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Committee on Technical Barriers to Trade

MINUTES OF THE MEETING OF 19-20 MARCH 2014

CHAIRPERSON: MR. JINGO KIKUKAWA

Note by the Secretariat[1]

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[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 contained in WTO/AIR/4250.

2 IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

2.1 Statements from Members under Article 15.2

2.1. The Chairman said that the list of statements submitted under Article 15.2 of the TBT Agreement was contained in document G/TBT/GEN/1/Rev.13, dated 25 February 2014. He recalled that this information was available, and regularly updated, on the TBT Information Management System (the "TBT IMS"[2]). He stressed that while 128 Members had submitted at least one Statement on Implementation under Article 15.2, 31 Members had not yet fulfilled this obligation and he urged them to do so in a timely manner. He suggested that letters be sent to those Members reminding them of the obligation to submit this statement.

2.2. The representative of the United States thanked the Chairman for taking the initiative on this matter. She reminded the Committee that a workshop had been held on the submission of statements under Article 15.2 in November 2007, where the Committee heard how, in the preparation of this statement, Members had the opportunity to address their own trade priorities as well as the implementation of the TBT Agreement. The preparation process of the 15.2 notification benefitted the Member undertaking the effort; it facilitated coordination with other agencies as well as with the private sector and this helped set trade priorities. She commended several members who had recently submitted revised and improved versions of their 15.2 statements.

2.2 Specific Trade Concerns

2.2.1 New Concerns

2.2.1.1 Ecuador – Proposed Motor Vehicle Safety Regulatory Requirements (RTE INEN 034) (G/TBT/N/ECU/32 and G/TBT/N/ECU/32/Add.6)

2.3. The representative of Japan asked Ecuador to provide a period of at least 24 months (for new vehicle models) and 48 months (for in-production vehicle models) between the publication of the measure and its entry into force. These periods thus reflected the full time intervals imported and domestically-produced vehicles took from their point of shipment to delivery, including customs clearance. Japan also asked Ecuador to review its existing and proposed regulations to ensure their harmonization with UN standards.

2.4. The representative of Brazil echoed the concerns raised by Japan, noting that Brazilian exporters had reached out to the Brazilian government to question both Ecuador's choice of the standard and the appropriateness of its specified implementation time.

2.5. The representative of Ecuador stated that adoption of the proposed regulation was aimed at protecting the safety of persons and preventing practices that could mislead consumers, in line with provisions of the TBT Agreement. Ecuador stated that the regulation provided for the incorporation of safety devices along a variety of time frames, and not necessarily for the entry into force of every one of its corresponding components. It was noted that Ecuador had in recent years undertaken a broad-based plan to improve its highways and motorways, and that vehicles on these road networks were required to have minimum safety elements so as to mitigate the severity of accidents. Ecuador worked with United Nations specialists when drafting the proposed regulation to gather recommendations for minimum elements or security devices to be incorporated into vehicles marketed in Ecuador, and the adopted standard was thus that established by the UNECE. Ecuador also listed the main parameters that were considered for its joint effort with industry, including annual production planning, previously planned requests, production pursuant to legal standards in force, the complexity of implementation in existing Ecuadorean production platforms, the time to develop spare parts required in domestic industry for

[2] http://tbtims.wto.org.

production lines of the vehicle models that would have minimum required safety elements. On the basis of these technical aspects, Ecuador was considering the time-frame for the implementation of the recommendations established in RTE INEN 034. Ecuador said that the draft regulation was notified to the WTO on the 13 December 2013, and that the consultation and comment period was conducted in accordance with the TBT Agreement. Comments received during this period were analysed by the Ministry of Transport and Public Works, and pending the review, the regulation would be published in the official Ecuadorean bulletin prior to entry into force. Ecuador emphasized that information had been disseminated to local industry, importers, and foreign governments in order to explain the scope of the regulation, and that it remained open to further discussions.

2.2.1.2 United States – Energy Conservation Program: Test Procedure for Commercial Refrigeration Equipment (G/TBT/N/USA/865)

2.6. The representative of China noted that Article 3.2 of Annex A to subpart C of 10 CFR part 431 required the use of test methods established in ARI Standard 1200-2008 to confirm the Total Display Area (TDA) of products with canonical geometric structure, but failed to clarify the test method for products with non-canonical geometric structures, which created difficulty for such products. China suggested that the United States add a test method for products with non-canonical geometric structures. China also noted that the US measure required testing components and accessories of refrigeration equipment under the condition of all lighting components displaying full functionality. Because the energy consumed by lighting components with auxiliary functions represented a small proportion of the overall energy consumption, the requirement would be inconvenient and introduce unnecessary test costs. China asked that the test requirement for lighting components be therefore removed.

2.7. The representative of the United States explained that the measure's purpose was to revise and reorganize test procedures in order to clarify certain terms, procedures and compliance dates. The proposed rule was developed in response to several inquiries that the US Department of Energy had received from interested parties regarding the applicability of the test procedures on current federal energy conservation standards. The US assured China that the Department of Energy would take its comments into account during the deliberative phase of the rulemaking process, and that the measure was to be finalized in the coming months.

2.2.1.3 Ecuador – Resolution No. 116 of the Foreign Trade Committee of Ecuador of 19 November 2013 and Technical Regulation of the Ecuadorian Standardization Institute RTE INEN 022 on the labelling of processed and packaged food products (G/TBT/N/ECU/19/Add.3)

2.8. The Representative of Costa Rica noted that Costa Rican processed food exporters had been unable to comply with conformity assessment requirements in the Ecuadorian technical regulation ("RTE INEN 022"), as there were no accreditation bodies established in neither Costa Rica nor Ecuador to carry out inspections and provide the necessary certification requirements. He asked therefore that Ecuador suspend this requirement until such clear responsibilities had been set for accrediting bodies. He reminded Ecuador that one of the fundamental pillars that govern international standards in accreditation was the ability to recognize equivalence certificates in compliance with accredited bodies. He asked whether Resolution No. 116 related to this technical regulation had been notified to the TBT Committee, and whether it provided for a reasonable comment period as well as sufficient time before its entry into force so as to allow exporters time to adapt. He also expressed his delegation's concern with the amendment of RTE INEN 022 (Document No. 1353, published in the Official Journal on 15 October 2013), which was notified to this Committee in October 2013 in G/TBT/N/ECU/19/Add.3. He said that this amendment established that any food manufactured from genetically modified products had to list the ingredients, and include the underlined words "Contains Genetically modified products" on the label. Manufactures were also obliged to inform suppliers if the ingredients were genetically modified or not. Additionally, the fulfilment of these requirements had to be verified through the Conformity Assessment Mechanism for food labelling. This provision, he said, was of great concern to food exporters in Costa Rica and asked what justified the urgency of the measure and why no comment period had been provided. He also questioned the scientific basis for the measure.

