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Committee on Technical Barriers to Trade

MINUTES OF THE MEETING 8-10 MARCH 2023

CHAIRPERSON: MR. ANWAR HUSSAIN SHAIK

Note by the Secretariat[1]

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

1 ADOPTION OF THE AGENDA

1.1. The Committee adopted the agenda in WTO/AIR/TBT/25.

1.2. The representative of Paraguay wished to raise the issue of the functioning of the CTG and its subsidiary bodies contained in JOB/CTG/21 and JOB/TBT/498.

1.3. The representative of Ukraine informed Members about relevant activities in the field of technical regulation. Despite full-scale war unleashed by Russia, which had now lasted for one year and 11 days, Ukraine remained strongly committed to the fundamental rules of the WTO and made every effort to ensure the transparency of measures adopted by the Government of Ukraine under martial law. Russia continued to demonstrate a flagrant disregard for international law and did not stop in its acts of state terrorism against Ukraine and Ukrainian civilians by attacking critical infrastructure and residential areas resulting in significant casualties and destruction. Nevertheless, Ukraine continued to take steps to ensure the proper functioning of the system of technical regulations and steady work in the field of standardization and metrology in wartime conditions. To date, in Ukraine, 46,191 national standards had been adopted in Ukraine, of which 38,412 international and European standards had been adopted as national ones. The National Standardization Program for 2023 provided for the development of 1,843 draft national standards, of which 1,133 standards would be harmonized with international and European standards. Currently, there were 165 technical standardization committees operating in Ukraine in various sectors of the national economy, which included representatives of public authorities and business, educational, scientific, and technical societies, and consumer organizations. Today, the infrastructure of designated bodies responsible for conformity assessment with the requirements of technical regulations consisted of 69 accredited bodies (including two recognized independent organizations). For the time being, all the 69 designated bodies located in different regions of Ukraine continued to carry out the full conformity assessment procedure at their permanent locations. Among them, 14 bodies were responsible for the conformity assessment of measuring instruments with the requirements of technical regulations in the field of metrology. In addition, there were 73 authorized verification laboratories that carried out metrological activities. At the same time, in some regions of Ukraine, scientific and production centers for standardization, metrology, and certification had been seriously affected by the war. Kherson, Luhansk, and Donetsk regional research centres for standardization, metrology, and certification had been forced to cease their operations. Despite the wartime conditions, Ukraine remained committed to transparency and notifying Members about their legislation. Since the beginning of the war, Ukraine had submitted 70 notifications and replied to 50 Members' requests related to TBT issues. Ukraine was grateful to all WTO Members that had stood with them in resolutely opposing Russia's brutal war against Ukraine and its people.

1.4. The representative of Canada noted that it had been more than a year since Russia's illegal invasion of Ukraine, an event that had had a catastrophic effect on Ukraine, its neighbours, and people around the world. For a year Ukraine had endured staggering levels of destruction and human suffering and its ability to participate in the global trading system had been severely impaired. Canada stressed the need to stand united against this unprovoked and illegal invasion and its attempted annexations.

1.5. The representative of the United States condemned Russia's illegal, unjustifiable, and unprovoked war, its disregard for the Charter of the United Nations, and indifference to the impacts that its war was having on people worldwide. Russia's actions had also contravened the principles and values that were the foundation of the WTO, including other Members' shared notions of fairness and openness. Meanwhile, Ukraine continued to notify its regulations to the WTO despite the unimaginable conditions they faced. We commend Ukraine's commitment to transparency and to this organization.

1.6. The representative of the European Union welcomed Ukraine's efforts to integrate into the EU internal market, including through very close collaboration on standardization as well as alignment with EU technical regulations and quality infrastructure. The EU also praised Ukraine's efforts to submit notifications and reply to questions despite the war. This clearly demonstrated their strong commitment to the WTO work. 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 some 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, was a flagrant violation 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 stood firmly with Ukraine and its people for as long as it would take.

1.7. The representative of New Zealand thanked Ukraine for the steps taken to ensure the proper functioning of its technical regulation system despite the massive destruction brought on by Russia's illegal invasion. Last month marked one year since Russia launched its illegal invasion of Ukraine. New Zealand remained resolved to stand against Russia's aggression and alleged atrocities committed in Ukraine. New Zealand stood with Ukraine in supporting its sovereignty and territorial integrity. Russia had massively destroyed global production and trade through its illegal and unprovoked attacks on one of the leading food producers, as well as its destruction of Ukraine's civilian infrastructure and the blockading of ports. These Russian actions had a clear and devastating impact on Ukraine and the global economy.

1.8. The representative of the United Kingdom affirmed unwavering support for Ukraine in line with remarks from other colleagues. Russia's continued war of aggression had reached the sad mark of one year. This was one year after Russia had illegally invaded another sovereign nation, and the impacts of the brutal act continued to be felt. The UK was also conscious of the consequences of this brutal war of aggression on the ability of Ukraine to participate in the TBT Committee and the WTO. The UK applauded the efforts to comply with TBT obligations and admired the courage and bravery of Ukraine, who, despite the dire circumstances, stood firm against Russia. 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 to civilian lives. Ukrainian exporters were also directly affected, with infrastructure destruction and supply-chain disruptions resulting directly from this illegal war. Over the last year, the UK and its allies had continued to outline the enormous global impact of Putin's actions, and the UK would continue to do so for as long as it took.

1.9. The representative of Japan noted that a year had passed since Russia began its aggression against Ukraine. Japan strongly condemned Russia's aggression against Ukraine and its missile attacks against civilian infrastructure and cities across Ukraine. As the only country to have ever suffered atomic bombings during wartime, Japan could not accept Russia's nuclear threats, let alone its use of nuclear weapons under any circumstances. Japan urged Russia again 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 of imposing strong sanctions against Russia and supporting Ukraine in cooperation with the international community.

1.10. The representative of Australia thanked Ukraine for its update and acknowledged the challenging circumstances impacting Ukraine's participation in the work of the WTO, and commended Ukraine's commitment to transparency. In this broader context, Australia echoed others: it reiterated its condemnation of Russia's illegal invasion of Ukraine, 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.

1.11. The representative of Switzerland condemned Russia's 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 to withdraw its troops and contribute to the de-escalation. Switzerland called on all actors to respect international law, including international communitarian law.

1.12. The representative of the Republic of Korea commended Ukraine for its continued efforts in transparency despite challenging circumstances and reaffirmed its consistent position that the sovereignty, territorial integrity, and independence of Ukraine had to be respected. Korea, as a responsible Member of the international community, supported various diplomatic and economic efforts of the international community to contribute to the end of the war and the restoration of peace: Korea would actively participate in those efforts.

1.13. The representative of the Russian Federation noted that while he had not raised a point of order, some of the interventions clearly fell outside the mandate of the present Committee. Multiple times, Russia had repeated that the discussions of the regional or global security situation, the UN Charter - the enforcement or compliance thereof – evidently went beyond the mandate of not just this TBT Committee but the WTO itself. Trade diplomats did not have the expertise to discuss these issues as these discussions belonged to the specialized UN bodies and agencies; it was in these agencies that Russia shared positions on the rules and reasons for special military operation, as well as on the issues that have arisen during the conflict. Regarding the allegations of food security disruptions, as Russia had stated on numerous occasions, the significant contributing factor to the current global crisis was unilateral trade-restrictive measures with extraterritorial implications by the Members that had just taken the floor.

2 IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

2.1 Specific Trade Concerns

2.1.1 Reported progress on STCs

2.1. The representative of the United Kingdom provided the following statement. We express support for the initiative of this "good news" agenda item, to highlight the good work and collaboration in this Committee. We hope that many Members will have the opportunity to speak under this item in the future and we definitely had several productive discussions with Members this year. Today we would like to notify to this Committee that we have withdrawn STC No 666 (Kingdom of Saudi Arabia - Technical Regulation for limiting and restricting hazardous materials in electrical and electronic equipment). We held a series of productive exchanges bilaterally and together with other interested Members, and are happy to report that our main concerns regarding this measure have been addressed by the Saudi Standards, Metrology and Quality Organization. Working together with other Members on issues of mutual interest and involving regulators early in the process, was particularly helpful and facilitated the prompt resolution of our concerns. We would like to thank the Kingdom of Saudi Arabia for their engagement and would like to take this opportunity to emphasize that this is the type of outcome which we strive to achieve through our engagement in this Committee. By enabling this type of technical and focussed exchange and its associated functions, this Committee can greatly contribute to the facilitation of international trade, reducing trade barriers and preserving Members' right to regulate.

2.2. The representative of the United States provided the following statement. We would like to provide a positive development update on a bilateral STC we raised on the margins of the past few Committee meetings, on Viet Nam Draft Circular Guidelines on Nutrition Labeling of Foods notified as G/TBT/N/VNM/219. During our meetings on the margins of the Committee meeting, Viet Nam provided a helpful feedback confirming that it would extend the implementation period for this measure to two years and will increase flexibilities for products that are on the market before the measure goes into force following requests by the United States. Further, Viet Nam confirmed that alcohol would not be included in the scope of this measure. We greatly appreciate this update, which directly answered some of the questions we had posed on this measure. There was also constructive communication between Enquiry Points and Geneva mission representatives that resulted in Viet Nam notifying the Draft Circular to the Committee in April of 2022. We look forward to continued bilateral engagement on this matter as Viet Nam further considers policy options, guidelines, and subsequent implementing measures, and thank Viet Nam for its previous responses.

2.1.2 New Specific Trade Concerns

2.1.2.1 Panama - Technical Regulation for Milled and Paddy Rice, G/TBT/N/PAN/118, G/TBT/N/PAN/120 (ID 782[2])

2.3. The representative of the United States provided the following statement. On 14 June 2022, Panama notified a new draft regulation on rice detailing the grade and quality standards. The United States submitted comments prior to the deadline which identify important concerns regarding these measures. Panama's draft regulations appear to deviate from the relevant international standards CXS198-1995 (ISO-7301-2021). We respectfully ask Panama to provide a scientific

[2] For previous statements follow the thread under ID 782.

and/or technical justification or rationale for not using relevant existing international standards guidance for the grading standards developed. We are very concerned with the technical aspects of these regulatory proposals which continue to be vague. We ask Panama to describe each requirement with specific detailed parameters and metrics. In addition, we request that those parameters are written into the regulation to allow continuity. The United States requests that Panama continue to accept US rice grading standards (§868.212; §868.210) as fulfilling its regulatory objective, as has long been the established practice. We note that USDA rice grading standards are consistent with international standards and are widely accepted across the world. The United States is concerned that Panama appears to be developing technical regulations that are not least trade restrictive and may be applied to protect sensitive domestic products. We urge Panama to take trading partners' concerns into account before advancing any regulatory action. We invite Panama to engage in technical dialogue in this area as soon as possible.

2.4. In response, the representative of Panama provided the following statement. Panama thanks the United States for its interest in the Panamanian Technical Regulation for rice. We also thank the US technicians who are with us in today's meeting in relation to our bilateral meeting this week. We have listened carefully to your intervention and also to the points shared in our bilateral meeting. We have conveyed the concerns to our authorities and look forward to having more information soon. We emphasize that the talks remain at an early stage, and the regulation has not entered into force, and we therefore continue to study the comments we have received from our trading partners. However, like the United States, Panama wishes to resolve this trade concern bilaterally, and accordingly we trust that discussions under the Trade Promotion Agreement between our authorities and the US industry can lead to mutually satisfactory solutions.

2.1.2.2 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[3])

2.5. The representative of Indonesia provided the following statement. Indonesia would first 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. As some concerns were raised, Indonesia submitted an enquiry on 23 December 2022. Indonesia realizes that the enquiry submission was overdue the commenting period, however, we appreciate if the EU could deem the enquiry as an effort to seek further clarification and detail information on the notified measure. The said notification provided information on a draft regulation that would replace the current Regulation (EC) 1013/2006 on shipments of waste. This draft Regulation establishes procedures and control regimes for waste shipments, taking into account the origin, destination and route of the 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 shipments of waste both within, to, and from the Union.

2.6. Indonesia appreciates the EU's intention to take serious measures to minimize the risks that may endanger public health, as well as any environmental impacts that would arise due to unmanaged waste shipments. However, Indonesia would like to echo the discourse stated in the TBT Agreement whereby measures prepared to achieve legitimate objectives, it shall be assumed not to create unnecessary obstacles to international trade. Indonesia is concerned that there are indications of discrimination in this proposed regulation, in which the EU will restrain the export of non-hazardous waste, by establishing excessive administrative arrangements for exports to destinations outside EU member States and OECD countries. This draft proposal also does not differentiate between the treatment of hazardous waste and non-hazardous waste (green list), which can be reused as industrial raw materials to support the circular economy. According to the terms of trade in the World Trade Organization (WTO), all countries should have the same position in accordance with the Most Favored Nation (MFN) principle and must emphasize the principle of fair trade, and Indonesia and the EU should have the same equality as they are state parties to the WTO, Basel Convention and other international multilateral agreements.

2.7. The pulp and paper industry will be one of the sectors significantly affected by this proposed regulation. The provisions in this proposal also regulate export restrictions and mechanisms for recycled paper, which is essential as a raw material for the Indonesian paper industry. As the

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

domestic waste collectors have not been able to meet the demand for recycled paper in terms of quality and quantity, the import of recycled paper from the EU is the preferred solution. The import value of recycled paper reached IDR 17.4 billion with a volume of 1.9 million tonnes. Indonesia has the same intention on environmental protection which has been a global issue and the need to escalate the implementation of circular economy, reducing greenhouse gas emissions (Net Zero Emissions) and others in addressing the issue. However, the recycling rate is still very low so there is still a shortage of recycled materials, one of which is recycled paper. Indonesian recycled paper can only meet about 50% of the total industrial demand, while the demand for packaging paper in the country is increasing. Packaging paper is highly needed as a supporting industry for other developing industrial sectors such as packaging industry, the food and beverage industry, the footwear industry, the electronics industry, etc.

2.8. As for the recycled paper that Indonesia imports mainly comes from the EU, so if the EU implements these proposed regulations, which we believe could prevent our industry from obtaining raw materials, then this will not be in line with the circular economy program both in Indonesia and in the EU itself. We have received information that the total availability of recycled paper raw materials in the EU is 54.4 million tons, but only 47.9 million tons could be absorbed by the EU pulp and paper industry. The pulp and paper industry is also obliged to comply with the regulations set by the Indonesian Government, including those related to environmental management aspects such as waste management; green industry; greenhouse gas emissions; quality standards on emissions; employment; as well as regulations for the purpose of importing waste to be used as raw material. The Indonesian government has a strong commitment in addressing climate change issues, reducing emissions, and improving environmental aspects. Gradually, Indonesia is committed to increase 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 emission in 2060 or earlier. Indonesia's GHG emission reduction target with its own capabilities in the Updated Nationally Determined Contribution (UNDC) was increased to 31.89%, while the target with international support in the UNDC was increased to 43.20% in the Enhanced Nationally Determined Contribution (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 measures 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.

2.9. The arrangements of the importation Non-hazardous waste in Indonesia has been regulated in such a way as to ensure that it has been imported in accordance with the applicable regulations and that the importer can carry out waste treatment. This means that Indonesia is very concerned about the quality of recycled paper sent to Indonesia, so if the EU is going to conduct an audit, it should be done in the country of origin and not in the country of export destination. In view of the above, and in order to minimize potential technical barriers to trade due to the existence of the EU WSR proposal, Indonesia would like to urge the EU to respond to our enquiry. We further seek the possibility to be designated as one of the "Listed Countries" and to be exempted from the administrative as well as certification requirements that are time consuming and costly. Furthermore, we are ready and eager to fulfil our commitment as stated in enhancing NDC. Indonesia looks forward to further engagement with the EU on this issue.

2.10. 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 last 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.

2.11. 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 to Türkiye, 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.

2.12. 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.

2.13. In response, the representative of the European Union provided the following statement. 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.[4] 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.

2.14. 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 under the EU legislation.

2.15. 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.[5] The notified draft is designed to ensure that the provisions on "broadly equivalent

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

[5] 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 -

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 as well. 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.

2.1.2.3 China - Interim Regulation on Radio Management of Wireless Charging (Power Transmission) Equipment, G/TBT/N/CHN/1711 (ID 784[6])

2.16. The representative of the United States provided the following statement. The United States would like to raise concerns today with China's draft 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 thank China for its notification of the measure to the TBT Committee in November 2022, however we note that the proposed date of adoption was January 2023, the same month as the deadline for stakeholders to provide input. Given this, we ask China to clarify the status of the measure, as well as how China took into account the comments received during the comment period? The United States and US industry submitted written comments to China in January, and while we await China's response, we think it is important to highlight several of our concerns in the Committee given the significant impact this measure may have on international trade.

2.17. 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? As many in this Committee may be aware, the ITU is in the process of revising this standard, and it is expected to be completed soon. The draft revision is taking multiple frequency ranges into consideration, such as 315-400kHZ, which we understand has demonstrated substantially lower energy consumption. We encourage China to delay finalization of the measure until it has taken into consideration the revised international standard and can use it as a basis for China's regulation, in order to harmonize with international consensus.

2.18. Second, 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. Third, 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.

2.19. Fourth, Article 14 of the draft measure states that beginning in 2024, equipment that does not comply with the requirements of this measure may no longer be produced in China or imported into China. It also states that devices that comply with the previous measure that have been put into use may be used until scrapped. Could China please address products that have already been imported or produced but that have not yet been put into use, for instance, those stored in facilities in China for sale? We urge China to consider flexibility to avoid unnecessary mass disposal or export that would result in increased electronic waste. Furthermore, US industry has indicated that China's proposed one-year transition (for 2024) is unreasonable and would pose significant challenges for compliance. If China decides to move forward with these requirements, we ask China to provide

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R1013-20210111&qid=1670254090535.

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

additional transition time for this regulation. We appreciate the opportunity to discuss these matters further.

2.20. The representative of Japan provided the following statement. Japan has 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. The frequencies used for the wireless charging (power transmission) equipment are set by international standards from the Wireless Power Consortium (WPC) and the International Telecommunication Union Radiocommunication Sector (ITU-R). Furthermore, WPC has decided to revise the Qi standard, and ITU-R has also decided to revise the guidance. However, the Interim Regulations exclude 360kHz, which is scheduled to be included in WPC's Qi2.0. The Interim Regulations also exclude 315-400kHz and 1700-1800kHz, which are scheduled to be included in ITU-R's revised guidance. Therefore, the Interim Regulations do not use the international standards as a basis and would be inconsistent with Article 2.4 of the TBT Agreement. Japan requests China to clarify why the Interim Regulations do not use International Standards as a basis.

2.21. China has explained that the purposes of the Interim Regulations is to regulate the use of wireless charging (power transmission) equipment, to avoid harmful interference to the services complying with the law, and to maintain the order of the radio wave. However, it is considered that adopting the international standard Qi2.0 of WPC and the revised guidance of ITU-R enables China to achieve these purposes. Therefore, the Interim Regulations, which prohibit the import, sale and use of products that comply with international standards, are likely to be an unnecessarily trade-restrictive measure and can violate Article 2.2 of the TBT Agreement. Japan requests that China use international standards as a basis for formulating the Interim Regulations on Radio Management of Wireless Charging (Power Transmission) Equipment so that the Interim Regulations do not become unnecessarily trade-restrictive measures.

2.22. The representative of the European Union provided the following statement. The EU would like to support the delegations of the United States and Japan. On 13 January 2023 the EU sent its comments on notification G/TBT/N/CHN/1711 to China. To date we did not receive China's reply, 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.

2.23. 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 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).

2.24. Regarding Article 14 of Interim Regulations, the EU requested an extension of transition period to two years, to allow for a smooth transition. The global supply chain has been impacted by the pandemic, and many 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 it was decided to have a transition period of two 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, it would result in more waste and additional market access barriers.

2.25. In response, the representative of China provided the following statement. China would like to thank the United States, Japan and the EU for their comments on the Interim Regulation on Radio Management of Wireless Charging Equipment. With regards to the range of the operating frequencies of wireless charging equipment, based on relevant recommendations from the International Telecommunication Union (ITU) and the development status of the industry, the Ministry of Industry and Information Technology of China has specified three frequency bands for mobile and portable wireless charging equipment, namely 100-148.5 kHz, 6765-6795 kHz and 13553-13567 kHz. Currently, as there is not enough compatibility analysis between these three bands and others, introducing new bands may cause harmful interference with existing services and systems. The interim regulation is subject to future adjustments as made necessary by the advancement of the industry and technology. The definition of wireless charging equipment in Article 2 involves the power receiver, which is because the working mechanisms of wireless charging are based on magnetic coupling (induction, resonance) and capacitive coupling, etc, involving the joint action of transmitter and receiver to enable power transfer.

2.26. Suggestions regarding article 11 will be considered. The interim regulation will no longer require marking or displaying the words "wireless charging equipment", but to use "special identification" for labelling. If conditions do not permit, it can be shown on independent outer packages or in the instructions of the products. Regarding Article 14, in consideration of producers' R&D and production cycle, the Interim Regulation will set up a reasonable transitional period, which will facilitate the industry to prepare and coordinate before its implementation. Meanwhile, wireless charging devices that are produced or imported before the deadline of the transitional period, can continue to be sold and used until they are scrapped. Regarding the testing method for wireless charging equipment, the Ministry of Industry and Information Technology is currently organizing the development of related standards, which will serve as the basis for testing when published.

2.1.2.4 India - Standards and Labelling Program for Washing Machines (ID 785[7])

2.27. The representative of the Republic of Korea provided the following statement. First of all, Korea respects India's efforts to protect its environment and the safety of consumers through energy efficiency regulations, and Korean companies are making efforts to comply with Indian regulations as such. With regard to the Standards and Labelling Program for Washing Machines provided by India's BEE (Bureau of Energy Efficiency), Korea submitted letters stating the concerns of the Korean industry through the Indian Enquiry Point on 5 January and 8 February this year, but we have not yet received a response, and we would like to convey our comments once again. First, the energy efficiency regulation for washing machines by BEE is currently implemented as a voluntary certification scheme, but it is noted that it shall be changed to a mandatory scheme as of 1 July 2023 without any WTO TBT notification. In relation to this issue, in the draft amendment to energy efficiency regulation for washing machines distributed at the BEE Tech meeting held for local companies, clauses 1.(c) and 6.7 specify that not only energy efficiency requirements but also safety standards (IS 302-2-7) must be satisfied.

2.28. Most jurisdictions, including the EU and Korea, do not require safety tests as part of energy efficiency tests. Indeed, the aforementioned requirements in India are excessive compared to the relevant ones in other countries. In addition, it is known that the BIS (Bureau of Indian Standards) also received comments regarding the mandatory implementation of IS 302-2-7 certification for washing machines in December 2022. If the corresponding BIS QCO (Quality Control Order) enter into force, it will be a duplicated regulation by the BEE and the BIS for the same standard, which

[7] For previous statements follow the thread under ID 785.

would impose an excessive burden on the related industries. As such, Korea would like to request the removal of the safety test requirements specified in the amendment to the energy efficiency regulation for washing machines by BEE.

2.29. Secondly, although the regulation stipulates that a washing program designated by the BEE shall be used when conducting energy efficiency tests for washing machines, however, when testing is conducted by a third-party testing institute, the manufacturer is guided to designate the washing program for testing, causing confusion in the test process. For reference, the related international standard, IEC 60456, specifies that manufacturers can designate washing programs for testing. Therefore, we would like to request that India clarify the relevant test procedure and amend the regulation to allow manufacturers to designate washing programs. Third, it will be quite an excessive measure to regulate the energy efficiency of the Mini Washer product, which is an auxiliary product that cannot be operated alone. So we would like to request that such Mini Washer products be excluded from the regulatory scope. Finally, this regulation is scheduled to become mandatory on 1 July 2023. However, it has not been notified to the WTO, and above all, the final text of the amendment has not been announced yet. For this reason and under Articles 2.9.2 and 2.9.4 of the WTO TBT Agreement, Korea requests that, apart from collecting domestic opinions, India notify other WTO Members through the WTO Secretariat, receive comments and take them into account before finalizing the amendment and publish it with a sufficient grace period for regulatory compliance.

2.30. In response, the representative of India provided the following statement. The QCO for Washing Machines is not being implemented presently, BEE with due diligence and consensus of all the technical committee members, decided to get the product tested for safety requirements. For washing performance and energy consumption tests, India labelling program is totally in line with IEC 60456 and it is the manufacturers who has to declare their washing program to the testing authority. Therefore, it is evident that India labelling program has made no deviation in the test procedure in respect of the above tests. Both IEC 60456 and IEC 60335-2-7 are silent about Mini Washer in their scope. In accordance with the provisions of the said standards, no differentiation has been laid down for Mini Washer and the conventional washing machine. India's Standards and Labelling Program for Washing Machines covers both semiautomatic and fully automatic (top and front loading).

2.1.2.5 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 (ID 786[8])

2.31. The representative of the Russian Federation provided the following statement. Russia supports efforts taken to fight climate changes and to protect the environment. At the same time, such measures shall be consistent with WTO rules and shall not lead to unnecessary additional obstacles to trade. Today, Russia would like to express a concern related to the proposal of a draft Regulation on Packaging and Packaging Waste published in November 2022. We took note of the presentation made yesterday on the draft regulation. It clarified some questions. Nevertheless, in our view, the proposed regulation does not take into account the specifics of the market, as well as the level of development of waste management in the world. It is also not consistent with WTO rules. In this regard I would like to make several points. First, we note inconsistency of terminology used in the draft regulation with the relevant international standards. For example, the definition of "packaging" in the draft regulation includes not only the product itself, but also the material and various additional elements from which the "packaging" is produced. The definition of "packaging" diverts significantly from the one specified in international standards, in particular: ISO 21067-1:2016, ISO 21067-2:2015.

2.32. Second, there is inconsistency with international standards of the draft regulation's requirements that goes beyond terminology. In particular, there are significant differences in the attribution of certain products to packaging. For example, the draft Regulation refers flowerpots to packaging for transportation or sale only. It is obvious that in practice it is hardly possible to separate such pots according to their intended purpose. The list of packaging also includes clothes hangers, which are not included in the packaging according to international standards. The proposed measures regarding packaging that must be recycled also differ from those specified in international

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

ISO standards, in particular with the ISO 18600 series of standards "Packaging and the environment".

2.33. Third, Articles 43 and 47 of the draft Regulation contain the term "high" and "medium" quality recycling, however, the document does not provide any definition of what should be understood by a "high" or "medium" level of recycling, nor provided any reference to the relative international standard. It is not clear, who and how will determine the "high" and "medium" quality recycling if such measure is introduced. Finally, the draft regulation seeks to establish requirements for recyclability and for the share of recycled material in packaging. Although it is technically possible to manufacture certain types of packaging from recycled materials, for most types of packaging there are no approved in international level test methods confirming the safety of using recycled materials and the preservation of packaging functions.

2.34. Moreover, there is no scientific evidence for the requirements to be imposed. The EU did not provide grounded justifications as to why certain requirements would apply to the products covered. It seems that the EU has decided to develop its legislation based on private standards applied by the enterprises consuming packages rather than on the rules, principles and procedures stipulated by the Agreement on TBT. To sum up, the proposed draft regulation seems to be inconsistent with WTO rules, in particular with Article 2 of the TBT Agreement as its measures are not based on international standards and may create significant uncertainty in the EU market, as well as unnecessary obstacles to international trade. In this regard, the Russian Federation requests that international standards used as a basis for the proposed Regulation or a relevant specific scientific justification is disclosed. We also urge the EU consider comments provided today by WTO Members and take them into account during further work on the draft regulation.

2.35. The representative of China provided the following statement. China appreciates the efforts made by the EU in reducing the quantity of packaging waste, promoting high-quality recycling of packaging ("closed-loop"), and reducing the demand for primary natural resources, and thanks the EU for the timely release of the PPWR proposal. The revised PPWR will have wide application and cover a large range of products. It specifies a number of requirements on packaging, such as solutions for packing that can be reused and refilled, making all packaging on the EU market recyclable in an economically feasible way by 2030 and creating a well-functioning market for secondary raw materials (regenerated materials), increasing the use of recycled plastics in packaging through mandatory proportion of recycled materials. All these requirements will have long-term and far-reaching impacts on the packaging industry and a significant influence on the trade of related products to Europe. In view of this, we would like to request that the EU continue its good practice on transparency, inform Members of the progress of the proposal in a timely manner, give Members opportunities to put forward their comments and suggestions on the PPWR, and provide an appropriate transition period, and facilitate the trade while aiming to protect the environment.

2.36. In response, the representative of the European Union provided the following statement. The EU would like to inform WTO Members that the proposal was notified under the TBT Agreement on 27 February 2023. The final date for comments is 90 days from the notification. The proposed date of adoption is 2025. The EU would welcome written comments from other WTO Members within the specified deadline and we will reply to these comments under the procedure.

2.1.2.6 United States - Chapter 173-337 of WAC, safer products restriction and reporting, G/TBT/N/USA/1958 (ID 787[9])

2.37. The representative of China provided the following statement. China thanks the United States for its notification of Chapter 173-337 of WAC, safer products restriction and reporting, regarding which China would like to raise the following concerns. First, China requests the US not to control OFRs as a whole but instead to specify certain OFR subgroups to be restricted based on comprehensive assessments, including scientific hazard assessment, technical feasibility of alternatives as well as impacts on the industry. There is a total of over 100 types of OFRs, and 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 classified as a single group through hazardous assessment; instead they should be sorted into 14 subgroups based on chemical structure, physico-chemical properties, and predicted biologic activity, and then the assessment should be based not only on hazard but also technical feasibility

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

of alternatives, as well as impacts on the industry. Thus, to avoid unnecessary barriers to trade, it is not desirable to conduct "one size fits all" control over OFRs without sufficient scientific assessment; instead, subgroup-based control should be adopted.

2.38. Second, China requests that the US should grant exemption to those EEE products which do not have alternatives to OFRs temporarily. Restricting the use of OFRs is aimed to achieve "Safer Products". Although in some instances there might be alternatives to some sub-groups of OFRs for use in indoor EEE casings, however, alternatives are not always available for all occasions. If product manufacturers are forced to use alternatives not well proven, it will undermine the fireproof performance of the indoor EEE products and jeopardize consumers' life and property. Besides, from the perspective of circular economy, plastics with OFRs actually have their unique advantage in recycling and carbon footprint, given their comparatively high thermal stability. Thus it is suggested that US should grant exemption to those EEE products which do not have alternatives to OFRs temporarily. Third, China suggests that the US should specify the names of toxic chemicals and the scope of EEE products. On one hand, the proposed rule should specify individual electronic and electrical products that it plans to regulate, and on the other hand, it should specify individual OFRs by CAS Registry Number that it plans to regulate. This information is needed to alleviate confusion and avoid potential supply chain disruptions that could harm the supply of EEE products in Washington State.

2.39. The representative of Japan provided the following statement. Japan shares the following concerns regarding the proposed restrictions on organohalogen flame retardants (OFRs) in external plastic 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. Consumer EEE is used in a wide range of fields, including consumer electronics, medical equipment, and telecommunications equipment. OFR does not mean a single substance, but a group of all organohalogen flame retardants, whose number is said to be in the tens of thousands or more. Since OFRs are commonly used in EEE plastic external enclosures to prevent the ignition and spread of fires in case of a fire, resulting in protecting human lives, if this Proposed OFR restrictions would be implemented in an early manner, not only would many industries be seriously affected, but also many citizens in the United States would be at a huge disadvantage because of no distribution of consumer EEE. Therefore, very careful consideration is necessary before this Proposed OFR restriction is implemented.

2.40. The laws and regulations of other States in the United States, other countries or regions as well as international conventions do not restrict all OFRs uniformly for all consumer EEE plastic external enclosures. For this Proposed OFR restrictions, 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, and it does not seem to be proven that all OFRs are potentially hazardous. We would appreciate if the DoE could provide evidence for concluding that all OFRs are hazardous. In addition, although the DoE has asserted that several non-halogen flame retardants are available as alternatives to OFRs, it will take time for industry to confirm that those alternatives can be used with equivalent properties and safety profiles for all types of consumer EEE plastic external enclosures.

2.41. We understand that the objective of the Safer Products for Washington is to protect citizens from exposure to hazardous chemicals. However, we have been informed by Japan industrial associations that there is little release of OFRs from consumer EEE during its use and it is considered that the risk of adverse effect on human health and the environment is extremely low. Therefore, implementing the Proposed OFR restrictions at an early time would simply force EEE manufacturers to cancel shipments of non-conforming products to the United States, and would significantly affect trade and distribution of many aforementioned EEE to the United States. We have been informed by Japan industrial associations that they submitted comments to the DoE during three public comment periods in relation to the concerns stated above. However, we have been informed that few of their requests have been reflected in the Proposed OFR restrictions to date and they also submitted similar comments to its TBT notification. Japan understands that the objectives of the regulations are protection of human health and the environment. However, Japan is concerned that the regulations would be more trade-restrictive than necessary to fulfill the objectives and in violation of Article 2.2 of the TBT Agreement. For the reasons stated above, in order to ensure that the proposed OFR restrictions are not more trade-restrictive than necessary to achieve its legitimate objectives, Japan would like to request the United States as follows: to conduct a more thorough risk assessment

regarding the impact on human health and the environment posed by OFRs contained in EEE plastic external enclosures, taking into account the consistency with the results of risk assessment in other countries and regions; to narrow the range of the OFRs and the type of EEE to be regulated, and set appropriate and feasible thresholds for OFR content; and to conduct a realistic feasibility study on the alternatives and to consider a more appropriate schedule until the implementation of the OFR restrictions.

2.42. 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 and will take into consideration all comments received during the open comment period and respond to substantive comments in the next published rulemaking procedure.

2.1.2.7 China - Electrical Safety Regulation for Medical Electrical Equipment, G/TBT/N/CHN/1410 (ID 788[10])

2.43. The representative of Japan provided the following statement. Japan raises the following concerns regarding the National Standard GB9706.1-2020, and collateral standards. The National Standard for Electrical Safety of Active Medical Devices GB9706.1-2020 was revised on 9 April 2020, and its collateral standards have also been revised. All medical devices are required to complete conformity certification to the revised standard by medical device inspection centres and registration change of medical devices according to the Regulations for the Supervision and Administration of Medical Devices by 1 May 2023. However, it usually takes more than one year to complete the registration change under the Regulations after completing the conformity certification. Considering that the inspection centres started accepting application for conformity certification under the revised standard after January 2023 in some regions, the transition period required for the certification procedures is not sufficient.

2.44. In addition to conforming to the GB9706.1-2020, some medical devices have to meet further particular standards that are specific to the medical devices. These particular standards are currently being revised in compliance with the GB9706.1-2020. For example, some particular standards, such as those related to Patient Monitors and Defibrillators, have just been revised after the end of 2022, while others, such as those related to Thermometry, have not been revised yet. However, in order to certify conformity to the GB9706.1-2020, it is necessary to conform to these particular standards after their revision. Therefore, medical devices that have to meet their particular standards need to be redesigned after the publication of the revised particular standards, obtain conformity certification to the revised GB9706.1-2020 with its collateral standards and related particular standards by medical device inspection centres, and complete the registration change of the medical devices, but the transition period required for these procedures is not sufficiently secured.

2.45. As Japan mentioned, there is concern that China's measures would be in violation of Article 2.12 of the TBT Agreement because the interval between the publication of the National Standard GB9706.1-2020, collateral standards and particular standards and their entry into force in order for manufacturers to adapt their medical devices to the requirements of the National Standard GB9706.1-2020, etc., is inappropriate. Japan is deeply concerned that many manufacturers will not be able to complete the GB9706.1-2020 conformity certification and registration change of medical devices by the transition deadline. Japan is also very concerned that this will cause significant disruption to the supply of many active medical devices needed for healthcare in China. Therefore, Japan would like to request extension of the transition period as follows. The transition period of the GB9706.1-2020 and its collateral standards shall be postponed for three years from the current implementation date. Or, as was the case when the GB9706.1 was revised in 2007, even if registration change of medical devices based on this revised National Standard GB9706.1-2020 has not been completed as of 1 May 2023, these medical devices shall be allowed to be sold until the expiration date of the medical device registration based on the previous National Standard before its revision.

2.46. The representative of the United States provided the following statement. The United States has interest in this STC and thanks Japan for adding it to the agenda. We are still reviewing the

[10] For previous statements follow the thread under ID 788.

concerns raised by Japan along with investigating the specific concerns filed by the medical devices industry and look forward to any additional information and updates from China that they are able to provide. We note the US industry has requested China to provide a three-year extension until May 2026 before this technical regulation enters into force due to the large number of products subject to the regulation as well as the insufficient laboratory testing capacity.

2.47. In response, the representative of China provided the following statement. GB 9706.1-2020 "Medical Electrical Equipment Part 1: General Requirements for Basic safety and Essential performance" was released on 9 April 2020, and will be implemented from 1 May 2023. Its supporting parallel standards have also been released, with special standards currently under preparation. The implementation of GB 9706.1-2020 series standards is of great significance to the overall improvement of the quality and safety level of China's active medical devices. National Medical Products Administration will issue documents to guide the orderly implementation of the standards.

2.1.2.8 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[11])

2.48. The representative of China provided the following statement. China would like to thank the EU for its notification of the Draft Commission Delegated Regulation amending Regulation No. 1272/2008 as regards hazard classes and criteria for the classification, labelling, and packaging of substances and mixtures. In line with Article 2.2 of the WTO/TBT Agreement, China would like to invite the EU to, first, give a list and a corresponding exemptions list of substances and mixtures with "endocrine disrupting property for human health" and "endocrine disrupting property for the environment", provide further testing and verification methods for "endocrine disrupting property for human health" and "endocrine disrupting property for the environment", thus enabling stakeholders to determine whether a substance or mixture belongs to the two new categories of endocrine disruptors, and avoiding unnecessary trade barriers; second, develop a hazard class of PMT (Persistent, Transportable, Toxic). Previously, the hazard classification in the EU was PBT (persistent, bioaccumulative and toxic). B in PBT refers to being bioaccumulative. If a substance is highly bioaccumulative, it is also highly enriched in soil and difficult to migrate. However, M in the PMT developed by the EU this time emphasizes mobility, so B in the PBT and M in the PMT are contradictory, which is easy to cause ambiguity in the regulation implementation. China hopes that the EU provides the scientific basis for the classification of PMT, or clarify the contradiction between B as in PBT and M as in PMT; and third, give a model for the calculation of the M, to facilitate the experimental verification and as a result avoiding unnecessary obstacles to international trade.

2.49. Besides, given that the application time of the regulation is too short, which is likely to lead to the failure of the regulation's implementation, China requests the EU to extend the application time of new substances to 36 months, referencing the time allowed for product experiment cycle and assessment after the official implementation of the 2018 EU Guidelines on the identification of endocrine disruptors for pesticides and disinfection and sterilization Products.

2.50. 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)[12]. 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 stakeholder 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.

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

[12] 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.

2.51. Regarding endocrine disruptors and PBT/vPvB criteria, the EU largely builds on existing criteria in other EU legislation 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 harmonized 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 harmonized 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.

2.52. 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.

2.1.2.9 India - Viscose Staple Fibres (Quality Control) Order, 2022, G/TBT/N/IND/234 (ID 790[13])

2.53. The representative of Indonesia provided the following statement. Indonesia thanks India for notifying G/TBT/N/IND/234 on Viscose Staple Fibres (Quality Control) Order to the TBT WTO Committee on 1 September 2022. Referring to the notification, the regulation requires Viscose Staple Fibre (VSF) products to comply with the requirements set out in the Indian standard IS 17266:2019 Textiles-Viscose Staple Fibres-Specification, with compliance being achieved through certification by BIS. In addition, VSF is also required to carry the ISI mark as proof of compliance prior to distribution in the Indian market. Indonesia appreciates that India has suspended the enforcement of this regulation until 29 March 2023, as announced in the Gazette of India dated 27 January 2023. However, we encourage India to submit the addendum to notification G/TBT/N/IND/234 on this measure in order to inform stakeholders on the implementation status of this regulation. Indonesia would like India to consider further suspending the implementation of the QCO. We believe that the transition period provided by India is still insufficient for companies to comply with the requirements of this regulation. The certification process conducted by BIS may also take some time. Therefore, we request India to postpone the implementation of the VSF QCO until 29 February 2024, or provide a 12-month transition period.

