions, as they are based on inconclusive opinions.

3.160. The representative of Argentina provided the following statement. We would like to thank the delegations for including this concern on the Committee's agenda and we would be grateful if Argentina's support could be put on record. 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 inappropriate 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 once again calls for a review of the transition periods.

3.161. The representative of Paraguay provided the following statement. As with the previous concern, we urge the EU to reassess its approach and, where MRL reductions are duly justified, provide adequate transition periods that take into account the realities of the production processes and the geography, including distances, of its trading partners. With regard to the international consultations, we thank the EU for the notification of the measures. However, we repeat our question to the EU about how the comments submitted by Members at different stages of the consultation process are taken into account. We would also like to know whether there are cases in which regulatory changes or adjustments have been introduced using the information submitted by stakeholders during the consultation process. In many cases, the limited time between the end of the comment period and the approval of the drafts without amendments leads us to believe that these notifications and comment periods are mere formalities, and comments are not intended to be, and are in fact not, taken into account.

3.162. The representative of Guatemala provided the following statement. Guatemala thanks the Members that raised this trade concern and reiterates its support for the concern. We reiterate the position that we previously expressed. Transitional periods continue to be insufficient for making adjustments to productive processes and adapting them to local conditions (for example, they do not take into account the very variable climatic and geographic conditions or the time needed to conduct technical and economic assessments and training). Many tests need to be carried out to determine that a product is effective in treating a specific pest or disease in a crop, in variable climatic conditions and within a budget. The results need to be used to establish values that are statistically valid. The EU has failed to take account of these transitional periods, which will vary

depending on the type of crop and harvest. Each crop has a different productive cycle, which means that a fixed period cannot be set for all crops in general. Moreover, many of the compounds used do not have established substitutes that meet the necessary requirements in terms of, *inter alia*, effectiveness and cost. This situation is more critical for small-scale farmers and cooperatives in the various areas of the country. It is not possible to ask producers to make changes to their use of substances in the different production stages without giving them an exact date of when the MRLs will be changed, particularly when the number of alternatives on the market is declining. As it has been indicated to us that such decisions must be made when the EU submits a TBT notification, this process does not provide producers with certainty. We hope to find a satisfactory solution.

3.163. The representative of Ecuador provided the following statement. Ecuador continues to support this trade concern raised by Kenya, the United States, Costa Rica, Colombia and India and shares the concern of other WTO Members that took the floor earlier. As it has done at previous meetings of this Committee, my delegation reiterates its concern with regard to the procedures relating to the transitional periods adopted by the European Union for implementing its measures concerning the non-renewal of the approval of substances and the reduction of tolerances. In order to establish reasonable transitional periods, it is necessary to consider harvesting periods and the times when agrochemicals are applied. Ecuador therefore urges the European Union to consider granting an adequate period, of a minimum of five years, so that developing countries may adjust their production to the new conditions set out in the European regulations, given that farmers need more time to adapt to the maximum reside level (MRL) requirements. It is important for the European Union to take into account that the development or registration of a new phytosanitary product for pest control takes an average of 10 years, and this is when new alternatives have been identified. My country calls on the European Union to consider the comments of third countries, particularly when the use of the substances is key for the control of pests or diseases typical of tropical and subtropical climates, the conditions of which differ from those of the members of the European economic bloc.

3.164. The representative of Uruguay provided the following statement. Considering harvest seasons, the stages at which plant protection products are applied and the time needed to develop and register alternative substances, the transition periods set by the European Union in the provisions amending the MRLs for active substances are mostly insufficient in practice for making the necessary adjustments to production and ensuring that agricultural products, especially processed or frozen products, comply with the new, amended MRLs. As we have said before, six months are insufficient for adaptation. In our opinion, 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 effective substitutes for the active ingredients for which the MRLs are to be reduced. It is inappropriate to make abrupt changes to the rules in the middle of a harvest season, considering the impact this may have on the marketing of the affected products. My delegation reiterates the call for Members to take 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, in accordance with the relevant WTO Agreements.

3.165. Uruguay urges the EU, when taking decisions to reduce MRLs for active substances used in agricultural production by other Members, to provide sufficient transition periods to make the relevant adjustments. Lastly, Uruguay shares the concerns expressed regarding the practical operation of the EU's international consultation process on MRLs and regrets that its delegation has not yet responded to the requests of Colombia, Paraguay, Guatemala and Uruguay at the March 2023 meeting of the TBT Committee for further information as to how, and to what extent, the EU has taken into account the comments of other Members in its regulatory process, and for examples of cases where the EU has modified its original proposals in response to comments or information received from third countries.

3.166. In response, the representative of the European Union provided the following statement. 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. Nevertheless, we would like to also inform Members of the TBT Committee that all measures taken on MRLs in the EU are based on a scientific risk assessment carried out by both an evaluating Member State and the European Food Safety Authority and using the most up to date science and evidence

available. Obviously, science is under continuous development with new data and risk assessment methodologies becoming available. Therefore, the EU has the procedures in place to review any measure at any moment if this is necessary. On the contrary, all measures concerning 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.

3.167. 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 those 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 those 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. 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.

3.1.3.11 China - Draft Administrative Measures for Registration of Overseas Producers of Imported Foods, G/TBT/N/CHN/1522 (ID 611[36])

3.168. The representative of the United States provided the following statement. The United States remains deeply concerned with this measure, published as Decree 248 in April 2021, and implemented in January 2022. We continue to question the food safety and public health benefits, and whether the measure is based on science and risk. We ask that China please provide further information in this regard to support and explain their legitimate objective. The United States notes that the lack of guidance provided by China, and China's unpredictable implementation and enforcement of the measure continue to cause considerable confusion for exporters and competent authorities. Furthermore, GACC appears to require foreign competent authorities to manage information in 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. Instead, GACC should ensure that all facilities are able to self-register without foreign competent authority involvement.

3.169. We note that GACC is requiring both competent authority Declarations of Conformity that rely on exporting country food safety systems, as well as requiring facility-specific manufacturing information, a duplicative approach which is overly burdensome in terms of registration requirements. Moreover, GACC's requests for additional detailed information from facilities, such as information on manufacturing process flow charts and critical control points on an establishment-by-establishment basis, are not consistent with international guidance for a system-based food safety approach. Is GACC taking its knowledge, experience, and confidence with other countries' food safety systems into account in implementing this measure? We look forward to China's response to these specific requests and comments.

3.170. The representative of Australia provided the following statement. Australia respects the right of WTO Members to address the safety and quality of imported food products in accordance with the TBT Agreement and without unnecessarily restricting trade. Australia welcomes the recent amendments to the CIFER system and hopes that they deliver the desired outcome of a simplified registration process. Whilst we are yet to fully understand the impacts of these recent changes, we believe the changes to allow suspended establishments to retain their registration and the ability for establishments to change details such as their address and legal representatives will result in a more efficient system. Australia acknowledges the difficulties experienced by China in the implementation of CIFER as part of its roll out of Regulation on Registration and Administration of Overseas Manufacturers of Imported Food (Decree 248). Australia appreciates the continued cooperation of officials from the General Administration of Customs China (GACC) to work through the many system

[36] For previous statements follow the thread under ID 611.

issues experienced in the CIFER system. We remain willing to engage with China to minimise trade disruptions but are still concerned at the resource-and-labour-intensive costs borne by exporters and exporting country competent authorities to comply with the CIFER registration process.

3.171. This burden is exacerbated by the number of technical issues, delays and lack of clarity experienced within the CIFER system. Australia encourages China to improve engagement with trading partners on CIFER through the provision of: regularly updated and detailed guidance material; a pathway to systems recognition and recognition of trading partner systems; guarantee of continuity of trade to all currently registered establishments until the IT system issues in the CIFER system are resolved. Australia reminds China that its regulations must not discriminate against imported goods. Delays in processing registration renewals, lifting suspensions and approving new applications from overseas food producers, only lead to imported foods being treated less favourably than China's domestic product.

3.172. The representative of The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu provided the following statement. Given their potential to affect a wide range of industries, and because there has been little progress on this STC, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu would like to reiterate the concerns we expressed in previous TBT meetings over the implementation of the above-referenced measures since they took effect on 1 January 2022. First, transparency continues to be an issue and the lack of sufficient information regarding registration requirements, operational guidelines, and procedural updates remains a major obstacle, particularly for those facilities that are required to register directly with the General Administration of Customs of China (GACC). In order to ensure that the inability of these facilities to complete the registration process does not disrupt trade, a single enquiry point should be established to provide them with effective and timely assistance. Moreover, while China has indicated that technical guidance, regulatory interpretations, and supporting documentation have already been provided, we would urge that this information be placed on a publicly accessible website so that it can be accessed directly by overseas facilities.

3.173. Second, we also have concerns regarding the review and approval procedures established by these measures. Standard or anticipated processing periods have yet to be disclosed, little is known about the individual stages of the application process, and several applications have been rejected by the GACC without explanation. Article 5.2.2 of the TBT Agreement requires, among other things, that the standard processing period of each conformity assessment procedure be published, that the results of the assessment be communicated in a precise and complete manner so that corrective action can be taken if necessary, and that the applicant be informed of the stage of the procedure upon request. Article 5.2.8 further mandates that a mechanism be established to review complaints concerning the operation of a conformity assessment procedure. Both of these provisions are critical for ensuring transparency, and at the very least require that facilities whose applications have been rejected be provided with an explanation of the grounds for such rejection as well as an opportunity to have their applications reviewed. We would therefore urge that the GACC comply with its obligations under the TBT Agreement so as to ensure that the review and approval procedures for applications submitted under these measures are efficient and transparent.

3.174. Third, the ambiguity of the HS code categorization as well as the scope of products subject to these measures has also been an issue, with some of our facilities reporting that their products have been suspended from customs clearance for no apparent reason. Fourth, we would like to reiterate the concerns expressed by others regarding the unnecessary and unjustified burdens imposed on the competent authorities of exporting Members with respect to 18 categories of food products. While we agree that more stringent requirements are warranted for such high-risk goods as dairy, meat, and fishery products, we would urge that China consider eliminating them for medium-risk products (GACC-II). Restricting such requirements to high-risk items will ensure the effective use of administrative resources while allowing for a more efficient registration process. Ever since China notified the WTO of its intent to pass these measures in 2020, we have repeatedly expressed concern and sought clarification regarding their implementation through bilateral channels as well as the TBT Committee, yet these concerns have yet to be adequately addressed. Accordingly, and as discussed above, we would urge China to establish an enquiry point for questions regarding the registration process and provide detailed technical guidance and other relevant materials on a publicly accessible website. Finally, since measures of this magnitude necessarily require considerable time and effort on the part of exporting Members to implement, we would like to echo other Members' calls for a longer grace period, so that products from registered facilities would be allowed to temporarily enter the Chinese market to prevent unnecessary trade disruption.

3.175. 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). More than a year after its entry into force, the EU considers that the whole implementation process of Decree 248 is still very burdensome and not transparent. As previously mentioned, EU applicants are still facing many issues in the registration process, mostly due to recurrent technical problems with the web-based registration system (CIFER), making the electronic submission of documents cumbersome, time consuming and uncertain, be it to apply for new registrations or to amend or correct existing registrations. In this context, EU applicants remain concerned about the June 2023 deadline to provide supplementary information for existing registrations. Due to recurrent technical problems with the CIFER system, it is unlikely that all establishments will complete their registration on time. EU applicants have also faced difficulties regarding the renewals of past registrations, with a burdensome procedure including, first, an application for "modification", followed by an application for "extension".

3.176. In order to avoid food trade disruption, the EU urges China to: Resolve the technical software problems with the CIFER system; Facilitate the process to amend/correct existing registrations; Simplify the renewal procedure for past registrations; and Refrain from enforcing any new requirements scheduled to come into effect after 30 June until concerns are addressed. The EU would like to thank China for the constructive dialogue, which has so far helped to address several questions related to implementation of Decree 248, however, important issues remain to be resolved.

3.177. The representative of Japan provided the following statement. Japan, like other Members, would like to raise its concerns again regarding the implementation of Decree 248 by China concerning administrative measures for registration of overseas manufacturers of imported food. First, Japan appreciates China's willingness to address the concerns we have expressed in previous occasions, and also thanks China for its recent bilateral engagement with us. Having said so, Japan is still concerned that 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. Japan requests China improve the operation of the CIFER system, and make the procedures for implementation of Decree 248 transparent. Japan specifically requests that China to maintain the status of a registered manufacturer for an establishment who submit the additional information by 30 June deadline, even if the procedure by Chinese side to register the manufacturer would not be completed by the end of June, so that there would be no adverse impact on export of food products from Japan to China.

3.178. Japan would also like to ask China the following: 1. 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. 2. Give sufficient explanation for the reasons when an application is rejected through the CIFER system, and ensure its consistency. 3. 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 the GACC provide a reasonable transitional period. 4. Correct any defects in the CIFER system as soon as possible, including: (a) the current, considerable delays in the registration process; (b) its inability to accept letters of proxy; and (c) the fact that some of the product codes (HS CIQ) are missing from the list shown on the system. 5. Respond to unanswered questions within a reasonable time. Japan would like to communicate closely with China to address our concerns in a corporative manner.

3.179. The representative of Canada provided the following statement. Canada thanks China for its information session provided to WTO Members on Monday, 19 June on Decree 248 and the China Import Food Enterprise Registration (CIFER) system. Canada also welcomes China's recent changes to the CIFER system to facilitate the registration and renewal process by addressing some of the challenges, such as uncertainty and delays, faced by foreign establishments. While Canada appreciates the efforts made by Chinese authorities to facilitate the registration and renewal process, we call on China to continue to provide flexibilities to ensure that the CIFER system does not become a technical barrier and disrupt trade. Beyond this, Canada requests China to appropriately consider the relative risk of different products, particularly those classified as "medium-risk", to ensure that (a) the level of information requested from foreign establishments is proportionate to the risk of the product and (b) the efficiency of the process is improved by allowing more foreign establishments

to submit their applications directly in CIFER without additional steps required by foreign competent authorities.

3.180. The representative of Brazil provided the following statement. We would like to thank China for discussing this matter bilaterally and for the efforts in trying to clarify some questions that we have and also we appreciate the fact of the presence of experts from capital and the organization of the informational session as well. Brazil would like, once again, to support STC 611 regarding new requirements for the registration of overseas producers of imported foods. The Chinese government has not yet clarified 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 n. 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 n. 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"?

3.181. The representative of the Philippines provided the following statement. The Philippines shares the concerns raised by Members that spoke before us on the draft administrative measures for registration of overseas producers of imported foods. We also wish to thank China for the information session they organized to share further information on the implementation of Decree 248. Our exporters still face challenges relevant to the registration with GACC such as the inclusion of consolidators and traders as GACC only covers registration of food manufacturers, processors, and storage facilities. These requirements are quite burdensome for overseas food manufacturers. In addition to the points raised by previous speakers, we request China to also consider its commitments under Article 10.1.1(b) of the Trade Facilitation Agreement which states that Members should review formalities and documentation requirements such that measures are adopted to reduce the time and cost of compliance for traders and operators.

3.182. The representative of the Republic of Korea provided the following statement. The Republic of Korea echoes the concerns raised by 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 stipulated in Article 7 of Decree 248 still include low-risk food products. This is an unnecessary obstacle that hinders 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, which causes a negative impact on trade. Korea also requests China to review the registration standard, to consider basing it on the individual manufacturing facilities, instead of the product categories. The current requirements lead to 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 such suggestion 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. As the new measures significantly affect bilateral trade, Korea would like to ask China to provide a response to our statement.

3.183. In response, the representative of China provided the following statement. The revision of Administrative Measures for Registration of Overseas Manufacturers of Imported Foods had come into effect from 1 January 2022. With the strong cooperation of the food safety authorities of all Members, more than 80,000 overseas manufacturers from 165 economies have been registered in China, and 229 overseas competent authorities of 130 economies have joined the CIFER system. Thanks to the cooperation of the Members, the implementation of the provision has gradually passed into a stable period. To support the implementation of the regulations, the GACC had successively

issued the interpretation of the regulations, the guideline and supporting documents and forms for registration application, launched the registration information system for overseas enterprises. In order to better understand the regulation by the competent authorities and enterprises of Members, the GACC has held regulatory briefings and training with more than 100 Members. Even last week, GACC published a video demonstration of the CIFER system operation on their official website. GACC has also optimized its CIFER system to provide more flexibility in solving competent authorities' and enterprises' special technical issues.

3.184. In addition to strengthening food safety supervision, the measure also takes full consideration of trade facilitation. On 29 September 2021, GACC sent letter to all Member food safety authorities, that 18 categories of overseas food manufacturers that had traditional trade records exporting to China before the implementation of Decree 248 could be quickly reviewed and registered in CIFER system, and the relevant ones should log in the CIFER system to supplement registration information during the 18-months transition period or before 30 June 2023. That is a trade facility policy to guarantee unimpeded trade of those companies. Till now, the competent authorities of WTO Members had urged most of those manufacturers to supplement the information, and we understood some companies might have the difficulties and objective reasons to provide supplemental materials on time, we confirmed that their products can export to China normally after 30 June 2023, and wish the competent authorities could give us an explanation on the reasons to the GACC in advance. Last but not least, China would like to underline that strengthening communication and interpretation between China and Members is an important way to eliminate misunderstandings and solve problems about registration regulation. We noticed that sometimes, the questions about registration raised here have been resolved through bilateral communication channels. That is why China organized an information session on 19 June 2023. At the information session, China reiterated the legitimacy and transparency of the regulation, explained that the regulation is based on science and risk assessment and facilitated food trade exporting to China, shared the implementation information about GACC Decree 248, made an introduction to the operation and optimization of registration system (CIFER), and gave an explanation on the common questions received from the Members. If Members are still confused about the regulations and the registration system, they are welcome to raise questions at any time, and GACC will respond in a timely manner and provide technical support.

3.1.3.12 Peru - Supreme Decree No. 015-2019-SA, which amends the Manual of Advertising Warnings approved by Supreme Decree No. 012-2018-SA (ID 618[37])

3.185. The representative of Costa Rica provided the following statement. Costa Rica reiterates 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, as has been mentioned on previous occasions, this temporary solution does not effectively and permanently address the concerns of our exporters to the Peruvian market. The temporary maintenance of the use of adhesive labels does not provide our exporters with legal certainty and clarity about the regulations applicable to trade in food in Peru. In Costa Rica's view, progress needs to be made on an amendment to the final regulation, which would allow the use of adhesive labels for an unlimited period. This is a practice that is widely recognized internationally, as such labels achieve the same public health protection and consumer information purposes achieved by permanent labels. In terms of Codex Alimentarius international reference standards, 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. In view of the foregoing, 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 thank the Peruvian authorities for the information that it provided to us in March and, in turn, request that it provide information on the current status of this regulation, on whether the intention is still to ban the use of adhesives on labels and on the time frame for the regulation's entry into force.

3.186. The representative of the European Union provided the following statement. The European Union (EU) would like to thank Peru for their engagement on this issue so far and granting extensions

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

to use stickers for compliance with labelling requirements for processed imported foods. However, the European Union notes that the latest extension is expiring on 30 June 2023. 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. 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. In this respect, the EU also underline the recent decision of the Peruvian Court for the Defence of Competition and Protection of Intellectual Property (INDECOPI) which declared the ban on the use of octagon adhesives in imported processed foods as a non-tariff trade barrier. We invite once again Peru to bilaterally work with the EU on this issue.

3.187. The representative of Colombia provided the following statement. Colombia once again shares with the Committee this trade concern regarding the use of stickers for advertising warnings. It has been suggested on previous occasions in this Committee that using adhesive labels is a common practice internationally, as they fulfil the same public health protection and consumer information purpose as permanent labels. We value the talks that have taken place at different levels and the extensions of the period for using adhesive labels, and we understand that the current deadline expires on 30 June 2023. However, a permanent solution is crucial in providing legal certainty and clarity regarding the regulations applicable to the food trade on the Peruvian market. It is therefore in our interest, and surely in other countries' interests also, to move forward with a regulation allowing the use of adhesive labels without an expiry date, thereby avoiding an unnecessary barrier to trade.

3.188. 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/97/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 022-2022-SA, the entry into force of the prohibition on stickers was delayed until 30 June 2023. 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 continue to raise this STC until Peru permanently removes its burdensome requirements for food labelling.

3.189. The representative of Paraguay provided the following statement. Paraguay's concerns and views regarding this measure remain unchanged. We therefore request that the entirety of our statement from the previous meeting be reflected in the meeting minutes, and I will limit myself to repeating the questions and recent comments. Considering the impending expiry of the temporary extension period, when does Peru think that the assessment by its Ministry of Health of the use of this type of additional adhesives will be concluded? Can Peru share the terms of reference of the study initiated and the methodology used? We would also be interested in understanding the scope of the decision of the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI) Tribunal, mentioned by the European Union.

3.190. *Statement from March 2023 meeting, in full.*[38] We thank Brazil, Costa Rica, Colombia and the European Union for including this trade concern on the agenda and request that Paraguay's support be recorded. 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 to fulfil the legitimate objective. We regret that once again Peru has decided to extend only temporarily its legislation to

[38] G/TBT/M/89, para. 2.213.

allow the use of supplementary labels until 30 June this year, this being the fourth temporary extension, so we reiterate that temporary extensions do not provide exporters with the legal certainty they need. We therefore 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. Considering the new assessment by Peru's Ministry of Health regarding the use of this type of adhesives, when does Peru think that it will be concluded? Can Peru share the terms of reference of the study initiated and the methodology used?

3.191. The representative of Chile provided the following statement. The delegation of Chile would like to thank the delegations of Brazil, Colombia, Costa Rica and the European Union for including this specific trade concern on the agenda. Our delegation recognizes that nutritional labelling is a health and consumer information-based policy and is grateful to Peru for extending the acceptance of adhesives on the packaging of food products. We urge the regulatory authority of Peru to allow the permanent use of adhesives on the packaging of food products, thereby avoiding creating an unnecessary technical barrier to trade.

3.192. The representative of Guatemala provided the following statement. As has been indicated on previous occasions, we recognize Peru's right to safeguard and protect the health and life of consumers, while informing the public about food content. Supreme Decree No. 022-2022-SA, published on 31 December 2022 in the special edition of the Official Journal *El Peruano*, extends the deadline to 30 June 2023 for the use of adhesives with advertising warnings on imported products as provided for in the Manual of Advertising Warnings approved by Supreme Decree No. 012-2018-SA, within the framework of Law No. 30021 on the promotion of healthy eating among children and adolescents and its implementing Regulations approved by Supreme Decree No. 017-2017-SA. We thank Peru for considering adhesive labels, although we are concerned that the deadline for using such labels is set for 10 days' time. Accordingly, we ask Peru to reconsider the measure, which we deem to be a non-tariff barrier to trade as there are other less restrictive alternatives, such as the use of additional labels that must fully and accurately reflect the information contained on the original label, as established by the Codex Alimentarius in the General Standard for the Labelling of Prepackaged Foods (CXS 1-1985). As the deadline approaches, we ask for it to be extended and for the option to use adhesive labels to be permitted indefinitely. We reiterate our statements made at previous meetings of the Committee.

3.193. In response, the representative of Peru provided the following statement. As we have stated on previous occasions, Peru is committed to achieving its objectives of protecting the health of its citizens and most vulnerable groups, such as children and adolescents. Peru is therefore seeking to ensure that the information contained in the Manual of Advertising Warnings reaches consumers clearly and effectively to enable them to make informed choices. With regard to the concerns raised by certain Members, I would like to point out that Peru is in the process of finalizing the relevant arrangements and hopes, in due course, to find a definitive solution that satisfactorily addresses the requests made by other countries, taking into account that adhesives may not be used after 30 June. Lastly, we would like to 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 international trade.

3.1.3.13 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; G/TBT/W/774 (ID 630[39])

3.194. 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

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

Matsu would like to reiterate its concerns about the Orders issued by India's Ministry of Chemicals and Fertilizers on phthalic anhydride, 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 fully understand that India's implementation of Quality Control Orders (QCOs) is to ensure the quality of products manufactured in India and their safety for consumers. However, India's implementation of QCOs still needs to comply with WTO/TBT Agreement; especially taking into account their impact on international trade and the unnecessary burdens imposed on the industry. Moreover, under the QCO system, officials from the Bureau of Indian Standards (BIS) must be assigned to perform on-site factory inspection and take samples. Our manufacturers have repeatedly expressed concerns about the BIS's limited manpower and resources, which have caused unexpected delays of scheduled on-site factory inspection, thereby resulting in disrupted trade operations and harm to the rights and interests of our businesses.

3.195. Our quarantine requirements for all international visitors were lifted in October last year. Regarding our manufacturers' applications, we thank the Indian side for resuming their on-site factory inspection. However, the certification process will still take considerable time, we hope Indian side can expedite the review process for granting the certificates and consider postponing of the implementation dates. In doing so, we believe that Indian companies will also avail themselves of the competitiveness of their products in the international market by rapidly accessing needed raw materials and semi-finished products of good quality from our companies.

3.196. The representative of the United States provided the following statement. We understand that in March 2023, India's Department of Chemicals and Petrochemicals (DCPC) met with several industry stakeholders to discuss the possible enactment of mandatory, India-specific quality-control standards for 76 chemicals, many of which are different from those included in a previous October 2019 meeting notice. Can India elaborate on the basis, criteria, and rationale behind the prioritization of these 76 chemicals? Does India intend to hold public consultations on this prioritization? US industry has indicated that, for certain substances such as carbon tetrachloride, chloroform, N-Butyl acetate, and perchloroethylene, the current Bureau of Indian Standards (BIS) standards do not align with relevant international standards and do not incorporate newer, more accurate testing methods. Can India explain the rationale behind mandating compliance to standards developed by BIS for these substances, as opposed to encouraging voluntary compliance, recognizing other international standards, or including reference to international standards in the BIS standards?

3.197. Additionally, we understand from US industry that a reasonable transition period of approximately five years after final adoption of any technical regulation corresponding to the 76 identified chemicals is needed for manufacturers to adapt their products or methods of production. Can India provide more clarity on the likely implementation timeline for these technical regulations? We also ask that India notify any technical regulation or implementing rule to the WTO TBT Committee, allow a stakeholder comment period of at least 60 days, and take submitted comments into account before finalizing the measure(s). Lastly, we recognize India's most recent six-month extension of the Polyethylene Material for Moulding and Extrusion Quality Control Order (Polyethylene QCO) in March 2023. While we appreciate this recent extension, we kindly reiterate our previous request that India extend the implementation timeline until April 2024. The United States refers to its previous interventions on this matter, including the concerns raised in the March 2023 WTO TBT Committee meeting.

3.198. The representative of the European Union provided the following statement. The European Union would like to support the delegations of the United States, Chinese Taipei, Indonesia, and Canada. The EU continues to systematically take 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 once more reiterates its request to India to provide structured information regarding the planned timing 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 clarification, explaining the reasons for establishing India-specific Quality Control Orders and India specific standards when these chemical and petrochemical products already comply with internationally recognised 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 recognised international approaches and best practices.

3.199. The representative of Canada provided the following statement. In previous Committee meetings, Canada and other Members 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 continues to remain 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 across many sectors. There are now 40 notifications from India with respect to QCOs for chemical and petrochemical substances, most of which lack clarity and transparency with respect to substantive information and timeframe for implementation. Such an approach to notifications, in Canada's view, goes against the spirit of the transparency provisions of the TBT Agreement. At the November 2022 Committee meeting, Canada joined the room document G/TBT/W/774 which serves to highlight key concerns with respect to India's QCO framework and approach. India noted that the room document was under review by capital. While Canada was hoping that India would address certain of these concerns at the March Committee, we were disappointed to note that India did refer back to the issues raised in G/TBT/W/774, and instead provided a very short response focussed on BIS carrying out physical inspections where conditions allowed. Canada hopes that India will start to engage constructively in this Committee on the issues raised by many Members on its QCO framework, and will work to ensure that the implementation of the orders is conducted in ways that are consistent with India's WTO TBT obligations.

3.200. In response, the representative of India provided the following statement. Chair, we would like to reiterate our comments on this issue. The Bureau of Indian Standards (BIS) is carrying out physical inspections for applications received from foreign manufacturers, where the country to be visited is facilitating the visit of fully vaccinated BIS officers without the requirement of any quarantine. The process of standards development of BIS is aligned with accepted international best practices that are based on the core principles of openness, transparency, impartiality and consensus. While formulating Indian standards, it is an integral part of the Standard formulation process to analyze the relevance of the existing international Standards (even other than ISO/IEC Standards) for Indian situation in accordance with the Code of Good Practice of WTO-TBT Agreement and as a policy. BIS always tries to align Indian Standards with International Standards of ISO and IEC, where available and to the extent possible, keeping in consideration the specific climatic/environmental conditions and technological development in the country. Around 88% of Indian Standards, for which corresponding ISO and IEC standards are available, are harmonized with their ISO/IEC counterparts.

3.1.3.14 Indonesia - Government Regulation 28 of 2021 – Implementing Regulation (for the Manufacturing/Industry Sector) to Law No. 11 of 2020 the "Job Creation Act", G/TBT/N/IDN/152 (ID 724[40])

3.201. 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). While we thank Indonesia for the response we received on Tuesday this week, unfortunately, many of our long-standing concerns remain unanswered and are not addressed in this recent response. While we will follow up in writing in more detail, we ask that Indonesia attempt to engage with Members to effectively address the concerns raised in writing and in this Committee. In particular, Indonesia's response notes that it remains committed to fulfilling the transparency principle of the WTO TBT Agreement. However, it failed to provide Members with an opportunity to comment on a draft measure, given that it notified an implementing regulation for GR28/2021 in G/TBT/N/IDN/152 in January of 2023, despite being signed and entering into force in November of 2022. Indonesia also has not yet explained what steps it took to take Members' comments into account, particularly in light of the fact that the comment period was provided after the measure entered into force.

3.202. Further, we again ask Indonesia to please provide a justification for requiring conformity assessment testing to be conducted by Indonesian civil servants residing in Indonesia. How do these requirements relate to the ability to perform conformity assessment? Why is Indonesia not allowing

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

remote factory inspections, given travel restrictions and disruptions that may prevent onsite inspections? We again refer Indonesia to our previous statements from November 2021, March, July, and November 2022, and March 2023. Without reiterating them, the United States requests that Indonesia provide a response that specifically addresses Members' concerns.

3.203. The representative of the European Union provided the following statement. The European Union continues to remain 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 measures related to raw materials. It also introduces new requirements with regard to product certification bodies. The new requirements affect in principle all products subject to SNI certification, thus making export to Indonesia very complicated. Additionally, due to lack of available guidelines, the situation does not improve. Certain sectors are particularly concerned (e.g. toys, tyres and machinery). The European industry continues to report that various requirements of this measure continue to represent an unnecessary barrier to trade. The European Union would like to refer to its previous statements made during recent TBT Committee meetings and notes that the majority of the issues raised therein remains unanswered. The European Union invites Indonesia to respond to concerns we raised previously, and in particular to make sure that the conformity assessment bodies continue certification process for foreign products. The EU remains available to discuss this issue bilaterally.

3.204. The representative of Canada provided the following statement. Once again, Canada reiterates the following points from previous meetings of the Committee, specifically outlined in our statement at the July 2022 TBT Committee in paragraphs 2.402-2.404 of G/TBT/M/87, and which we are again referring to today for the record: Canadian industry stakeholders have reported that the various requirements of this measure remain the same and therefore continue to represent an unnecessary barrier to trade. At the November 2022 and March 2023 TBT Committees, Indonesia committed to answer Members' concerns through a formal written letter sent to our respective Enquiry Points. Whilst Canada thanks Indonesia for its response to Canada's comment letter, received on June 20, which we are in the process of reviewing, Canada also takes this opportunity to reiterate the following: concerns about significant provisions related to the recognition of conformity assessment results and the need to have mutual recognition agreement between countries in the field of technical regulations in accordance with the regulatory provisions of the legislation; as well as requests for Indonesia to provide a rationale as to why it did not provide for a 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, as per Articles 2.9.2 and 5.6.4 of the TBT Agreement; and between the publication of the technical regulation and its entry into force, as per Article 2.12 and 5.9 of the TBT Agreement.

3.205. In response, the representative of Indonesia provided the following statement. Indonesia thanks the United States, the European Union, and Canada for their continued interest to Government Regulation 28 Year 2021. Indonesia would like to reiterate that Government Regulation 28 of 2021 aims to clarify and complement the previous requirements set out in Government Regulation (PP) 2 of 2017 regarding the Development of Industrial Facilities and Infrastructure. The implementing regulation regarding the mandatory application of SNI on specific products will be stipulated in other Minister of Industry regulation. We will remain committed to fulfilling the transparency principle of the WTO TBT Agreement by notifying relevant technical regulations. To date, Indonesia has notified the Minister of Industry Regulation number 45 of 2022 on Industrial Standardization through document G/TBT/N/IDN/152 and also several regulations such as (i) Draft Decree of the Minister of Industry on the Mandatory Implementation of Indonesian National Standard for Plastics Raw Material (G/TBT/N/IDN/151), (ii) Draft Decree of the Minister of Industry on the Mandatory Implementation of Indonesian National Standard for Portable Fire Extinguishers (G/TBT/N/IDN/150), as the implementing regulation number 28 of 2021.

3.206. The certification process for SNI-based technical regulations in the industrial sector is carried out in accordance with the provisions contained in the relevant Ministerial Regulation. All provisions regarding standard and conformity assessment schemes apply equally to both domestic and foreign manufacturers. Minister of Industry Regulation Number 45 of 2022 contains procedures including how the Minister of Industry will evaluate the Conformity Assessment Body as mandated in Government Regulation Number 28 of 2021, where the regulation states that: Conformity assessment procedures are carried out by Conformity Assessment Body accredited by the Indonesia

National Accreditation Body (KAN) and appointed by the Minister of Industry; Based on Regulation of the Minister of Industry Number 45 of 2022, it is further explained that the implementation of conformity assessment procedures shall continue to be carried out in accordance with the previous regulation, until the regulation is amended. Indonesia accepts test results from accredited foreign testing laboratories under the framework of mutual recognition agreements and the availability of technical regulatory agreements between Indonesia and its partner countries.

3.1.3.15 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[41])

3.207. The representative of Kenya provided the following statement. Kenya reiterates her previous statement on this Specific Trade Concern. Kenya raised this as a Specific Trade Concern in the previous TBT Committee meeting and continues to have concerns over the same issue. Kenya takes note of the EU's response given in the March 2023 TBT Committee meeting. Arising from this response, Kenya looks forward to further information that the EU may have concerning this issue. Kenya wishes to express concern on the fact that the measures have been adopted despite the concerns raised by Members.

3.208. The representative of Australia provided the following statement. Australia reiterates our concerns about amendments to Regulation 396/2005 arising from Commission Regulation 2023/334 regarding maximum residue levels for clothianidin and thiamethoxam in or on certain products. The amendments consider environmental impacts in exporting countries when setting import 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 outcomes 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.

3.209. 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.

3.210. The representative of the United States provided the following statement. The United States continues to express our deep concern with the European Union's regulation (Commission Regulation 2023/334) regarding the reduction of maximum residue levels (MRLs) for clothianidin and thiamethoxam, notified to the TBT Committee as G/TBT/N/EU/908 on 6 June 2022. The United States is concerned that this measure lacks sufficient technical justification to fulfil its environmental objective, undermines the expertise of national competent authorities and good agricultural practices worldwide, and introduces a dangerous precedent for an unsubstantiated use of a food safety metric to achieve supposed environmental aims. Given the critical importance of these pesticides for the production of crops that are exported to the EU from the United States and other WTO Members, we are concerned that the reduction of these MRLs to the limit of determination (LOD) may pose a significant obstacle to trade.

3.211. The United States notes that efforts to protect bees and other pollinators in the United States are well established, and we would welcome opportunities to share information about US pollinator research and initiatives. As the EU has previously recognized, global environmental challenges cannot be achieved by prescriptive, one-size-fits-all approaches that are narrowly tailored to the

[41] For previous statements follow the thread under ID 763.

conditions in one country or region. Once again, the United States urges the EU to pursue a collaborative approach to protecting pollinators, using appropriate international venues to advance a shared understanding of this global challenge. We remind the EU that environmental considerations are not included in the Codex Committee on Pesticide Residue (CCPR) assessment process for establishing MRLs, and we are disappointed and dismayed with the EU's decision to use pesticide MRLs as an environmental safety management tool. The United States urges the EU to refrain from using MRLs outside of their intended purpose, which is food safety. The United States recalls that the European Food Safety Authority (EFSA) had reviewed clothianidin and thiamethoxam MRLs and recommended MRLs that were safe for consumers in its most recent MRL review.

3.212. The United States restates our prior concerns regarding the 2018 EFSA risk assessments and notes the importance of completing science-based risk assessments in their entirety prior to reducing or withdrawing existing MRLs. We respectfully ask the EU to share the scientific and technical information evaluated by EFSA that demonstrates how the reduction of these MRLs to the LOD for products produced outside of the EU protects pollinators, including bees. Given the lack of global consensus about the factors that negatively affect pollinator health, including the health of bees, and in the absence of scientific or technical information indicating how the reduction of MRLs to the LOD for products produced outside of the EU contributes to the objective of protection of pollinators, including bees, the United States requests that the EU refrain from additional attempts to achieve global environmental outcomes through pesticide MRLs and to restore prior MRLs for clothianidin and thiamethoxam.

3.213. The representative of Indonesia provided the following statement. Indonesia once again wishes to reiterate that the Draft Commission Regulation as regards maximum residue levels for clothianidin and thiamethoxam, notified under G/TBT/N/EU/908 amending Regulation (EC) No. 396/2005, will have a serious impact on farmers in developing countries producing products exported to the European Union, as it will restrict farmers from using certain technologies useful for producing agricultural commodities economically. The Maximum Residue Levels (MRL) is an international trade standard related to food safety and consumer protection. The imposition of MRLs for environmental protection deviates from the purpose of MRLs themselves. The reduction MRL for active ingredient of neonicotinoid (NNIC) aimed at addressing a global environmental issue, namely the reduction of pollinators worldwide, Indonesia thinks that it does not provide a strong legal basis for taking measures that regulate and impact the use of registered crop protection products outside EU territory and jurisdiction. As such, it conflicts with the responsibilities and authorities of other sovereign states, resulting in the extraterritorial application of European Union legislation, which may be incompatible with treaties, international agreements and commitments to which the Union and its member States are party, in particular within the framework of the World Trade Organization (WTO).