2.9. The representative of the United States associated her delegation with the comments made by Costa Rica. She requested an update on the implementation of regulation RTE INEN 022 - specifically on the mandatory labelling of "contains transgenics" being required. She asked that

this proposed implementing regulation be notified to the TBT Committee with an appropriate comment period, and that such comments be taken into account and also that sufficient implementing time be given so entities concerned would be able to comply. The US was concerned that imposing mandatory requirements to label food and beverage products with the statements "contains transgenics" was counter to the stated objectives of Resolution No. 017-2008 to prevent practices "which may mislead consumers" and "to create an erroneous impression regarding its character in any respect". She argued that for foods derived from genetically modified organisms that had been found to be substantially equivalent to conventional counterparts, mandating the use of such statements in labels could create the erroneous impression that the product was less safe than conventional products. Genetically engineered products that had been evaluated through risk-based safety assessments in accordance with international guidelines, such as through the Codex Alimentarius Commission, should not be required to use different labelling. In addition to confusing consumers, such labelling would likely also increase costs to industry, consumers, and government authorities. The US believed that rather than a mandatory labelling requirement, a voluntary approach to the labelling of such products would allow for consumer choice. Mandatory requirements, she said, might raise concern amongst consumers about products that had the same quality and were equally safe. She urged Ecuador to suspend implementation of this measure and that Members' concerns be taken into account before progressing to enforcement of this new labelling requirement.

2.10. The US also requested Ecuador to provide its definition of "contains transgenics", and clarification on the scope of the measure, in particular the confirmation that the measure would exempt food which did not contain transgenic protein or DNA, such as highly processed products such as oil, sugar and syrup from genetically engineered crops; and food which could have been produced using genetically engineered processing aides, such as cheese, beer, and yogurt. She also asked for confirmation that foodstuff derived from animals fed with genetically engineered feed would also be exempt from the labelling requirements. Finally, the US also requested clarification on: (i) the manner by which "testing to assess compliance" and "demonstration of compliance", as specified in Resolution No. 017-2008, would be carried out with regards to mandatory transgenics labelling; and (ii) how the provision on "supplier declaration", as specified in Supplement No. 101 of the Official Journal of 15 October 2013, would be implemented.

2.11. The representative of Guatemala supported the statement by Costa Rica and said that, while his delegation shared the legitimate objective of providing information to consumers, it was nonetheless concerned with the measure's inability to fulfil such objectives as well as with the trade restrictiveness of its burdensome requirements, particularly those related to conformity assessment. He asked therefore that Ecuador reconsider the scope and necessity of this measure.

2.12. The representative of Canada echoed the comments made by other Members. Canada was concerned with Resolution 116, specifically the new requirement for importers to present certificates of recognition for products listed in Annex A of the Resolution. These new rules came into force only two weeks after adoption, failing to allow the six months between adoption and entry into force of the measure. Canadian business, she said, had reported that there were no local certification bodies that were capable of producing these mandatory certificates, resulting in products being barred from the Ecuadorian market. Citing the example of frozen french fries, Canada informed that the real intent of the Regulation was to encourage import substitution, which was in clear violation of Article 2.2 of the TBT Agreement. She therefore questioned the measure's stated objectives as there was no obvious risk to human health, the environment or national security.

2.13. The representative of Peru joined previous speakers in expressing her delegation's concern with the conformity assessment procedures under Resolution 116. She expanded further to include other measures which had also been raised during the Committee meeting. These technical regulations and conformity assessment procedures affected a wide range of products worth USD 96 million in 2013 and representing more than 10% of exports from Peru to Ecuador. She reminded Ecuador that technical regulations and conformity assessment procedures should comply with the transparency provisions in the TBT Agreement. It appeared however that Ecuador had not notified these measures at the draft stage and within the timeframe for receiving comments from other Members, also allowing for a reasonable amount of time between publication and entry into force of the measure.

2.14. The representative of Chile shared the concerns raised by Peru and noted that Resolution 116, along with the conformity assessment requirements for all products, was not duly notified to the WTO. She urged Ecuador to fulfil its transparency obligations as set out in Article 2.9 of the TBT Agreement. Chile considered that such conformity assessment requirements were more trade restrictive than necessary and thus impossible to comply with. Given that Chile had not been able to find laboratories in Ecuador capable of carrying out these conformity assessment trials, this had caused exports to Ecuador to come to a standstill. Concerning technical regulation RTE INEN 022, she asked that further clarification be provided by Ecuador as there had been multiple notifications regarding this technical regulation and it was unclear which one was the latest version. Chile asked Ecuador to change this practice and instead notify each of these instruments separately under Article 2.9 of the Agreement, and not as addenda, so as to allow time for comments.

2.15. The representative of Ecuador informed the Committee that Resolution No. 116 established certificates of recognition for conformity assessment as a support document to customs declaration for all goods imported as from 3 December 2013. This Resolution, issued by the Foreign Trade Committee, was not in itself a technical regulation but, instead, an internal Resolution regarding customs administration that only established control for marketing products in Ecuador based on regulations that in various cases were already in force. Therefore, this Resolution was not subject to the notification procedures established in the TBT Agreement. Concerning technical regulation RTE INEN 022, in force since May 2009, he explained that it applied to all processed food for human consumption on the Ecuadorian market and that in April 2013 a slight modification therein came into force so as to improve the labelling of these products by avoiding that such labels could mislead consumers. In October 2013, a second amendment included the requirement that products containing genetically modified items also be labelled as such. Regulation No. 116 also required a recognition certificate as a supporting document to the customs declaration prior to products entering the Ecuadorian market. He also explained that the Ministry of Public Health established the health regulations for the labelling of processed food for human consumption, published in the Official Journal No. 134 of 29 November 2013, in order to combat cardiovascular disease and diabetes, which were the major causes of mortality and obesity in Ecuador due to the lack of information on food labels. This regulation established a grading system for the presence of salt, sugar and fat. The Ecuadorian standardization Institute (ILEN) included this regulation through a modification to RTE 022, which was notified to the WTO on 11 March 2013. This modification provided for a graphic system describing the high, medium or low content of the three components. The inclusion of genetically modified products or non-calorific sweeteners was due to the necessity to include a graphic system that was based on 100gms or 100mls, rather than on portion sizes.