2.54. Indonesia also 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.

2.55. The representative of the European Union provided the following statement. Let me begin by making several remarks that horizontally apply to all Quality Control Orders raised at this meeting of the TBT Committee and to other (draft) QCOs. The EU remains deeply concerned by the increasing

[13] For previous statements follow the thread under ID 790.

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 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.

2.56. 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. The EU is 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.

2.57. 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 recognized standards like ISO. The Viscose Staple Fibres QCO, same as other QCOs, 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". 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 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.

2.58. 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.

2.59. 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. 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 Quality Control Orders by indicating in the legal act the HS code(s) of the goods concerned. Finally, the EU would like to ask India to consider deferring the implementation of this QCO, originally planned for 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.

2.60. In response, the representative of India provided the following statement. We thank the delegations of European Union and 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.

2.1.2.10 India - Energy Consumption Standards for Star Labelled Household Refrigerators, S.O. 4554(E), 2022 (ID 791[14])

2.61. The representative of the Republic of Korea provided the following statement. Korea respects India's efforts to introduce new energy efficiency rating standards for household refrigerators, and Korean industries are making efforts to comply with Indian regulations. In relation to "Amendment Notification of Energy Consumption Standards for Star Labelled Household Refrigerators (Statutory Order 4554(E).)," published in the Indian Official e-Gazette on 26 September 2022, Korea submitted comments regarding concerns raised by the Korean industry through the TBT Enquiry Point on 12 October 2022. However, as we have thus far not received any reply from India on this matter, we would like to convey our comments again as follows. If a correction factor is not applied to the formula for calculating the internal volume of the freezer compartment, which consumes more power than the refrigerator compartment, the products with larger freezer compartments, such as side-by-side or four-door refrigerators, will have more disadvantages when it comes to estimating the energy efficiency rating. This amendment does not conform to the international standard IEC 62552-3 and deviates from the general and international practice used in the EU, the US, and Korea, in which the efficiency rating of refrigerators is estimated by weighting the internal volume of the freezer compartment.

2.62. For this reason, Korea requests that the "Adjusted Volume" be applied, which assigns a freezer compartment weight factor to the energy efficiency rating calculation formula for refrigerating appliances, in line with international standards, so that a variety of products can be provided to the Indian market. In addition, the amended regulation has not been notified to the WTO Members through the WTO Secretariat, despite the fact that it is not in accordance with the relevant international standards and may have a significant effect on the trade of other WTO Members. Accordingly, pursuant to Article 2.9.2 of the TBT Agreement, Korea requests that India notify the WTO Members of the amendment.

2.63. In response, the representative of India provided the following statement. We thank Korea for their interest in this issue. Calculation of volume of freezer compartment is based on the Indian Standard 17550 published by BIS. The development process of Star Rating program involves consultation with the Technical Committee members which includes various stakeholders viz. manufacturers, testing labs, accreditation body, standard making body, consumer voice and associations etc. Further, S.O. 4554 (E) published on 26 September 2022 covers Single Door and Double Door Refrigerators (i.e. Frost Free and Direct Cool Refrigerator). The Side-by-Side and multi door refrigerators are not covered under the scope of aforesaid Gazette Notification. Recently, BEE has prepared and launched the Star Rating Program for Side-by-Side/Multi Door Refrigerator under Voluntary regime whose energy consumption standards are different. The revised star rating table for Refrigerator implemented with effect from 1 January 2023 along with volume calculation formula was presented to the Technical Committee Members which is based on BIS new standard - 17550. The same was finalized during 8th Technical Committee Meeting held on 8 July 2022 based on the agreement of Technical Committee members. Hence, sufficient time was provided after introduction of the revised star rating program for Refrigerator.

2.64. Also, many overseas manufacturers are members of the Technical Committee and the new energy performance standards are agreed by all the members of the Technical Committee. Further, it is reported that all the manufacturers have already registered their models with Bureau of Energy Efficiency as per the new energy performance standards for refrigerator. So far, 450+ models are registered with Bureau of Energy Efficiency based on the revised star rating table implemented from 1 January 2023.

[14] For previous statements follow the thread under ID 791.

2.1.2.11 European Union - Amendment of the authorisation for the active substance sulfoxaflor, G/TBT/N/EU/853 (ID 792[15])

2.65. 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/853, which aims at restricting the conditions of approval of the active substance sulfoxaflor to uses in permanent greenhouses only in order to protect bees. Brazil has submitted comments on this proposition and is looking forward to receiving replies from the EU. 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.

2.66. Considering these circumstances, Brazil would like to know if the stricter conditions of approval of sulfoxaflor in the EU, as proposed, would lead to reducing MRLs of this substance on imported products. If so, 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.

2.67. 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. Thank you.

2.68. The representative of Argentina provided the following statement. Argentina supports Brazil's approach and in this regard would also like to know whether the stricter conditions for the approval of sulfoxaflor in the EU would lead to the reduction of MRLs for this substance in imported products. If so, Argentina considers that it will be important for the EU to conduct a robust risk analysis, consistent with international recommendations, to ensure transparency and predictability in the regulatory process. Argentina also shares Brazil's concern that, as in other cases, the EU is seeking to avoid an alleged transfer of adverse effects on bees involved in EU food production due to the importation of food from third markets outside the EU. In Argentina, this substance is used in extensive crops as well as fruit (pears and apples), which include relevant productive sectors in different regions of the country. We emphasize that European regulators should consider the variety of local conditions in other countries, including climate, soil and the different needs and challenges of agricultural production in each country.

2.69. We also share Brazil's approach that MRL reductions on this basis are contrary to the commitment of Article 2.2 of the TBT Agreement, as it is outside the scope of this Agreement to support unilateral policies aimed at allegedly protecting the environment in third countries. We understand that, by having extraterritorial effects, such measures are contrary to the rules and jurisprudence of the multilateral trading system, and we insist that these measures are not based on a robust environmental impact assessment, which is what is required to decide whether it is neonicotinoids that are affecting the bee population or the severe climate crisis that we are experiencing, particularly when it is clear that these are phenomena with multiple causes.

2.70. 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

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

of confirmatory data, as required in Regulation (EU) 2015/1295 approving its use in the EU. TBT comments were admissible until 17 January 2022. 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), which 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.

2.71. 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) shall expire by 19 May 2023 at the latest. The EU would like to re-assure Brazil, Argentina, and all other interested Members, that the measure does not lead to any immediate disruptions of trade in agricultural goods, as it 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.

2.1.2.12 Malaysia - Revision of the Regulations on Alcoholic Beverages in Food Regulations 1985, G/TBT/N/MYS/114 (ID 793[16])

2.72. 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 replies, we still would like to ask Malaysia for concrete information concerning several issues the EU had raised in its comments. In particular, 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. On wine Malaysia made a number of modifications in its wine definition, but the alcoholic range has not been modified (i.e. not less than 7% and not more than 15%). 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).

2.73. 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%. A state can however, for its domestic market, apply a maximum acquired alcoholic strength of above 22% whilst remaining below or equal to 24%. The EU would like to underline that this unchanged alcoholic range applied in Malaysia continues to be a trade barrier for exporters. 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 of the OIV. Malaysia has also provided clarification concerning the harmonization of references to permitted food conditioners that includes reference to polyvinilpyrrolidone in wine (Regulation 362). The EU would like to ask confirmation from Malaysia, that fining agents, including polyvinilpyrrolidone, can continue to be used in imported wines in accordance with regulation 19(2), despite of the amendment deleting the reference to wine in Table II of the Eleventh Schedule on permitted food conditioners.

2.74. As regards the reference to the use of plain caramel I (INS 150a), the EU would like to ask a confirmation that the reference to "caramel" as a permitted colouring substances in food in Table II point 1.(1) in the Seventh Schedule also includes plain caramel (INS 150a). 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%). The current position by Malaysia that allowing low ABV (alcohol by volume)

[16] For previous statements follow the thread under ID 793.

spirit drinks would increase the availability of alcoholic beverages does not seem convincing, since other alcoholic beverages with a lower ABV will continue to be commercialized.

2.75. 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. 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-aromatized spirit drinks do not currently fit into Regulation 383 for gin of the Food Regulation 1985, 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).

2.76. 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. Finally, Malaysia has provided clarification concerning the possibility to use sweeteners listed under food category 14.2.6 of the General Standards for Food Additives (GSFA) in rum. However, the EU would like to point out that GSFA do not include a number of sweetening products that are used for sweetening of spirit drinks such as white sugar, concentrated grape must, honey or other natural carbohydrate products. Consequently, the EU would still consider a need to provide for such possibility in regulation 380 in order to better align it with international practices.

2.77. The representative of Mexico provided the following statement. The delegation of Mexico refers to the amendments and additions to the Food Regulations 1985 of the Government of Malaysia, as notified by the Malaysian Government to the Members of this Committee on 27 October 2022 in document G/TBT/N/MYS/114. Specifically, the delegation of Mexico refers to Official Communication No. 500/ROC/089/2022, sent by the Government of Mexico during the public consultation period for the measure, indicating the possible impact of this measure on tequila and mezcal, specifically with regard to their classifications and respective designations. In this connection, the following requests are highlighted: With regard to new Regulation 384A, a request was made to differentiate the categories of tequila and mezcal, on the basis of their distinct appellations of origin and specifications, and to include precise definitions based on the corresponding Mexican regulations. Moreover, with regard to Regulation 385, the Government of Mexico requested the removal of the term "tequila" since the Regulation prohibits the inclusion of other terms on the front-of-pack label, which is contradictory to the Mexican standard applicable to tequila, which requires the declaration of the categories and the different classes of tequila. In this connection, the delegation of Mexico thanks the Government of Malaysia for its reply to these comments. However, it asks that the requests of the Government of Mexico be reconsidered with a view to avoiding the impact that the regulation would have on these emblematic Mexican beverages, which are subject to specifications contained in the Mexican regulations concerned in order to be produced and marketed. The delegation of Mexico thanks the delegation of Malaysia for giving its consideration to this statement and the requests made therein.

2.78. The representative of Japan provided the following statement. Japan shares the concerns with EU and Mexico about Malaysia's revision of the regulations on alcoholic beverages in food regulations 1985. Especially, according to regulation 386, liqueur shall contain not less than 17% volume per volume of alcohol. This lower limit of alcohol content differs from the regulations of other countries including Japan or EU, and appears more trade restrictive than necessary to fulfil the objective of the regulation. Japan requests Malaysia to delete the lower limit of alcohol content of liqueur or relax this lower limit from 17% to 15%. Even if Malaysia deletes or relaxes the lower limit of alcohol content of liqueur, there would be a shift from a higher alcohol product to a lower alcohol product. As a result, it would contribute to the reduction of harmful use of alcohol.

2.79. In response, the representative of Malaysia provided the following statement. Malaysia thanks the European Union, Mexico and Japan for their interest 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. We also note Japan's statement and its interest under this agenda item. In gist, 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 harmonize 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.

2.80. The deadline for comments on this notification was 26 December 2022 and Malaysia thanks the European Union and Mexico for providing their comments and proposals within the stipulated timeline. In general, 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 based on the schedule and timeframe that have been established according to certain commodity groups. For alcoholic beverages, announcements for requests on any proposed amendments were made in 2020 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 then proceeded with the relevant process including public consultations. As the proposed amendments are now in the process of being gazetted, any new proposals received after the cut-of date in 2021 are being reviewed separately. Until the proposed amendments are gazetted and entered into force, the existing regulations under the Food Regulations 1985 are still in force and applicable.

2.81. Malaysia has submitted our responses to the EU on 3 February 2023. We take also note of the statement by the EU which was submitted earlier via the eAgenda as well as the ones delivered today. Our capital is currently reviewing the comments and will provide our response in due course. Malaysia has also provided our responses to Mexico's comments and suggestions on 3 February 2023. Based on Mexico's statement today, Malaysia would require further clarification on some of the comments before we could provide our response and we propose for this matter to be discussed in detail bilaterally. With regard to Japan's statement, we would appreciate the written statement is provided, to be submitted to our capital for further review and we will provide a response in due course. Moving forward, Malaysia welcomes further bilateral dialogues and engagements with the European Union, Mexico and Japan to address the concerns raised. We kindly seek your understanding and cooperation on this matter.

2.1.3 Previously raised concerns

2.1.3.1 China - Requirements for information security products, including, inter alia, the Office of State Commercial Cryptography Administration (OSCCA) 1999 Regulation on commercial encryption products and its on-going revision and the Multi-Level Protection Scheme (MLPS) (ID 294[17])

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

2.83. The representative of Japan provided the following statement. Japan remains concerned about China's Regulation on Commercial Encryption Products and Cybersecurity Multi-Level Protection Scheme. We request that China provide information on the status of its consideration of the draft Regulation on Commercial Encryption Products, which was open for comment until 19 September 2020, and the Cybersecurity Multi-Level Protection Scheme, which China said was being drafted at the Committee meeting in July 2022, and that a transparent system be put in place.

2.84. In response, the representative of China provided the following statement. China would like to thank the EU and Japan for their continued interest in the Regulation on commercial encryption products and the Multi-Level Protection Scheme. With regard to the management of commercial encryption products, China has, from 1 January 2020, cancelled the approval of varieties and models of commercial encryption products, and established a unified certification scheme for commercial cryptography. The management of commercial encryption products fully reflects the principles of non-discrimination and fair competition. It treats domestic and foreign products and companies

[17] For previous statements follow the thread under ID 294.

equally. China implements mandatory testing and certification on commercial encryption products that involve national security, national economy, people's livelihood, and public interest, and implements voluntary testing and certification on other commercial encryption products.

2.85. To protect network and data security, in 2007, China has enacted Measures for the Administration of Classified Protection of Information Security, and begun to implement Classified Protection of Information Security (now called Classified Protection of Cybersecurity) system. In 2016, Cybersecurity Law of China stipulates that the state shall implement the system for classified protection of cybersecurity, thus establishing the legal status of the system. The system for classified protection of cybersecurity has become a basic national policy and system in the field of cybersecurity in China, and has played an essential role in the maintenance and protection of cybersecurity. As required by the system, information systems are divided into five levels based on respective importance and the harm when damaged. Operators for level II and above shall file records to the public security authority. Operators shall determine the level based on relevant national normative documents, technical standards, and their own actual operations, and implement different protection strategies respectively, to effectively strengthen protection for the network and data. The practice is consistent with common international practices.

2.1.3.2 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[18])

2.86. The representative of Costa Rica provided the following statement. Costa Rica once again reiterates its support for this trade concern raised by Australia and supported by Brazil, Kenya and Canada, as we have done on previous occasions. Costa Rica is concerned about the hazard-based approach adopted by the EU given that the obligations of the multilateral system require all technical requirements 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 implementation of its regulations is based on risk assessments that meet criteria supported by sufficient scientific evidence, in line with the obligations set out in the TBT Agreement.

2.87. 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. Regarding import tolerance applications for clothianidin and thiamethoxam, we seek clarification on how EU regulators are better placed to assess effects on pollinators in third countries? This is considering 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. 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.

2.88. 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.

2.89. The representative of Kenya provided the following statement. Kenya would like to refer to her previous statement on this specific trade concern. Kenya continues to support the other delegations that have raised this issue, since the measure is deemed to be more trade restrictive than necessary contrary to Article 2.2 of the TBT Agreement. Kenya reiterates that a risk-based approach is the best global practice that meets the intended objective. Adoption of the hazard-based system by the EU has the potential to create unnecessary barriers to trade. 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

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

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.

2.90. The representative of Canada provided the following statement. Canada would like to take this opportunity to once again echo the concerns raised by other Members regarding the European Union's (EU) hazard-based regulation for active substances in plant protection products and the setting of import tolerances. We encourage the EU to take an approach that does not unnecessarily limit the availability of all crop protection tools for growers. Regulatory decisions based on assessments of both hazards and risks for all active substances are the best means to achieve the right balance between grower and consumer safety on one hand and food security and reduced waste on the other. Canada does not favour or promote the use of any one production method over another and we share the objective of ensuring that pesticides are used only as necessary. We have in place an effective regulatory regime to monitor the safe use of pesticides including clear labelling requirements. Farmers need to have access to a wide range of effective and affordable plant protection products, including both chemical and biological options, to ensure plant health and minimal waste. Using integrated pest management approaches, we support farmers in their own assessment of what is needed according to growing conditions, market demand, and other factors.

2.91. Canada's rigorous regulatory requirements, including scientific assessments and monitoring programs, ensure the health and safety of consumers where pesticide residues can be a factor, as well as the health of the environment. Canadian growers and exporters have yet to be convinced of the real-world feasibility, commercial viability, and compliance with international obligations of the EU's proposed approach for setting import tolerances when a plant protection product has met the hazard-based cut-off criteria. In past Committee meetings, the EU has mentioned that comments from third countries are duly taken into account in the EU's decision-making processes. Can the EU please explain how this feedback is coordinated, reviewed, and considered? Finally, Canada once again requests that the EU consider maintaining MRLs for substances that do not pose unacceptable dietary risks and import tolerances be authorized based on dietary risk alone. We recognize that a dietary risk assessment as part of the re-authorization process would likely be needed, regardless of the results of the hazard screen.

2.92. The representative of Brazil provided the following statement. Brazil would like to refer to its previous statements regarding STC 393.[19] 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 LMRs. 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.

2.93. The representative of El Salvador provided the following statement. El Salvador reiterates the position expressed at previous meetings of this Committee, and we echo the comments made by other Members in relation to the concern about the imposition of measures by the European Union on the basis of a hazard-based approach, rather than a risk-based approach established using scientific criteria in accordance with international standards so that these measures do not constitute a trade restriction. El Salvador will continue to follow up on this issue.

2.94. The representative of Ecuador provided the following statement. Ecuador once again thanks the delegations of Costa Rica and Australia for maintaining this concern on the agenda of our work within this Committee. My delegation reiterates its support for this trade concern and shares the points and doubts set out in the statements of previous speakers. My country recognizes and shares the genuine interest in the importance of protecting human and environmental health. However, we

[19] European Union - Hazard-based approach to plant protection products and setting of import tolerances (ID 393).

consider that regulatory decisions adopted on the basis of hazard-based criteria are not consistent with international risk-assessment practice, given that there is no consideration of exposure. Ecuador urges the European Union to take into consideration the relevant scientific information emanating from international specialized agencies recognized by the WTO, such as the Codex Alimentarius, which has relevant information on pesticides. This is in order not to be more trade-restrictive than necessary to fulfil a legitimate objective, in accordance with Article 2.2 of the TBT Agreement. The precautionary approach has resulted in approvals of active ingredients being withdrawn for lack of data and MRLs being reduced to the limit of detection. Consequently, my country once again calls on the EU 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.

2.95. The representative of Paraguay provided the following statement. Paraguay reiterates its position and refers to its previous statements, while stressing the importance of adopting a scientific approach to the regulation of phytosanitary products based on the risk and not just on the hazard arising from the intrinsic properties of a chemical. In this regard, Paraguay once again requests the European Union to take into consideration information on pesticides provided by the specialized agencies recognized by the WTO, such as the Codex Alimentarius; to reconsider its approach; to base its decisions on conclusive scientific evidence and real risk weightings, in accordance with international standards and principles; to ensure import tolerances; and, where necessary, to provide sufficient transition periods.

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

2.97. The representative of Chile provided the following statement. The delegation of Chile wishes to refer to the specific trade concern raised recently, with respect to the fact that the tolerances imposed by the EU on various plant protection substances must be risk-based, given their effects on Chile's foreign trade in agricultural products.

2.98. The representative of Guatemala provided the following statement. Guatemala thanks Costa Rica and Australia for including this item on the agenda. We reiterate our previous statements. We are concerned about the hazard-based approach rather than the recognition of international standards, what are key to harmonizing regulations of this type internationally, in particular because they base their results on a risk analysis which provides a scientific basis for the measures. We request the European Union to consider measures that do not create unnecessary barriers to international trade and to preserve the WTO's commitments and principles.

2.99. 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.[20] 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, and available to WTO Members.[21] 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 authorized in the EU, due to the so-called "cut-off" criteria in Regulation (EC) No 1107/2009[22] 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.[23] The EU reiterates its commitment to act in full transparency and keep Members duly informed about further developments.

2.1.3.3 European Union - Regulation (EC) No 1272/2008 (CLP Regulation), G/TBT/N/EU/629, G/TBT/N/EU/826 (ID 539[24])

2.100. The representative of the Russian Federation provided the following statement. We would like to briefly remind that in October 2019, the EU published a Regulation on classification, labelling and packaging of substances and mixtures that unreasonably and unjustifiably considers cobalt carcinogen. For several years in various WTO bodies, the Russian delegation has been calling on the European delegation to provide scientific justification for such action or to apply the specific technological method of gastric bioelution for repeated investigation and assessment of the carcinogenicity of cobalt. In fact, the gastric bioelution method is still not approved by the EU, despite the fact that two years ago the Cobalt Institute completed all formal procedures under the legislation of the European Union to initiate scientific study on carcinogenicity of cobalt metal for oral route of exposure. According to the Cobalt Institute data, the data and figures in the EU Regulation on the carcinogenicity of cobalt are based on an approach that does not use the best available scientific data.[25] In December 2022, the European Union revised the CLP regulation and published a new proposal, but unfortunately, our comments, as well as the results of scientific studies of the Cobalt Institute were not taken into consideration, neither incorporation of the gastric bioelution. We would like to reiterate our concern regarding the classification of cobalt and urge the EU to incorporate bioelution into the CLP regulation. Finally, it is regrettable that the EU has chosen not to engage on this issue as it has been refusing to respond to present concerns for several meetings in a row. This situation is of systemic concern. Transparency is an important pillar of the WTO and provision of explanation on various measures and policies in this Committee is part of the transparency mechanism. Refusal to respond to the raised trade concerns is in stark contrast to the EU's rhetoric about the importance of transparency in this organization.

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

2.101. The representative of the European Union provided the following statement. The EU has raised the Security Review of Network Products and Services, among many aspects of the Cybersecurity Review Measures, in this Committee on several occasions, stressing our concerns related to these measures, which entered into force on 1 June 2020, were subsequently amended in January 2022, and entered into force on 15 February 2022. We remain concerned that the

[20] 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.

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

[22] 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.

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

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

[25] Occupational Exposure Limits: EU internal work on cobalt risks squandering EU green transition goals | Cobalt Institute

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

measures are quite general and very broad discretionary powers are left to the authorities in charge of the security review, raising concerns for foreign ICT operators. The Amended Measures contain few explanations of the issues we raised before and new issues have arisen since then.

2.102. The Measures expand the scope of the application from Critical Information Infrastructure Operator's (CIIO) purchase of network products and services, to online platform operators carrying out data processing activities. A newly imposed requirement is that online platform operators holding personal information of more than one million users, and that are newly listed on foreign markets, must report for review. The Measures include very broadly defined triggers, such as security, openness, transparency and diversity of supply sources, as well as "political, diplomatic and trade factors". The review is perceived as being lengthy and untransparent, and may subject suppliers to exposure of trade secrets. The EU considers that, in this environment, domestic companies may be favoured over international ones. It remains unclear who would be a "data processor" or when they would be engaged in "data processing activities". Understanding this scope is necessary as it determines if and when an application would have to be filed.

2.103. The EU urges China to clarify if "a data processor carrying out data processing activities" applies only to a data processor registered in China and processing data in China, and excludes overseas data processors that process data outside of China. The EU seeks clarification on the following points: Based on the previous draft, entities subject to Cybersecurity Reviews have changed from "data processors" to "online platform operators". The final Measures do not define "online platform operators", but the Draft Network Data Security Regulations define the term "Internet platform operators" as "data processors who provide Internet platform services such as information publishing, social networking, transaction, payment or audio-visual services". The EU urges China to clarify if the scope of "online platform operators" is narrower than "data processors", which was used previously and excludes self-operated e-commerce services of fast-moving consumer goods companies that do not provide online platform services. The vagueness of "online platform operators" leaves room for interpretation by regulators. The EU urges China to clarify the following terms: "core data", "important data", "important communication product" and the scope of "network products and services". Overall, the EU urges China to ensure clarity, transparency and objectiveness in the security review so that the Measure does not create market access barriers.

2.104. In response, the representative of China provided the following statement. China would like to thank the EU for its continued interest in the – Draft implementing measures for the Cybersecurity Review of Network Products and Services. The Chinese Government administers the internet in accordance with laws and regulations. In April 2020, the Cyberspace Administration of China and 12 other departments jointly formulated the Cybersecurity Review Measures, which took effect on 1 June 2020. The Measures for Cybersecurity Review of products and services, which came into force on 1 June 2017, were repealed at the same time. In 2021, the Cyberspace Administration of China and 13 other departments jointly revised the Cybersecurity Review Measures, which took effect on 15 February 2022. The cybersecurity review of the procurement of network products and services by the operators of critical information infrastructure has been carried out in accordance with the National Security Law and the Cybersecurity Law of China. Conducting a cybersecurity review is necessary to safeguard cybersecurity and national security. It is also a common practice of all Members, and many Members have taken legal and administrative measures in this regard. China will, as always, welcome foreign products and services to enter the Chinese market in compliance with the requirements of Chinese laws and regulations.

2.1.3.5 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[27])

2.105. The representative of Costa Rica provided the following statement. Costa Rica wishes to express its appreciation for the efforts of the Colombian authorities to provide information related to its regulation on the maximum sodium content for a prioritized list of foods. In this regard, we note that our capitals have had exchanges on the reasons and justification for this Colombian regulation. However, Costa Rica would like to reiterate its request that Colombia share with us either the Codex standard setting out the percentages for the maximum sodium content per food, or the risk analysis performed in order to determine these percentages. As in the case with front-of-pack nutritional labelling, there are no international reference standards that form the basis for setting percentages for the maximum sodium, fat or sugar content, above which a specific product cannot

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

be sold in a particular market (as is the case with the list of foods prioritized by Colombia and the maximum sodium percentages) or a stop sign or a black stamp must be placed on the package to discourage consumption of the product. As a result, there are different regulatory schemes for the international trade in processed foods, which make sectors less competitive and are more trade-restrictive than necessary. We remain open to bilateral dialogue in Geneva and once again thank the support we have received from the Colombian authorities until now.

2.106. The representative of Paraguay provided the following statement. 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).

2.107. 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.

2.108. The representative of Guatemala provided the following statement. Guatemala appreciates the inclusion of this item on the agenda. Guatemala reiterates its comments made in the previous Committee. As the issue of companies' certification and the process and lack of certification abroad is a source of concern for us, we would be grateful if Colombia could shed further light on the procedure and implementation to ensure that this does not become an unnecessary barrier to trade.

2.109. In response, the representative of Colombia provided the following statement. First, we would like to express our gratitude for the comments made by some Members on previous occasions and at this meeting. Second, we note that Resolution No. 2013 of 2020 reflects public health policy, whose objective is to reduce mortality attributable to high blood pressure and cardiovascular disease by gradually reducing salt intake from food sources, until the WHO recommendation has been achieved. In the past, Colombia has shared and discussed the documents underlying the measure taken through the aforementioned Resolution on maximum sodium content in processed foods. In fact, in the previous Committee, we mentioned the importance of the work done with Costa Rica and the need for clarification of its concern since although this refers to the technical regulation on maximum sodium content, the arguments and treatment of the subject matter refer to a regulation on nutritional and front-of-pack labelling. On the other hand, and with respect to the comments made by Paraguay in the previous Committee, I would point out that the importer or domestic manufacturer may opt for any of the accredited certification schemes permitted, in order to obtain the relevant certificate of conformity, that is, it would not be limited to the batch certification scheme.

2.110. On the other hand, and in response to Guatemala's concerns, also raise in the last Committee meeting, regarding the acceptance of the first-party declaration, it is expected that such a declaration will be valid for a period of 24 months from the date on which the first certifier has obtained accreditation in accordance with the provisions of the Colombian Technical Standard or by laboratories accredited by a foreign accreditation body that form part of the Mutual Recognition Agreement for International Laboratory Accreditation Cooperation. Third, and to conclude, I would like to reiterate the willingness of our authorities to continue technical discussions with the authorities of the countries concerned, with a view to clarifying the concerns raised and providing elements that facilitate understanding and compliance with the rules.

2.1.3.6 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[28])

2.111. 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 regulations (Guidelines on Nutrition Labelling CXG 2-1985, Annex 2, adopted in 2021). In this regard, we invite Mexico to use the recently approved 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 upholds the importance of the work done in the framework of the Codex Alimentarius, as well as the need for any food labelling measures adopted to be based on scientific evidence and on Codex standards, as set out in the Agreement on Technical Barriers to Trade. To date, the Codex Alimentarius has not defined percentages of sodium, sugar or fat content above which consumers must be warned through labels with stop signs or black stamps which are designed to discourage consumption of the product. This lack of harmonization and scientific evidence has led to the proliferation of various front-of-pack food labelling schemes with different content-percentage thresholds at which a warning is required, all of which increases the costs associated with international trade in food, makes businesses less competitive and ultimately creates unnecessary barriers to trade.

2.112. The representative of Paraguay provided the following statement. We thank Costa Rica for including this trade concern on the agenda and request that the statement made by Paraguay at the previous meeting be reflected in full in the minutes of this meeting.

2.113. *Statement from November 2022 meeting, in full.*[29] Paraguay supports Mexico's goal of protecting public health and considers that the provision of nutritional information to consumers is an appropriate strategy. However, Paraguay expresses its concern over its enforcement since there is no analytical method for distinguishing total sugars from added sugars in food. Therefore, we would ask Mexico if this would not render enforcement difficult.

2.114. In response, the representative of Mexico provided the following statement. We appreciate the comments made and the consideration given by the delegations of Costa Rica and Paraguay regarding Mexican Official Standard (NOM) 051 on the labelling of food and non-alcoholic beverages. The Government of Mexico recognizes the importance of the use of international standards and guidelines as a basis for the development of technical regulations and takes note of the comments expressed by Costa Rica. However, it notes that, at the time NOM 051 was drawn up, there were no international reference standards or guidelines that could be used as a basis for the establishment of front-of-pack labelling. We also note that the adoption, modification and/or cancellation of technical regulations in Mexico is subject to the standardization process set out in the Quality Infrastructure Law and the processes established in this Law, which provide for compliance with international commitments relating to the issuance of these instruments. At the moment, the above-mentioned Mexican legislation is not included in the 2023 National Quality Infrastructure Programme, and therefore it is not scheduled to be amended in the near future. However, the Mexican Government reiterates its commitment to the fulfilment of the international obligations contained in the TBT Agreement and in the free trade agreements to which it is party, while recognizing the legitimate public interest objective of safeguarding the health of the population.

2.1.3.7 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[30])

2.115. The representative of the European Union provided the following statement. The EU appreciates the deferment of implementation of QCOs on safety glass and wheel rims. However, the EU would like to recall that safety glass and wheel rims manufactured in the EU are subject to a rigorous certification process, in line with established international standards, which are not much different from the Indian ones, introduced by relevant QCOs. The EU once more reiterates to India to keep the BIS marking as optional for components, which are already in compliance with the UN

[28] For previous statements follow the thread under ID 608.
[29] G/TBT/M/88, para. 2.364.
[30] For previous statements follow the thread under ID 649.

marking requirements. The EU would like to know whether India would be ready to accept provisionally UN type approvals and markings. The EU would like to stress that required conformity assessment procedures are not in line with Article 5.1.2 of WTO TBT Agreement which provides that "conformity assessment procedures shall not be more strict […] than is necessary to give the importing Member adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create." Considering this, the EU would like to request India to reconsider the introduction of the QCOs on automotive safety glass and wheel rims. The EU also recalls its earlier suggestion to keep the BIS marking as optional for components that are already in compliance with the current marking requirements. The EU reiterates its request to the Indian authorities to consider preparing rules for international recognition of laboratories by the BIS, as foreseen by legislation in place. This would speed-up audits and lower the cost of mandatory testing for foreign manufacturers.

2.116. 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.

2.1.3.8 China - Commercial Cryptography Administrative Regulations (ID 644[31])

2.117. The representative of the European Union provided the following statement. The EU remains concerned about this implementation measure of the Cryptography Law, and sent comments to the State Cryptography Administration (SCA) in September 2020. Specifically, concerns relate to (i) the scope of the law; (ii) the protection of intellectual property; (iii) the imposition of pre-market and export controls; (iv) the vague requirements around testing and certification, and the turning of voluntary certification requirements into de facto market access prerequisites; (v) the imposition of additional "national security reviews"; and (vi) the use of domestic standards, along with the lack of meaningful access to pertinent Chinese standards development organizations. The EU urges the SCA to address these concerns in the further development of the draft regulations in order to ensure that legal and regulatory requirements are applied in a non-discriminatory manner, do not favour specific technologies, do not limit market access and do not lead to forced transfers of intellectual property.

2.118. Additionally, the EU encourages the SCA to open up, in practice, the Working Group 3 on Cryptographic Technology of the National Information Security Standardisation Technical Committee (TC260) and the "Cryptography Industry Standardisation Technical Committee" (CISTC) to foreign-invested industry based in China. Finally, in view of the existing controversies surrounding the 2020 version of this draft Regulation, and since the draft is currently with the Ministry of Justice, the EU calls on the Ministry to hold another round of public consultations before the regulation is finalized. The EU would appreciate its comments being taken into consideration and invites China to notify the draft regulations to the WTO.

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

2.1.3.9 European Union - Draft EU Batteries Regulation (implementation of the European Green Deal), G/TBT/N/EU/775 (ID 685[32])

2.120. The representative of the Russian Federation provided the following statement. The Russian Federation would like to refer to its statements at previous TBT Committees with regard to the Regulation of the European Parliament and of the Council concerning batteries and waste batteries. The Russian Federation has been raising this issue in the TBT Committee since June 2021. However, up to now the EU has failed to provide clarification on specific scientific justification of proposed measure, as well as the relevant international standards. This concern relates to, *inter alia*, the maximum level of carbon footprint over the lifecycle of batteries, minimum level of certain recycled materials, as well as additional restrictions on the use of cobalt, lithium and nickel. We reiterate a request that the EU clarify if less trade restrictive measures to stimulate recycling of nickel, lithium,

[31] For previous statements follow the thread under ID 644.
[32] For previous statements follow the thread under ID 685.

cobalt, copper and lead were considered rather than such administrative measure as minimum level of recycled materials in the battery. If yes, we request the reasons as to why these measures haven't been employed or proposed for implementation. Finally, Chair, it is regrettable that the EU has chosen not to engage on this issue as it has been refusing to respond to present concerns for several meetings in a row. This situation is of systemic concern. Transparency is an important pillar of the WTO and provision of explanations of various measures and policies in this Committee is part of the transparency mechanism.

2.121. The representative of China provided the following statement. China supports the EU's efforts for better regulation of batteries and waste batteries and would like to thank the EU for responses to our previous comments. However we still have some concerns which have not been resolved, as follows. China would like to know the progress in formulating calculation methods for carbon footprint and recycled content by the EU side. And we would like the EU to engage other Members in the policy-making process. China would also like the EU to timely update the carbon footprint database and adopt data from non-EU institutions as necessary and appropriate. Also, the EU is reminded to note that the requirement on relevant technical documents may result in the disclosure of commercial secrets. The required information such as the content of cobalt, nickel, lithium contained in batteries, and carbon emission date in the production process of electrolyte and isolation membrane, involves multiple core business secrets. To disclose such information in the technical documents poses a risk of secret leakage. It is recommended to set relevant protection clauses or cancel the disclosure of the technical documents containing commercial secrets when the regulatory objectives could be satisfied otherwise.

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

2.123. 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. I will try to address the Chinese concerns in the order that they were raised: First, in relation to the progress in formulating calculation methods for carbon footprint and recycled content, the EU would like to inform China that the preparatory work for this is in its early stages. The Joint Research Centre of the European Commission is preparing the technical work for the delegated acts. On carbon footprint, the Joint Research Centre already held several meetings with stakeholders on the methodology for electric vehicle batteries. However, the EU would like to reassure China that the implementing and delegated acts that will be developed under the notified draft will include consultations with stakeholders. Furthermore, drafts of those implementing measures and delegated acts will also be notified to the WTO in accordance with the TBT Agreement.

2.124. Two, there is no specific carbon footprint database related to the battery regulation. But, the EU aims to make available a carbon footprint calculation tool for batteries that can be used freely by economic operators for the purpose of the battery regulation. Three, the EU intends to amend the text of the proposal so that it makes clear that the technical documentation that the manufacturer draws up to demonstrate compliance with the requirements of the regulation will remain a confidential document, only to be shared with notified bodies, and with public authorities at their request. For certain other sensitive information, the Regulation and its implementing acts will include provisions to ensure that the information is only shared with those that need it. Four, as for the review to assess the feasibility of measures to phase out the use of non-rechargeable portable batteries of general use, the EU considers it more appropriate to achieve its intended objectives to carry out an assessment encompassing all such batteries together. But, of course, the EU will consider the specificities of the different battery types and chemistries. Finally, an EU-wide register of battery manufacturers is a long-term goal of the EU's waste policy. However, for the time being, the EU has chosen to maintain the approach of the existing EU Batteries Directive, since in recent years considerable investments have been made in the implementation of the current registers of battery producers.

2.1.3.10 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[33])

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

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

2.127. 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 as well as for uploading its statement in the eAgenda so as to allow the EU to prepare a meaningful reply. 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, section 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 harmonized standards or, where applicable, common specifications referred to in Article 41, covering the requirements set out in Chapter 2. Title High Risk AI Systems.

2.128. 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. The EU would like to thank the Chinese authorities once again for providing comments on the notified draft and hopefully these additional responses sufficiently clarify the points raised.

2.1.3.11 China - Recommended National Standard (GB/T) for Office Devices (Information security technology – Security specification for office devices) (ID 761[34])

2.129. The representative of Japan provided the following statement. As Japan has pointed out at various meetings of the Committees, Japan has heard that the proposed national standards require

[33] For previous statements follow the thread under ID 736.
[34] For previous statements follow the thread under ID 761.

office devices including their components procured by critical information infrastructure operators to be developed and manufactured in China, and also require information disclosure to prove that the development and production are carried out in China. As pointed out at the last TBT Committee meeting, if national standards including the above requirements are introduced and are enforced on a de facto basis, 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 discriminated against and that trade will be restricted unnecessarily. This may violate Articles 2.1, 2.2, and 5.1.2 of the TBT Agreement, Article 2.1 of the TRIMS Agreement, and Article III.4 of the GATT. There is also a concern that it could violate Article 7.3 of China's WTO accession protocol if, for example, the specific operation of the National Standard could force the transfer of technology in order to manufacture office devices in China.