3.214. The insect pollinator decline is multifactorial and cannot be attributed exclusively to the use of pesticides, and in particular cannot be attributed to one class of pesticides. Indonesia has a strong commitment to protecting insect pollinators and protecting the environment. Recent scientific developments studies on pollinators concluded that risk of the NNIC class substances to bees and other invertebrates is acceptable in their jurisdiction, therefore regulatory authorities in more than 80 countries still use and register NNIC class active ingredients. This is also supported by data from Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES)[42], which confirms that no single factor can explain the pattern of bee colony losses observed in some countries, while bee colonies are increasing in others. The authors of the IPBES report have even been challenged by NGOs who point out that there is no conclusive link between the use of certain pesticides and the decline of wild bees. Moreover, a positive trend was also reported by the UN Food and Agriculture Organization (FAO), which showed a significant increase in honeybee colonies in major agricultural countries from 2012 to 2019, including those where the two compounds in question were registered and used.[43]

3.215. Every country, including Indonesia, has unique sustainable agriculture goals and challenges. In addition to climate challenges, agriculture in our country has high pest and disease pressure due to the combination of heat, humidity, and plant-disturbing organism pressure from various pests, diseases, and plant weeds. To overcome these problems, various methods, tools, and technologies are needed so that agriculture can sustainably meet the world's growing food and feed needs.

[42] IPBES 2016, https://ipbes.net/assessment-reports/pollinators.
[43] https://www.fao.org/faostat/en/#data/QCL.

Therefore, in accordance with regulations implemented by the government, we continue to promote more sustainable and good agricultural practices and food systems by emphasizing the combination of the best methods and techniques to achieve adequate and more sustainable production. Therefore, regulatory decisions relating to pollinator protection should take into account the uniqueness of each country's ecology and agricultural landscape, and be assessed by each country's regulators based on a scientific approach. Indonesia understands that this draft regulation does not require non-EU countries to ban the use of clothianidin and thiamethoxam in their own territories and the aim is that food and feed consumed in the EU does not contribute to the global decline of pollinators. However, lowering the MRL to the Limit of Quantification (LoQ) is an indirect measure to avoid the use of thiamethoxam and clothianidin by countries that have different agricultural practices to control pests resulting in different but safe residue levels. We believe that non-EU countries have their own regulatory frameworks that recognize the safety of these products in use.

3.216. Indonesia has adopted Codex Alimentarius standards for setting MRLs through the Indonesian National Standard (SNI), and all other crops have MRLs currently set higher than 0.01 mg/kg, except for palm oil and cocoa products. However, any new levels applied will pose a risk to our export products, as even small exceedances that are perfectly safe for human consumption could lead to refusal of shipments to the EU or return and destruction. This will result in high cost for our producers and the uncertainty process will make it less attractive due to the higher risk of rejection. We would like to appreciate the data from the EU annual monitoring program for pesticide residues in 2019, all analyzed samples originating from Indonesia, had clothianidin or thiamethoxam levels lower than the LoQ, except for tea products. We highlight a very significant decrease in MRLs for tea products, from Codex Standards and EU Regulations, the MRLs for Thiamethoxam and Clothianidin are 20 mg/kg and 0.7 mg/kg, whereas under the EU Regulation, the MRL should be 0.05 mg/kg. This will be a significant obstacle for Indonesian tea farmers which could lead to loss of Indonesian tea exports to the EU. Indonesia hopes that the European Union can take this into consideration and refer to the MRLs in existing international standards as a reference for setting MRLs for clothianidin and thiamethoxam in or on certain products.

3.217. The representative of Costa Rica provided the following statement. Costa Rica wishes once again to support this trade concern, which was originally raised by Kenya and relates to the EU's intention to establish maximum residue levels (MRLs) for clothianidin and thiamethoxam as mechanisms to fulfil environmental objectives. Costa Rica reiterates that, broadly speaking, its national 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 multilateralism and the fundamental obligations that underpin this Organization. The TBT Agreement clearly sets out the objectives that technical regulations, standards and conformity assessment procedures may legitimately fulfil. From Costa Rica's perspective, it is unclear which legitimate objective might justify the revision of an MRL, which is a matter related to food security and the protection of human health and therefore falls within the scope of the SPS Agreement. In that connection, we are struggling to understand EU notification G/TBT/N/EU/908, due to the fact that, although this notification proposes reducing the MRLs for clothianidin and thiamethoxam, it was submitted to the TBT Committee and not to the SPS Committee. Costa Rica does not agree with the EU's claim that the above-mentioned notification is justified by a "global environmental concern". Among the legitimate objectives of the TBT Agreement, we cannot find global environmental concerns as justification for a measure covered by this Agreement. Addressing global environmental concerns is also a matter of the utmost importance for Costa Rica. However, it is unclear how this objective falls within the scope of the SPS and TBT Agreements. Lastly, Costa Rica thanks the EU for its explanations regarding this concern.

3.218. The representative of Colombia provided the following statement. This statement refers to STCs 763, 579 and 627, relating to the substances chlorothalonil, mancozeb, clothianidin and thiamethoxam. Colombia is aware of the importance of consuming foods free from excess pesticide residues in line with international safety recommendations. To this end, our health authorities are going to great lengths with the productive sectors to ensure that food meets these requirements and standards. However, the prohibition and subsequent non-renewal of the approval of active substances such as chlorothalonil, mancozeb, clothianidin and thiamethoxam is hitting our country's agricultural export sector hard. The search for alternatives to the substances that have been banned or whose approval is being modified necessarily requires time and investment, especially when potential alternatives are also becoming scarcer owing to the EU's changes to phytosanitary regulations as part of the Green Deal or the Farm to Fork Strategy, for example. In the non-renewal

or modification of approval for active substances, it is essential to take into account processes and production methods in countries that could be affected. Failing to do so would violate the TBT Agreement, which stipulates that technical regulations must not be more trade restrictive than necessary. We therefore invite the European Union to support solutions that would allow our agricultural producers to continue meeting European demand for food, to the benefit not only of developing countries but also the multilateral trading system, which has already been hit hard by this and other measures.

3.219. The representative of India provided the following statement. India reiterates its concerns regarding lowering of existing MRLs for clothianidin and thiamethoxam by EU. As highlighted previously, India notes that this approach of lowering MRLs for pesticides no longer approved in EU's jurisdiction due to environmental concerns is not restricted merely to this notification, and for many products, the residual pesticide limits have been set at 0.01 mg/kg. There are significant concerns with the setting of default MRLs because it imposes a standard that needs to be sufficiently scientifically founded on imports from other countries. In light of the raised concerns, India requests the European Union to reassess its approach and ensure that arbitrary MRL standards are not imposed preventing unnecessary disruption to trade in safe products.

3.220. The representative of Canada provided the following statement. Canada, like other Members, is disappointed with the EU's decision to adopt regulation EC No 396/2005 to lower the MRLs for clothianidin and thiamethoxam to the Limit of Quantification (LOQ). We would like to note that this decision is not based on dietary risk, but rather on perceived environmental concerns for the global pollinator population, which does not take into account risk mitigation measures in exporting countries or residues in pollinator relevant matrices such as pollen and/or nectar. This approach is unnecessarily trade restrictive and does not take into consideration unique circumstances (e.g., climate and growing conditions) and risk management measures of exporting countries. If a pesticide does not cause dietary risk, there is no evidence of health risks to EU consumers. To that end, if EFSA cannot conclude a risk assessment due to data gaps, the EU should maintain the MRLs or harmonize with Codex MRLs (CXLs). Canada has a robust, science and evidence-based regulatory system and is confident in the mechanisms we have in place to protect consumers and the environment.

3.221. 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 and growing conditions. 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 legislative requirements extraterritorially, and we hope this will not become a pattern that continues.

3.222. The representative of Paraguay provided the following statement. Paraguay reiterates its concern about the EU's claim 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 the interest of time, I request that the entirety of the statement made at the previous meeting be reflected in the minutes. I will limit myself to making only a few comments and repeating the questions: First, considering that it was included in the statement from the previous meeting, I would like to thank the EU for removing the incorrect reference to Paraguay from the Regulation. The EU drew attention to the fact that, owing to the judgment of the European Court of Justice of 19 January 2023 in Case C-162/21, members can no longer grant emergency authorizations for products containing restricted neonicotinoids. We note, however, that a series of emergency authorizations were approved before the judgment but remain applicable after it. At least one emergency authorization for thiamethoxam was granted even after the judgment. This authorization was given by the Czech Republic on 4 April 2023 for the period from 20 April to 16 July 2023. It contains some interesting elements that I would like to highlight: In section 15, "Rationale", of the form, it states that the product will be used only when the harvest is intended for export to countries outside the European Union. Although section 16, "Mitigation measures", includes some risk mitigation measures with which we agree, it too states that, as a mitigation mechanism, the treated produce is not intended for consumption in Europe.

3.223. I would like to know how consumption abroad protects European pollinators and how this would be consistent with non-discrimination obligations, considering that Paraguay and other Members will not be able to benefit from this mechanism. The EU insists that emergency

authorizations are not trade facilitation measures, unlike import tolerances, but we would like to understand what role the Standing Committee on Plants, Animals, Food and Feed (SCoPAFF) plays in authorizing import tolerances in cases where a request is considered by the EFSA to be "fully supported by data and safe for consumers". Would the EU refuse a request upon SCoPAFF's recommendation, thereby disregarding scientific information from its own scientific authority on the matter? To conclude, Chair, it would be remiss of me not to mention the extensive list of questions raised at the previous meeting of this Committee, which, as I said before, I will not read out again in the interest of time since it will be recorded in the minutes. I hope that the EU will provide a sufficient response, otherwise we will have to read it out again in full in future meetings.

3.224. *Statement from March 2023 meeting, in full.*[44] Paraguay reiterates its concern about the EU's claim 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. But each country has particular needs and challenges in its agricultural production, on the basis of 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 risk to the environment and pollinators.

3.225. My country, like several other Members, submitted comments on notification G/TBT/N/EU/908 within the established deadline but on 27 September 2022, only 23 days after the end of the comment period, the EU Standing Committee on Plants, Animals, Food and Feed (ScoPAFF) 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. This is compounded by the fact that written responses to comments that were taken into account in theory were only submitted several months later, on 26 January 2023, only one week prior to the approval of Commission Regulation (EU) 2023/334 (3 February 2023). Allow me to add that this Regulation mentions my country among the various non-EU countries that have also restricted the use of these products with the aim of protecting pollinators, including bees. This is incorrect. The resolution mentioned in footnote 19 DOES NOT EXIST IN MY COUNTRY and the name of the Ministry mentioned does not correspond to that of the Ministry responsible for the matter.

3.226. With regard to the questions already submitted at the previous meeting of this Committee, I would add a request for clarification of this incorrect mention of my country. We also reiterate the following questions: How does the EU intend to address the special needs of developing and LDC Members in the area of finance, trade and development in accordance with Article 12.3 of the TBT Agreement? 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.

3.227. 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? 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

[44] G/TBT/M/89, paras. 2.297-2.301.

since EU members are also Members of the WTO in their own right and it may be necessary to start asking each of them questions 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. In the reply received from the EU to the comments made by Paraguay on notification G/TBT/N/EU/908, the EU mentions that when the EFSA finds that the emergency authorization is not justified the EU takes measures to avoid repetition of emergency authorizations but it only indicates two specific cases.

3.228. In this regard, we would like to know how these measures adopted by the EU operate? Is the opinion of the EFSA not binding? Are regulations required to make them binding? This takes account of the fact that, as we previously mentioned, we have identified a number of cases in which they continue to be authorized. 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, we would like to receive more information on the recent ruling by the European Court of Justice confirming that EU member countries cannot make exemptions regarding the use of seeds treated with plant protection products expressly prohibited by EU legislation specifically referring to some of these substances. This takes particular account, for example, of a recent emergency authorization for the substance thiamethoxam granted by Romania on 21 December 2022 for the period 1 March 2023 - 30 May 2023 for the treatment of seeds.

3.229. The representative of Japan provided the following statement. The Commission regulation lowering the Maximum Residues Levels ("MRL") of clothianidin and thiamethoxam in foods entered into force in March 2023. Japan is disappointed by the EU's decision to adopt and put in force the measures without due consideration of the concerns expressed repeatedly by Japan and other Members at previous TBT Committee meetings. Japan has been communicating closely with the EU on this issue, and we appreciate the EU for providing responses. They are useful in understanding the EU's position and we hope to continue communicating with the EU to address our concerns in a cooperative manner. Japan's specific concerns are as follows; First, the adopted measures lowering the MRLs of the two active substances for the purpose of protecting pollinators outside the EU are clearly a deviation from the current MRL setting principles, which protect human life or health, as well as from the trend of international harmonization of the MLRs. Although the EU insists that the measure would not directly link to the health of citizens, Japan considers that when taking a new approach to the measures affecting third countries, such as the MRLs, it should be thoroughly discussed with such third countries at the relevant international fora, including the SPS Committee.

3.230. Second, in paragraph 20 of the preamble of the adopted regulation, it is indicated that import tolerance may be set if the applicant provides scientific evidence that the use of these two active substances does not adversely impact pollinators. As it is not clear what kind of evidence will be required in the application process, and by what criteria the unacceptable risk to pollinators is measured, we would like the EU to clarify these points as soon as possible. While the EU suggests, in its responses to Japan's comments, that the use of the active substances in permanent greenhouses would be an example of the specific conditions for the application of import tolerances, Japan considers that allowing application of import tolerances to only such limited situations is not appropriate considering the diverse environmental conditions, pesticide use, and agricultural production practices in non-EU countries. We would also like the EU to clarify, if a third country has applied for import tolerance for a specific crop and has successfully established a related standard value, whether this value would also apply to the product in question imported into the EU from other third countries. Last but not least, Japan emphasizes that the environmental conditions in each country are different, and the use of pesticides is regulated by the authorities of each country based on scientific evidence in consideration of the environmental conditions in each country. Japan reiterates its position that, by imposing the adopted measures, the EU should not make judgements about the appropriateness of the use of the specific pesticides under the specific conditions in third countries.

3.231. The representative of Brazil provided the following statement. Brazil thanks the European Union for the opportunity to comment on the proposition notified as G/TBT/N/EU/908, that resulted in the publication of Commission Regulation 2023/334, withdrawing approval of the active

substances thiamethoxam and clothianidin and restricting 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.

3.232. The EU affirms that its restrictive measure would seek to avoid a supposed 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.

3.233. 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. Furthermore, there is no scientific basis or multilaterally agreed concept for the European Union to use the concept of MRLs related to environmental issues. The scientific basis for using the concept of MRLs related to human health issues is well established by the Codex Alimentarius, however the concept of MRLs related to environmental issues is neither multilaterally nor scientifically established. Therefore, the measure came before there was a multilateral and scientific basis to support it and, in this sense, it should be considered a barrier to trade, until the European Union proves the relationship between MRLs and the environment. This relationship must be defended in the appropriate multilateral environmental forums, considering that the Codex Alimentarius does not deal with environmental issues. 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 receiving replies to its comments but regrets that they have not been taken into account for publication of Commission Regulation 2023/334.

3.234. The representative of Argentina provided the following statement. Argentina reiterates its concern about the consistency of this measure with WTO rules. We consider that the measure is inappropriate and disproportionate and that the EU's decision is an extraterritorial application of law because it clearly has an impact on third party decisions and a totally negative effect on trade, as either the European market is lost for certain products that are exported or the use of these pesticides must be stopped in the territory of the exporting countries, even if their use is required on account of climate and production conditions, etc., and bees are not affected by them. We understand that if the EU did not intend to achieve an application of its measure outside the EU, it should have examined other measures. We reiterate that the EU has established an MRL at the level of detection to protect bees, when MRLs are actually adopted to ensure food safety, not to protect the environment. The Codex Alimentarius recently adopted new MRLs for neonicotinoids, demonstrating that they are safe for consumers. Argentina considers that the measure adopted by the EU to establish limit of quantification values for these neonicotinoids is not clearly justified and constitutes a disguised restriction on international trade within the meaning of Article 2.2 of the TBT Agreement because it is disproportionate to the objective that it claims to protect and unduly restricts trade as it prevents the marketing of any product that has been treated with these neonicotinoids that may exceed the limit of quantification, even though the EU cannot demonstrate that MRLs at the level established by the Codex may affect the health of consumers, which ultimately is the intended purpose of an MRL.

3.235. The representative of New Zealand provided the following statement. New Zealand shares the concerns raised by other Members following the EU's adoption of the proposal to lower the MRLs on specific neonicotinoids to the limit of quantification as a means to address pollinator decline. The decline of pollinators given their vital role in supporting ecosystem functions and food production is also of concern to New Zealand, however we note that the extent of pollinator decline varies considerably throughout the world and is associated with a range of different causes. New Zealand considers that national authorities are the most appropriate decision makers with respect to the sustainable use of pesticides within their country. This permits countries' unique pest and disease status, climate and geographical conditions to be taken into account when applying measures to halt pollinator decline. New Zealand also echoes the concerns raised by other Members that with the EU unilaterally imposing prescriptive import measures to address a global environmental challenge this could lead to perverse outcomes and create unjustified trade barriers. New Zealand encourages the EU to instead address global environmental issues, including sustainable pesticide use, by working with trade partners in multilateral fora that have environmental protection mandates. Finally, New Zealand encourages Members to use the least trade-restrictive measures and to recognize that alternative regulatory approaches adapted to a countries' specific production context can also achieve desired outcomes.

3.236. The representative of Guatemala provided the following statement. We thank the Members that included this item on the agenda. We share the EU's genuine interest in pollinators for the global environment, protecting ecosystems and biodiversity. Our concern is that this initiative is based on risk assessments used in non-EU territory, and it would appear that the objective is to regulate the use of neonicotinoids in third countries' production. It is important to note that agricultural production, in order to export to international markets, complies with different standards and good agricultural practices, which also include the safe use and management of agricultural inputs. In addition, there are programmes to mitigate any risk of poisoning and/or contamination that comply with all necessary measures and practices to guarantee the correct use of agricultural inputs and an appropriate production plant environment, including integrated pest management and robust agricultural education on the use and effect 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 EU does not have a legal basis for applying environmental measures to products outside the EU, or for making a change in maximum residue levels (MRLs) for substances without scientific evidence and a risk analysis.

3.237. Changing an MRL is linked to ensuring food safety, and the issue of the environment does not come under this legitimate objective set out in the TBT Agreement. In addition, there is an SPS aspect to MRL reduction. We would appreciate clarification of this issue from the EU. Guatemala reiterates the importance of protecting the environment and natural resources, and also the importance of the EU recognizing the use of good agricultural practices, which involves a sustainable level of production using productive methods and recognition of the very different climatic characteristics of each region around the world. We would be grateful if the EU could clarify how it will apply the European Court of Justice ruling on emergency authorizations in current and previously authorized measures.

3.238. The representative of Ecuador provided the following statement. We thank the European Union for its reply to the timely comments submitted by Ecuador. However, Ecuador wishes to reiterate its concern about the draft regulation amending Annexes II and V to Regulation (EC) No. 396/2005 of the European Parliament and of the Council, which addresses the reduction of maximum residue levels (MRLs) for neonicotinoids (clothianidin and thiamethoxam). Ecuador reiterates that the European Union's draft regulation would appear to be inadequately aligned with the provisions of the WTO TBT Agreement and 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 in controlling nematodes and black aphids in banana production. It leaves significantly less residue in the environment and decomposes much faster than other products. The risk from the use of this substance in banana cultivation has been mitigated and there have been no reports of direct harm to bee populations.

3.239. Ecuador urges the European Union to consider different studies indicating that obtaining just one compound to be used as a pesticide can take more than 11.3 years of research and development on average and significant private investment to implement. 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 on this matter by a number of Members within this Committee, in order to avoid unnecessary restrictions on trade.

3.240. The representative of South Africa provided the following statement. South Africa would like to thank the European Union (EU) for the response received on South Africa's concerns regarding draft Commission Regulation amending annexes II and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regard Maximum Residue Levels for Clothianidin and Thiamethoxam in or on products. Response reference: 607785 of 26/01/2023. We further appreciate the analysis of the products originating from South Africa and the assurance that out of the 1742 samples analysed originating from South Africa covering a variety of exported products (various fruits, vegetables, teas, wines), 99.8% had levels of clothianidin or thiamethoxam lower than the Limit of Quantification (LOQ).

3.241. In the March 2023 TBT Committee meeting, we indicated that we are considering the response and we made a preliminary observation regarding the average time to apply for import tolerance which is estimated to be an average of two years depending on the quality and completeness of the data. Our suggestion was a reduction of the period to approximately six months. South Africa notes that the Regulation is adopted and is published in the Official Journal of the European Union. It will become applicable from 7 March 2026. We are not clear how comments from WTO members considered and incorporated in the adopted regulation. Our industry stakeholders have given due consideration to the responses provided by the EU to our concerns. South Africa notes the EU's statement that according to the scientific assessments of clothianidin and thiamethoxam conducted by the European Food Safety Authority, there is no Good Agricultural Practices (GAPs) for outdoor uses of thiamethoxam and clothianidin that would not pose an unacceptable risk to bees.

3.242. South Africa would like to draw attention to the fact that, while the above argument might hold true in certain circumstances, in South Africa, this is not the case due to the timing of the application of these substances as stated on the product labels. This includes that no application may occur after bud burst or before 100% petal drop, nor while pollinators are active at any time on the applicable fields. South Africa therefore believes that these products, when applied according to label instructions, including recommended safety measures, can comply with GAPs. Note that it is illegal to apply any product contrary to the product label in South Africa as it is a contravention of Regulation No. R1716 of 26 July 1991 under Act No. 36 of 1947. South African farmers depend on many species other than honeybees for pollination, such as stingless bees, wasps, flies, moths, beetles, etc. Honeybees are not the most efficient pollinators for many types of crops grown in South Africa. Based on the EU response that, there are no GAPs for outdoor uses of these substances that would not pose an unacceptable risk to bees specifically, it appears that the response pertains purely to honeybees as pollinators and does not take into account the various other, equally important sources of pollination in South Africa.

3.243. South Africa agricultural industry understand the important role of all pollinators, various role players, including grower groups, beekeeper associations and the crop protection industry have signed a pollinator charter[45] to ensure that all parties adhere to these good practices. South Africa further appreciates that the EU acknowledges that non-EU countries face production conditions and pest pressures that are different from those in Europe, and the emphasise that the draft Regulation does not require WTO trade partners to ban the use of clothianidin and thiamethoxam in their own territory. Further clarity is needed in terms of the final MRL regulation for clothianidin and thiamethoxam that was published in the Official Journal of the European Union (Commission Regulation (EU) 2023/334 of 2 February 2023).

3.244. South Africa would appreciate to receive clarity on what exactly is meant by the production of all products that are consumed in the European Union, which will likely include imported products that may not be associated with pollinator mortality? Will the EU regard any application of these two substances by third countries exporting to the EU as a risk associated with pollinator mortality? Especially considering the EU's response letter to South Africa stating that, according to EFSA, there are no GAPs for outdoor uses of these two substances. If the above is not the case can the EU confirm again that growers who are exporting to the EU may continue to use these two substances

[45] https://croplife.co.za/Resources/Crop%20Protection/Pollinator-Charter-Final.pdf.

if the products are registered legally, as long as they do not have detectable residues? (This is stated in the response letter but remains ambiguous in the interpretation of the final Regulation) - Notwithstanding the response pertaining to the point raised above, it must be emphasised that the main concern pertaining to these measures relate to the process that was followed with the two substances and the precedent it sets going forward. South Africa notes that Maximum Residue Limits (MRLs) are a trading standard used to ensure that food is safe for human consumption and that import tolerances are set based on uses registered in third countries to allow the import of treated goods/commodities and to facilitate international trade. However, the EU is moving away from internationally agreed practices by taking environmental aspects into account when assessing requests for import tolerances for pesticide substances that are no longer approved in the EU. MRLs are meant to facilitate trade and protect consumer health, and should be science and evidence-based in order to ensure that food products are safe for consumers, as per the "Better Regulation" principle.

3.245. Data shows that when the decision-making process follows a science-based risk assessment, consumer foods are safe. Environmental impacts are already considered when the product is registered in South Africa where it is analysed by our competent authorities that understand our local agricultural conditions. This change in approach is compromising South Africa's right in making its own decisions regarding safe and effective agricultural practices that comply with environmental and human health standards within the country, as well as undermining the regulatory framework and associated departments that are executing this mandate in South Africa. While South Africa fully respects the EU's right to regulate the use of these substances within the EU, the nature of this measure seems to attempt to affect production standards beyond the EU territory, indicating that the measure is a border measure subject to Article XI of the GATT 1994. In addition, it can be inferred that, because the proposed measure will have no bearing on EU agricultural production or products, which must already be free from these substances, it is aimed exclusively at imported products. Based on this logic and considering Articles 2.1 and 2.2 of the TBT Agreement, the measure disproportionately discriminates against imported products compared to domestic EU products, making it highly trade restrictive.

3.246. The representative of Uruguay provided the following statement. Uruguay regrets the adoption, without substantive changes, of Regulation 2023/334, amending the MRLs for clothianidin and thiamethoxam, on 2 February 2023, despite the substantive concerns and comments of numerous trading partners, representing different geographical and productive conditions and different levels of development, presented in the international consultation process as well as in the recent meetings of the Goods Council, the SPS, TBT and Market Access Committees, and even more recently the Trade Policy Review of the European Union. As we have said before, Uruguay understands that setting MRLs for pesticides is a type of measure intended to protect consumer health from the risks arising from ingestion and that it therefore naturally 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, although there is currently no consideration of environmental aspects in its risk analyses.

3.247. Without prejudice to other standards within the vast and complex European regulatory framework, Article 3(d) of Regulation (EC) No. 396/2005, the main and specific rule on MRLs for pesticides in food and feed, 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". In this legal provision, there would seem to be a convergence with the view expressed by Uruguay and an overwhelming majority of WTO Members on the nature of MRLs, which is in line with the assertion repeated by the EU itself – at least until March 2022 – that, as a matter of principle, concerns about the setting of MRLs for pesticides and any specific issue related to their application are matters to be discussed in the SPS Committee, and not the TBT Committee. Uruguay still has serious doubts as to both the relevance and the legal basis, in 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. While we are aware of the importance of the environmental aspects, we understand that these are not included in the process for establishing MRLs as they are and must be addressed by countries individually in their territory using appropriate tools, on the basis of their own productive and regulatory systems, environmental conditions and policies. In this regard, we wish to point out that in Uruguay, plant protection products affected by this Regulation are already regulated by the competent authority to ensure correct, safe and recommended use, as part of a National Environment Plan focused on good agricultural practices.

3.248. Uruguay thus 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, including the EU, to find mechanisms that can be used to achieve these objectives without unnecessarily restricting trade, while also ensuring conservation of the environment and protection of human, animal and plant health. Lastly, like other delegations, we are concerned that emergency authorizations for the use of these substances 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 this connection, we would like to have an update from the EU on how it expects emergency authorizations for the use of these substances and others that might be subject to restrictions at the Community level to be affected by the recent judgment of 19 January 2023 of the Court of Justice of the European Union (CJEU), which considers such authorizations to be illegal in certain cases. We note with interest the case mentioned by Paraguay, and we look forward to the European Union's comments on the matter.

3.249. In response, the representative of the European Union provided the following statement. The EU would like to thank the intervening Members for raising this topic and for providing numerous comments on the notification G/TBT/N/EU/908. We provided extensive and comprehensive feedback to those comments, in the best interest of transparency and accountability towards the EUs international partners. The Commission Regulation (EU) 2023/334 was adopted and published[46] on 2 February 2023. It will become applicable from 7 March 2026, to provide enough time to operators in third countries, especially in least developed and developing countries, and food business operators, to prepare themselves to meet the new requirements. The EU acknowledges that non-EU countries may face production conditions and pest pressures different from those in Europe. The EU would like to reiterate that the Regulation (EC) No 2023/334 does not regulate the use of clothianidin and thiamethoxam by non-EU countries in their own territory.

3.250. The EU's actions related to neonicotinoids used as pesticides, such as this Regulation, are coordinated with other EU programmes and international activities such as: - The EU pollinators initiative which integrates holistic actions on pollinators across different sectorial policies, addressing the main known causes for pollinator decline and strengthening the collaboration between all the actors concerned. - The active EU collaborations with the Food and Agriculture Organization of the United Nations in its "Global Action on Pollination Services for Sustainable Agriculture" and with the International Union for Conservation of Nature in projects to address the decline of pollinators. Moreover, promoting the generation and implementation of more sustainable alternatives to chemical pesticides is a key element for a global transition towards more sustainable food systems. The EU is funding several research projects, under the Horizon Europe programme, dedicated to find alternatives to chemical pesticides and combinations of tools and technologies for integrated pest management, including several innovative low-risk products.

3.251. In addition, the EU funds several programmes to assist third countries to comply with EU legislation and to build capacity and knowledge, such as the new Agrinfo programme (managed by COLEAD- the Committee Linking Entrepreneurship Agriculture and Development), further the existing Fit for Market and Plantwise Plus programmes to name only a few examples. The EU also organizes specific training courses related to plant health, integrated pest management and food safety in relation to pesticide residues. The EU would like to thank again intervening Members for their interest in the subject and is ready to continue the dialogue on the implementation of the Regulation in question.

3.1.3.16 European Union - Proposal for a Regulation on packaging and packaging waste amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC, G/TBT/N/EU/953 (ID 786[47])

3.252. The representative of Mexico provided the following statement. The delegation of Mexico refers to the Proposal for a Regulation of the European Parliament and of the Council on Packaging and Packaging Waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and

[46] COMMISSION REGULATION (EU) 2023/334 of 2 February 2023 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. OJ L 47, 15.2.2023, p. 29–45.

[47] For previous statements follow the thread under ID 786.

repealing Directive 94/62/EC (COM(2022) 677 final), which was notified by the EU to members of this Committee in document G/TBT/N/EU/953. The above-mentioned proposal establishes sustainability requirements for the marketing of EU packaging that relate to its composition and design, restricting the use of packaging formats and establishing obligations on economic operators and WTO Members, including packaging reuse and waste prevention targets. Although the Government of Mexico agrees with the importance of encouraging sustainable practices, it is necessary to point out that there are three considerations on this legislation that need to be taken into account to avoid any impact on foreign industries. The first consideration is that the European Commission's proposal excludes spirits from the reuse and refill targets under Article 26 of the proposal. However, the draft report by the rapporteur of the European Parliament Committee on the Environment, Public Health and Food Safety (ENVI) proposes to include spirits in the scope of application of the reuse provisions.

3.253. In this regard, Mexico considers that there should be no compulsory reuse targets for tequila, since the applicable Mexican legislation establishes a mandatory requirement under which, in order for tequila to be considered "100%-agave tequila", it must be bottled in the plant controlled by the authorized producer, which must be located within the territory specified in the declaration. In addition, the legislation mentions that tequila shall be bottled in new sanitary containers. In view of the foregoing, the production of tequila containers in Mexican territory is a necessary condition in tequila production, so Mexico considers that this measure could contravene Article 2.2 of the WTO TBT Agreement by being more trade-restrictive than necessary to fulfil a legitimate objective. In fact, we consider that imposing reuse targets on spirits will have an adverse effect and will fail to achieve the goal of improving the sustainability of packaging. Moreover, it is important to highlight that the differentiation in packaging is key for preventing its falsification, which is why producers of spirits work to ensure that the materials and design of the bottles meet the considerations in terms of geographical indications and appellations of origin. This work becomes complicated when marketing aspects are disregarded and when the performance criteria applicable to the packaging fail to recognize the differentiation in design or presentation.

3.254. Accordingly, we request that all products protected by geographical indications and appellations of origin, including tequila, be exempt from compliance with the packaging performance criteria set out in Annex IV to the proposal. Lastly, the third consideration is related to an amendment submitted to the European Parliament by the ENVI rapporteur, which would allow EU member States to "adopt the necessary additional sustainability requirements to reduce per capita packaging waste". If this amendment is maintained in the final version of the document, the "additional sustainability requirements" could lead to greater fragmentation in the European internal market, which would generate additional costs for exporting producers from the Mexican industry. As a result, we ask the European Commission and the co-legislators to avoid including this amendment in the final version of the document, in order to ensure the continued harmonization of the European internal market and prevent the creation of unnecessary obstacles to trade.

3.255. The representative of China provided the following statement. 1. For chapter 1, article 4/5, it is suggested to delete this article. Chapter I, article 4/5 refers to "In addition to the labelling requirements laid down in Article 11, member States may provide for further labelling requirements, for the purpose of identifying the extended producer responsibility scheme or a deposit and return system other than those referred to in Article 44(1).". Article 11 of the Notification Regulation has clearly stipulated the implementation of uniform packaging labels at the EU level. If each member state further stipulates the labeling of its own EPR or depository system at the member state level, it will create inconsistent market compliance requirements and increase the cost of economic practitioners. 2. For chapter 2, Article 6, it is suggested to develop an authorization act as soon as possible, providing a transition period of at least 3 years. Chapter 2, article 6/4 and Chapter 2, Article 6/6 indicate that the Commission shall develop an authorization act for the design and large-scale recyclable requirements of packaging recycling. The supply chain of manufacturers outside the EU is complex, and the packaging takes a long time to put on the EU market, so it takes time to meet the new standards. The chapter 2 article 6/2 indicate that (a) and (e) will enter into force on 1 January 2030 and 1 January 2035, respectively to ensure that the EU market products meet the regulatory requirements. It is recommended to provide at least 3 years of transition time, allowing economic practitioners have more time to deal with, for example, changing the design scheme, manufacturing, consumption of existing inventory, etc. Therefore, it is suggested to develop an authorization act before 31 December 2026 and 1 December 2031.

3.256. 3. For chapter 2, Article 7, it is recommended to not set requirements of recycled plastic content for the plastic packaging of electronic and electrical products, especially the packaging of direct contact with the products. Chapter 2, Article 7 stipulates the recycled plastic content: 35% in 2030 and 65% in 2040. The electronic and electrical products often contain many sensitive devices, due to the complex source, recycled plastics may introduce various ions, which may lead to ion pollution of electronic components, and ultimately create functional failure. Therefore, it is recommended to not set requirements of recycled plastic content for the plastic packaging of electronic and electrical products, especially the packaging of direct contact with the products. 4.For chapter 2, article 7/1-2, it is suggested to simplify the calculation method of recycled material and adjust the recycled proportion. Chapter 2 Article 7/1-2 sets the minimum requirements of recycled material for each packaging unit (per unit of packaging). The performance and appearance of recycled plastic packaging cannot meet the requirements, such as foam, plastic sealing film, bubble bags, and trays. For plastic type or weight, it is recommended to exempt or reduce the recycling proportion requirements.

3.257. It is suggested that the European Union could simplify the calculation method of recycled content and adjust the minimum recycled material content requirements for the average value of packaging on the EU market within a specific period of time. Because the current mainstream technology does not support that all plastic packaging can use recycled materials, calculating the minimum recycled content based on the average value of the manufacturer can provide enough flexibility to achieve the minimum recycled material content, but also achieve better environmental protection. 5. For chapter 2, Article 9, it is recommended to modify the assessment content of packaging minimization. 1.The content of the packaging minimized assessment content stipulated in Chapter 2, Article 9/3 is not specific enough, so it is suggested to further detail the assessment content to make it operable. 2.Chapter 2, Article 9/3 provides that "For the purpose of assessing the compliance with this paragraph, space filled by paper cuttings, air cushions, bubble wraps, sponge fillers, foam fillers, wood wool, polystyrene, styrofoam chips or other filling materials shall be considered as empty space." The above-mentioned fillings is filled in order to provide more reliable protection for the product. If it is minimized as empty space, the manufacturer will have no effective ways to protect the transportation of the goods, which may result in accidental damage to the goods. 6.For chapter 3, article 11, it is recommended that the EU could incorporate material composition information and recycled content information into the QR code specified in Article 11 (2) to display on the QR code.

3.258. Chapter 3, Article 11 stipulates that the packaging material composition information (material composition) shall be clearly marked on the package, if the recycled content specified in Article 7 is also contained , it shall be clearly marked on the package. It is recommended that it is recommended that the EU could incorporate material composition information and recycled content information into the QR code specified in Article 11(2) to display on the QR code. Because the material composition information and recycled content information can be incorporated into the QR code, it is convenient for manufacturers to maintain and update such information, which could reduce the compliance cost of manufacturers. Meanwhile, the digital identification can also strengthen the protection of the environment. It can be stipulated that the QR code is clearly marked on the packaging, and consumers can be guided to clearly understand and use the QR code through consumer training or other ways.

3.259. 7. For chapter 4, Article 21, it is suggested to detail the empty space ratio of packaging and modify its calculation method. Chapter 4, Article 21/1 stipulates that "Economic operators who supply products to a final distributor or an end user in grouped packaging, transport packaging or e-commerce packaging, shall ensure that the empty space ratio is maximum 40%.". It is recommended to modify this term to "Economic operators who supply products to final distributors or end users in grouped packaging, transport packaging or e-commerce packaging, shall ensure that the empty space ratio is moderate, and the specific index requirements will be specified based on different packaging contents". 1. For reducing the transportation storage costs, the manufacturer has motivation to minimize packaging. If the packaging has empty space, it is more likely to provide additional protection to goods, such as fragile or vulnerable goods. The compulsory empty space ratio has only saved the packaging, but caused more damage goods in the warehouse transportation. It is not economic or environmental protection. 2. Transportation packaging and e-commerce packaging cannot achieve the empty space ratio below 40%. For e-commerce or express packaging, if consumers purchase multiple products at the same time, due to the variety of products and the limited size of general packaging, which often causes large empty space ratio. In view of the irregular

shape and different size of products, labour and delivery area, the packaging of each product is unable to meet requirement of the empty space ratio.