2.16. Regarding the concern on the threshold for transgenic content, he explained that the Ecuadorian Standardization Institute decided upon the threshold of 0.9% of genetically modified content of the total of the ingredients for the products to be considered as genetically modified. On the concern of Members regarding the ban of images of people or animals in products with high or medium content of fat, salt or sugar, the draft modification of RTE 022 had withdrawn this ban so that images could be used as before, in line with the child and adolescent code. Concerning the lack of testing facilities, Ecuador was in the process of establishing laboratories to issue the conformity assessment certificates. A third modification to Regulation 022 of Resolution 1423 of the Sub-Secretary of Quality of Ecuador, in which article 9.22 established that the option to fulfil this requirement was to present a manufacturer's conformity assessment certificate. This alternative eased the concerns of the food industry. He said that all comments that had been made in the meeting would be taken into account in the preparation of the regulations. As a general explanation, the representative informed the Committee that Ecuador had conducted an analysis of the levels of quality available in each product manufactured within Ecuador that this analysis found that Ecuador only had 300 up to date regulations, whereas the average in Latin America was over 6000, and the average in the US and the EU was over 20,000. Ecuador had established a strategy to adopt international standards and norms already adopted by other Members. As from 2013, Ecuador began incorporating several mandatory standards in line with international standards and regulations.

2.2.1.4 Russia Federation– Federal Service for Market Regulation (FSR) - New Provisions for the Mandatory Notification of Liquor Products

2.17. The representative of Canada expressed disappointment that this measure, as required by Articles 2.9 of the TBT Agreement, had not been notified to the TBT Committee. Moreover, as required by Article 2.12 of the TBT Agreement, Russia had not allowed for a proper entry into force period for these regulations. Canada strongly recommended that Russia notify the measure and include the text of the proposed regulation so as to allow Members an opportunity to comment. She said that the letter Canada had sent to Russia on 1 October 2013 expressing these concerns had still not been replied to.

2.18. The representative of the Russian Federation informed the Committee that the requirement for a legal entity to notify the Russian regulating authority was established in 2011 by the provisions of the Federal Law No. 171-FZ of 22 November 1995 on State Regulation of Producing and Turnover of Alcoholic and Alcohol containing Products and therefore this requirement was not new. Russia said that because Resolution No. 474 did not introduce new requirements it therefore did not require notification to the WTO, nor a transitional period for entry into force. Implementation of the Federal Law requirement introduced in 2011 revealed certain grey zones and this led to the Russian regulating authority and economic operators seeking clarification of the requirement. Accordingly, Resolution No. 474 was developed and entered into force on 1 October 2013. Provisions of the Resolution simplified the notification requirements. The notification procedure was being performed by electronic means and was to be provided on a one-off basis, meaning that if information on the products had already been included in the roster, there were no requirements for a legal entity to notify further. Concerning the actions of the regulatory authority, Russia said that clarifications were introduced in order to streamline the process. Resolution No. 474 established the requirement for the regulating authority to provide confirmation of receipt of the notification within one working day and add the information to the roster which was publicly available on the website of the federal service of alcohol market regulation. Given that this was a one-off notification procedure, and that, in general, provisions of Resolution No. 474 simplified the notification process for economic operations, Russia did not share Canada's view that this measure violated WTO rules.

2.2.1.5 India – Labelling Regulations for Canola Oil

2.19. The representative of Canada noted that as of February 2014, Canola oil shipments to India needed to follow an apparently newly modified labelling requirement set out by India's Food Safety and Standards Authority. These requirements stated that product labels for canola oil had to read: "ingredients imported: rapeseed oil erucic acid canola oil". Previously, canola oil products had been labelled as "ingredients imported: refined canola oil" and had entered India for many years without incident. India's sudden decision to impose apparently new labelling requirements to canola oil affected Canadian exports, including those at destination ports awaiting clearance. In Canada's view India's regulation was more trade restrictive than necessary to achieve the legitimate objective, thus violating Article 2.2 of the TBT Agreement. Canada was also concerned that labelling requirements for canola oil contained in India's Food Products Standard and Food Additives Regulation 2011 did not conform to relevant international guidelines recommended by the Codex Alimentarius Commission because Codex standards deemed canola oil and low erucic acid rapeseed as synonyms. Since India's regulation differed from this relevant international standard from the Codex, Canada was of the view that India's regulation also violated Article 2.4 of the TBT Agreement. She encouraged India to consider an alternative measure that followed Codex guidelines and did not unnecessarily create a barrier to international trade.

2.20. The representative of India said that Canola oil was an edible vegetable oil produced from rapeseed bearing low erucic acid. Canola oil had been imported to India for several years, mostly from Canada. "Canola oil" was, he said, a given trade name. In the Codex standard the product was listed as "rapeseed oil, low erucic acid". The appropriate marking for imports into India was "imported rape rapeseed low e-acid oil (canola oil)" or "imported refined rapeseed low e-acid (canola oil)" – with "imported" as a prefix. Given that the objective of this marking was just to ensure that consumers could make an informed choice, it was not a violation of the TBT Agreement. Moreover, this was an old regulation, dating back to 2011. Canada was therefore requested to start following the regulation; any previous non-adherence to the regulation did not mean that non-adherence could continue. Moreover, being a label, there was not one element of the regulation that could be characterized as more trade restrictive than necessary.

2.2.1.6 Ecuador – Systematic failure to publish notices at an early appropriate stage

2.21. The representative of Canada said that her delegation was increasingly concerned that some Members were not adhering to their obligations under the TBT Agreement with regard to early, appropriate notification of changes to technical regulations and conformity assessment procedures. Under Articles 2.9 and 5.6 of the TBT Agreement, all Members were obliged to give adequate notice (60 days), of changes to technical regulations and conformity assessment procedures. While Canada recognized that occasional lapses could occur for any Member, systemic late notifications were of concern. Since October 2013, there had been 41 notifications from Ecuador, 18 of which had been notified well after the relevant measures had entered into force. Although this was troubling in itself, given that Members' right to comment had been violated, Canada was more troubled by Ecuador's decision to invoke Articles 2.10 and 5.7 (urgency). In Canada's view, changes to rules concerning cosmetics, french fries, energy efficiency and surface tension agents did not qualify as "urgent problems of safety, health, environmental protection or national security". This was a misapplication of a key provision of the TBT Agreement, which diluted the meaning and intent of the emergency provisions.

2.22. The representative of the European Union associated himself with Canada's concerns, in particular with respect to the cosmetics notification in G/TBT/N/ECU/116. The adoption of this technical regulation under the emergency procedure had caused a total block of cosmetic exports from the EU to Ecuador. The EU said that the use of the emergency procedure needed to remain exceptional for genuine urgent measures; its use had to be duly justified in the notification form. It could not become a routine alternative for notifying texts that did not qualify as urgent.