2.130. In addition, China stated "there are no plans to revise the Recommended National Standards related to printers and copiers in the near future." at the previous Market Access Committee meeting last October. However, only one week later, the National Information Security Standardization Technical Committee (TC260), which is in charge of the draft National Standards, notified that the planning process for the National Standards had been completed on 30 October 2022. Japan understands that the process for revision is still ongoing under the direction of TC260. Japan would like China to share the information regarding the schedule of revision of the National Standards including the timing for public comment, the scope of application of this National Standards including the definition of critical information infrastructure operators, the requirements for the development and production of office devices and their components in China, and the requirements for information disclosure to prove that they were developed and manufactured in China. Furthermore, China stated "this is an issue related to standards and should be discussed in the TBT Committee," at the last TRIMs Committee meeting, but if China does not provide a convincing explanation of the specific concerns raised by Japan and related countries at successive TBT Committee meetings, and these concerns are not resolved before the public comment, it would be considered that China's commitment to the authority of the WTO, which is at the core of the multilateral trade system, is not fulfilled. In order to avoid such doubts, Japan hopes that the concerns raised at this meeting will be firmly addressed before the public comment. Japan strongly requests China not to amend the draft of the national standards, which contains the discriminatory treatment of foreign products and the possibility of causing de facto forced technology transfer, in a form causing such matters of concern. Besides, Japan strongly urges China not to take the same or similar measures in other industrial sectors or products.

2.131. The representative of the European Union provided the following statement. The EU would like to echo the concerns raised by Japan 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.

2.132. In response, the representative of China provided the following statement. This standard is currently under application for revision and the notice for its revision application was published on 22 December 2022. So far, no objections have been received. The revision of these national standards is still waiting for the approval of the Standardization Administration of China. The formulation and revision of China's national standards are always based on the principle of openness and transparency. After the standard revision plan is officially approved, relevant information will be released to the public. All parties can obtain this information through the website of the Standardization Administration of China.

2.1.3.12 France - Decree on the minimum proportion of re-used packaging to be placed on the market annually, G/TBT/N/FRA/223 (ID 758[35])

2.133. The representative of Mexico provided the following statement. The delegation of Mexico refers to the Decree on the minimum proportion of re-used packaging to be placed on the market

[35] For previous statements follow the thread under ID 758.

annually, notified by the Government of France to the Members of this Committee on 3 March 2022 through document G/TBT/N/FRA/223. The Government of Mexico also refers to Official Communication No. 500/RVL/058/2022, sent during the public consultation period for this measure, identifying the possible impact of the measure on tequila exports. In this regard, we would like to reiterate the main concern in that communication: The measure would directly affect exports of tequila since, under domestic law, the beverage must be bottled at origin to guarantee its source and ensure compliance with the relevant health standards.

2.134. The delegation of Mexico kindly requests the delegation of France: To clarify the scope of the products covered by the Decree. We also kindly request a response to the questions contained in Official Communication No. 500/RVL/058/2022, in which the Government of Mexico sent comments on the measure during its public consultation period. Lastly, we ask to be informed of the status of the Decree. The delegation of Mexico thanks the delegation of France for giving its consideration to this statement and the requests made therein.

2.135. The representative of Australia provided the following statement. Australia thanks the EU for their response in November 2022 meeting, advising the decree applies equally to products produced domestically in France and imported products. Recognizing 2023 is the first year the decree is entering into force, Australia thanks the EU for their commitment to enforcing this decree with a flexible and educational objective in mind. This will be important to ensure industry adapts smoothly to the changed conditions. Australia would appreciate further detail on the implementation of the decree. In particular, noting the decree provides for obligations to be transferred to an eco-organisation, we request further information on whether the obligations imposed by these requirements would be greater for imported products than for products produced domestically.

2.136. The representative of Argentina provided the following statement. According to the notification made in March 2022, the Decree establishes the obligation to recycle a certain percentage of containers and packaging, increasing over time, in order to reduce waste and move towards a circular economy. Accordingly, deadlines and procedures are established for those within the supply chain to organize themselves to comply with this obligation. At the last meeting of this Committee, the EU noted that the Decree applies equally to containers produced in France and to imported containers. In this regard, Argentina wishes to express concern and consult France on the scope of the Decree in relation to imported products, on how it intends to apply it to these products, and whether this would not be an extraterritorial application of a provision aimed at reducing waste and carrying out recycling to protect the EU environment. Moreover, it would be important for Argentina to know whether this regulation is consistent with the packaging provisions being adopted by the EU.

2.137. In response, the representative of the European Union provided the following statement. The EU would like to thank Mexico, Australia and Argentina for their comments on this notification. To answer the practical questions first. The decree was adopted on 8 April 2022, and started to apply as of the beginning of this year in France. In my answer I will focus on tequila bottles from Mexico but I hope that the logic of the answer is equally valid for Australian wine and Argentinian wine, if not I am happy to follow up on a bilateral level. Regarding the re-use of tequila bottles, the EU would like to provide the following reassurances to Mexico. Under the French Decree, tequila bottles would be considered household packaging. It is important to be conscious that in France, household packaging has been subject to an extended producer responsibility scheme since 1992. Thus the producers of this packaging, i.e. national producers and importers, are required to finance the end-of-life of their packaging which includes the collection and processing of the waste either themselves, or by joining an eco-organization who will take over the extended producer duties. In practice, we see that in France there are no producers of household packaging who manage the recollection of their packaging waste themselves. All producers of such waste are a member of an eco-organization (for example, Citeo or Léko).

2.138. In such case, the Decree states that the obligation to place reused packaging on the market is transferred from the individual producer to the eco-organization. Thus, in practice, it is the eco-organizations in the household packaging sector that are required to take the necessary steps to achieve the objectives of placing reused packaging on the market, which are then applicable to all packaging. In practice this entails that a Mexican producer of tequila will not be asked to set up its own recollection system of empty tequila bottles with as aim to refill these bottles in Mexico with new tequila. In principle, being a member of an eco-organisation - as the individual tequila importers should already be – should suffice to respect the obligations stemming from the French Decree. The

EU hopes that this answer is useful and for any follow-up questions we are happy to follow up bilaterally.

2.1.3.13 Canada - Proposed Prohibition of Certain Toxic Substances Regulations, 2022, G/TBT/N/CAN/673 (ID 753[36])

2.139. The representative of Japan provided the following statement. We appreciate the following comments made by Canada at the last TBT Committee meeting. The Regulations aim to reduce the risk of toxic substances entering the Canadian environment, contributing to the protection of Canada's environment and wildlife. Canada published the screening assessment for DBDPE in 2019 and concluded that DBDPE has a risk of harm to the environment due to its persistence and widespread occurrence in the environment along with the potential for bioaccumulation and the toxicity of its transformation products. However, Japan continues to have concerns, especially in relation to impacts on industries and citizen's lives in Canada, regarding the proposed DBDPE restriction in the Proposed Prohibition of Certain Toxic Substances Regulations, 2022. DBDPE is widely used in electrical and electronic equipment, automobiles, aircraft, medical equipment, industrial equipment, social infrastructure equipment, agricultural machinery, industrial machinery, construction machinery and industrial vehicles. DBDPE is an alternative to decaBDE, which is a globally banned brominated flame retardant, and DBDPE has not been restricted by international conventions or in other jurisdictions.

2.140. In addition, since there is no equivalent flame retardant for many applications that can be used as a substitute for DBDPE at the moment, their prohibition will likely have significant and serious effects on the trade and distribution of the above equipment in the case that the use of DBDPE is prohibited. In particular, because of potential impacts on important instruments that support industries and the citizen's lives in Canada such as medical equipment, industrial equipment and transport equipment, it is considered that the examination to discover alternatives to DBDPE and set an appropriate grace period need to be carried out particularly carefully, by carrying out additional hearings from stakeholders for example. Canada cited the protection of endangered whales and belugas as the main reason for regulating DBDPE and we understand the objectives of the policy. However, we have been informed by Japanese industries that DBDPE contained in articles poses a very low risk of adverse effects on humans and the environment, including on those endangered species.

2.141. In relation to this, the screening assessment published by Environment and Climate Change Canada elaborates that DBDPE has a very low volatility and that the exposure to the environment is very low from DBDPE contained in articles. It would be appreciated if Canada would indicate the rationale for including DBDPE contained in articles in the scope of the Regulations. Therefore, in order to ensure that the proposed DBDPE restriction would not be more trade restrictive than necessary to achieve its legitimate objectives, Japan would like to request that Canada undertake the following: 1) conduct a more thorough risk assessment of the effects of DBDPE contained in articles on human health and the environment, while taking into account the consistency with results of risk assessments from other countries and regions; 2) conduct a realistic feasibility study on alternatives to DBDPE; and 3) maintain flexibility in considering whether to introduce the DBDPE restriction, and ensure that any introduction schedule includes an appropriate grace period based on the risk assessment and the feasibility study.

2.142. The representative of the Republic of Korea provided the following statement. Korea supports the concerns raised by the delegation of Japan 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. Regarding the proposed regulations, Korea submitted comments on 21 July 2022 via the Canadian TBT Enquiry Point and received an answer on 22 August 2022. Though we thank Canada for this sincere answer, related industries in Korea remain concerned about the proposed restriction of DBDPE and as such, Korea would like to convey the following requests. Due to its cost-effective and excellent 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 electronic products, automobiles, construction equipment vehicles, agricultural machinery, etc., substituting the once commonly used decaBDE. 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

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

such measures would not only be more trade-restrictive than necessary but also put human safety at risk. 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.

2.143. Therefore, Korea requests that Canada thoroughly reconsider product safety before enforcing the DBDPE restriction and give suggestions for manufacturers on the alternatives on par with DBDPE in terms of performance and cost. Also, we request that Canada postpone the regulations indefinitely until such DBDPE alternatives are developed. 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 U.S. Environmental Protection Agency (EPA) and the European Chemicals Agency (ECHA) do not implement risk assessments or risk management measures on DBDPE currently, and the Stockholm Convention and the Great Lakes Water Quality Control Convention (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.

2.144. In response, the representative of Canada provided the following statement. 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. On 14 May 2022, Canada published in Part I of the Canada Gazette, the Proposed Prohibition of Certain Toxic Substances Regulations, 2022. Publication of the proposed Regulations opened a 75-day comment period for stakeholders. The measure was notified to the WTO TBT Committee on 18 May. We appreciate the comments received by Japan and Korea. Canada is carefully reviewing and analysing all public comments received during the comment period, in consideration for the development of the final regulations. 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 to be published in late 2023.

2.1.3.14 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[37])

2.145. The representative of Costa Rica provided the following statement. Costa Rica wishes to raise this trade concern in support of a systemic defence of the principles of the TBT Agreement, specifically those relating to: 1 - the adoption of measures based on scientific evidence; and 2 - the harmonization of rules through the use of regulations issued by the international reference organizations. Costa Rica once again emphasizes the importance of harmonizing food labelling schemes on the basis provided by international reference organizations, such as the Codex Alimentarius and its existing regulations such as the Guidelines on Nutrition Labelling CXG 2-1985, Annex 2, adopted in 2021. The lack of harmonization of food labelling regulations leads to the proliferation of schemes with different content percentages for requiring a warning, resulting in unnecessary barriers to trade. To date, the Codex Alimentarius has not defined percentages of sugar, fat or other content above which consumers must be warned through labels with stop signs or black stamps intended to discourage consumption of the product. 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.

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

2.146. 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. In Argentina, the enactment of Law No. 27.642 was the result of a lengthy democratic process, with extensive discussion in both houses of the National Congress, where industry, academia and civil society had the opportunity to present their positions. In the framework of the committee discussions, where a great deal of relevant scientific evidence was circulated, parliamentary decisions were taken. Similarly, during the drafting process for the Regulatory Decree, different sectors were involved and had the opportunity to make suggestions. This Law, which was the product of a comprehensive legislative discussion, with the participation of all sectors involved, clearly states that the Pan American Health Organization (PAHO) Nutrient Profile Model should be used. Regarding the nutrient profile, we should first point out that the PAHO nutrient profiling system (NPS) is based on the nutritional recommendations of the World Health Organization (WHO) for the consumption of the nutrients assessed. The Food Guidelines for the Argentine Population (GAPA) are based on the same international recommendations that state that the nutrient profile models should complement and support food-based dietary guidelines in the region where they are applied. In this regard, Argentina's Ministry of Health conducted an investigation that evaluated the level of concordance between NPSs used under different regulations in and outside the region with the national recommendations made in the GAPA. The PAHO NPS had the highest overall degree of concordance and, when conducting an overall assessment of each NPS, the PAHO/WHO model performed the best, corresponding to the national scientific evidence available to date.

2.147. It follows that Argentina considers that this nutrient profile is the best option for assessing the food marketed in our country. It is important to mention that in recent years essential population studies were published in our country 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 in Argentina each year. At the same time, excessive consumption of these nutrients is associated with the consumption of ultra-processed and processed products containing excessive amounts of such nutrients as set out in the PAHO/WHO Nutrient Profile Model. Studies carried out in 10 countries, including Argentina, also concluded that the consumption of products containing excess critical nutrients according to the PAHO/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 emphasize our readiness to continue engaging bilaterally with the delegation of Costa Rica.

2.1.3.15 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[38])

2.148. The representative of China provided the following statement. China supports the EU's requirements on eco-design of mobile phones and tablets, but in accordance with Article 2.2 of the TBT Agreement for not creating unnecessary trade barriers, China would like to raise the following suggestions. First, China would like the EU to require the provision of spare parts of folding screen protective film only to professional maintenance personnel and withdraw the requirement of providing spare parts and replacement of folding screen protective film to consumers. Compared with ordinary mobile phone film, folding screen protective film is more sticky and difficult to operate and repair. If dust particles are mixed in the process of pasting protective film, it will be more harmful to the screen. Second, China would like to remind the EU that disassembly and replacement of battery should be carried out by professional repairers in workshop environment. Smartphone and tablets belong to precision devices. For better user experience and longer standby time, flexible packaging design is generally adopted for batteries to fit the irregular space inside the equipment. On the one hand, the distance between the positive and negative electrodes of the battery is small, so the static electricity of human body during maintenance and replacement and other misoperation may cause potential safety hazards such as fire and explosion, or damage to other spare parts. Therefore, battery maintenance and replacement require the repairer to have certain ability in electrostatic (ESD) protection environment.

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

2.149. Third, China would like the EU to require that only "display assembly and battery" be provided to professional repairers as spare parts. Large numbers of use cases show that only the display assembly and battery are spare parts with a high replacement rate in mobile phones and tablets, and the replacement rate of other parts is low. The burden of providing other spare parts of low replacement rate would not only bring unnecessary costs to manufacturers but also bring large amounts of electronic waste to the EU market. Four, China would like the EU to reduce the waterproof and dust-tight requirements on mobile phones and tablets. The current waterproof requirements of IP67 set out in the regulation are stricter than necessary and do not match the daily use of smartphones. Consumers need to bear extra costs for unnecessary functional design, so it is not suitable as the minimum requirement. IP42 could apply instead. For tablets, IP44 set out in the regulation does not match the actual usage scenarios, and is not suitable as the minimum requirements. To meet this requirement, consumers need to pay more costs and lose the maintainability of products. Besides, under current technological level, certain folding smartphones cannot meet the regulatory requirements. Five, the EU is invited to reduce the requirement on resistance to accidental drops and delete the requirement on resistance to accidental drops of folding screens in unfolded state. There is a big gap between the number of falls defined in the regulations and the actual usage scenarios. We recommend that the requirements of the regulations should be consistent with the actual scenarios and reduce it to 35 falls at a height of 1m. The current regulation has no minimum requirement for tablets. For the folding screen mobile phone, its unfolded size (greater than 7 inches) is equivalent to the tablet, which should be consistent with the anti-drop requirements of the tablet. It is recommended to delete the minimum anti-drop requirements of the folding screen in the unfolded state.

2.150. Six, China hopes that the time limit for security upgrade of operating system could be changed to four years after the products are released, and the time limit for function update of operating system could be changed to two years after the products are released. Android system updates involve Google, chip manufacturers and OEM; and the continuous provision of security updates needs the support of the whole Android ecosystem. According to earlier research by the EU, all the 25 Android smartphones among Ecodesign preparatory study on mobile phones, smartphones and tablets cannot meet the system updates requirements of five years, and still run stably for a period of time without system security update. Seven. We hope that architecture analysis, module implementation, module test and integrated test can only be executed serially from the implementation process. It is recommended that the availability of security updates could be extended to six months, and the availability of functionality updates, especially system updates, could be extended to 12 months. The requirement on the option to restore the operating system version which was previously available (System rollback) will introduce unnecessary security risks with no value to users. This requirement is better to be deleted.

2.151. Eight, at present, the delivery time of spare parts is affected by the distance between the warehouse and the place of order, logistics, the mode of transportation and other restrictions, etc. We think the five working days allowed for the delivery of the spare parts after having received the order could be modified to 15 working days, which is consistent with the Ecodesign Directive of other products such as dishwashers and washing machines. Nine, China would like the EU to provide a minimum transition period of 24 months for this regulation, and a minimum period of 30 months on repair operations. In order to meet requirements regarding waterproof, dust-tight, accidental drops, spare parts disassembly, battery endurance and others, manufacturers need a longer time to redesign products and adjust the supply chain, such as prototype testing, mass production testing, etc.

2.152. The representative of the Republic of Korea provided the following statement. Korea appreciates this opportunity to make 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 and scheduled to come into effect on 6 January 2024. Korea respects and supports the efforts of the EU in adopting the ecodesign requirements to protect the environment. Korean companies are also conducting various technological innovation activities to develop eco-friendly products and provide more value and utility for consumers. Korea thanks the EU for its review and acceptance of some of our previous requests, such as the resistance test criteria to accidental drops, that were conveyed via Enquiry Point on 26 September 2022 and at the last TBT Committee meeting in November. Regarding the ecodesign regulation's "Revised proposed text" passed at the EU Regulatory Committee meeting on 17 November 2022 and submitted to the EU Council in January this year, we would like to request the EU for further consideration as some concerns from the Korean industry still persist or have been newly added. Some of the provisions in

the revised proposed text stipulate more stringent criteria compared to other ecodesign regulations on home appliances, including TVs and refrigerators, hampering the introduction of new and innovative technologies and limiting the consumer's right to choose the latest products and services, such as foldable smartphones.

2.153. Regarding the latest foldable smartphones, Korea requests that the EU relax the three following technical requirements, which will make it difficult for the manufacturers to achieve regulatory compliance or guarantee the product's integrity and safety. Therefore, it is requested that the EU (i) Allow the supply of foldable-feature-related spare parts (e.g. the Mechanical display folding mechanism, and the Foldable display) not as separate but as an assembly. (ii) Ease minimum criteria on the working environment and technical proficiency for ensuring battery replaceability. (iii) Ease device dust-tight rating requirement from IP67 to IP47. Also, regarding mobile phones and tablets in general, Korea requests for the relaxation of the next three requirements, which will place excessive burdens on manufacturers and delay the introduction of new, innovative technologies.

2.154. Therefore, it is requested that the EU (iv) Extend the maximum delivery time of spare parts from within five days to within ten days. (v) Reduce the minimum period for providing OS updates or change the reference point from the date of the end of placement on the market to the date of placement on the market. (vi) Lower the number of cycles for battery endurance tests to 500 cycles while raising the value of remaining capacity to 83% to shorten the verification period. We are also ready to continue the discussion with the EU through bilateral engagement and the Enquiry Points to address this issue of technical nature in full detail.

2.155. 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 draft Ecodesign measures for mobile phones, cordless phones and slate tablets pursuant to Directive 2009/125/EC of the European Parliament and of the Council. The EU would like to reassure both countries that their concerns have been duly considered: Regarding the folding screen protective film, the EU would like to inform both countries that the revised version of the act foresees in an altered definition of "protective foil", which means "a protective film designed to be attached to the display of a foldable device to enhance the reliability and to reduce mechanical wear of the screen surface". Regarding the disassembly requirements for batteries, please consider that the approach laid down in the Regulation for the disassembly requirements of batteries allows for the manufacturer to choose between different solutions for his product: either, to comply with the requirement that batteries shall be removable by any layperson with basic tool ("reparability path"), or to comply with an alternative requirement that batteries shall be long-lasting, i.e. not having a deterioration of more than 20% of their capacity after 1,000 cycles of charge/discharge ("durability path"). In the latter case, the disassembly requirements are less stringent.

2.156. Regarding the provision of spare parts, please consider that the revised act has "modulated" the maximum delivery time of spare parts: during the first five years of the period referred to in points 1(a) and (c), spare parts are delivered within five working days after having received the order; during the remaining two years of the period referred to in points 1(a) and (c), spare parts are delivered within ten working days after having received the order. Regarding the tests for the resistance to accidental drops of foldable smartphones have also been revised: devices shall pass 45 falls without any protective foil or separate protective cover, foldable smartphones designed to be used with a protective foil on the foldable display shall pass 35 falls in the un-extended state and 15 falls in the extended state; Note that the Regulation now foresees that the resistance to accidental drops is the number of falls which have been passed by at least four out of the five units under test (before, it was three out five).

2.157. On the time limit for security upgrade of operating system, the EU is of the opinion that the five years of updates availability (after the date of the end of placement on the market) will be highly beneficial, to the extent of prolonging the lifetime of devices. In fact, the lack of availability of software and firmware updates, together with the need for fast/better performing /new devices were among the most common replies given by users when asked for the reasons why their previous device was no longer in use (within the public consultation carried out in relation to the initiatives). Furthermore, in the revised text security or corrective updates and functionality updates shall be available to the user within four months and within six months, respectively. Finally, the latest version of the act now foresees that the requirements will enter into application after 21 months from the date of entry into force of this Regulation (in the in the version submitted to WTO, this period was of 12 months). We remain available to discuss the measure bilaterally.

2.1.3.16 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[39])

2.158. 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.[40] We request India notify the draft proposed amendment to this Committee, provide at least a 60-day comment period, and take any comments received into account before finalizing and adopting the measure. At the November 2022 WTO TBT Committee meeting, the United States had questions regarding the proposed amendments. We will not repeat those questions again for the sake of brevity. India's representatives said they would share our concerns with capital and return with answers. We hope they have those answers today. In particular, we would appreciate if India could provide an update on the current status of the proposed amendments and we cite the Public Consultation.

2.159. In response, the representative of India provided the following statement. We thank the USA for their interest in this issue. 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 under examination The provision is being considered in the interest of consumers and is applicable to all the industries viz. indigenous manufacturers and importers.

2.1.3.17 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[41])

2.160. The representative of the United States provided the following statement. The United States again recalls its concerns regarding the European Union's (EU) practices related to the enforcement and reduction of pesticide maximum residue levels (MRLs). We have noted that EU MRLs and import tolerances are often reduced or withdrawn following a non-approval or restricted approval decision. The United States continues to request that the EU complete, in their entirety, its science-based risk assessments prior to establishing new MRLs. The United States also asks the EU to provide an opportunity in advance of the formal WTO notification comment period for third-country data contributions. Such an approach will allow the EU to take all available evidence into account, prior to making an MRL decision. We have experienced instances where the review of available data is only considered after the EU notifies its intention to not approve a renewal or to approve a renewal on a restricted basis.

2.161. The United States reiterates its request that the EU retain existing MRL levels while import tolerances are under consideration. A recent EU draft regulation now states that it will only consider import tolerance applications on a case-by-case basis dependent upon meeting its definition of "environmental criteria". Without clear guidance from the EU regarding the parameters of "environmental criteria" the proposed new approach lacks clarity and unnecessarily increases uncertainty for farmers and growers globally. 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 it applies for the EU's domestic goods, is applied inconsistently and causes disruptions in trade for products destined for the EU market. Trading partners have found themselves racing to move shipments through customs to prevent rejections or turning back orders because a product that previously complied with an existing EU MRL at the time of production could potentially be rejected at EU borders. EU growers are not required to adhere to the same timelines under the current regulatory provisions,

[39] For previous statements follow the thread under ID 765.
[40] I-19//42/2022-W&M, Inviting Public Consultation for declaring two or more prime constituents of the commodity on front side of the package with the Brand Name/ Logo".
[41] For previous statements follow the thread under ID 580.

and the United States requests that MRLs for all products, both domestic and imported, be enforced based on the date of production.

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

2.163. The representative of Colombia provided the following statement. These are topics that we have raised in a number of sessions of this Committee and these concerns are reiterated on this occasion because the requests for adequate transition periods have not been addressed to date, and comments expressed in the international consultation process have not been taken into account. In fact, we have had no response to our previous questions regarding how the European Union has taken account of comments submitted by Members or whether there are cases where regulatory changes have been introduced on the basis of the information submitted. We do not know how comments have been considered to determine transition periods for the implementation of the rules. In addition to these questions that we have raised previously, there are those that we have raised in other scenarios regarding the use of emergency authorizations, from which producers from the EU and from some non-EU countries benefit, but which are not accessible on equal terms for all other countries.

2.164. Everyone here knows that regulatory changes on the use of plant protection substances, coupled with short transition periods, create difficulties and uncertainty for fruit- and vegetable-producing countries, in addition to creating additional burdens for producers who need to make decisions on the use of crop protection products one year or more in advance of the arrival of the product on the European market. In light of the above, Colombia urges the EU to take account of the comments made before moving ahead on reducing an active ingredient to a minimum level of detection, particularly where the substances are key for controlling pests or diseases that are typical of tropical climates. We 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.

2.165. The representative of Kenya provided the following statement. Kenya would like to refer to her previous statement on this Specific Trade Concern. Kenya continues to support the other delegations that have raised this issue, since the measure is deemed to be more trade restrictive than necessary contrary to Article 2.2 of the TBT Agreement. The transitional periods for MRLs established by EU are short and do not take into account the needs and adaptive capacities of developing countries in contravention of Article 12.3 of the TBT Agreement. The transition periods clearly need to be longer. Kenya therefore calls for a review of the transitional periods.

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

2.167. The representative of Paraguay provided the following statement. As with other similar concerns and as stated in previous meetings of this and other committees, we are concerned that the European Union's approach to limiting the use of substances is more trade-restrictive than it needs to be for it to achieve its legitimate objectives under the TBT Agreement. The pursuit of such policies will cause significant trade damage to the economies of developing countries and jeopardize their ability to achieve the Sustainable Development Goals, including those related to food security. We urge the EU to reassess its approach and, where MRL reductions are duly justified, provide

adequate transition periods that take into account the realities of the production processes and geographical locations, including distances, of its trading partners. With regard to international consultations, we thank the EU for the notification of measures of this type. However, we reiterate our questions regarding how the EU has taken account of comments submitted by Members at different stages of the consultation process and whether there are cases where regulatory changes or adjustments have indeed been introduced on the basis of information submitted by those concerned in the process since the limited time between the end of the comment period and the approval of the drafts without modifications, which occurs in many cases, leads us to believe that these notifications and comment periods are mere formalities and that no account is taken of comments or even intended to be taken.

2.168. The representative of Ecuador provided the following statement. Ecuador maintains its support for this trade concern raised by the United States, Costa Rica and Colombia, and appreciates the inclusion of this specific trade concern on the agenda of this Committee. My delegation once again 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. Ecuador's understanding is that, in order to establish reasonable transition periods, it is necessary to consider harvesting periods and the times when agrochemicals are applied. Farmers need more time to adapt to MRL requirements, as it takes at least 10 years on average to develop or register a new phytosanitary pest-control product, and this is when new alternatives have been identified.

2.169. It is estimated that around 20% to 40% of the world's crops are lost to pests each year. Of that loss, about one third is caused by fungal diseases. Crops such as bananas are particularly vulnerable to such pests, which include black sigatoka or, even worse, Fusarium R4T. With the policy of prohibiting substances such as imazalil, chlorothalonil, mancozeb and metiram, growers are left with no viable alternatives for countering these pests. In view of the above, Ecuador urges the EU to consider an adequate period to enable developing countries to adjust their production to the new conditions established in the European regulations. It calls on the EU 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, conditions that differ from those of the members of the European economic bloc. Ecuador reiterates its request to the EU for information on how it monitors that the member State that has received an emergency authorization for the use of prohibited substances is complying with the existing MRL regulations and how the EU verifies, in the case of non-compliance with the MRL regulations, that the products containing the prohibited substances have not been marketed in other EU member States.

2.170. The representative of Uruguay provided the following statement. In view of harvesting periods, the stages at which plant protection products are applied, and the time required to develop and register alternative substances, the transition periods granted by the European Union in the provisions amending the MRLs for active substances are, in most cases, 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 earlier, six months are insufficient for adaptation. In our view, any changes should be gradual, and a reasonable period of time should be granted to raise awareness in the productive sector and among technical advisers, and to make available on the market effective substitutes for the active ingredients for which the MRLs are to be reduced. It is inappropriate to make drastic changes to the rules in the middle of a harvest season, given the impact this may have on the marketing of these products. My delegation reiterates the call for Members to adopt regulatory decisions based on internationally accepted standards or to present conclusive scientific evidence when it is strictly necessary to deviate from those standards to meet their legitimate aims, as provided for in the relevant WTO Agreements.

2.171. Uruguay urges the EU, when taking decisions to reduce MRLs for active substances used in agricultural production by other Members, to consider the need to grant adequate and 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 echoes the questions from Colombia and Paraguay on how, and to what extent, the EU has actively taken into account the comments of other Members in its regulatory process, and whether it can give examples of cases where its original proposals have been modified in response to comments received from third countries.

2.172. The representative of El Salvador provided the following statement. El Salvador wishes to support this trade concern. We echo the comments made by other Members in relation to the concern about the imposition of measures to reduce maximum residue levels and the established transition periods to comply with the new tolerances being established by the European Union. In that regard, we urge the European Union to extend the transition period so that the measures imposed do not create unnecessary trade restrictions and are in line with the principles of this Organization. In addition, extending these periods would allow small exporting producers to adapt to the regulations imposed, taking into account the type of crop and the substances used, enabling them to be competitive at the international level. It is important that these measures fulfil their objective and do not distort trade.

2.173. The representative of Panama provided the following statement. We echo the comments made by the delegations that took the floor earlier. As in past meetings, Panama wishes to express its concern regarding the transition periods to comply with the new tolerances established. We urge the EU to extend the transition period to enable small exporting producers to adapt to the regulations imposed since the current period is insufficient.

2.174. The representative of Guatemala provided the following statement. We reiterate the point made in previous meetings that the European Union's transition periods are insufficient in practice to make the necessary adjustments in this area, in line with production chains and stages. In addition, producers require certainty regarding substances, and this should be considered as from the entry into force of the MRL changes and not the renewal of the substance. An appropriate period is needed for producers to make the necessary changes, and in particular to have time regarding the effectiveness of the substances, which is measured according to the different climatic phases during the year. We support the questions submitted by Colombia and Paraguay.

2.175. 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. 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. 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.

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

2.177. The representative of Uruguay provided the following statement. We would like to thank the European Union for its response and take note of it. We can see that it is essentially the same as the response that was provided on previous occasions. In order to make headway in the dialogue on this concern shared by several Members, we would simply like to ask the European Union if it could, at this meeting or at the next meeting of this Committee, also answer the questions raised by Colombia, Paraguay, Uruguay and Guatemala, today, which had already been raised at several previous meetings.

2.1.3.18 European Union - Chlorothalonil (pesticide active substance), G/TBT/N/EU/625 (ID 579[42])

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

2.179. The representative of Colombia provided the following statement. Colombia once again expresses its concern regarding the measure notified by the European Union regarding the active substance chlorothalonil. In fact, despite the technical and scientific comments submitted within the consultation periods, the rule preventing the renewal of the marketing of products with this active substance entered into force and the European Commission set the maximum residue level or minimum level of detection. It is clear that in this case the EU has also not taken into consideration the technical comments submitted or the requests for a longer transition period to adapt production processes. We therefore urge the EU to take account of the productive and social particularities of the tropical countries supplying its market. I refer in particular to the fact that reducing the MRL for chlorothalonil causes a significant impact on producers, putting at risk employment and the economic and social stability of whole regions of the country. The scenario is even worse if account is taken of the fact that at the moment there are no substitute or similar plant protection products or any that have the same environmental or toxicological profile, since other alternative substances are also under review by the EU.

2.180. We therefore reiterate the request to the EU to consider pesticide information provided by specialized agencies, such as Codex, and to take its decisions on the basis of conclusive scientific evidence and the weighting of actual risks in accordance with international principles and standards in this area, and to ensure import tolerances. These measures, in addition to deviating from recognized international standards, are being applied unevenly as, in practice, their implementation and authorization for use differentiate between domestic and foreign producers. This is the case for emergency authorizations, which allow EU producers to continue or resume use of this substance. In conclusion, we note that producers and exporters still have concerns regarding the inspection and control mechanisms and procedures for demonstrating compliance with the requirements, which does not make for predictability in foreign trade operations.

2.181. 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.

2.182. The representative of Ecuador provided the following statement. Ecuador once again thanks Costa Rica and Colombia 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. Controlling black sigatoka (*Mycosphaerella fijiensis*) is the main

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

challenge for banana production in Latin America. To control the disease, strategies of rotating fungicides with different modes of action are pursued to avoid fungal resistance to these compounds.

2.183. 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 (2.1 billion). This equates to 2% of GDP and 35% of agricultural GDP.

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

2.185. *Statement from November 2022 meeting.*[43] This concern and the non-renewal of the approval of chlorothalonil and other substances were already discussed extensively both in this Committee and in the SPS Committee because of the subsequent reduction in the MRLs. Paraguay therefore refers to its previous statements and requests that its statement at the previous meeting be reflected in full in the minutes of this meeting. We once again request that the European Union take into consideration information on pesticides provided by the specialized agencies recognized by the WTO, such as the Codex Alimentarius, reconsider its approach and base its decisions on conclusive scientific evidence and real risk weightings, in accordance with international standards and principles, and ensure import tolerances.

2.186. The representative of Guatemala provided the following statement. Guatemala remains concerned about the use of chlorothalonil and maintains its position with respect to this trade concern. We would like reiterate our previous statements. There is no information to date on scientific evidence of possible damage by these substances to human health. There is currently no compound on the market that is as effective for the control of the Ascochyta fungus, particularly in vegetables. Alternative substances that might replace the use of chlorothalonil include mancozeb, azoxystrobin, pyraclostrobin, sulphur and difenoconazole. For four of these alternative substances, the registrations for marketing were not renewed in the European Union and therefore MRLs have been reduced to almost zero tolerance, leaving Guatemalan agricultural production with no options that can effectively combat diseases of fungal origin. We reiterate our concerns and await a proper response from the European Union.

2.187. In response, the representative of the European Union provided the following statement. As explained at previous meetings, the EU proposed not to renew the approval of chlorothalonil through Commission Implementing Regulation (EU) No 2019/677[44], adopted on 29 April 2019 and previously notified to the TBT Committee. Following the non-renewal of approval decision, the EU prepared a draft Regulation lowering the Maximum Residue Limits (MRLs) for chlorothalonil, which was notified to the WTO/SPS Committee (G/SPS/N/EU/394). In view of the concerns identified by EFSA, the EU lowered all MRLs for chlorothalonil to the relevant limits of quantification through Commission

[43] G/TBT/M/88, para. 2.220.

[44] 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.

Regulation (EU) 2021/155[45] of 9 February 2021. The new 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 were received. Import tolerance requests, which need to be supported by substantial new data addressing the concerns, remain possible and will be assessed on a case-by-case basis by the "rapporteur" member State and the EFSA.

2.1.3.19 China - Draft Administrative Measures for Registration of Overseas Producers of Imported Foods, G/TBT/N/CHN/1522 (ID 611[46])

2.188. 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 such benefits are based on science or risk. 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. The General Administration of Customs of China (GACC) should not require competent authorities in exporting countries to administer China's registration process through its online system or otherwise. These administrative actions are fundamentally outside the responsibility of foreign food safety authorities, and should be performed by GACC. The requirement that all facilities exporting food to China must provide extensive, detailed information burdens trade and limits consumers' access to safe food products, and China still has not explained how this information will be used.

2.189. China appears to be both relying on foreign competent authority oversight and reviewing documentation submitted by individual facilities. This framework establishes redundant reviews of products for which China has not identified any risk. Overall, the system that China intends to implement is confusing, appears to be unnecessarily burdensome to achieve food safety, and does not appear to be based on the risk of commodities exported to China. As we have noted previously, GACC should ensure that all facilities are able to self-register without foreign competent authority involvement or unreasonable information requirements. Finally, we note that GACC's deadline of 30 June 2023 for firms and competent authorities to complete the registration process is completely unrealistic. The actions GACC appears to request would take years to complete, if they are even possible at all. We request that China indefinitely suspend this deadline to allow trade to continue while China addresses outstanding concerns with these requirements. We look forward to China's response to these specific requests and comments.

2.190. The representative of The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu provided the following statement. Because there is no progress on this STC and the lack of transparency continues to be an issue, we would like to reiterate our concerns in the previous TBT meetings. Given the wide range of our food industries that have been or may have been affected by this measure, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu has been closely following the implementation of the measure. Many concerns over the measure remain even after it took effect on 1 January 2022. First, the lack of sufficient information about registration requirements, operational guidelines, and updates of the stages of the procedure is one of the biggest difficulties we face. This issue is even more critical for those facilities that need to file the application by themselves. Without sufficient guidance, the facilities are unable to complete registration, and trade may be disrupted as a consequence. To avoid trade disruption, an enquiry point is needed to provide effective and timely assistance for facilities to contact directly with concerns about the measure. Also, an information session is necessary so we can learn more about the General Administration of Customs of China (GACC)'s implementation of the measure. Second, there are also concerns over the measure's review and approval procedure. Standard or anticipated processing periods are unknown. So is the stage of the application. In addition, some of our facilities were rejected by the GACC without further explanation.

2.191. Under Article 5.2.2 of the TBT Agreement, Members shall ensure that the standard processing period of each conformity assessment procedure is published to the applicant and, upon request, the applicant is informed of the stage of the procedure. We request that the GACC comply

[45] 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.

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

with the requirements set out under the TBT Agreement, including the transparency requirement and informing the applicant in a precise and complete manner of all deficiencies and allowing corrective actions. Third, other difficulties we face include the ambiguity of HS code categorization and the scope of the products subject to this measure. Some of our facilities reported that their products have faced customs clearance suspension for no reason. Ever since China made notification to the WTO in 2020, we have expressed our concerns and sought clarification from China several times through both bilateral channels and this forum; however, we have yet to receive a sufficient and detailed response. We therefore once again urge for sufficient and detailed guidelines and designation of an enquiry point. Also, as any measure of this magnitude requires far more time for industries to implement, we would like to echo other Members' call for a longer grace period for implementation and temporarily allowing entry of all products from registered facilities so as to avoid serious trade disruption.

2.192. 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 are concerned with the upcoming deadline of June 2023 to provide supplementary information for existing registrations. Due to recurrent technical problems with the CIFER system, it is unlikely that all establishments will be able to complete their registration on time.

2.193. More recently, 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". 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; Extend the deadline of June 2023 to provide supplementary information on existing registrations; and Simplify the renewal procedure for past registrations. 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.

2.194. The representative of India provided the following statement. Through the notification G/TBT/N/CHN/1522 China has implemented online China Import Food Enterprise Registration (CIFER) system. The registration process in the CIFER system is burdensome, technically onerous to comply with and there is lack of any clarity on the compliance process involved. In view of these trade restrictive measures, we request China to provide greater clarity on the compliance process. We also request China to establish dedicated communication channels to deal with any queries related to the compliance of this notification.

2.195. The representative of Kenya provided the following statement. Kenya would like to reiterate 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 is concerned that some provisions in the regulation are more trade restrictive than necessary contrary to Article 2.2 of the TBT Agreement. Kenya therefore urges China to review these regulations, and possibly revise them to provide among other things, clarity on the scope of their application (transparency), and make them less stringent to comply with, i.e. eliminate the need to have all imported food and food products to be pre-registered with China's General Administration of Customs (GACC).

2.196. The representative of Japan provided the following statement. Japan 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. Japan is 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. In addition, Japan appreciates China's General Administration of Customs (GACC)'s letter dated 27 October 2022 explaining that the overseas manufacturers of certain primary edible agricultural products need to be registered via letters/emails instead of using CIFER system.