3.260. As a general regulation of packaging, the requirements need to take into account the different forms and properties of different commodities, rather than using single requirements. Therefore, it is necessary to consider developing different empty space ratio for different product categories and content. It is suggested to relax the empty space ratio requirements for packaging, or modify its calculation method: to calculate as the longest and widest empty space and the highest within the pack. 8.For chapter 12, Article 65, it is recommended to extend the transition period to 24 or 36 months. Chapter 12, Article 65 states that "It shall apply from [OP: Please insert the date = 12 months after the date of entry into force of this Regulation]." For goods with slower upgrading speed, or those with little change of shape, the production of packaging may be earlier than the goods, which means the 12-month transition period may create the waste of already produced packaging due to non-compliance. Considering the universality of this regulation, it is recommended to provide enough time to prepare and extend the transition period to 24 or 36 months.

3.261. The representative of the Russian Federation provided the following statement. The Russian Federation refers to its statement at previous TBT Committee meeting with regard to the EU Proposal for a Regulation on packaging and packaging waste. WTO Members will recall that over the last Committee meeting we raised certain questions in respect of the EU proposal, such as the inconsistency of the proposed requirements with international standards, the absence of approved at the international level test methods confirming the safety of the use of recycled materials, as well as the absence of scientific evidence for the proposed requirements. All these questions remain without response. In addition to the examples of unjustified restrictions of the proposed Regulation, which we provided at the last Committee meeting, we would like to note that the EU seeks to prohibit the following single use packaging formats: - Packaging for less than 1.5 kg of fresh fruit and vegetables - Packaging for food and drink to be filled and consumed on the premises of hotels and restaurants - Small hotel packaging for cosmetic, hygiene and toiletry products (less than 50 ml for liquid products or less than 100 g for non-liquid products) - Single-portion or single-serving packaging used in the catering sector for condiments, preserves, sauces, coffee cream, sugar and spices. We underline that such prohibition is supposed to be established regardless the materials used in packaging. The proposed prohibition is based neither on international standards nor on any scientific justification. The Russian Federation once again underline that the proposed Regulation seems to be inconsistent with WTO rules and may create significant uncertainty in the EU market, as well as unnecessary obstacles to international trade. We urge the EU to revise this Regulation and bring it into compliance with WTO rules.

3.262. The representative of India provided the following statement. India expresses concern regarding European Union's Proposal for a regulation on packaging and packaging waste amending Regulation (EU) 2019/1020 and Directive 2019/104. While India appreciates EU's thoughts towards addressing environmental concerns, however, India also believes that any proposal in this regard should take into account the complexity of business sectors in question and appropriate packaging solutions. In this regard, India requests EU to share the relevant international standard which has been used as a basis for the proposed regulation. India also requests EU to share its analysis on which the discretionary space of the economic operators has been taken into account.

3.263. The representative of Guatemala provided the following statement. Guatemala also wishes to stress the importance of the environmental work being carried out to create a healthier living environment. However, we emphasize our concern that such work can lead to unnecessary barriers to trade. With regard to this trade concern, there are certain elements that we consider should be analysed further and with greater precision. Guatemala would therefore be grateful if this matter could be addressed and the definitions contained in the draft regulation could be carefully assessed. For example, Articles 30, 31, 32, 33 and 34 establish the guidelines for the conformity assessment of packaging. However, they do not specify which authority is competent to carry out the assessment. It would appear that there is uncertainty regarding the criteria for this assessment, which leaves open the possibility of having multiple criteria. Additionally, Article 13.5 indicates that packaging must bear a number to identify it, such as a batch number. However, in the case of reusable packaging, on which the batch number is printed with a laser, the previous batch number cannot be erased, which will lead to problems with the new products and may cause confusion when tracing them. We therefore ask for account to be taken of these aspects and characteristics of reusable packaging on which the batch number has been printed with a laser. Article 11 mentions the requirement for a label, but it is unclear to us whether it is referring to a label additional to the

one borne by the product, such as when a product already placed on the market has a QR code. We also ask whether the same QR code can be used to provide information on the packaging materials. We would appreciate clarification from the EU regarding our concerns, with a view to advancing trade and ensuring that it is also beneficial for trading partners.

3.264. In response, the representative of the European Union provided the following statement. The EU thanks Members for their interest in the proposal for a Regulation on packaging and packaging waste amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC. The EU notified the proposed Regulation under the TBT Agreement on 27 February 2023. Consequently, the deadline for comments, which was 90 days from the notification, has now expired. The EU has received comments on this proposal from several Members, including from China, Japan, US, UK, and Canada. We thank Members for their interest and constructive comments, to which we will reply as soon as possible. We will also take these comments and concerns into account in the on-going legislative, co-decision, process. Most questions we have received concerned, for example: how the Commission will proceed with the existing member States incompliances in relation to the existing packaging directive, and about the future flexibilities of member States under the proposed Regulation, reuse targets and their impact on the environment and industry, recyclability (pointing to the need of giving enough time for industry to comply and questioning how the existing voluntary standards would be integrated into the future secondary legislation on design for recycling criteria), minimum recycled content requirements and a possible flexibility of economic operators to meet them, whether other intellectual property rights than geographical indication could be considered as possible reasons for exemption from the packaging minimization requirements, practical work of the market surveillance authorities.

3.265. The Commission would like to thank the Members for issues raised, which will help improve the current proposal. We would like to reassure the Members that the EU has been looking at most of these issues with the utmost attention and that practical solutions are being sought and discussed. It is currently too early to predict the exact date of adoption of this proposal. The EU internal procedures are in motion to reach an agreement in 2024 before the end of the current legislature mandate. The final act, once adopted, will be notified to the TBT Committee.

3.1.3.17 United States - Chapter 173-337 of WAC, safer products restriction and reporting, G/TBT/N/USA/1958 (ID 787[48])

3.266. The representative of the Republic of Korea provided the following statement. Korea appreciates this opportunity to convey the concerns from our industries on the "Safer Products Restrictions and Reporting; Washington Administrative Code (WAC)", which was notified by the United States as G/TBT/N/USA/1958 on 6 January 2023. With regard to the wide range restriction of flame retardants in electric and electronic products specified in the proposed Rule, Korea submitted its written comments on 1 February as follows. Under the provision WAC 173-337-112, the restriction of Organohalogen Flame Retardants (OFRs) applicable to Electric and Electronic Equipment (EEE) that are intended for indoor use and powered either by Standard 120 volt outlets or by batteries will regulate virtually all indoor EEE products. Since such extensive restriction impose overly burdensome requirements beyond the regulatory level of the US federal and other state governments, and may also cause consumer safety issues by negatively affecting the flame retardancy performance of EEE products, it was requested that the aforementioned provision be withdrawn. Korea once again requests to reconsider withdrawing the OFR restriction and the relevant enforcement provisions in the current Rule, as it is still difficult to comply with the full restriction requirements on OFRs. If the withdrawal request cannot be accepted, we request that the state of Washington consider applying the following measures; introduction of a voluntary reporting system to accumulate OFR usage data before the implementation of the restriction, narrowing the range of the OFRs and the EEE products to be regulated, and/or granting temporary exemptions for EEE products that cannot avoid using OFRs until proper alternatives to the substances are developed.

3.267. The representative of China provided the following statement. China is pleased to note that the new rule adopted by Washington State on 31 May 2023 has absorbed relevant comments from members. China appreciates it and thanks US for the revision. The new rule recognizes several critical uses of OFRs and allows - in form of exemptions - OFRs to be used continuously in a broad range of applications, including inside electrical products, products sold as spare parts, medical

[48] For previous statements follow the thread under ID 787.

devices, aerospace, motorized vehicles and etc. Besides, the new rule sets a special process for exemptions, and stakeholders can apply for additional specific exemptions where needed. China notes that the new rule still restricts the use of intentionally added OFRs in some external enclosures for indoor EEE products and implements a new reporting requirement for OFRs used in casings & enclosures for some outdoor EEE products.

3.268. Firstly, China suggests not to control OFRs as a family, instead, to specify which OFR subgroup is restricted. There are totally over 100 types of OFRs, however, in line with the prevailing international practices such as Stockholm Convention and EU RoHS, no more than 10 types are restricted currently. US National Academies of Sciences, Engineering and Medicine (NASEM) released a study report in 2019, pointing out that OFRs used in consumer products cannot be assessed as a single group; instead, they should be sorted into 14 subgroups based on chemical structure, physicochemical properties and predicted biologic activity, and then they should be assessed not only in terms of hazard, but also in technical feasibility of alternatives as well as impacts on the industry. Secondly, China suggests US postpones implementation of OFR restriction and reporting for one year based on the current timeline to 1 January 2026. It usually takes a circle of two or three years to complete replacement of a flame retardant from formulation development, users' confirmation to the market's stability feedback. If product manufacturers are forced to use alternatives which is not well proven, it will undermine fireproof performance of the products and jeopardize consumers' life and property. Currently, the earliest implementation of OFRs restriction will take place on 1 January 2025, only 1.5 years away from 1 July 2023 effective time of the new rule.

3.269. The representative of Japan provided the following statement. Japan continues to share the following concerns regarding the proposed restrictions on organohalogen flame retardants (OFRs) in plastic external enclosures of consumer electrical and electronic equipment (EEE) (hereinafter referred to as "Proposed OFR restrictions") for an implementation program (known as "Safer Products for Washington") of Chapter 70 A. 350 RCW, US-State of Washington Law. Japan industrial associations submitted their comments to the Department of Ecology several times during the public comment periods, including on the TBT notification. Consumer EEE is used in a wide range of fields, including consumer electronics, medical equipment, telecommunications equipment, and so forth. OFR refers not to a single substance but rather the entire group of organohalogen flame retardants, whose number is said to be in the tens of thousands or more. OFRs are commonly used in EEE plastic external enclosures to prevent the start of or spread of fires, and to protect human lives. If the Proposed OFR restrictions were to be implemented in an early manner, EEE manufacturers would have to give up shipments of their non-compliant products to the United States. Thus, not only would many industries be seriously affected, but also many citizens in the United States would be at a huge disadvantage. Therefore, careful consideration is necessary before the implementation of the Proposed OFR restrictions.

3.270. We understand that the aim of Safer Products for Washington is to protect citizens from exposure to hazardous chemical substances. However, we have been informed by Japanese industrial associations that there is little release of OFRs from consumer EEE plastic external enclosures during their use and the risk of adverse effects on human health and the environment is extremely low. The laws and regulations of other states in the United States and other countries or regions as well as international conventions do not restrict all OFRs uniformly for all consumer EEE plastic external enclosures. The Department of Ecology, the State of Washington (hereinafter referred to as "the DoE") has merely conducted research on only 22 OFRs that are thought to be potentially hazardous. However, it does not seem to be proven that all OFRs are hazardous. We would like to request the DoE to provide evidence indicating that all OFRs are hazardous. In addition, the DoE has asserted that several non-halogen flame retardants are available as alternatives to OFRs. However, not only it will take time to confirm that those alternatives can be used with equivalent properties and safety profiles for all types of consumer EEE plastic external enclosures, but also it may not always be possible that all consumer EEE plastic external enclosures can be replaced by such alternatives.

3.271. We understand that the objectives of the regulations are to protect human health and the environment. However, we are concerned that the Proposed OFR restrictions would be more trade restrictive than necessary to fulfill the objectives and be in violation of Article 2.2 of the TBT Agreement. Therefore, Japan would like to request to the United States the following points in order for the Proposed OFR restrictions to be consistent with the TBT Agreement. 1) To conduct a more thorough risk assessment on the impact on human health and the environment posed by OFRs

contained in EEE plastic external enclosures, including a consistency analysis with the results of risk assessments in other countries and regions; 2) based on the results of the risk assessment, to identify the name and CAS Registration Number of the targeted OFRs, narrow the type of EEE to be regulated, and set appropriate and feasible thresholds for OFR content, and 3) to carry out a practical feasibility study on the alternatives and to consider a more appropriate grace period for the OFR restrictions.

3.272. In response, the representative of the United States provided the following statement. On 6 January 2023, the United States notified Washington State's Administrative Code for safer products restrictions and reporting. This measure creates reporting requirements or restrictions that apply to consumer products for certain chemicals. The United States appreciates the comments submitted by China, Japan and Korea in response to this notification. The final measure was published 31 May 2023, as G/TBT/N/USA/1958/Add.1. Visit the Safer Products for Washington rulemaking webpage[49] for information about this rulemaking and to review the supporting documents. These include the Final Regulatory Analyses, the Concise Explanatory Statement, the Rule Implementation Plan, and the SEPA Determination of Non-significance.

3.1.3.18 India - Viscose Staple Fibres (Quality Control) Order, 2022, G/TBT/N/IND/234 (ID 790[50])

3.273. The representative of Indonesia provided the following statement. Indonesia reiterates its concern regarding the implementation of Viscose Staple Fibres (Quality Control) Order, 2022 by India that has been notified through G/TBT/N/IND/234 on 1 September 2022. Indonesia appreciates India for suspending the enforcement of this regulation until 29 March 2023. However, we consider that the transition period provided by India is still not enough for companies to fulfill the provisions of this regulation, especially regarding the certification process carried out by BIS. Indonesian companies can fulfil all the requirements in the regulation including administrative requirements set by BIS. Since December 2022, Indonesian companies have applied to BIS for the certification process and BIS has scheduled a factory inspection in January 2023. However, BIS postponed the schedule of factory inspection to February, and as of today, BIS has not yet conducted any factory inspections to Indonesian companies. Our companies have raised their concerns related to the limited personnel and resources of BIS, which led to the delay in on-site inspections. Indonesia deeply regrets this delay in on-site inspections as it has resulted in significant losses to Indonesia's VSF industry. In 2022, Indonesia was able to export an average of 5 thousand tonnes of VSF products per month to India. However, in 2023 (from January - March 2023) the export amount decreased to 2,360 tons of VSF products. Moreover, since the enforcement of the VSF QCO on 29 March 2023, Indonesian companies have not been able to export to India at all because certification has not yet been carried out. This condition causes uncertainty in trade operations and harms the rights and business interests of our industry.

3.274. Indonesia also questions the differential treatment of our companies, as there is still no clarity on the factory inspection schedule for Indonesian companies. On the other hand, according to information obtained by Indonesian companies, India has conducted factory inspections for companies outside Indonesia. We expect India to be able to give equal treatment to every company that will be certified. We urge India to implement the QCO system in a manner in compliance with Articles 2.1 and 2.2 of TBT Agreement. If the factory inspection issue cannot be resolved immediately, Indonesia urges India to postpone the VSF QCO implementation until BIS can ensure the readiness and availability of personnel who will conduct factory inspections. And once again, Indonesia requests India to consider the option of international recognition under the MRA/MLA framework for conformity assessment results and/or conformity assessment bodies from the country of origin. This will speed up the certification process, avoid duplication of testing and certification procedures, and may reduce the cost of conformity assessment.

3.275. The representative of the European Union provided the following statement. The EU remains deeply concerned by the increasing number of Quality Control Orders (QCOs) issued by India across many sectors. The EU would like to recall that the majority of QCOs introduced by India appear to have a protectionist orientation and consequently raise questions regarding their compliance with the WTO's TBT Agreement obligations. The EU is particularly concerned by the fact that QCOs usually prescribe India-specific standards where international standards already exist. The EU would like to

[49] WAC 173-337 - Washington State Department of Ecology.
[50] For previous statements follow the thread under ID 790.

remind India that Article 2.4 of the WTO TBT Agreement requires members to use international standards, where they exist, as basis for their technical regulations, except, when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems. Furthermore, QCOs prescribe mandatory conformity assessment procedures that are more restrictive than necessary to fulfil their legitimate objective. They cause extra burden and economic cost to the EU industry as a result of unnecessarily cumbersome procedures, including mandatory factory inspections, sample testing in Indian laboratories, to obtain necessary permissions or licences for products already tested and certified under established international standards and schemes. There is no provision for a streamlined process on the basis of existing certification from any international body.

3.276. The EU remains concerned with the visible trend towards establishing mandatory domestic standards in India that deviate from international ones for growing number of products in textile sector. The EU also noticed that India is failing to notify many of these measures as required under Articles 2.9. and 5.6. of the WTO TBT Agreement. Given that to date India did not provide replies to questions raised by the EU in the previous TBT Committee meeting, the EU once more wishes to make a detailed statement on this issue. The EU would like to seek clarifications from India, explaining the reasons for establishing India-specific QCO for Viscose Staple Fibres when EU exports already comply with internationally recognised standards like ISO. The Viscose Staple Fibres QCO, is based on a registration process with the Bureau of Indian Standards (BIS). Manufacturing facilities in the exporting country must be audited in person by a team of BIS officials. The EU is deeply concerned not only about the significant cost of such registration but also by the requirement to reveal commercially sensitive information regarding pricing and production, as well as a requirement to make a USD 10.000 bank guarantee in favour of BIS which is held as a "quality performance guarantee".

3.277. The proposed measures for Viscose Staple Fibres require products to be tested twice, including local audits and designated laboratory tests. This represents additional burden to the EU industry related to registration, bank-guarantee, testing and certification. The certification process is costly, burdensome and includes requirements to submit sensitive business information. The products covered by this legislation do not present risk to health and safety, as they are subject to a detailed testing for safety and quality control in the EU before being exported. For this reason, the mandatory certification by the BIS is considered as unnecessary. The QCO in question is not in line with Article 2.2 of the TBT Agreement, which states that Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. Furthermore, as a bank guarantee is required for all imported products, the QCO appears to run against Article 2.1 of the TBT Agreement, according to which Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country. It is worth recalling that EU-based producers of man-made fibres already comply with a wide range of quality, safety, and environmental protection related certifications and standards, such as ISO 9001, 14001, and 45001, EU Ecolabel and European Pharmacopoeia. The EU would like to ask India to re-consider the current standards and conformity assessment procedures set in this QCO and to consider aligning the BIS standards and conformity assessment procedures with international standards and approaches, as well as to accept certificates issued outside India based on ISO standards.

3.278. The EU would also like to point out that compulsory process of affixing the ISI mark is redundant and results in excessive certification costs, while strict packaging requirements constrain innovation and even limit the use of more environmentally friendly materials. In addition, the EU would also like to request India if it would be possible to clarify the scope of the product(s) under the Quality Control Orders by clearly indicating in the QCO the HS code(s) of the goods concerned. The EU regrets that the entry into force of this QCO, was not deferred, and took place on the 29 March 2023. Article 2.12 of the WTO TBT Agreements requires a reasonable interval between the publication of technical regulations and their entry into force in order to allow time for producers to adapt their products or methods of production to the new requirements. The EU would also like to recall that according to the 2001 WTO Ministerial Decision on Implementation-related Issues and Concerns, Ministers agreed that the phrase "reasonable interval" shall be understood to mean normally a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued. The EU hopes that India can provide clarifications on the issues raised. We remain open to discuss this matters bilaterally on expert level.

3.279. In response, the representative of India provided the following statement. India thanks the delegation of Indonesia and EU for their interest in Viscose Staple Fibre (Quality Control) Order, 2022. The Viscose Staple Fibre (Quality Control) Order, 2022 was issued in the gazette dated 29 December 2022 informing that it shall come into force after thirty days from the date of publication. Further, an Amendment Order, 2023 was issued on 27 January 2023 stating that the order shall come into force on 29 March 2023 giving the industry sufficient time for transition on the request of Industry. It may be noted that BIS has already granted four licences for Viscose Staple Fibres as per IS 17266:2019 to domestic manufacturers and three licences to foreign manufacturers as well in the UK (1) and Austria (2). At present, there are five applications pending from foreign manufacturers and no pending applications from domestic manufacturers. As regards, the proposal for consideration of international recognition for conformity assessment results as well as conformity assessment bodies, it is informed that such provisions can be made only under the provisions of Government to Government Mutual Recognition agreement (MRA) with interested countries with the approval of Central Government.

3.280. BIS certification scheme is basically voluntary in nature. However, for a number of products compliance to Indian Standards is made compulsory by the Central Government under various considerations viz. public interest, protection of human, animal or plant health, safety of environment, prevention of unfair trade practices and national security, that are WTO consistent. The draft QCOs envisages conformity assessment scheme-I of BIS (Conformity Assessment) regulations, 2018. Scheme-I of Schedule-II of the Bureau of Indian Standards (Conformity Assessment) Regulations, 2018 is based on Conformity Assessment Scheme Type 4 given in the International Standard ISO/IEC 17067:2013 Conformity assessment — Fundamentals of product certification and guidelines for product certification schemes. Factory audit by BIS is a mandatory requirement under this scheme for the purpose of BIS certification. Under Scheme-I, the conformity of the product to the relevant standard is established through testing of products in the factory or in a third-party BIS recognized laboratory or a combination of both. It may also be noted that conformity assessment requirements as specified in the draft QCOs are equally applicable to domestic manufactures as well as foreign manufacturers who intends to export their products to India.

3.281. Viscose Staple Fibre QCO has been issued under the provisions of BIS Act, 2016. In this regard, any information obtained by a certification officer or the Bureau from any statement made or information supplied or any evidence given or from inspection made under the provisions of this Act shall be treated as confidential. Manufacturers are required to submit a Performance Bank Guarantee (PBG) after Grant of BIS licence through signing of an agreement between BIS and the Foreign manufacturer. Submission & maintenance of Bank Guarantee (BG) by foreign manufacturers is an essential requirement and may not be considered as discrimination between domestic and foreign companies. For domestic manufacturers, in case of any violation of BIS Act, Rules and Regulations including non-payment of marking fee dues, BIS can approach and seek compensation through Indian Courts. However, this Law of Land cannot be enforced in foreign countries. Therefore, BG is required in case of foreign manufacturers to ensure due compliance of the provisions of the BIS Act, Rules and Regulations. BG is intended to protect BIS from any breach of terms and conditions of the licences being operated by foreign manufacturers. It is invoked only when there is any breach and covers civil liability and loss of revenue, if any, that may arise during the tenure of the licence or thereafter. The amount shown against BG remains with the concerned bank in the form of refundable security and it should not be construed as expenditure.

3.282. It is further to add that BGs are also prevalent in international trade with regard to performance of contracts. Government of India has been encouraging industry to produce quality products by following standards and these standards need to be applicable on imports also to protect the market from substandard VSF products by mandating the BIS Certification with BIS VSF Standard. It may be noted that the conformity assessment requirements (like affixing of ISI mark on goods and packaging) as specified in the draft QCOs are equally applicable to domestic manufactures as well as foreign manufacturers who intends to export their products to India.

3.1.3.19 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[51])

3.283. The representative of Indonesia provided the following statement. The Government of Indonesia would like to request further clarification from the Government of India regarding restrictions on tyre imports and the imposition of royalties for the use of the Indian Standard (IS) mark on tyre products supplied to third parties. Indonesia regrets that it has not been able to find the best solution to this issue. The Directorate General of Foreign Trade of India's Ministry of Trade and E-Commerce issued Notification No.12/2015-2020 on 12 June 2020, amending the policy banning imports of certain sizes and types of Indian tyres. The Indonesian government has evaluated this notification. The Government of India has tightened its import regulations, prohibiting the import of tyres of specific types and sizes and requiring each container sent to India to be sampled for customs purposes and to meet requirements related to the registration of the warehouse where the imported tyre products in question will be stored.

3.284. Since the implementation of this policy, importers have been required to submit a statement via email regarding the import ban for specific types and categories of tyres with specific sizes that have been produced domestically; failure to do so will result in criminal penalties under the FTDR Act of 1992. This information has been made known to Indonesia. Given the large number of types and sizes of tyres produced in India as one of the world's major producers, the implementation of this regulation has de facto restricted the types of products that can be imported and created unnecessary trade barriers to the export of Indonesian tyre products. Indonesia also plans to seek clarification on the imposition of royalties or marking fees on tyre products bearing the IS Mark and intended for export to other parties. According to Indonesia, the implementation of royalty fees could burden corporate operators and pose unnecessary trade barriers to global trade. The imposition of royalties for the use of the IS Mark is not a standard practice, has no legal basis, and has nothing to do with preserving the wellbeing and security of humans, animals, plants, and the environment or stopping unfair business practices. As stated in the provisions of Articles 2.1 and 2.2 of the WTO TBT Agreement, Indonesia is of the opinion that the application of the policy to imported tyre products is inconsistent with the principle of non-discrimination and has the potential to unnecessarily impede international trade. Indonesia expects that India will further clarify the situation, notify the WTO TBT Committee of any relevant regulations, and assess the application of these policies to ensure that it is in line with WTO rules.

3.285. The representative of Canada provided the following statement. Canada wishes to support Indonesia and has concerns over the approach taken by India on the certification system for tyres. We understand that in terms of standards applicable to the domestic market, India, which is not a member of the relevant international agreement – the 1958 UNECE Agreement, has adopted regulations to protect its market. Since the 2009 Quality Control Order (implemented in 2011), tyres are subject to specific certification and marking, which entails double testing, specific fees and cumbersome administrative procedures. In addition, on 17 May 2021, India published a new AIS 142 regulation on thresholds for three tyre performances (rolling resistance, wet grip and noise) applicable to the Original Equipment market. We understand this regulation has been implemented on all types of tyres with a differentiated timeline (October 2021 for new designs, October 2022 for existing ones). While the thresholds proposed by this regulation are very close to the thresholds of the UNECE regulation, which is positive, the implementation of the regulation raises a number of questions, in particular: the lack of WTO notification and the short implementation period, the unique recognition of four test centers in India, and the non-recognition of international laboratories; finally, while the regulation is slightly less restrictive than the UNECE regulation, no mechanism for recognizing UNECE-compliant tyres is provided. Canada is disappointed this system continues to not recognize existing international certification schemes, despite ongoing concerns raised by other countries, and urges India to consider appropriate remedies for importers.

3.286. In response, the representative of India provided the following statement. We have already provided responses to all the questions raised by Indonesia in previous Committee meetings. Since no new questions have been raised, we request the delegation of Indonesia to refer to our past responses. We are reviewing the comments made by Canada. We remain open to discuss this issue bilaterally.

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

3.1.3.20 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[52])

3.287. The representative of the Republic of Korea provided the following statement. The Republic of Korea recognizes China's objective to simplify medical device review and approval process, encourage innovation and development of industry, and enhance whole process of medical devices supervision through the "Regulations for the Supervision and Administration of Medical Devices" as China mentioned at the last TBT Committee. We believe that the inclusion of "internationally accredited testing laboratories" will contribute to better access of people in China to safe and high quality medical devices as those laboratories are equipped with proper resources in accordance with relevant international standards and regulations, advancing the public health in China. Therefore, Korea would like to once again request that "internationally accredited testing laboratories" be included in China's definition of "qualified testing laboratories" mentioned in the "Regulations for the Supervision and Administration of Medical Devices (No. 650)" Article 14.

3.288. In response, the representative of China provided the following statement. Since the release and implementation of the new Regulations on the Supervision and Administration of Medical Devices in 2021, National Medical Products Administration (NMPA) has revised a number of supporting regulations and documents such as the Measures for the Registration and Filing of Medical Devices, the Measures for the Registration and filing of in vitro diagnostic Reagents, the Measures for the Supervision and Administration of Medical Device Production, and the Measures for the Supervision and Administration of Medical Device Management, so as to further improve the medical device supervision and regulation system. Regulations and methods scientifically set clinical evaluation requirements, simplify the review and approval process, and further encourage innovative and high-quality development of the industry. After the publication of the regulations, NMPA actively carried out publicity, provided policy interpretation through government websites and other platforms, and organized relevant training, such as training for imported medical device registrants. At the same time, the registrant system is implemented, the main responsibility of enterprises is strengthened, and the whole process of supervision is strengthened. In the next step, China will continue to pay attention to the implementation of the Regulations on the Supervision and Administration of Medical Devices, listen to the opinions and suggestions of the industry, including the registrants of imported medical devices, and improve the relevant supporting measures.

3.1.3.21 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[53])

3.289. The representative of the United States provided the following statement. The United States continues to try and work with Indonesia to ensure implementation of Indonesia's Halal Product Assurance Law is achieved in a way that is consistent with Indonesia's WTO obligations. While we thank Indonesia for their recent response on some of these concerns, we are still reviewing the responses given we just received them on Tuesday. However, upon initial review, we note that many of our long-standing concerns remain unanswered. Indonesia's recent response does not address the several implementing regulations we have flagged that have not been notified to this Committee, including BPJPH Regulation 57 of 2021 and BPJPH Regulation 141 of 2021, nor did this response address the continued pattern of Indonesia notifying measures after they are finalized, denying stakeholders and trading partners fair access to drafts in an effort to prevent barriers to trade. We again refer Indonesia to our statements from previous WTO TBT Committee meetings, as well as outstanding questions submitted as G/TBT/W/761. Despite their recent response through the enquiry point, Indonesia has not adequately provided any additional information or necessary clarifications and we again ask Indonesia to respond to all questions and concerns laid out in the Working Document and past statements. We will not repeat all of our outstanding concerns here.

3.290. We are further disappointed that Indonesia appears to have issued Presidential Regulation 6/2023 on Halal Certification for Drugs, Biological Products, and Medical Devices (PR 6/2023) in January 2023 without first notifying it to this Committee. We ask Indonesia to notify this regulation to the Committee, allow a reasonable time for stakeholder comments, and to take those comments

[52] For previous statements follow the thread under ID 428.
[53] For previous statements follow the thread under ID 502.

into consideration as it implements the measure. In addition to PR 6/2023, can Indonesia confirm what implementing regulations are forthcoming and what is the expected timeline for notification? Will there be other industry-specific implementing regulations, for example related to halal certification for cosmetics or services? We again urge Indonesia to notify these regulations when drafts become available, before they take effect, and to take stakeholder comments into account before the draft regulations are adopted and implemented. While we had hoped that industry-specific regulations would allow for targeted halal certification, PR 6/2023 has not fully taken the needs and consumer realities of the drugs, biological products, and medical devices sector into account. For example, the measure requires halal certification of materials and devices, including disinfectants, that never contact a living body and are solely used to perform laboratory tests.

3.291. Many of our concerns with PR 6/2023 echo our previously raised concerns: There is a lack of clarity about what products require certification, the definition of animal ingredients and their derivative products, and what materials are classified as "haram" or forbidden. This regulation creates Indonesia-specific certification requirements that diverge from international norms. And, Indonesia continues to require halal certification for a variety of services in this regulation, including processing, packaging, and storage, but has yet to adequately engage stakeholders or provide clarity on the necessity or actionability of that requirement. We recently learned that early last year Indonesia released Presidential Emergency Regulation No. 2 Year 2022, which we understand modifies the requirement for products to be certified as halal every three years, to instead only requiring certification if there is a change of formulation. We ask that Indonesia notify this regulation to this Committee, allow a reasonable time for stakeholder comments, and take those comments into account as it implements the measure. We understand foreign halal certifying bodies are undergoing the process of accreditation. From our understanding, each halal certifying body will negotiate a list of products that they are able to certify with BPJPH. Can Indonesia please confirm whether foreign halal certifying bodies will be allowed to certify finished products? Indonesia's written response through the Enquiry Point was "BPJPH will determine the scope of halal certification product that can be certified by foreign halal CBs in accordance with consideration of their competencies and resources." That does not answer the fundamental question of whether or not any foreign halal certifying bodies will be allowed to certify finished products, or if only BPJPH will be allowed to conduct that certification. We remain committed to working 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. We therefore look forward to an update on what Indonesia is doing to address the concerns that have been raised in this Committee, and to response to the specific questions raised today.

3.292. The representative of the European Union provided the following statement. The European Union reiterates its serious concerns on the Indonesian Halal Product Assurance 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. In particular, the EU is concerned about Indonesia's stance and policy that disregard the EU's principle of single market, despite the repeated call from the EU. The single market has enabled EU-based halal certifiers to certify companies from other EU member States. The EU 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.

3.293. 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. The EU stresses the importance of ensuring the continued possibility to place non-Halal products on the Indonesian market. 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 clarify its approach to international cooperation on Halal and provide for 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.

3.294. 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 support from Indonesia to ensure our existing halal assurance processes will continue to be recognised when the grace period for Law No. 33 of 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.

3.295. 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 is 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.

3.296. The representative of the Philippines provided the following statement. The Philippines shares the concerns raised by the European Union, the United States, Australia, and Canada on Indonesia's Halal Product Assurance Law No. 33 of 2014. We acknowledge the legitimate objective of Indonesia for the mandatory Halal certification of products to prevent deceptive practices and strengthen consumer protection. To ensure predictability and transparency in relation to Indonesia's TBT commitments, the Philippines requests Indonesia to provide a list of HS codes of product and Central Product Classification (CPC) for services that are covered by the mandatory certification.

3.297. The representative of Canada provided the following statement. Canada would once again like to join other Members in expressing its concerns with Indonesia's Halal Product Assurance Law no. 33 of 2014, and its implementing regulations, as it continues to represent a barrier to Canadian exports of halal products to Indonesia. While Canada supports Indonesia's objective to provide Indonesian consumers the assurance that they have access to products that are certified as halal through a rigorous and recognized process, the broad scope of the measure, as well as the lack of predictability and clarity on its implementation, remain problematic. Canada appreciates that Indonesia has taken steps to clarify the scope of products that will require halal certification. Indonesia has noted that it has not used HS Codes in Regulation 1360 of 2021 (G/TBT/N/IDN/140) because not all products in the halal positive list have an HS Code and not all ingredients in the same HS Code are exempted from halal certification requirements. While Canada understands Indonesia's reasoning, not using HS Codes for relevant products could lead to confusion and a lack of consistency. Canada asks that Indonesia consider using HS Codes where possible. For example, for products that require halal certification and fall under an HS Category with no exemptions. Further, we understand that remote audit is permitted under certain circumstances. We ask Indonesia to consider using remote audit as a temporary measure to accredit foreign certification bodies until full in-person audits can be conducted. In the meantime, Canada looks forward to positive developments regarding the audits of two Canadian halal certifying bodies, which remain outstanding and represent a key step to having Canadian exports of halal products to Indonesia resume. Canada requests that these audits take place as expeditiously as possible, so that BPJPH and the Canadian halal certifying bodies can move forward with the finalization of mutual recognition agreements.

3.298. The representative of Switzerland provided the following statement. As in previous TBT Committee meetings, Switzerland is following this matter with interest. We thank Indonesia for its written response received this week. However, we still share the concerns expressed by other members regarding Indonesia's Halal Product Assurance Law No. 33 of 2014 and its implementing

regulations, which require mandatory halal certification and labelling for a wide range of products. Switzerland invites Indonesia to consider less trade restrictive alternatives to the current, wide-ranging mandatory Halal certification and labelling, in order to pursue the legitimate objective of ensuring reliable information to consumers. In particular, we stress the importance of a thorough but streamlined process for the recognition of foreign Halal certification bodies and acceptance of foreign certificates.

3.299. The representative of Norway provided the following statement. Norway would like to thank Indonesia for the ongoing dialogue with our embassy in Jakarta about Indonesia's Halal Product Assurance Law no. 33 of 2014 and its implementing regulations. We recognise Indonesia's legitimate objective of providing its consumers with access to products which are certified as halal. However, Norway is concerned by the broad scope of the measures, the uncertainty surrounding products which are listed as exempt from halal certification, as well as the closure of the application deadline for approval of foreign certification bodies as of the end of 2022. Norway finds that the total extent of these measures place excessive burdens on economic operators and foreign governments and create barriers to trade. Norway is a big seafood exporter and we wish to continue our trade with Indonesia with as few trade restrictions as possible. Indonesian authorities have confirmed that seafood is considered as halal. However, we find contrary information as to the categories of fish for which halal certification is mandatory. Indonesia has not used HS Codes in order to categorise products. This makes the scope of products subject to halal certification and products exempt from halal certification unclear. If understood correctly, Norway questions why for instance non-slaughtered, wild caught frozen fish which has not undergone processing must be halal certified. There should be no need for halal certifying wild caught fish which has only been frozen before exports. Further, the slaughtering of farmed fish, as salmon, is exclusively undertaken in processing plants handling fish. No handling of other animals are undertaken in these enterprises. Norway requests Indonesia to provide more detailed information about the exemption procedures and product categorisation, as well as to consider the use of HS Codes where possible. We also look forward to further cooperation with Indonesia in order to find solutions in the seafood sector which secure the least trade restrictive framework possible.

3.300. In response, the representative of Indonesia provided the following statement. Indonesia would like to thank the United States, the European Union, Australia, Canada, Switzerland, Norway and Philippines for their continues interest on Halal Product Assurance Implementation in Indonesia. We have sent a written response to the WTO Member Enquiry Point that raised this issue. The implementation of Halal Product Assurance aims to ensure the certainty and safety aspects of halal products circulating in Indonesia and increase added value for the industry to produce and distribute Halal products. Products that are mandatory to be halal certified as listed in Regulation 748 of 2021 (notification G/TBT/N/IDN/134, G/TBT/N/IDN/134/Add.1) shall bear Halal Label upon granted halal certification from a recognized halal certification body/authority. For products or material that fall under Minister of Religious Affairs Regulation No. 1360 of 2021 (notified as G/TBT/N/IDN/140, G/TBT/N/IDN/140/Add.1) will not necessary to be halal certified. With regard to non-halal labelling, instead, it is only required to provide information on the non-halal materials contained in the related product.

3.301. As such, Indonesia is of the view that non-halal information is essential to ensure that consumers have sufficient information in making decisions based on their belief preferences. Indonesia provides information on non-halal material contained in the related products as stated in the articles 92 to 94 of GR 39/2021 (notified as G/TBT/N/IDN/131, G/TBT/N/IDN/131/Add.1). Indonesia considers that halal certification and halal certification bodies have functioned in this way for decades, however Indonesia currently has BPJPH, under the Ministry of Religious Affairs which regulates halal certification previously carried out by MUI, therefore the bilateral agreement needs to be extended. All submissions from foreign halal certification bodies to extend cooperation with BPJPH, are currently entering the assessment stage. Indonesia has notified Minister of Religious Affairs Number 2 of 2022 regarding International Cooperation on Halal Product Assurance (Notified as G/TBT/N/IDN/139 and G/TBT/N/IDN/139/Add.1) which aims to develop the implementation of international halal cooperation in Indonesia, including Mutual Recognition Arrangement (MRA) of halal certificate. All forms of MRA shall be preceded by a Government to Government (G to G) MoU or bilateral agreement. Once the MoU is available, the MRA can then be carried out. BPJPH welcomes cooperation in the field of mutual recognition and mutual acceptance of halal certification following the availability of a G-to-G Agreement between Indonesia and its partner countries. BPJPH also welcomes international halal cooperation in developing conformity assessment procedure schemes.