2.23. The representative of Costa Rica shared the concerns expressed by Canada and stressed the importance of being able to provide comment. Costa Rica was concerned about this practice and while his delegation supported the rights of all Members to develop necessary regulation to achieve legitimate objectives, it was important to consider the trade impact of proposed regulations on other Members.

2.24. The representative of Brazil also had systemic concerns with respect to measures notified by Ecuador – and in particular Resolution No. 116 of the Foreign Trade Committee. Despite useful bilateral meetings, the Brazilian delegation requested further clarification with respect to the apparent need for double certification for many products, i.e. the co-existence of conformity assessment and a new "certificate of recognition". The representative of Brazil asked for confirmation from Ecuador about the possibility of using SDoC instead of the certificate of recognition. On procedural matters, the representative of Brazil recalled the obligation of Members to notify TBT measures at an early appropriate stage (Article 2.9 and 5.6 of the TBT Agreement). Another point of concern was the high number of measures treated as urgent, or converted into urgent ones, after first notification – which entailed the omission of the consultation process. Clarification was needed with respect to the criteria used by Ecuador when defining a measure as "urgent". Also, only a limited amount of time had been allowed for Members to adapt their methods of production to the new requirements and in some instances it seemed that the time interval granted was not reasonable (Article 2.12 of the TBT Agreement).

2.25. The representative of Chile and the United States supported the comments made by Canada as well as other delegations.

2.26. The representative of Ecuador said that his country had embarked upon a policy overhaul that required that products on the market to be of high quality. Until 2008, Ecuador had implemented 70 regulations but no more than 30 were actually being enforced – which showed that there were weaknesses both in the regulations themselves, but also of a more institutional nature. In 2013, it had been decided that prior to import, compliance would have to be demonstrated through a certification of conformity issued by an accredited certification body in Ecuador. Thus, he stressed, the establishment of requirements with respect to conformity assessment was only about ensuring the quality of products marketed in Ecuador. With respect to the technical regulations which had entered into force, these were in line with the disciplines of the TBT Agreement and the legitimate objectives set out therein. Clearly, the process of adaptation by industry had been complex – and there had been difficulties in the procedures related to notification. Ecuador was working on this so as to strengthen the system for the adoption of future regulations. Moreover, many of the concerns expressed by delegations had been taken into account in further developing the measures at issue (cosmetics, french fries, energy efficiency and

surface tension agents – mentioned by Canada). For example, the use of SDoC was now envisaged as a possible option.

2.2.1.7 China – China Food and Drug Administration (CFDA) Notice 191 of 16 December 2013 – Free Sales Certificate for Imported Cosmetics

2.27. The representative of the European Union raised concerns with the Notice's change of the interpretation of the Free Sales Certificates (FSC) requirement. This change resulted in a requirement by which all cosmetics imported into China be accompanied by a certificate proving manufacture and sale in the country of origin, as a precondition for registration in China. According to the CFDA, the changes were a violation of two existing regulations – the 2005 basic Chinese cosmetics law (CHMR), and the 2009 "SFDA Requirements for the Application of a Cosmetics Administrative Licence". The EU noted that the basic cosmetics law did not contain an explicit requirement that the product be sold in the country of origin but merely that the product had "approval for manufacture". It added that both importers and the CFDA had up to that point interpreted the 2009 SFDA requirements as an obligation to comply with the regulatory and safety requirements of the country of origin, and not an obligation to sell the product in that country.

2.28. The EU representative recalled that Free Sales Certificates had been used and accepted by registration authorities worldwide. However, as a consequence of Notice 191, CFDA inspectors were systematically rejecting all new applications for imported EU cosmetics accompanied by a FSC with the previously accepted wording and meaning. The EU added that Chinese requirements appeared to have greater flexibility if the producing company maintained research and development activities in China. The EU also noted that cosmetics produced in China did not have to comply with the new requirements. According to the EU, the new Chinese interpretation thus created discrimination between imported and locally produced cosmetics, and the requirement that products be actually sold in the country of origin was overly burdensome and lacked any legitimate health or safety objective, especially in light of extensive pre-market requirements that cosmetics imported into China were already subject to. The EU concluded by noting that the rapid implementation of the measure, without prior notice, or possibility for importers and producers to adjust, had led to significant trade disruptions. The EU asked China to suspend implementation of the Notice, pending a thorough consultation with the cosmetics industry, notification to the TBT Committee, and the provision of a sufficient implementation period of at least six months.

2.29. The representative of the United States shared the concerns voiced by the EU with the reinterpretation of the Notice that resulted in a requirement to show that the cosmetic was manufactured and sold in the country of origin. The US asked China to immediately suspend the implementation of this new interpretation for at least six months. The US also asked China to notify this new interpretation to the WTO so as to allow Members to provide written comments, and to take such comments into account in accordance with TBT obligations and the decisions and recommendations of the TBT Committee. The US added that it had already submitted comments on the new Chinese interpretation, and asked China how it planned to take these comments into account. The US representative rejected the notion that imported products were being used to test new ingredients not used elsewhere on Chinese consumers, asserting that cosmetics products manufactured in the US were already required to comply with stringent US regulations and to undergo extensive mandatory testing and assessment programs by Chinese authorities. Noting that the sudden implementation of the new interpretation, without prior notice, had already impacted US companies and caused the rejection of hundreds of applications, the US asked China to clarify how the new interpretation enhanced the safety of Chinese consumers.

2.30. The representative of Canada supported the views expressed by the EU and US and noted that the new interpretation contrasted with China's previously accepted interpretation, whereby the certificate of free sale was only required to state that the cosmetic product was permitted to be sold in the country of origin or manufacture. Given that foreign cosmetic manufacturers were forced to provide proof of manufacture and sale in the country of origin, while domestic Chinese manufacturers were exempt from pre-market registration, Canada complained that the additional registration level would cause significant delays for new product launches and increase costs for importers, thus resulting in preferential treatment for domestic manufacturers. Canada called upon China to review its new interpretation.

2.31. The representative of China noted that the concerns pertain to CFDA no. 191, internal notice of 2014, notified as G/TBT/N/CHN/821, which was issued to reiterate Articles 3 and 4 of existing

provisions for the administration of cosmetics application acceptance. As there were no new requirements in the notice, she argued that it had little influence on trade.