However, the details of such alternative procedures have not been made clear, and the procedures are uncertain and lack predictability. As a result, the operation of Decree 248 could have a significantly negative impact on China's trade with Japan and other Members. Japan requests that China improve the operation of the CIFER system, and make the procedures for implementation of Decree 248 transparent, including those for primary edible agricultural products, based on the Members' remarks at this and previous TBT Committee meetings.

2.197. Specifically, once again, Japan requests that China: (i) Establish a standard processing period for applications made through the CIFER system (i.e., a standard timeline to be followed from application through registration), and make that processing period known to the Members and foreign manufacturers. (ii) Give sufficient explanation for the reasons when an application is rejected through the CIFER system. (iii) 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 transition period. (iv) Correct any defects in the CIFER system as soon as possible, including: (a) the fact that the system does not accept changes to information about the legal representatives and addresses of registered manufacturers and does not accept the submission of letters of proxy; (b) the current, considerable delays in the registration process; and (c) the fact that some of the product codes (HS CIQ) are missing from the list shown on the system. (v) Establish an enquiry point for interested parties and competent authorities, and also hold an information session in Geneva for concerned Members regarding implementation of the regulations. (vi) Respond to unanswered questions within a reasonable time.

2.198. Japan would also like to echo the previous speakers that China should extend the June 2023 deadline for the submission of additional relevant information for the validity of existing approval of establishments falling under Article 7 of Decree 248. Japan thanks China for its prompt attention to resolving these issues in an appropriate and timely manner.

2.199. The representative of Australia provided the following statement. Australia acknowledges the difficulties experienced by China in the implementation of the China Import Food Enterprise Registration (CIFER) system as part of its roll out of Regulation on Registration and Administration of Overseas Manufacturers of Imported Food (Decree 248). Australia appreciates the cooperation between the Department of Agriculture, Fisheries and Forestry and the General Administration of Customs of China (GACC) to work through the many system issues being experienced in the CIFER system. We remain willing to continue to work with China to minimise trade disruptions. Australia is concerned at the resource-and-labour-intensive costs borne by exporters and exporting countries' competent authorities to comply with registration in the CIFER system. This burden is exacerbated by the number of technical issues, delays and lack of clarity experienced within the CIFER system, with competent authorities having to verify data and evidence supplied.

2.200. Australia encourages China to provide: Reasonable timeframes for assessing, re-evaluating and adjusting applications in the CIFER system; notification of updates to the system competent authorities. Transparency in: evidence required to support applications, and the acceptance of official verification of documentation for its intended purpose; provision of appropriate guidance (including instructional materials), assistance and resources to enterprises and trading partners' competent authorities in meeting China's registration processes. A guarantee of continuity of trade to all currently registered establishments until the IT system issues in China are resolved. Equal opportunity for access to application modules of, and application assessments for, all establishments registered in CIFER. For example, establishments registered in CIFER, if suspended by GACC, do not have the functionality in their profiles to submit applications for extension and therefore are not given the opportunity to apply to extend their registrations before they expire.

2.201. 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, must not lead to imported foods being treated less favourably than China's domestic product. Australia encourages China to work with competent authorities and food facilities to conduct audits as described in Decree 248 in an informed, sustainable and equitable manner.

2.202. The representative of the Republic of Korea provided the following statement. The Republic of Korea echoes the concerns raised by US, Chinese Taipei, EU, India, Kenya, Japan and Australia under this Specific Trade Concern. Korea respects China's efforts to ensure the safety of its consumers from risks caused by food products, and appreciates its continued cooperation through

bilateral channels. However, Korea remains concerned since China's measures still include low-risk food products provided in Article 7 of Decree 248, which is creating unnecessary obstacles to trade. While Korea is registering newly added product categories in accordance with GACC's requirements, it is taking a significant amount of time for the registration to finalize. Moreover, some facilities are rejected without explanation, leading to a negative impact on trade.

2.203. Korea also requests China review the registration standard, to consider basing it on the individual manufacturing facilities, instead of the product categories. The current requirements are resulting in inefficiency, such as having to apply for each category the facilities wants to register and having to submit duplicate data, as facilities are required to apply for registration based on product categories. In order to process the registration applications as swiftly as possible, Korea requests China change the registration standard to the manufacturing facilities, from the current product categories, and to utilize previously reviewed data, so that registered facilities can be allowed to export all of their products. 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 ease related regulations. Korea would like to remind China that all WTO Members have the obligation to implement food safety regulations based on sound scientific basis and transparency. As the new measures would significantly affects bilateral trade, Korea would like to ask China to provide a response to our statement.

2.204. The representative of Switzerland provided the following statement. Switzerland follows this matter with interest and supports the concerns raised by other Members.

2.205. The representative of Brazil provided the following statement. 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.

2.206. 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"?

2.207. In response, the representative of China provided the following statement. China would like to inform Members that the content of the revision is legally based, and the process is open and transparent. In order to effectively implement the provisions of the Food Safety Law of China and its Implementation Regulations and other related laws and administrative regulations, GACC revised the Provisions on the Registration and Administration of Overseas Enterprises Producing Imported Food (hereinafter referred to as the Provisions), which was published on 12 April 2021 and officially implemented on 1 January 2022. Before announcing the regulations, China notified members and received comments therefrom. Reasonable comments have been fully taken into consideration. We also set a reasonable transitional period as required by the TBT/SPS Agreement. While aiming to strengthen food safety supervision, the regulations also give full consideration to trade facilitation. The revised Provisions extend to all categories of food stipulated in the Food Safety Law. Based on the analysis of factors such as raw material source, production and processing technology, food safety historical data, consumer groups, eating methods, and so on, and in line with international practices, the "official recommendation registration" mode is adopted for overseas producers of 18 types of food. Members shall audit and inspect the enterprises they recommend for registration and confirm that they meet the registration requirements. For overseas producers of foods other than the 18 categories, the mode of "application by enterprises" with relatively simplified procedures is adopted. They can apply for registration and submit application materials to GACC by themselves or by entrusted agents.

2.208. In order to ensure the implementation of the regulations, GACC has published the interpretation of the regulations, the Guide for registration and applications, the supporting documents and forms for registration and applications, and launched the overseas enterprise registration information system with the system operation manual. GACC has actively contacted Members that have food trade with China, informed overseas enterprises of relevant requirements and procedures for registration, taking into full account the existing food trade situation, and made reasonable arrangements such as speeding up the examination and registration of overseas enterprises. Through various means of communication with competent departments of members on the implementation of the regulations, GACC has up to now organized training sessions for over 2000 overseas enterprises. By 28 February 2023, authorities of more than 100 countries and regions had provided GACC with a list of enterprises recommended for registration, a total of 82,000 overseas manufacturers of 32 categories of products have been registered. Up to now, GACC has conducted briefings for foreign embassies and consulates of 152 countries (regions) in China and overseas competent authorities to clear doubts and concerns and established "point-to-point" contact with some Members. At present, the implementation of the measures and food trade with China go smoothly.

2.1.3.20 Peru - Supreme Decree No. 015-2019-SA, which amends the Manual of Advertising Warnings approved by Supreme Decree No. 012-2018-SA (ID 618[47])

2.209. The representative of the European Union provided the following statement. The European Union (EU) appreciates that Peru further extended the possibility for imported products to use stickers for compliance with labelling requirements for processed foods, until 30 June 2023. However, the EU would like to repeat once again the urgent invitation to Peru to provide for a permanent possibility for imported products to use stickers. The repeated and unforeseeable extensions of the deadline severely disrupt trade because retailers in the Peruvian market stop buying products with stickers several months before each deadline. Such disruptions represent significant losses for importers and producers, as well as disruption of trade flows and unavailability of the affected products in the Peruvian market. The EU recognises that reliable information to the Peruvian consumer and protection of public health are legitimate objectives. Nevertheless, the obligation to print information on the product package is unnecessarily trade-restrictive and represents a disproportionate burden for foreign producers, in particular SMEs. In the EU and in most countries around the world, stickers are allowed for food products, provided that the information is accurate and the stickers are not easily removable. In this respect, the EU also notes that other Peruvian instruments, such as Supreme Decree No. 007-98-SA adopting the regulations on sanitary surveillance and control of food and beverages, allows for the use of stickers to meet labelling requirements, given that this is an appropriate means for the fulfilment of the proposed legitimate objectives. We invite once again Peru to bilaterally work with the EU on this issue.

2.210. The representative of Costa Rica provided the following statement. Costa Rica reiterates its trade concern regarding the process of implementing 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 thanks Peru for extending the deadline for using adhesive labels. However, this temporary solution does not provide our exporters with legal certainty and clarity about the regulations applicable to trade in food in Peru. Progress needs to be made on an amendment to the final regulation, which would allow the use of adhesive labels for an unlimited period. It is important to note that the use of adhesive labels is widely recognized internationally, as such labels achieve the same public health protection and consumer information purposes achieved by permanent labels. At the CODEX level, for example, Articles 8.1.1 and 8.2.1 of CODEX-STAN 1-1985, General Standard for the Labelling of Prepackaged Foods, permit the use of supplementary and adhesive labels, as long as it is guaranteed that they will not become separated from the container, or in cases where the language on the original label is not acceptable to the consumer for whom it is intended. Costa Rica respectfully requests the Peruvian authorities to consider permitting the use of adhesive labels on a reciprocal basis, given that these labels may be used on Peruvian food products to be marketed in Central America. We request the Peruvian authorities to provide information on the status of this regulation, whether the intention is still to ban the use of stickers on labels, and the timing of the regulation's entry into force.

2.211. The representative of Colombia provided the following statement. Colombia once again brings this trade concern to the agenda of this Committee regarding the use of stickers as advertising

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

warnings. It has been suggested on previous occasions that the use of adhesive labels is widely recognized internationally, as they fulfil the same public health protection and consumer information purpose as permanent labels. In fact, as has also been mentioned earlier, with current technology, self-adhesive labels can be printed which do not peel off the packaging, thereby ensuring that they will remain affixed, despite not being printed directly onto the packaging. Consequently, it is in our interest, as well as that of other countries, to use adhesive labels indefinitely. For Colombia, initial trade association estimates indicate that this measure particularly affects small and medium-sized businesses that have exported processed foods to Peru, in addition to creating logistical issues related to distribution, as establishments generally require compliance with standards in advance so that at the time of sale to end consumers compliance is guaranteed. At the same time, this measure affects product competitiveness since it increases costs, because producers must install different packaging lines or contract third parties depending on the country of export. Lastly, while we value the bilateral talks that have taken place at different levels and the extensions of the period for using adhesive labels, a definitive solution would contribute to legal certainty and clarity regarding the regulations applicable to the food trade in Peru. There is a need to move forward as regards amending the final regulation, allowing the use of adhesive labels without a time limit, thereby avoiding an unnecessary barrier to trade.

2.212. The representative of Brazil provided the following statement. Brazil regrets having to once again express its concerns regarding labeling 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.

2.213. The representative of Paraguay provided the following statement. 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 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?

2.214. The representative of Guatemala provided the following statement. We reiterate the recognition of 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 stickers with advertising warnings for 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 Regulations approved by Supreme Decree No. 017-2017-SA. The Codex Alimentarius, in the General Standard

for the Labelling of Prepackaged Foods (CXS 1-1985), recognizes the application of supplementary labels on condition that the information on the original label is fully and accurately reflected, complying with the requirements of the country of destination, allowing the same purpose of protecting public health and consumer information to be fulfilled. We therefore request Peru to establish adhesive labelling on a permanent basis, given that this achieves the same legitimate objective and constitutes a less trade-restrictive measure. Regarding the points made to Peru at previous meetings on Supreme Decree No. 015-2019-SA, they remain valid as Guatemala's position.

2.215. The representative of Chile provided the following statement. Chile once again states that the regulation established by the Supreme Decree amending the Manual of Advertising Warnings approved by Peru has been a source of concern to the enterprises and trade associations exporting packaged food to that destination, in that the acceptance of labelling with stickers on products from abroad is not permanent. Chile would be grateful if Peru would consider the permanent acceptance of this labelling for food in order to avoid the creation of an unnecessary technical barrier to trade in these products to Peru.

2.216. In response, the representative of Peru provided the following statement. Peru thanks the European Union, Costa Rica, Colombia, Brazil, Paraguay, Guatemala and Chile for their statements and comments. 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, in accordance with its international trade commitments in this domain. 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. In response to the concerns expressed by some Members, Peru has re-extended, through Supreme Decree No. 0022-2022-SA, the period during which the use of adhesive warning labels is allowed until 30 June 2023. In this respect, we would like to reiterate that we continue to coordinate internally so that we can have a definitive response on this issue. We would also 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 trade.

2.1.3.21 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[48])

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

2.218. The representative of Kenya provided the following statement. Kenya echoes 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. The active substance mancozeb is an important molecule in pest control in Kenya. Mancozeb containing products are used in the agriculture sector for the control of a wide range of fungal diseases found in the tropics. Its use is critical in the Flower Industry, which is a leading sector in terms of the Kenya's GDP and also employing thousands of Kenyans thus impacting livelihoods. Mancozeb has been an important molecule in relation to fungal pathogens control on a number of vegetable crops including Potato, Tomato, Onions among others. There are no available alternatives to offer multisite fungicide for control of early and late blight on the above crops; which cause annual yield losses of up to 60-70% on the 4.5-5.5 Million Metric Tonnes (USD 1.9 Billion) of potato, 560,000 Metric Tonnes (USD 333 Million) of Tomato respectively produced in Kenya for local consumption.

2.219. 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

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

Members". Kenya requests the European Union to consider the withdrawal of the Regulation as the measure is more trade restrictive than necessary.

2.220. 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. Brazil also respectfully asks the EU to align MRLs with limits established under the framework of Codex Alimentarius, to consider less trade-restrictive alternatives that would also safeguard its legitimate policy objective and to grant a treatment for Brazilian farmers no less favourable than that granted to European farmers.

2.221. The representative of Colombia provided the following statement. Colombia once again places on the agenda this trade concern about the measure notified by the European Union relating to mancozeb. As we have mentioned previously, the EU has adopted measures resulting in the non-approval of the use of certain substances, adopting a hazard-based or precautionary approach, without any real risk identification. Thus, measures for the suspension or non-approval of active substances and the subsequent reduction of their maximum residue levels (MRLs) to the lowest limit of detection are being adopted without any sound scientific evidence and without demonstrating that they are indeed the least trade-restrictive measures to achieve the desired level of protection. This, of course, is creating an unnecessary technical barrier to trade, with the obvious implications for the agricultural and agro-industrial exports of Colombia and other trading partners.

2.222. The above is more serious for at least two reasons: first, there are currently no alternatives to mancozeb that are duly registered and are equally effective; second, other similar substances such as chlorothalonil or dithiocarbamates have already been limited in the European market. It is also a concern that the number of substances prohibited by the EU Commission is increasing. This situation has serious implications for a number of WTO Members, particularly developing countries, whose populations and economies are heavily dependent on agricultural exports. I would like to recall the importance of taking account of international standards, guidelines and recommendations, and also of scientific information produced by the international standard-setting bodies recognized by the WTO, as well as providing reasonable transition periods. The sole aim of all the above is to encourage movement in the direction of good regulatory practices, under which rules should be based on clear and objective information, and open dialogue with stakeholders, transparency, and reduction of market distortions should be promoted.

2.223. The representative of Paraguay provided the following statement. 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.

2.224. 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.

2.225. 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.¨

2.226. 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.

2.227. 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.

2.228. The representative of Australia provided the following statement. Australia remains concerned with the EU's non-renewal of Mancozeb. As there is limited availability for alternatives, this is having a significant impact on trade, including wine exports to the EU. We maintain the hazard-based approach adopted by the EU does not adequately assess risk of potential harm because it does not consider the level of exposure. Australia welcomes further information on the EFSA's scientific opinion on the concerns we have 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.

2.229. The representative of Guatemala provided the following statement. We regret that we are obliged to speak again on this matter, due to the fact that the European Union has still not responded to the issues raised. We remain concerned about the non-renewal of the approval of the active substance mancozeb, because there is no information providing scientific evidence of damage that could be caused to human health by the active substance mancozeb. On previous occasions, the EU has mentioned that it has identified potentially negative effects on human health, without presenting scientific evidence to this discussion body. The EU has still not shared with the countries concerned the information on contamination of the products that have been assessed on the basis of available scientific evidence. When we speak of certainty required by producers, mancozeb is an example of

this. Here the EU notified the Committee on Technical Barriers to Trade of the non-renewal of the active substance mancozeb in 2020, and this April it will be three years that the MRL has been under review, a situation which does not create certainty for the domestic production sector in third countries. Mancozeb is essential for the production of a number of strategic agricultural crops that are exported to different EU markets, such as fruit (including bananas and plantains) and vegetables, and this would also affect other countries, in particular tropical countries. In view of the above, we request the EU not to change current MRLs for mancozeb, so as not to affect third countries' production and exports. We regret the fact that producers from third countries do not have the same treatment/benefits as European producers have enjoyed to date, such as emergency authorizations. We reiterate the importance of having a concrete dialogue that could lead to solutions that are not more trade-restrictive than necessary.

2.230. The representative of Ecuador provided the following statement. Ecuador thanks Costa Rica, Kenya, Brazil, Colombia, Paraguay and Australia for including this concern under the agenda item of this Committee and 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.

2.231. 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 in countries such as Ecuador 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.

2.232. The representative of Uruguay provided the following statement. Uruguay wishes to thank the delegations of Paraguay, Brazil, Colombia, Costa Rica, Australia and Kenya for raising this specific trade concern today, and agrees with many of the points raised by the delegations that took the floor previously. Mancozeb is an active substance that is authorized and widely used in many countries, such as Uruguay, where it is used safely to control diseases and pests in various products in the domestic fruit and vegetable sector, such as apples, pears and citrus fruits. Of particular note is its use to control apple scab and pear scab, which are the main diseases affecting apple and pear production and are caused by fungi of the genus *Venturia spp*. In that connection, we share the concerns and requests expressed by other delegations, particularly in view of the possibility that, as a result of the ongoing dithiocarbamate review process, the European Union 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.

2.233. In this regard, we would appreciate an update on the status of the ongoing 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.

2.234. The representative of Panama provided the following statement. Panama supports this concern and thanks Costa Rica, Kenya, Brazil, Colombia, Paraguay and Australia for including this

STC on the agenda. We echo the statements we have heard on this topic. Panama reiterates its concern regarding the non-renewal of mancozeb. As we have mentioned at each meeting of this Committee in recent years, the active substance mancozeb is of vital importance to my country's main agricultural items. On account of its particular mode of action, it is irreplaceable in the control of Black Sigatoka, a major pest in tropical crops. There is currently no other active ingredient that can replace mancozeb; this leaves the industry deprived of phytosanitary tools and thus seriously affects Panama's exports to the European Union. In view of the above, Panama requests the EU to align the MRLs with the limits established under the Codex Alimentarius, or to consider less trade-restrictive alternatives, and not to accord less favourable treatment to our farmers than that accorded to European farmers through the use of emergency authorizations.

2.235. The representative of Chile provided the following statement. The delegation of Chile appreciates the placing of this specific trade concern on the agenda. With regard to the EU's non-renewal of the authorization of the active substance mancozeb, this delegation echoes the trade concern referred to by those who spoke before me in this Committee.

2.236. 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. The EU would like to inform Members that EFSA has started a review of the existing Maximum Residue Levels (MRLs) for dithiocarbamates (group of substances which Mancozeb is part of). Following the possibility for contribution from interested parties, as described in document G/SPS/GEN/1494/Rev.1, EFSA launched a consultation with EU member States which was finalized on 9 December 2022. EFSA is now addressing their comments and its scientific opinion is expected to be published in the first half of 2023.

2.237. For advice on alternatives to Mancozeb, the EU pesticides database 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), following the classification of the substance as CMR (carcinogenic, mutagenic or reproductive toxicant) 1A or 1B under that same Regulation.

2.1.3.22 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[49])

2.238. The representative of the United States provided the following statement. We continue to have concerns with India's Quality Control Orders (QCOs), which we summarized in a working document, G/TBT/W/774, circulated at the November 2022 WTO TBT Committee meeting. Since 2020, India's Ministry of Chemicals and Fertilizers has notified 44 QCOs to the WTO TBT Committee, each identifying chemicals and petrochemicals for which India intends to mandate compliance to standards set by the Bureau of Indian Standards. We continue to reiterate U.S. industry's concerns regarding the Polyethylene Material for Molding and Extrusion QCO 2020 (Polyethylene QCO), notified as G/TBT/N/IND/191. Specifically, U.S. industry has raised concerns about the measure's labeling requirement, which mandates markings that must include "designation codes" identifying an array of technical information, including melting point, density, processing method, and application. Can India explain the objective and intended audience for these labels? We remain

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

interested in understanding how India has considered industry input on alternative, cost-effective, and mutually beneficial ways to fulfill India's regulatory objectives. How has India considered these proposed alternative options?

2.239. We continue to report U.S. industry's concern that requiring the labelling and affixation of information in print, with alphanumerical code unique to India, will impose administrative burdens leading to inefficiencies, delays, and additional costs for exporters. While we appreciate India's previous extensions of the Polyethylene QCO, we kindly request an additional extension of the implementation timeline by twelve months, from April 2023 to April 2024. Because the Polyethylene QCO's unique labelling requirement is based on neither international standards nor globally accepted practices, and because India has not yet indicated it will revise the QCO in response to Members' concerns, additional time will be critical for industry to determine a path towards compliance.

2.240. The representative of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu provided the following statement. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu would like to reiterate its concerns about the 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 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. Under the QCO system, officials from the Bureau of Indian Standards (BIS) have to 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 caused scheduled on-site factory inspection to be delayed unexpectedly, thereby resulting in the uncertainty of trade operations and harm to the rights and interests of our businesses. We urge India to implement the QCOs system in a manner in compliance with Articles 5.2.1 and 5.2.2 of TBT Agreement on expediting application procedures and informing the stage of the application procedure.

2.241. We have lifted quarantine requirements for all international arrivals since 13 October 2022. Hence, we suggest that BIS, through prompt dispatch of inspectors, accelerate the processes of on-site inspection in Chinese Taipei so that our manufacturers can finalize mandatory certification requirements as soon as possible. In doing so, we believe that Indian companies will also avail themselves of the competitiveness of their products in the international market through the swift access to needed raw materials and semi-finished products of good quality from Chinese Taipei. In addition, we would also like to encourage India to positively consider alternative measures suggested by Members in G/TBT/W/774 to facilitate processing of applications for BIS certification.

2.242. The representative of Indonesia provided the following statement. Indonesia shares the concerns expressed by the delegations of the United States of America, Chinese Taipei, European Union, and Canada regarding India's Notifications G/TBT/N/IND/220, G/TBT/N/IND/221, G/TBT/N/IND/223 and G/TBT/N/IND/224 regarding the implementation of the (Quality Control) Order for Acid Oil, Coconut Fatty Acid, Lauric Acid, and Palm Fatty Acid. Indonesia would like to refer to its last statement at the TBT meeting in November 2022. Indonesia emphasizes that India could provide sufficient transition period to allow industry to comply with the Indian regulation, which would be at least 12 months from publication or until 23 October 2023. In addition, Indonesia would encourage India to accept conformity assessment results issued by foreign conformity assessment bodies (inspection bodies) under the MRA/MLA and accreditation framework. We believe this would expedite the audit and certification process while reducing the cost of certification.

2.243. 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 reiterates its request to India to provide structured information regarding the planned time for the adoption of these measures, as well as to provide an updated list of chemicals and petrochemicals, which have already been implemented and of those that are yet to be implemented, together with copies of relevant Quality Control Orders. The European Union recalls its request for clarification, explaining the reasons for establishing India-specific Quality Control Orders 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.

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

2.245. The representative of Singapore provided the following statement. We thank the proponents for raising this STC, as well as India for the bilateral meeting yesterday. While we appreciate India's clarifications, Singapore would like to echo the concerns raised by other Members and would like to reiterate our concerns expressed at the previous meetings of this Committee, as contained in document G/TBT/M/88. Singapore remains concerned that India's Quality Control Orders for chemical and petrochemical substances could affect foreign chemical manufacturers' access to the Indian market, given the onerous requirements for industry stakeholders to comply with the new measures, some of which are not aligned with international standards. We respectfully urge India to consider accepting relevant international standards, where possible, to avoid duplicative requirements, reduce the industry's compliance costs, and ensure that the measures imposed are not more trade-restrictive than necessary to fulfil India's regulatory objectives.

2.246. In response, the representative of India provided the following statement. 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 who are carrying negative RT-PCR test report and without the requirement of any quarantine. With respect to applications received from Chinese Taipei, visits of the inspectors are being planned wherever necessary formalities such as payment of application charge, scrutiny of application etc., have been completed.

2.1.3.23 India – Draft Food Safety and Standards (Import) Amendment Regulation, 2020, G/TBT/N/IND/180, G/TBT/N/IND/237 (ID 667[50])

2.247. The representative of the United States provided the following statement. The United States remains concerned with India's measure, notified to the WTO TBT Committee as G/TBT/N/IND/180; and would also like to address G/TBT/N/IND/237, which appears to be a related measure for facility registration. During the November 2022 TBT Committee meeting, India noted that a registration measure had been published, and it appears that this measure was later notified as G/TBT/N/IND/237. The United States provided comments on this proposed measure that has maintained an implementation date of 1 February 2023. We appreciate India's confirmation that trade will continue uninterrupted past this date, even for those countries who cannot provide lists of exporting manufacturers by that date. In our comments, the United States noted concerns with this measure; in particular, we noted the undue burden placed on foreign competent authorities to maintain lists of manufacturing facilities that produce certain products and export to India. We urge India to be flexible and take into account the approaches of different trading partners in providing lists of exporting manufacturers. We look forward to further technical discussions in this regard.

2.248. In addition, while the measure notes certain affected product categories, a list of harmonized tariff codes of products subject to registration has not been provided, and, thus the scope of the measure remains unclear. 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 burdensome 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

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

as information on audit processes. We look forward to receiving further information and clarification from India on these two concerning measures.

2.249. 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. Referring to the FSSAI Order of 10 October 2022, the EU would like to thank India for clarifying the measure (including the scope of products/food categories subject to the registration), and for postponing the entering into force of the new requirements to 1 February 2023. However, 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, and recall that it did not receive a formal written reply to the comments sent to India in February 2021 to the notification G/TBT/N/IND/180.

2.250. 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 in the exporting countries, inspections of facilities, border checks and health certificates associated with the registration of foreign food manufacturing facilities, if and when these requirements will be made mandatory 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. Finally, 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, as well as to reiterate the availability of the EU to cooperate with the competent authorities of India to enhance mutual understanding and avoid unnecessary and unjustified disruptions to trade.

2.251. The representative of Canada provided the following statement. Canada would like to reiterate concerns raised at previous TBT Committee Meetings since February 2021 regarding India's draft amendment to its Food Safety Standards (Import) Amendment Regulation pertaining to the registration, inspection and/or audit of foreign food manufacturing facilities producing food products destined for India which has 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.

2.252. 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. Canada thanks FSSAI for its prompt registration of Canada's food manufacturing facilities and publication of the 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 closing, Canada recalls its request to India to notify these amendments to the SPS Committee given that India's proposed regulation covers food safety measures aimed at protecting human health and safety.

2.253. The representative of Japan provided the following statement. Japan echo the previous speakers and 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. Our concern is that the Indian authority would not have 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 dated 10 October 2022, India has not yet registered some of the facilities on the list. Japan requests that India: (i) 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; (ii) 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; (iii) Clarify the details on how to apply for the registration of foreign food manufacturing facilities; and (iv) Respond to the unanswered questions from Japan within a reasonable time.

2.254. The representative of Australia provided the following statement. Australia recognises the right of the Indian Government to take measures necessary to protect public health. Australia thanks India for providing clarification that this regulation applies to five food categories. This is in line with previous advice from the Food Safety and Standards Authority of India (FSSAI) that the proposed regulations would not apply to all food establishments. Australia would appreciate information on India's risk assessment which concluded that additional measures 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 can further advise that its 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. Australia would appreciate the opportunity to streamline the process so as to reduce the level of administrative burden for food industries and competent authorities. We suggest India consider the food safety systems of its trading partners in applying the regulation. Australia is happy to work with India to support a more risk and outcomes-based approach to food safety.

2.255. The representative of New Zealand provided the following statement. New Zealand would like to thank FSSAI for their flexibility on the implementation of this new requirement and the more simplified information required to register premises and associated product. 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 food safety practices at a manufacturer will be the same for all products produced, therefore 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. An acceptable questionnaire along with official health certification issued by competent authorities should be sufficient to address any individual product risks.

2.256. 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. 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.

2.257. 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 w.r.t procedures and the list of commodities for which manufactures need to give details for registration. 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.

2.258. India being a developing nation and one of the biggest food market in world, ensuring safety and quality of food is of utmost importance 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. 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.

2.1.3.24 European Union - Chemical strategy for sustainability (implementation of the European Green Deal) (ID 690[51])

2.259. The representative of Kenya provided the following statement. Kenya raised this as a Specific Trade Concern in the previous TBT Committee meeting and continues to have concerns over the same issue. Kenya is greatly concerned by one of the proposals that have been cited as one of the key deliverables of the European Green Deal policy that was enacted in 2020. This is the EU Proposal on Corporate Sustainability Due Diligence. The European Commission on 14 July 2021 adopted a set of intermediate proposals that aim to cut greenhouse gas emissions by 55 % by 2030 as part of a broader European Green Deal (EGD). While the EGD is mainly an internal EU policy instrument, its potential for global spill-overs are likely to have significant impacts on production and trade for developing countries. Kenya is therefore concerned that this measure has not been notified. Published on 23 February 2022, the EU proposal on Corporate Sustainability Due Diligence poses significant barriers to trade between Kenya and the EU owing to the scope of its provisions. The proposal requires that EU companies work with exporters in identifying and preventing/mitigating adverse impacts of their activities on human rights (child labour, exploitation of workers etc.) and on the environment (pollution, biodiversity loss etc.).

2.260. The EU claims that the objective of the proposal is to foster sustainable and responsible corporate behaviour throughout the global value chains. Kenya's concern is premised on the fact that developing countries are already struggling to meet international standards, technical regulations, and conformity assessment procedures necessary for international market access. Imposing additional sustainability requirements as prerequisites for market access will be burdensome (in both financial costs and technical capacities) to value chain actors across the developing world, including Kenya. There is also a further concern that these private standards are often developed without the input from the developing countries, yet they are expected to comply/ implement them without any clear commitment for technical support. In light of the above 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". While noting EUs response that this strategy was for purposes of outlining future policy, Kenya reiterates the need for a comprehensive dialogue with the EU and other Members of the WTO on this matter; prior to advancing to further stages in the development of this policy.

2.261. 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. Despite the fact that the Strategy is a non-binding document, it is a strong political commitment which involves plans to tighten even further current regulation of chemical substances and mixtures under the CLP/Reach Regulations as well as other product specific regulations which will further restrict the use of certain materials, as it already happened with cobalt, lithium and nickel under the CLP and battery production regulations. In December 2022, the European Commission published the Recommendation for safe and sustainable chemicals, which contains classification of hazardous

[51] For previous statements follow the thread under ID 690.

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.

2.262. Once again, Chair, we find it important to repeat the fact the EU keeps imposing unilateral trade restrictions under the umbrella of European green deal despite the rules of WTO. None of the questions that we have been raising on the site on the WTO since June 2021, on that strategy have been addressed. Chair, once again it is regrettable that the EU have chosen not to engage on this issue as it has been refusing to respond to present concern for several meetings in a row. This situation is of systemic concern. Transparency is the important pillar of this organization and provision of explanations on various measures and policies in this Committee is the part of the mechanism. Refusal to respond to the raised trade concerns is in stark contrast to the EU's rhetoric about the importance of transparency in this organization.

2.263. In response, the representative of the European Union provided the following statement. We would like to thank Kenya for taking the floor. Unfortunately, we need to insist that the EU Chemical Strategy for Sustainability is not a technical regulation in the meaning of the TBT Agreement. It is only a communication document from the European commission addressed to the EU member States and stakeholders outlining future policy for the purpose of transparency. Furthermore, the EU Proposal on Corporate Sustainability Due Diligence is also not a technical regulation in the meaning of the TBT Agreement. Therefore, we are not able to give substantive feedback on this specific trade concern. However, we invite Kenya to raise their concerns in the appropriate forum within the WTO framework.

2.1.3.25 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[52])

2.264. The representative of the United States provided the following statement. The United States acknowledges that Egypt has delayed implementation of new halal requirements for dairy products multiple times, with the most recent delay until 1 April 2023. However, the lack of clear implementing procedures has had a chilling effect on U.S. exports, which require a lengthy transit before reaching Egypt. The United States requests that Egypt formally suspend any new halal requirements until the transparency and certifier issues have been resolved, providing the assurance that U.S. exporters need in order to resume shipping to Egypt. The United States understands that a draft decree or regulation for halal certification of dairy products is under consideration. Does Egypt have an update on when it will be notified to the WTO? The United States also understands that Egypt is considering approving other overseas certification bodies; approving more than one certifier would help keep certification costs low and certification services competitive. The United States is supportive of this trade facilitating effort. Does Egypt have a timeline for when it will approve additional certification bodies?

2.265. Finally, the United States has repeatedly requested additional information about how Egypt will implement these new halal requirements. One of the most pressing questions deals with the scope of products. Based on the draft of ES 4249 shared by Egypt's Inquiry Point in 2022, it appears that Egypt will require halal certification for food products containing milk fat only "where grease or animal fats were added to it." However, the HS codes that Egypt listed in Addendum 3 (HS 0401 – 0404) are more extensive and do not match the language in the revised draft of ES 4249. When Egypt provides a regulation or decree formalizing these new halal requirements, the United States requests a clearly laid out scope of products. The United States looks forward to Egypt's response to these questions, as well as our past requests. We greatly value our trading relationship with Egypt and fully support continuing to work with Egypt to ensure that its consumers have access to affordable and nutritious halal food products.

2.266. 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 appreciates that the requirement for dairy products was then suspended first until 1 October 2022 and later until the end of March 2023. However, this is just a temporary solution. The EU submitted written

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

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 G/TBT/N/EGY/313 (G/TBT/N/EGY/313/Add.3), providing more HS codes of covered products, information on relevant procedures and on labelling requirements. Nevertheless, a number of important and practical information for economic operators is still missing, such as deadlines for issuance of certificates by IS EG Halal, details on audits, etc. Finally, EU comment regarding the monopolistic position of the IS EG Halal, does not seem to have been taken into account either. 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 establishments already certified by other companies is an unnecessary duplication and would lead to longer time to market and higher costs for consumers.

2.267. The EU would like to ask Egypt to consider keeping the Halal certification and labelling voluntary for dairy products, in order to pursue the legitimate objective of ensuring reliable information without unduly hindering trade flows. Consumers should be able to decide whether to buy Halal-certified food or not, based on clear labelling. The EU would appreciate if Egypt would consider further trade facilitating measures, such as requiring Halal certification for the product and not per container, as well as proportional costs of Halal certification that take into account the international practice and correspond to the service rendered. 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.

2.268. The representative of India provided the following statement. By this notification Egypt requires that requires that imports of meat, poultry and their products, milk and dairy products be accompanied by a Halal certificate issued by the relevant certification bodies in the exporting countries as determined by General Organization for Veterinary services (GOVS). As per the notification the proposed new regime only specifies one Egyptian certification body that will have the authority to certify halal products for the Egyptian market. This is expected to significantly raise cost of certification and will inevitably increase the time involved in the process. This measure could result in a certification process that is overly burdensome, costly and more trade restrictive than necessary to achieve Egypt's stated objective. India request Egypt to share the alternative approaches that were considered before finalising this measure. Secondly, India would like to request Egypt to share the requirements by which Indian certification bodies can become eligible to issue halal certificates.

2.269. The representative of Kenya provided the following statement. Kenya echoes 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 requests that Egypt should work with the Kenyan Halal certification bodies.

2.270. 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. Canada understands Egypt's objective to ensure that Egyptian consumers are confident that they are buying and consuming Halal-certified products in agreement with Islamic Sharia. However, such measures should not create unnecessary barriers to international trade or be more trade-restrictive than necessary to fulfil that objective. While Canada welcomes Egypt's delayed implementation of the Halal certification for dairy products to March 31st, this is only temporary and Canadian exporters need more information and time to adapt to these new measures This includes information on procedures, fee structures, details on audits (if needed), and specificity on how these

requirements will be implemented. Additionally, Canada is seeking confirmation that the list of HS codes and associated products shared in August 2022 is the finalized list.

2.271. Canada encourages Egypt to reconsider this measure considering the degree of uncertainty, lack of clear implementation protocol, and unnecessary added cost and administrative burden. For example, the proposed new regime only specifies one Egyptian certification body that will have the authority to certify halal products for the Egyptian market. It is our understanding that this has already significantly raised the halal certification fee which will have to be borne by exporters of halal product to Egypt. The new measure could result in a certification process that is overly burdensome, costly and more trade restrictive than necessary to achieve Egypt's stated objective. Canada strongly encourages Egypt to have open and transparent discussions with trading partners to share information, further clarify the requirements under this new measure and consider the impact it may have on trade before the measure is enforced. Egypt could also consider opening a halal certification office in Canada to facilitate trade, as is the case with other members. Canada is open to discussing this further bilaterally. Until then, we respectfully request that Egypt suspend the implementation of the measure.

2.272. The representative of New Zealand provided the following statement. New Zealand thanks Egypt for the further extension of the requirement for dairy products to meet Egypt Halal requirements. We note that the final halal standard is still not available and suggest Egypt consider a reasonable implementation period once this is notified to the WTO as a final standard. We understand there may be further requirements to meet Egypt's new Halal standard and request these are also appropriately notified to the WTO, with sufficient time to enable members to provide feedback and implement requirements.

2.273. The representative of Switzerland provided the following statement. Switzerland continues to follow this matter with interest. We support the concerns raised by other Members with regard to the requirements on halal certification based on the Egyptian Halal standard 4249/2014 and refer to previous statements in this Committee on this matter. In particular, we reiterate our call on Egypt to provide flexibility for the continued recognition of foreign Halal certification bodies and to clarify the details and criteria for the acceptance of foreign Halal certificates.

2.274. 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 again thank Egypt for notification of the third addendum to G/TBT/N/EGY/313 on 15 August 2022. Australia notes that this addendum, while providing clarity on the procedures exporting slaughterhouses and factories must undertake to export to Egypt, it does not provide any information on facility audits set to be undertaken by IS EG Halal. Australia respectfully 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. Notification of draft technical measures to the WTO will allow Members the opportunity to provide comment before implementation to ensure that requirements, when finalised, meet both Egypt's policy goals while ensuring measures are not more trade restrictive than necessary. Australia notes that it provided written comments to 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.

2.275. The representative of Paraguay provided the following statement. 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.

2.276. In response, the representative of Egypt provided the following statement. Egypt thanks the United States, the European Union India, Kenya, Canada, New Zealand, Switzerland, Australia and

Paraguay 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.

2.277. 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." As indicated in G/TBT/N/EGY/313/Add.3 the scope of products requiring halal certification was clear and confined to the products specified in this addendum except for crude milk, it should be further noted that no imports of milk and dairy products not accompanied by Halal certificate have been denied entry in Egypt, since this regulation entered into force and will continue enjoy this exception till 31 March 2023. 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. I would also like to note that ES 4249 for 2014 is currently under review and any changes or amendments will be duly notified to the WTO TBT Committee.

2.278. 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 Cairo 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. We urge our trade partners to provide information on the amount of bilateral trade affected by this measure. Or at least to indicate if consignments shipped have faced or are currently facing access barriers at Egypt's entry points that are connected to this measure, this will help us assess the magnitude and nature of matters/concerns that we need to deal with to secure the interest of our trade partners while mainstreaming our policy objective for which this measure was adopted.