Indonesia is committed to working together and opens up opportunities to hold further technical discussions on halal certification and address issues related to halal certification in Indonesia.

3.1.3.22 China - Cybersecurity Law (ID 526[54])

3.302. The representative of the United States provided the following statement. 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. Our numerous, long-standing concerns are clearly laid out in our past statements to this Committee and remain unaddressed. We will therefore refer the Committee to our previous statements.

3.303. The representative of the European Union provided the following statement. The EU would like to note at the outset that two previously raised STCs are now, and will continue to be, incorporated into this STC on Cybersecurity. These two previous STCs were (i) 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) and (ii) Cyberspace Administration of China – Draft implementing measures for the Cybersecurity Review of Network Products and Services (ID 533). Our concerns on both issues remain unresolved. The EU would like to refer to its statements at previous TBT Committees with regard to the Cybersecurity Law[55] and related legislation and standards. The concerns raised in those previous statements remain and have already had a negative effect on business confidence. Uncertainty remains around key definitions of the Law and related legislation and standards, including, but not limited to, critical information infrastructure operator[56], online platform operator and network products and services. In addition, there is an overlap between the scope of application of the Critical Information Infrastructure Security Protection Regulation[57] on the one hand and the Multi-Level Protection Scheme (MLPS) 2.0[58] on the other hand. The uncertainty resulting from this overlap is exacerbated by the fact that the Regulations on Cybersecurity Classification Protection[59] have not yet been finalized.

3.304. The Cybersecurity Review Measures[60] continue to give rise to considerable uncertainty, in particular with regard to the security review of network products and services that it mandates. The triggers for this review are defined extremely broadly and the reviews themselves have proven to be opaque and potentially lengthy. It also remains unclear what exactly the consequences are when a review is failed, in particular also for downstream customers. This uncertainty around key definitions and overlap between different pieces of legislation creates considerable, and costly, uncertainty for EU companies as to which legislation is applicable to them. The EU urges China to 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, there is a tendency for these two sets of obligations to become equal. The EU calls on China to implement its legislation in a non-discriminatory manner, respecting the principles of transparency, proportionality, necessity and technology neutrality, and ensure adequate protection of intellectual property. The EU requests that China notify draft measures concerning any sectoral implementation to the WTO.

3.305. The representative of Japan provided the following statement. Japan continues to have concerns about the Cybersecurity Law and its subordinate regulations. In September 2022, the draft amendment to the Cybersecurity Law was published, and Japan has submitted its comments. Japan would like to request that China take them into account. In particular, Article 65, which has been changed in the draft amendment, stipulates penalties for critical information infrastructure operators who use network products or services that have not undergone or passed a "cybersecurity review."

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

[55] 网络安全法.

[56] 关键信息基础设施的运营者.

[57] 关键信息基础设施保护条例.

[58] 网络安全等级保护制度.

[59] 网络安全等级保护条例, also translated as "Multi-Level Protection Scheme Regulation".

[60] 网络安全审查办法.

We understand that the Cybersecurity Review Measures stipulate the procedures, required documents, and required number of days for this "cybersecurity review." However, some points remain unclear, such as the specific scope of network products, which may create unnecessary obstacles to the market entry of relevant foreign vendors and service providers. Japan requests that the above unclear points be clarified and that the "cybersecurity review" be operated in a manner consistent with especially Article 5 of the TBT Agreement.

3.306. We also have comments regarding the Cross-border Data Transfer Security Assessment Measures came into effect in September 2022, the Cybersecurity Multi-Level Protection Scheme published for public consultation in 2018 and the Security Certification Specifications for Cross-border Processing Activities of Personal Information published in December 2022, as subordinate regulations of the Cybersecurity Law or Personal Data Protection. 1) Regarding the Cross-border Data Transfer Security Assessment Measures, Japan submitted comments during the public consultation period. While the Measures define "general data", "critical data", and "core data", they do not provide objective and specific criteria for classification of such data. In February 2022, the Information Security Technology Critical Data Identification Guideline was submitted for public consultation, and in September 2022, the Information Security Technology Network Data Classification and Grading Requirements were submitted for public consultation. Japan would like to request that China clarify whether China intend that the classification criteria for "general data," "critical data," and "core data" will be defined appropriately in these national standards. 2) Japan submitted its comments on the Cybersecurity Multi-Level Protection Scheme during the public consultation period in 2018. We continue to have concerns about the unclear terminology, for example, the difference between "network operator" and "network service provider," and the consistency of national standard referred in the Cybersecurity Multi-Level Protection Scheme with Articles 2 and 5 of the TBT Agreement. At the previous TBT Committee meetings, China has stated that the process was in the drafting phase. Japan would like to request that China provide information on the status of its consideration and that a transparent system be established.

3.307. 3) With regard to the Security Certification Specifications for Cross-border Processing Activities of Personal Information, these standards require personal data processors who engage in cross-border processing activities of personal information to establish a personal data protection agency and to assess the impact of personal data protection on activities in which personal information is to be provided to foreign recipients. These obligations will have a significant impact on foreign businesses that have a high need to provide personal data outside of China, and may hinder the smooth facilitation of business activities depending on their specific nature. Since predictability is important from a perspective of business, Japan would like to request that the opinions submitted for public consultation by Japan be taken into consideration, and that transparent implementation is ensured.

3.308. The representative of Australia provided the following statement. Australia reiterates our previous position regarding China's Cybersecurity 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. Like other Members today, 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.

3.309. 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 suite of cybersecurity and cryptography/encryption laws and related implementing regulations. The multiplication of implementing measures 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 Critical Information Infrastructure (CII) Security Protection Regulations; the Draft Regulations on Network Data Security; the Measures on Security Assessment of Cross-Border Data Transfer; the Measures on the Standard Contract for the Cross-Border Transfer of Personal Information; the Practical Guidance of Cybersecurity Standards-Technical Specifications for Certification of Cross-border Handling of Personal Information; and the Implementation Rules of Personal Information Protection Certification. Canada would like to urge China to recognize the concerns that have been raised by Members on this measures since 2017 and reiterate our long-

standing request for a notification of these measures, only one of which has been duly notified to date to this Committee.

3.310. In response, the representative of China provided the following statement. Cybersecurity Law came into effect on 1 June 2017. It is China's first basic, framework, 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, 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 has been further clarified. The Cybersecurity 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 cybersecurity has been enhanced, the legal system of cybersecurity has been improved, the law enforcement capacity in cyberspace has been strengthened, and the cyberspace has become cleaner and more orderly.

3.1.3.23 China - Encryption Law of the People's Republic of China by the Office of State Commercial Cryptography Administration (OSCCA) (ID 534[61])

3.311. The representative of the United States provided the following statement. The United States refers to its previous statements and supports Members' interventions on the Cybersecurity Law.

3.312. The representative of the European Union provided the following statement. The EU would like to note at the outset that a previously raised STC is now, and will continue to be, incorporated into this STC on Encryption. This previous STC was Commercial Cryptography Administrative Regulations (ID 644). Our concerns here remain unresolved. The EU would like to reiterate its concerns relating to the Cryptography Law[62] and related legislation. The EU remains concerned about the wide scope of the law. These concerns have already negatively impacted business confidence. We note in particular that the Law does not recognise China's commitment that cryptography regulation would only apply to products whose core function is providing encryption.[63] The EU remains concerned about the Commercial Cryptography Administrative Regulations, in particular: the wide scope of the law, the insufficient safeguards for the protection of intellectual property, the imposition of pre-market and export controls, unclear requirements around testing and certification, turning voluntary certification requirements into de facto market access prerequisites, the imposition of national security reviews, the use of domestic standards and the lack of meaningful access to Chinese standards development organisations.

3.313. The EU welcomes that the published final version of the Commercial Cryptography Administrative Regulations limits security assessment, and product testing and certification to critical information infrastructure operators. However, given the newly introduced Article 41 of these regulations, the EU is concerned that similar requirements may re-appear for other operators in other legislation, in particular the Regulations on Cybersecurity Classification Protection, which is still pending release. 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 companies to participate on an equal footing with domestic companies in the market for cryptographic products. Additionally, the EU urges China to provide effective access, including the right to vote and to lead standards drafting, for foreign companies to standardization bodies, in particular Technical Committee 260 and the Cryptography Industry Standardisation Technical Committee (CISTC). The EU requests that applications to these bodies be replied to in a timely manner.

3.314. The representative of Japan provided the following statement. Japan continues to have concerns about the Encryption Law, which came into effect as of 1 January 2020. The Encryption Law contains an article that prohibits requests for disclosure of source code, etc. We would like to

[61] For previous statements follow the thread under ID 534.

[62] 中华人民共和国密码法, also translated as 'Encryption Law'.

[63] The so-called "Year 2000 Clarification" by the State Cryptography Administration (SCA).

request that China prohibit disclosure requirement of algorithms as well as source code. Japan would like to request that the operation of this law not be more-trade restrictive than necessary in accordance with Article 2.2 of the TBT Agreement, and that not impede the activities of foreign companies in China or their entry into the Chinese market.

3.315. The representative of Canada provided the following statement. Canada notes that China finalized the revisions to the Regulations on the Administration of Commercial Cryptography, which will enter into force on 1 July 2023. However, Canada also notes that the revised regulations provide little response in relation to Canada's official comments submitted on the August 2020 draft, or the points that it has raised at multiple WTO TBT Committee meetings. For example, with respect to the use of international standards in Article 10, the language remains exactly the same as two years ago. Furthermore, while the revisions re-work the earlier 1999 regulations to align with the new testing and certification processes for commercial encryption in the 2020 Cryptography (Encryption) Law, there is no additional information on the definition of key terms and the applicable scope. While this law provided for some relaxation of commercial encryption controls compared to the web of encryption regulations that existed previously, Canada is disappointed that technical barriers to trade still exist, and these revised regulations do not improve the situation.

3.316. Therefore, once again, 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 Cryptography Administration's draft of the Regulations on the Administration of Commercial Cryptography, 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; and Finally, we urge China to notify the revised regulations to this Committee and allow Members reasonable time for review and comment.

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

3.1.3.24 Viet Nam - Cybersecurity Measures (ID 544[64])

3.318. The representative of Japan provided the following statement. Japan continues to request that the security assurance obligations for devices and systems stipulated by the Cybersecurity Law and Decree No.53/2022/ND-CP (hereinafter "Decree 53") be implemented in compliance with the TBT Agreement. We understand that the Cybersecurity Law and Decree 53 impose the obligation on domestic enterprises to store data in Viet Nam without conditions, different from an obligation on foreign enterprises in this regard. If the domestic enterprises include foreign enterprises' subsidiaries established in Viet Nam under Vietnamese laws, such subsidiaries would have the obligation to store data in Viet Nam, even though their parent enterprises are foreign enterprises. In general, foreign enterprises collect and manage data in an integrated manner outside Viet Nam. These foreign enterprises are more likely to incur burdens such as additional investment costs and to be placed in de facto unfavourable competitive conditions compared to domestic enterprises that collect and manage data in Viet Nam. At the previous meeting, Viet Nam mentioned "We take note of the comments and will convey to the competent authority in capital for consideration and further feedback." Japan would like to request feedback from the competent authority.

3.319. In response, the representative of Viet Nam provided the following statement. Viet Nam would like to thank Japan again for its concern on this measure of Viet Nam. According to the Enterprise Law 2020 of Viet Nam, a domestic enterprise is an enterprise established or registered for establishment in accordance with Vietnamese laws and regulations and has its headquarters in Viet Nam, which needs to store data when the Decree takes effect. Domestic enterprises must also have the responsibility to coordinate with regulatory agencies in preventing, investigating, and handling acts of violating the law on Cyber Security like foreign enterprises. The subsidiaries

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

established by foreign companies need to 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 Cyber Security and have been reported by the Department of Cybersecurity and Counter High-Tech Crime of the Ministry of Public Security of Viet Nam and requested in writing to coordinate, prevent, investigate and deal with, but fail to comply or fully comply, or prevent, hinder, disable or override cyber security protection measures taken by specialized cyber security forces. We would like to reiterate that Viet Nam's Law on Cybersecurity and Decree No. 53/2022/ND-CP grant companies the right to decide on this issue and not impede the flow of data or impose an additional burden if enterprises comply with the Law and Decree.

3.1.3.25 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])

3.320. The representative of the Republic of Korea provided the following statement. The Republic of Korea, first of all would like to express gratitude for continuing cooperation through bilateral consultations between the MFDS Korea-NMPA China. Korea recognizes the China's policy objective to strengthen and implement cosmetics-related regulations to ensure the quality and safety of Chinese cosmetics and protect consumer health. However, Korea would like to echo the United States and Japan, and raise our concern in relation to the implementation of the Cosmetics Supervision and Administration Regulation and measures as these concerns from other WTO Member countries, including Korea, have not clearly improved. First, In accordance with the "Specifications for Cosmetic Efficacy Claim Evaluation", China's regulation 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 TBT Committee meeting, China replied that China does not prohibit foreign inspection institutions from getting the certification. Korea requests China to adopt more flexible measures by recognizing test reports issued by qualified foreign laboratories located outside of the country.

3.321. Second, regarding "Specifications for Registration and Filing of New Cosmetic Ingredients", we request that alternative test methods certified by international organizations such as the OECD be recognized without evidence of toxicity tests. And regarding the "Administrative Measures on Cosmetic Labeling", Korea requests that China to align its requirement of ingredient declaration in cosmetic labelling with international practices. (Note: In China, ingredients with a content of 0.1% or more must be labelled in descending order of content, and a content less than that is labelled as other minor ingredients. Internationally, most countries apply ingredient labelling based on 1% or more, and other minor ingredients are not listed separately)

3.322. Third, in the "Specifications for Cosmetic Registration and Filing", China requires companies to specify the sources and to provide quality data of all ingredients in their applications, which is excessively stringent compared to international practices. This required information often contains trade secrets, and such requirement is restrictive more than necessary to fulfill China's legitimate objectives to ensure product safety and manage China's domestic market. Furthermore, according to Appendix 13-14, 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 Committee meeting, China responded that trade secrets and intellectual property are not damaged and that trade secrets are rigorously protected. However, we request again to limit the data submission to necessary level. In the same context, 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 these information may contain trade secrets that could affect the businesses, Korea requests China to minimize such disclosure requirements. In the last meeting, China responded that trade secrets are protected under the relevant regulations on the disclosure of information and that the NMPA would strictly abide by the regulations when managing the registration and filing of cosmetic products. Korea is well aware of China's effort to protect

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

intellectual property including trade secrets. However, we request a consultation with stakeholders and other countries regarding sensitive information that bears less importance to consumers.

3.323. The representative of the United States provided the following statement. The United States maintains that it has serious concerns with CSAR and the likely inconsistency of some of its implementing measures with certain WTO 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 in the development and implementation of the CSAR measures. Recognizing this, we would however like to note some progress. We thank China for Announcement Number 34 issued by the National Medical Products Administration (NMPA) in March on the management of cosmetics ingredient safety information, which extended the transition period for providing ingredient safety information; reducing the filing requirements for products registered before 2024. These steps will lessen the immediate burden for companies.

3.324. We note that China held a national consultation period in May on its draft Technical Guidelines for Filling in and Submitting Cosmetic Ingredient Safety Information. Could China please clarify the implementation timeline for these Guidelines, particularly in light of Announcement Number 34? We reiterate our request from the last Committee meeting that China provide clarity on NMPA's Announcement Number 13 of 2023, issued in January on matters related to the notification and inspection of general cosmetics. Our understanding is that firms manufacturing in China will have the option of self-testing for general cosmetics, if they have a cosmetics production licence and they meet additional conditions. Please confirm if that is correct. We also ask that China clarify whether importers will also be given the option to self-test. Further, if these requirements and procedures were not included in previously notified measures, would China please notify them to the WTO TBT Committee? As we have long noted, US industry faces pressing challenges in trying to comply with China's often unrealistic implementation timelines for CSAR and its conflicting technical regulations – complicated further by the lag from prior Covid-19 shutdowns over the past three years, and the backlogs at labs in China.

3.325. In prior meetings, we asked that China consider extending the national CSAR implementation deadlines for the notified measures contained in G/TBT/N/CHN/1459, G/TBT/N/CHN/1515, G/TBT/N/CHN/1526, and G/TBT/N/CHN/1525, including extending the deadlines that have already gone into effect. We appreciate that China's March 27 announcement extended the deadlines for cosmetics ingredients filings, and we urge that China provide further flexibility in extensions across the other measures, given the aftereffects of the pandemic and the requirements for in-country testing. We also ask that China consider how it can rely upon international recognition schemes for conformity assessment to reduce the timelines for companies to comply. We understand that China may be drafting some provisions regarding overseas inspections. Is China able to provide a timeline on when this will be issued for public comment? Another measure of serious concern is the Provisions for the Supervision of Cosmetics Sampling and Testing. We understand that China published the final measure on 12 January. This published measure does not appear to address the concerns expressed in the written comments submitted by the United States and US industry. We are particularly concerned that the seven days provided for companies to appeal test findings on potential noncompliance of their products with CSAR requirements is not sufficient.

3.326. US companies remain eager for 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? Finally, we refer to previous US statements for other unresolved concerns and unanswered questions. 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.

3.327. 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 Committee meetings. However, Japan continues to express the following concerns, as we have stated in the previous Committee meetings and uploaded at the eAgenda in the Committee meeting in March 2023. Japan would like to request that China continue to address not only the matters in the statements in the meetings, but also all of the matters uploaded at the eAgenda. 1. "Management Rules for Testing required for Cosmetic Product Registration and 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 notification must be conducted by testing laboratories that are located in China and that have obtained CMA (China Methodology Accreditation) certificate. Japan has repeatedly received responses from China stating that it does not prohibit or restrict foreign laboratories from obtaining CMA. However, Article 4, Article 14, etc. of the "Administrative Measures for the Accreditation of Inspection and Testing Institutions," which is cited as the basis for the regulation, explicitly stipulate that only testing laboratories within the territory of China are qualified for CMA. Therefore, it is Japan's view that foreign capital testing laboratories eligible to obtain a CMA are restricted to those located in China. As a consequence, this does not meet Japan's request to accept the test results of foreign laboratories with testing capabilities equivalent to laboratories that have obtained CMA. As Japan has repeatedly stated, if the purpose of granting CMA is for confirmation of testing capability, the location is essentially irrelevant to testing capability. Japan would like to continue to request a more flexible framework through which China will treat foreign laboratories with capability equivalent to the laboratories located in China that have obtained CMA as equal and also accept test results of such foreign laboratories as equivalents, regardless of where they are located.

3.328. 2. The "Specifications for Registration and filing of New Cosmetic Ingredients" and "Specifications for Cosmetic Efficacy Claim Evaluation" stipulate that priority is given to test results in accordance with China's national standards or relevant regulations and various additional restrictions and conditions are imposed, such as requiring verification of equivalence with the established test methods in the national standards and regulations, and storing the test results in preparation for inspections, in the case of conducting a test method which is not specified in the regulations. Internationally, there are test methods that are scientifically confirmed by the OECD and ISO which are to be used for safety evaluation. Japan would like to request that China treat internationally accepted methods such as those from the OECD or ISO as equal to the methods stipulated in China's national standards or relevant regulations, so as not to be more restrictive than necessary in proving safety and efficacy. If they are not regarded as equivalent test methods, Japan would like to ask for China's clarification as to why they are not treated as acceptable.

3.329. 3. Regarding the efficacy claim evaluation methods required by the "Specifications for Cosmetic Efficacy Claim Evaluation", China responded that "the test method of efficacy claim evaluation does not make much limitations as to selecting the evaluation methods" at the last TBT Committee meeting. However, Japan considers that the following points, in particular, are more stringent and restrictive than necessary for the purpose of guaranteeing the scientific validity and reliability of efficacy claim evaluation and protection of consumer legal interests. Japan reiterates its request for the implementation of a flexible framework considering internationally recognized practice. - "Attachment 1, Requirements of Cosmetic Efficacy Claim Evaluation item" specifies four types of evidence. It finely stipulates which evidence can be used for each efficacy claim. However, the scientific validity of limiting which evidence is used for each efficacy item has not been demonstrated. The types of evidence for each efficacy claim should be determined individually by cosmetics registrants and filers based on the specific wording of claims and scientifically valid testing method for each one, as the types of evidence depend on the specific wording of claims. - The scope of application of the "Guiding Principles of Equivalent Evaluation" as stipulated in the Specifications for Cosmetic Efficacy Claim Evaluation is very narrow, being limited to makeup products. Even in the case of makeup products, the quotation of "common efficacy claim" evaluation test data is only allowed in exceptional circumstances such as cases where only colorants differ in the formula of make-up series with multiple colours of the same registrants or filers. In addition, because applying "Guiding Principles of Equivalent Evaluation" to skincare products, hair-care products, etc. is not allowed, even if slight changes in a formula due to regulatory compliance are made, retests are required. This creates heavy burdens for 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 for freckle-removing/whitening products, Japan would like to request that China answer the clear reason why the "Read-Across" approach, 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, was removed in the final regulation. 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.

3.330. 4. The National Medical Products Administration announcement on "Measures for Further Optimizing Cosmetic Ingredient Safety Information Administration (announcement No.34, 2023)"

dated 27 March 2023 was promulgated, and the grace period for submitting information has been extended to 1 January 2024, both for all ingredients contained in new products and for ingredients that are still required to be submitted for existing products. In addition, cosmetics companies (product registrants/filers) can now issue the Cosmetic Ingredients Safety Information based on information they have collected. Japan would like to express its gratitude to China for having considered the requests from Japan. According to the aforementioned announcement, as for products that have been registered (licensed) or filed by 31 December 2023, the Cosmetic Ingredients Safety Information except for high-risk ingredients should be kept by the registrant/filer for inspection. However, as for products to be applied for registration or filed on or after 1 January 2024, the submission of the Cosmetic Ingredients Safety Information will still be required for all ingredients. It is the responsibility of cosmetics companies to ensure the safety of ingredients and final products, including what ingredients are used. The safety assessment report for products including the safety information of the ingredients and final products is required at the time of product registration or filing, and it is a duplicate requirement to separately submit the Cosmetic Ingredients Safety Information. Therefore, Japan would like to request that the registrant/filer keep the Cosmetic Ingredients Safety Information for all ingredients for inspections, regardless of whether the risk is high or low and the timing of application for registration or filing.

3.331. 5. Japan recognizes that a transition period is set in all relevant regulations. However, we disagree that each transition period is long enough. Japan would like to strongly 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. 6. Regarding the "Interim Measures on the Administration of Overseas Inspections of Cosmetics," Japan would like to continue to request 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, however it is not this information that directly affects product safety assurance. Furthermore, inspections within China are limited to the production sector and this indicates that it is not necessary to conduct inspections of R&D departments. Therefore, Japan requests that China ensure that R&D departments that may hold confidential information be excluded from the subject of foreign inspections. Japan also requests that confidential information not be disclosed to persons other than those who are necessary for the legitimate purpose of the inspection.

3.332. 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 that are produced in China, in other words, Japan requests that China abolish the obligation to acquire the sales certification that relates to imported products. Regarding the "Administrative Measures on Cosmetic Labeling," which was promulgated on 3 June 2021, Japan would like to continue to express its following concerns. 8. In the TBT Committee meeting in November 2022, 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" on the product 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, which is to inform consumers of the persons responsible for product quality and efficacy. As China mentioned at the previous TBT Committee meetings, the "Cosmetics Supervision and Administration Regulation" clearly stipulates that cosmetics registrants and filers are fully responsible for quality, safety and efficacy claims of cosmetics. In order to clarify responsibilities and avoid confusion among consumers, Japan would like to ask that the label should indicate only a single responsible person ("cosmetics registrants or filers" and if needed, a "responsible persons in China" as contact persons can be added). Japan would like to request that China delete content that requires the display of producers.

3.333. 10. In the previous TBT Committee meetings, China explained that ingredients of 0.1% or less can be labelled as "other trace ingredients" in no particular order. 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" include stipulations about nano ingredients. To follow those regulations, Japan considers that a more detailed and concrete standard is necessary to determine 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. 12. Japan understands the purpose of the sample retention system explained in the TBT Committee meeting in July 2022. 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. Essentially, registrants or filers are responsible for the cosmetics in any case. Even in the case of imported cosmetics, Japan would like to request that China accept that samples do not always have to be retained in China if the testing system can be utilized immediately when problems occur.

3.334. 13. With regard to the exemption of toxicological testing documents via certification documents related to the quality management system and good manufacturing practice qualifications, Japan requests China's continued consideration for accepting certification documents related to quality management systems or good manufacturing practice qualifications issued by competent international organizations or industry associations which are authorized to issue the certification by government agencies in the country or region where the cosmetic manufacturer is located.

3.335. The representative of Australia provided the following statement. Australia remains concerned 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 for low-risk cosmetics. These concerns relate to testing and registration requirements, government certification requirements and requirements to provide detailed information on production processes and other aspects of their intellectual property. The Australian Government looks forward to working with China on CSAR implementation.

3.336. The representative of the European Union provided the following statement. The EU welcomes that the Chinese authorities have extended the deadline for registration of cosmetics' raw materials and finished products until 1 January 2024, as well as the announced changes in terms of limited submission requirements to specific ingredients. At the same time, 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 already confirmed that it supported the 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. In particular, this pertains to consumer safety and traceability of the ingredients used in cosmetics. CSAR's provisions diverge from international practice, as such an extensive level of information is not required elsewhere in the world for notification and registration purposes.

3.337. 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. The EU would like to recall that Chinese requirements go far beyond the EU's Cosmetics Regulation – considered to be most stringent in the world. As regards efficacy testing, the multiple China-specific requirements will require significant re-testing of products for which the efficacy was already established in a third country. This also affects thousands of products that already have been placed on the market in China and for which the claim substantiation still needs to be completed. These concerns were transmitted to the relevant Chinese authorities in a joint letter from several WTO Members in January this year. The EU would like to have a constructive dialogue with the Chinese authorities to find a satisfactory solution to ensure cosmetics safety without unnecessary overburdening of importers.

3.338. The representative of New Zealand provided the following statement. New Zealand would like to reiterate our well-documented concerns from previous meetings in relation to China's regulatory system for cosmetics. We continue to urge 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 looks forward to engaging further with China on its Cosmetics Supervision and Administration Regulations (CSAR) to address these issues.

3.339. In response, the representative of China provided the following statement. 1. Regarding the inspection required for cosmetics registration and notification, 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. However, 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. 2. Based on the non-discrimination principle of WTO, the Provisions on the Administration of Cosmetics Registration and Filing Data put forward exactly the same requirements on imported and domestic ordinary cosmetics regarding the alternative program of animal tests for safety evaluation. For both domestic and imported ordinary cosmetics, the toxicological tests can be replaced with safety risk assessment once they have obtained quality management system certification issued by government authorities.

3.340. 3. Regarding the evaluation of cosmetic efficacy claims. The formulation of the specification for the Evaluation of Cosmetic Efficacy Claims is to further ensure the scientificity, accuracy, and reliability of the evaluation of cosmetic efficacy claims, and safeguard the rights and interests of consumers. Based on the principle of equivalence, the efficacy claim evaluation test method does not limit the selection of internationally recognized foreign regulations or technical standards, such as OECD or ISO. 4. Regarding the cosmetics labelling related issues. The information of cosmetics manufacturers includes the relevant information of the manufacturers and their locations, and etc, which is an important measure to protect consumers' rights. When marking enterprise information, the corresponding guide language should be used for marking, and there is no situation that will confuse consumers. It stipulates that ingredients with weight percentages not exceeding 0.1% (w/w) should be labelled with "other trace ingredients" as indicating words. The measures does not require a descending order of ingredient content or any other specific order. 5. Regarding the protection of trade secrets and intellectual property rights, 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 for the safety review of health-related products in various countries. It is exactly for the purpose of protecting the intellectual property rights and trade secrets of enterprises that in the process of formulating relevant technical documents, the evaluation data required of cosmetic 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 he name, registration number, source, composition, physical and chemical properties, purpose of use, 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 prescribed by all relevant laws and regulations.

3.1.3.26 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])

3.341. The representative of the United States provided the following statement. We would like to provide an update on the STC we have raised in past Committee meetings, on the Regulation of the European Parliament and the Council on Medical Devices, notified as G/TBT/N/EU/71/Add.1. Since the last meeting, the EU has published amendments to the regulation which entered into force on

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

20 March. The amendments extend the validity of existing certificates under certain conditions and abolish the "warehousing" deadline from prior versions of the regulation. We greatly appreciate the EU taking these steps to ensure that critical medical devices which have previously been approved on the EU market will not be subject to disruptions in trade which were threatened by challenges with implementing the regulation as intended, including due to a lack of notified body capacity.

3.342. We note that our concerns with the European Medical Device Nomenclature (EMDN) system remain, and we hope the EU will reconsider its position by selecting the Global Medical Device Nomenclature system (GMDN), which is used by over 100 national medical device regulators to support their activity. The United States will continue to engage with the EU about GMDN through technical discussions among the regulators. We look forward to continued engagement with the EU as it undertakes further implementation of the Medical Device Regulation.

3.343. The representative of China provided the following statement. (1) It is suggested to specify the method for proving the legality of the expired certificates which are used in the extended transition periods, such as adding notes on the expired certificates. The reasons are as follows: Article 1.(1)(a) of the (EU)2023/607 specifies the conditions under which the expired certificates can be used in the extended transition periods, but the method for proving the legality of the expired certificates which meet such conditions and used in the extended transition periods is not stipulated, which will create great obstacles to product supervision, launch, sales and usage. (2) It is suggested to clarify solutions as soon as possible for the small and medium-sized medical device companies without services provided by notified bodies, such as adding more notified bodies. The reasons are as follows: Although there are more notified bodies than before, it is difficult for them to provide services for all the medical device companies worldwide. Presently, notified bodies tend to prioritize product certifications for large medical device companies; however, most manufacturers are small and medium-sized, and it is hard for them to get product certification services from notified bodies.

3.344. (3) It is suggested to clarify regulatory requirements on original equipment manufacturer (OEM) and original design manufacturer (ODM), and introduce guidelines for OEM and ODM as soon as possible. The reasons are as follows: Both OEM and ODM are effective modes for companies to communicate with each other, exchange technologies and promote market channels. They are also production modes with mature technologies and management modes. But the regulatory requirements on OEM and ODM are not clearly provided in the MDR, neither the relevant guidelines. At present, notified bodies have different regulatory requirements on OEM and ODM, which cause great confusions and obstacles to relevant works of medical device companies.

3.345. (4) It is suggested to provide relevant guidelines on the recognition and use of clinical trial data obtained outside of the EU. The reasons are as follows: There are no specific instructions for using the clinical trial data obtained outside of the EU in existing EU regulations or guidelines, which could lead to inconsistent understanding between different notified bodies; notified bodies and manufacturers. It is adverse to efficient clinical evaluations. The International Medical Device Regulators Forum (IMDRF) has published general requirements on clinical trials and guidelines on accepting the clinical trial data obtained in foreign countries, for instance, general principles for clinical studies are stipulated in Chapter 6 of the "IMDRF Clinical Trial Guidelines".

3.346. The representative of Japan provided the following statement. Japan welcomes the implementation of Regulation (EU) 2023/607 revising the MDR and IVDR on the extension of transitional measures and the removal of distribution deadlines. However, there are issues to be addressed in the MDR and IVDR as described below, and we request the following improvements.

3.347. 1. MDR 1.1 Some companies have reported that they have made progress with their conformity assessments. On the other hand, many companies have not completed their conformity assessments. Therefore, they have not been able to ship new products to Europe since 26 May 2021, the MDR's implementation date. Several companies have reported that it has been more than three years since the start of the conformity assessment process. Japan has repeatedly requested improvements to this situation in the previous TBT Committee meetings. Furthermore, the EU stated at the last TBT Committee meeting that "the EU remains very concerned about the current level of notified body capacity and preparedness of medical device manufacturers and is committed to continue working closely with all relevant economic operators and partners to further mitigate the situation and avoid shortages of critical devices". However, the situation remains unimproved. Japan requests that the EU continue to monitor the situation and make improvements as a regulator.

3.348. 1.2 The MDR requires rigorous clinical evaluation assessment even for relatively low-risk Class I, IIa and IIb medical devices. However, this may be more trade-restrictive than necessary to achieve legitimate objectives. In order to ensure that the regulations do not become more trade-restrictive than necessary, Japan continues to request that the EU simplify the requirements of the assessment such as the Japanese pharmaceutical certification and the US 510(k) regulations, taking into account the promotion of international harmonization in regulations. For example, clinical evaluation could be simplified for medical devices with a medium or low risk, using technologies that have already been proven on the market.

3.349. 2. IVDR (EU) 2023/607, dated 15 March 2023, enables companies to supply devices that meet certain conditions. However, as stated in the previous TBT Committee meetings, Japan is deeply concerned that the conformity assessments for many manufacturers will not be completed by the deadline, given the lack of infrastructure necessary for conformity assessments. According to the results of the survey on IVDR conformity assessment status of Japanese IVDs conducted by the Japan Association of Clinical Reagents Industries, only about 10% of devices requiring IVDR conformity assessments had been certified as of January 2023, and the situation has not improved. Therefore, Japan would like to request that the transition period for the IVDR be re-extended until at least the end of 2027 or the end of 2028 or beyond, as was done for the MDR.

3.350. 3. MDR and IVDR 3.1 Japan welcomes the publication of guidance in line with the MDCG Guidance Publication Plan. However, we have heard from Japanese manufacturers that the requirement to conform to guidance without a transition period is a factor in the prolonged conformity assessments. As we requested at the previous TBT Committee meetings, we continue to request that public consultation be carried out prior to the publication of MDCG guidance, that newly published MDCG guidance have a transition period of at least one year, and that MDCG guidance be used for reviews by notified bodies after the transition period has elapsed. We welcome the publication of guidance MDCG 2022-21 on Periodic Safety Update Reports (PSURs) on post-marketing surveillance; however, this guidance states that guidance on trend analysis will be issued separately, but it has not yet been issued. We request the guidance on trend analysis to be issued promptly as it is necessary to build the process for the implementation of the PSURs. 3.2 In some cases of the conformity assessments by notified bodies, the need for conformity may be required even though the harmonized standards of MDR and IVDR are published in the EU Official Journal immediately before the conformity assessments. We request an appropriate transition period for harmonised standards to be set.

3.351. The representative of Australia provided the following statement. Australia refers to its previous statements made in the TBT Committee and notes the recent decision by the European Parliament to extend transition timeframes for the European Union Medical Device Regulations (EU MDR). Australia welcomes this extension as it will allow additional time and increased capacity to access appropriately designated notified bodies to transition medical devices to the new regulatory framework. The EU MDR impacts both Australian manufacturers accessing European markets, but also impacts access to Australian markets given common reliance on European conformity assessment certification to support marketing approval in Australia. We still remain concerned about misalignment of components of the EU MDR with international guidance for certain medical devices which may result in trade barriers and burden to manufacturers who also supply their products to other countries including Australia. Australia also reiterates concern about the European shift to the European Medical Device Nomenclature (EMDN) currently being developed, diverging from the internationally developed Global Medical Device Nomenclature (GMDN). Australia is concerned about the issues this may create for a globally harmonised Unique Device Identifier (UDI) system resulting from use of EMDN in Europe, in contrast to use of GMDN in a range of other jurisdictions. Australia continues to be concerned about the absence of effective arrangements for interoperability (such as a mapping of EMDN and GMDN codes), given the potential for duplication for industry, and impact on information sharing in monitoring and responding to safety concerns for patients.

3.352. In response, the representative of the European Union provided the following statement. As announced in previous Committee meetings, the MDR officially entered into force on 26 May 2021. It is important to underline that the shift between the Directives to the MDR is a gradual one, facilitated by transition periods that allow for medical devices in compliance with the Directives to continue to be in circulation until May 2024, 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. 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 ones. One of the revolutionary changes introduced by the two new regulations include fit for purpose classification rules, reinforced notified body requirements and higher clinical evidence thresholds. These changes were deemed necessary in order to respond to a number of failures in the system and prevent future crises putting patients at serious risk.

3.353. On the subject of notified bodies, we are glad to report that as of today, we now have 38 MDR designated Notified Bodies and 10 Notified Bodies under the IVDR. With the amendments to extend the transition period for MDR and IVDR compliance, the EU believes that the situation has improved and that notified body capacity has been alleviated. Nevertheless, the preparedness of medical device manufacturers remains essential and working towards early compliance will be essential to avoid bottlenecks in the system. On the question of SME access to notified bodies, the EU has put in place a number of non-legislative measures in order to encourage availability of notified body capacity to deal with new applications as well as applications submitted by SMEs. Continuous monitoring of these measures is ongoing and frequent discussions with notified bodies entail the assessment of those activities. On Nomenclature, the EU maintains the need to separate the discussions from those related to Unique Device Identification (UDI). While the UDI system used in the EU is based on internationally agreed principles, the Nomenclature, also known as the language of use is different. This was a decision taken after careful assessment and consideration. The EU would like to stress, once again, that the EU's choice for creating the European Medical Device Nomenclature has been based on the need for a sensibly structured nomenclature that is transparent, open, fully accessible for the public, and downloadable for free. There are currently no other nomenclature systems offering those characteristics. The EU maintains that the choice of language and dictionary for medical devices i.e., the nomenclature does not constitute a barrier to trade. The EU is fully determined to ensure 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.