2.2.1.8 Ecuador – Ministry of Public Health Executive Decree (Agreement) No. 00004522 amending the Sanitary Regulations for the Labelling of Processed Foods for Human Consumption (G/TBT/N/ECU/19/Add.1 and G/TBT/N/ECU/19/Add.4)

2.32. The representative of the European Union raised concerns over the decree, which imposed nutrition food labelling obligations such as "high in" warnings and a color-coded warning system. While fully sharing Ecuador's public health concerns regarding the provision of adequate nutritional information to consumers, the EU doubted if the approach taken in the notified draft was the optimal and proportional way to achieve its objectives of consumer information and welfare. The EU asked Ecuador if it had considered less restrictive alternatives that encouraged the consumer to read the contents of sugar, fat and salt on the products in question and make an informed choice. The EU noted that the consumption of limited quantities of products high in sugar, fat or salt could be part of a healthy diet.

2.33. Recalling the CODEX Guidelines on Nutrition Labelling (CAC/GL 2-1985 CODEX), the EU pointed out that no nutrient thresholds had been established by CODEX for the nutrients targeted by the Ecuadorian legislation. While recognising that for certain nutrients there was evidence of an association between their excessive intake and the risk of developing a disease or disorder, the EU asserted that there was no scientific evidence suggesting an identifiable threshold above which the risk existed, and that risk increased rather continuously when the nutrient intake increased above recommended levels. The EU said that "high in" warnings, such as those proposed by the Ecuadorian legislation, were not foreseen by the applicable CODEX guidelines on nutrition labelling and thus risked stigmatizing some foods which, when consumed in moderation, could, in fact, be part of a healthy diet. The EU recalled that, according to CODEX guidelines, only factual information was to be provided in nutrition labelling, such as the energy value and the amounts of protein, fats, sodium and total sugars. Recalling Article 2.4 of the TBT Agreement, the EU stated that Ecuador's departure from these internationally recognised practices would have a significant impact on foreign manufacturers, who would need to adapt their packaging for the Ecuadorian market only.

2.34. The EU was also concerned: (i) that the Executive Decree was never notified; (ii) that Ecuador had belatedly notified its technical regulation on food labelling under G/TBT/N/ECU/19 Add. 4; (iii) that Ecuador had not provided time for comments; and (iv) that the new technical regulation would enter into force already on 29 May 2014. Recalling the obligations under Articles 2.9 and 2.9.4 of the TBT Agreement, the EU asked Ecuador to: (i) allow sufficient time for comments on the notified measure; (ii) take such comments into consideration; and (iii) suspend implementation of the measure with a view to providing at least 6 months for companies to adapt to the new requirements.

2.35. The representative of the United States shared Ecuador's concerns with the rising of obesity rates and the need for regulatory policies that can improve citizens' health. The US understood the amendments of the existing regulation to be technical regulations, as they included new requirements for mandatory Front-of-Pack (FOP) icons and advisory statements for pre-packaged foods. Noting that Ecuador approved a Final Executive Decree on 15 November 2013, and that the measure became effective through publication in the Official Gazette on 29 November 2013, the US sought clarification as to whether compliance for all covered products was required as of 29 November 2013. The US understood that Ecuador had failed to undertake any public consultation with domestic stakeholders, or WTO trading partners, and asked Ecuador how it intended to fulfil its WTO obligations on notice and comment. The US said that technical guidance on how to implement the requirements was also needed by industry. In this respect, it asked Ecuador to explain how previously issued guidance from Ecuador's national standardization body applied to new requirements of INEN 1334-1, INEN 1334-2, and RTE-022. The US was also concerned that these labelling changes would require the redesign of all processed food labels specifically for consumers in Ecuador, representing a large cost to manufacturers. The US asked Ecuador to articulate how it had determined that the proposed labelling would be used and understood by Ecuadorian consumers. Referencing Article 28 of Ecuador's revised sanitary registration requirements, the US also asked Ecuador to confirm that the new "traffic light" icons and health advisory statement would not necessitate reapplication for sanitary registration.

2.36. The representative of Brazil shared the concerns raised by the EU and the US.

2.37. The representative of Ecuador noted that the Ministry of Public Health had put forward its regulation on labelling of food products for human consumption in order to combat cardiovascular disease and diabetes, which were among the primary causes of mortality and morbidity in Ecuador. He noted that the Ecuadorian Standards Institution accepted the regulation through modification RTE-022, which had been notified to the WTO on 11 March 2014. The amendments to the regulation included a grading system describing whether salt, sugar, and fat were contained in high, medium, or low quantities, as well as a requirement for labels indicating the presence of any transgenic content or sweeteners. Noting that several parties had expressed concerns with the technical regulation, Ecuador explained that many of these concerns had been addressed through the subsequent amendments. For example, Ecuador had decided to include conformity assessment certification equivalent to the manufacturer's statement. Further, while the date of entry into force of the measure was June 2014, until then Ecuador was still accepting inputs from stakeholders and the relevant agencies were, accordingly, discussing appropriate adaptations to the measure. Ecuador said that these adaptations would be notified through normal channels, and that it had considered the pros and cons in the production lines of all companies, both domestic and foreign, as to design an appropriate implementation timeframe.

2.2.1.9 Ecuador – Cosmetic products (G/TBT/N/ECU/111 and G/TBT/N/ECU/116)

2.38. The representative of the European Union raised concerns regarding Ecuadorian Technical Regulation 93 on Cosmetics Products, which had been notified twice: first through normal procedures, on 19 November 2013, and subsequently on 22 November 2013, under the urgency procedure with immediate entry into force. Recalling Articles 5.6.2 and 5.6.4 of the TBT Agreement, the EU asked Ecuador to explain why the initial notification needed to be transformed into an emergency notification, therefore not providing sufficient time for comments and not leaving time for companies to adapt. The EU stated that the technical regulation established certification requirements which were impossible to fulfil, as there were no accredited laboratories which could perform the requested certifications. The application of the requirements had resulted in a total blockage of cosmetic product exports to Ecuador for several weeks.

2.39. The EU also welcomed recent amendments to the technical regulation that Ecuador had adopted on 30 January 2014 and that, among others, allowed for a system of conformity self-declaration complemented by a system of notification and registration. The EU recalled that its own Cosmetics Regulation was based on the principle of manufacturer's responsibility for safety and on regulation compliance through national competent authorities taking responsibility for in-market controls. The EU said that there was no pre-market approval system for cosmetics placed on the EU market.