2.1.3.26 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[53])

2.279. The representative of the United States provided the following statement. The United States continues to have serious concerns with the Government of Indonesia Regulation No. 28 of 2021, which is the Implementing Regulation (for the Manufacturing/Industry Sector) to Law No. 11 of 2020 of the "Job Creation Act" (GR28/2021). We understand the recently notified G/TBT/N/IDN/152, Ministry of Industry No. 45 Year 2022 regarding Standardization of Industry (MOI 45/2022), may be part of the implementing regulations for GR28/2021. Is MOI 45/2022 intended to fully implement GR28/2021, or does Indonesia anticipate publishing additional implementing regulations for GR28/2021? We are disappointed that Indonesia appears to have notified MOI 45/2022 in January of 2023, despite the measure being signed and having entered into force in November of 2022. We urge Indonesia to meet its obligation under the WTO TBT Agreement to notify regulations to the WTO TBT Committee in draft form prior to finalization. We have recently submitted comments on this measure, and we look forward to Indonesia's response.

2.280. We refer Indonesia to our previous statements from November 2021, and March, July, and November 2022. Many of our concerns remain unanswered. Without reiterating them, we ask Indonesia to respond, and we again strongly request Indonesia to ensure that all domestic conformity assessment bodies are continuing certification of foreign products. In particular, we

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

remain interested in the justification for requiring conformity assessment testing be conducted by Indonesian citizens residing in Indonesia? How do these requirements relate to the ability to perform conformity assessment?

2.281. The representative of the European Union provided the following statement. The European Union is seriously concerned by Government Regulation No.28 of 2021 and new requirements for Indonesian National Standard (SNI) certification. This Regulation is one of the implementing regulations of the Omnibus Law on Job Creation (Law 11/2020) recently adopted. Government Regulation 28/2021 aims to increase the competitiveness of Indonesia's national industry and mainly outlines measure related to raw materials. It also introduces new requirements with regard to product certification bodies (Lspros). The new requirements affect in principle all products subject to SNI certification and it is very complex to export to Indonesia. In addition, due to lack of guidelines, the situation has not progressed and certain sectors appear to be particularly concerned (e.g. toys, tyres and machinery). The European Union refers for the record to its previous statements and notes that the majority of the issues remain unanswered.

2.282. The European Union invites Indonesia to respond to our concerns and in particular to make sure that the conformity assessment bodies are continuing certification of foreign products. We remain available to discuss the issue also bilaterally.

2.283. 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 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 TBT Committee, Indonesia committed to answer Members' concerns through a formal written letter sent to our respective Enquiry Points. Canada is disappointed that it has yet to receive a response and would appreciate if Indonesia could provide a timeline on when Canada can expect one. Canada kindly asks that Indonesia provide the Committee with a response that specifically addresses Members' concerns.

2.284. Canada also takes this opportunity to express strong concerns with Indonesia's Regulation 45 of year 2022 regarding Standardisation of Industry, notified under G/TBT/N/IDN/152, which we understand is linked to Government Regulation No. 28. This measure was notified to the WTO TBT Committee on 5 January 2023; however, the regulation was adopted and entered into force on 1 November 2022. Even though Indonesia provided Members with a 60-day comment period, can Indonesia explain how these comments will be taken into account, as per TBT Articles 2.9.4 and 5.6.4, in the development of a measure that has already entered into force? In addition, can Indonesia provide a rationale as to why it did not provide for a reasonable interval, recognized to be six months, between the publication of the measure and its entry into force, as per Articles 2.12 and 5.9 of the TBT Agreement? Canada urges Indonesia to re-notify Regulation No. 45, provide Members with a meaningful 60-day comment period, and allow an interval of at least six months between the publication of the measure and its entry into force.

2.285. In response, the representative of Indonesia provided the following statement. Indonesia thanks the United States, the European Union and Canada for their continued interest in 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. Regarding the provisions for conformity assessment bodies that conduct SNI certification as regulated in this regulation, Indonesia is of the view that such provisions are general requirements. The certification process for technical regulations based on SNI in the industrial sector is carried out in accordance with the provisions contained in the related Ministerial Regulation. All provisions regarding the standard and the conformity assessment scheme apply equally for both domestic and foreign manufacturers. Regarding the implementing regulation number 28 of 2021, Indonesia has notified the Minister of Industry Regulation number 45 of 2022 concerning Industrial Standardization through document G/TBT/N/IDN/152

2.286. Regulation of the Minister of Industry Number 45 of 2022 contains procedures including how the Minister of Industry will evaluate the Conformity Assessment Body as mandated by Government Regulation Number 28 of 2021, in which the regulation states that: The conformity assessment procedure is carried out by a Conformity Assessment Body accredited by the National Accreditation

Body of Indonesia (KAN) and appointed by the Minister of Industry; Based on the Regulation of the Minister of Industry Number 45 of 2022, it is further explained that the implementation of the conformity assessment procedure shall continue to be carried out in accordance with the previous regulations, until such regulations are 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.

2.1.3.27 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[54])

2.287. The representative of the United States provided the following statement. The United States thanks the EU for its response to our comments on the "Draft Commission Regulation as regards maximum residue levels for clothianidin and thiamethoxam," received on 26 January 2023. The United States reiterates our shared concern regarding pollinator health, and notes our ongoing efforts to protect bees and other pollinators in the United States. To date, the global scientific and regulatory community has found that complex interactions among multiple factors affect pollinator health, including the health of bees. Given the critical importance of the pesticides identified in the Regulation as part of integrated pest management programs on crops that are exported to the EU by many countries, we are concerned that the proposed measure may pose a significant obstacle to international trade and production of agricultural products. The United States appreciates that in the EU's response to US comments, it recognized that global environmental challenges require collaboration across the global community and that these challenges cannot be addressed by one country or one region, as such actions may complicate or further delay meaningful progress on these pressing issues while unnecessarily affecting agricultural production and trade.

2.288. The United States therefore encourages the EU to pursue a collaborative approach to protecting pollinators, using appropriate international venues to advance a shared understanding of this global challenge. The United States notes that the Codex Committee on Pesticide Residue (CCPR) is not the appropriate venue to discuss environmental standards. The United States would like to remind the EU that environmental issues are not included in CCPR because MRLs are not intended to be an environmental safety management tools. Rather, pesticide MRLs are intended to manage the food safety risk of treated imported food products upon arrival into a market. Using MRLs for alternative purposes may have unintended consequences that could undermine the development and use of international standards for food safety. The United States recalls its concerns regarding the 2018 EFSA risk assessments for this measure and notes the importance of completing science-based risk assessments in their entirety prior to setting new MRLs. We request that the EU provide the scientific or technical information that demonstrates how the reduction of these MRLs to the LOD contributes to the objective of the protection of pollinators, including bees. In the absence of scientific or technical information indicating how the reduction of MRLs to the LOD on the impacted products contributes to the objective of protection of pollinators, including bees, the United States again requests that the EU maintain its current MRLs for clothianidin and thiamethoxam. In place of the EU's proposed regulation, the United States would encourage the EU to take a collaborative approach to protecting pollinators and to provide the opportunity for WTO Members to contribute resources, scientific expertise, and new ideas.

2.289. The representative of Indonesia provided the following statement. Indonesia thanks the EU for its notification of "Draft Commission Regulation as regards maximum residue levels for clothianidin and thiamethoxam" to the WTO as G/TBT/N/EU/908 which amends Regulation (EC) No. 396/2005. Indonesia has received a response from the EU on 27 January 2023 to Indonesia's comments on 22 September 2022. However, Indonesia would like to reiterate and further explain the following points. Maximum Residue Levels (MRL) are related to food safety standard and not to environmental protection provision. The Imposition of MRLs for environmental protection deviates from the purpose of MRLs themselves. This raises a question of legal basis where it shows inconsistency with the objectives of the EU MRL Regulation, which are twofold: (1) to ensure high level of consumer and animal health protection; and (2) to remove trade barriers and facilitate international trade. Regulation (EC) No 396/2005 is a consumer protection directed regulation. It defines MRLs as "means 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

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

consumer exposure necessary to protect vulnerable consumers;" and an import tolerance as "an MRL set for imported products to meet the needs of international trade". Thus, MRLs and import tolerances have a dual role of protecting the consumer and to enable trade.

2.290. Environmental considerations are not within the scope of Regulation (EC) No 396/2005 as these aspects are thoroughly covered by Regulation (EC) No 1107/2009 for pesticides that have been assessed and registered for safe use in the European Union. Hence, environmental impact data is not typically required to be submitted in the MRL application dossier. A similar regulatory approach generally applies in non-EU countries: environmental data are not part of the procedure for import tolerance setting, but robust environmental risk assessment standards are in place for the registration and use of pesticides in the majority of jurisdictions, including the assessment of pollinator risk. Regulation (EC) No 396/2005 does not appear to provide a basis for considering measures that would regulate and affect the use of registered pesticides outside of the territory and jurisdiction of the Union. Thereby, it appears to conflict with the responsibility and authority of other sovereign nations, resulting in the extraterritorial application of European Union legislation, which may well be incompatible with the treaties, international agreements and commitments to which the Union and its Member States are party to, in particular within the framework of the World Trade Organization (WTO).

2.291. Referring to the EU's information that the draft Regulation does not require non-EU countries to ban the use of clothianidin and thiamethoxam on their own territory. In this regard, we would like to emphasize that non-EU countries have their own regulatory frameworks for assessing the risk of pesticides and their use, including on the environment and the risk to pollinators. Despite the draft Regulation does not oblige the non-EU countries to ban the use of clothianidin and thiamethoxam in their own territory, the lowering of the MRLs to the Limit of Quantification (LoQ) is an indirect measure to avoid the use of clothianidin and thiamethoxam by those countries that have different agricultural practices to control pests, resulting in different but safe residue levels. As stated, the non-EU countries have their own regulatory framework that recognizes the safety of these products in use. In reference to global decline of pollinator, to our knowledge, pollinator decline is multifactorial and cannot be associated exclusively to pesticide use, and particularly not a single pesticide class. When we talk about pesticides, we need to talk about proper product use, i.e., following label recommendations and best management practices, including mitigation measures where appropriate. Data from the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES)[55], which is often cited as a key global reference, confirms that no single factor alone 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.

2.292. Positive trends are also reported by the UN Food and Agriculture Organization (FAO), which shows a significant increase in honey bee colonies in major agricultural countries from 2012 to 2019, including those where the two compounds in question are registered and used.[56] To resume, any new levels of MRL applied will put trade at risk, when even small exceedances that are perfectly safe for people, could lead to consignments being refused entry to the EU/returned or destroyed. The uncertainty makes it less attractive for exporters from Indonesia as the risk of rejection is much higher. We hope that the EU will take this into account and refer the MRLs to international standards, such as CODEX as a reference for clothianidin and thiamethoxam in or on certain products.

2.293. The representative of India provided the following statement. We remain concerned with the draft Commission Regulation amending Annexes II and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for clothianidin and thiamethoxam in or on certain products. This concern was raised by India in the November TBT committee meeting. We thank EU for responding to India's concerns shared during the comment period. However, the issue This issue still remain unresolved. This new notification is based on the assumption that use of these neonicotinoids (clothianidin and thiamethoxam) even at the level determined by Codex are harmful for bees. However, the impact of field-level neonicotinoid exposure on honeybee health and survival has been less decisive than assumed by the proposed EU notification. Based on this understanding, India seeks EU's explanation how it still considers regulating these neonicotinoids relevant. In addition to the above, India also requests EU to share -

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

the risk assessment demonstrating the need to fix the MRL of these two pesticides at the level of determination; and, its assessment vis-à-vis other approaches considered in arriving at the conclusion that this is the least trade restrictive approach possible. India also requests the EU to provide a detailed justification concerning the link between the new MRL limit set for clothianidin and thiamethoxam, and its correlation with objective sought to be achieved by the EU under the WTO covered agreements

2.294. 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) based on environmental concerns for the global pollinator population. This policy is more trade restrictive than necessary to reach its objective. It does not appear to recognize global research and good agricultural practice, and is outside the scope of the regulatory objective to protect vulnerable consumers. If a pesticide does not have dietary concerns and poses no risks to EU consumers, the EU should maintain the MRLs or harmonize with Codex. Canada has a robust regulatory system and is confident in the mechanisms we have in place to protect consumers and the environment. Canada protects 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. By reducing neonicotinoid MRLs to default values when no dietary risks of concern have been identified, Canada is of the opinion that the European Union is unjustifiably applying their domestic legislation extraterritorially and hope this will not become a pattern that continues.

2.295. The representative of Colombia provided the following statement. First, we would like to express gratitude for the response that the European Union gave to Colombia at the end of January concerning our comments on what was a draft Regulation at the time. Without prejudice to the foregoing, Colombia is bound to reiterate its concern about Regulation 2023/334 of 2 February 2023 of the European Commission, which amends Annexes II and V to Regulation (EC) No 396/2005 of the European Parliament and of the Council, affecting the maximum residue levels (MRLs) for clothianidin and thiamethoxam. In the previous Committee, Colombia expressed concern about the draft Regulation, but since February this has been a reality and the issuance of the Regulation is a fait accompli despite the comments submitted by various trading partners.

2.296. While recognizing the right of WTO Members to protect animal, plant and human health and the environment, Members are also bound by their WTO commitments, in particular as regards conducting science-based risk assessments and ensuring that measures are not more trade-restrictive than necessary. However, the reduction of MRLs for the above-mentioned substances extends the scope of existing regulations beyond consumer protection to environmental considerations, which is precisely what we must avoid – namely, creating an unnecessary and unjustified barrier to trade. It is clear that the proposed reduction measure will have an adverse effect on agricultural and agri-food exports to the EU and will negatively affect the livelihood of rural producers who earn their living from agricultural production. In addition, and regardless of the degree of legitimacy of the objective pursued, the EU measure will result in a ban on market access for a wide range of products. We therefore find that there would be no proportionality between the objective pursued by the EU and the disruptive effect on trade that the reduction of MRLs would have on the set of products covered by the measure. In this regard, the Regulation would be contrary to obligations related to ensuring that measures are applied where necessary, minimizing negative trade effects and avoiding unnecessary restrictions to trade.

2.297. 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 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.

2.298. 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.

2.299. 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.

2.300. 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 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.

2.301. 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.

2.302. The representative of Australia provided the following statement. Australia thanks the European Union (EU) for notifying members of the proposed regulation in document G/TBT/N/EU/908 on the draft regulation for the neonicotinoid insecticides clothianidin and thiamethoxam, to which Australia provided comments. Australia reiterates the concerns expressed in our submission. The draft regulation considers environmental impacts in exporting countries when setting import MRLs and assessing requests for import tolerances. Australia recognises 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.

2.303. 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 is has robust evidence to support its policy objective. We look forward to continuing to engage with the EU on this important topic.

2.304. The representative of Costa Rica provided the following statement. Costa Rica wishes to support this trade concern, originally submitted by Kenya and supported by a large number of Members, against the EU proposal to establish maximum residue levels (MRLs) for clothianidin and thiamethoxam as mechanisms for achieving environmental objectives. In general terms, Costa Rica's policy is aligned with the EU objective of prioritizing environmental protection, the fight against climate change, and sustainable economic development, as the only viable path for the future of our planet. However, under no circumstances must achieving these objectives come at the expense of the multilateralism and fundamental obligations that underpin this Organization. The Agreement on Technical Barriers to Trade clearly defines the objectives that technical regulations, standards and conformity assessment procedures may legitimately fulfil. We are not sure which legitimate objective could justify revising an MRL, an issue linked to food safety and the protection of human health, which falls within the scope of the SPS Agreement. Therefore, we have difficulties in understanding EU notification G/TBT/N/EU/908, due to the fact that this notification, while proposing to reduce MRLs for clothianidin and thiamethoxam, was notified to the TBT Committee and not to the SPS Committee.

2.305. The EU states in this notification that its rationale is an "environmental concern of [a] global nature". Among the legitimate objectives of the TBT Agreement, we cannot find global environmental concerns as justification for a measure covered by this Agreement. Addressing environmental concerns of a global nature is also a matter of the utmost importance to Costa Rica. However, it is not clear how this objective falls within the scope of the SPS and TBT Agreements. We would like to thank the EU in advance for its explanations regarding this concern, which Costa Rica raises along with other Members.

2.306. The representative of Japan provided the following statement. On 2 February 2023, the EU adopted new rules which will, once applicable, lower the Maximum Residues Levels ("MRL") of clothianidin and thiamethoxam in food. It is regrettable that the measures were adopted by the EU without due consideration of Japan and other members' concerns expressed repeatedly at TBT committee meetings. Japan has been communicating closely with the EU on this issue, and we appreciate the EU for providing written responses to our comments dated 6 July 2022. These responses have been useful in understanding the EU's position and we hope to continue communication with the EU to address our concerns in a cooperative manner. Japan would like to raise again its concerns and make requests to the EU regarding the adopted measures, and we hope the EU will proceed with appropriate actions in response to our concerns. 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 MRL international harmonization trend. 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.

2.307. 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 judgments about the appropriateness of the use of the specific pesticides under the specific conditions in third countries.

2.308. 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.

2.309. 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.

2.310. We also have a concern that if the current proposal for restricting the use of thiamethoxam and clothianidin becomes the basis for other similar restrictions, farmers in Brazil and worldwide can face serious problems that will affect productivity and their capacity to contribute to global food security. Brazil appreciates the opportunity to discuss this issue with the EU and calls for the European Commission to consider a more balanced approach that harmonizes with the Codex Alimentarius' recommendations for clothianidin and thiamethoxam MRLs. Brazil also appreciates receiving replies to its comments but regrets that they have not been taken into account for publication of Commission Regulation 2023/334.

2.311. The representative of Ecuador provided the following statement. My delegation wishes to express its concern about the measure notified by the European Union regarding the protection of pollinators by lowering the MRLs for neonicotinoids (clothianidin and thiamethoxam), of which this Committee was notified in July 2022. Ecuador reiterates that the EU's regulatory proposal would not appear to be properly in line with Articles 2.2, 2.4 and 12.3 of the WTO Agreement on Technical Barriers to Trade and GATT 1994. It infringes on the regulatory policy powers of its trading partners, who sovereignly set the conditions for food production and agricultural activity in their own jurisdictions according to their geographic differences, ecosystem conditions, agricultural output, scientific capabilities and development. Thiamethoxam is effective against nematodes and black aphids in banana production, and against thrips and aphids in flower production. It also leaves significantly less residue in the environment and decomposes much faster than other products.

2.312. According to the Rainforest Alliance, the risk from the use of thiamethoxam in banana cultivation has been mitigated and there have been no reports of direct harm to bee populations. Other studies indicate 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 that. Lastly, as this is a measure that applies to third countries, the EU 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 EU is invited to address the concerns expressed by a number of Members on this matter, in order to avoid unnecessary restrictions on trade.

2.313. The representative of Argentina provided the following statement. First of all, we would like to thank the EU for the responses to our concerns. However, we believe that they are not sufficient. We therefore consider that the substantive issues raised by Argentina remain valid. Argentina remains concerned about the consistency of this measure with WTO principles. 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., to maintain the market and bees are not affected by them. If this is not the case, could the EU indicate what non-EU countries should do to continue using neonicotinoids if they are necessary and to continue exporting products to the EU that have been treated with 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. Could the EU indicate whether it did? And how did it examine the proportionality of the measure that it intended to implement?

2.314. 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. The EU's decision is therefore inappropriate and inconsistent with WTO principles and is disproportionate, since trade in certain products will be significantly affected if it is decided to continue applying these products. In its response to Argentina, the EU reminded us that WTO Members are not prevented from taking the necessary measures to ensure the protection of animals or plants, health or the environment, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. In accordance with Article 2.2 of the TBT Agreement, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks that non-compliance would create. The EU considers that the reduction of MRLs for clothianidin and thiamethoxam to the limit of quantification (LOQ) is necessary to fulfil its legitimate environmental protection objective and that there is no alternative that is less trade-restrictive and likewise contributes to the objective.

2.315. Argentina considers that the measure adopted by the EU to establish LOQ values for these neonicotinoids is not clearly justified and constitutes a disguised restriction on international trade within the meaning of Article 2.2 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 LOQ, 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.

2.316. The representative of Kenya provided the following statement. Kenya echoes 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. While several references are provided in the draft regulation including Inter-governmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) (2016), Kenya notes that the assessment report of the IPBES on pollinators, pollination and food production confirms that one single factor alone cannot explain the pattern of bee colony decline observed in some countries, while bee colonies increase in others. Hence there is no confirmed global environmental risk arising from the two substances. The EU measure therefore raises serious concerns of inconsistency with the TBT Agreement Article 2.2. No other data available would underpin the assertion that there is a global environmental risk that would remain unmanaged by the current established risk mitigation measures implemented by the respective regulatory approvals by non-EU countries.

2.317. Kenya takes cognisance of the fact that environmental protection is a legitimate objective under the WTO TBT Agreement. However, the EU regulations as proposed are more trade restrictive than necessary to fulfil a legitimate objective. It also fails to take into consideration, the Good Agricultural Practices (GAP) for legal uses in non-EU countries. Kenya is an agriculturally based economy, and the products are an integral tool in achieving food security and meeting public health objectives. Technical regulations should be based on international standards where they exist (Article 2.4 of the TBT Agreement), in the assessment of suitability for authorization of active substances. The European Union's policy on regulation of pesticides is in contravention of International Standards and principles of risk analysis (Article 5 of SPS Agreement) and the Risk Analysis Principles applied by CODEX, in particular the Codex Committee on Pesticide Residues (CCPR). Kenya is concerned that by this proposed regulation coming into force, it sets a negative precedent for application of similar approaches for regulating other substances beyond the borders of the EU based on environmental factors in future. This will have significant impact on international trade.

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

2.319. Products containing Clothianidin have been registered as a Seed Dresser Insecticide for the control of Aphids and thrips for reduction of Maize Lethal Necrosis Disease (MLND). MLND has contributed to the reduction of maize production in Kenya, with areas affected recording losses of up to 100%. In Kenya, maize constitutes a significant basis of food security and is cultivated by both large and small-scale farmers. More than 90% of the Kenyan population relies on it for income, human consumption, and raw material for industrial uses. Among the diseases, MNLD has emerged as the single most important production constraint in maize and other crops. In light of the above 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.

2.320. The representative of New Zealand provided the following statement. New Zealand, like other Members, remains concerned with the EU's proposed regulation and implementation mechanism, relating to the neonicotinoid insecticides clothianidin and thiamethoxam notified to Members in document G/TBT/N/EU/908. New Zealand shares worldwide concern for the decline of pollinators given their vital role in supporting ecosystem functions and food production. However, the extent of this pollinator decline varies considerably throughout the world and can be associated with a range of different causes. New Zealand encourages the EU, like all WTO Members, to address

global environmental issues, including sustainable pesticide use, by working with trading partners in multilateral fora. New Zealand reiterates concerns previously raised in this Committee that unilaterally imposing prescriptive import measures, in a manner such as those notified, may not successfully achieve the intended goal, and could create unjustified trade barriers for trading partners. New Zealand maintains that national authorities have the appropriate competency with respect to making decisions on the sustainable use of pesticides within their country. While it is noted that there is a large variability in trading partners production and regulatory systems, reflecting their unique climate, environment, and pest and disease status, amongst other factors, New Zealand encourages Members to recognise that different production and regulatory systems can, and do, deliver desirable environmental outcomes. New Zealand encourages Members to use risk-based measures founded on sound science and relevant international standards, which are least trade-restrictive and appropriate to achieve the desired outcome.

2.321. The representative of Guatemala provided the following statement. We share the European Union'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 territory outside the EU, and it would appear that the objective is to regulate the use of neonecotinoids in the production of third countries. 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 includes the safe use and management of agricultural inputs. In addition, there are programmes to mitigate any risk of poisoning and/or contamination by complying with all necessary measures and practices to ensure their proper use and that of the environment of the production plant, including integrated pest management and robust agricultural education on the use and effect of agrochemicals.

2.322. In addition, it is important to emphasize that pollinators are key to the production phase for agricultural products, such as coffee, particularly in the flowering period. 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 MRLs for substances without scientific evidence and risk analysis. Changing an MRL is linked to ensuring safe food, and the environmental issue does not come under the legitimate objective set out in the TBT Agreement; apart from this, there is the SPS aspect of MRL reduction. We would appreciate clarification of this issue from the EU. Guatemala reiterates the importance of conserving the environment and natural resources, and also the importance of the EU recognizing the use of good agricultural practices, which allows a sustainable level of production using productive methods and also recognizes the very different climatic characteristics of each region in global terms.

2.323. The representative of South Africa provided the following statement. South Africa would like to thank the European Union (EU) for taking time to respond to South Africa's concern 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. Amongst other points reflected in the EU response, South Africa notes the following: That the South Africa is considering the response. However, we would like to make the preliminary observation in terms of the average time for any application of the tolerance which is estimated to be an average of two years depending on the quality and completeness of the date and we shall provide the response in the next meeting.

2.324. The representative of Uruguay provided the following statement. Uruguay would like to thank the delegations of the United States, Indonesia, Australia, Colombia, Canada, India, Paraguay and Costa Rica for placing this specific trade concern on the Committee's agenda, and all those who submitted their views with respect to this measure. It is rare to see so many delegations, representing different geographical and productive conditions and different levels of development, expressing such converging views on an issue in the WTO. In my delegation's view, this is something that deserves to be highlighted. My delegation thanks the European Union for its replies to the comments submitted by Uruguay on 5 September 2022, as part of the consultation process on this notification, which were received on 26 January 2023. However, we take note of the approval without substantive changes, on 2 February 2023, of Regulation 2023/334 amending the MRLs for clothianidin and thiamethoxam, despite the numerous comments made by some 20 trading partners in the aforementioned consultation process, and by many WTO Members at recent meetings of the Goods Council and the SPS, TBT and Market Access Committees.

2.325. In Uruguay, the relevant plant protection products are regulated to ensure correct, safe and recommended use, as part of a National Environment Plan focused on good agricultural practices.

Uruguay understands that setting MRLs is the type of measure intended to protect consumer health from the risks arising from ingestion and that it therefore naturally falls within the scope of the SPS Agreement. For such issues, the international reference body is the Codex Alimentarius Commission, where health-related issues are comprehensively addressed in relation to the adoption of MRLs, but there is currently no consideration of environmental aspects in its risk analyses (as confirmed by the Codex Secretariat and indicated in paragraph 35 of the report of the 53rd Session of the Codex Committee on Pesticide Residues (CCPR)). Without prejudice to other European standards of the vast and complex European regulatory framework, in the EU the main and specific rule on MRLs for pesticides in food and feed is Regulation (EC) No 396/2005, Article 3(d) of which defines MRLs as: "the upper legal level of a concentration for a pesticide residue in or on food or feed set in accordance with this Regulation, based on good agricultural practice and the lowest consumer exposure necessary to protect vulnerable consumers".

2.326. The EU itself has repeatedly indicated to us – up to March 2022 – that, as a matter of principle, concerns about fixing MRLs for pesticides and any specific issue related to their implementation are matters that must be discussed in the SPS Committee, and not the TBT Committee. In that connection, the EU has notified, and continues to notify, the SPS Committee of successive amendments to MRLS for an increasing number of substances. Moreover, in the discussions on STC No. 11 yesterday in this Committee, the EU stated that it would notify any changes to the MRLs for sulfoxaflor to the SPS Committee[57], despite the fact that the justification for the restrictions of use defined for that substance, as explained by the EU itself, would respond to very similar reasons as those put forward in the case of clothianidin and thiamethoxam. Chair, if this is confusing for the European Union, imagine how confusing it might be for the rest of us. Uruguay shares concerns about promoting the protection of pollinators, in line with environmental and biodiversity protection, and supports the establishment of regulatory environments based on scientific criteria, so as to avoid putting food security at risk or erecting barriers to trade. Uruguay reiterates its willingness to cooperate with other Members, 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.

2.327. However, Uruguay still has doubts as to both the appropriateness 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 that are not related to human health. Despite being 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 addition, 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. We would be interested to know how the EU intends to consider emergency authorizations for these substances, and possibly others, in light of the recent ruling of 19 January 2023 of the Court of Justice of the European Union (CJEU), which considers such authorizations illegal in certain cases.

2.328. In response, the representative of the European Union provided the following statement. The EU would like to thank the intervening Members for providing comments on the Notification G/TBT/N/EU/908. The EU has carefully studied all the comments received from a large number of trade partners and business associations and it has replied to all of the questions raised. The Regulation is already adopted and published in the Official Journal of the European Union.[58] It will become applicable from 7 March 2026 in order to permit 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 would like to thank the different WTO Members once again for providing comments on this draft and hopes to have provided responses that sufficiently clarified the points raised. Nevertheless, having heard the number and substance of comments just presented

[57] "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".

[58] 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.

by EU trade partners, we will do our best to provide further relevant information at the next meeting of this Committee.

2.1.3.28 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[59])

2.329. The representative of the European Union provided the following statement. At the outset, the EU would like to acknowledge that many of our questions have been answered by India, including in an online information session. The EU would like to thank India for recently 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. However, even if the new certificates are not associated to new sanitary measures: (1) given the disruption to trade associated to the three certificates issued by one authority; (2) given the uncertainty associated to the new certificate issued by another authority in the beginning of March; (3) given the duplication of certificates requested by different authorities in India; (4) given the existence of different products/food categories associated to the certificates and to the registration of foreign food manufacturing facilities; and (5) given the importance of the competent authorities and companies in the exporting countries to have sufficient time to adapt to new measures, 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 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.

2.330. The representative of the United States provided the following statement. On 3 August 2022, India's Ministry of Health and Family Welfare and the Food Safety and Standards Authority of India (FSSAI) issued notification F. No. 1829/Health Certificate/FSSAI/Imports (2021). India notified this measure to the WTO TBT Committee on 18 August 2022 as G/TBT/N/IND/233. The United States submitted comments in response to this notification in December 2022. On 24 February 2023, FSSAI circulated a public notice extending the implementation of the order indefinitely. Although the indefinite postponement of the order is welcome news, we expect India to follow science and risk-based processes, as well as to take comments into account prior to finalizing the measure. We look forward to continuing bilateral engagement between the competent technical authorities on the import certificate requirements for pork, seafood, and dairy products with the goal of minimizing trade disruptions. We appreciate India's transparency through the process and will be anticipating a notification to the WTO if FSSAI will be implementing new certification requirements for these products.

2.331. The representative of Canada provided the following statement. Canada notes that the new FSSAI requirements related to export certificates for pork and fish and seafood has had adverse impacts on trade. However, Canada was pleased to learn that the implementation of FSSAI's new certification requirements has been delayed until further notice, until competent authorities work to develop a joint certificate. Canada would appreciate clarification from India regarding the coordination between FSSAI, the Department of Animal Husbandry and Dairying, and the Department of Fisheries on these new certification requirements. Which competent authority will lead the negotiation of 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 recalls 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 to notify the SPS Committee of the

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

joint certificate given that India's proposed regulation covers food safety measures aimed at protecting human health and safety.

2.332. The representative of Japan provided the following statement. Japan reiterates 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 three times, and a specific date of implementation has not announced yet. Although Japan appreciates India's decision on the extension of 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. Lastly, Japan notes that one of the objectives of India's Order is to ensure the safety of imported food products into India. If that is the case, Japan considers that India should notify the Order under the SPS Agreement as well.

2.333. The representative of Australia provided the following statement. Australia supports the concerns raised by the European Union, New Zealand, the US, Canada and Japan 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.

2.334. Australia is eager to continue working with India to negotiate mutually agreeable health certification for imports of Australian pork and pork products, milk and milk products and fish and fish 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. Australia would appreciate India's assurance that existing health certification for pork and pork products, milk and milk products and fish and fish products, previously bilaterally agreed with DAHD, will continue to be accepted until certification negotiations are concluded.

2.335. The representative of New Zealand provided the following statement. New Zealand thanks FSSAI for the interactive process that was undertaken to gain approval for 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 that consideration is given to longer implementation periods, factoring in time to consider submissions on the relevant WTO notification and time for countries to undertake any required assessment and implement changes accordingly. A minimum of six months, but preferably twelve months, should 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 certification 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.

2.336. 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 requirements 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.

2.1.3.29 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[60])

2.337. The representative of the European Union provided the following statement. The EU supports India's efforts to improve safety of its electric vehicles' fleet. India's increasingly proactive involvement in the work of the UN's informal working group on safety of electric vehicles, in the recent years, is particularly lauded. The EU was glad to learn that India was preparing revision 2 to the AIS 038 standard, which was largely based on the requirements of UN GTR 20. The latter have been judiciously developed to support continuous technological development of different battery architectures and solutions, while ensuring the highest levels of vehicle and battery safety. The EU understands that during 2022, a series of incidences of battery related fires primarily in the two-wheelers vehicles have been reported in India. This has led India to introduce amendments of the proposed revision 2 of the AIS 038 standard that significantly deviates from the internationally agreed rules, i.e. UN GTR 20. The EU regrets that to date India failed to notify to the TBT Committee the amendments 2 and 3 to the revision 2 of the AIS 038 standard, thus going against Article 2.9.2 of the TBT Agreement that requires Members to notify at an early appropriate stage, when amendments can still be introduced, and comments taken into account.

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

2.339. The representative of the Republic of Korea provided the following statement. Korea appreciates this opportunity to make comments on India's amended "AIS-038 and AIS-156, Safety Requirements with respect to the Rechargeable Electrical Energy Storage System (REESS) for electric power train vehicles," which were announced on 27 September 2022 through the website of the Ministry of Road Transport and Highways and will be phase-implemented on 1 December 2022 and 31 March this year. At the last WTO TBT Committee meeting in November 2022, Korea raised an STC regarding India's REESS Safety Requirements, which are more stringent than the current relevant international standards, and conveyed the three following requests: Our first request was to remove requirements that are not stipulated in the current UN ECE standards, namely, the requirements regarding "temperature sensors," "audio-visual alarm," "active paralleling circuits," and "cell-to-cell spacing distance," and also revise the overly burdensome "no evidence of fire and explosion" requirement in line with the relevant international standard, UN ECE R100.

2.340. The second request was to revise the duplicated certification requirements according to IS 16893-Part 2 and also Part 3, in the way the cells used to make REESS need to be certified only under IS 16893-Part 3. The third request was to revise the Automotive Industry Standards (AIS) to allow charge-discharge tests for the battery cell formation to be carried out under the conditions declared by the manufacturers as suitable for each cell product. Although Korea has received confirmation via the responses from the Indian delegation and the TBT Enquiry Point that these concerns have been forwarded to the competent authority for examination, we have yet to receive

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

any answer from the competent authority. As the implementation date of the amended standards is imminent, Korea requests that India quickly provide answers to our previous comments. In addition, should there be further amendments to the standards as a result of examining our comments, it is also requested that India provide a transition period of at least six months in consideration of the time for the manufacturers to adapt.

2.341. In response, the representative of India provided the following statement. We thank EU and Korea for their interest in this measure. IS 16893-Part 2 and IS 16893-Part 3 are identical adoptions of IEC 62660-2: 2010 and IEC 62660-3: 2016 respectively. Further, India is currently undertaking stakeholder consultations in the context of AIS–038 (Rev 2). The original AIS-516 has been formulated in alignment with UN Regulation 136 while AIS 038 (Rev 2) has been formulated in alignment with UN R100 (Rev 3), which is based on Global Technical Regulation GTR 20. India is a signatory to 1998 UN agreement for global harmonization of technical regulations but not to 1958 UN agreement for adoption of harmonized UN regulations. GTR 20 group has worked on M&N category vehicles (four-wheeler vehicles, buses and trucks) and Phase 1 of GTR 20 is released. As such, the work of GTR on L category (two and three wheelers) vehicles is not yet initiated. Representations were received from the Republic of Korea and European Union, highlighting that the additional requirements introduced in AIS-156 and AIS–038 (Rev 2) are over and above the global regulations and these requirements may pose a technical barrier to the trading activities with India.

2.342. The Standards Committee reviewed the comments received from the Republic of Korea and EU of South Korea on amendment 3 of AIS – 156: a) The experts agree that correct reference to IS 16893 – 3 is required. Hence, the committee agreed South Korea's request to test cells only as per IS 16893-3. b) The experts agreed that the charge-discharge current can be C/3 or higher, in reply to the request from South Korea. Regarding AIS-038 (Rev 2), the additional requirements of Amendment 3 are being analysed in line with the intended purpose and the comments received. Nearly four weeks of time will be required for a wider stakeholder consultation and for deliberation on the received comments. The outcome of the discussions shall then be communicated.

2.1.3.30 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[61])

2.343. The representative of Indonesia provided the following statement. The Indonesian government expresses gratitude to India for responding to its concerns at the TBT Committee meeting in November 2022 on the policy of restricting imports of tyre products. Unfortunately, Indonesia laments that it has not yet found a suitable way to address this issue. The policy of restricting tyre imports and the policy of enforcing royalties for the use of the Indian Standard mark on tyre products sold to third countries are both subject to further explanation requests from the Government of Indonesia to the Government of India. The Indian Government changed the import policy for tires from "free" to "restricted," as stated in Notification No.12/2015-2020, which was published by the Indian Ministry of Trade and E-Directorate Commerce's General of Foreign Trade on 12 June 2020. The Indonesian government has studied these changes. In addition, we view that the current import policy in India has become more stringent, where every container business actor sent to India needs to be sampled for customs purposes as well as fulfilling provisions related to warehouse registration where the imported tire products will be stored.

2.344. Indonesia is aware that as a result of the implementation of this policy, importers are now required to send separate declarations via email regarding import restrictions for specific types and size categories that can be produced by domestic producers in India. They are also required to comply with warehouse registration requirements, and any violations will be subject to criminal penalties under the FTDR Act 1992. Additionally, Indonesia views the application of the aforementioned policy as discriminatory, since it is selectively applied to a subset of member nations that could potentially pose a threat to domestic tyre producers by disrupting market access. With the large range of tire sizes produced in India as one of the world's main producers, the implementation of this policy has de facto limited the sorts of products that may be exported and generated unnecessary trade obstacles for tire products from Indonesia.

2.345. Indonesia also plans to request further information regarding the usage of a royalty policy or marking fees on tyres that bear the IS Mark. According to Indonesia, imposing the IS Mark marking charge on tyre products that will be exported to third countries is not a standard practice,

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

and it could burden business players and erect unneeded trade obstacles in global trade. The imposition of the marking charge is unlawful and has nothing to do with safeguarding people's health, safety, or preventing dishonest business activities. As stated in the requirements of Articles 2.1 and 2.2 of the TBT Agreement, the Indonesian Government believes that the execution of these regulations is inconsistent with the principle of non-discrimination and has the potential to obstruct international trade needlessly. Indonesia urges India to be allowed to notify and assess the implementation of the policy in order to ensure compliance with the rules in effect at the WTO. Indonesia believes that India can provide additional information on the subject in issue.

2.346. In response, the representative of India provided the following statement. We thank Indonesia for their continued interest in this measure. 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 remain open to discuss this issue bilaterally.

2.1.3.31 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[62])

2.347. The representative of the Republic of Korea provided the following statement. The Republic of Korea recognizes China's efforts to protect the health of its people by enhancing the efficiency of supervision and management of medical devices life cycle, and strengthening corporate responsibility through the Regulations for the Supervision and Administration of Medical Devices. According to China's response in the last TBT Committee meeting, it is understood that the only test reports that are allowed for submission are those issued by testing laboratories in China that are approved by the authority, and the test reports by overseas testing laboratories or internationally accredited testing laboratories are not accepted. Thereby, the Republic of Korea requests China to include "internationally accredited testing laboratories" in Article 14, "Qualified testing laboratories" as per Article 6.1, 6.3 and 6.4 of the TBT Agreement. The addition of "internationally accredited testing laboratories" in Article 14 "qualified testing laboratories" will lead to expedited entry of products with new, internationally-approved technologies into China, to promote health of the Chinese people and to advance innovation and development of the medical device industry in China.