3.1.3.27 Qatar - Ministry of Public Health Circular regarding shelf life for cheese (ID 602[67])

3.354. 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 ultra-heat treatment (UHT) milk and white cheese that entered into force already in 2019 and followed later by additional Circulars issued by Qatar on this issue. These trade restrictive measures are still kept in place to date. One of the main EU concerns as regards these import conditions is the short shelf-life period imposed for several dairy products, including milk, cheese and butter, which do not seem to be based on science nor on international standards. In practice, it is impossible for EU exporters to continue shipping certain dairy products to Qatar under these conditions. At the same time, local dairy producers in Qatar are favoured as they are not affected by the long transport time that foreign exporters need for shipping their dairy products to the country, and thus can comply with shorter shelf-life periods. The European Union would like to refer to constructive mutual exchanges on this important concern, however, despite the continued positive dialogue, the import measures are still in place. During our dialogue on this matter, Qatar signalled to be working on a solution to be offered in near future. The EU is looking forward to Qatar solving this issue at short term and we stand ready to continue working constructively with Qatar.

3.355. The representative of New Zealand provided the following statement. New Zealand continues to support the EU's interventions and requests the scientific evidence behind the assessment that resulted in such restrictive shelf-life requirements. New Zealand remains strongly of the view that Qatar's shelf-life requirements for imported cheese and other dairy commodities are trade restrictive, not based on science, and not in line with Codex standards. New Zealand continues to request that Qatar use internationally recognized standards such as Codex for the setting of shelf-life requirements.

3.356. 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. As it has already been said, the relevant measures apply

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

equally to domestic and imported products and are therefore non-discriminatory in nature. These measures do not have a significant effect on trade, product-specific requirements applied in the State of Qatar do not prevent the importation and sale of any products that meet quality standards. We remain available to continue our constructive discussion with the interested Members to provide additional explanation where necessary.

3.1.3.28 Colombia - Food Prioritized for its Sodium Content, Certification Requirements, G/TBT/N/COL/238, G/TBT/N/COL/238/Add.1, G/TBT/N/COL/246 (ID 609[68])

3.357. The representative of Costa Rica provided the following statement. Costa Rica wishes to reiterate its trade concern in support of a systemic defence of the principles of the TBT Agreement relating to the adoption of measures based on scientific evidence and the harmonization of rules through the use of regulations issued by international reference organizations such as the Codex Alimentarius. The Codex Alimentarius has no standards that may act as a basis for setting percentages for maximum sodium, fat or sugar content (as is the case with the list of foods prioritized by Colombia and the maximum sodium percentages). As a result, there are different regulatory systems for international trade in processed foods, which makes sectors less competitive and restricts trade more than necessary. As with other trade concerns raised at this meeting, Costa Rica remains open to receiving further information on the international reference organization standards used by the Colombian authorities to prepare this regulation.

3.358. 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 procedure is more restrictive than necessary to achieve the legitimate objective pursued by Colombia with this measure. We therefore request that Paraguay's support for this concern be put on record and that its entire statement from the previous meeting be recorded in the minutes.

3.359. *Statement from March 2023 meeting, in full.*[69] We thank Costa Rica for the inclusion of this trade concern on the agenda and we request that Paraguay's support be recorded. 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 procedure is more restrictive than necessary to achieve the legitimate objective pursued by Colombia with this measure. In particular, it is concerned that the first party declaration may no longer be used, given the accreditation of an entity to certify compliance and the expiry of the period for using this type of certification (two years from the accreditation of the certifying entity).

3.360. We believe that there are still not enough accredited laboratories to date to deal with all certification requests that will have to be managed as of July when the deadline for the use of first party certifications expires, which could generate a bottleneck in applications. While the possibility exists of having recourse to an certification body accredited abroad and recognized by Colombia, this would involve much greater cost, and some small and medium-sized Paraguayan enterprises would not be able to avail themselves of this option. For these reasons, Paraguay requests Colombia to increase the availability of certification bodies accredited in Colombia and to complement them in an appropriate manner with certification bodies accredited in other countries so as to increase the number of available certification entities, thereby reducing bottlenecks and helping to reduce certification costs.

3.361. In response, the representative of Colombia provided the following statement. First, I would like to express our gratitude for the comments made on previous occasions and at this meeting. Second, in previous sessions and at earlier bilateral meetings, Colombia has shared and discussed documents justifying the measure on the maximum sodium content of processed foods. In fact, at the previous Committee meeting we spoke about the importance of our work with various countries to clarify aspects of the measure and respond to questions that arose with respect to the permitted certification schemes and acceptance of first-party declarations, among other matters. Third, and to conclude, we reiterate that our authorities are more than willing to continue technical discussions

[68] For previous statements follow the thread under ID 609.
[69] G/TBT/M/89, para. 2.106-2.107.

with the authorities of the countries concerned, with a view to clarifying the comments made and finding ways of overcoming this trade concern.

3.1.3.29 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[70])

3.362. The representative of Costa Rica provided the following statement. Costa Rica would like to reiterate this concern and emphasize the importance of harmonizing food labelling schemes, in particular front-of-pack nutritional labelling, on the basis of Codex Alimentarius standards (Guidelines on Nutrition Labelling CXG 2-1985, Annex 2, adopted in 2021). In this regard, we invite Mexico to use the Codex guidance on the subject as a reference to ensure that regulations are consistent with the international consensus and do not create unnecessary restrictions on trade. Costa Rica, as it has done for similar concerns raised at previous meetings of the Committee, wishes to remind other Members present of the importance of the work undertaken within the framework of the Codex Alimentarius and of the need for any food labelling measures adopted to be based on scientific evidence and on Codex Standards, in accordance with the provisions of the TBT Agreement.

3.363. In response, the representative of Mexico provided the following statement. With regard to NOM-051-SCFI/SSA1-2010, Mexico reiterates what it said during the meetings held in November 2022 and March 2023, in the sense that the competent Mexican authorities are fully aware of the relevant international schemes on food labelling, specifically the provisions of Annex 2 to the Guidelines on Nutrition Labelling (CXG 2-1985), adopted in 2021 by the Codex Alimentarius. However, the amendment of NOM-051-SCFI/SSA1-2010 was published in the Mexican Official Journal on 27 March 2020 and entered into force on 1 October that same year, at which time there was a lack of relevant guidelines or international standards that could be used as a basis for establishing front-of-pack labelling. It is important to highlight that, pursuant to the Law on Quality Infrastructure, Mexican Official Standards are systematically reviewed every five years. As regards NOM-051-SCFI/SSA1-2010, the date of its last amendment was 27 March 2020. As a result, in accordance with the applicable Mexican legislation, the period for carrying out the next systematic review of the Standard begins on 28 March 2025. It will be during this systematic review period that the CODEX guidelines on labelling or any other international standard will need to be analysed and considered, which will determine the viability of, or need for, an amendment of NOM-051-SCFI/SSA1-2010. Lastly, the Government of Mexico reaffirms its duty to comply with the international commitments set out in the TBT Agreement 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.

3.1.3.30 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. G/TBT/W/774 (ID 632[71])

3.364. The representative of the United States provided the following statement. The United States and others have made our longstanding concerns well known in previous meetings. We are disappointed that, despite several Members raising concerns about this issue, India has failed to constructively engage on this or take steps to meaningfully address Members' full range of concerns with the QCO for toys. These concerns have included the rising use of quality control orders to mandate Indian-specific standards as well as burdensome, costly, and unnecessary conformity assessment requirements related to licensing, in-country testing, and factory inspections. We have asked - without response - what actions India is taking to provide market access to exporters whose factories are located in countries where BIS inspectors are not currently conducting in-person inspections. It is clear that raising this issue in this forum has not been successful, and that this is not the only sector where an Indian quality control order has created unnecessary obstacles to international trade. We remind India of the greater pattern of concerns highlighted in G/TBT/W/774 and will continue to explore other ways to address these concerns.

3.365. The representative of the European Union provided the following statement. The continuously increasing number of Quality Control Orders (QCOs) across sectors is sending worrying

[70] For previous statements follow the thread under ID 608.
[71] For previous statements follow the thread under ID 632.

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 questions in relation to their compliance with the WTO's TBT Agreement obligations. The EU remains 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. As stated in previous TBT Committees, the European Union remains 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 (BIS). The EU refers to its previous interventions but would like to highlight that European industry continues to report the difficulties to work through the QCO.

3.366. The European industries indicate that the QCO remains challenging and the process is still very burdensome and complex. In addition, a major concern is related to the fact that the import policy (G/TBT/N/IND/143) is applied on top of the QCO. – One of key issues for the EU toy industry are the challenges in understanding by the BIS of the complexity and velocity of toy manufacturing. For example, when a factory is being audited, only the limited number of items being produced in that moment are taken as samples and sent for testing, and then included in the factory licence. However, all other toys produced in that factory at a later stage also need to be included in that license, which is a burdensome process as for foreign manufacturing sites this has to be done via paper-based applications, whereas local manufacturers can do it online. Moreover, given that companies are producing a huge variety of items over the year with constant innovation, the requirement to add each new SKU (Stock keeping unit) coming from an audited factory can cause huge delays in importing new items and should rather be replaced by an online application, in order to guarantee a level playing field with local manufacturing. According to the EU the application process should be simplified with less documentation needed and electronic versions of documents should also be accepted for review. This would include extending the same online system as Manakonline to foreign manufacturers to submit the inclusion applications, which allows for easy access, status information, and reference needed for customs clearance. Given that the on-line application for licence is only accessible to domestic toy manufacturers results in more burden and delays for foreign manufacturers.

3.367. The EU would like to point out that the time taken to process the applications (between the submission of the application and the nomination of an auditor), which is currently two months in average (and sometimes up to almost two years for overseas manufacturers) should be reduced to one month in order to enhance the efficiency of the application process. As concerns the preparation of audits, the EU would like to propose to stipulate a statutory timeline for every stage of audits, as this would give better visibility regarding the start and end point, increase transparency in the process and eventually benefit not only the applicant to obtain the licence in a timely manner but also the BIS to keep track of the applications. Moreover, overseas audits should be allowed to be outsourced and carried out by third party auditors, in particular for licence renewals, in order to speed up the process. In order to improve the auditing process itself a set time limit for the issuance of licences should be provided as well as additional resources and trainings for auditors, including check-lists and a standard procedure. The EU would also like to have more clarity as regards the procedure of licence renewal. The EU welcomes the increased transparency of the process, but would like to understand whether a longer renewal period is granted to companies that specifically ask for it?

3.368. To ensure the continued effectiveness of the Indian toy safety and quality regime under the QCO, the European Union would like to ask once more that the Indian government considers 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, the EU understands that currently only the QCO is applicable and the previous regime is no longer in force. This would mean that there is no need of additional testing at customs anymore. However, the EU would welcome a formal confirmation of this understanding. 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.

3.369. The representative of China provided the following statement. For the Toys (Quality Control) Order, 2020: 1. According to Article 3 of the Toys (Quality Control) Order, 2020, the mandatory certification has involved a large range of toys, that is all toys products or materials used by children under 14-year-old including swing and slide, etc.. It is recommended that the Indian can manage toys according to their risk level and conduct mandatory certification on toys of higher risk; exempt

toys of other risk levels and those small number of imported toys with single batch. 2.The Toys (Quality Control) Act 2020 stipulates that the certification process is subject to conformity testing from third party laboratories. We appreciate India for increasing the number of accredited laboratories. However, to date, all laboratories accredited by India are in India, and no overseas laboratory has been accredited. Moreover, the ways for overseas laboratories to obtain accreditation are unclear and lack of transparency. It is recommended that India could accept overseas laboratories (including ILAC laboratories), and provide transparent guidance to obtain accreditation. 3. Given that the online audits technology is already quite mature, it is recommended that foreign factories could be allowed to conduct online audits for factory inspections. 4. In October 2020, the BIS issued the document of 10 Steps to BIS License for Toys on its official website, in which step 4 stipulated that factories producing electric toys should be equipped with instruments required by IS 15644:2006 Clause 8, 9 and 10. However, some tests need expensive and technically demanding equipments that are difficult for small and medium-sized enterprises to obtain, and these tests are often done by third-party laboratories. This part of the equipment requires the factory to provide by itself, which is unnecessary and unreasonable. According to Article 5.1.2 of the TBT Agreement, it is suggested that India could cancel the equipment requirements for electric toys and other projects.

3.370. For Policy Condition No. 2(iii) to Chapter 95 of ITC (HS), 2017- Schedule-I (Import Policy): 1. According to Article 2 of newly revised Policy Condition No. 2(iii) to Chapter 95 of ITC (HS), 2017- Schedule-I (Import Policy), samples of imported toys should be randomly sent to NABL accredited labs for testing in the process of clearance, which would be released after test is qualified. It seriously affected the efficiency of customs clearance and increased the importer's storage costs, which does not comply with Article 5.1.2 and 5.2.1 of the TBT Agreement. It is recommended that India could exempt test for accredited toys. 2. According to newly revised Policy Condition No. 2(iii) to Chapter 95 of ITC (HS), 2017- Schedule-I (Import Policy), imported toys must be sent to laboratory accredited by NABL in India. Considering that NABL in India is a member of ILAC, it is recommended that India could accept foreign laboratory test results from ILAC-accredited labs.

3.371. The representative of Canada provided the following statement. As stated in previous TBT Committee meetings, the objective of India's quality control order regarding toys, and QCOs across many sectors, remains fundamentally unclear. Canada notes that India continues to avoid addressing Canada's and other Members' issues and questions in its responsive statements. Canada noted that India reiterated the same response in previous Committee meetings on the way that QCO will be implemented, failing to address Canada's and other Members' questions and concerns. Canada would once again ask that India provide a substantive response and explain what specific actions are planned in the near future to have imports of toys into India resume normally.

3.372. In response, the representative of India provided the following statement. The Bureau of Indian Standards (BIS) is carrying out physical inspections for applications received from foreign manufacturers, where the country to be visited is facilitating the visit of fully vaccinated BIS officers without the requirement of quarantine. No application pertaining to toys has been received from USA under Foreign Manufacturers Certification Scheme of BIS. With respect to applications received from the European Union, visits are being planned wherever necessary formalities such as payment of application charge, scrutiny of application etc., have been completed. The BIS is not able to carry out preliminary inspection for Chinese manufacturers due to COVID-19 pandemic. The Bureau of Indian Standards under its Laboratory Recognition Scheme (BIS LRS) grants recognition to outside laboratories for testing of products as per the relevant Indian Standards.

3.373. The Laboratory Recognition Scheme is governed by provision under section 13(4) of BIS Act, 2016 and Rule 32 of BIS Rules, 2018. These statutory provision confers upon BIS, powers to recognize any laboratory in India or outside India for carrying out testing of samples in relation to Conformity Assessment and such other functions as the Bureau may assign to it. Clause 12 of BIS LRS details the complete procedure of recognition of foreign laboratories. The decision regarding recognition of foreign laboratories will be taken by BIS taking into account the MRA (Mutual Recognition Agreement) with the concerned nation. BIS LRS is available on BIS website www.bis.gov.in under "laboratory services" tab. As on date, there is no pending application from any Outside Laboratory located outside India seeking recognition from BIS in compliance to the provisions of LRS.

3.1.3.31 India - Order related to requirement of Non-GM cum GM free certificate accompanied with imported food consignment, G/TBT/N/IND/168 (ID 651[72])

3.374. The representative of the United States provided the following statement. This is the ninth TBT Committee meeting in which the United States has raised concerns regarding India's Order 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. The United States once again acknowledges India's right to regulate "GM" foods, as laid out in their Environment Protection Act (1986) and Rules 1989. However, the United States continues to insist that India provide the rationale for requiring a non-GM certificate on a per-consignment basis for each of the 24 crops named in the Order. In response to India's request that Members cite specific trade issues in connection with the Order, the United States resubmits for the record that US apples experienced immediate and significant trade disruption upon the entry into force of the Order in March 2021, which was only resolved by a U.S. State issuing a non-GM certificate. Additional US products have been affected by the Order, and the United continues to face further market access issues with genetically engineered products, in particular. Despite continuing to engage with India on this Order, we have been unable to make substantive progress to resolve these concerns. The United States requests that India immediately revoke this trade-restrictive Order and engage in further dialogue with the United States to find mutually agreeable alternatives that do not unnecessarily impact trade.

3.375. 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 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. The EU would like to emphasise that the additional costs that the issuance of these certificates carries for exporters, particularly as there is a need for a certificate for each container in each consignment of exported fresh fruit and vegetables to India, are not negligible. This is even more important taking into consideration that the cost is entirely unnecessary since no fruits or vegetables in the EU can be genetically modified under EU legislation. The EU would like to ask India to waive the requirement to attach the certificate for food items or alternatively to consider a less burdensome approach to meeting the Order's stated objectives.

3.376. 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 – 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 appreciates India's cooperation in agreeing to a pathway forward on this matter during FSSAI's recent visit to Australia in 2022. The agreed pathway moves this matter towards more 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.

3.377. The representative of Japan provided the following statement. Japan, like other Members, 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 a measure which 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 GM-free certificates for those items. Japan requests India to withdraw

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

the requirement to the attachment of certificates for foods that are properly controlled in the origin country.

3.378. The representative of Canada provided the following statement. Canada wishes to reiterate its concerns raised at previous TBT and SPS Committee meetings, as well as recent Council for Trade in Goods meetings, regarding India's August 2020 Order, which mandates that a non-genetically modified or GM free certificate accompany imported consignments of 24 imported food products. India has stated that the requirement to regulate the import of "GM" food is not new, having been notified as the Environmental Protection Act (1986), and that the requirement has not caused trade disruptions. Canada is not aware of this requirement having been enforced on imported foods to date. Canada views that India's Order unnecessarily restricts international trade, and disproportionately impacts the ability of GM-food producing countries to export to India, and could jeopardize India's food security objectives. Canada's concerns are detailed in comments submitted through India's TBT Enquiry Point in October 2020. We continue to await India's response. While we understand India's commitment to ensuring the health and safety of its population, it remains unclear to Canada how India's non-GM certification requirement will fulfil its intended objective given the lack of available scientific information and/or justification to support its implementation. We would like to emphasize that foods derived from GM sources have a long history of safety and nutrition as compared to non-GM foods, and undergo rigorous risk assessment processes under robust regulatory frameworks managed by many different competent authorities worldwide.

3.379. We call on India to share the scientific and technical information on which it has based its approach to support a transparent, predictable, risk- and science-based trading environment - in line with India's WTO commitments. Canada reiterates its request that India immediately suspend the implementation of this measure and allow trade to continue without a GM-free certificate requirement. We urge India to consider alternate, less trade-restrictive approaches that would meet India's objectives. Canada remains available and would welcome the opportunity to share its extensive experience regulating GM food safety while encouraging food innovation, and to pursue further discussions on this issue in a bilateral setting. Finally, Canada recalls its request for India to notify the non-GM Order to the SPS Committee given the Order's stated objective is "to ensure the safety and wholesomeness of articles of food imported into India."

3.380. The representative of Paraguay provided the following statement. In the interest of time, we request that the statement made at the previous meeting be put on record in its entirety, and I will limit myself to repeating the question on the measures notified by India in documents G/TBT/N/IND/240 and G/SPS/N/IND/290 relating to the draft Food Safety and Standards (Genetically Modified Foods) Regulations, 2022, and their implications for the implementation of the Order of 21 August 2020. In particular, it should be borne in mind that paragraph 2 of this Order states that the certification requirement is adopted to ensure that only non-GM food crops are imported into India, while regulations relating to products subject to genetic engineering or modification are developed in accordance with Section 22 of the Food Safety and Standards Act of 2006.

3.381. *Statement from March 2023 meeting, in full.*[73] Paraguay is concerned 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 request India, both in this Organization and in New Delhi, to reconsider this policy as it is not consistent with its obligations in this Organization. We also echo the questions posed by Uruguay on the recent measures notified by India and their implications for the implementation of the Order of 21 August 2020.

3.382. The representative of Argentina provided the following statement. We appreciate Costa Rica's interest in Law No. 27.642 on the promotion of healthy eating and we reiterate that it is consistent with the rules contained in the TBT Agreement. At previous meetings of this Committee, Argentina has provided detailed explanations of the development and implementation process of this Law. In recent years, essential population studies were published in Argentina that allow for a closer characterization of the epidemiological situation relating to nutrition and food. This is characterized by ever-increasing consumption of ultra-processed products and an increase in

[73] G/TBT/M/89, para. 2.448.

malnutrition rates, especially through excess, in all social groups. The excess consumption of critical nutrients regulated by labelling is associated with increased cardiovascular and cerebrovascular diseases, obesity, diabetes, cancer and hypertension, among others, which are the cause of most deaths each year in Argentina. Furthermore, studies carried out in 10 countries, including Argentina, also concluded that the consumption of products containing excess critical nutrients according to the Pan American Health Organization/WHO definition (which has been adopted by the Law and its regulations in Argentina) is associated with significant non-compliance with WHO recommendations on the intake of these nutrients. Lastly, we reiterate our readiness to continue engaging bilaterally with the delegation of Costa Rica.

3.383. 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, there should be a logical connection between the proposed measure and the objective pursued, and in this case, beyond the answers provided by India so far, there appears to be no technical justification for the implementation of the proposed certification measure, taking into account the cited legitimate objective of ensuring the safety and wholesomeness of imported foods. In the light of this objective, we wish to reiterate that, in our opinion, this measure should be notified to the SPS Committee. We consider it fitting to recall, once again, 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. Furthermore, Uruguay would like to stress 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 SPS and TBT Agreements. Lastly, we wish to reiterate the questions posed by Uruguay in the March and April 2023 meetings of the SPS and TBT Committees and the Goods Council, echoed by Paraguay, with respect to the relationship between the measure referred to in this specific trade concern and the measure notified by India to the TBT and SPS Committees on 5 January 2023 (as documents G/TBT/N/IND/240 and G/SPS/N/IND/290, respectively), regarding the Draft Food Safety and Standards (Genetically Modified Foods) Regulations, 2022.[74] We remain attentive to any comments and replies of the delegation of India in relation to the questions and concerns of Members, as have been presented for over two years by numerous delegations in both Geneva and New Delhi.

3.384. In response, the representative of India provided the following statement. As on date import of GM foods are not allowed in India (as per Environment Protection Act, 1986 and FSS Act, 2006). Therefore, to ensure that only Non-GM food crops are imported into India, FSSAI has notified the requirement of Non-GM certificate to be accompanied with imported food consignment, which is only an assurance provided by the Competent Authority of exporting country that the food crops which are not approved by GEAC (Genetic Engineering Approval Committee) are not imported in India and importer has to provide the certificate as per the format notified by FSSAI. On similar lines, India has been issuing such certificates for its exports to other countries. Moreover, some countries have also established tolerance and traceability requirements for adventitious presence of GMOs, while others are in the process of developing or adopting legislation. The threshold for labelling of adventitious presence of approved GM material in non-GM grain varies from 0.9% (e.g., EU) to 5% (e.g., Japan).

3.385. Noting the restriction of GM foods in India, the tolerance limit for adventitious presence of GMOs at 1% is permissible in imported food crops and the same was notified vide FSSAI order dated 8 February 2021. Accordingly, import is permissible if the adventitious presence of GM content is

[74] "In this connection, we would like to recall that the Order of 21 August 2020, establishing the certification requirement for the importation of consignments of any of the 24 crops specified in its Annex, indicates in point 2 that this requirement is adopted to ensure that only non-GM food crops are imported into India while regulations relating to products subject to genetic engineering or modification are developed in accordance with Section 22 of the Food Safety and Standards Act of 2006.

The draft standard notified on 5 January 2023 refers in its recitals, *inter alia*, to Section 22 of the Food Safety and Standards Act 2006, which is the same as that referred to in the Order of 21 August 2020. In this regard, in line with the bilateral discussions on the margins of this meeting, we would like to request India to clarify the relationship between the two measures, if there is one, including whether or not the recently notified draft corresponds to the standard referred to in the Order of 21 August 2020.

If so, does this mean that the certification requirement under the said Order will cease to apply once the draft standard notified on 5 January 2023, as it stands or modified, enters into force? If not, could India inform this Committee of the status of development of regulations concerning products subject to genetic engineering or modification as provided for in Section 22 of the Food Safety and Standards Act of 2006?"

less than notified tolerance limit. Further, GEAC has so far not approved any of the crop varieties of Genetically Modified/Engineered origin listed on the Order mentioned above. The requirement of a Non-GM certificate for import of 24 food crops is an assurance required from Competent Authorities of exporting countries that the food crops exported to India are of Non-GM origin and GM-free. As on date, our several trade partners like, US, Australia, Canada, Turkey, Iran, China, Thailand and EU including Italy, Germany, France are already providing requisite certificate and trade is going on smoothly. FSSAI is open to interact with trading partners for discussing the said matter in order to facilitate the trade.

3.1.3.32 Republic of Korea - Revision of Safety Conformation Criteria for Textile Products for Infants, G/TBT/N/KOR/678 (ID 652[75])

3.386. The representative of the European Union provided the following statement. The EU would like to thank the Republic of Korea for its engagement on this issue. As agreed, we recently provided information to the Korean Agency for Testing and Standards (KATS) regarding the foreign conformity assessment bodies willing to become designated by the relevant Korean labs. Therefore, we hope that the Republic of Korea can assist in proceeding with this designation in a timely manner in order for the mutual recognition of test results to be arranged so that tests can be carried out close to production sites, thereby reducing the environmental costs of shipping the clothing to Korea for testing.

3.387. In response, the representative of the Republic of Korea provided the following statement. With regard to the safety conformation of Textile Products for Infants, Korea would like to inform the EU that the information the EU provided to the KATS (Korean Agency for Technology and Standards) has been forwarded to the relevant Korean testing labs, so that the labs can recognize what the EU hopes to achieve. 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 Korea informs the EU that once discussions between the testing laboratories for a contract have been made, the Korean government will faithfully fulfill its role under the Special Act on the Safety of Products for Children.

3.1.3.33 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[76])

3.388. The representative of the European Union provided the following statement. Although, the EU appreciates the deferment of implementation of QCO on wheel rims by six months, until 22 December 2023, the EU remains concerned about the strict mandatory conformity assessment procedures in place for product in question. The EU would like to reiterate its request to Indian authorities to consider preparing rules for international recognition of laboratories by the BIS, as foreseen by the legislation in place. This would speed-up audits and lower the cost of mandatory lab testing in a BIS recognised lab for foreign manufacturers. Given that the QCO on safety glass has already entered into force, the EU understands that India will not suspend it. However, we would like to stress that this matter remains an important trade deterrent for the EU wheel rims manufacturers exporting to India. This matter, therefore, remains a trade concern for the European Union and we will seek other channels of cooperation to work with India to further promote at least provisional acceptance of UN type approvals and markings.

3.389. In response, the representative of India provided the following statement. The Safety Glass (Quality Control) Order 2020 has been subjected to three extensions basis requests received, indicating that sufficient time has been granted to foreign and domestic manufacturers. Secondly, the concerns raised by EU have already been replied in the previous Committee meeting.

[75] For previous statements follow the thread under ID 652.
[76] For previous statements follow the thread under ID 649.

3.1.3.34 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[77])

3.390. The representative of the United States provided the following statement. The United States submitted comments on G/TBT/N/MEX/465/Rev.1 on 3 May 2022, and has not received a response. The United States remains concerned about the scope and implementation of the measure. Could Mexico provide a timeline for when it will respond to WTO Members' comments? 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. In November 2022, Mexico shared that the measure was in the final stage of review by Mexico's Ministry of Economy legal team. 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 all vegetable fat, and there are no relevant internationally accepted testing methods 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 the 2019 update to the NOM-223 cheese standard, with the NOM-223 cheese CAP versions developed through 2020–2021, and an expected 2022 update to the NOM-223 cheese standard?

3.391. 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? We request that Mexico provide an outline of the different roles that each Ministry will play in the monitoring, compliance, and verification activities listed in the draft measure. We continue to have several significant concerns and questions about this measure's scope and implementation and request that Mexico indefinitely delay implementation or implement no earlier than 1 July 2024.

3.392. The representative of Australia provided the following statement. Australia would like to reiterate its concerns stared at the last seven previous TBT Committee meetings 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. Like the US, 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 and at the TBT Committee.

3.393. 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.

3.394. In response, the representative of Mexico provided the following statement. With regard to NOM-223-SCFI/SAGARPA-2018, we wish to inform you that the competent authorities (Ministry of Economic Affairs and Ministry of Agriculture and Rural Development) are still in the process of analysing the 174 comments received from national and foreign interested parties during the consultation period. The Government of Mexico will be in a position to notify the delegations that raised this concern and all WTO Members once the above-mentioned analysis period concludes. This process will continue to be carried out in strict compliance with the obligations under the WTO TBT Agreement and in the free trade agreements to which Mexico is party.

[77] For previous statements follow the thread under ID 678.

3.1.3.35 Colombia – Good manufacturing practices of overseas production establishments, G/TBT/N/COL/242 (ID 697[78])

3.395. The representative of the European Union provided the following statement. The European Union would like to thank Colombia for its engagement in the WTO TBT Committee and for the extensive bilateral discussions. The EU understands that Colombia is currently in the process of amending the relevant Decree to remove the GMP certification requirement and welcomes this development. In this respect, the EU would be thankful for a confirmation of this understanding and for any further information on this process, notably on the envisaged timeline and content of amendments. The EU would like to thank again Colombia for their cooperation in this matter.

3.396. In response, the representative of Colombia provided the following statement. First, I would like to express our gratitude for the comments made on previous occasions and at this meeting. Second, I would like to highlight the work that has been carried out by the health authorities of Colombia and the countries concerned, with a view to clarifying the concerns raised regarding this measure. At the same time, consultations and meetings have been held at the national level to assess possible adjustments and seek alternatives to facilitate trade or relax the requirements. This is, of course, without prejudice to compliance with the sanitary conditions for the manufacture of alcoholic beverages. It should be noted that the process of adjusting the provisions is duly under way in accordance with the rules in force concerning the preparation, modification and issuance of technical regulations, led by our regulatory body, in this case the Ministry of Health. To conclude, we reiterate our willingness to continue working to clarify the comments made and suggest ways of overcoming this trade concern.

3.1.3.36 Mongolia - Draft Law on controlling the circulation of alcohol beverages, and fight against alcoholism, G/TBT/N/MNG/14 (ID 730[79])

3.397. The representative of the European Union provided the following statement. The EU would like to thank Mongolia for their reply regarding the possibility to affix tax stamps in a bonded warehouse in Mongolia before products enter the market. That said, it appears that no formal or public statement has been issued by Mongolia on this topic. Therefore, as operators need a formal confirmation in an official government document that confirms this option to affix tax stamps in a bonded warehouse, the EU would like to ask Mongolia to provide this legal certainty. Given the imminence of the entry into force of this measure on 1 July 2023, this official confirmation would need to be provided extremely quickly. If it is the case that there has been no change to the relevant legislation, we would be grateful to Mongolia if they could provide the link to the specific official government legislation (in Mongolian).

3.398. In response, the representative of Mongolia provided the following statement. In response to the EU's raised concerns, Mongolia would like to kindly inform that the adoption of the Law on Controlling the Circulation of Alcoholic Beverages and Combating Alcoholism of Mongolia did not result in any amendments to the Law on Customs of Mongolia. Consequently, matters concerning bonded warehouses are regulated by the provisions outlined in the Law on Customs, specifically Chapter Ten of said law. Please refer to the following link for the unofficial translation of this law: https://legalinfo.mn/mn/detail?lawId=209.

3.1.3.37 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[80])

3.399. 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 would like to thank India for postponing the entering into force of the three health certificates, until further notice as well as for providing a list of HS product codes associated to products/food categories. The EU would like to ask India to: Avoid the duplication of sanitary measures in and associated to the different certificates for the import of the same products, which are required by different competent authorities of India; Clarify the modalities related to audits to the exporting countries, inspections of facilities, questionnaires, regionalization, border checks and listing of establishments associated to all the

[78] For previous statements follow the thread under ID 697.
[79] For previous statements follow the thread under ID 730.
[80] For previous statements follow the thread under ID 780.

certificates, if and when these requirements will be made obligatory by any of the India authorities; and notify to the WTO TBT and SPS Committees the above-mentioned modalities and all future health certificates well in advance of the date of their entering into force, to ensure full transparency and timely follow-up by all the competent authorities, producers and exporters. Finally, the EU reiterates its availability to cooperate with the competent authorities of India, to enhance mutual understanding and avoid unnecessary and unjustified disruptions to trade.

3.400. The representative of Australia provided the following statement. Australia supports the concerns raised by other Members on this issue. Australia respects India's commitment to protect the safety standards for food products imported into India. Australia thanks India for providing clarification on the requirements of the certification order, including that a single certificate incorporating both FSSAI's and DAHD's requirements is acceptable, that certificate template components that contain duplicative commercial information and duplicative attestations with existing certification need not be included. Australia maintains a well-established, robust export system and is a source of reliable, wholesome, and safe agricultural exports. Australia's export system is underpinned by a strong regulatory framework enforced through compliance with Australia's export control legislation. This legislation provides trading partners with assurance that exported food products are free from harmful contaminants, are suitable for human consumption, and that importing country requirements are met. Australia is eager to continue working with India to negotiate mutually agreeable health certification for imports of Australian milk and milk products into India. Australia encourages India to consider an outcomes-based approach to health certification and take into consideration trading partners regulatory framework which, in Australia's case, provides the required assurance to FSSAI that India's import food safety standards are being met. As noted in previous statement Australia would appreciate India's assurance that existing health certification for milk and milk products, previously bilaterally agreed with DAHD, will continue to be accepted until certification negotiations are concluded.

3.401. The representative of Japan provided the following statement. Japan reiterates again its concerns 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 for the notification 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 the comments. Then, India has announced the extension of the date of implementation, and a specific date of implementation has not announced yet. Although Japan appreciates India's decision to extend the date of implementation, we still think that India should set sufficient transition period before the implementation of the Order in order to allow time for exporting Members to adapt their system to the new health certificate forms. 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.

3.402. The representative of Canada provided the following statement. Canada was pleased to learn that the implementation of Food Safety and Standards Authority of India (FSSAI) new certification requirements has been delayed until further notice, until India's competent authorities work to develop joint certificates. Canada notes a number of concerns with the new FSSAI certification requirements which reference Indian regulations, requirements and product standards. Canada strongly encourages India to streamline certification requirements and base requirements on international standards. In addition, Canada reiterates the need to provide sufficient time between the adoption and entry into force of these new requirements to allow time for trading partners to adapt. In closing, Canada looks forward to India notifying trade partners of the joint certificate and providing an opportunity to comment. Canada requests India notify the SPS Committee of the joint certificate given that India's proposed regulation covers food safety measures aimed at protecting human health and safety.

3.403. The representative of New Zealand provided the following statement. New Zealand thanks FSSAI for the interactive process that was undertaken to gain approval for the New Zealand certificates and supports their goal in ensuring India has robust food safety requirements. We would like to note that for future changes to certification requirements, consideration should be given to longer implementation periods, factoring in time to consider submissions on the relevant WTO notification, and time for countries to do any required assessment and implement changes to requirements accordingly. A minimum of six months, but preferably twelve months, would likely provide countries sufficient time for adequate implementation. Our exporters have also had some

issues with clearance by DAHD officials since this change and look forward to consolidated certificate requirements that meet India's food safety and biosecurity needs, while also facilitating trade. New Zealand recommends that DAHD and FSSAI processes be coordinated prior to any new food safety certification requirements to avoid duplication for no added food safety benefit.

3.404. In response, the representative of India provided the following statement. The requirement of sanitary 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 pursuance of the above and to envisage robust food safety and monitoring system, FSSAI has notified the requirement of Health Certificate to be accompanied with the imported food consignments of Milk and Milk products, Pork and Pork products, and Fish and Fish products. 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. The requirement was notified in WTO-TBT for comments/inputs from the Members. However, various concerns regarding the number of certificates and extension for implementation of the Health Certificate were received from the Member countries. Accordingly, considering the comments received from various trading partners, the requirement of Health Certificate has been deferred till further order.

3.1.3.38 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[81])

3.405. The representative of Costa Rica provided the following statement. Costa Rica wishes once again to express its concern regarding the Argentine regulation on the promotion of healthy eating, doing so in support of a systemic defence of the principles of the TBT Agreement relating to the adoption of measures based on scientific evidence and the harmonization of rules through the use of regulations issued by international reference organizations such as the Codex Alimentarius. Costa Rica is concerned by the lack of harmonization among the various food labelling standards and regulations, which has led to the proliferation of schemes with different content percentages for requiring a warning, thereby creating unnecessary barriers to trade. Costa Rica wishes once again to stress the importance of harmonizing food labelling schemes, on the basis provided by the Codex Alimentarius, and encourages other Members to actively participate in the discussions on front-of-pack labelling within this international reference organization. Costa Rica undertakes to maintain an open dialogue between both countries' delegations to the WTO, with the aim of exchanging communications and information relating to the new Argentine regulation.

3.406. In response, the representative of Argentina provided the following statement. We appreciate Costa Rica's interest in Law No. 27.642 on the promotion of healthy eating and we reiterate that it is consistent with the rules contained in the TBT Agreement. At previous meetings of this Committee, Argentina has provided detailed explanations of the development and implementation process of this Law. In recent years, essential population studies were published in Argentina that allow for a closer characterization of the epidemiological situation relating to nutrition and food. This is characterized by ever-increasing consumption of ultra-processed products and an increase in malnutrition rates, especially through excess, in all social groups. The excess consumption of critical nutrients regulated by labelling is associated with increased cardiovascular and cerebrovascular diseases, obesity, diabetes, cancer and hypertension, among others, which are the cause of most deaths each year in Argentina. Furthermore, studies carried out in 10 countries, including Argentina, also concluded that the consumption of products containing excess critical nutrients according to the Pan American Health Organization/WHO definition (which has been adopted by the Law and its regulations in Argentina) is associated with significant non-compliance with WHO recommendations on the intake of these nutrients. Lastly, we reiterate our readiness to continue engaging bilaterally with the delegation of Costa Rica.

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

3.1.3.39 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[82])

3.407. The representative of the United States provided the following statement. In August of 2022, the Department of Consumer Affairs, Legal Metrology Division, circulated a public consultation, titled: "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. At the March 2023 WTO TBT Committee meeting, India acknowledged the comments of the United States and industry stakeholders and indicated that the measure is being examined. We refer India to our previous specific comments raised in the November 2022 TBT Committee and welcome any updates India may be able to share. As we understand that the measure is now on hold, we have no further comments to raise in the Committee at this time. However, if India decides to move forward with this measure, we request that India notify a draft to the Committee, provide at least a 60-day comment period, and take any comments received into account before finalizing and adopting the measure. We thank India for its consideration of the US comments.