2.40. Referencing Article 2.10.1 of the TBT Agreement, the representative of Chile asked Ecuador to highlight the specific emergency problems that justified the emergency notification of the Ecuadorian measure on 22 November 2013, in particular given that the cosmetics at issue were low-risk products. Referencing Article 2.9 of the TBT Agreement, Chile also drew attention to the need for minimum comment and implementation periods. Chile also considered Ecuador's measure to be more trade restrictive than necessary (Article 2.2 of the TBT Agreement). Chile requested clarification on specific provisions of the regulation, such as the requirement for imported products to have a certificate produced by accredited bodies, with the accreditation recognized by the OAE or another body set out by the conformity assessment law of Ecuador. However, Chile was not aware of any accredited laboratories for cosmetics in Ecuador and noted that accreditation in Ecuador took at least six months. This rendered the marketing of cosmetic products unfeasible as conformity assessment certificates were required to be issued before marketing. Chile also highlighted the importance of providing an adequate timeframe for implementation, and stated that the timeframe of 80 days following registration was insufficient for compliance with the requirements.

2.41. The representative of Korea joined the concerns of the EU and Chile regarding the Ecuadorian measure. While respecting Ecuador's efforts to protect consumer safety, Korea was nonetheless concerned that Ecuador did not notify the technical regulations to the WTO, nor did it provide a comment period prior to entry into force, as required by Article 2.9 of the TBT Agreement. Ecuador had instead notified the revised technical regulations for cosmetic products in accordance with Article 2.10 of the TBT Agreement. Korea asked Ecuador what was the urgent

circumstance, as stipulated in Article 2.10 and 2.12 of the TBT Agreement. Korea also asked Ecuador to offer sufficient time for comment and to provide a grace period of greater than 6 months prior to implementation of the regulations.

2.42. The representative of Brazil shared the concerns raised by the EU, Chile, and Korea.

2.43. The representative of Ecuador noted that INEN 093 had its basis in Decision 516 of the Andean Community on the harmonization of legislation concerning cosmetics. Nevertheless, Ecuador acknowledged that some difficulties had arisen for traders in the implementation of the measure. Following consultations with the cosmetics industry and personal hygiene products industry, Ecuador stated that efforts were made to implement mechanisms that made it easier to market cosmetics on the Ecuadorian market. Ecuador added that the Ecuadorian Institute for Standardization had already made changes for the proper implementation and operationalization of INEN 093. These changes included the opportunity to present a certificate of conformity corresponding to a manufacturer's declaration, in view of the adaptation time required for accreditation for certifying bodies. Ecuador felt that this was a satisfactory solution to the issue of not having had appropriate accredited laboratories.

2.2.1.10 Russian Federation – Safety of products for children and adolescents (G/TBT/N/RUS/29)

2.44. The representative of the European Union raised concerns over the draft amendments, noting firstly that the general ban on the use of artificial or synthetic materials in the lining of footwear for children and adolescents had been replaced in the new regulation by a ban on "artificial or synthetic leather". While the EU welcomed the abolishment of the general ban, it worried that the new regulation was open to misinterpretation. Citing the established International Council of Tanners definition of leather, the EU asked for clarification regarding how "artificial or synthetic leather" was defined for the purposes of the new regulation. The EU also considered the limits set by the measure on materials used in products for children and adolescents to be an obstacle to the use of the latest technologies in children's footwear. It also considered the wide range of labelling and marking requirements included in Article 9 of the regulation to be excessive in comparison to that required to be provided to the consumer. The EU invited Russia to consider limiting mandatory labelling requirements to only absolutely essential elements, such as the composition of the product, with other information at the discretion of the producer or distributor.

2.45. With respect to changes to required conformity assessment procedures, the EU noted that the technical regulation allowed for compliance to be demonstrated through certificates of conformity or declarations of conformity, depending on the product. As the EU considered textile, clothing, leather and footwear to be low-risk products, it argued that compulsory third party conformity certification created an unnecessary barrier to trade. The EU asked Russia to clarify the testing requirements for both certificates of conformity and declarations of conformity, as well as the role to be played by accredited laboratories. Finally, the EU stressed that its concerns related to technical requirements and conformity assessment procedures were the same with regard to the Customs Union technical regulation on safety of light industry products, notified as G/TBT/N/RUS/31 on the same day as G/TBT/N/RUS/29. In both cases, the amendments were to enter into force no later than October 2014, while the basic texts of the technical regulations were to enter into force on 15 February 2014 and 1 July 2014, respectively. The EU said the transition period could cause market uncertainty with respect to which requirements applied, and asked for Russia to confirm the implementation dates of the amendments and of the preceding provisions they replaced.

2.46. The representative of Norway noted that Norway shared many concerns raised by the EU.

2.47. The representative of the Russian Federation stated that the concerns of the EU and Norway were being reviewed, and that final comments would be provided later in writing. He noted that the original technical regulation entered into force on 1 July 2012, and that economic operators were given a transition period that expired on 15 February 2014. The implementation of this technical regulation, in practice, had revealed the need for liberalization of certain requirements of the measure, and that resulting amendments to the technical regulation were developed and notified pursuant to the TBT Agreement. Public hearings on the draft amendments were completed in March 2014 and comments of the interested parties were in the process of being reviewed.

Procedures for introducing amendments to technical regulations were very similar those for the development of the technical regulation itself. Accordingly, the Russian Federation foresaw the amendments being adopted not earlier than September 2014 and their entry into force occurring around March 2015. Until then, the current version of the technical regulation would be applied.

2.48. The representative of Russia also noted that some of the EU comments were not related to the amendments, but to the original technical regulation. With respect to the point made on the stringency of the safety requirements, he drew attention to the fact that the regulation in question covered products both for children and adolescents, while a separate technical regulation with more liberal requirements existed to cover products used by adults. He also emphasized that the requirements included in the technical regulation on products intended for use by children and adolescents were relevant and necessary for ensuring the achievement of the objective of protecting their safety and health, and that these requirements were based on sound scientific justification. With regard to the international standards mentioned by the EU, he stated that these were included in the list of international standards attached to the technical regulation, which meant that compliance with such standards indicated compliance with the relevant provisions of the Russian technical regulation. He also explained that the labelling requirements in the original technical regulation were mandatory and were established to avoid misleading consumer information. Making reference to paragraph 1 of Article 9 of the technical regulation, the Russian representative noted that labelling requirements can be met by various methods, such as placing the label on the product itself, by attaching the label to the package of the product (or group of products), or by inserting a card accompanying the product. Furthermore, with regard to the marking of products with a sign of distribution in the market of member states of the customs union, he stated that the requirement was mandatory and represented compliance with the requirements of the original technical regulation. Finally, with respect to other comments, Russia noted that these would be reviewed and formal comments would be forthcoming.