2.348. In response, the representative of China provided the following statement. The new Regulations on the Supervision and Administration of Medical Devices, Measures for Registration and filing Administration of Medical Devices, and Measures for the Registration and filing Administration of in Vitro Diagnostic Reagents have already been implemented. As required by the Opinions on Further Deepening the Reform of the Review and Approval System to Encourage Innovation of Drugs and Medical Devices, the above Regulations and Measures scientifically set clinical evaluation requirements, simplify the review and approval process, and further encourage innovation and development of the industry, while at the same time aiming to fully carry out the registrant system, increase the awareness of the responsibility of enterprises, and enhance whole process supervision of medical devices.

2.1.3.32 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[63])

2.349. The representative of the United States provided the following statement. The United States continues to try to work with Indonesia, bilaterally and in multilateral settings, to ensure that implementation of Indonesia's Halal Product Assurance Law is achieved in a way that is consistent with Indonesia's WTO obligations. We urge Indonesia to continue bilateral engagement with WTO Members and industry stakeholders. Unfortunately, many of our long-standing concerns remain unanswered. We refer Indonesia to our previous statement from previous WTO TBT Committee meetings, as well as outstanding questions submitted as G/TBT/W/761. Despite Indonesia indicating in November 2022 that it would respond formally through the Enquiry Point; we still have not received any communication from Indonesia in response to the concerns raised in this Committee.

[62] For previous statements follow the thread under ID 428.
[63] For previous statements follow the thread under ID 502.

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.

2.350. Can Indonesia confirm whether there are further implementing regulations for the Halal Law forthcoming, and if so, what is the expected timeline for notifying those regulations? We again ask that Indonesia notify these regulations when drafts become available, before they take effect, and take stakeholder comments into account before the draft regulations are adopted and implemented. 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? Finally, we ask Indonesia to explain what specific steps it is taking to address the concerns raised by Members in this Committee on its Halal Law. We remain committed to working with Indonesia to address the concerns raised by the United States and other Members in this Committee, and to ensure that Indonesia's halal measures do not create unnecessary obstacles to international trade.

2.351. 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. 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. 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, and represent an excessive burden for economic operators.

2.352. 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.

2.353. 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; however, confusion and lack of consistency remains, for instance with respect to HS codes for products that require halal certification, application of the measure to frozen seafood, and which genetically modified plant products may require halal certification.

2.354. It is important that Canada obtains answers to these questions so its exporters can comply with the new halal regulatory requirements. Without full and complete information, it will be difficult for our exporters to ensure their production processes fully comply with all the ramifications of Indonesia's halal regime. Unfortunately, as we noted previously in this Committee, Indonesia's response to these issues and others remain outstanding, even though Canada raised these issues in two comment letters on notifications G/TBT/N/IDN/139 and G/TBT/N/IDN/140. Canada would

appreciate if Indonesia could provide a timeline regarding when we can expect a response. 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.

2.355. The representative of Switzerland provided the following statement. As in previous meetings of the TBT Committee, Switzerland is following this matter with interest. We share the concerns expressed by other Members regarding the Indonesian Halal Product Guarantee Law No 33 of 2014 and its implementing provisions, which require mandatory Halal certification and labelling for a large range of products. While Switzerland recognizes Indonesia's legitimate objective to ensure reliable information for consumers related to the halal integrity of certain products, we remain concerned over the potential negative impact on trade and refer for details to Switzerland's previous statements in the TBT Committee on this matter. In particular, we stress the importance to provide flexibility for the recognition of foreign Halal certification bodies and the acceptance of foreign Halal certificates.

2.356. The representative of Australia provided the following statement. Australia welcomes ongoing discussions on the Indonesian Halal Product Assurance Law No.33 of 2014 (Halal Law). Australia thanks Indonesia for the informative fourth International Halal Dialogue on 7 October 2022. We encourage Indonesia to continue to facilitate an open and transparent dialogue with its trading partners to allow foreign businesses and their valued Indonesian importers to remain adequately informed of the Halal Law implementation regulations. Australia would appreciate clarification from Indonesia on whether our existing halal assurance processes will continue to be recognized when the grace period for Law 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.

2.357. 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.

2.358. The representative of New Zealand provided the following statement. New Zealand thanks Indonesia for its ongoing engagement on the implementation of the Halal Assurance Law and associated implementation regulations to date, and acknowledges Indonesia's desire to increase the robustness of the halal assurances associated with products traded to Indonesia. However, New Zealand stresses that the WTO process of notification and consultation should be upheld. Law 33/2014 and its implementing regulations are not explicit regarding the requirements for recognition of Overseas Halal Certification Bodies. The amendments to Law 33/2014 through additional regulations create uncertainty around the Law's implementation. Regulation 1 of 2023, signed 1 February 2023, which introduces new and previously unknown criteria for Halal Certification Bodies, has not been WTO-notified and there has been no opportunity for members to provide comment, and for businesses and agencies to achieve conformity. This creates ongoing uncertainties surrounding the security of halal trade with Indonesia. Our previous concerns regarding Regulation 748/2021 still stand and we will not repeat these, but emphasise the importance of adhering to WTO-consistent notification and consultation processes.

2.359. In response, the representative of Indonesia provided the following statement. The implementation of Halal Product Assurance aims for ensuring certainty and safety aspects of halal products available in Indonesia and increasing added value for the industry to produce and distribute Halal products. Products that are mandatory to be halal certified shall bear the halal label after being granted halal certification by recognized halal certification body/ authority based on the principle of mutual cooperation, mutual recognition, and mutual acceptance of conformity assessment in

accordance with international regulations and practices. The provision of requirements and guidelines for product certification remains under discussion and will be notified to the WTO TBT Committee. The non-halal information is intended to help consumers identify non-halal products, and Indonesia would like to point out that there is no obligation to label non-halal products, but only to provide information on the non-halal materials contained in the product. Furthermore, the Indonesian Halal Product Assurance Agency (BPJPH) have received and welcome the initiation of bilateral cooperation of international halal cooperation from Members. We remain open to the opportunity for Members to further discuss bilaterally regarding the implementation of Halal Law and the implementing regulations.

2.1.3.33 India - Mandatory Certification for Steel Products, G/TBT/N/IND/32, G/TBT/N/IND/32/Add.1, G/TBT/N/IND/32/Add.2, G/TBT/N/IND/32/Add.3, G/TBT/W/774 (ID 224[64])

2.360. The representative of The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu provided the following statement. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu remain concerned about the application procedures of IS 17404:2020 (electrogalvanized hot rolled and cold reduced carbon steel sheets and strips) certification under the Steel and Steel Products (Quality Control) Order, 2020. We appreciate that Bureau of Indian Standards (BIS) responded positively to our steel businesses for scheduling on-site inspection after our travel restrictions was lifted. As on-site inspection is only part of the certification process, the applicants are still left in a great deal of uncertainties in terms of the certification timeline due to the limited manpower of BIS. Such uncertainties and delays have made a profound impact on bilateral trade. We urge India to follow Articles 5.2.1 and 5.2.2 of TBT Agreement to make transparent each of the application stage and speed up on-site inspection procedures. We believe that Indian businesses could also benefit from good quality steel and steel products from Chinese Taipei at an early time. We would also like to encourage India to take into account Members' concerns and suggestions stated in G/TBT/W/774 published on 11 November 2022 and consider alternative measures to facilitate the whole certification processes.

2.361. The representative of Japan provided the following statement. The mandatory regulation IS 11169 (Part 1) was revised and published on 21 September last year. This revision changes the compliance requirements and expands the scope of the steel products covered by the mandatory regulation IS 11169 (Part 1). Therefore, steel products that have not been certified under the revised IS 11169 (Part 1) by the enforcement date cannot be exported to India. However, the revised IS 11169 (Part 1) was put into force on 15 December last year. This meant the grace period from publication to enforcement was less than three months. It was extremely difficult for steel mills outside India to obtain a certification under the revised IS 11169 (Part 1) by the enforcement date. This is because a sufficient grace period was required for many processes involved in obtaining the certification, including preparation and submission of documents, production and maritime transportation of sample products, and arranging on-site inspections. Japan kindly requests India to provide a sufficient grace period to allow for the many processes involved in obtaining certification in accordance with Article 2.12 of the TBT Agreement and in consideration of Paragraph 5.2 of the Implementation-Related Issues and Concerns of the Ministerial Decision 2001 and Paragraph 6.3.1.10 of the Decision and Recommendation by the TBT Committee when establishing or amending mandatory regulations in the future.

2.362. 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 who are carrying negative RT-PCR test report, without the requirement of quarantine. With respect to applications received from Chinese Taipei, visits are being planned wherever necessary formalities such as payment of application charge, scrutiny of application etc., have been completed.

2.1.3.34 China - Cybersecurity Law (ID 526[65])

2.363. The representative of the European Union provided the following statement. The EU would like to refer to its statements at previous TBT Committees with regard to the Cybersecurity Law. The EU requests more clarity regarding several of the implementing measures of China's Cybersecurity

[64] For previous statements follow the thread under ID 224.
[65] For previous statements follow the thread under ID 526.

Law. For example, the National Information Security Standardisation Technical Committee (also known as TC260) has released the draft of a short (non-binding) guideline on the identification of "important data" (the Identification Guideline). The concept of "important data" was first introduced in the Cybersecurity Law and has been adopted into the Data Security Law. However, the term has still never been comprehensively defined. Under the Data Security Law, regional and sectoral regulators have already been tasked with formulating catalogues of "important data" for their respective sectors. The draft Identification Guideline, released on 13 January 2022, was the first step towards implementing this national classification system for "important data". The EU urges China to proceed with these guidelines, to narrowly define catalogues of sectoral important data as soon as possible, and take into account the submitted EU comments.

2.364. The EU has taken note of the publication of the Outbound Data Transfer Security Assessment Measures by the Cyberspace Administration of China (CAC). Several issues have been identified. Firstly, once the regulatory security assessment is triggered, the data handler may no longer be able to resort to signing a standard contract or to being certified for cross-border handling of personal information, transferring data across borders, even when it comes to low-risk scenarios, such as the intra-company transfers of employees' personal information by large MNCs. Secondly, for those that handle large amounts of personal information, even if only one piece of such information is transferred abroad, a regulatory security assessment will still be triggered, unnecessarily. Additionally, we are concerned that they put foreign operators at a disadvantage compared to local ones. The scope of some of the provisions remains unclear and it is not possible to determine which types of data and which kinds of transfers would be covered by the measure. While these terms may be defined in other pieces of legislation, the concerns we have raised there would also apply here. For example, those subject to interpretation, in particular, the vague concepts of "important data" and "critical information infrastructure". It would be important to address these issues to ensure legal certainty. The EU urges China to take on board its comments provided.

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

2.366. The EU notes the recent entering into force of the Measures for Data Security Management in Industry and Information Technology (for Trial Implementation). The measures impose hard localization requirements for potentially extremely broad sets of data used in industry. Key terminology crucial to the interpretation of the Measures are vaguely defined, including "industrial data", "important data" and "crucial data". This creates considerable uncertainty. The EU encourages China to clarify the scope of the measures and to define this in as narrow a manner as possible. The EU calls on China to implement the provisions in a non-discriminatory manner, respecting the principles of proportionality, necessity and technology neutrality, and ensure adequate protection of intellectual property (IP). The EU requests that China notify draft measures concerning any sectoral implementation to the WTO.

2.367. 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. We will continue to carefully monitor China's implementation of the Cybersecurity law and related measures, as well as the Cryptography Law. We look forward to continuing this important dialogue.

2.368. The representative of Japan provided the following statement. Japan continues to have concerns about the Cybersecurity Law. In September 2022, the draft amendment to the Cybersecurity Law was published. Japan has submitted its comments and request China to take it into consideration. In particular, Article 65, which has been changed in the proposed amendment, stipulates penalties for critical information infrastructure operators who use network products or services that have not undergone or passed a "cybersecurity review". While Japan understands that the Cybersecurity Review Measures stipulate the procedures, required documents and required number of days for this "cybersecurity review," there still remains some unclear points, such as the specific scope of network products, which may cause unnecessary obstacles to the market entry of relevant foreign vendors and service providers. We request that the above unclear points be clarified and that the "cybersecurity review" be operated in a manner consistent with the TBT Agreement. We are also aware that the Cross-border Data Transfer Security Assessment Measures came into effect in September 2022 and the Security Certification Specifications for Cross-border Processing Activities of Personal Information was published in December 2022 as a subordinate regulation of the Cybersecurity Law and Personal Data Protection respectively.

2.369. First, regarding the Cross-border Data Transfer Security Assessment Measures, Japan submitted comments during the public comment 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 comment, and in September 2022, the Information Security Technology Network Data Classification and Grading Requirements were submitted for public comment. Japan requests China clarify whether China intend that the classification criteria for "general data," "critical data," and "core data" will be defined in these national standards. In addition, the Security Certification Specifications for Cross-border Processing Activities of Personal Information requires 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, and these will have a significant impact on foreign businesses that have a high necessity 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 the perspective of business, we request that China take the opinions we submitted for public comment into consideration, and that transparent implementation is ensured.

2.370. 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 Practical Guidance of Cybersecurity Standards—Technical Specifications for Certification of Cross-border Handling of Personal Information; the Critical Information Infrastructure (CII) Security Protection Regulations; the Cybersecurity Review Measures; the Draft Regulations on Network Data Security; and the Draft Measures for Security Assessment of Cross-Border Data Transfer. 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.

2.371. 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. 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.

2.372. In response, the representative of China provided the following statement. China would like to thank Members for their interest in the Cybersecurity law of China. 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, and network users. Basic systems have been established to ensure the security of network products and services, network operation, network data, network information, network security monitoring, early warning and emergency response. The network security supervision and management system have been further clarified. The 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 cyber security has been enhanced, the legal system of cyber security has been improved, the law enforcement capacity in cyberspace has been strengthened, and the cyberspace has become cleaner and more orderly.

2.1.3.35 China - Encryption Law of the People's Republic of China by the Office of State Commercial Cryptography Administration (OSCCA) (ID 534[66])

2.373. The representative of the United States provided the following statement. The United States will support other Members' interventions and refer to its statements on the Cybersecurity Law.

2.374. The representative of the European Union provided the following statement. The EU would like to reiterate its concerns relating to the Cryptography Law that came into force on 1 January 2020. The EU remains concerned about the wide scope of the law. These factors have already negatively impacted business confidence. The EU also notes, with concern, that the new law does not recognize China's previous commitment, made in 2000, that the cryptography-related regulation would only apply to products whose core function is that of providing encryption – the so-called "Year 2000 Clarification" by the State Cryptography Administration (SCA). The EU calls on China to ensure that legal and regulatory requirements are non-discriminatory, do not favour specific technologies, do not limit market access and do not lead to forced transfers of intellectual property. The EU urges China to guarantee the possibility for foreign invested enterprises (FIEs) to participate on an equal footing with domestic companies in the production, research, development and sale of cryptography products on its market, including participation by chipmakers in standardization bodies, including Working Group 3 of the TC260 and the SCA's own Cryptography Industry Standardisation Technical Committee (CISTC). The EU requests that applications to these bodies be replied to in a timely manner.

2.375. The representative of Japan provided the following statement. Japan continues to have concerns about the Encryption Law, which is in 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 ask a prohibition on requests for disclosure of algorithms as well as source code. We request that the operation of this law not impede the activities of foreign companies in China or their entry into the Chinese market.

2.376. The representative of Canada provided the following statement. 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 draft of Cryptography Administration's cryptography regulations, which Canada provided in September 2020. We also seek further clarity, transparency and predictability in China's regulations and laws related to Encryption and Cryptography, including the definition of terms; clarification that international standards will be used; and further precision on the measures' scope. Finally, we urge China to notify the draft regulations to this Committee and allow Members reasonable time for review and comment.

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

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

2.1.3.36 Viet Nam - Cybersecurity Measures (ID 544[67])

2.378. The representative of Japan provided the following statement. Japan requests that the security assurance obligations for devices and systems stipulated by Cybersecurity Law and Decree No.53/2022/ND-CP (hereinafter "Decree 53") be implemented in compliance with the TBT Agreement. We understand that at the previous Committee meeting, Viet Nam stated that the obligation to store data and to establish branches or representative offices in Viet Nam, as stipulated by the Cybersecurity Law and Decree 53, are imposed on "foreign enterprises" only if the services provided by "foreign enterprises" are used for an activity that is in violation of the Cybersecurity Law. However, Decree 53 imposes on "domestic enterprises" the obligation to store data in Viet Nam without such limitation. Therefore, it is undeniable under Decree 53 that Vietnamese subsidiaries established by "foreign enterprises" under Vietnamese laws have the potential to fall under the category of "domestic enterprises." This does not result in reducing the burden on "foreign enterprises" that own "domestic enterprises" in Viet Nam, even if the obligation to store data in Viet Nam for "foreign enterprises" is limited, as Viet Nam pointed out at the last Committee meeting.

2.379. Presumably, Vietnamese subsidiaries whose parent companies are headquartered outside of Viet Nam, in general, collect and manage data in an integrated manner outside of Viet Nam. These subsidiaries are more likely to incur additional investment costs and other burdens and to be placed in de facto unfavourable competitive conditions compared to enterprises that collect and manage data in Viet Nam. Japanese industry has concerns based on the premise that their Vietnamese subsidiaries established by "foreign enterprises" under Vietnamese laws could be recognized as "domestic enterprises." In consideration of their concerns, Japan would like to request that Viet Nam take appropriate measures to address them.

2.380. In response, the representative of Viet Nam provided the following statement. Viet Nam would like to thank Japan for its continued interest in our measure. We take note of the comments and will convey to the competent authority in capital for consideration and further feedback.

2.1.3.37 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[68])

2.381. The representative of the United States provided the following statement. It is unfortunate that despite the United States and other WTO Members raising significant concerns with the Cosmetics Supervision and Administration Regulation (CSAR) and its implementing measures in the past eleven TBT Committee meetings and five meetings of the Council on Trade in Goods, China has not sought to work with the United States and other WTO Members to reach resolution. The United States maintains that it has serious concerns with CSAR and its implementing measures' likely inconsistency with 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. In addition to our previously raised concerns, we ask that China provide clarity on Announcement Number 13 of 2023, issued by the National Medical Products Administration on 18 January on matters related to the Notification and Inspection of General Cosmetics. It appears that firms manufacturing in China will have the option of self-testing for general cosmetics, instead of mandatory third-party testing, if they have a cosmetics production licence and they meet additional conditions. Please confirm if that is correct.

2.382. We also ask that China clarify if importers will also be given the option to self-test? Further, we ask that if these requirements and procedures are new, China notify them as a draft 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. In November, we asked that China consider extending by

[67] For previous statements follow the thread under ID 544.
[68] For previous statements follow the thread under ID 576.

two to three years 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 urge China to address this point. We also ask that China consider how it can rely more upon international recognition schemes for conformity assessment to reduce the timelines for companies to comply.

2.383. 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 January 12. 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. 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.

2.384. The representative of the Republic of Korea provided the following statement. The Republic of Korea appreciates China's response to Korea's comments on the Cosmetics Supervision and Administration Regulation (CSAR) and its implementing regulations. We hope to continue cooperation to share information on cosmetic regulations. Nevertheless, Korea reiterates previous concerns as China's response remains limited to explaining how the measures are implemented, and as Korea's concerns were not duly addressed in China's finalized specifications and regulations. First, China's regulation states that test reports required for cosmetic product registration must be those 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. We would like to clarify whether it is possible for foreign inspection institutions located outside China to get the CMA certificate. Also, Korea again requests China to adopt more flexible measures by recognizing test reports issued by qualified foreign laboratories located outside of the country.

2.385. Second, as per Article 13 of the New Cosmetic Ingredients Authorization and Registration Regulation, China requires companies to prove that the test results derived from alternative test methods are the same with those results by *in vivo* toxicity testing method, or animal testing. With respect to this, Korea requests China to recognize alternative test methods approved by the OECD or other international organizations without requiring the submission of equivalence evidence. Although China replied that such requirements are applied to both imported and domestic cosmetics, Korea would like to re-emphasize that our comment under this STC is asking China to recognize internationally-approved alternative test methods in its Regulations. Third, regarding the Administrative Measures on Cosmetic Labelling, Korea requests that China to align its labelling requirements with international practices. China requires the labelling of ingredients with 0.1% or higher concentration in descending percentage order and the rest as "other trace ingredients". In most countries, cosmetic ingredients are subject to declaration when the substances are at a 1% or higher concentration and the rest are not subject to labelling. Thus, China's proposed regulation is not in harmony with international practices.

2.386. Fourth, China requires companies to specify the sources and to provide quality data of all ingredients in their applications, which is more stringent than necessary compared to international practices. This required information often contains trade secrets, and is more than necessary to fulfill China's legitimate objectives to ensure product safety and to manage China's domestic market. Korea therefore requests China to provide an evidence-based explanation for its measures. 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 meeting, China responded that trade secrets and intellectual property are not damaged and that trade secrets are rigorously protected. With respect to this, Korea requests concrete explanation on how China is protecting trade secrets of businesses. In the same vein, under the Specifications for Cosmetic Efficacy Claim Evaluation, it is still mandatory for businesses to disclose summarized scientific evidence that supports cosmetic efficacy claims on NMPA-designated websites. Since 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 Regulations on the Disclosure of Government Information and that the NMPA would strictly abide by the Regulations when managing the registration and filing of cosmetic products. Regarding this, Korea would like to request China to provide detailed explanation on the measures taken to comply with its regulations on the disclosure of information.

2.387. 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 November 2022. Japan requests 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.

2.388. 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 filing must be conducted by testing laboratories that are located in China and that have obtained CMA (China Inspection Body and Laboratory Mandatory Approval). China's response in the previous TBT Committee meetings that China does not prohibit or restrict foreign laboratories from obtaining CMA does not meet Japan's requirements of accepting the test results of foreign laboratories with testing capability equivalent to laboratories that obtained CMA. If the purpose of granting CMA is for confirmation of testing capability, the location is essentially irrelevant to testing capability. So regardless of whether the location is in China or outside China, Japan would like to continue to request a more flexible framework through which China 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.

2.389. 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 order for 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.

2.390. 3. Especially for the following reasons, the efficacy claim evaluation method required by the "Specifications for Cosmetic Efficacy Claim Evaluation" is a more stringent requirement than necessary for the purpose of guaranteeing the scientific validity and reliability of efficacy claim evaluation and protection of consumer legal interests. Japan would like to request 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 could 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.

2.391. 4. The Cosmetic Ingredients Safety Information includes more detailed information than necessary for the purpose of ensuring the safety and quality of final products and is stricter than regulations in other countries. Requirements for such overly detailed information creates heavy burdens for cosmetic ingredient manufacturers or cosmetics registrants and filers. If the information is not submitted, it is assumed that products already on the Chinese market can no longer be sold or products distributed in other countries cannot be sold in China, possibly leading to a failure to fulfill the demands of Chinese consumers. Japan would like to request an adequate framework for preventing more excessive demands than are necessary for a legitimate purpose. Especially regarding existing products for which application for registration or filing has occurred before 1 May 2021, which is the implementation date of registration and notification under the new regulatory scheme, considering the large number of ingredients to be covered, it is practically impossible to submit the Cosmetic Ingredients Safety Information by 1 May 2023. Japan would like to request that China provide an adequate grace period of at least one year after promulgation of all relevant regulations.

2.392. 5. Japan recognizes that a transition period is set in all relevant regulations. However, we cannot say each transition period is long enough for the following reasons in particular. 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. - The "Specifications for Cosmetic Efficacy Claim Evaluation" stipulate that regarding cosmetics for which application for registration or filing has occurred before 1 May 2021, a cosmetic efficacy claim evaluation must be conducted and the abstract of an efficacy evaluation of products must be uploaded by 1 May 2023. As mentioned in 3, considering that many conditions and restrictions are imposed on evaluation methods, it is practically impossible to complete an efficacy evaluation of products and upload the abstract by that deadline. - The "Administrative Measures on Cosmetic Labelling" stipulate that applications for registration or filing of products as of 1 May 2022, must be adapted to the regulations. It also stipulates that those products for which application for registration or filing has occurred before 1 May 2022, must be adapted to the regulations by 1 May 2023. However, despite the impending enforcement date, all detailed rules and guidelines, which registrants or filers need to adapt to the new cosmetic labelling system, have yet to be stipulated.

2.393. 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.

2.394. 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 Labelling," which was promulgated on 3 June 2021, Japan would like to continue to express its following concerns.

2.395. 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.

2.396. 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 mentioned by China at the TBT Committee meeting in November 2022, 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.

2.397. 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.

2.398. 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.

2.399. 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.

2.400. In addition to the above, Japan would like to request that China continue to consider the following points that have been proposed by Japan prior to this meeting: - Exemption from submitting toxicological testing documents via certification documents on the quality management system or good manufacturing practice qualifications - Restrict use of new toothpaste ingredients during the safety monitoring period only when registrants or filers confirm the use in advance of new cosmetic ingredients - Handle efficacy evaluation reports for toothpaste by utilizing direct upload to the public website by registrants or filers in the same way as cosmetics.

2.401. The representative of the European Union provided the following statement. The EU would like to support the delegations of Republic of Korea, Japan, the United States, and New Zealand. The EU would like to refer to its earlier statements on this topic, as the EU's concerns outlined therein remain unchanged. The European Union 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. 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.

2.402. The representative of New Zealand provided the following statement. New Zealand continues to have concerns in relation to China's regulatory system for cosmetics which are well-documented in previous meetings of the TBT Committee and the Council for Trade in Goods. As we pointed out at the November meetings, New Zealand continues 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.

2.403. The representative of Australia provided the following statement. Australia would like to reiterate our concerns from previous Committee meetings on this specific trade concern. 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 include testing, registration requirements, government certification requirements and requirements to provide detailed information on production processes and other aspects of their intellectual property. The Australian Government reiterates that we are ready to work with China to discuss the CSAR and our respective systems for cosmetics regulation.

2.404. In response, the representative of China provided the following statement. China would like to thank Members for their continued interest in the Cosmetics Supervision and Administration Regulation and Regulation for Notification of Non-special Cosmetics. 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. 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 programs of animal tests for safety evaluation. For both domestic and imported ordinary cosmetics, the toxicological test can be replaced with safety risk assessment once they have obtained quality management system certification issued by government authorities.

2.405. 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, safeguard the rights and interests of consumers, and promote social co-governance and the healthy development of the cosmetics industry. The Regulations on the Supervision and Administration of Cosmetics and the Specifications and other supporting regulations clearly require that the claims of cosmetic efficacy should be based on sufficient scientific evidence. Based on the principle of equivalence, the test method of efficacy claim evaluation does not make much limitations as to selecting the evaluation methods. Cosmetic registrants may, by themselves or through entrusted competent evaluation institutions, carry out cosmetic efficacy claim evaluation according to relevant requirements set in Cosmetic Efficacy Claim Evaluation Project Requirement and Technical Guidelines for Cosmetic Efficacy Claim Evaluation. The specific requirements for the equivalent evaluation of freckle removing and whitening efficacy have been clearly defined by the contents of "equivalent evaluation of efficacy claim" in the Test Method

of Cosmetic freckle removing and whitening Efficacy and the Specification for Evaluation of Cosmetic Efficacy claims and other supporting documents

2.406. Regarding cosmetics labelling-related issues. The information of cosmetics manufacturers includes the relevant information of the manufacturers and their locations, etc. Requiring the labelling of the information of manufacturers is an important measure to protect consumers' right to know, as well as an important means to promote social co-governance and crack down on counterfeiting and shoddy products. The Regulations on the Supervision and Administration of Cosmetics clearly stipulate that the registrant of cosmetics is responsible for the quality and safety of cosmetics. The Measures for the Administration of Cosmetics Labels stipulates that ingredients with weight percentage 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.

2.407. Regarding the raw material safety information related issues. Product safety is closely related to the safety of raw materials. It is an important measure to ensure product safety to require registrants to clarify the relevant information on raw materials safety when applying for registration. Considering that it is common for enterprises to change the raw material manufacturer, the Provisions on the Management of Cosmetics Registration and Notification Data make corresponding provisions according to different situations in which the raw material manufacturers of registered or notified products have changed: If the manufacturer of registered or notified raw materials has changed, the content of the raw materials used in the formula and the type and proportion of ingredients in the raw materials have not changed, it only needs to maintain the raw material manufacturer through the registration and notification information platform; If the manufacturer of raw materials of registered or notified products changes, the content of raw materials in the formula and the content of main functional ingredients and solvents in the raw materials do not change, and the type or content of minor stabilizer, antioxidant, preservative and other ingredients added to ensure the quality of raw materials change, only the change-related information shall be submitted, not all the information. In order to facilitate the cosmetics registrant to fill in the raw material safety-related information, it is made clear in the Regulations on the Administration of Cosmetics Registration and Recordholder issued by the State Food and Drug Administration that if the raw material manufacturer has already submitted the raw material safety-related information according to the regulations, the registrant only needs to fill in the raw material submission code for information association.

2.408. 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 Members. 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 the names, registration number, source, composition, physical and chemical properties, the purpose of use, the scope of use, safe amount of use, precautions, storage conditions and best before period, rather than the complete information. The authorities and administrative staff will strictly protect trade secrets in handling cosmetics registration, as prescribed by all relevant laws and regulations.

2.1.3.38 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[69])

2.409. The representative of the United States provided the following statement. The United States was pleased to see the European Commission's (EC) publication and subsequent adoption of proposed amendments to the European Union's (EU) Medical Device Regulation (MDR), which address some of the concerns that the United States has previously highlighted. In particular, the extension of the validity of certificates under certain conditions will help enable vital medical devices to remain accessible to the market as backlogs are addressed. Additionally, the extension of the transition periods under certain conditions is much needed to address the long queues as

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

manufacturers wait for conformity assessment reviews from Notified Bodies. Finally, the deletion of the current "sell-off" date provision is welcomed, as it avoids unnecessary shortages and waste by allowing products already deemed safe to continue to be made available in the market. The United States will continue to monitor any industry concerns around MDR following approval.

2.410. One area of ongoing concern is access to Notified Bodies for SMEs. The majority of medical device manufacturers are SMEs. However, we have heard complaints from US-based SMEs that they are having trouble finding Notified Bodies to work with as Notified Bodies are prioritizing approvals for larger organizations. Can the EU please provide more information about specific plans to ensure that, moving forward, SMEs have access to Notified Bodies? Does the EU believe that the call for proposals to support increased capacity of Notified Bodies under the EU4Health Program will provide sufficient and timely solutions? Thank you again for your continued cooperation with the United States as we strive to ensure clear guidance and timely access for vital medical technologies in the EU market. As you know from our previous statements, the United States has voiced concerns with the European Medical Device Nomenclature (EMDN) system. In response to our concerns, EU has raised as a solution to conduct a mapping exercise between the two systems, and so far, the exercise, with WHO leading the effort, appears to be fraught with challenges. The United States will continue to monitor the exercise with WHO, and hopes that the EU reconsiders its position by selecting the Global Medial Device Nomenclature system, as it was developed with the support of ISO and is widely adopted by the medical device industry and used by over 100 national medical device regulators to support their activity.

2.411. The representative of China provided the following statement. China has raised concerns on the regulations (EU) 2017/745, (EU) 2017/7456, and subsequent notifications or guidelines. We would like to thank the EU for replying to our suggestions; however, our relevant industry still has concerns on the implementation of the above regulations. 1. Article 1 of the Proposal G/TBT/N/EU/943 revised Article 120.2.a of the MDR, specifying the conditions under which the extended transition period applies to the expired certificates, but the method of proving the legality of the expired certificates which meet such conditions and are used in such extended transition period is not stipulated, which would create great obstacles to supervision, marketing, sales and usage. Therefore, it is suggested to specify the method of proving the legality of the expired certificates which are used in the extended transition period, such as issuing new certificates or adding relevant notes on certificates.

2.412. 2. CS regulation does not provide a clear definition or relevant standards to "European equivalent group", which would lead to inconsistent judgments between manufacturers and notified bodies during compliance assessment, creating high compliance risks to manufacturers. It is suggested to issue corresponding guidelines. 3. Due to the various categories of medical device products, there are certain differences among different member States in the interpretation of classification rules and relevant guidelines. It is suggested that the EU could publish the lists of medical and non-medical device products, specifying information such as product name, principles of operation and intended usage. This will help manufacturers to accurately determine categories of products, and save their preparation time and cost for products put on the market. 4. For the accessories, modules, and other spare parts to be sold together with medical devices, the EU has not issued any unified compliance requirements, for example, whether conformity assessment procedures shall be carried out separately, and whether compliance certification materials shall be provided for customs clearance. The requirements proposed by different EU member States are not the same, which would create certain impacts for enterprises to enter the EU market. It is suggested that the EU authorities shall formulate and issue uniform and standardized compliance requirements for spare parts products.

2.413. The representative of Japan provided the following statement. We appreciate the revisions to the MDR and IVDR regarding the extension of transitional measures and the elimination of distribution deadlines. However, the MDRs and IVDRs have the following issues, which we request be improved. 1. MDR 1.1 Since the MDR's implementation dated 26 May 2021, Japanese manufacturers have been unable to ship new products and medical devices with new features to Europe. In the previous meetings, Japan stated that it had continued to be informed by several companies that more than two years and eight months had passed since the technical document review had started, and it did not seem that there had been improvement. Japan also stated that it would like to request that the EU continue to monitor and make improvements as a regulator. Japan appreciates the EU's response at the previous meeting that the MDCG is closely monitoring the situation of the reviews on the ground. However, we continue to be informed by several companies

that more than three years have passed since the technical document review started. It does not seem that there has been improvement. Japan would like to request that the EU continue to monitor the situation and make improvements as a regulator.

2.414. 1.2 Strict clinical evaluation is required even for relatively low-risk medical devices classified as Class I, IIa and IIb under the MDR. Japan requests that the EU consider simplifying the clinical evaluation requirements for low-risk medical devices like Japanese pharmaceutical certification or US 510(k) regulations and that, for example, the EU consider simplifying the clinical evaluation requirements for medical devices of medium-risk or lower using market-proven technology also from the viewpoint of promoting international harmonization. As requested in the previous meetings, Japan continues to request that the EU consider ensuring that the operation is not more trade-restrictive than necessary. 1.3 Japan also requests that the mapping of the EMDN (European Medical Device Nomenclature) and the GMDN (Global Medical Device Nomenclature) is achieved through the EU's active involvement in the WHO's standardized nomenclature for medical devices.

2.415. 2. IVDR. Japan welcomes the proposal to remove the "sell-off period" of the transition period for devices requiring certification under IVDR plus one year, meaning the deadline for selling off products placed in the market before the end of transition period, addressed in the Regulation amending the transitional provisions for the MDR and the IVDR submitted by European Commission on 6 January 2023. The proposal says significant extension of the transition deadline, the end of 2027 through the end of 2028 depending on their risk class, for devices requiring certification under the MDR. However, the transition period for devices requiring certification under the IVDR remains unchanged from the period extended by REGULATION (EU) 2022/112 of 26 May 2025 through 26 May 2027. As stated in the previous meeting, Japan is deeply concerned that many manufacturers will not be able to complete certification by the deadline given the lack of infrastructure necessary for IVDR certification. According to the results from the survey on IVDR certification status of Japanese IVD manufacturers conducted by the Japan Association of Clinical Reagents Industries in June and November 2022 and January 2023, approximately only 10% of IVD devices requiring IVDR certification have been certified as of January 2023, and the number of certified devices is only 69 for half a year from June 2022. Regarding the review period, the survey revealed that some IVD devices have not been certified even after 27 months have passed. Therefore, Japan would like to request the re-extension of the transition period for the IVDR to at least the same as that for the MDR, the end of 2027 through the end of 2028, or beyond.

2.416. 3. MDR and IVDR 3.1 Japan appreciates the sequential publication of the guidance in line with the MDCG Guidance Publication Plan. However, Japan has been informed by Japanese manufacturers that the requirement to conform to guidance issued immediately prior to application for certification is a factor that prolongs the certification audit process. In line with our statements in the previous meetings, Japan requests that public consultation be carried out prior to the publication of MDCG guidance, and that the published MDCG guidance have a transitional period of at least one year, and that it be used for reviews by notified bodies after the transitional period has elapsed. 3.2 In the previous meetings, Japan stated "The publication plan in the EU Official Journal on harmonized standards is not disclosed and are promulgated abruptly. Therefore, Japanese manufacturers need to develop and respond to their conformity plans urgently after the publication of harmonized standards. We request the release of the plan for the development and publication of harmonized standards for MDR and IVDR." Japan requests continued consideration on the publication plan and setting an adequate transition period for MDR and IVDR harmonized standards.

2.417. 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 harmonized 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.

2.418. In response, the representative of the European Union provided the following statement. The EU thanks the WTO Members for their comments on the Medical Devices Regulation (MDR) and in vitro Diagnostic Medical Devices Regulation (IVDR). 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.

2.419. On the subject of notified bodies, we are glad to report that as of today, we now have 36 MDR designated Notified Bodies and eight Notified Bodies under the IVDR. Nevertheless, 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. 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 in order to ensure trade continuity.

2.1.3.39 Qatar - Ministry of Public Health Circular regarding shelf life for cheese (ID 602[70])

2.420. 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 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. We stand ready to continue working constructively with Qatar in order to resolve this important issue in due course.

2.421. The representative of New Zealand provided the following statement. New Zealand continues to support the EU concerns raised in this Committee and requests the scientific evidence behind the assessment that resulted in such restrictive shelf-life requirements.

2.422. In response, the representative of Qatar provided the following statement. Qatar has taken note of the continued concern of the European Union, New Zealand, and the United States regarding Qatar's Ministry of Public health circular on quality standards for certain dairy products and thanks them for their interests in this matter. Qatar has been holding very constructive discussions on this matter with the European Union, last of which was the successful EU-Qatar Workshop on dairy products hosted by the European Union in Brussels last month. This event was a great opportunity to explore perspectives from both sides, and provided an enriching exchange of ideas on how we can enhance our trade relations. We would like to assure Members that the relevant measures apply equally to domestic and imported products and are therefore non-discriminatory in nature. In this respect, we would like to emphasize that product-specific requirements applied in the State of Qatar do not prevent the importation and sale of any products that meet quality standards and thus do

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

not have a significant effect on trade. We remain available to continue our constructive discussion with the interested Members to provide additional explanation where necessary.

2.1.3.40 India - Air Conditioner and its related Parts (Quality Control) Order, 2019, G/TBT/N/IND/74, G/TBT/N/IND/110 (ID 598[71])

2.423. The representative of China provided the following statement. China would like to thank India for deferring the implementation of the Air Conditioner QCO to 1 January 2023. However, to date, no Chinese company has completed the factory inspection. Given that samples on-site for the factory inspection need to be shipped to India for in-county testing which is quite time-consuming, China would like to urge India to carry out and complete the factory inspection manufacturers as soon as possible, or further postpone the implementation of the regulation. China appreciates India's efforts to increase its domestic laboratory testing capacity. India has indicated that the decision regarding the recognition of overseas laboratories will be taken by BIS. However, the specific process of recognition of overseas laboratories is unclear and lacks transparency. China has not known any laboratory recognized by BIS. We would like to urge India to provide transparent guidance, facilitating overseas laboratories to obtain such recognition. Lastly, China would like to urge India to consider virtual and/or alternative options for inspections for those low-risk products. We are willing to work with India on finding solutions to the factory inspection on foreign providers.