3.408. In response, the representative of India provided the following statement. The draft was circulated by Indian authorities inviting Public Consultation for declaring two or more prime constituents of the commodity on front side of the package with the Brand Name / Logo until 31 August 2022. The comments of US based industries were also received and are under examination. The provision is being considered in the interest of consumers and is applicable to all the industries viz. indigenous manufacturers and importers.

3.1.3.40 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])

3.409. The representative of Canada provided the following statement. Canada continues to be concerned with Panama's quality requirements for fresh potatoes, implemented in February 2020, which are having a direct impact on Canada's ability to export potatoes to Panama. Canada would like to refer to its previous intervention at WTO TBT meetings on this item and ask it to be included in the meeting record as the situation has not changed. Canada respectfully requests 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 continue to create unintended barriers to our mutually beneficial bilateral trade in agriculture. Canada would also welcome a bilateral meeting with Panama to discuss potential courses of action to enable Canadian exports of potatoes to resume.

3.410. In response, the representative of Panama provided the following statement. Panama thanks Canada for its comments and continued interest in this matter. I have taken due note of your concerns. Panama remains open to dialogue and to finding mutually satisfactory solutions. In the past, dialogue led us to extend the measure concerning onions. My capital is open to continuing the bilateral technical dialogue with Canada and all our trading partners. Chair, Panama reaffirms its commitment to transparency and reiterates that any update will be duly shared with and notified to this Committee.

3.1.3.41 European Union - Chlorothalonil (pesticide active substance), G/TBT/N/EU/625 (ID 579[84])

3.411. The representative of Costa Rica provided the following statement. Costa Rica wishes to reiterate this concern and refers to previous statements expressing its concern about the measure notified by the EU in document G/TBT/N/EU/625, which relates to the non-renewal of the approval of the active substance chlorothalonil. Costa Rica thanks the EU for its willingness to discuss agrochemicals policy, taking into consideration international foreign trade-related obligations and the agricultural and environmental policy objectives of the member countries of the international community. Costa Rica also reiterates its request and its commitment to leaving nobody behind in the implementation of its Green Deal policy.

[82] For previous statements follow the thread under ID 765.
[83] For previous statements follow the thread under ID 662.
[84] For previous statements follow the thread under ID 579.

3.412. 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 Health Regulatory 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 and watermelon, among other products.

3.413. 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 of MRLs. 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. We also ask it to 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.

3.414. The representative of Ecuador provided the following statement. Ecuador once again thanks Members for including this concern on the Committee's agenda and reiterates its support for this concern regarding the non-renewal of approval for use 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. It should be mentioned that the options for multi-site substances remain scarce as no new substitutes have been identified which are not also under review by the European Union, as is the case for mancozeb and metiram. The climate in Ecuador is tropical, so pests and their behaviour are different from those in the EU. 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 EU 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 huge impact on the banana sector in my country. This sector makes a substantial contribution in providing jobs for 2.5 million people. Exports of this product account for a significant share of the country's foreign exchange earnings and this equates to 2% of GDP. Therefore, Ecuador urges the EU to take into consideration this issue.

3.415. The representative of Colombia provided the following statement. This statement refers to STCs 763, 579 and 627, relating to the substances chlorothalonil, mancozeb, clothianidin and thiamethoxam. Colombia is aware of the importance of consuming foods free from excess pesticide residues in line with international safety recommendations. To this end, our health authorities are going to great lengths with the productive sectors to ensure that food meets these requirements and standards. However, the prohibition and subsequent non-renewal of the approval of active substances such as chlorothalonil, mancozeb, clothianidin and thiamethoxam is hitting our country's agricultural export sector hard. The search for alternatives to the substances that have been banned or whose approval is being modified necessarily requires time and investment, especially when potential alternatives are also becoming scarcer owing to the EU's changes to phytosanitary regulations as part of the Green Deal or the Farm to Fork Strategy, for example. In the non-renewal or modification of approval for active substances, it is essential to take into account processes and production methods in countries that could be affected. Failing to do so would violate the TBT Agreement, which stipulates that technical regulations must not be more trade restrictive than necessary. We therefore invite the European Union to support solutions that would allow our agricultural producers to continue meeting European demand for food, to the benefit not only of developing countries but also the multilateral trading system, which has already been hit hard by this and other measures.

3.416. In response, the representative of the European Union provided the following statement. As explained in detail at several previous meetings, the EU proposed not to renew the approval of

Chlorothalonil through Commission Implementing Regulation (EU) 2019/677[85], adopted on 29 April 2019 and previously notified to the TBT Committee. This was based on a peer-reviewed risk assessment carried out by a European member State (the so-called "rapporteur" member State) and the European Food Safety Authority. Several serious concerns were raised by the Authority, so that the approval conditions for the substance were not fulfilled. As regards consumer safety, EFSA identified a genotoxicity concern for residues to which consumers will be exposed. Following the non-renewal of approval decision and based on the fact that consumer health concerns were identified by EFSA, the EU prepared a draft Regulation lowering the Maximum Residue Limits (MRLs) for Chlorothalonil to the relevant limits of quantification. The draft Regulation was notified to the WTO/SPS Committee (G/SPS/N/EU/394) and published after its adoption as Commission Regulation (EU) 2021/155[86] of 9 February 2021. The EU wishes to emphasise that, although the substance chlorothalonil also meets the cut off criteria, decisions on MRLs in the EU are always based on a risk assessment and that this approach has been followed also for chlorothalonil. The new MRL values are applicable to all food products since 2 September 2021. Since then, there has been no further developments in the EU on this substance as no new data to support import tolerances 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 EFSA.

3.1.3.42 India - Air Conditioner and its related Parts (Quality Control) Order, 2019, G/TBT/N/IND/74, G/TBT/N/IND/110 (ID 598[87])

3.417. The representative of China provided the following statement. 1. China thanks India for extending the transition period of regulations such as QCO regulations on air conditioning. However, there are still a large backlog of factory inspections that cannot be carried out in time, and samples taken during on-site factory inspections need to be shipped back to India for testing, Chinese enterprises have great difficulties in obtaining BIS certification before the implementation of the regulations. China urged India to improve the efficiency of factory inspections by implementing factory inspections on Chinese manufacturers as soon as possible, or to further delay the implementation of regulations such as those on air conditioning and refrigeration equipments when factory inspections are not available or cannot be provided quickly. 2. China suggests that India could improve the transparency information on factory inspections and release information on factory inspection schedules timely to facilitate enterprises' production arrangements. 3. In order to accelerate factory inspections, China once again suggests that India could implement alternative measures, such as temporary factory inspection exemption for a limited period, remote factory inspections or inspections conducted by recognized third parties. 4. China appreciates India's efforts on improving its domestic testing capabilities and realizes that India has indicated that BIS can recognize overseas laboratories. But the way overseas laboratories get accredition is unclear and lacks transparency. China is not aware of any overseas laboratories that have been accredited by BIS. China urged India to provide open and transparent information guidelines for overseas laboratories to be accredited.

3.418. In response, the representative of India provided the following statement. BIS is not able to carry out preliminary inspection for Chinese manufacturers due to COVID-19 pandemic. Bureau of Indian Standards under its Laboratory Recognition Scheme (BIS LRS) grants recognition to outside laboratories for testing of products as per the relevant Indian Standards. The Laboratory Recognition Scheme is governed by provision under section 13(4) of BIS Act, 2016 and Rule 32 of BIS Rules, 2018. These statutory provision confers upon BIS, powers to recognize any laboratory in India or outside India for carrying out testing of samples in relation to Conformity Assessment and such other functions as the Bureau may assign to it.

3.419. Clause 12 of BIS LRS details the complete procedure of recognition of foreign laboratories. The decision regarding recognition of foreign laboratories will be taken by BIS taking into account

[85] 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.

[86] 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.

[87] For previous statements follow the thread under ID 598.

the MRA (Mutual Recognition Agreement) with the concerned nation. BIS LRS is available on BIS website www.bis.gov.in under "laboratory services" tab. As on date, there is no pending application from any laboratory located outside India seeking recognition from BIS in compliance to the provisions of LRS. The product certification schemes operated by BIS are governed by the BIS (Conformity Assessment) Regulations, 2018 notified by the Central Government. Presently, there is no provision to undertake virtual inspection towards product certification under these regulations.

3.1.3.43 European Union - Non-renewal of the approval of the active substance mancozeb, G/TBT/N/EU/712; G/TBT/N/EU/797, G/SPS/GEN/1494/Rev.1 (ID 627[88])

3.420. The representative of Kenya provided the following statement. Kenya reiterates her previous statement on this Specific Trade Concern. Kenya raised this as a Specific Trade Concern in the previous TBT Committee meeting and continues to have concerns over the same issue. Kenya takes note of the EU's response given in the March 2023 TBT Committee meeting non-renewal of the approval of the active substance mancozeb. The non-renewal of the approval of the active substance Mancozeb and EUs response on the restrictive use of Mancozeb under the EU Chemicals legislation (REACH) is likely to be discriminatory. This will restrict Kenya's products from accessing the EU market which is deemed to be inconsistent with Article 2.1 of the TBT Agreement. 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.

3.421. 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. 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. The proposed measure would be deemed to be in contravention of Article 12.3 of the TBT Agreement which requires that "Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing country Members, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Members". Kenya requests the European Union to consider the withdrawal of the Regulation as the measure is more trade restrictive than necessary.

3.422. The representative of Australia provided the following statement. Australia reiterates concerns with the EU's non-renewal of Mancozeb. There is limited availability for alternatives to Mancozeb so this decision significantly impacts trade. Australia emphasises the EU's hazard-based approach does not adequately assess risk of potential harm because it does not consider the level of exposure. Australia notes the EU's statement made in the previous meeting that the European Food Safety Authority (the EFSA) expects to publish its scientific opinion on dithiocarbamates in the first half of 2023. We welcome information on the EFSA's scientific opinion on concerns previously outlined. We also 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.

3.423. The representative of Costa Rica provided the following statement. Costa Rica wishes to reiterate its concern regarding the draft Implementing Regulation notified by the EU in G/SPS/N/EU/384, under which approval for the use of mancozeb would not be renewed. We support the statements made by the delegations that have joined as proponents of this concern.

3.424. The representative of Colombia provided the following statement. This statement refers to STCs 763, 579 and 627, relating to the substances chlorothalonil, mancozeb, clothianidin and thiamethoxam. Colombia is aware of the importance of consuming foods free from excess pesticide residues in line with international safety recommendations. To this end, our health authorities are going to great lengths with the productive sectors to ensure that food meets these requirements

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

and standards. However, the ban and subsequent non-renewal of the approval of active substances such as chlorothalonil, mancozeb, clothianidin and thiamethoxam is hitting our country's agricultural export sector hard. The search for alternatives to the substances that have been banned or whose approval is being modified necessarily requires time and investment, especially when potential alternatives are also becoming scarcer owing to the EU's changes to phytosanitary regulations as part of the Green Deal or the Farm to Fork Strategy, for example. In the non-renewal or modification of approval for active substances, it is essential to take into account processes and production methods in countries that could be affected. Failing to do so would violate the TBT Agreement, which stipulates that technical regulations must not be more trade restrictive than necessary. We therefore invite the European Union to support solutions that would allow our agricultural producers to continue meeting European demand for food, to the benefit not only of developing countries but also the multilateral trading system, which has already been hit hard by this and other measures.

3.425. 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. We therefore request that the entirety of the statement made by my delegation at the previous meeting be recorded in the minutes. I would like to reiterate that Paraguay and other Members have raised a series of questions about this and other measures. In Paraguay's case, these questions will be recorded in the minutes since they were mentioned in our statement at the previous meeting. We hope that the EU can provide full answers.

3.426. *Statement from March 2023 meeting, in full.*[89] There are some new developments that we would like to discuss, but have yet to receive answers to the questions we have submitted. This is the same statement that I delivered at the previous meeting, hoping for different results and full answers from the EU to the questions submitted in the SPS Committee and in this one. 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.

3.427. 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, as follows: - 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. With regard to these emergency authorizations, 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.

3.428. We see, for example, how many of the emergency authorizations for mancozeb are given for approximately the same annual period (roughly June to September or October), 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. 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 have 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. Here 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.¨

[89] G/TBT/M/89, paras. 2.223-2.227.

3.429. Furthermore, we have heard that, although emergency authorizations are granted by EU members, the EFSA reviews them if 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 the use of the substance was not properly justified. 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 MRL 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.

3.430. 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", who are also WTO Members in their own right and to whom we should address questions if we receive no responses. Lastly, 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.

3.431. 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 G/TBT/N/EU/712. Mancozeb is a substance whose use is approved for many different crops by the Brazilian Health Regulatory Agency, including soy. MRLs for soybeans in Brazil are set in 0,3 mg/kg. Around 11% of the soy produced in Brazil is exported to the EU. Therefore, restrictions on mancozeb 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 regrets that European authorities have not established transition periods that were adequate to the production cycle of the affected crops.

3.432. 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. Finally, Brazil would like to request any available updates on this matter, considering EFSA's expectation to publish its scientific opinion on MRLs for dithiocarbamates in the first half of 2023.

3.433. The representative of Uruguay provided the following statement. Mancozeb is an active substance that is authorized and routinely used in many countries, such as Uruguay, where it is used safely to control diseases and major pests in various products in the domestic fruit and vegetable sector, such as apples, pears and citrus fruits. It is particularly important for the control of apple and pear scab, which is the main disease affecting apple and pear production and is 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 to the limit of detection, without having any conclusive scientific evidence that substantiates such a decision in line with the SPS Agreement of the WTO. In this regard, we would appreciate an update on the status of the review process for these substances, including the predicted date for the presentation of the EFSA scientific opinion on dithiocarbamates, as well as the expected time frame for any notification to the SPS Committee regarding the relevant MRLs. In this context, like other

Members, Uruguay recalls the importance of taking due account of international standards, guidelines and recommendations, and scientific information produced within the framework of international standard-setting bodies recognized in the WTO, such as the Codex Alimentarius; the obligation to open consultation periods that may serve as effective instances of regulatory cooperation between Members; and the need to grant reasonable transition periods if an amendment to the MRLs is finally decided.

3.434. The representative of Ecuador provided the following statement. Ecuador thanks the delegations that have spoken before me for including this concern under the agenda item of this Committee. My delegation reiterates its concern regarding the non-renewal of mancozeb. We have already referred on previous occasions to the importance of this plant protection substance and its use for many strategic crops produced in Ecuador and the region, such as bananas, cocoa, and others. Our country remains concerned that there are currently no approved alternatives to mancozeb that are duly registered and equally effective as mancozeb. The case of this substance 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 rapporteur states of the European Union, 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.

3.435. 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 fungicide - without effective alternatives - would mean leaving producers of my country without immediate plant protection tools for implementing programmes for the management and control of black sigatoka. Accordingly, Ecuador calls on the European Union to consider alternative measures that are less restrictive to trade, to identify substitute substances that would enable existing trade to continue, to base its measures on conclusive studies, not only on the precautionary principle, and to establish adequate transition periods for the registration of alternative substances, in view of the current shortage of available pest-control tools.

3.436. The representative of Chile provided the following statement. The delegation of Chile is grateful for the opportunity to express that the fungicide Mancozeb is of great importance for Chilean agriculture and that there is no product of similar effectiveness and characteristics that can be used to replace it following the EU's non-renewal of its authorization. In view of the foregoing, we respectfully ask the EU to reconsider this non-renewal.

3.437. In response, the representative of the European Union provided the following statement. We have provided detailed explanations on this issue in previous TBT Committees. 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. For advice on alternatives to Mancozeb, the EU pesticides database[90] 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[91]), following the classification of the substance as CMR (carcinogenic, mutagenic or reproductive toxicant) 1A or 1B under that same Regulation. As regards maximum residue levels (MRLs), the EU would like to inform Members that EFSA – as is usual practice for MRL assessments – follows a risk-based approach. EFSA has recently published a new risk assessment[92] reviewing the MRLs for dithiocarbamates. This review takes into consideration residues of mancozeb along with those of other substances belonging to the same group of substances (dithiocarbamates) as they are reported under a common residue definition, as carbon disulfides (CS2). It also considers existing Codex MRLs along with import

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

[91] 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).

[92] https://www.efsa.europa.eu/en/efsajournal/pub/7987.

tolerances, while taking into account background levels of CS2 due to naturally occurring sulphur compounds. Based on EFSA's opinion, risk managers will commence discussions and regulatory work on the review of those MRLs in autumn 2023.

3.1.3.44 Australia - Maturation requirements for imported alcohol (ID 636[93])

3.438. The representative of Brazil provided the following statement. Brazil would like to reiterate previous interventions on Australia's proposal to amend current regulations dealing with alcoholic beverages, 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. Brazil regrets to bring this issue to the Committee's attention again. We first brought this matter up for discussion with Australia more than four years ago, in December 2019. Since then, Australia has not justified the inconsistency between its legislation and the TBT Agreement, given the fact that its customs and tax issues interfere with the definition of beverages and maturation requirements. Since 2019, Australia has held meetings involving many different government bodies, but it did not lead to any technical solution nor any signs of concrete evolution. Brazil would like to note that we also raised this concern in the Committee on Market Access, given that the absence of a timely and concrete response from Australia imposes a ban to the importation of non-matured cachaça. Brazil, therefore, would like to emphasize its request for Australia to make progress in its legislative process or in any other practical solution with the necessary urgency.

3.439. In response, the representative of Australia provided the following statement. We acknowledge the urgency of Brazil's interest in Australia's maturation requirements for certain imported alcohol products. We also thank Brazil for their proactive engagement with Australia on this topic and gratefully acknowledge Brazil's patience thus far. As explained in our previous statements, Australia established a whole-of-government working group in 2022 to consider trading partners' concerns regarding the maturation requirements for the importation of certain alcohol products into Australia. The working group is considering the legislative framework for the importation of certain unmatured alcohol products under section 105A of the Customs Act 1901 (Customs Act), and corresponding domestic maturation requirements contained in other legislation. Australia would like to reassure Brazil and the TBT Committee that it appreciates the importance of taking active steps to progress a solution to this issue.

3.440. Australia continues to work through the legislative complexities and stakeholder concerns associated with this matter to progress a way forward. Since the March TBT Committee, Australia has taken new steps, including updating Cabinet Ministers on the current status and urgency of the issue. Any legislative changes to section 105A of the Customs Act and any other possible changes to alcohol maturation requirements contained in other legislation need to be made in accordance with Australia's domestic regulatory reform processes. The Australian Government will notify the Committee of any proposed changes, including any implications for labelling requirements, in accordance with Australia's obligations under the TBT Agreement.

3.1.3.45 European Union - Withdrawal of the approval of the active substance alpha-cypermethrin, G/TBT/N/EU/770, G/TBT/N/EU/908 (ID 694[94])

3.441. The representative of Kenya provided the following statement. Kenya reiterates her previous statement on this STC where EU has proposed new regulations withdrawing the approval of the active substance alpha-cypermethrin. Kenya raised this as a Specific Trade Concern in the previous TBT Committee meeting and continues to have concerns over the same issue. Kenya takes note of the EU's response given in the March 2023 TBT Committee meeting and looks forward to the report of the review currently being conducted by European Food Safety Authority (EFSA).

3.442. The representative of Brazil provided the following statement. Brazil would like to express its concerns related to European notification G/TBT/N/EU/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

[93] For previous statements follow the thread under ID 636.
[94] For previous statements follow the thread under ID 694.

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 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 more than USD 1.1 billion in 2022. 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. Brazil regrets that the EU did not extend the approval of the active substance, which expired on 31 October. Such measure would have minimized the impact on Brazilian citrus producers. At the same time, European countries still approve "emergency use" of the same substance, therefore discriminating against imported products. Brazil would appreciate receiving any update on EFSA's review of MRLs for the whole group of cypermethrins.

3.443. The representative of Paraguay provided the following statement. We request that Paraguay's support and statement from the previous meeting of this Committee be put on record.

3.444. *Statement from March 2023 meeting, in full.*[95] 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, to reconsider its approach and to base its decisions on conclusive scientific evidence and real risk weightings, in accordance with international standards and principles.

3.445. In response, the representative of the European Union provided the following statement. In principle the EU would like to refer to its previous statements at the TBT Committee, which we made on the issue of withdrawal of approval of this substance. As regards Maximum Residue Levels (MRLs), a review of the whole group of cypermethrins is currently conducted by the European Food Safety Authority (EFSA). Existing Codex Maximum Residue Limits and Import Tolerances will be considered in this review. 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 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[96] on maximum residue levels of pesticides in or on food and feed of plant and animal origin.

3.1.3.46 European Union - Draft EU Batteries Regulation (implementation of the European Green Deal), G/TBT/N/EU/775 (ID 685[97])

3.446. The representative of China provided the following statement. On 26 January 2021, the European Union notified its latest regulation "Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020"to WTO. New regulation will upgrade the current battery control system from the" instructions "to" regulations ", to ensure that batteries on the EU market of become sustainable, high performance and safe in the entire life cycle. The new regulations make a comprehensive supervision to portable batteries, industrial batteries, automotive batteries and electric vehicle batteries. China raised concerns at the 86th-90th WTO/TBT meetings. The EU has stated that they would like to engage other Members in the policy-making process, but has not adopted other concerns at the 90th meeting. We would like to continue to raise our concerns on the share of recycled content at the 91st meeting. We support the EU's controls on batteries and waste batteries. Our industry also concerns on this regulation. With a view to facilitating our industry to understand this regulation and prepare the compliance in advance, China would like to raise concerns

[95] G/TBT/M/89, paras. 2.488-2.489.
[96] 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.
[97] For previous statements follow the thread under ID 685.

as follows: 1. China suggest EU to reduce the proportion of cobalt, lithium and nickel. China automobile industry has claimed the recycled proportion of cobalt, lithium and nickel is relatively high, which is quite strict before. Now this regulation has adjusted especially in the proportion of cobalt, lithium and nickel, for example, by 2030, from previous 12%, 4% and 4% to current 16%, 6% and 6%. China automobile industry still it is difficult to meet this requirement with the present technology. 2. With regard to the issue of "carbon footprint threshold setting", China still suggests EU should regulate the carbon footprint after the carbon footprint calculation method of battery products is unified, In addition, scientific and reasonable carbon footprint thresholds should be set according to carbon peak and carbon neutral targets in different regions and countries. and, China recommends EU disclose the progress of the development of carbon footprint calculation methods and let other Members join in the discussion on the development of carbon footprint calculation methods. 3. We would like to ask EU further explain the reasons for the large differences in the implementation time of different types of batteries, and propose to unify the implementation time of the carbon footprint of automotive power batteries, industrial batteries and LMT batteries. In consideration of the complexity of carbon footprint accounting, the implementation time should be postponed to 36 months after the entry into force of the law.

3.447. 4. China recommends EU further clarify the subject and specific implementation methods of due diligence obligations. 5. China recommends EU consider establishing a unified manufacturer registration and management system, allowing manufacturers to achieve recognition within the EU member states by registering in one member state (the country where the importer is located, i.e. the main importing country), rather than registering battery manufacturers individually in EU member states to promote trade facilitation. 6. China suggests EU implement the goal of recycling used battery in stages, and that manufacturers, recyclers, echelon utilization operators, and end-of-life vehicle disassemblers should jointly achieve this goal. 7. China asks the EU to clarify the testing items and basis for evaluating the health status of reused batteries or refer to the UN regulation UN R100 for testing. 8. China recommend EU further clarify the specific requirements for providing relevant information to waste management operators, such as how to provide the location of hazardous substances and under what circumstances, such as clearly referring to existing EU regulations such as ELV or REACH to avoid confusion among enterprises.

3.448. The representative of the Russian Federation provided the following statement. The Russian Federation would like to reiterate its statements made at the previous TBT Committee meetings with regard to the Regulation of the European Parliament and of the Council concerning batteries and waste batteries that we have been raising since June 2021. Since the beginning of discussion of this STC, the EU delegation have been requested to provide clarification on specific scientific justification of proposed measure, as well as the relevant international standards which had been the basis for the draft regulation. However, such requests remain unaddressed. On 18 January 2023, the EU's Council circulated the final compromise text of the proposal for the regulation. Unfortunately, draft regulation does not take into account concerns of WTO Members. We urge the EU to take into account questions and concerns raised by WTO Members during TBT Committee meetings in its further consideration of proposed regulation and to provide WTO Membership with specific scientific justification of proposed measure.

3.449. The representative of the Republic of Korea provided the following statement. Just like Korea conveyed its industry's concerns through an STC in the July 2022 TBT Committee meeting and a bilateral talk at the margin of the meeting, Korea is still concerned about the requirements on the removability and replaceability of portable batteries laid down in the EU Batteries Regulation. Specifically, first, the technical skills (levels) of the person or operator that is removing/replacing the batteries, second, the available tools in removing and replacing the batteries and third, the products to be exempted from the removability and replaceability requirements. We request that the EU reconsider the three concerns and relax the related requirements as they are stringent for the industry to comply with. For details, Korea would like to ask the EU to refer to our STC statements made in the July 2022 meeting, and Korea hopes to discuss these matters with the EU bilaterally in the future.

3.450. In response, the representative of the European Union provided the following statement. The EU would like to thank China for their comments on the proposal for an EU Batteries Regulation. The EU has taken good note of the comments by China, and proposes to follow-up bilaterally. The EU regulation on batteries was voted by the European Parliament last week and official publication is expected this summer. As for the timetable of the implementation of the work on carbon footprint, the work on batteries for electric vehicles is the most advanced, because a lot of work had already

been done by stakeholders in the past. The Joint Research Centre of the European Commission has recently published their recommendations for the delegated act, which will serve as input for the further process on the delegated act, along with feedback of stakeholders on it.

3.1.3.47 European Union - Chemical strategy for sustainability (implementation of the European Green Deal) (ID 690[98])

3.451. The representative of the Russian Federation provided the following statement. The Russian Federation would like to reiterate its concern on the European chemical strategy for sustainability. In December 2022, the European commission published the Recommendation for safe and sustainable chemicals, which contains classification of hazardous properties and their influence on human health and environment. However, the classification is based upon the REACH Regulation which lacks of laboratory and epidemiological data or the scientific justification. The EU keeps imposing unilateral trade restrictions under the umbrella of European green deal despite the rules of the WTO. None of the questions that have been asked in the Committee since June 2021 on that strategy have been answered. We urge the EU to provide responses on the questions raised during the previous TBT Committee meetings. Moreover, it is worrisome that the EU link fulfilment of its transparency commitments with the reasons not related to the WTO as they have been refusing to engage on the issue. Transparency is the important pillar of this organization. The EU acknowledged its importance on multiple occasions. It is unfortunate that the EU's actions run counter to its words.

3.1.3.48 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[99])

3.452. The representative of Kenya provided the following statement. Kenya reiterates her previous statement on this Specific Trade Concern. Kenya raised this as a Specific Trade Concern in the previous TBT Committee meeting and continues to have concerns over the same issue. 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 (Bodies) 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's only ISEG Halal Egypt that can certify exports from other countries. This is contrary to Article 2.2 of the TBT Agreement. It is also contrary to the principle of national treatment by restricting who can carry out Halal certification. This is contrary to Articles 2.1 of the TBT Agreement. This measure will be too expensive for Kenya's exports to the Egyptian market hence making Kenyan products uncompetitive. Kenya therefore proposes that Egypt considers mutual recognition of Kenyan Halal certification bodies in line with Article 6 of the WTO TBT Agreement. We await response on the proposal. We look forward to reviewing the standard once the new version is notified to the WTO TBT Committee.

3.453. 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 has noted that the requirement for dairy products was then suspended several times, most recently until 30 September, by the latest Addendum, as introduced on 16 June. We would like to appreciate this considerable level of flexibility of Egypt's authorities, which is very helpful to economic operators. The EU submitted written comments on 26 January 2022 and would welcome a reply by the Egyptian authorities. In this context we appreciate the Egypt's notification from August 2022, 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. Nevertheless, several 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 considered either.

3.454. In this context 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

[98] For previous statements follow the thread under ID 690.
[99] For previous statements follow the thread under ID 718.

establishments already certified by other companies is an unnecessary duplication and would lead to longer time to market and higher costs for consumers. The EU would like to ask Egypt to consider keeping the Halal certification and labelling voluntary for dairy products, 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. 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 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.

3.455. The representative of India provided the following statement. India joins other WTO Members in raising concerns with Egypt's new halal certification requirements for all imported food and beverage products. In the context of the Egyptian Standard ES 4249/2014 on General Requirements for Halal Food according to Islamic Sharia, India seeks detailed information concerning implementation of the same. Further, India seeks Egypt's reconsideration on the decision to grant the right to certify the compliance with halal requirements to a single entity, and requests Egypt to provide a system that would allow other certification entities to certify as well. In light of the currently prevailing challenges with the measure, India requests Egypt to delay the implementation until the challenges are resolved.

3.456. The representative of Canada provided the following statement. Canada continues to be concerned by Egypt's new halal certification requirements for all imported food and beverage products. While Canada understands Egypt's objective to ensure that Egyptian consumers are confident that they are buying and consuming Halal-certified products, we believe that such measures should not create unnecessary barriers to international trade or be more trade-restrictive than necessary to fulfil that objective. Canada welcomes Egypt's delayed implementation of the halal certification for dairy products to 30 September 2023. However, Canadian exporters require additional information and sufficient time to adapt to these new measures. The current lack of clarity surrounding procedures, fee structures, audit details, documentation requirements, and the specific implementation process is causing ongoing ambiguity and uncertainty. In light of these concerns, Canada refers to our previous statements made at this committee and urges Egypt to reconsider the implementation of this measure. The absence of a clear implementation protocol, coupled with unnecessary added cost and administrative burden further highlights the need for Egypt to reconsider this measure.

3.457. Canada strongly encourages Egypt to engage in open and transparent discussions with trading partners to share information, provide further clarification on the requirements associated with this new measure and to consider the impact it may have on trade. Canada also recommends that Egypt explore the establishment of a halal certification office in Canada to facilitate trade, a similar arrangement made in other member countries. Until these concerns are addressed, Canada respectfully requests that Egypt suspend the implementation of this measure. This would allow for the necessary dialogue and collaboration between both nations, fostering a conducive environment for trade and ensuring the smooth transition for Canadian exporters.

3.458. The representative of Australia provided the following statement. Australia thanks Egypt for ongoing bilateral communication and engagement on the implementation of new Halal certification requirements for food and beverage products of animal origin. Australia also takes this opportunity to note the importance and need for the continuation of open and transparent communication on these requirements within international forums to ensure mutual understanding and so Egypt can meet both its policy goals while ensuring measures are not more trade restrictive than necessary. Further to statements made at the TBT Committee meeting in March 2023, Australia respectfully requests further information on the processes and procedures which will be undertaken as part of ongoing facility audits of exporting slaughterhouses and processing factories – including dairy – set to be undertaken by IS EG Halal. Australia also requests that information of this nature be provided as part of a draft technical measure for notification to the WTO, ideally in the primary document and not as an addendum. Australia again notes it has provided written comments to TBT notification G/TBT/N/EGY/313 in January 2022 and would welcome a response from Egypt. Australia also 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 finalisation and publication. Australia welcomes ongoing discussion on the implementation of Egypt's new Halal certification measures.

3.459. The representative of the United States provided the following statement. While the US Government appreciates Egypt's ongoing and constructive efforts to respond to questions from its trading partners, the United States remains concerned about Egypt's implementation of its halal requirements for dairy products and the resulting uncertainty in the market. The United States thanks Egypt for the 16 June 2023 notification to the WTO TBT Committee informing Members of the extension on the implementation of the measure to 30 September 2023 of when milk and dairy products will need to be accompanied by a halal certificate. In our previous floor interventions and bilateral discussions, the United States communicated the need for additional information that would provide needed clarity for our exporters, allowing them to understand and comply with Egypt's measure for halal requirements for dairy products. However, we are reframing the questions into three specific requests to make it clear to Egypt as to what the United States requires. Until the information is provided, we again reiterate the need for Egypt to suspend existing halal requirements on dairy products.

3.460. First, the United States requests that Egypt publish an official technical regulation containing implementing procedures for all dairy products that require halal certification as a condition of import. While Egypt has deferred previous questions about implementation to IS EG Halal, a private certifier, details about fee structures, documentation requirements, production process requirements, test methods, etc., are the responsibility of the regulatory authority. We encourage the Government of Egypt to publish these details to ensure uniform implementation of this measure and to maintain halal integrity. Second, the United States requests that Egypt provide a list of which products must be halal certified. The United States notes that in Egypt's third addendum to its notification, G/TBT/N/EGY/313/Add.3, Egypt provided a list of HS codes for dairy products requiring halal certification. However, this Addendum 3 also states that Egyptian Standard (ES) 4249 is the basis for requiring halal certification. We understand that ES 4249 has been revised and lists that halal certification for dairy products with added animal fats or grease. The United States is aware that the sole halal certifier is requiring a halal certification for additional agricultural goods outside the scope of both the addendum and ES 4249. Given this discrepancy, the United States requests that Egypt publish a clear list of products that must be halal certified and notify it to the WTO TBT Committee if the scope is different to what has been previously notified. Lastly, the United States renews its request that Egypt allow overseas certification bodies to continue offering halal certification for products exported to Egypt. Having a multiplicity of halal certification companies increases halal assurance while lowering certification costs. Does Egypt have a timeline for when it plans to approve additional certification bodies? The United States thanks Egypt for its continued willingness to work with the United States and other trading partners to ensure that exporters have adequate information to understand and comply with its new halal requirements. The United States appreciates Egypt's responses provided during our bilateral exchange and looks forward to further regulatory cooperation.

3.461. The representative of New Zealand provided the following statement. New Zealand notes that a final halal standard has not yet been published or made available. New Zealand requests that Egypt provide a reasonable implementation period of at least 6-12 months once this has been consulted and notified to the WTO as a final standard to allow exporters time to understand and comply with the new standard. We also: register our expectation that any new requirements that accompany Egypt's new Halal standard, including for registration, auditing and labelling, be promulgated by the relevant Government Ministry, and request these are also notified to the WTO with sufficient time to enable Members to provide feedback, and for business to implement the new requirements. We invite Egypt to clarify the process for new halal certification bodies to be approved for certification of exports to the Egyptian market, in accordance with international best practice. New Zealand would note that allowing multiple, well-established certification bodies to certify products as halal will make Egypt's halal regulations less trade restrictive, and also reduce the impact of duplication and other unnecessary costs on consumers, help resolve supply chain issues, and promote Egypt's overall food security.

3.462. The representative of Switzerland provided the following statement. Switzerland continues to follow this matter with interest. We share the concerns expressed by other Members regarding the requirements for halal certification and refer to previous statements in this Committee. In

particular, we reiterate our call on Egypt to recognize foreign halal certification bodies and to clarify the criteria for the acceptance of foreign halal certificates. In order to prevent ambiguities and uncertainties, Switzerland also invites Egypt to publish clear guidelines for stakeholders on the specific implementation procedures.

3.463. The representative of Paraguay provided the following statement. Paraguay reiterates its concern and requests that its statement from the previous meeting be put on record.

3.464. *Statement from March 2023 meeting, in full.*[100] We thank the delegations of the United States of America, the European Union, India, Kenya and Canada for including this item on the Committee's agenda and we request that the support of Paraguay be recorded. While Paraguay shares Egypt's interest in providing its consumers with certainty regarding the purchase and consumption of halal-certified products, 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.

3.465. In response, the representative of Egypt provided the following statement. Egypt thanks the United States, the European Union, Paraguay, Switzerland, India, Kenya, Canada, New Zealand and Australia for their interest in this issue and their continued engagement on the matter, while recognizing Egypt's right to adopt the halal certification requirements, which we deem necessary and appropriate to achieve our legitimate policy objective yet remain consistent with our obligations under the TBT Agreement. Recognizing the comments that our trading partners raised in the last Committee meeting and in the bilateral meetings we had with them, Egypt would like to point out that since the introduction of the requirement with respect to milk and dairy products by General Organization For Veterinary Services (GOVS), Egypt has introduced a number of facilitating measures extending the time line to abide by the requirement for over a year now. This has provided the business operators an appropriate period of time to adapt to the set of requirements. It is also important to note that since its initial notification, Egypt has been clear that the certification body currently recognized by the General Organization for Veterinary Services is ISEG Halal. In fact, a lot of exporters have indeed approached ISEG Halal and issued the Halal certification successfully.

3.466. The TBT Agreement gave explicit regulation to all WTO Members to protect legitimate interest according to own regulatory autonomy. It is also important to clarify that the Egyptian standard ES4249 does not and shall not provide for any supervision requirements for a specific certification body." Egypt has notified an addendum G/TBT/N/EGY/313/Add.5 concerning an extension of the time period during which imports of milk and dairy products which are not accompanied by Halal certificate are allowed to enter into Egypt until 13 September 2023. Moreover, the relevant authorities are preparing a decision on the requirements for importing halal milk and dairy products, to clarify the points and issues raised in this respect. The decision shall clarify the scope of products and the conformity assessment procedures for issuing Halal certificates. I would also like to remind the Committee that Egypt has taken measures to ease the application of this decision giving particular attention to the considerations and interests of our trading partners.

3.467. It is worth noting, that we received specific questions from some Members, and we have provided answers and replies to many of those questions, and our colleagues in the capital are working on the remaining questions. We will be sharing those answers in due course in accordance with the terms and procedures of this Committee. Finally, I would like to stress that Egypt is committed to continue its bilateral exchanges on the matter with all interested trading partners and to take into account their concerns as appropriate and stress our commitment to the transparency requirements under the TBT Agreement.

3.1.3.49 Republic of Korea - Regulation for supporting low carbon solar module product (ID 744[101])

3.468. The representative of China provided the following statement. Effective on 13 July 2020, Korea's "Regulations on Supporting Low-carbon Solar Module Products", require Photovoltaic module suppliers to submit low-carbon certification qualifications. The audit agency is the Korea Energy

[100] G/TBT/M/89, para. 2.275.
[101] For previous statements follow the thread under ID 744.