2.2.1.11 Ecuador – Certification of Ceramic Tiles II (G/TBT/N/ECU/31/Add.4)

2.49. The representative of the European Union relayed her delegation's concerns with the latest revision of the Ecuadorian technical regulation on ceramic tiles, which, according to the EU, established stringent marking, packaging and certification requirements, but was only notified as a fourth addendum to the initial notification , thus denying other WTO Members the opportunity to formally submit comments. In terms of substance, the EU expressed concern with the measure's marking requirements, including the intention to establish a marking for every tile which would include the abrasion level or symbol of use. The EU argued that this was not consistent with the marking requirements of ISO 13006, which allowed such information to be made available on the packaging. The EU invited Ecuador to consider the option of providing information in accompanying documents when it was not possible to include it on the package itself. The EU also noted that the revised regulation also required the importer's name and address to be marked on the product or on each package. The EU similarly invited Ecuador to allow this information to appear in a document accompanying the product. With regard to conformity assessment procedures, the EU observed that Article 7.1 of the notified draft seemed to require that every single lot - irrespective of the quantity (or every single shipment), would have to be sampled and subsequently tested and certified. The EU asked if this interpretation of Article 7.1 was correct and if so, whether the certificate of conformity required by the Ecuadorian measure would have to be based on the testing of every single lot or shipment. If this were the case, the EU also requested to know the rationale for imposing such strict third party certification requirements. Recalling Article 5.1.2 of the TBT Agreement, the EU asked Ecuador to consider less burdensome conformity assessment procedures for ceramic tiles, such as tests made by product type rather than sampling of every lot.

2.50. The representative of Brazil shared the concerns of the EU and noted that Brazil would be following the case with interest.

2.51. The representative of Ecuador noted that the technical regulation RTE INEN 033 entered into force on 7 October 2008 as a binding requirement for ceramic tiles of domestic or imported origin marketed in Ecuador. He elaborated that according to the information provided by the Ecuadorian Institute for Standardization, the regulation mandated compliance with certain requirements based on international standards such as ISO 13006. The regulation required demonstration of conformity through the presentation of a certificate of conformity issued by an accredited body or one that had been designated in the country. To this end, accreditation was provided by the Ecuadorian accreditation body for the Spanish Association for Standardization and

Certification (AENOR), which was operating in Ecuador. Nevertheless, Ecuador had made a number of modifications to the measure in response to comments received from several parties. These changes included allowing marking to be done on the packaging and allowing the symbol of classification of the tile to be indicated on the back of the tile. With regard to conformity assessment, the changes included recognition of a testing report for one year following the production of the lot being certified. Ecuador concluded by noting that these changes had been in effect since 13 March 2014.

2.2.1.12 France – Recycling Triman Mark: "Draft Decree on a common set of symbols informing the consumer about recyclable products subject to a system of extended producer responsibility associated with waste sorting instructions" (G/TBT/N/FRA/153)

2.52. The representative of the United States recalled that it had submitted comments on the measure on 23 January 2014, and provided background on the measure, including its role in following up on the 2007 "Grenelle Framework" for the Environment that had called for the creation of a common set of symbols for recyclable products marketed in France. The planning law for the implementation of the "Grenelle Framework" had also called for the harmonization of symbols and waste sorting instructions. The US raised several questions and concerns with respect to the measure. First, the US observed that the scope and implications of the requirements were extremely broad. All recyclable products and packaging were to be required to display the "Triman" logo, and the logo was to be placed next to existing environmental logos such as the "Green Dot" logo. In addition, the logo was required to be displayed on secondary recyclable packaging. The US inquired as to the degree that France had considered the implementation costs of the requirement, which it viewed as disproportionately high in light of the stated policy objectives of simplifying waste sorting activities, and increasing the recycling rate in France. The US also asked how requiring that most products be labelled solely for the French market was compatible with Articles 34 and 36 of the EU Treaty, given that the measure was additional to the "Green Dot" program. It was the view of the US that the measure would effectively block free movement of trade within the EU for products that were legally labelled and traded within the rest of the single market.

2.53. The US was also concerned that there was currently no harmonized approach to sorting waste in France, with some regions and municipalities much more advanced than others. In the least advanced regions, where there was no provision of different waste bins to sort household waste, the US questioned the relevance of giving sorting instructions to the consumer. The US asked whether the Government of France had consulted with producers and manufacturers on alternative options that would be less costly while still increasing rates of recycling. It proposed, for example, that France could achieve the same policy objective by developing a consumer education program with a systemic long-term impact on recycling habits without negatively impacting trade. While the US was pleased that glass was specifically exempted from the scope of the proposal in the law published on 3 January 2014, it understood that other packaging, including outer packaging and aluminium and plastic closures, would still be subject to the logo requirement. From a practical standpoint, the US was unclear on how companies would be able to comply with some of the requirements. It asked, for instance, if a logo would be required to be included on the product's closure, and if this were not possible, what other provisions of logo placement would be required. The US asked clarification about at what point in the supply chain the labels could be affixed: in the country of origin or in a bonded warehouse? The US also asked for clarification on where the logo was required to be placed and how large the logo was required to be. Given its practical concerns and the potential disruption to international trade, the US encouraged France to allow further comment and consideration of the proposal prior to implementation.

2.54. The representative of Canada acknowledged that the proposed labelling scheme for products was based on environmental considerations, but was nonetheless concerned that the Decree could create unnecessary obstacles to international trade and would not achieve its environmental objective. Canada was of the view that environmental and safety labels on products should be clear and comprehensible for the consumer. It stated that internationally developed and recognized symbols for recycling of products, such as the "Green Dot" recycling logo and "Möbius" recycling marker, had been used effectively for many years. Bearing in mind that many products also displayed other marks, including safety marks and certification stamps, Canada worried that the addition of another recycling mark could dilute the effectiveness of safety and environmental labels for consumers who could become overwhelmed by a surfeit of information for their review. Canada was also worried that consumers could become confused as to why multiple recycling

symbols equivalent in meaning were present, and inferred that France's proposed mark could thus be misleading. Canada argued that the application of the "Triman" mark could result in significant cost increases for products sold in France, particularly those from small and medium sized enterprises (SMEs). Canada added that some companies could respond to the requirement by increasing packaging size to accommodate this new label, thus inadvertently defeating the purpose of environmental protection. Canada concluded by noting that it was unclear whether the principle of mutual recognition of other recycling marks from other EU member states extended to internationally developed and recognized recycling marks that were used by some of those member states. Citing most favoured nation obligations under TBT Article 2.1, Canada sought clarification as to whether France would accept products bearing recycling marks used by other EU member states in lieu of the "Triman" mark from WTO Members who were not EU member states.