2.424. In response, the representative of India provided the following statement . We thank China for their continued interest in this measure. The Bureau of Indian Standard (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 who are carrying negative RT-PCR test report, without the requirement of quarantine. With respect to applications received from China, visits are being planned wherever necessary formalities such as payment of application charge, scrutiny of application etc., have been completed. Further, Air Conditioners & its related parts (Quality Control) Order 2019 has been subjected to four extensions basis requests received, indicating that sufficient time has been granted to foreign and domestic manufacturers. The Air Conditioners and its related parts (Quality Control) Order 2019 was notified by the authorities on 5 December 2019 with the date of implementation as 1 June 2020. The date of implementation has been extended four times so far. (i) it was first extended to 1 January 2021 vide notification dated 18 May 2020 and (ii) then to 1 January 2022 vide notification dated 22 December 2020 and then (iii) then to 1 January 2023 vide notification dated 8 December 2021 (iv) and then to 1 October 2023 vide notification dated 21 December 2022. This shows that India has provided sufficient time as well as opportunity to the manufacturers from foreign as well as domestic entities based on the representations from various foreign as well as domestic companies in order to enable them to comply with the mandatory Indian standards.

2.1.3.41 Kingdom of Saudi Arabia - Saber Conformity Assessment Online Platform / Saleem Product Safety Program, G/TBT/N/SAU/993/Rev.1 (ID 615[72])

2.425. The representative of the European Union provided the following statement. The implementation of the electronic certification system SALEEM through the web-portal SABER remains a concern for the European Union. The EU welcomes the initiative of the Kingdom of Saudi Arabia to create an integrated system that efficiently assesses the safety of imported products. We would like to thank the authorities of Saudi Arabia for engaging constructively in bilateral talks and providing some explanations. European stakeholders appreciate the SABER platform, however they coincide in reporting the overly costly, burdensome and time-consuming nature of the conformity assessment requirements. The sector of toys is particularly affected. In this regard, the European Union refers to its previous statements. We note that some issues remain unanswered and we invite the Kingdom of Saudi Arabia to address these concerns and ensure efficient and less costly procedures for all products concerned. The European Union would like to thank as mentioned the bilateral discussion we had in these days, and would appreciate if SASO could ensure a more detailed guidance to the Notified Bodies on how to make use of the SABER platform and therefore ensure a more consistent and transparent use of conformity assessment procedures. The European Union remains available to continue bilateral discussions.

[71] For previous statements follow the thread under ID 598.
[72] For previous statements follow the thread under ID 615.

2.426. The representative of Canada provided the following statement. Canada supports Saudi Arabia's goal of creating an integrated system that efficiently assess the safety of imported products, in particular for toys. Canada would like to thank Saudi Arabia for the explanation at the last TBT Committee in November. Industry stakeholders support SABER, however, issues continue to persist regarding the implementation requirements established by Notifying Bodies, which continue to pose unnecessary administrative burden, costs and duplicative requirements. Canada has raised some of these concerns at previous TBT meetings. Canada would once again ask that Saudi Arabia's SASO play a more active role to monitor the notified bodies closely and ensure that they are consistent and transparent in administering the conformity assessment procedures. We would also request Saudi Arabia's consideration of providing more detailed guidance to the Notified Bodies on how to use the SABER platform in order to increase the efficiency of the system, reduce compliance costs and ensure consistency.

2.427. The representative of Switzerland provided the following statement. Switzerland would like to support the interventions on the "Saber Conformity Assessment Online Platform". We remain concerned over the negative impact of the on bilateral trade with the Kingdom of Saudi Arabia and refer for details to our previous statements in the WTO TBT Committee. The disproportionate fees and unnecessary administrative burdens when obtaining the required certificates from notified bodies authorized by Saudi Standards, Metrology and Quality Organisation (SASO), as well as the duplicative requirements, remain of particular concern.

2.428. In response, the representative of the Kingdom of Saudi Arabia provided the following statement. The Kingdom of Saudi Arabia thanks the European Union, Canada and Switzerland for raising concerns regarding Saber Conformity Assessment Online Platform / Saleem Product Safety Program and is pleased to clarify that "Saber" is an IT Platform that aims to improve the import experience by easing the Conformity process/procedure before the shipment arrival. Furthermore, "Saber" has contributed to facilitating and enhancing trade, reducing the cost and time of custom clearance to 1-7 working days compared to 7-15 working days in previous years. As a result, Saudi Arabia ranking in the cross-border trade index advanced 72 ranks, confirming Saudi Arabia's commitment to boosting trade facilitation. In conclusion, Saudi Arabia is always ready to collaborate and engage to address related issues bilaterally. The competent authority in the Kingdom (SASO) is willing to provide guidelines and hold workshops for all interested trade partners and stakeholders.

2.1.3.42 India – Toys (Quality Control) Order, 2020 (IND/131); Amendment in Policy Condition No. 2(iii) to Chapter 95 of ITC (HS), 2017- Schedule-I (Import Policy) (IND/143), G/TBT/N/IND/68, G/TBT/N/IND/131, G/TBT/N/IND/143. G/TBT/W/774 (ID 632[73])

2.429. The representative of the United States provided the following statement. In at least the last eight WTO TBT Committee meetings, Members have urged India to provide a means by which companies around the globe can resume shipments of toys to India, without meaningful dialogue towards a resolution from India. We remain concerned about the clear message that India has sent about limiting importation of toys, regardless of where they are exported from. We ask India to explain to the WTO TBT Committee what actions India is taking to address Members' concerns given this has been raised by at least four different Members going back to at least May 2020? In particular, what mechanism is India willing to implement that provides market access to exporters whose factories are located in countries where BIS inspectors are not currently traveling?

2.430. The representative of the European Union provided the following statement. The increasing number of Quality Control Orders (QCOs) across sectors is sending worrying signals to EU industry, EU investors, and EU member States as the majority of QCOs introduced by India appear to have protectionist orientation and raise question in relation to their compliance with the WTO's TBT Agreement obligations. The European Union is deeply concerned by the fact that QCOs prescribe Indian specific standards where international standards already exist. With regard to the toys sector, we remain 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 European Union refers for the record to the statements made in previous TBT Committees but would like to highlight today that European industry continue to report the difficulties to work through the QCO.

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

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

2.432. 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 Indians can manage toys according to their risk level, which conducts mandatory certification to higher risk toys and provides other toys with a transition period. 2. The Toys (Quality Control) Act 2020 stipulates that the certification process is subject to conformity testing from third-party laboratories. We thank 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 transparency. It is recommended that India could accept overseas laboratories (including ILAC laboratories), and provide transparent guidance to obtain accreditation.

2.433. 3. Given that online audits are already widely used, it is recommended that foreign factories could be allowed for online 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 is difficult for small and medium-sized enterprises to obtain, and these tests are often done by third-party laboratories. The requirement for these equipments 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.

2.434. 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 when it is qualified in testing. It seriously affected the efficiency of customs clearance and increased the importer's storage costs, which does not comply with Articles 5.1.2 and 5.2.1 of the TBT Agreement. It is recommended that India could exempt testing 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 a laboratory accredited by NABL in India. Considering that NABL is a member of ILAC, it is recommended that India could accept foreign laboratory test results from ILAC-accredited labs.

2.435. The representative of Canada provided the following statement. As stated by Canada in previous TBT Committee meetings, the objective of India's quality control order regarding toys, as well as QCOs across many sectors, remains unclear. At the last two TBT Committees, while India provided updates on the number of preliminary inspections that have been conducted, Canada noted that India reiterated the same response on the way that QCO will be implemented, failing to address any of Canada's and other Members' questions and concerns. Canada would once again ask India to provide a substantive response and explain what specific actions are planned in the near future to have imports of toys into India resume normally.

2.436. In response, the representative of India provided the following statement. We thank the Members for their continued interest in 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 who are carrying negative RT-PCR test report, without the requirement of quarantine. 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. Toys (Quality Control) Order 2020 was notified by the authorities on 25 February 2020 with date of implementation as 1 September 2020. The date of implementation has been extended to 1 January 2021 vide notification dated 15 September 2020. This shows that India has provided sufficient time as well as opportunity to the manufacturers from foreign as well as domestic entity based on the representations from various foreign as well as domestic companies in order to enable them to cope up with the mandatory Indian Standards. We have also engaged bilaterally with some Members to address their concerns.

2.1.3.43 India - Order related to requirement of Non-GM cum GM free certificate accompanied with imported food consignment, G/TBT/N/IND/168 (ID 651[74])

2.437. The representative of the United States provided the following statement. This is the eighth 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 and authority 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 floor statements during the previous TBT Committee meeting, India repeated its assertion that the Order is not trade restrictive and requested that interested delegations provide specific trade issues being faced in respect to the Order.

2.438. 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 US state issuing a non-GM certificate. The United States has more recently experienced pronounced market access issues for US dried distillers' grains and solubles (DDGS) as well as alfalfa hay. India's most recent floor statement confirms that its Genetic Engineering Approval Committee (GEAC) has so far not issued import approvals for any of the named 24-crops; GEAC has indeed issued few approvals of any kind since being empowered by India's Ministry of Commerce and Industry in 2006 to issue such approvals. The United States notes that GEAC has received multiple applications for DDGS import approval since 2015, and, via the establishment of a United States-India Phytosanitary Framework Agreement in December 2021, India made a written commitment to waive "GMO certification requirements" for US alfalfa hay. Despite continued engagement with India on this Order, most recently during the high-level US – India Trade Policy Forum on 11 January 2023, we have been unable to make substantive progress to resolve our 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 minimize the impact on trade.

2.439. 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 considers that the India requirements go beyond what is necessary to achieve the stated objective and put an additional burden and costs on EU exporters. The EU would invite India to explain why it considers necessary to impose such a burden on trading partners with a high prevalence of non-GM food on their domestic market and a robust regulatory regime governing the use of GMs. In addition to the fact that only a limited number of the food crops referred to in the Annexure are authorized to contain GMs, there are very strict traceability and labelling requirements applicable to food that contains GMOs. The Indian requirement that fresh fruit and vegetables are accompanied by a certificate attesting to the GM-free nature is a redundant obligation as no authorized GMOs exist in the EU fruit and vegetable sectors. 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. According to the information provided by the industry, in 2022 (with data available until October), the costs associated with GM-free certificates to export to India add up to more than €105,000, impairing trade. This cost is entirely unnecessary as no fruits or vegetables in the EU can be genetically modified under EU legislation. Accordingly, there is no need for such a certificate and costs associated with it. The EU would like to ask India to waive the requirement to attach the certificate for food items.

2.440. The representative of Canada provided the following statement. Canada would like to reiterate concerns raised at previous TBT Committee meetings, SPS Committee meetings, and the

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

Council for Trade in Goods regarding the implementation of India's August 2020 Order, which mandates that a non-genetically modified (or GM-free) certificate accompany imported consignments of 24 imported food products. As detailed in Canada's comments submitted through India's TBT Enquiry Point in October 2020, we are concerned that India's Order will disproportionately impact the ability of GM-producing countries to export to India and unnecessarily restrict international trade. Canada welcomed India's decision to accept Canada's attestation for non-GM certification on bean exports. However, Canada continues to encourage India to consider a less burdensome approach to meeting the Order's stated food safety goals.

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

2.442. The representative of Japan provided the following statement. Japan reiterates its long-standing concern that India's measure to require 24 agricultural products imported into 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 an appropriate control system for genetically modified agricultural products in the origin country, there is no scientific rationale to require non-GM origin and GM-free certificates for those items. Japan therefore requests India to withdraw the requirement to the attachment of certificates for foods that are properly controlled in the origin country.

2.443. 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 recognise the existing regulatory systems in place by countries to control GM exports. Australia maintains appropriate regulation of GM-crops and is able to provide assurances of which crops are and are not subject to GM. Australia will work with India to seek a mutually agreeable solution that facilitates free and open trade, in accordance with the principles of the recently entered into force Australia-India Economic Cooperation and Trade Agreement (AI-ECTA). Australia looks forward to further collaborative engagement with India on this matter.

2.444. The representative of Argentina provided the following statement. We thank those delegations who have again submitted this specific trade concern on the Committee's agenda and request that Argentina's support be recorded. With respect to India's measure, Argentina regrets having again to reiterate its concern and wishes to emphasize that the measure has no scientific explanation that supports it. India has not responded to the concerns raised in a timely manner by Argentina, so our concern regarding this measure remains valid. We refer to interventions made at previous meetings of this Committee.

2.445. The representative of Uruguay provided the following statement. Uruguay of course recognizes India's right to take measures to ensure 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 this regard, note should be taken once again of 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. Uruguay would like to reiterate how important it is for Members to establish measures based on scientific principles, and, in particular, for these measures to be implemented with the objective of minimizing negative trade effects, in line with the provisions of the TBT and SPS Agreements.

2.446. With reference to the SPS Agreement, taking into account the objective referred to above of ensuring the safety and wholesomeness of imported foods, we would like to ask again why the reference measure is still not being notified to the SPS Committee of this Organization, despite having been notified to the TBT Committee. In this regard, we take note of notifications G/TBT/N/IND/240 - G/SPS/N/IND/290, submitted by India on 5 January 2023 to the TBT and SPS Committees, respectively, regarding the Draft Food Safety and Standards (Genetically Modified Foods) Regulations, 2022. 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.

2.447. 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? We remain attentive to any comments and replies of the delegation of India in relation to the concerns of Members, as have been expressed for over two years by numerous delegations in both Geneva and New Delhi.

2.448. The representative of Paraguay provided the following statement. 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.

2.449. In response, the representative of India provided the following statement. India thanks the members intervening today for their interest and comments. 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).

2.450. 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 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, USA, 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.

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

2.451. 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. We would like to clarify if having a Korean laboratory conclude a contract with a foreign laboratory is specific to one single site of a testing laboratory or institution, or can be applied to an entire testing laboratory with multiple sites regardless of the country. We hope that Korea can assist in setting up the contact between a designated testing laboratory in Korea and a foreign testing laboratory or institution, in order for the mutual recognition of test results and inspections to be arranged, and to solve this issue in a timely manner.

2.452. In response, the representative of the Republic of Korea provided the following statement. Korea would like to thank the European Union for its continued interest regarding the "Safety Conformation Criteria for Textile Products for Infants" of Korea, and we would like to take this opportunity to respond to the STC comments raised by the EU for this TBT Committee meeting. Textile products for infants under 36 months of age must be tested and inspected by a designated laboratory prescribed by the "Special Act on the Safety of Children's Products" to verify that the product meets the safety criteria specific to infant textile products. Korea would like to inform the EU that, in accordance with the requirements and procedures stipulated in Article 22.(7) of the Special Act on the Safety of Children's Products and Article 35 of the Enforcement Regulation of the aforementioned Special Act, a designated laboratory may enter into a contract with a foreign laboratory or institution for the mutual recognition of test results and inspections on verifying the safety of textile products for infants.

2.453. The contract for mutual recognition is a matter between a laboratory designated under the Special Act and a foreign laboratory (or foreign institution), so we consider that the details of the contract should be addressed in the process of concluding the contract. In addition, we inform the EU that there are five laboratories designated as the testing and inspection institutions for verifying the safety of infant textile products. They are the Korea Conformity Laboratories (KCL), the Korea Testing Certification Institute (KTC), the Korea Apparel Testing & Research Institute (KATRI), the FITI Testing & Research Institute and the KOTITI Testing & Research Institute. If discussions about the contract are made between the laboratories, the Korean Agency for Technology and Standards (KATS) will actively cooperate under the Special Act on the Safety of Children's Products.

2.1.3.45 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[76])

2.454. 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 from Mexico. 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? We request that Mexico please provide an update on the status of this measure and an estimated timeframe of when the revised measure will be notified to the WTO. In November, 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

[75] For previous statements follow the thread under ID 652.
[76] For previous statements follow the thread under ID 678.

differentiate milk fat from all vegetable fat, and there are no relevant internationally accepted testing methods available for this type of analysis.

2.455. 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? Once finalized, will implementation of the measure move forward based on Mexico's Quality Infrastructure Law or the law it replaced, the Federal Law on Metrology and Standardization? Could Mexico share an outline of the different roles that each Ministry will play in the monitoring, compliance, and verification activities listed in the draft measure? Has Mexico considered extending its eventual timeline for implementation of the measure to a period of at least 12 months? If Mexico proceeds with implementation of the current measure, the United States (Government and industry) would need at least one year to launch systems to comply; however, we urge Mexico to delay implementation indefinitely due to continued concerns about this measure's scope and implementation.

2.456. The representative of Australia provided the following statement. Australia would like to reiterate its concerns stared at the last six 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. We look forward to receiving Mexico's reply to our comments on its revised notification. We kindly request an update for the release date of the new version of the procedure for public consultation.

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

2.458. In response, the representative of Mexico provided the following statement. The draft 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, was published in the Official Journal on 31 January 2022 for public consultation, this period expiring on 8 April 2022. However, at the request of the Government of the United States of America and the European Union, this period was extended until 9 May 2022, a total of 174 comments being received from 27 interested parties (domestic and foreign). As a joint technical regulation (Mexican Official Standard) of the Ministry of Economic Affairs (SE), regarding trade description and information, and the Ministry of Agriculture and Rural Development (SADER), regarding the substantive technical aspects of the regulation, the comments received must be analysed and addressed by both standardizing authorities. Once these authorities have exhausted this process, the final version of the measure will be duly notified to WTO Members.

2.459. At the moment, there is no defined date for the issuance of responses to comments received during the public consultation and of the amended version of the measure, since a detailed technical and scientific analysis is required. The necessary communication will therefore be sought to intensify the work and to conclude the technically appropriate resolution as soon as possible. It is important to note that the standardization process will be conducted in accordance with the terms of the Quality Infrastructure Law and will be aligned with Mexican Official Standard NOM-223-SCFI/SAGARPA-2018. The monitoring of conformity assessment bodies will be carried out by the Ministry of Economic Affairs and the Ministry of Agriculture and Rural Development in a coordinated manner; the verification activities will be carried out by the Federal Consumer Protection Agency, as well as the Ministry of Economic Affairs and the Ministry of Agriculture and Rural Development, individually and in the exercise of their respective powers and competencies. Lastly, Mexico reaffirms its commitments on transparency under the TBT Agreement and the free trade agreements, thereby ensuring that the processes for the entry into force and implementation of the measure will observe the principles contained in the TBT Agreement and in the free trade agreements to which Mexico is party.

2.1.3.46 Kingdom of Saudi Arabia - Technical Regulation for limiting and restricting hazardous materials in electrical and electronic equipment, G/TBT/N/SAU/1166, G/TBT/N/SAU/1166/Add.2 (ID 666[77])

2.460. The representative of the United States provided the following statement. The United States appreciates Saudi Arabia's continued engagement on the "Technical Regulation for the Restrictions of Hazardous Substances (RoHS)" for electrical and electronic equipment, including bilateral discussions this week on this matter. In particular, we appreciate the clarifications that Saudi Arabia has provided regarding utilization of the Suppliers Declaration of Conformity, and we continue to encourage Saudi Arabia to provide sufficient written clarifications to traders and notified bodies. As part of our engagement, we flagged some areas where our traders continue to seek clarification in order to help them comply with the requirements. We will follow-up in further detail directly with Saudi Arabia, including if implementation issues arise in the future. We have no further questions in the Committee on this matter at this time.

2.461. In response, the representative of the Kingdom of Saudi Arabia provided the following statement. The Kingdom of Saudi Arabia would like to thank the United States for their valuable comments on the Technical Regulation for Restriction of Hazardous Substances. In addition, Saudi Arabia would like to take this opportunity and thank the United Kingdom for their remarks under the good news item. Also, we thank all our trade partners for the constructive engagement to solve this matter bilaterally. We would like to highlight that the competent authority in Saudi Arabia (SASO) is aiming at protecting human health and safety, and the environment, by regulating to ensure that hazardous substances are not above certain levels in consumer products such as EEE products.

2.462. For the purpose of determination of the product liability after placing the product in the Saudi markets, the self-declaration conformity assessment scheme will be accepted if products covered by the scope of the RoHS technical regulation and imported by the manufacturers or their legal (authorized) representative: (i) The legal representative is defined as any natural or legal person existed in Saudi Arabia, and who has received a written mandate from the manufacturer to perform, on his behalf, all or part of the obligations and formalities connected with the technical regulations, including representing the manufacturer at the regulatory and judicial authorities. (ii) The tasks of the (Legal) authorized representative should be defined in a written mandate. Considering the role of (Legal) authorized representatives, the minimum requirements they should meet should be clearly defined, including the requirement of having available a person who fulfils minimum conditions of qualification which should be similar to those for a manufacturer's person responsible for regulatory compliance. (iii) For suppliers (whom authorized by the manufacturer), it will be sufficient to demonstrate compliance by providing SDOC since the (Legal) authorized representative plays a crucial role in ensuring the compliance of the products produced by those manufacturers and in serving as their contact person established in the Kingdom of Saudi Arabia. In conclusion, Saudi Arabia is always delighted to continue collaborate and engage with all our stakeholder, in order to address related issues bilaterally.

2.1.3.47 Republic of Korea - Regulation for supporting low carbon solar module product (ID 744[78])

2.463. The representative of China provided the following statement. China hopes that Korea could fully consider the reasonable demands of China's photovoltaic enterprises and take measures to solve China's concerns. China suggests Korea conduct LCA review of the submitted reports in accordance with internationally recognized standards such as ISO and disclose the report review process, review time, and standards. China hopes that the Korean side could treat foreign and domestic enterprises and products equally, not discriminating against imported products.

2.464. 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. Unfortunately, we have not received any advance message from China while preparing for this March Committee meeting so we regret to inform you that a substantive answer is not available today. Nevertheless, we will convey your comments faithfully to the capital for a review and an appropriate response by our competent regulatory authority. And in

[77] For previous statements follow the thread under ID 666.
[78] For previous statements follow the thread under ID 744.

this regard, if China could submit the comments in writing, our responsible authority could reply likewise.

2.1.3.48 India - Approved models and manufacturers of solar photovoltaic modules order, 2019 (ID 742[79])

2.465. The representative of China provided the following statement. China hopes that India can fully consider the reasonable demands of China's photovoltaic enterprises and adjust measures as soon as possible. 1. the Ministry of New and Renewable Energy of India and the National Solar Energy Research Institute should publish the audit time to improve the efficiency of certification and treat domestic and foreign enterprises equally and fairly; The significantly increased discriminatory tariffs on imported photovoltaic products should be eliminated. 2. Chinese enterprises reported that ALMM fees charged by India are relatively high, largely exceeding the approximate cost required for services as application and inspection fees, etc. India is inconsistent with Article VIII:1(a) of the GATT 1994 to control the fees. It is suggested that India should follow WTO rules to set reasonable pricing, certification fees should be based on the export volume to India, rather than the total production capacity of the enterprise. 3. The purpose of Indian MNRE is to ensure the quality of PV modules has been fully met by BIS certification. The additional ALMM certification list becomes an obstacle to trade and manufacturers, exceeding the limits necessary to achieve legitimate objectives, which is inconsistent with Article 2.2 of the TBT Agreement. China suggests India reconsider the necessity of ALMM certification and abolish the ALMM decree.

2.466. In response, the representative of India provided the following statement. India has already provided a very detailed response on this STC in previous TBT meetings. There is no statement uploaded by China and hence no new concerns have been communicated. In view of this, we will examine the comments made today and request China to refer to the detailed statement made by India in previous Committee meetings.

2.1.3.49 India - Plastic Waste Management (Amendment) Rules, 2021 and 2022 (ID 719[80])

2.467. The representative of the United States provided the following statement. As we previously noted, in February 2022, India's Ministry of Environment, Forest and Climate Change published in the Gazette of India the Plastic Waste Management (Amendment) Rules, 2022 (PWM Amendment Rules), which as we understand from guidance published by the Ministry, went into effect 1 July 2022. Despite raising this issue in two previous meetings and requesting notification through the Enquiry Point, India has not yet notified this measure to the WTO TBT Committee. We fully support India's objective, like other members, to mitigate pollution caused by plastic waste. But such measures need to be enacted while upholding the transparency obligations that are central to this Committee. We have made our request well known and maintained that we would like to see India notify any relevant requirements and provide an opportunity for stakeholders to provide comments. As such, we will no longer raise this particular STC, and will attempt to seek the additional information that our stakeholders have requested through other means.

2.468. In response, the representative of India provided the following statement. We thank the delegation of the USA for their interest in this issue. The Guidelines for Extended Producer Responsibility on Plastic Packaging have been notified under the Environment (Protection) Act, 1986, after following due process of draft notification as mandated under law. The EPR Guidelines are not discriminatory and do not form a barrier to international trade. The requirements are applicable in a uniform manner to domestic and international companies. Such guidelines have also been put in place by other countries / regional groupings such as European Union. Further, producers, importers and brand owners are mandated to undertake EPR on plastic packaging introduced in the market since 2016. Littered and un-managed plastic waste due to plastic packaging leads to environmental pollution in the country and hence needs to be managed. The reporting obligations of producers, importers and brand owners are given in Guidelines on Extended Producer Responsibility for Plastic Packaging as given below. "The Producers, Importers & Brand-Owners shall file annual returns on the plastic packaging waste collected and processed towards fulfilling obligations under Extended Producer Responsibility with the Central Pollution Control Board or concerned State Pollution Control Board or Pollution Control Committee as per pro forma prescribed by Central Pollution Control Board

[79] For previous statements follow the thread under ID 742.
[80] For previous statements follow the thread under ID 719.

by 30 June of the next financial year. Information on the reuse and/or recycled content used for packaging purposes will also be provided. The details of the registered recyclers from whom the recycled plastic has been procured will also be provided".

2.469. The reporting needs to be done in the centralized online portal of plastic packaging.[81] The guidelines for environmental compensation for non-fulfilment in EPR obligation has been notified by CPCB and is available on the website of CPCB.[82] A separate module has been made operational on the centralized online EPR portal on plastic packaging for exchange of EPR certification.[83] The EPR guidelines recognize the following from plastic packaging category. (i) Category I: Rigid plastic packaging; (ii) Category II: Flexible plastic packaging of single layer or multi-layer (more than one layer with different types of plastic), plastic sheets or like and covers made of plastic sheet, carry bags, plastic sachet or pouches; (iii) Category III: Multilayered plastic packaging (at least one layer of plastic and at least one layer of material other than plastic); (iv) Category IV: Plastic sheet or like used for packaging as well as carry bags made of compostable plastics. Blister packs and shrink wraps wherever used as plastic packaging, are covered under category flexible plastic packaging.

2.1.3.50 China - Key Points and Judgment Principles of GMP Inspection for Cosmetics; Safety and Technical Standards for Cosmetics (2022); Technical Guidelines for Children's Cosmetics, G/TBT/N/CHN/1673; G/TBT/N/CHN/1674; G/TBT/N/CHN/1682; G/TBT/N/CHN/1699 (ID 749[84])

2.470. The representative of the United States provided the following statement. We previously made our concerns on this STC known during the November TBT Committee. While our concerns remain, because many of the concerns with this STC also apply to our longstanding STC on China's CSAR measures, raised under STC#49, ID 576[85], we will raise our concerns under that STC going forward.

2.471. In response, the representative of China provided the following statement. The Inspection Key Points and Judgment Principles of the Cosmetic Production Quality Management Standard are formulated for the purpose of regulating the cosmetic production licence, supervision and inspection, and guiding the cosmetic registrants, archivists and entrusted production enterprises to implement the "Cosmetic Production Quality Management Standard". There are no new obligations for the cosmetic registrants, archivists and entrusted production enterprises. As for the retention samples of imported cosmetics, according to the Measures for the Supervision and Administration of Cosmetics Production and Operation and the Announcement of the State Food and Drug Administration on Matters related to the Implementation of the Measures for the Supervision and Administration of Cosmetics Production and Operation, overseas cosmetics registrants and registrants shall retain samples of each batch of products imported to China after 1 January 2022. The samples and records shall be kept by the responsible person within China. If the same batch of products is imported from China more than once, the sample shall be retained at least once at the time of the first importation.

2.472. The "Technical Code for Cosmetic Safety" sets forth the general requirements for cosmetics, the forbidden and permitted raw materials, and the safety and technical requirements for inspection and evaluation methods. In the process of revising the Code, full consideration has been given to various cosmetics regulations, standards and technical requirements, including those of the International Organization for Standardization (ISO). The Technical Code for Cosmetic Safety was released for public comment in March 2022. In order to strengthen the technical guidance for the research and development of children's cosmetics products, standardize and guide the registration and archival work of children's cosmetics, we have organized and formed the Technical Guidelines for Children's Cosmetics according to the Regulations on the Supervision and Administration of Cosmetics, the Measures on the Registration and Archival Administration of Cosmetics, the Regulations on the Supervision and Administration of Children's Cosmetics and other relevant legal documents, and solicited public opinions. In the drafting process, we always adhere to the principle of "openness, transparency and extensive participation", refer to relevant technical guidelines at

[81] https://eprplastic.cpcb.gov.in/#/plastic/home
[82] https://cpcb.nic.in/uploads/plasticwaste/PWM-Amendment-Rules-2022.pdf
[83] https://eprplastic.cpcb.gov.in/#/plastic/home
[84] For previous statements follow the thread under ID 749.
[85] China - Cosmetics Supervision and Administration Regulation and Regulation for Notification of Non-special Cosmetics (ID 576).

home and abroad, solicit opinions from industry associations, and revise and improve. Based on the principle of increasing operability and providing technical guidance for the product research and development of enterprises, the Guiding Principles integrate and clarify the requirements of the Regulations and supporting legal documents on children's cosmetics, but do not put forward new requirements.

2.1.3.51 India - Amendment to notification on mandatory testing and certification of telecommunication systems (MTCTE) – Phase III & IV, G/TBT/N/IND/229 (ID 760[86])

2.473. The representative of China provided the following statement. Article 5 "Only test results/reports issued by labs accredited by ILAC signatories from none-border sharing countries will be accepted" does not conform with the WTO/TBT Agreement: Article 2.1 "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."; Article 2.2 "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."; Article 5.1.2 "conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade."; Article 6.1.1 " verified compliance, for instance through accreditation, with relevant guides or recommendations issued by international standardizing bodies shall be taken into account as an indication of adequate technical competence;". China proposes India amend article 5 of "Amendment to Notification on Mandatory Testing and Certification of Telecommunication Systems (MTCTE) --Phase III&IV" to accept test results from all laboratories approved by the International Organization for Laboratory Accreditation Cooperation (ILAC) signatories.

2.474. In response, the representative of India provided the following statement. We thank the delegation of China for their continued interest in this measure. The paragraph 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 extension is given considering all the aspects including the availability of labs in India. As on 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 labs 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.

2.475. 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.

2.1.3.52 United States - Energy conservation program: energy conservation standards for room air conditioners, G/TBT/N/USA/305/Rev.1 (ID 755[87])

2.476. The representative of China provided the following statement. We appreciate the efforts made by the United States in energy conservation and environmental protection. China still has concerns on the progress of the technical regulations, and we suggest the United States pay attention to our comments and give a reply. The concerns are as follows: 1. It is recommended that RAC products could be evaluated by using seasonal energy efficiency indicators. The energy efficiency indicators of household room air conditioners are mainly divided into single-point energy efficiency (such as EER, CEER) and seasonal energy efficiency (such as APF, SEER), in which single-point energy efficiency is used for evaluation in the early stage. With the development of technology,

[86] For previous statements follow the thread under ID 760.
[87] For previous statements follow the thread under ID 755.

it has gradually been found that seasonal energy efficiency can evaluate the comprehensive performance of products more accurately, and has been adopted by major countries/regions such as the European Union, Japan, South Korea, and Australia. At present, energy efficiency standards in many Members are upgraded to seasonal energy efficiency for evaluation. The energy efficiency upgrade proposal of RAC products in the United States still uses CEER indicators for product evaluation and only changes in energy efficiency values. It is recommended that RAC products could be evaluated by using seasonal energy efficiency indicators.

2.477. 2. If the above proposal cannot be adopted, it is recommended that energy efficiency upgrade could unify the test methods of the two types of products. There are two CEER test methods for RAC products in US regulations for fixed speed products and variable speed products, which cannot show the advantages and disadvantages of the two kinds of products in energy efficiency. Therefore it is suggested to unify the test methods with variable speed products.

2.478. In response, the representative of the United States provided the following statement. The United States appreciates the comments submitted by China on 2 June 2022. When we last checked the measure was not yet final. The United States will take into consideration all comments received during the open comment period and respond to each substantive comment in the next published rulemaking procedure on standards for room air conditioners.

2.1.3.53 India - Flat Transparent Sheet Glass and Safety Glass (Quality Control) Order, G/TBT/N/IND/118, G/TBT/N/IND/119 (ID 669[88])

2.479. The representative of the Republic of Korea provided the following statement. Korea respects India's efforts in introducing the Safety Glass Quality Control Order (QCO) for the health and safety of the Indian people. Korean companies are also endeavouring to comply with the Indian regulation faithfully. The implementation date of the Safety Glass QCO had been suspended to 1 April 2022 in February 2021, and again to 1 April 2023 in February 2022 due to COVID-19. And yet, Korea understands that it is still difficult for the BIS certification body in carrying out its normal work. Korea would like to express its gratitude to India for suspending the QCO in consideration of the concerns raised by Korean exporters. However, although Korean companies completed applications for certification in 2020, the following certification process, such as on-site factory inspection, is not being carried out after document review and continues to be delayed. As the QCO's entry into force is imminent, companies that did not get factory inspection would be halted from exporting their products to India. Therefore, considering the situation of delays in the certification process due to the inspection bottlenecks caused by COVID-19, Korea would like to request that either the enforcement of the Safety Glass QCO be postponed for at least six months or appropriate alternatives such as suspension of factory inspection be provided.

2.480. In response, the representative of India provided the following statement. We thank the delegation of Korea for their interest in this issue. The Safety Glass (Quality Control) Order 2020 was notified by the authorities on 12 March 2020 with date of implementation as 16 September 2020. The date of implementation has been extended three times so far (i) it was first extended to 1 April 2021 vide notification dated 23 June 2020 and (ii) then to 1 April 2022 vide notification dated 25 February 2021 and (iii) to 1 April 2023 vide notification dated 10 February 2022. This shows that India has provided sufficient time as well as opportunity to the manufacturers from foreign as well as domestic entity in order to enable them to cope up with the mandatory Indian standards. 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 who are carrying negative RT-PCR test report, without the requirement of quarantine. With respect to applications received from Korea, visits are being planned wherever necessary formalities such as payment of application charge, scrutiny of application etc., have been completed.

2.1.3.54 Australia - Maturation requirements for imported alcohol (ID 636[89])

2.481. The representative of Brazil provided the following statement. Brazil continues to follow closely Australia's proposal to amend current regulations dealing with alcoholic beverages, and we would like to thank Australia for its response in the Committee's last meeting and for its engagement in bilateral talks. In past meetings, we have shared our concerns with Australian technical

[88] For previous statements follow the thread under ID 669.
[89] For previous statements follow the thread under ID 636.

requirements applicable to cachaça, the Australian Customs Notice Nº 2007/19, which requires that some alcoholic beverages must be matured in wood for a minimum of two years before delivery from Customs control. This covers all beverages under tariff classifications 2208.20.10, 2208.30.00 and 2208.40.00. Even though said Notice only refers directly to brandy, rum, and whisky, it encompasses tariff line 2208.40.00 (rum and other spirits obtained by distilling fermented sugarcane products), under which cachaça is classified in Australia. By granting the same treatment to cachaça and rum, the Australian government does not allow imports of cachaça that are not matured for at least two years in wood. Such a requirement does not relate to any quality standard or sanitary requirement applicable to cachaça.

2.482. Following a public consultation in late-2019, the Australian Border Force (ABF) further explored a potential avenue to amend the Customs Act 1901 (Customs Act) that would enable the legitimate importation of certain alcohol products into Australia whilst retaining the maturation requirements for brandy, whisky, and rum. According to a more recent public consultation, the Australian government is developing an approach that is looking to retain Australia's existing maturation requirement for imported brandy, whisky, and rum, but would establish a list of products exempt from this maturation requirement. The proposed list of exempt products would include Cachaça, Pisco and Bourbon. Brazil acknowledges progress in the course of action proposed in the last public consultation. We support the creation of a list of exceptions to the rules set out today in section 105A, thus allowing certain cultural and geographical indications (i.e. Cachaça) that are not traditionally described as brandy, whiskey or rum to be imported into the Australian market.

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

2.484. In response, the representative of Australia provided the following statement. We acknowledge Brazil's continuing interest in Australia's review of maturation requirements for certain imported alcohol products. We also thank Brazil for their proactive engagement with Australia on this topic. 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, and the domestic maturation requirements of brandy, whisky and rum. The working group is considering the legislative framework for the importation of certain unmatured alcohol products under section 105A of the Customs Act 1901 (Customs Act). In 2023, the group will continue to work through the legislative complexities and stakeholder concerns associated with this matter to progress a way forward. The Australian Government will notify the Committee of any proposed legislative changes to section 105A of the Customs Act and any other changes to alcohol import requirements, in accordance with Australia's obligation under the TBT Agreement.

2.1.3.55 European Union - Withdrawal of the approval of the active substance alpha-cypermethrin, G/TBT/N/EU/770, G/TBT/N/EU/908 (ID 694[90])

2.485. The representative of Kenya provided the following statement. Kenya echoes 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 uses this product in plant protection, animal health as well as public health management. The proposed technical regulation will hurt Kenya which uses alpha-cypermethrin in the management of plant pest, vectors of animal and public health importance. This measure, therefore, will undermine Kenya's pursuit of legitimate objectives that is the protection of human health from tropical diseases as well as ensuring food security. These products, when properly used, have not had any proven negative effects on humans. The EU measure therefore raises serious concerns of inconsistency with the TBT Agreement Article 2.2. The EU does not have sufficient scientific justification for it, and therefore needs to provide scientific justification for the measure. In light of the above 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

[90] For previous statements follow the thread under ID 694.

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.

2.486. 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 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.

2.487. 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.

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

2.489. 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[91] on maximum residue levels of pesticides in or on food and feed of plant and animal origin.

2.1.3.56 Colombia – Good manufacturing practices of overseas production establishments, G/TBT/N/COL/242 (ID 697[92])

2.490. The representative of the European Union provided the following statement. The European Union would like to thank Colombia for its reply of November 2020 to the EU written comments and for the extensive bilateral discussions. The EU understands that Colombia is currently in the process

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

[92] For previous statements follow the thread under ID 697.

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. In the meantime, until the new Decree comes into force, the EU wishes to reiterate our request to Colombia to accept all EU Free Sales Certificates for the purpose of certifying compliance with Good Manufacturing Practices. The European Union continues to closely follow the situation and invites Colombia to notify to the TBT Committee any further amendments to the Decree. The EU would like to thank again Colombia for their cooperation in this matter.

2.491. The representative of Mexico provided the following statement. The delegation of Mexico refers to the draft Decree of the Ministry of Health and Social Welfare, partially amending Decree 1686 of 2012, notified by the Government of Colombia to the Members of this Committee on 13 July 2022 through document G/TBT/N/COL/242. The delegation of Mexico requests Colombia to indicate the latest status of the measure, and we kindly request confirmation regarding the elimination of the good manufacturing practices certification requirement. The delegation of Mexico thanks the delegation of Colombia for giving its consideration to these requests.

2.492. In response, the representative of Colombia provided the following statement. First, we would like to thank delegations for the comments made with a view to better understanding of the measure. Second, Colombia also notes the work being carried out by the Colombian health authorities and the countries concerned, with a view to clarifying the concerns raised regarding compliance with this measure. In this connection, it is of the utmost importance to continue this process of working together, particularly with regard to certificates of good manufacturing practices for alcoholic beverages for human consumption. Similarly, progress has been made with internal working sessions between our authorities to assess the possibility of making adjustments to the provisions, with the aim of finding a mechanism for facilitating or relaxing the requirements. This is, of course, without prejudice to compliance with the provisions that not only guarantee sanitary conditions for the manufacture of alcoholic beverages but also safeguard human health. It should be noted that such modifications should uphold the rules in force concerning the preparation, modification and issuance of technical regulations, which is why the regulator is conducting the respective regulatory impact analysis. In conclusion, we reiterate our readiness to continue with the cooperation work ahead and to resolve this matter.