Corporation and the New and Renewable Energy Center, under the Ministry of Trade and Industry of Korea. In accordance with Articles 5 and 12 of the mentioned Regulations, the total carbon emissions generated during the whole manufacturing stage of crystalline silicon solar photovoltaic modules at home and abroad were quantified and calculated. There are two types of carbon footprint certification: 1. Korean standard carbon emission coefficient measurement method; 2. Life cycle assessment method (LCA). But the coefficient factors of national electricity carbon emission for China used by the Korean side are seriously out of date and divorced from reality. On the other hand, the LCA certification method was adopted by Chinese enterprises, but no one has been certified. Chinese photovoltaic companies have submitted applications for more than two years, but no one has been certified, for unknown reasons. Due to the failure to obtain carbon footprint certification, the total sales of Chinese manufacturers in Korea have been reduced by nearly 200 million US dollars in the past two years, and the share in 2022 has been reduced by about 40% compared with 2021.

3.469. So, It is hoped that the Korean side will consider reasonable demands, and continue to urge the relevant Korean departments： 1. Adopt the latest coefficient factors of national electricity carbon emission released by the Ministry of Ecology and Environment of China for accounting purposes. 2. Conduct LCA audit in accordance with ISO standards, and publish the audit process, audit time, and standards. 3. Complete on-site factory inspection and audit as soon as possible, and provide a responsible response, do not take discriminatory measures before the audit results are announced.

3.470. In response, the representative of the Republic of Korea provided the following statement. Korea would like to thank China for its continued interest in the "Regulation for Supporting Low Carbon Solar Module Product" of Korea. Korea responded to China's concerns at the March and the July WTO TBT meeting in 2022, and at the November TBT meeting last year, Korea replied that if China could present more specific information on its concerns (e.g., the name and the numbers of internationally recognized standards that are relevant, actual cases of certification delays, instances where trade secrets or sensitive information are required to be disclosed unnecessarily, etc.), it would be possible to deliver a more detailed and meaningful answer to China. However, Korea has not received any comments bearing such substantive information from China. Korea asks for China's cooperation to address this issue in a constructive manner.

3.1.3.50 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[102])

3.471. The representative of China provided the following statement. On 11 November 2021, the European Union (EU) notified "Regulation of the European Parliament and of the Council laying down harmonized rules on artificial intelligence (artificial intelligence act) and amending certain union certain union legislative acts" (G/TBT/N/EU/850) to WTO, which regulates the definition, application, market access, penalties and other aspects of artificial intelligence technology. This regulation is the first AI legal framework in the EU, aimed at strengthening the EU's controls on the risks accompanying using AI technology, with a view to protecting the safety and fundamental rights of users and companies. Considering the importance of this Act to AI industry, we submitted our comments to the EU through the WTO/TBT Enquiry Point of China in January 2022, and received the EU's reply. We have also raised our concerns on this act at the 87th-90th WTO/TBT meeting and we appreciate the explanation and further clarification to meet our concerns. However, we still have hesitation concerning conformity assessment and penalties which are pretty core issues to us so we would like to raise concerns at this meeting.

3.472. We support the EU's governance on artificial intelligence, however, from not create the unnecessary trade barriers, in accordance with Article 2.2 of the TBT Agreement, China would like to raise concerns as follows： 1. We would like to highlight 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. We use the following example to illustrate our proposal: When a radio device is defined as an AI system, the device needs to comply with both RED and AI regulations; Conformity assessment of RED: with respect to the requirement set out in Article 3.2 of the RED, a conformity assessment involving a notified body shall be used, if such harmonized standards are partially applied or not applied or do not exist. It is clear to our industry. Conformity assessment of AI regulation: The product has applied all the harmonized standards or, where

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

applicable, common specifications referred to in Article 41. and the manufacturer of the product has the right to opt out of third-party conformity assessment. However, in accordance with the current draft regulation, for high-risk AI systems, to which legal acts listed in Annex II, section A, apply, the provider shall follow the relevant conformity assessment as required under those legal acts. 2. 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 appropriate. It is recommended to adjust the relevant requirements in accordance with Article 21 of (EU) 2017/2394. "up to X % of the trader's annual turnover in the Member State or Member States concerned."

3.473. In response, the representative of the European Union provided the following statement. The EU would like to thank China for continued interest in this measure. The EU would like to refer to its previous replies to comments received on this measure. With regard to the Article 43.3, the EU would like to indicate that article specifically clarifies the procedures to be followed for high-risk AI systems covered by Annex II.A. In particular, it requires the provider to follow the relevant conformity assessment as required under those legal acts. It also specifies that where the legal acts listed in Annex II.A, enable the manufacturer of the product to opt out from a third-party conformity assessment, provided that that manufacturer has applied all harmonized standards covering all the relevant requirements, that manufacturer may make use of that option only if he has also applied harmonised standards or, where applicable, common specifications referred to in Article 41, covering the requirements set out in Chapter 2 of the Title - High Risk AI Systems. The penalty system in the notified draft follows the model of the New Legislative Framework system but also of other existing legislation, such as the General Data Protection Regulation (GDPR). This implies that member States remain responsible for laying down the rules on penalties, including administrative fines, applicable to infringements of the notified draft. However, some harmonization elements are provided, e.g. on the capping and types of infringements associated. The reference to the "total worldwide annual turnover" is consistent with already applicable legislation in the field of data protection (GDPR). While 2% is the maximum capping for the supply of incorrect, incomplete or misleading information to notified bodies and national competent authorities, it is up to the member States to foresee in their national laws the amount applicable to the relevant infringement. Finally, the EU takes note of the request on the transition period although it notes that it considers the transition period sufficient for the industry to adjust to the new legislation.

3.1.3.51 Morocco - Conformity assessment, G/TBT/N/MAR/28 (ID 779[103])

3.474. 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 bilateral discussions and 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 whether the product is imported or manufactured locally. However, 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 and could amount to a discrimination. 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. For some products these checks are done at origin, for some others in Morocco upon arrival. Could Morocco please explain the rational between the choice for putting a product under one or the other procedure?

3.475. The Moroccan conformity assessment procedure for the respective products create an unnecessary obstacle to international trade as the procedures seem 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

[103] For previous statements follow the thread under ID 779.

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. Also sometimes exporters got contradictory information from the conformity assessment bodies mandated to undertake assessments; and some were requested to submit sensitive commercial information. 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 standardisation 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 further bilateral discussions in order to clarify the issue.

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

3.1.3.52 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[104])

3.477. The representative of the European Union provided the following statement. The EU continues to support India's efforts to improve safety of its electric vehicles' fleet and passenger safety. 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 has earlier voiced its strong concerns regarding the proposed revision 2 of the AIS 038 standard, which significantly deviates from the internationally agreed rules, i.e. UN GTR 20. The EU appreciates that Indian authorities have since shown a certain degree of understanding for EU concerns. According to our understanding, the Automotive Research Association of India (ARAI) organised a number of exchanges with the representatives of the EU automotive industry, with a view to harmonise AIS standards with UN-R100 and GTR 20, remove design restrictive requirements, align legal requirements and specify them clearly for common interpretation/ applications (risk of non-conformity). As a result, ARAI prepared a proposal amending the AIS standards. The EU also welcomes that MoRTH initiated an internal review within the special task force, based on the ARAI proposal, however, it would be useful, if MoRTH already considered the possibility of meeting the stakeholders and anticipate the entry into force of the revised requirements. The EU requests India, in the context of an ongoing review of the AIS standards, to continue considering the impact of lead times imposed on the industry.

3.478. In response, the representative of India provided the following statement. India would like to furnish the following comments in addition to the detailed comments provided in the previous meeting: The Committee of Experts analysed the standard AIS-038 (Rev 2) with respect to the representations received from the German Association of Automotive Industry and Korean Industry. After having examined the proposed modifications in the standards and the intended purpose of the clauses of the standard, the following recommendations/suggestions have been considered for acceptance:- (i) Committee recommended that any technical solutions to prevent circulating currents leading to hazardous situations may be accepted. This could include active paralleling as well. (ii) On the suggestions of the Sufficient cell-to-cell spacing Committee recommended that the Sufficient cell-to-cell spacing distance or other suitable alternative technologies should be maintained for effective heat transfer from the cell to isolate the cells in case of thermal runaway in REESS. (iii) Committee recommended that BMS shall comply with EMC requirements as per AIS 004 Part 3 or AIS 004 Part 3 Rev 1 as applicable at ESA or vehicle level. (iv) Committee recommended that Cells used to make REESS shall be certified as per as per IS 16893- Part 3 by NABL or an internationally accredited lab or by a testing agency notified under CMV Rule 126. (v) Committee recommended that REESS with higher than 95% SoC shall be tested for water ingress protection IP X7 as per IEC 60529. There shall be no fire or explosion during IP X7 testing of REESS. Alternatively, an immersion into water test can be performed as per ISO 6469-1:2019. (vi) Committee recommended that charge/discharge cycling shall be at C/3 (as mentioned in the standard) or at a different current suggested by the supplier as per IS17855:2022.

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

3.1.3.53 India - Amendment to notification on mandatory testing and certification of telecommunication systems (MTCTE) – Phase III & IV, G/TBT/N/IND/229 (ID 760[105])

3.479. The representative of China provided the following statement. To avoid unnecessary obstacles to international trade, China suggests India: (1) to delete this clause and recognize test results/reports issued by accredited laboratories in all ILAC signatory countries; (2) to provide the scientific basis for the threat to national security posed by the use of laboratory testing reports recognized by ILAC signatories from non-border sharing countries.

3.480. In response, the representative of India provided the following statement. The para 5 of the Amendment notification to MTCTE Phase III & IV dated 31 January 2022, provides "Test reports/results issued by labs accredited by ILAC signatories from non-border sharing countries will only be accepted." In this regard, it is submitted that presently the test reports/results issued by labs accredited by ILAC signatories has been accepted only for "Technical Parameters" of the Essential Requirements (ERs) as a relaxation to the MTCTE Procedure. The said relaxation is reviewed from time to time, and an extension is given considering all the aspects, including the availability of Labs in India. As of date, the said relaxation is valid up to 30 June 2023. The above-mentioned interim provision in Para 5 of the referred MTCTE amendment notification dated 31 January 2022 addresses the unavailability of the lab in India. The interim provision in Para 5 of the MTCTE amendment notification dated 31 January 2022 has been introduced to ensure that telecommunication equipment used in India does not pose a threat to national security. The MTCTE scheme mandates that equipment undergoes testing and certification to evaluate its ability to withstand cyber-attacks, prevent unauthorized access to data, and safeguard the integrity and confidentiality of communications. Given the crucial role of the telecommunications sector in India's infrastructure and economy, any security breach could have significant consequences for national security and stability. Hence, the MTCTE scheme is aimed at safeguarding India's essential infrastructure and economy from potential cyber threats by ensuring that telecommunication equipment used in the country meets specific technical standards and security requirements and does not endanger national security.

3.1.3.54 Malaysia - Revision of the Regulations on Alcoholic Beverages in Food Regulations 1985, G/TBT/N/MYS/114 (ID 793[106])

3.481. The representative of Japan provided the following statement. Japan understands that the amendments to the Food Regulations 1985, which were notified to WTO Members by Malaysia on 27 October 2022, were triggered by the health damage of methanol poisoning, and these amendment regulations are intended to provide appropriate information by labelling and to ensure consumers' health and safety. We appreciate the flexibility that Malaysia has shown in the amendment regulations for alcohol beverages with respect to lowering minimum alcohol content of "Rice Wine" and "Samsu" which are including Sake and Shochu, respectively. However, Japan continues to have strong concerns that there is no category that includes liqueur products with less than 17 percent alcohol content in Malaysia, which is not consistent with "Codex category" referenced as the international standard. Even if Malaysia lowers minimum alcohol content of Liqueur to 15 percent, there would still be no category under which liqueur products with less than 15 percent alcohol content would fall, without simultaneously organizing the category of Liqueur, including prepared cocktails such as mixtures of liqueurs. Under this circumstance, it is not possible to import low-alcohol liqueur products into Malaysia.

3.482. Continuing to maintain the situation where Malaysia has no applicable category of liqueur products with less than 15 percent alcohol content would be more trade restrictive than it achieves legitimate objectives. Thus, this measure may conflict with the Article 2.2 of the TBT Agreement. Malaysia might explain that banning low alcohol products of liqueurs prevents easy access to alcohol. However, Japan supposes that even if Malaysia delete or relax the lower limit of alcohol content of liqueur, there would be a shift from higher alcohol products to lower alcohol products, rather than an increase in overall liqueur consumption. As a result, it would contribute to reduce harmful use of alcohol. Therefore, Japan recognizes that Malaysia cannot justify the lack of an applicable category for liqueur products with less than 15 percent alcohol content, which could be a trade barrier. In order to solve this trade issue, Japan strongly requests Malaysia to delete the lower limit of alcohol

[105] For previous statements follow the thread under ID 760.
[106] For previous statements follow the thread under ID 793.

content of liqueur. If Malaysia cannot do so, minimum alcohol content of Liqueur should be sufficiently lowered, for example, to 3 percent alcohol content.

3.483. The representative of the European Union provided the following statement. The European Union would like to thank Malaysia for the notification G/TBT/N/MYS/114 of 27 October 2022 on amendment to Regulations 361 to 368A and 387 and insertion of a new Regulation 384A to Food Regulations 1985. The EU provided its comments on these legislative amendments in December and Malaysia replied at the end of January 2023, for which we would also like to thank Malaysian authorities. Nevertheless, having thoroughly studied Malaysian document, we still would like to ask Malaysia for concrete information concerning several issues the EU had raised in its comments. Therefore, we have recently, on 12 June, sent our reaction to Malaysian replies. We are interested to know more on alcoholic range and on permitted preservatives and food conditioners for wine and on definition of liquors, sloe gin and rum.

3.484. We have also been informed that Malaysian authorities recently started a supplementary review of the legislation in question and there seem to be positive signals, as regards considering comments from international partners. The EU very much appreciates this latest development and is waiting for official information from our Malaysian colleagues. Additionally, we highly appreciate the recent unblocking of shipments of alcoholic beverages which were held up in Malaysian ports. By that time, we would like to reiterate our existing concerns, as follows: On wine: A maximum limit at 15% vol. for wines would contravene major wine producing countries' legislation, often based on the recommendations adopted by the International Organisation of Vine and Wine (OIV). For liqueur wines, the OIV code reads that it is a product with acquired alcoholic strength above or equal to 15% and below, or equal to 22%.

3.485. Therefore, unless there are objective justifications for such deviations, the EU is kindly asking the authorities of Malaysia to align its rules with international practices, in line with the standards and definitions the OIV. As regards the definition of liqueurs, the requirement that they must not contain less than 17% of alcohol is particularly problematic. This is not in line with international practice: under most national legislative frameworks for spirits, products with an ABV of 15-17% can be defined as liqueurs if they meet the other criteria in terms of ingredients and production practices. According to the EU legislation on spirit drinks, the corresponding minimum threshold is 15% (with an exception for egg liqueur, whose minimum required ABV is 14%). Under the current conditions, it seems that it will be impossible to import to Malaysia liqueurs with an ABV lower than 17%. Therefore, we would like to ask Malaysian authorities to reconsider their position and to align the rules with international practice.

3.486. The EU regrets that the absence of a general standard for sloe-aromatised spirit drinks category, which leads to the prohibition to sell such products, and invites Malaysia to consider amending the Food Regulation 1985 to include such standard. The fact that sloe-aromatised spirit drinks do not currently fit into Regulation 383 for gin of the Food Regulation 19895, due to different specification, also points to a more generic issue of the absence of a specific generic "catch-all" spirit drinks standard for those spirit drinks. These drinks do not fit into any specific standards however, they comply with generic rules (e.g. minimum ABV, based on distilled alcohol of agricultural origin). The EU would like to invite Malaysia to consider adding such a generic "catch-all" spirit drink standard. Concerning sloe gin, given there is no proposed definition in the relevant Regulation, EU would like to ask for confirmation that products of an ABV between 25% - 37% can be marketed as sloe gin in Malaysia.

3.487. In response, the representative of Malaysia provided the following statement. Malaysia thanks the European Union and Japan for their continued interests in the Ministry of Health's proposed amendments to the regulations 361 to 386A and 387 as well as the insertion of a new 384A regulation to the Food Regulations 1985. As we have explained in the previous TBT Committee meeting, the current notification involves proposed amendments to the Food Regulations 1985 on specific requirements of alcoholic beverages in relation to the alcohol content, the addition of other ingredients, the use of food additives and labelling requirements. The purpose of the amendments on all provisions of food additives for alcoholic beverages is to harmonise the food additive requirements with the Codex General Standard for Food Additives (GSFA, Codex STAN 192-1995), in line with subregulation 19(2) of the Food Regulations 1985. On this note, the conditions under which food additives may be used in alcoholic beverages can be directly referred to GSFA, Codex STAN 192-1995. For record, the deadline for comments on this notification was 26 December 2022. Malaysia thanks Members who provided their comments and proposals within the stipulated timeline.

The regulations of all food commodities under the Food Regulations 1985 are revised systematically based on the implementation of the five-year review framework. This review is carried out according to the schedule and timeframe that have been established based on certain commodity groups. For alcoholic beverages, announcements requesting for any proposed amendments were made in 2019 through the relevant website. During that period, interested parties may submit any proposed amendments or new proposed regulations related to alcoholic beverages to the Ministry of Health for consideration. These exercises were completed in 2021, and the proposed amendments are now being gazetted.

3.488. Turning to the concerns raised by Japan, Malaysia would like to stress that we prioritize the Codex standard as the main reference in the development of standards requirements under the Malaysian Food Regulations 1985. We wish to also emphasize that there is no specific Codex commodity standard related to alcoholic beverages prescribed in the Codex standards. The food category in the Codex GSFA only states the definition of food categories and requirements of food additives for alcoholic beverages. According to the notes on food category system in the GSFA, the Codex food category descriptors are not to be legal product designations nor intended for labelling purpose. In this case, its applicability to Malaysia is depending on the provisions in the Malaysian Food Regulations 1985. On Japan's request for Malaysia to lower the minimum alcohol content of liqueur to for example 3%, we wish to reiterate that the review exercises were completed in 2021. Malaysia did not receive any proposal or application regarding new category of alcoholic beverages from Japan prior to the completion of this process. This proposal was only recently highlighted by Japan to Malaysia's relevant authority in April 2023, well after the deadline of the commenting period of our notification.

3.489. Hence, in order for Malaysia to consider and review any new proposal, written application with supporting documents must be submitted through the proper channel for due process. We have conveyed similar message to Japan bilaterally in Kuala Lumpur. Now on the additional comments by the EU dated 12 June 2023 concerning alcoholic range of alcoholic products involving wine, liqueur and sloe gin, we wish to underscore that our response have been emailed to the EU's competent authority on 15 June 2023. We hope that the EU would review these responses positively. Nevertheless, with regard to the EU's comment on the possible need to add a "catch-all" residual category of alcoholic beverages which do not fit in the classic definitions of liqueur, whisky, vodka, tequila etc., we wish to reiterate that any new proposal would need to be submitted to our competent authority for review and the necessary due process. In closing, we would like to stress that the final draft of amendments to the regulations of alcoholic beverages are currently being gazetted. We have taken into consideration the feedback and comments received from Members, including from the EU and Japan, as part of the gazettement process. For the benefit of all trading partners, we wish to expedite this process that started in 2019 where all interested parties were invited to provide comments or suggestions. Until the proposed amendments are gazetted and entered into force, the existing regulations under the Food Regulations 1985 will continue to be applicable. It is of Malaysia's utmost interest to ensure smooth flow of trade with trading partners and we remain ready to facilitate the importation of goods into Malaysia, in line with Article 2 of the TBT Agreement. Moving forward, Malaysia welcomes further bilateral dialogues and engagements with Japan and the European Union to address the concerns raised. We kindly seek your understanding and cooperation on this matter.

3.1.3.55 European Union - Draft Commission Delegated Regulation amending Regulation No. 1272/2008 as regards hazard classes and criteria for the classification, labeling and packaging of substances and mixtures, G/TBT/N/EU/926 (ID 789[107])

3.490. The representative of China provided the following statement. According to Article 2.2 of the WTO/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". (1) China suggests that the EU provide further test validation methods for "endocrine disrupting property for human health" and "endocrine disrupting property for the environment", in order to enable stakeholders to better determine whether a substance or mixture belongs to the two new categories of endocrine disruptors, and avoid trade disputes. (2) Considering a short application time can easily lead to a failure of regulation enforcement, China proposes to extend the application time for the new substances to 36 months.

[107] For previous statements follow the thread under ID 789.

3.491. In response, the representative of the European Union provided the following statement. The European Union thanks The People's Republic of China for its interest in the Regulation adopted by the EU Commission on the introduction of new hazard classes for endocrine disruptors for human health and environmental hazards (endocrine disruptors, PBT, vPvB, PMT and vPvM[108]). It should be published soon. The new hazard classes and criteria are the result of in-depth scientific discussions with experts from EU Members and stakeholders representatives. In parallel with its adoption at EU level, the EU is co-ordinating the discussions on the inclusion of these hazards in the started Globally Harmonized System of Classification and Labelling of Chemicals (GHS) in the framework of the United Nations. The EU very much hopes that it can count on the People's Republic of China's support to address the growing concerns of citizens and scientists on endocrine disrupting chemicals and those with long lasting effects in the environment.

3.492. Regarding endocrine disruptors and PBT/vPvB criteria, the EU largely builds on existing criteria in other EU legislation such as REACH, the Plant Protection Products Regulation and the Biocidal Products Regulation. Only the PMT and vPvM criteria are really new. Guidance is under development and will cover all new hazard classes. It will be available before the end of the transitional period of 24 months in order to ensure that suppliers would be able to assess if their substances or mixtures fulfil the criteria for classification as an endocrine disruptor for human health or the environment. This guidance will also list all test methods, including in vitro ones, that could be used to classify substances as endocrine disruptors. The new hazard classes will be included in Annex I to CLP, together with the other hazard classes and criteria. Based on these criteria and for some prioritised substances, the EU will develop harmonised classification and labelling dossiers and companies will have to classify their substances and mixtures according to the new criteria. The list of substances China refers to is presumably the Table with the harmonised classification and labelling entries in Annex VI to CLP. Substances are included there after a long and thorough scientific process, hence the EU would not be able to provide such list until that has been achieved.

3.493. As to the concerns raised regarding the scientific basis for classification as PMT and more specifically the claim that the P and M criteria would contradict each other, please note that we do not see any contradiction between P and M properties. To the contrary they are complementary. Mobility does not mean that a substance disappears, but that it migrates, hence it can be mobile and persistent at the same time. In addition, the criterion for persistency is not limited to the soil compartment, but covers the aquatic compartment as well. Both criteria need to be fulfilled cumulatively to warrant classification as PMT, in addition to being toxic. If a substance is toxic and only mobile or only persistent, it would not be classified as PMT. As to the calculation method for mobility, please note that the log KoC criterion which is one of the elements to be taken into account as part of an overall assessment weighing all available evidence and using expert judgment. It would not exclude taking into account e.g. results of leachability and monitoring studies relevant to identify M/vM substances. The guidance will provide explanation on how to use additional information to log Koc to assess mobility of substances. With regard to the application time for substances not yet placed on the market, please note that the text has been revised and extended to 24 months. For substances already on the market, the deadline remains 42 months. Those transitional provisions should allow suppliers sufficient time to adapt to the new rules. The EU reiterates its commitment to act in full transparency and keep Members duly informed about further developments.

3.1.3.56 India - Refrigerating Appliances (Quality Control) Order, 2020, G/TBT/N/IND/173 (ID 671[109])

3.494. The representative of China provided the following statement. According to Article 5.1.2 of the WTO/TBT Agreement, "conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade,": (1) It is recommended that Indian adopt international mainstream practices and choose to recognize/entrust overseas (Chinese) related institutions. The recognized/entrusted institutions can conduct factory inspection, testing, and other work to improve the efficiency of certificate issuance. (2) If the relevant overseas (Chinese) institutions have not been reviewed, recognized or commissioned, it is recommended to resume arranging factory audits for Chinese manufacturers as soon as possible to ensure that ISI certification for Chinese manufacturers can proceed normally; (3) Given the long

[108] PBT stands for Persistent, Bioaccumulative and Toxic properties, vPvB stands for very Persistent and very Bioaccumulative properties, PMT stands for Persistent, Mobile and Toxic properties, vPvM stands for very Persistent and very Mobile properties.

[109] For previous statements follow the thread under ID 671.

cycle of ISI certification, resuming factory audits in the second half of 2023 may still result in the inability to complete ISI certification before 1 January 2024. It is recommended that India further postpone the implementation of the Refrigerating Appliances (Quality Control) Order, 2020.

3.495. In response, the representative of India provided the following statement. The standards are chosen after due stakeholder consultation, including industry associations. As per the note in QCO notified in the gazette, "the latest version of Indian Standards including the amendments issued thereof, as notified by the Bureau of Indian Standards from time to time, shall apply from the date as notified by the Bureau". The QCO was notified on 10 December 2020 with an implementation date of 1 January 2022, thus providing sufficient time for the industry to prepare.

3.1.3.57 European Union - Amendment of the authorisation for the active substance sulfoxaflor, G/TBT/N/EU/853 (ID 792[110])

3.496. The representative of Brazil provided the following statement. Brazil would like to refer to the European Union's notification G/TBT/N/EU/853 and to the Commission Implementing Regulation (EU) 2022/686, restricting the use of sulfoxaflor to indoor uses only in order to protect bees. Sulfoxaflor is a priority crop protection tool used by Brazilian growers of orange. This industry plays an important role in generating jobs in the countryside, and exports of orange juices to the European market represented more than USD 1.1 billion in 2022. Sulfoxaflor is used to control 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. Considering these circumstances, Brazil would like to express its concern that, even though the EU has assured that "the measure does not lead to any immediate disruptions of trade in agricultural goods", we may suffer that effect eventually, as the EU has informed that "separate action will likely be taken on MRLs".

3.497. Brazil, therefore, would like to reiterate that, when considering measures involving MRLs, a solid risk analysis, consistent with the Codex Alimentarius' recommendations, will be important to ensure transparency and predictability in the regulatory process. Brazil is concerned, furthermore, that, as in other cases, the EU would seek to avoid a supposed transfer of adverse effects on bees from food production in the EU to food production in non-EU countries. In this case, regulators should consider the variety of local conditions, including climate, soil and the different needs and challenges posed by agricultural production in each country. In Brazil, the use of sulfoxaflor has been approved by relevant authorities after rigid technical procedures, including an assessment by the Brazilian Institute for the Environment that considered the effects of the substance in bees. Brazil believes, moreover, that reductions of MRLs on such basis go 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 supposedly protecting the environment in third countries. We understand that, as they have extraterritorial effects, such measures go against the rules and jurisprudence of the multilateral trade system. Brazil would highly appreciate if the EU could provide further clarifications on the proposed measure and take these comments into consideration in the regulatory process.

3.498. In response, the representative of the European Union provided the following statement. The EU notified the draft Commission Implementing Regulation amending the conditions of approval of the active substance Sulfoxaflor on 17 November 2021 (G/TBT/N/EU/853), based on the evaluation of confirmatory data, as required in Regulation (EU) 2015/1295 approving its use in the EU. On 28 April 2022 the European Commission adopted the Commission Implementing Regulation (EU) 2022/686 restricting the use of sulfoxaflor to indoor uses only. The conclusion is based on a risk assessment (peer-reviewed at EU level under the lead of the European Food Safety Authority-EFSA). EFSA concluded risk to bees is low when plant protection products containing Sulfoxaflor are used in permanent greenhouses. The measure therefore aims at restricting the conditions of approval of the active substance Sulfoxaflor to uses only inside permanent greenhouses in order to protect bees. In line with Article 3 of the Regulation 2022/686, EU member States had to withdraw, where necessary, or amend, by 19 November 2022 at the latest, authorizations for plant protection products containing sulfoxaflor as an active substance. Furthermore, according to Article 4 any grace period granted by EU member States (in accordance with Article 46 of Regulation (EC) No 1107/2009 for marketing and use of existing stocks) expired by 19 May 2023. The EU would like to re-assure that the measure does not lead to any immediate disruptions of trade in agricultural goods, as it

[110] For previous statements follow the thread under ID 792.

does not amend MRLs. Separate action will likely be taken on MRLs, following the expiry of all grace periods for stocks, and a separate notification will be submitted to the SPS Committee.

3.499. The Committee took note of all statements made.

3.500. The Secretariat introduced a novel feature within the Trade Concerns Database entitled "related STCs." This enhancement links potentially associated STCs discussed across varied WTO entities. The inclusions of these cross-references by the Secretariat stem from data furnished by Members. Two distinct categories define these cross-references: (i) instances where Members confirmed referencing a particular trade concern across multiple Committees, and (ii) cases where additional data associated with STCs, such as cited notifications, hint at a connection between STCs discussed in separate entities. Four committees utilize the Trade Concerns Database: the Committee on Market Access, the Committee on Import Licensing, the SPS Committee, and the TBT Committee. Cross-references have been established exclusively for concerns articulated within the Committee on Market Access, SPS Committee, and TBT Committee, as applicable. Highlighting the ongoing development of this feature, the Secretariat encouraged Members to report any discrepancies or share feedback, enabling the Secretariat to refine the data accordingly.

3.501. The representative of South Africa enquired about the nexus between the Trade Concerns Database and ePing.

3.502. The Secretariat explained that ePing integrates data from the Trade Concerns Database. It emphasized the broader applicability of the Trade Concerns Database, as it finds use across diverse Committees. With these platforms undergoing continual evolution, the Secretariat aims to ensure data consistency and interconnectivity across these tools.

3.2 Exchange of Experiences

3.2.1 Transparency

3.2.1.1 Statements from Members under Article 15.2

3.503. The Chairperson noted that the first issue under this agenda related to statements of implementation under Article 15.2. The Chairperson recalled that Article 15.2 required Members to provide information on measures they put into place to ensure the implementation of the Agreement and to notify any changes of such measures over time. At this stage, there were no new notifications under Article 15.2.

3.2.1.2 Update on the Transparency Working Group Meeting of 11 May

3.504. The Chairperson recalled that the Transparency Working Group had been established in March 2022 to address the numerous Triennial Review recommendations related to transparency. The fourth meeting of the Working Group had been held the previous month, on 11 May. The Chairperson thanked the delegations that had submitted proposals and comments. Following a request from the Working Group, the Secretariat had prepared a Compilation of TBT Notification Formats and Guidelines (JOB/TBT/507). The data in this document had been extracted from the Annexes of G/TBT/1/Rev.15, and the document spanned almost 100 pages. This streamlined document was anticipated to ease the Working Group's discussions on the Triennial Review recommendations that centred on notification formats and guidelines specifically. The Secretariat had also launched a dedicated webpage, offering access to documents and links pertinent to the Transparency Working Group. The webpage also featured a list of all transparency-related recommendations from the Ninth Triennial Review, indicating any subsequent actions undertaken by the Secretariat and/or Members. This dynamic document was expected to simplify the tracking of progress regarding these recommendations. The Working Group had also deliberated on Canada's revised proposal related to notification guidelines (JOB/TBT/485/Rev.1), especially in consideration of Colombia's feedback (JOB/TBT/496). The Working Group had decided to revisit this proposal during its subsequent meeting. Moreover, the Group had evaluated a proposal from the United States (JOB/TBT/495) concerning a draft template for submitting Article 15.2 notifications through ePing. Several questions had arisen about the proposed template and its relation to other notification types, prompting the Working Group to decide on revisiting this proposal in their forthcoming meeting.

3.505. The representative of the United States thanked the Secretariat for their work in advancing Member initiatives to implement the Ninth Triennial Review recommendations on transparency through the Transparency Working Group, in particular the efforts relating to ePing functionalities and formats. The US saw value in using ePing as a tool to help Members submit or update Article 15.2 statements. The US proposal for submitting Article 15.2 notifications in ePing, JOB/TBT/495, provided an option for structuring the notification in ePing. It was noted that work was now underway by the Secretariat to pilot a template for Article 15.2 notifications via ePing with interested Members, taking into account comments provided by Members during Transparency Working Group meetings. The US supported this effort and looked forward to seeing this work progress in the coming months.

3.506. The representative of South Africa highlighted its participation in the Transparency Working Group. They had provided feedback and eagerly awaited the upcoming meeting. In the most recent meeting, the Secretariat had indicated its intention to examine the mandate and elucidate certain aspects about transparency and the notification format. South Africa emphasized the utility of the Secretariat sharing insights on these topics prior to the next Working Group gathering.

3.507. The Secretariat suggested that for the upcoming Transparency Working Group meeting, they could present an update on the Group's progress regarding notification formats. The Secretariat reminded everyone that there was currently no template for Article 15.2 notifications, and the objective was to devise a new template to assist Members in preparing these notifications. This had been mandated by the previous Triennial Review. The United States had volunteered to initiate the creation of the template for Article 15.2 notifications and was collaborating with the Secretariat on inputting such information through ePing. The Secretariat mentioned that the next Transparency Working Group might commence by examining the background on various notification formats.

3.508. The representative of Australia expressed satisfaction in having contributed to the initiative led by the United States to craft an ePing template for Article 15.2 notifications and in collaborating with the Secretariat on this endeavour. Australia anticipated updating its Article 15.2 statement using the new template once finalized. They emphasized the Committee's significant opportunity to promote consistency and clarify expectations for these statements. Australia urged other Members to participate in this crucial project and expressed gratitude to the United States for spearheading the effort.

3.509. The representative of the United Kingdom echoed its endorsement for augmented efforts on transparency and expressed appreciation to both the United States and Canada for championing this cause. Specifically, the United Kingdom voiced support for the proposals introduced by Canada concerning alterations to the notification guidelines.

3.510. The Chairperson urged delegations to provide any additional feedback on these propositions. She mentioned that she would propose a date for the subsequent Transparency Working Group meeting, which was expected to convene after the summer recess.

3.2.1.3 Report on the Tenth Special Meeting on Procedures for Information Exchange held on 19 June 2023

3.511. The Chairperson recalled that at the outset of that TBT week, the TBT Committee had convened its Tenth Special Meeting on Procedures for Information Exchange. This gathering had offered Members, especially Enquiry Points and Notification Authorities, an avenue to converse about activities and challenges concerning information exchange and to assess the effectiveness of notification procedures. All relevant materials, including the programme and presentations from this session, were available on the WTO TBT webpage. The special meeting had comprised three sessions on: ePing, Enquiry Points, and HS codes.

3.512. In the initial session on ePing, the Secretariat had showcased ePing's potential as an invaluable tool for delegates. ePing facilitated tracking of Committee work and liaising with domestic stakeholders. Broadening the use of ePing's communication features for clarification on notifications might lessen the volume of STCs presented to the Committee. Enquiry Points were instrumental in ensuring that their nations reaped the full advantages of ePing. The experience-sharing among Enquiry Points had proved constructive and was anticipated to persist in future sessions. There had also been suggestions for ePing to adapt further, incorporating contemporary digital advancements,

with mentions of a potential 'ChatTBT'. The Secretariat intended to draft a clarifying note detailing different user profiles and administrative privileges.

3.513. In the subsequent session on Enquiry Points, discussions had revolved around Members' methodologies for addressing queries and preparing remarks and responses. Insights from this discourse would be influential in the creation of a best practices guide on commenting. This initiative was aligned with the Committee's mandate from the Ninth Triennial Review. As disclosed during the special session, seven Enquiry Points, representing Australia, Kenya, Namibia, Peru, the Philippines, South Africa, and the United States, had pledged to contribute to this guide. The Chairperson expressed gratitude to these Members and invited them to present updates during the next Transparency Working Group gathering.

3.514. The final session had centred around HS codes. Delegates had practised assigning HS codes to various products, including chocolate. Colleagues from the Market Access Division had done a commendable job simplifying this intricate topic. The session had also highlighted the difficulties Enquiry Points and Notification Authorities might face when attributing HS codes to notifications. To assist in this, the Secretariat had introduced a novel "product dictionary" initiative, aimed at aiding delegations in pinpointing and categorizing by HS codes/product groupings. The Chairperson proposed that discussions on product coverage persist within the Transparency Working Group.

3.515. The Chairperson observed that this interactive Special Meeting had furnished invaluable knowledge, strategies, and techniques to enhance Members' regulatory transparency endeavours. Gratitude was extended to all speakers for their enlightening talks and to Members for their proactive involvement in the meeting.

3.516. The Chairperson mentioned that the Secretariat had been approached with questions about the recording's availability. She enquired if Members would consent to the session's recording being uploaded on the TBT webpage, enabling access for those delegations who might have missed the event or wished to review the shared information. It was decided that the recordings would be uploaded unless a Member raised objections. As no objections were raised, the Chairperson directed the Secretariat to upload the recording to the designated webpage.

3.2.1.4 Update by Secretariat on ePing

3.517. The Chairperson noted that the Special Meeting on Procedures for Information Exchange during that TBT week had enabled the Secretariat to provide a thorough review of ePing and also conduct some hands-on sessions.

3.518. The Secretariat underlined the following from its comprehensive assessment of ePing at the Special Meeting on Transparency and directed delegations to the in-depth ePing presentation from the gathering, which was accessible on the webpage. Firstly, the Secretariat had uploaded nine instructional videos to the ePing platform, illustrating procedures such as registration, searching, and participation in forums. The Secretariat urged delegations to utilize these tutorials, which could also be beneficial for outreach to domestic stakeholders. Gratitude was extended to their ePing collaborator, UNDESA, for financing the video production. Secondly, beyond notifications and specific trade concerns, the ePing platform had incorporated a search functionality for all other documents disseminated under the SPS and TBT Committees. This feature, still undergoing refinement, was expected to expedite TBT officials' access to Committee documents. Lastly, if delegations needed notification or outreach administrative privileges, they were advised to reach out to ePing@wto.org.

3.2.1.5 Conformity Assessment Procedures

3.519. The Chairperson recalled that the Committee had agreed at the Eighth Triennial Review of the TBT Agreement to develop guidelines to support regulators in the choice and design of conformity assessment procedures. Subsequently, in the Ninth Triennial Review, the Committee had noted progress to date and had agreed to finalize this work. The Chairperson noted that this work had advanced well over the past year. She turned to Mr. Anwar Hussain Shaik, the Committee's previous Chair, to report on progress made during his chairmanship on the guidelines for conformity assessment.