2.1.3.57 Belgium - Draft law introducing additional security measures for the provision of mobile 5G services, G/TBT/N/BEL/44, G/TBT/N/BEL/45, G/TBT/N/BEL/47 (ID 713[93])

2.493. The representative of China provided the following statement. China reiterates its concerns that the risk assessment criteria in notification G/TBT/N/BEL/44 lack a neutral and objective technical basis. China hopes that international technical standards that can objectively assess product security or use certification methods that are based on international standards are used in the decree as the sole or fundamental risk assessment criteria for product or service security. For G/TBT/N/BEL/47, we would like to raise the following concerns: 1. China's core concern is that the notified decree shall adopt an objectively definable security standard based on product characteristics. In other words, the assessment criteria with respect to the security of a product containing 5G technology shall focus on the characteristics of the products, or use certification methods that are based on international standards as fundamental risk assessment criteria for product or service security. Whether or not it originates from the NIS Cooperation Group's 5G toolbox is irrelevant. China considers that the risk assessment criteria of notified decree which neither relates to the 5G product characteristics nor contains the objectively definable standard, is not consistent with the requirements of technical regulation under the TBT Agreement.

2.494. 2. The decree has adopted the criteria in notification G/TBT/N/BEL/44 with respect to the extent of interference to the vendor by a non-EU country. We consider that such criteria are based on the origin of vendors and discriminate the vendors from non-EU countries. Such criteria are neither objective nor impartial. China urges that Belgium should comply with Articles 2.1 and 2.2 of the TBT Agreement by applying objective, fair, and non-discriminatory 5G equipment security standards and measures, that is, taking full consideration of the characteristics and usage of 5G technology and adopting industry-recognized good practices. 3. We would like to reiterate that the decree shall provide the so-called high-risk vendors (the "HRVs") with complete, independent administrative or judicial remedies. In this regard, it is necessary to clarify the specific procedures

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

to remove the HRV designation and their rights or seek relief. On the one hand, under the current provisions of the notified decree, the vendors of 5G equipment or services can only present and defend themselves through network operators when submitting the request for prior authorization or when challenging the preliminary adverse decisions. If, for instance, the network operators do not request a hearing to the ministers concerned, the vendors of 5G equipment or services are deprived of any opportunity to request the ministers concerned to provide the rationales or evidence for their designation and to defend against the preliminary adverse risk assessment results. On the other hand, an HRV cannot get an effective remedy if it is merely allowed to submit an appeal against the designation. The so-called HRVs are hindered from effectively seeking remedies provided to them under other Belgium laws and regulations when they are not fully informed of the reasons for the designation. The appeal against its designation decision is unlikely to meet the practical necessity of 5G equipment or services vendors, taking into account the cost and duration of administrative litigation.

2.495. 4. The decree generally prohibits the use of any active elements produced by HRVs in specific types of networks, and does not specify the classification of such 5G equipment or its parts according to their different security levels based on different security and risks of products. China considers that different security levels can be applied on the basis of product characteristics and objectively definable product security assessment standards in order to achieve the requirements of proportionality and necessity. In this regard, China suggests that Belgium could adopt differentiated management for 5G equipment or its parts at different security levels on the basis of their product security and actual risks. With reference to the good practice of the industry, please apply appropriate and necessary technical measures to address the risk of them.

2.496. In response, the representative of the European Union provided the following statement. We thank China for its continued interest in this measure. We would like to refer to our previous statements on this matter and the written feedback provided to China in reaction to their written comments.

2.1.3.58 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[94])

2.497. 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 published on 19 and 20 April 2022 and for the opportunity to comment on the draft texts. The European Union provided written comments to this notification on 13 July 2022 and would be grateful if it could receive a reply to them. In particular, the European Union asked whether imported beverages would fall under the registration requirement or whether they will benefit from a possible exemption. Furthermore, the European Union suggested, in line with international practices, the use of terms such as "alcohol", "alc", instead of expression "alcoholic strength" or "alcohol content". The EU also asked Brazil to provide justification for setting a maximum limit on the alcohol content of spirits, which may not be in line with international practices. The EU therefore asks that Brazil remove the maximum alcohol content in all corresponding articles on spirits, in line with international practice. The European Union also asked for a number of clarifications concerning spirits categories definitions in notified draft such as liqueur, rum, whiskey, vodka, gin and aquavit, and made specific proposals to better align those definitions with international practice and avoid the risk of causing unnecessary obstacles to trade. The European Union would be grateful if the above-mentioned comments could be taken into account and replied to before adoption of the notified draft.

2.498. The representative of Mexico provided the following statement. The Government of Mexico refers to the draft Regulation on Law No. 8.918 of 14 July 1994 (Beverages Law), notified by the Government of Brazil to the Members of this Committee on 19 April 2022 in document G/TBT/N/BRA/1145/Add.1. The Government of Mexico thanks the Government of Brazil for its compliance with the transparency commitments and the possibility granted for the issuance of comments on this Regulation, which were submitted by Mexico in July 2022 during the public consultation period and were kindly addressed by the Government of Brazil in August 2022. The communication from the Government of Brazil indicated that responses would be provided to the

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

comments received during the consultation period and would be published on the relevant Ministry's website. In addition, Brazil also indicated that it would publish a new draft of the Regulation that would consider the comments suggested through the WTO E-Ping Platform prior to its entry into force. In this regard, the delegation of Mexico requests the delegation of Brazil to provide information on the entry into force and the status of this Regulation today. The delegation of Mexico thanks the delegation of Brazil for giving its consideration to this statement and the requests made therein.

2.499. In response, the representative of Brazil provided the following statement. Brazil would like to thank the EU and Mexico for their statements and for the comments they submitted in reply to notification G/TBT/N/BRA/1145/Add.1. We also welcome the contributions from other countries to our public consultation. Brazilian authorities are currently reviewing all of them and we would like to assure that they will be duly considered. Proposed amendments to Decree Nº 6,871/2009 aim to simplify the definitions of alcoholic beverages and their standards of identity and quality. The draft also introduces improvements in the control and registration systems and administrative measures based on risk analysis, in order to reduce the administrative burden for companies and to ensure supply of products with lower risk. In the next steps of this regulatory process, we will publish our answers to the comments and a revised draft regulation of law No. 8,918, of 14 July 1994 (Beverage Law). This revised draft will be notified to all Members and further comments will be accepted. We appreciate engagement from our trade partners and assure them that the development of this regulation will remain transparent and aligned to our WTO commitments.

2.1.3.59 Morocco - Conformity assessment, G/TBT/N/MAR/28 (ID 779[95])

2.500. 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 two letters. Despite these discussions concerns remain on the EU side. As regards the conformity control system for industrial products, Morocco informed us that the legislative framework does not make a distinction on the basis of whether the product is imported or manufactured locally. However, it appears that the arrangements for checking compliance vary depending on whether imported or local products are concerned. Since the introduction of the new system in February 2020, checks on imported industrial products have been outsourced and appear to require the systematic obtaining of a certificate of conformity issued by one of the approved bodies, which is very burdensome and costly. On the other hand, checks on local products are carried out on the basis of a national market surveillance plan, and risk-based according to the products in question, so not on a systematic basis. This difference in treatment seems problematic to us.

2.501. The TBT Agreement (Article 5.1.1) 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? 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 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.

2.502. Moreover, for Morocco's technical regulations that impose the use of Moroccan standards corresponding to international and EU standards, Morocco should accept EU certificates that are based on the same international and EU standards and done by ILAC laboratories like a lot of countries are doing world-wide. Another important problem that we face is that some Moroccan regulations depart from international standards without providing an adequate justification for it. The standardiZation process and the subsequent transformation of the national standards into compulsory technical regulations also raises questions of transparency. We would be grateful if Morocco could take these concerns into account and work on the review of their conformity

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

assessment system. We are ready to engage further in bilateral discussions in order to clarify the issue further.

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

2.1.3.60 Angola - Decreto Executivo n°186/22 by the Ministerio das Finanças (ID 776[96])

2.504. The representative of the European Union provided the following statement. On 10 March 2022, Angola published the Executive Decree n°149/22 introducing the obligation to affix High Security Tax Stamps on certain products including beverages (beer, wine, spirits, soft drinks) and tobacco in order to fight smuggling. This decree was supposed to enter into force on 10 April 2022. On 8 April 2022, the Angolan authorities published the Executive Decree n°186/22, which suspended the mandatory affixing of high-security tax stamps on all alcoholic beverages. There is so far no revised decree, but the entry into force seems to be still foreseen for April 2023. Angola has not yet notified this draft measure to the TBT Committee and we request Angola to notify as soon as possible, so that all Members can provide their comments on the draft measure well ahead of the adoption and entry into force. As announced by Angola after the November 2022 TBT Committee a number of improvements to the system are foreseen that would address some of our concerns. For example, the ability to affix tax stamps in Angola and the foreseen transitional period of six months after publication and entry into force of the Regulation on Compulsory Sealing, – although a one-year transition period would be better. However there is so far no new decree that could confirm these announcements.

2.505. A number of concerns still remain: - Need for further guidance on the new system - A stock exhaustion clause. Angola's proposal that tax stamps should be affixed on products in stock which are not sold after the transitional period does not amount to a stock exhaustion clause. We recall that it is very important to notify any new draft decree to the WTO TBT Committee well in advance and to consult with all relevant stakeholders and take their comments into account. In any case the currently announced transition period of six months is insufficient and should be at least one year. Furthermore a stock exhausting clause should be foreseen and operators need more guidance. Different announcements were made in the course of the last year and it would be important to confirm these through a new decree in order to offer legal certainty. We would be grateful if Angola could take these concerns into account. We are ready to engage in bilateral discussions in order to clarify the issue further.

2.506. In response, the representative of Angola provided the following statement. In response to EU Statement, we would like to consider in part as valid, our declaration made at the last TBT meeting, held on 16 November 2022. However, we add that, the decree and the regulation have not yet been submitted for consideration by WTO Members, because some changes are being made, based on the proposals received of stakeholders, especially regarding on the price of digital tax stamps and we believe that the situation will be resolved soon. We sincerely apologize, however, we remain committed to notify the measure, as soon as its respective proposal is finalized. Finally, we inform the EU, that our institution is preparing to hold bilateral meetings in Luanda or in Brussels.

2.1.3.61 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[97])

2.507. The representative of the European Union provided the following statement. The EU thanks South Africa for notifying their proposed revisions to their alcohol beverage composition, production, and labelling regulations in December 2021. The EU sent written comments on 16 February 2022. The EU – through a letter sent on 21 October 2022 by the Ambassador to South Africa - also on behalf of several EU member States' Ambassadors to South Africa - to the Director General of the Department of Agriculture, Land Reform and Rural Development – also requested clarifications and raised concerns with specific aspects of these regulations. This was furthermore supported by a letter of the Italian Ambassador to South Africa's Minister Didiza sent on 25 October 2022. Our key concerns relate to the following South African categories: spirit aperitif, gin, description of pot still brandy and vintage brandy. The amended regulation related to the composition, production and labelling of wine and spirits intended for sale in the Republic of South Africa was published on 15 July

[96] For previous statements follow the thread under ID 776.
[97] For previous statements follow the thread under ID 733.

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, but seem to apply already for products not yet approved prior to 15 July 2022.

2.508. South Africa has already started to block products not yet approved by South African Authorities which do not meet the criteria set in the new rules. This does not apply to products that had received an approval from South Africa prior to publication of the new rules in the Gazette, as we understand, as many of the new rules will only apply to them in December 2025, but is still concerning and impacts a number of EU products. While some of our concerns concerning the new spirit aperitif category have been taken on board (including safeguards on how the name of the spirit used for production of this drink can be used and displayed on the label and comments in relation to gin), there are some important issues with the new rules which result in products being excluded from the South African market. While local producers will be able to reformulate in line with the new rules, EU producers will not, for economic reasons. The category of "spirit aperitif" with its minimum and maximum alcoholic strength together with the existing minimum alcohol limits set for other "defined classes" in South Africa (example whiskey) could result in a number of EU spirit drinks no longer having the right to be marketed in South Africa. We suggested that South Africa creates a new category "spirit drink" for products that do not fall under South African categories due to their alcohol content. Without the flexibility that a "spirits drink" category could offer, many EU products will no longer be exportable to South Africa.

2.509. Moreover, the European Union would like to continue the discussion on aligning the minimum maturation period with the one set in Cognac product specifications as well as some of the analytical parameters set by the 1989 Act regarding the brandy class. We would be grateful if South Africa could take these concerns into account as a matter of urgency, given the blockages of products. Reformulating is not an option for imported spirits, and the rules should therefore be adapted to allow EU spirits to be sold in South Africa.

2.510. The representative of Mexico provided the following statement. The delegation of Mexico refers to its statement at the previous meeting of this Committee in November 2022, in which a specific trade concern was presented once again regarding the Regulations relating to the composition, production and labelling of wine and spirits intended for sale in the Republic of South Africa, notified to the Members of this Committee on 20 December 2021 in document G/TBT/N/ZAF/48/Rev.2/Add.1. In this regard, we would like to reiterate the main concerns referred to in that statement and in the comments sent by the Government of Mexico during the public consultation period for the measure, as well as through a bilateral meeting held with the competent authorities in South Africa in October last year: The definition and requirements set out in Annex D of the Regulations for the "100% agave" category are in line with the "100%-agave tequila" category provided for in Mexican Official Standard (NOM) 006 concerning tequila. In light of the above, a possibly deceptive practice would arise from the mistaken perception of consumers that when purchasing a spirit under the name "100% agave" they would be acquiring a tequila in the "100% agave" category or another beverage of Mexican origin made 100% from agave.

2.511. Moreover, five out of the seven classes envisaged for the "100% agave" category in the South African Regulations replicate the five classes of tequila referred to in the NOM concerning tequila. In this regard, Mexico has repeatedly requested that there be a specific class for tequila and that the "100% agave" class in the Regulations should not refer to tequila or the categories thereof. Furthermore, the WTO's TBT Agreement recognizes the prevention of deceptive practices as a legitimate objective of technical regulations, so that the use of language that was undoubtedly drawn from Mexican standards in the Regulations, on top of the refusal of the South African Government to provide an alternative for the differentiation of tequila, could be considered as a technical barrier to trade for Mexico. For this reason, we once again urge the South African Government to reconsider the concerns and comments voiced by Mexico. We also reiterate our request for a bilateral follow-up meeting in order to reach a mutually satisfactory solution.

2.512. In response, the representative of South Africa provided the following statement. South Africa would like to thank European Union (EU) and Mexico for continued interest on the regulation relating to the composition, production and labelling of wine and spirits intended for sale in the Republic of South Africa. South Africa, in consultation with the affected industry, has been discussing proposals and notified unintended consequences of the amendments in relation to the regulation at hand. Virtual meetings were held with Mexico to discuss and clarify the concerns raised. South Africa, under the Department of Agriculture, Land Reform and Rural Development (DALRRD), is

reconsidering the regulation with the view to address notified unintended consequences of the regulation by WTO Members. On the same token, South Africa is undertaking activities to deal with section 12 of the South African regulation on matters related to spirit aperitifs being passed off as spirits. The process is such that the draft amendments of the regulation shall follow the due Departmental approval processes and procedures that underpins gazetting the revised regulation for publication and notification in order to solicit comments from all affected stakeholders. This process will include the notification to the WTO. Whilst this process is ongoing, there will be no impact on trade relating to the products imported as Spirit Aperitifs. Importers and local producers of Spirit Aperitifs have been applying for concessions and may continue to apply for concessions to sell products under the prior Spirit Aperitif category until 31 December 2025. South Africa will provide regular updates.

2.1.3.62 Mongolia - Draft Law on controlling the circulation of alcohol beverages, and fight against alcoholism, G/TBT/N/MNG/14 (ID 730[98])

2.513. The representative of the European Union provided the following statement. The EU would like to raise its concerns about the implementation of this measure. We understand that the new law requires that imported products already need to have tax stickers affixed to them before they arrive at the Mongolian border and can no longer be affixed to the product in bonded warehouses in Mongolia, as was previously the case. There is a lack of detailed information about this new requirement, for instance, whether tax stickers must be sent from Mongolia or whether they will be printable/downloadable from a website. Given that the date of entry into force of this measure is 1 July 2023, the EU requests that Mongolia provide clarity on these new obligations as soon as possible.

2.514. The representative of Mexico provided the following statement. The delegation of Mexico refers to its statement at the March 2022 meeting of this Committee, regarding the draft Law on controlling the circulation of alcoholic beverages and fighting against alcoholism, notified by the Government of Mongolia on 12 August 2021 to the Members of this Committee in document G/TBT/N/MNG/14. In this regard, the delegation of Mexico reiterates the concerns that this measure causes in the Mexican industry producing alcoholic beverages. The delegation of Mexico also requests the Government of Mongolia to clarify the scope of these regulations, as well as their status and compliance with transparency obligations contained in the WTO's TBT Agreement.

2.515. In response, the representative of Mongolia provided the following statement. Mongolia would like to thank delegations of the EU and Mexico for their statement. We take note of the questions raised by the delegation of the EU. We will refer your clarification to our competent authority in the capital and revert in due course via your Enquiry Point. In regard of the concerns raised by the delegation of Mexico during the TBT Committee session in March 2022, we would like to inform that the provision on the prohibition of alcoholic beverages with alcohol content of more than 35% was excluded during the hearings of the draft law. Also, the law has no provisions prohibiting sales through electronic channels. However, there is a provision prohibiting the sale, service and delivery of alcoholic beverages by persons and entities who do not have the appropriate licence, including in the online environment. The law was adopted in July 2022 and came into force on 1 January 2023. We are ready to engage with the delegation of Mexico to provide more clarification and explanation if necessary.

2.2 Exchange of Experiences

2.2.1 Transparency

2.2.1.1 Update on the Transparency Working Group Meeting

2.516. The Chair recalled that the transparency working group had been established in March 2022 to advance with the numerous Triennial Review recommendations related to transparency. The third meeting of the working group had been held on 6 February (he noted that some key takeaways from the meeting are contained in ICN/TBT/14/Add.4). The Chair thanked delegations who had come forward with proposals and comments. During the meeting, Members considered a revised proposal from Canada (JOB/TBT/485/Rev.1) regarding notification guidelines, which took into account

[98] For previous statements follow the thread under ID 730.

feedback from Members, including written comments from Uganda in JOB/TBT/492. Colombia's comments on the proposal had subsequently been circulated in JOB/TBT/496.

2.517. The representative of Canada thanked Colombia for sharing their comments on its proposal regarding modifying the notification guidelines. Canada had reached out to the Colombian mission in Geneva to discuss Colombia's comments, and the Colombian mission, Canada understood, was currently in consultations with capital-based experts. Canada would, as necessary, circulate a revised version of its proposal before the next working group meeting.

2.518. The representative of Singapore expressed his delegation's support for Canada's revised proposal on notifications guidelines which sought to improve the quality of notifications and to put all Members on a level playing field regardless of the language of the notifications. Singapore believed that some of the proposed additions to the guidelines could be useful in providing further clarity and predictability for exporters, companies, and other relevant stakeholders. Singapore was reviewing the proposed amendments to the notification guidelines and would provide comments in due course.

2.519. The Chair drew the Committee's attention to another proposal, this one from the United States: a draft template to assist Members in preparing Article 15.2 notifications through ePing, subsequently circulated in JOB/TBT/495. The United States had also clarified that they had *withdrawn* their previous proposal related to Article 15.2, contained in JOB/TBT/466.

2.520. The representative of the United States recalled that during the 6 February meeting of the Working Group on Transparency, the United States had shared a proposal for possible fields to include in the Article 15.2 notifications section of the notification submission interface in e-Ping (JOB/TBT/495, 10 February 2023). The Article 15.2 notification template in ePing contained open text space – it did not have fields for the Member to structure the input, as available for submitting regular and addenda notifications under Articles 2.9.2, 2.10.1, 5.6.2, 5.7.1, 3.2, 7.2, or other. The fields suggested for 15.2 notifications in the U.S. proposal came directly from Article 15.2 of the TBT Agreement and G/TBT/1/Rev.15 (Section 6.2.1). Providing fields and prompts in the ePing submission interface on what information to include in a 15.2 notification could be helpful in guiding Members that had not submitted their 15.2 statements while also encouraging other Members to update elements of their 15.2 notifications where needed. This would improve transparency for all Members. Given current efforts to improve and enhance ePing, JOB/TBT/495 was a concept for the Secretariat to consider in order to provide more structure to the notification format for the submission of notifications by Members under Article 15.2, subject to current technology limitations. The United States remained willing to collaborate with the Secretariat and other Members of the Committee's Transparency Working Group to support the implementation of transparency recommendations and simplify the submission of new or updated notifications under Article 15.2 of the Agreement.

2.521. The Chair recalled that the working group had also asked the Secretariat to prepare a compilation document of all current notification templates and guidelines so as to facilitate the working group's review in light of the Ninth Triennial Review recommendations. This document was in the pipeline. The Chair proposed that the next meeting of the working group take place in advance of the Committee's June meetings (date subsequently confirmed as 11 May).

2.2.1.2 Planning of the Tenth Special Session on Procedures for Information Exchange

2.522. The Chair recalled that the TBT Committee had decided, in 1995, to hold regular meetings for persons responsible for information exchange, including those responsible for enquiry points and notifications. The 9th Special Meeting on Procedures for Information Exchange was held on 18-19 June 2019, and its meeting report can be found in G/TBT/GEN/265. He noted that at the Committee's November meeting (2022), he had proposed that the Committee hold its 10th Special Meeting on 19 June 2023, and this was agreed.[99]

2.523. The Secretariat recalled that the Committee's Special Meetings on Information Exchange focused on implementing transparency provisions and procedures. In practice, since 1995, nine such Special Meetings had been held – one every three years. Delegations could access the reports of all

[99] G/TBT/M/88, para. 2.476.

these meetings through G/TBT/1/Rev.15, para. 6.8.2. The last Special Meeting, held in June 2019, had been structured around transparency-related recommendations from the Eighth Triennial Review, which concluded in 2018, including the functioning of Enquiry Points, tracking and reacting to notifications, handling of comments, establishing which measures should be notified under SPS and/or TBT Agreements, technical cooperation, and notification and availability of adopted final texts – which had led to the adoption of the revised format. Following the June 2019 Special Meeting, the Committee also held two thematic sessions on transparency, in February 2021 and July 2022, covering specific transparency topics. In addition, the transparency working group, set up in March 2022, provided another avenue to discuss transparency practices. For the upcoming Tenth Special Meeting, the Secretariat suggested that delegations may wish to focus on some of the pending Ninth Triennial Review recommendations. For example, there could be further exchanges on commenting on notifications, improving product coverage information in notifications, or updating notifications formats and guidelines. The Secretariat could also provide a more comprehensive presentation on the various functions of the new ePing Platform, followed by an exchange of experiences by Members.

2.524. The representative of the Russian Federation noted that Article 10 of the TBT Agreement provides that Enquiry Points should be able to answer all reasonable enquiries from other WTO Members and interested parties in other Members. In this context, it would be interesting to learn if there was legislation in place in WTO Members defining "interested parties" that were eligible to submit enquiries to the Enquiry Points, and also the practice of different WTO Members of treating inquiries from foreign interested parties.

2.525. The Chair encouraged delegations to make sure that their Enquiry Points and Notifications Authorities were able to participate actively at the Special Meeting, preferably in-person and otherwise virtually.

2.2.1.3 Update by Secretariat on ePing

2.526. The Secretariat reported on an ePing walk-in session held on 8 March. She thanked delegations for their questions and feedback which helped the Secretariat in refining further the platform's services. She noted that ePing currently has slightly more than 20,000 registered users, around half from governments and the rest from private companies, academia, NGOs, and IGOs (more information on Members that have the highest number of subscribers and other developments related to ePing is available in the Annual Review document G/TBT/50 in Section 3.5).

2.2.2 Conformity Assessment Procedures

2.527. The Chair reported on this consultation on the guidelines for conformity assessment procedures. He recalled, first, that at the Eighth Triennial Review of the TBT Agreement, the Committee had agreed to develop guidelines to support regulators in the choice and design of conformity assessment procedures. Subsequently, in the Ninth Triennial Review, the Committee had noted progress and agreed to finalize this work. To this end, the Chair said that he had been holding consultations. A few points could be made:

a. **There is good engagement**. To date, delegations had engaged substantively in the process. So far in 2023, consultations had been held in late January and in early February, and they would continue through to the regular meeting in June;

b. **Process**. The Chair stressed that the process is an open one. Participation by all Members was welcome. Any Member wishing to participate in the consultations was welcome to do so. It was possible to do this both in person and virtually. The relevant documents were kept up-to-date on a webpage for Members that was accessible through the TBT Gateway. In addition, the Chair noted that he regularly sent out communications that indicate dates and next steps.

c. **Status quo**. The Secretariat had issued a revision of the draft guidelines on conformity assessment. This draft is contained in document JOB/TBT/438/Rev.2, issued on 9 February 2023. The latest version of the draft is posted on the TBT Gateway under the workstream for conformity assessment.

2.528. The Chair noted, regarding the latest document (Rev.2), that it showed the status of the draft guidelines following his last consultation with Members, which had completed a full review of the text on a paragraph-by-paragraph basis. He stressed that the document remained a draft. There were a number of square brackets in the text where Members had discussed alternative textual drafting. He encouraged delegations to engage among themselves to try to find convergence.

2.529. The United Kingdom welcomed the progress that had been made and expressed an interest in other Members' views, especially those that had not yet had a chance to participate.

2.2.3 Regulatory Cooperation Between Members

2.2.3.1 Report by the Moderator on the Thematic Sessions

2.530. The Moderator[100] for the thematic session on Thematic session on regulatory cooperation between members on **plastic regulation**, held on 7 March 2023, provided his report. The full report is contained in G/TBT/GEN/351.

2.531. The Moderator[101] for the thematic session on Thematic session on regulatory cooperation between members on **climate change**, held on 7 March 2023, provided his report. The full report is contained in G/TBT/GEN/352.

2.532. The Chair said that the Committee took note of the moderators' reports. He referred the Committee to the TBT Gateway, which would contain the full moderators' reports and the presentations by all the speakers. He noted that the number of speakers had left very little time for debate and discussion and that the Committee needed to look into this.

2.533. The Secretariat suggested discussing how to use the allocated three hours for each thematic session. Possible limitations, such as limiting the number of speakers or time to speak, could be considered to allow more time for discussion and debate. The Secretariat acknowledged that it could be difficult to refuse a Member on the speakers' list, even if it was getting long. This could be discussed informally within the Committee.

2.534. The representative of the European Union stated that the EU wanted to take the opportunity to share some general comments on the thematic sessions. The EU had always been very committed to this exercise, but they wanted to convey some concerns regarding the thematic session on climate change. The objective of the thematic sessions was to share informally the best practices and experiences among Members, with the aim of facilitating the work within the TBT Committee. However, the EU noted a last-minute change of the speaker from South Africa, which was not reflected in the agenda. This last-minute replacement of the delegation of South Africa, which represented the Business Association, did not provide the necessary transparency in the context of the presentation. The substance of the presentation was contrary to the purpose and the well-established practice of the thematic sessions, which is to share experiences and increase understanding of Members' approaches. Finally, the EU had been very transparent with the European Green Deal measures in the WTO and bilaterally, even from the early drafting stages. While the majority of the European Green Deal measures did not fall under the scope of the TBT Agreement, and in particular those mentioned by some speakers on Tuesday, they would continue to engage with WTO Members in the TBT Committee as regards those measures that were within the scope of the TBT Agreement. On a more practical aspect, in the future, it would be useful to be aware of the participants attending the online thematic sessions. In the current format, it was not possible to identify who participated, and therefore it was also difficult to provide a reply intended for everybody. The EU hoped that WTO Members could follow these good practices.

2.535. The representative of the United States congratulated the Moderators for doing a good job managing the speakers during the public session. The representative agreed with India's suggestion to appoint moderators early for the next meeting, as the role is important and requires time for planning. Regarding limits, the representative supported having fewer presentation slides and more dialogue, as many presentations can be redundant. She suggested discussing limitations, such as the number of speakers, presentation length, number of slides, and questions asked, in an informal

[100] Mr. David Jankowski (United States).
[101] Mr. Aashish Shandorkar (India).

mode. The representative also mentioned submitting some informal suggestions to the Secretariat from online participants, including prioritizing questions. The representative appreciated the honest technical dialogue and thoughtful presentations during the thematic sessions, which gave a better understanding of compliance measures.

2.536. The representative of the United Kingdom expressed their appreciation for the thematic sessions and praised the Moderators for managing the large content volume. They agreed that the Committee should work together to establish limits on time and speakers. She suggested that managing the amount of time each speaker has would be beneficial for the interactive Questions and Answers section. They also supported the idea of agreeing on moderators early on, which would allow Members to contribute as speakers more effectively. The representative expressed their willingness to work informally to contribute ideas for further improvements.

2.537. The representative of Singapore expressed appreciation for the Moderators and found the sessions insightful. Singapore agreed with earlier speakers that there is room for improvement in organizing thematic sessions. Nonetheless, Singapore suggested having flexibility with the imposition of limitations on time and speaker as Members may have different levels of interest in different topics. The representative also agreed with their EU counterpart that more information about the speakers and presentations would be helpful in determining if and what limitations are required. The representative also suggested that the Committee could review the timeliness of its finalisation of the topic of thematic session with the aim of providing the Secretariat with adequate time for their effective organisation of thematic sessions. The representative also agreed with the suggestion to have an informal discussion on improving thematic sessions before the June meeting.

2.3 Other Matters

2.3.1 Planning of the 2023 Thematic sessions

2.538. The Chair mentioned that the Members had agreed to have a thematic session on "regulatory cooperation between Members" with three separate topics to be covered in the next meeting in June. The three topics were "digital products", "cybersecurity", and a third topic yet to be defined. Additionally, one related topic that could be discussed in June was "current challenges and best practices for addressing issues related to the conformity assessment of goods obtained through e-commerce." This would mean the June thematic session could focus on the digital sphere. The Chairman also raised the question of whether to have three topics or to leave the third topic and have two sessions and whether to consider having one and a half days.

2.539. The representative of the United States stated that the Committee had already scheduled a special meeting on information exchange on Monday 19 and thematic sessions on digital products and cybersecurity on Tuesday, 20 June. These topics were popular, and having a third topic would be difficult due to time constraints.

2.540. The representative of the European Union agreed with this position, stating that it would be an intense week.

2.541. The representative of the United Kingdom suggested having the session in the morning and extending it to one and a half days, as there was a lot of interest in engaging more. They expressed a willingness to continue discussing possible solutions informally.

2.542. The Chair proposed to stick to the two topics for June. It was so agreed.

2.3.2 Planning of the 10th Triennial Review

2.543. The Chair recalled that at the end of 2024, the Committee would need to complete its Tenth Triennial Review. Article 15.4 of the TBT Agreement states:

> *"Not later than the end of the third year from the date of entry into force of the WTO Agreement and at the end of each three-year period thereafter, the Committee shall review the operation and implementation of this Agreement, including the provisions relating to transparency, with a view to recommending an adjustment of the rights and obligations of*

this Agreement where necessary to ensure mutual economic advantage and balance of rights and obligations, without prejudice to the provisions of Article 12. Having regard, inter alia, to the experience gained in the implementation of the Agreement, the Committee shall, where appropriate, submit proposals for amendments to the text of this Agreement to the Council for Trade in Goods". (TBT Agreement, Article 15.4)

2.544. The Chair noted that the last triennial review, the Ninth, was contained in document G/TBT/46 and was adopted in November 2021. 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 on such a timeline contained in G/TBT/W/735. The Secretariat had prepared a draft timeline that was based on previous practice. He said this draft is contained in document JOB/TBT/499. The Chair drew Members' attention to the draft and asked delegations to provide the Secretariat with any comments before our June meeting. At that point, the Committee would agree on the timeline. He set the deadline for comments to 15 May 2023, allowing the Secretariat to make any changes needed ahead of June. The Chair also suggested that the Secretariat hold a briefing on the Triennial Review process ahead of the November 2023 meeting to bring Members up to speed, particularly developing country delegations and those new to the TBT Committee.

2.545. The representative of Brazil informed the Committee about the translation of the TBT handbook into Portuguese, which will be launched on 30 March. The National Enquiry Point, the National Confederation of the Industry in Brazil, and APEC Brazil, which is the export promotion agency, worked together with the Secretariat to prepare the Portuguese version of the handbook. Brazil was of the view that it would be helpful to the Portuguese-speaking community worldwide, which amounted to approximately 300 million people. A launch event would occur in Brasilia on 30 March at 10 a.m. (Brasilia time), and the Secretariat would share the details with the TBT mailing list so that any member or stakeholder could participate in the event online.

3 TWENTY-EIGHTH ANNUAL REVIEW

3.1. The Secretariat provided an overview of the Twenty-Eighth Annual Review, highlighting key findings related to the implementation and operation of the TBT Agreement. In terms of transparency, there was a slight decline in the number of new or changed TBT measures submitted. Still, developing and least-developed Members were highly active, with African Members being the most active in submitting TBT notifications. The ePing platform was nearly universal for online notification submission. As for specific trade concerns, again, there was a slight decline in the number of new and previously raised STCs, with developing Members raising the majority of new STCs in 2022. Participation in STCs broadened, with 33 Members raising at least one STC in 2022. The full report is contained in the document G/TBT/50, issued on 6 March 2023.

3.2. The Committee took note of the report.

4 TECHNICAL COOPERATION ACTIVITIES

4.1. The Secretariat reported on technical assistance activities in 2022, which have picked up speed as Pandemic disruptions started to ease. In 2022, twelve TBT TAs were organized: seven (five nationals and two regionals) were delivered in-person, while the remining five (all nationals) were delivered virtually. The Secretariat also provided many training sessions on transparency – including on ePing – and launched the TBT Transparency Champions program.[102] In 2023 (at the time of writing), 14 TAs were requested/planned, with ten already delivered: 11 in-person TAs (ten nationals and one regional); and three virtual TAs (two nationals and one regional).

[102] A detailed description on TA delivered in 2022 is contained in the Twenty-Eighth Annual Review, document G/TBT/50 (6 March 2023), paras. 6.1 to 6.4.

5 OBSERVERS

5.1 Updates from Observers

5.1. Updates were provided by the following observers: RSO (G/TBT/GEN/345), UNECE (G/TBT/GEN/346), BIPM (G/TBT/GEN/347), CODEX (G/TBT/GEN/348) and IEC (G/TBT/GEN/349).

5.2. The representative of OIML highlighted two items currently being worked on. They mentioned that a training course was being organized in association with the German Academy of Metrology in July of that year on pre-packaged goods due to the increased importance of pre-packaged goods, particularly in developing economies. They also stated that they had been working with BIPM on developing some documentation and an e-learning package on OIML D 1, which is to do with a general law on metrology. The representative informed the Committee that once the simple brochures were available in a few months, they would be processing that into an e-learning package enabling senior decision-makers to understand the importance of a metrology law to the overall quality infrastructure of an economy.

5.2 Pending requests

5.3. The Chair 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 are still pending. Regarding pending requests, he had no new information that would lead him to believe that the situation had changed from where the Committee stood at the last meeting. The Chair, therefore, suggested – unless any Members has any other view (or different information) – that the Committee reverts to this matter when Members had had the time to further consult.

6 ELECTION OF CHAIRPERSON

6.1. The Chair noted that Members had not yet finalized the selection process for the Chairpersons of the Committee on Trade in Goods and its subsidiary bodies, including the TBT Committee. This meant that the current agenda item would be suspended for the current meeting, and the Committee would revert to it at the next formal Committee meeting just after adopting the agenda.

7 OTHER BUSINESS

7.1. The Chair reported that, in accordance with a request from Paraguay, an item had been included for discussion under Other Business, which concerned the ongoing process under the CTG that was examining the functioning of Committees. The Chair also recalled that in late October, the Chairs of the CTG subsidiary bodies had been requested to submit two reports to the CTG, one on the response to the pandemic and another on the current functioning of their committees. The final versions of these two reports were circulated on 1 December in documents G/TBT/48 and G/TBT/49, respectively. The WTO Secretariat had also circulated a matrix to help compare the information provided in the 15 reports (G/C/W/824/Rev.1). The reports from the subsidiary bodies, as well as the comparison matrix, had served as the basis for a discussion among Members during an informal meeting of the CTG on 31 January. During the meeting, many references had been made to the good practices of this Committee, such as the Triennial review process, thematic sessions, and the adoption of digital tools such as eAgenda and ePing. On 27 February, the CTG held another informal meeting on this topic, and a new multi-symbol document under consideration was a submission from Argentina, Ecuador, and Paraguay (also circulated as JOB/TBT/498/Rev.1). Following this meeting, the Chair of the CTG sent another communication to the Chairs of all CTG subsidiary bodies, requesting them to organize discussions in their respective bodies concerning the functioning of their Committees. Later in the year, subsidiary bodies would be requested to submit written reports to the CTG describing the discussions held and improvements introduced.

7.2. The representative of Argentina presented the document JOB/CTG/21/Rev.1 and JOB/TBT/498/Rev.1 on behalf of all the co-sponsors (Argentina, Colombia, Ecuador, Paraguay and Uruguay). The document was produced based on the matrix presented by the Secretariat at the Council for Trade in Goods (G/C/W/824), which included the reports submitted by the 14 subsidiary bodies. The proponents had identified challenges to the functioning of the CTG and its subsidiary

bodies, particularly in processing the large volume of information arising from formal meetings, informal meetings and thematic sessions. These challenges hindered the work of delegations, especially those with limited human resources, thus hampering progress on issues in what is a consensus-based organization. The purpose of the contribution was to create a common dialogue in the various subsidiary bodies in order to align their practices and avoid the risk of increasing disparities in their operational processes. They highlighted specific suggestions and areas for action that they were putting forward for consideration.

7.3. The representative of Argentina further noted that the document contained suggestions for improving the functioning of the Committee. The suggestions included the creation of a written manual and introductory sessions for new delegates to assist them, the preparation of a style manual for formal meetings to reduce disparities in formatting, document content, and other processes, and improve the minutes/reports of the CTG's subsidiary bodies, alignment of agendas for informal meetings with those of formal meetings, holding thematic sessions within the framework of formal meetings, and the use of digital tools such as eRegistration, eAgenda, the online notifications system, and the Trade Concerns Database. The document also suggested that each subsidiary Committee define which of the suggestions contained in the document would be useful to analyse its potential implementation or improvement in accordance with its own dynamics. A summary table was included at the end of the document that listed all the suggestions, with reference to the document paragraphs where they were detailed and aligned with their respective areas of action and related challenges. The document's authors hoped it would serve as a basis for online discussions with the mandate received from their Ministries at MC12 and the recent communication of the CTG Chair in JOB/CTG/24.

7.4. The Chairman suggested, in light of the communication received from the CTG Chair and the paper just presented, that the Committee dedicate some time to this topic at its next informal meeting.

8 DATE OF NEXT MEETING

8.1. The next regular meeting of the Committee will take place on 21-23 June 2023. The regular meeting will be preceded by the Tenth Special Meeting on Procedures for Information Exchange on 19 June and the thematic sessions on 20 June. The dates for all meetings in 2023 are contained in document JOB/TBT/467, issued on 8 June 2022. The tentative dates for 2024 are contained in document JOB/TBT/500/Rev.1.