3.520. The outgoing Chairman, Mr. Anwar Hussain Shaik, from India, reported on his consultations as TBT Chair. This report was subsequently circulated in document G/TBT/GEN/355.

3.521. The Chairperson thanked Mr. Anwar Hussain Shaik for his report and his hard work. It seemed that the Committee had made good progress in developing the text of the guidelines, but some issues remained unresolved.

3.2.2 Regulatory Cooperation between Members

3.522. The Chairperson noted that the Committee had held two thematic sessions on Tuesday, 20 June – both under the heading of "Regulatory Cooperation between Members". This is in line with the Ninth Triennial Review work plan. One session focused on *Intangible Digital Products,* and the other on *Cybersecurity*.

3.523. The Moderator[111] for the Thematic session on regulatory cooperation between Members on Intangible Digital Products, held on 20 June 2023, provided his report. The full report is contained in G/TBT/GEN/356.

3.524. The Moderator[112] for the Thematic session on regulatory cooperation between Members on Cybersecurity, held on 20 June 2023, provided his report. The full report is contained in G/TBT/GEN/357.

3.525. The Chairperson said that the Committee took note of the moderators' reports. The Chairperson thanked both moderators for their contributions. For more information on these sessions, the Chairperson referred delegations to the TBT Gateway where the full agenda and the presentations were collected.

3.3 Other Matters

3.3.1 Planning of the 10th Triennial Review

3.526. The Chairperson recalled that the Committee would need to complete its Tenth Triennial Review the end of 2024. She recalled the mandate in Article 15.4 of the TBT Agreement, and recalled that the last Triennial Review had been adopted in November 2021 (contained in G/TBT/46). The first organizational step in the Triennial Review process was to develop a timeline for the Committee's work. Three years ago, the Committee had agreed such a timeline (G/TBT/W/735). Based on previous practice, the Secretariat had prepared a draft timeline that was contained in document JOB/TBT/499/Rev.1. Delegations had been asked to provide the Secretariat with any comments. Since no comments had been received on the draft timeline, the Chairperson suggested to agree on the timeline contained in JOB/TBT/499/Rev.1.

3.527. The timeline was adopted.[113]

3.528. The Chairperson suggested that the Secretariat hold a briefing on the Triennial Review process ahead of the Committee's November meeting to bring Members up to speed, particularly developing country delegations and those who were new to the TBT Committee.

3.3.2 Planning of upcoming Thematic sessions

3.529. The Chairperson recalled that during the informal meeting on 11 May, the suggestion had been made to centre the thematic sessions on 7 November 2023 around: (i) Good Regulatory Practices; and (ii) conformity assessment and e-commerce (described as "current challenges and best practices for addressing issues related to the conformity assessment of goods acquired via e-commerce"). The Secretariat had investigated if there were thematic sessions decided upon at the last Triennial Review that had not yet been conducted.

[111] Mr. Francis Dorsemaine (Canada).
[112] Mr. Wei Guo Tang (Singapore).
[113] G/TBT/W/775.

3.530. The Secretariat recalled that at the previous TBT Committee meeting, it had been questioned about the progress of the Committee in completing the thematic sessions mandated by the last Triennial Review. Fourteen thematic sessions had been mandated by the Ninth Triennial Review. The Committee had completed ten of these sessions, and as discussed in the informal meeting in May, the plan had been to conduct the thematic sessions on Good Regulatory Practice and conformity assessment and e-commerce in November. This left the Committee with two sessions that had not been conducted: (i) conformity assessment ("the key role of the NQI in Members' regulatory systems"); and (ii) standards ("how Members incorporated international standards in their regulatory processes, inclusive of conformity assessment"). In 2024, following previous norms, the informal meetings' emphasis would be on the Triennial Review's preparation. There might have been an opportunity, for example in March, to conduct a thematic session if there were minimal or no proposals for the Triennial Review.

3.531. The Chairperson thanked the Secretariat for this background information. The Chairperson observed that the Committee had been lacking two topics: (i) conformity assessment (the function of National Quality Infrastructure); and (ii) standards (methods to integrate international standards into the regulatory procedures). The Chairperson had suggested addressing this at a subsequent time. In line with the discussion during the informal meeting on 11 May, she had proposed concentrating the 7 November thematic sessions on: (i) Good Regulatory Practice; and (ii) conformity assessment and e-commerce (described as "current challenges and best practices for tackling issues related to the conformity assessment of products purchased via e-commerce").

3.532. It was so agreed.

3.3.3 Better functioning of the CTG and its Subsidiary Bodies

3.533. The Chairperson recalled that in mid-November of the previous year, following a request from the CTG Chair, the TBT Chairperson had circulated two reports on the COVID-19 pandemic and the functioning of the TBT Committee. The final versions of these reports had been released on 1 December 2022 in G/TBT/48 (on the COVID-19 pandemic) and G/TBT/49 (on the functioning of the TBT Committee). At the CTG meeting in November 2022, Members had requested that the Secretariat prepare a document comparing the information in the 15 reports about the committees' functioning. In reply, the Secretariat had distributed a comparison matrix (G/C/W/824). When the CTG had convened on 31 January 2023, the subsidiary bodies' reports and the comparison matrix had formed the foundation for a discussion among Members. Many references had been made to the TBT Committee's good practices, such as the Triennial Review process, thematic sessions, and the utilization of digital tools like eAgenda and ePing. After that meeting, the Secretariat had released a revised version of the comparison matrix (G/C/W/824/Rev.1).

3.534. The Chairperson recalled that the CTG Chairperson had sent a message to the Chairs of all CTG subsidiary bodies, including the TBT Committee, and had asked that Chairs arrange discussions in their respective groups about the committees' operations. The Chairperson had observed that, later in the year, subsidiary bodies would have been asked to present written reports to the CTG on the discussions conducted and enhancements made. As much as possible, this written report should have been presented for review at the final official CTG meeting, tentatively planned for 30 November 2023.

3.535. The Chairperson noted that the TBT Committee had conducted some initial discussions on this topic during its informal meeting on 11 May. It had been observed that, although the Committee had functioned well overall, there might have been areas needing further improvement. Given this context, the Secretariat had created a document JOB/TBT/510 that had been designed to aid this discussion.

3.536. The representative of the Secretariat explained that the purpose of this document was to gather information and focus the discussion on this Committee. The document aimed at considering what the TBT Committee could do better and how to contribute to a future report that would be submitted to the CTG. The Secretariat had considered all the proposals on the table and tried to identify practices that the TBT Committee had not used yet and could consider taking onboard. Considering the forward-looking nature of the document JOB/TBT/510, the Secretariat did not include practices that the TBT Committee had already been using (such as ePing or eAgenda). The idea was to shed light on some areas where the TBT Committee could focus its discussions and what

could be taken forward in formal mode. Based on the above, the Secretariat identified four areas of possible improvement:

a. **eAgenda**. The TBT Committee uses eAgenda only for STCs and not for all agenda items as some other committees do. The TBT Committee could consider why it uses eAgenda only for STCs and if it could be expanded.

b. **Briefings by the Secretariat**. Currently, the Secretariat produces briefings only on an *ad hoc* basis. The Secretariat is, however, open to give briefings more regularly on the work of the Committee, especially to new delegations or on specific subjects (like ePing or eAgenda).

c. **Cross-cutting/joint meetings**. The TBT Committee could consider bringing in expertise from another Committee (on, e.g., environment or trade facilitation), and have joint meetings on a particular subjects.

d. **Annotated draft Agendas**. Annotated draft Agendas could be used for informal meetings.

3.537. The Secretariat explained that the list was not exhaustive, and this was an open exercise.

3.538. The Chairperson noted that it was a useful basis to continue discussions on further improvements on the work of the Committee.

3.539. The representative of Singapore considered some of the Secretariat's proposals interesting, especially about enhancing the use of eAgenda. Singapore viewed it as a systemic improvement on the functioning of all the WTO committees and noted that there was potential for the eAgenda system to also serve as an Annotated Agenda. For example, the full Committee agenda items, along with a brief description or required information on the agenda items, could be displayed on the eAgenda system. The aim was for Members to have a single platform to refer to information that would make following the meetings easier. Singapore also pointed out that the Secretariat and the Chairperson should upload their presentations or reports on the eAgenda to allow Members to follow the discussions more easily. Singapore supported the Secretariat's idea that the TBT Committee's eAgenda system should include other agenda items beyond STCs. In this regard, Singapore mentioned that some interventions might be long and technical, and uploading all statements in advance could make it easier for Members to follow the discussions.

3.540. The representative of Brazil expressed appreciation for the Secretariat's work on JOB/TBT/510. Brazil noted there were commendable suggestions, and they also aligned with the submissions made by Brazil, Argentina, Colombia, Ecuador, Paraguay, and Uruguay in the process of the reform of the WTO's deliberative functions. Brazil was examining ways to enhance the Committee's functions in line with the "reform by doing" principle. Most of the topics suggested by the Secretariat could be implemented almost immediately if Members desired. Brazil supported the idea of having all agenda items on the eAgenda, as was the case in other committees, such as the SPS Committee. Brazil also backed the suggestion of the Secretariat providing briefings on any matters related to the Committee's agenda or upon Member demand. Brazil added that briefings on the Triennial Review process would be beneficial. Brazil also stated that the idea of annotated draft agendas for informal meetings was good. Brazil further commented that cross-cutting/joint meetings were a good idea, and Members would only need to discuss the topics for such meetings.

3.541. The representative of Paraguay thanked the Secretariat for this document. It served as a useful tool for advancing the discussions and considering the various proposals put forth by Members, including one jointly presented by Argentina, Brazil, Colombia, Uruguay, and Paraguay, which Peru recently joined. Paraguay remarked that the majority of items proposed by the Secretariat could be practically implemented right away. On the subject of joint meetings, Paraguay mentioned that the Committee would first need to reach a consensus on the topics. Paraguay suggested that if the TBT Committee agreed on three other proposals that day, they could be tested, perhaps as soon as the next meeting. Paraguay also introduced the idea of e-registration but acknowledged its broader implications, especially regarding the budget, and recognized that it was currently a topic of discussion in the General Council.

3.542. The representative of China observed that it would be beneficial for Members to engage in thorough and forward-looking debates on significant, intricate, and cross-cutting matters, and even revisit the same topic multiple times. In China's perspective, this approach would bolster the Committee's long-term and comprehensive outcomes. Given the sizable number of STCs, China also proposed that Members might think about sending out a preliminary notice of the Committee's meetings. This would grant Members ample time to get ready for a session and retain detailed versions of the STCs and the responses in the eAgenda. China believed this would enhance efficiency and improve the Committee's operation.

3.543. The representative of Kenya added another dimension to the idea of holding regular Secretariat briefings. Kenya recommended that the Secretariat dispatch official communications from the Chairperson ahead of these meetings, indicating the scheduled dates. This official notification would be indispensable for most officials based in capitals and would support delegates in their preparations for upcoming sessions.

3.544. The representative of the United Kingdom welcomed this work and mentioned that they would contemplate it due to its significance and relevance to the broader WTO work. The ideas presented by the Secretariat were intriguing, especially concerning the briefings and cross-cutting/joint meetings, given the overarching nature of the TBT work. The United Kingdom recommended looking into not only the practices of existing committees but also ones that the WTO had not yet adopted. Occasionally, the United Kingdom remarked, these might be minor adjustments that could significantly enhance Members' preparation, such as setting a minimum period for Members to receive information before a meeting or providing guiding questions.

3.545. The representative of Argentina expressed gratitude to the Secretariat for crafting the document JOB/TBT/510, which Argentina found beneficial. Along with other proponents, Argentina endorsed it. Argentina regarded the four distinct proposals in this document as valuable and concurred with Brazil and Paraguay's views. Regarding the cross-cutting/joint meetings, Argentina pointed out that since the WTO is a Member-driven entity, it was pivotal that the subjects addressed in those meetings originated from Member suggestions and aligned with their interests. Argentina further commented that it was up to the TBT Committee to determine the pertinence of such meetings. In Argentina's perspective, this proposal warranted more thorough debates. Argentina proposed first green-lighting and implementing three other suggestions that had garnered wider agreement. Additionally, Argentina emphasized the importance of persevering with efforts on e-registrations, particularly for those delegates based in capitals. While acknowledging the budgetary ramifications of this matter and its current status in the General Council discussions, Argentina also stressed the need to deliberate on this issue within the TBT Committee.

3.546. The representative of Australia expressed gratitude to colleagues for their insights and to the Secretariat for the document. Australia seconded Singapore's observations regarding the eAgenda and its advantages. Australia enquired about the subsequent steps and wondered if the TBT Committee could consent that day to deploying eAgenda throughout the entire agenda for TBT subjects and to capitalize on readily achievable objectives.

3.547. The representative of Canada thanked the Secretariat for circulating the document and laying out compelling ideas for the betterment of the Committee. Canada was in favour of collaborating with the Secretariat and other Members to enhance the Committee's operations. Canada mentioned that the TBT Committee held a reputation as one of the more effective bodies within the WTO, yet believed that there was invariably scope for enhancement.

3.548. The representative of Uruguay expressed gratitude to the Secretariat for providing the document, which appeared valuable in shaping the discourse on refining the Committee's functionality. Uruguay aligned with the remarks put forth by Brazil, Paraguay, and Argentina, expressing their intent to persistently engage in and advance on these subjects that enjoyed broader consensus. Furthermore, Uruguay endorsed Australia's suggestion to broaden the scope of eAgenda to encompass all Committee items. In Uruguay's perspective, this should be executed at the earliest, contingent upon a mutual accord among Members. The concept of orchestrating joint/cross-cutting sessions seemed favourable to Uruguay. They also echoed sentiments regarding the utilization of e-registration and highlighted ongoing discussions at the General Council about its fiscal ramifications.

3.549. The representative of the Russian Federation extended gratitude to the Secretariat for the meticulously crafted report. The Russian Federation pointed out that the proposition regarding the amplified application of eAgenda could be settled on that day. They advocated for eAgenda to serve as a centralized portal for meetings with all pertinent reports and documents uploaded beforehand. Additionally, the Russian Federation suggested that the Chair's introductory and concluding statements could be incorporated by the Secretariat. Integrating the features of an Annotated Agenda could amplify eAgenda's utility, enabling Members to both prepare for and review the discussions post-meeting.

3.550. The representative of South Africa suggested reserving the first day of the TBT Committee week for capacity-building, given that the TBT issues were highly technical and participation in the TBT Committee's meetings was somewhat limited, particularly among African countries. Such capacity-building could be conducted upon request. Within this framework, the Secretariat could present the Committee's decisions since 1995 and elaborate on the pivotal decisions that Members should be familiar with. Presenting the CAP Guidelines in an informal environment would also be beneficial.

3.551. The representative of the European Union pointed to its communication on this matter to the CTG and mentioned that it was still meticulously examining the Secretariat's proposals. The European Union emphasized the significance of the discussions on this topic.

3.552. The representative of the Republic of Korea praised the Chairperson and the Secretariat for their rigorous work in evaluating how to maintain the smooth functioning of the Committee. In ongoing deliberations about enhancing the deliberative role across the WTO, the TBT Committee was frequently cited as a model of effective operations. Members' constructive and technical participation, paired with several instrumental tools (ePing, eAgenda, thematic sessions), had enabled them to address specific concerns at a preliminary stage. In its initial response, Korea largely backed the Secretariat's recommendations, including the expansion of eAgenda's usage, which would bolster Members' endeavours within the TBT Committee. Concurrently, Korea was of the opinion that the Committee's current regular review procedure permitted Members to sustain the Committee's relevant role and execute its mandate in a substantial way. Korea was eager to persist with productive discussions on this subject within the TBT Committee's purview and to participate actively in the upcoming Triennial Review process for the collective benefit of the Membership.

3.553. The Secretariat noted that it would be open to hold regular briefings, or specific capacity-building events, for capital-based delegations. This could be done without Committee-level decisions. This was possible both in-person and virtually. The Secretariat also noted that it could look into having a more official advance communication from the Chairperson that would indicate dates of the Committee's meeting.

3.554. The Chairperson hoped that the Secretariat's responses were helpful for the delegations. She thanked Members for the positive feedback, ideas and comments, including references to some of the horizontal issues such as the e-registration. Based on this discussion, the Chairperson said that there were two issues among the four issues that received general support: (i) extending the use of eAgenda to all agenda items; and (ii) the briefings by the Secretariat. Unless there was any objection, she suggested that the Committee agree on these two issues. The extension of the use of eAgenda would be implemented on a trial basis for now and subject to resource availability. The Chairperson suggested to revert to other issues proposed by the Secretariat and any other new ideas after the summer break in an informal mode.

3.555. The representative of Paraguay suggested that the Committee could also agree on the suggestion regarding the use of annotated draft agendas for informal meetings.

3.556. The Chairperson noted that, as advised by the Secretariat, it would be possible to implement also that proposal on a trial basis, if Members agreed. The Chairperson suggested to agree on three issues and revert to the suggestion regarding "joint sessions" and other possible ideas after the summer break in informal mode. These three issues would be:

a. extending the use of eAgenda to all agenda items (trial basis);

b. the briefings by the Secretariat; and,

c. the use of annotated draft agenda for informal meetings (trial basis).

3.557. It was so agreed.

4 TECHNICAL COOPERATION ACTIVITIES

4.1 Information from Members

4.1. The representative of New Zealand thanked the WTO Secretariat, Australia, and Timor-Leste for participating in an information and knowledge-sharing session to assist Timor-Leste in establishing a TBT Enquiry Point as part of its accession to the WTO. Specifically, New Zealand expressed gratitude to the WTO Secretariat for presenting an overview of the TBT Agreement on the role and significance of the TBT Enquiry Points and thanked Australia for sharing its practical experiences. New Zealand greatly valued the chance to discuss its journey in creating a TBT Enquiry Point, along with the associated processes, challenges faced, and insights gained. It hoped that Timor-Leste found the session beneficial.

4.2. The representative of Chile referred to the technical assistance activity organized with the SPS and TBT Committees between 18-20 April that year, which centred on the transparency provisions under both Agreements and the ePing platform. Chile remarked that it was a highly beneficial activity and expressed hope to organize another similar event in the near future.

4.3. The representative of Australia expressed gratitude to New Zealand for the update on the recent session and for its efforts in coordinating the event. Australia also extended thanks to the Secretariat for its guidance and contributions, and to Timor-Leste for its active involvement. Australia was glad to have had the chance to contribute to the session by narrating its experiences regarding TBT Enquiry Points. They hoped that Timor-Leste found the insights from the session valuable and informative. Australia also conveyed its support for Timor-Leste's accession to the WTO.

4.2 Information from Secretariat

4.4. The Secretariat noted that TBT had been one of the most frequently requested areas for capacity building by WTO Members. Most TBT technical assistance requests had been for training on transparency and ePing. To address these demands effectively, the Secretariat had piloted a new initiative: the Transparency Champions programme. This programme was designed to enhance the implementation and benefits of the regulatory transparency framework and to cultivate champions for transparency. It moved beyond the traditional format of a single technical assistance session. Instead, it supported the beneficiaries over a six-month span for tangible and lasting impact at the local level. The pilot, which targeted Enquiry Points and Notification Authorities from African countries, began in October 2022 in Geneva and ended in April 2023 in Nairobi. Over this duration, participants met both face-to-face and online. The programme not only sought to enrich their grasp of relevant rules and procedures but also centred on the practical application of this knowledge. Participants benefitted from mutual learning and guidance from four mentors from seasoned Enquiry Points. Each participant crafted a personalized action plan to tackle distinct issues and gaps they recognized in their own countries and produced a final report detailing their accomplishments and ongoing challenges. The Secretariat was in the process of creating a detailed evaluation report to gauge the course's impact.

4.5. The Secretariat pointed out several tangible outcomes. A notable result was a surge in notifications from certain participating nations, including the submission of addenda to notifications to declare the adoption of measures. Other outcomes included rejuvenated domestic coordination methods as well as domestic education and awareness initiatives for regulators and the business sector. There was also a marked rise in ePing registrations and heightened participation in the Committee's activities from the participating countries. For instance, three champions volunteered to aid in drafting the best practice guide on providing feedback. The most significant achievement was the establishment of a robust network among the champions, which persisted past the six-month course duration. The Secretariat expressed gratitude to the four mentors who had played a pivotal role in the success of this pilot Transparency Champions programme: Anne Gane (Australia), Linda Bodén (Sweden), George Opiyo (Uganda), and MaryAnn Hogan (the United States). The Secretariat also thanked the supporting institutions of these mentors, ARSO for its proactive

involvement and contributions, and Kenya for hosting the concluding in-person segment of the programme in Nairobi.

4.6. The representative of Kenya conveyed its appreciation to the WTO Secretariat for conducting the programme in Nairobi, mentioning that hosting it had been a privilege.

4.7. The representative of the United States expressed gratitude to the Secretariat for organizing and presenting this event, and to Kenya for accommodating the face-to-face event in April in Nairobi. The United States also extended thanks to its co-mentors and the champions themselves. The representative from the United States felt honoured by the mentoring experience, emphasizing the essential nature of the work on transparency within the Committee. One observation she made during the programme was that challenges in fulfilling transparency duties were not exclusive to any specific Member, regardless of their development status. She noted that it had been engaging, enlightening, and rewarding to delve into some of the submission challenges collectively and to become acquainted with some of the champions. The United States recognized potential avenues for enhanced engagement and for sharing strategies to address some of the transparency obligation challenges. The United States remained committed to mentoring in diverse roles and eagerly awaited future opportunities to do so.

5 OBSERVERS

5.1 Updates from Observers

5.1. The representative of OIML highlighted two items. They mentioned that the OIML had organized a training session for its members on pre-packaged goods and the control of pre-packaged goods. The OIML had hoped to make this a regular event, and it would be providing more information on that in future meetings. They also mentioned that the OIML, in association with the BIPM, its sister organization on metrology, had published a brochure and accompanying inserts based on a joint publication on the law of metrology, OIML D 1, that focused on how to establish a metrology law as part of a country's quality infrastructure. The brochure served as a concise introduction to this topic and aimed to clarify why decision-makers should implement a metrology law and how they might do so. The OIML was in the process of creating a short e-learning package on this topic.

5.2. Further updates had been provided by BIPM (G/TBT/GEN/359), ISO (G/TBT/GEN/360), and UNIDO (G/TBT/GEN/361).

5.2 Pending requests

5.3. The Chairperson drew Members' attention to an updated list of observers, including pending requests, that was contained in document G/TBT/GEN/2/Rev.17. In addition, document RD/TBT/1/Rev.9 provided an updated compilation of the original communications received by the WTO from the various bodies that had sought observer status in the TBT Committee and whose requests were still pending. Regarding pending requests, the Chairperson had no new information that would lead her to believe that the situation had changed from where the Committee stood at the last meeting. The Chair, therefore, suggested – unless any Members had any other view (or different information) – that the Committee revert to this matter when Members had further consulted.

6 OTHER BUSINESS

6.1 Steel event

6.1. Deputy Director-General Jean-Marie Paugam from the Secretariat updated the Committee on an event organized by the WTO Secretariat on the margins of the March TBT Committee meeting, entitled "Trade Forum for Decarbonization Standards: Promoting Transparency and Coherence in the Iron and Steel Sector". DDG Paugam's statement is contained in document G/TBT/GEN/354.

6.2. The representative of the United Kingdom thanked DDG Paugam for his presentation. The United Kingdom was very pleased to see this important work continue and bear fruit. These findings will continue to be of relevance to our work moving forward in this Committee and other fora. As announced at COP27, countries representing 30% of global steel production committed to making

near-zero emission steel the preferred choice in global markets, with efficient use and near-zero emission steel production established and growing in every region by 2030. A plan of action was announced on how to deliver this Steel Breakthrough initiative which committed signatory countries to accelerate the development of standards and procurement for low-carbon steel and to develop a strategic dialogue on the trade of low-carbon steel production. The United Kingdom welcomed other countries to join this important initiative which would only be successful through effective and inclusive international collaboration. All this important work, coupled with the recent event that took place in March, would be key in ensuring the WTO responds to the societal challenges we face today relating to climate change. The United Kingdom thanked DDG Paugam for his presentation and expressed its willingness to continue to progress this important agenda forward.

6.3. The representative of China thanked Deputy Director-General Paugam for his insightful report on the Trade Forum. China conveyed its sincere appreciation to the WTO Secretariat, and DDG Paugam for initiating the discussions on such an important topic. At the roundtable discussions, Chinese experts shared their experiences and observations on the sustainable and green development of the iron and steel sector. DDG Paugam's report pointed out that the lack of consistency among different carbon emission accounting methods would increase the transaction costs among enterprises and create potential barriers to trade, highlighting the importance of enhanced communication and cooperation among WTO Members. Although the WTO is not a standard-setting body, it can play a unique role in facilitating the harmonization and mutual recognition of relevant standards through its forum and voice. In this process, the development dimension should be kept in mind. The formulation and harmonization of decarbonization standards or other climate change-related measures should fully consider the reality and needs of developing country Members. In China's view, the role of the TBT Agreement and TBT Committee in tackling challenges posed by climate change deserved Members' further attention and exploration. The TBT Agreement and TBT Committee have a larger role to play in the future. China thanked DDG Paugam for his informative presentation and the successful organization of the event. China was ready to participate in further discussions and activities related to this topic to have a deeper exchange of views with Members and stakeholders.

6.4. The representative of Japan expressed appreciation for DDG Paugam's report and the WTO Secretariat's initiative. At the March Trade Forum, Japanese industries provided their green transition's strategy and perspectives. At the session last week, Mr. Kawaguchi, METI Director and G7 Industrial Decarbonization Agenda Chair, shared the G7 initiative on decarbonization standards, measurement, and data collection. In this way, Japan contributed to the way forward at the WTO and looked forward to further cooperating with other Members towards a smooth low-carbon transition.

6.5. The representative of India thanked DDG Paugam for his comprehensive report and for inviting India to participate in the event held in March. India's Permanent Representative to the WTO, H.E. Mr. Navnit, presented the developing country perspective at the March event. Some of these conversations continued in the Trade and Environment Week last week, where India had active participation from its steel industry expert, Ms. Ruchika Chaudhry Govil. India's delegation remained engaged as this key subject evolved, especially as Members faced environment-related trade measures which continued to proliferate.

6.6. The representative of the European Union expressed its gratitude to the Secretariat and the DDG for the interesting workshop held on 9 March that year.

6.7. The representative of the Republic of Korea thanked DDG Paugam for the comprehensive report of the discussions on steel decarbonization during the March event. As one of the main players in the steel sector, Korea's private sector delivered their perspectives on this issue with their experience and potential challenges. Korea believed that to explore a meaningful approach in dealing with this issue, it was important to further advance cooperation among all Members. Korea looked forward to continuing these discussions with all Members at the WTO, including in the TBT Committee, with a view to meaningfully facilitating Members' interlinked trade.

6.2 China on MC13 Declaration

6.8. The representative of China stated that recently, many Members established new laws, regulations, standards, and rules to respond to emerging challenges in areas such as environmental

protection, climate change, sustainable development, and the digital economy. Most of these measures were implemented in the form of technical regulations, standards, conformity assessment procedures, or SPS measures, which gradually replaced border measures as key factors impacting trade and economic growth. According to the WTO Environmental Database, he noted, TBT notifications represented 62% of all environment-related notifications by Members to the WTO. Moreover, on average, trade concerns related to climate change represented 24% of the measures put on the Committee's agenda over the past three years. In his view, there was no doubt that the TBT Agreement and the TBT Committee were very relevant to these emerging challenges, but the most pressing question was how to address the impact on trade. China's answer was to strengthen multilateral regulatory cooperation at the WTO for several reasons.

6.9. First, most emerging challenges were regulatory challenges faced by all Members. All Members had the right to adopt new regulatory measures in response to emerging challenges, and different levels of development might result in different regulatory systems. However, all Members needed to balance legitimate objectives with the obligation to avoid unnecessary impacts on trade. In the era of globalization, many products were designed, assembled, and produced in the territories of different Members. To ensure the safety of the product and supply chain, it was essential to promote regulatory consistency and enhance cooperation among regulators.

6.10. Second, the WTO provided powerful instruments for Members to strengthen regulatory cooperation. The basic principles of the TBT Agreement included transparency, non-discrimination, harmonization based on international standards, and special and differential treatment. These principles remained the most critical international rules that Members had to follow. The TBT Committee played a crucial role in promoting transparency among Members, mitigating trade tensions, sharing good practices, and developing guidelines, which formed a robust foundation for Members to strengthen regulatory cooperation.

6.11. Third, regulatory cooperation could promote trade facilitation. By strengthening regulatory cooperation, Members could enhance their regulatory systems' transparency, promote the exchange and sharing of good regulatory practices, advance regulatory consistency, and reduce technical trade barriers caused by regulatory differences.

6.12. In this regard, China proposed a Ministerial Declaration for adoption at MC13 and called on all Members to reduce technical barriers to trade by strengthening regulatory cooperation. China stressed that increasing the transparency of the regulatory system and enhancing information sharing and dialogue would enable Members to better address emerging challenges jointly.

6.13. The proposed Declaration focused on enhancing transparency and promoting the sharing of information and experiences. This work continued to be led by the TBT Committee based on Member input. Furthermore, the proposal drew from work within the TBT Committee. Indeed, regulatory cooperation and related good regulatory practices were the focus of thematic sessions and triennial reviews of the TBT Agreement. That year's four thematic sessions focused on topics like regulatory cooperation, plastic regulation, climate change, digital products, and cybersecurity.

6.14. The representative of China noted that similar discussions took place in the SPS area, with ministers adopting the "SPS Declaration: Responding to Modern SPS Challenges" the previous June at MC12. However, he stressed that the scope of the TBT Agreement was broader, encompassing products such as agricultural and industrial ones, as well as production processes, methods related to product characteristics, and measures for marking or labelling requirements. China asserted that Members needed to recognize the importance of the TBT Agreement and the TBT Committee more than ever.

6.15. MC13 was a unique and valuable opportunity to show Ministers and all stakeholders in the TBT area that the WTO possessed the tools and capability to address emerging challenges, and that the political will of WTO Members was to tackle these challenges together.

6.16. China expressed its appreciation to the Members and experts who provided support, comments, or suggestions. China looked forward to maintaining communication with all interested Members and sincerely hoped more Members would support and join China as co-sponsors, aiming for a multilateral outcome at MC13.

6.17. The representative of the European Union thanked China for sharing the draft TBT Ministerial Declaration with the TBT Committee. The European Union noted that it was still examining the wording. The European Union also pondered how the work based on this Declaration would align with other ongoing workstreams relevant to the TBT Committee. The European Union highlighted that the TBT Committee had a robust structure and would soon begin its Triennial Review. The EU sought to understand the relationship between the work under the draft Ministerial Declaration and the Triennial Review.

6.18. The representative of the United Kingdom thanked China for its submission and its comprehensive presentation. In principle, the United Kingdom welcomed the idea of a TBT outcome at MC13 through a high-level TBT Declaration which might offer more clarity and political attention to the vital work of this Committee. The United Kingdom believed that drawing ministerial attention to the TBT Committee's invaluable contributions, through its Members, in addressing and attempting to resolve trade barriers would be beneficial. However, the United Kingdom noted the approaching MC13 and felt it would be valuable to clarify the Declaration's objectives and understand the feasible process leading up to MC13. The United Kingdom expressed its desire to share views on this in the future and looked forward to further discussions with China and other interested Members.

6.19. The representative of the Russian Federation welcomed the proposal from China. Its initial perspective on the proposal was positive, and it expressed hope that Members would back this initiative to energize the Committee's efforts.

6.20. The representative of South Africa thanked China for sharing the TBT Declaration proposal for MC13. South Africa observed that the Declaration's objective needed clarification: whether it was a political statement or aimed to direct the TBT Committee's work. They noted potential overlap with existing TBT Committee tasks, raising concerns about duplicating or accelerating efforts. South Africa sought a clearer understanding of the need for a Ministerial Declaration to establish a TBT work plan. They emphasized the TBT Committee's efficiency, acknowledging areas for enhancement. The proposed Declaration's focus on "International regulatory cooperation within the scope of the TBT Agreement" required further examination for its relevance to the TBT Committee. It was crucial for South Africa that the Declaration indicated that the TBT Committee's Six Principles should guide emerging issues. These principles included transparency, openness, impartiality and consensus, effectiveness and relevance, coherence, and the development dimension. South Africa suggested revisiting these principles not for the Declaration but for the Committee's benefit.

6.21. The representative of Brazil thanked China for its presentation on its draft Ministerial Declaration. Brazil was still reviewing the draft. Brazil noted that it shared similar concerns as the EU and others regarding how this would integrate into the Committee's workstream. Additionally, Brazil considered the draft Ministerial Declaration in light of the MC13 agenda, which was already intricate. Referring to China's mention of a similar declaration in the SPS area, Brazil recalled its involvement from the start of that draft declaration, which evolved into ministerial declaration negotiations, and it took three years for Members to adopt that at MC12. Given China's point that the TBT scope was broader than the SPS, Brazil observed that these negotiations might be more intricate than anticipated. While still reviewing the draft, Brazil thanked China for its efforts and initiatives and expressed hope that the Committee would clarify the process.

6.22. The representative of Australia thanked China for sharing this proposal and its proactive engagement ahead of the meeting. Australia welcomed the chance to examine the paper and offered comments on the draft. Australia viewed this document as a solid foundation to move forward and anticipated collaborating with Members on advancing the work. Australia also embraced the suggestions on how this effort should progress and concurred with other Members about the importance of considering how this process would coincide with other ongoing tasks in the Committee, especially the Tenth Triennial Review.

6.23. The representative of the Republic of Korea valued China's effort in presenting a draft Ministerial Declaration and its detailed presentation that day. While the Republic of Korea was in the midst of internal consultations, it anticipated ongoing discussions, considering the feasibility of producing a meaningful outcome for MC13 and what might be further deliberated to enhance the TBT area for the benefit of WTO Members.

6.24. The representative of Costa Rica thanked the Chinese delegation for introducing this draft Ministerial Declaration, which was under review in its capital. Initially, Costa Rica's feedback closely mirrored earlier comments from fellow Members concerning the Declaration's purpose. Costa Rica wished to grasp how this Declaration would relate to the Tenth Triennial Review, noting potential overlaps. While Costa Rica agreed with others about the desire for the Ministerial Conference to make significant headway, they acknowledged the Committee's considerable workload. In this context, Costa Rica voiced a desire for clearer guidance on avoiding redundant efforts.

6.25. The representative of Canada thanked China for presenting the draft Ministerial Declaration and disseminating the text among the membership. The draft was circulated amongst crucial Canadian departments and agencies, with consultations in progress. Canada relished the chance to share insights about the proposed text and its inherent process. Echoing other delegations, Canada pointed out the Committee's packed agenda for the upcoming months and the next year leading to MC13. This agenda included efforts like finalizing work on the Conformity Assessment Guidelines, the Transparency Working Group, and initiating the Tenth Triennial Review. Canada wished to ensure that delegations had ample time to accomplish all tasks and objectives in these sectors. Canada conveyed its openness to meaningful dialogue and engagement with China and other Members regarding this proposal.

6.26. The representative of New Zealand thanked China for the communication and welcomed the ideas tabled. Non-tariff barriers were among the biggest challenges for Members, and the work in the TBT Committee was vital in ensuring open markets and the removal of unnecessary trade barriers. New Zealand stated that it supported the draft Declaration and believed that recognition, regulatory cooperation, and transparency were key principles when addressing needs and other emerging challenges. New Zealand remained open to further discussion on the ideas presented.

6.27. The representative of Singapore thanked China for its presentation on its proposed MC13 Declaration. Singapore welcomed the initiative for an MC13 Declaration on TBT, which they believed would grant more political attention and mandate to the crucial work of this Committee. Singapore expressed gratitude to China for the bilateral meetings and looked forward to continuing collaboration with China and other interested Members to deliver a meaningful Declaration.

6.28. The representative of the United States thanked China for its submission and work on the draft proposal. The United States emphasized that, much like Canada, it had a packed schedule. Additionally, there was the Triennial Review, which was of great significance to the Committee and had yielded positive results in the areas of standards, technical regulations, and conformity assessment procedures. The United States still had some reservations about the necessity of a Declaration and its potential overlap with the work of the Review. They sought clarity on how, if the Declaration were to elevate the work of the TBT Committee for more in-depth scrutiny or importance from higher-level WTO Committees, Council, or other senior officials, it would do so, and which items would be highlighted. The United States expressed its appreciation to China for its input and submission.

6.29. The representative of Guatemala thanked China for presenting the draft Ministerial Declaration, which was under review in its capital. On a preliminary basis, Guatemala mentioned that its delegation required a clearer understanding of the draft's purpose.

6.30. The representative of China took note of the comments and inquiries from the Members, expressing deep appreciation, particularly for the support from the Members. These perspectives would be considered in subsequent discussions, and China invited interested Members to reach out to China's permanent mission to the WTO located in Geneva. China believed that the process of drafting the Ministerial Declaration would serve as a valuable opportunity for Members to contemplate ways to bolster regulatory cooperation among Members at the TBT Committee. China anticipated collaborating with all eager Members to progress towards the first TBT Ministerial Declaration.

6.31. The Chairperson thanked China for presenting, and the delegations for their comments – and encouraged delegations to engage with China on this issue. She noted that regulatory cooperation was an important topic for the Membership and that there had been some questions and calls for clarifications that merited further discussion.

6.3 New US Standards Strategy

6.32. The representative of the United States provided a briefing on the U.S. Standards Strategy for Critical and Emerging Technologies as a part of its commitment to implement its obligations under Article 15.2.

7 DATE OF NEXT MEETING

7.1. The next regular meeting of the Committee will take place on 8-10 November 2023. The regular meeting will be preceded by the thematic sessions on 7 November. The dates for all meetings in 2023 are contained in document JOB/TBT/467/Rev.1, issued on 3 May 2023. The tentative dates for 2024 are contained in document JOB/TBT/500/Rev.1.