2.55. The representative of New Zealand recalled that it had submitted comments on the draft measure to the French Ministry of Ecology and Sustainable Development raising concerns relating to the implementation of the draft measure, and that a number of its concerns had been alleviated through subsequent discussions with this Ministry. However, it remained concerned about the fracturing of recycling labelling schemes within the EU, particularly when there were several schemes that overlapped in scope and purpose. Divergences from a common standard would continue to increase costs for exporters. New Zealand thus requested for other internationally recognized recycling labels to be recognized in the French scheme.

2.56. The representative of the European Union stated that the proposed decree was intended to increase the amount of recycled products and reduce the number of products mistakenly put into recycling bins by simplifying the sorting process. It added that it was seeking to meet environmental goals, and that despite the presence of a complete industrial system for waste management, French recycling performance was still in need of improvement. In view of the multiplication of symbols that could impact the effectiveness of waste sorting on the whole, the EU representative asserted that the "Triman" marking provided the consumer with clear information as to which products should not be disposed of in household waste bins. She referred to a study from the French Agency for the Environment and Energy Management (ADEME) that had been carried out prior to the drafting of the legislation in question and that had been published in March 2010. This ADEME study underscored the need for harmonized symbols so as to improve consumer understanding and simplify the sorting of waste. The ADEME study also analysed a number of constraints concerning the marking on recycling recommendations, and this analysis was geographically broad and included consideration of impacts on trade. In this respect, the French draft measure was part of a broader initiative that included launching a national information campaign on waste sorting and recycling. In addition, this draft had been tested on SMEs to assess impacts and receive proposals for alternative regulatory measures. Further, the French draft measure had a mutual recognition clause allowing for shared symbols that were endorsed by another EU member state as long as the symbol fully informed the consumer that recyclable products could be recycled and sorted. France had no intention to extend this provision at the time. Finally, with respect to the questions from the US, she noted that the draft stated that if there were any difficulty with the regulatory criteria in setting up the symbols, then the symbols could be affixed to an attached sheet or the packaging. As the symbol was intended for consumers, it was required to be affixed prior to the product's placement on the market. The symbol could be affixed by either the producer or the importer.

2.2.1.13 United Kingdom – Generic tobacco labelling

2.57. The representative of Cuba expressed concern regarding the consistency of the proposed measure with the WTO Agreements, in particular the TBT and TRIPS Agreements. It also requested the UK to abstain from any tobacco plain packaging legislation until the WTO disputes lodged against Australia's plain packaging measures had reached a conclusion and the results could be assessed. Cuba's full statement is contained in G/TBT/W/379.

2.58. The representative of Malawi aligned itself with the position taken by Cuba. Although Malawi recognized the sovereign right of the UK to implement measures to protect the health and welfare of its citizens, it was of the view that the UK should engage in only those practices that were the least trade-restrictive possible. It did not believe that the UK measures were scientifically-based in terms of achieving the stated policy goals. Malawi was particularly concerned that at a time when a relevant dispute was going through the dispute settlement process, the UK was continuing to

take steps towards implementing plain packaging measures. Malawi asked the UK to put such measures on hold, and aligned itself with Cuba on this point.

2.59. The representative of Nigeria said that her delegation shared the concerns expressed by Cuba and Malawi.

2.60. The representative of Honduras echoed the concerns of Cuba and Malawi. As Honduras had mentioned in other plain packaging cases, it was particularly concerned with the coherence of the measures with the TBT and TRIPS Agreements. While Honduras agreed that it was important to protect human health, it viewed the proposed measures as more trade restrictive than necessary. Honduras recalled that in September 2013, a group had been formed in the OECD to examine the situation in Honduras with regard to the plain packaging measures introduced by Australia. Honduras emphasized that it did not question Members' rights to adopt measures to protect human health, but only insisted that such measures should be based on scientific proof and should not be more trade restrictive than necessary. Honduras argued that the measure in question not only lacked basis in scientific proof, but was also more trade restrictive than necessary and damaged intellectual property rights, which were crucial for economic development. Honduras asserted that plain packaging had thus far failed to achieve desired objectives, and recalled a recent KPMG study that showed that illegal tobacco trade in Australia had increased by 3.2% since the introduction of the generic packaging requirement in the country. Honduras urged the UK to wait until the conclusion of the dispute settlement process against Australia initiated by Ukraine, Dominican Republic, Cuba, Indonesia and Honduras before moving ahead with its own measure.

2.61. The representative of Nicaragua said that his delegation shared the concerns raised by other Members with plain packaging requirements for tobacco products. Nicaragua recalled that the UK had announced in July 2013 that it would wait for the conclusion of the WTO disputes concerning Australia's plain packaging legislation before implementing its own similar measure. Nicaragua pointed out, however, that the UK Department of Health had nonetheless proceeded with a study assessing the feasibility of implementing plain packaging for tobacco products in the UK. As a tobacco producing and exporting country, Nicaragua stated that it had substantial concerns with the negative trade impact of plain packaging measures, in particular to small tobacco producing and exporting countries, like Nicaragua. In this respect, he noted that Nicaragua had approximately 23 tobacco products for export and its tobacco industry provided stimulus for its tourism industry. Nicaragua worried that plain packaging measures were not compliant with WTO rules, in particular those in the TBT and TRIPS Agreements. For instance, these measures were more trade restrictive than necessary and lacked scientific grounding and were thus not in accordance to Article 2.2 of the TBT Agreement. Nicaragua expressed general concern over the proliferation of plain packaging proposals at the same time that developing countries were in the process of bringing related cases to the DSB, or acting as third parties in such cases. Nicaragua urged Members considering plain packaging measures to refrain from doing so until there was a clear conclusion from the DSB on this issue.

2.62. The representative of Guatemala stated that it was not clear how plain packaging regulations would achieve the legitimate policy objectives of discouraging tobacco use and promoting public health. Guatemala echoed previous concerns over plain packaging measures, and exhorted the UK to consider less trade restrictive measures.

2.63. The representative of New Zealand lent support to the UK's attempt to introduce controls over the packaging of tobacco products. She recalled that in New Zealand, smoking is the single largest cause of preventable death and disease. WTO Agreements, including the TBT Agreement, did not prevent Members from taking legitimate measures to protect the health of their citizens and included appropriate flexibilities to allow them to regulate accordingly. New Zealand was determined to continue to take the public health threat of tobacco consumption very seriously. New Zealand noted the existence of an extensive body of international research and scientific studies establishing that plain packaging, as part of a comprehensive tobacco control program, could contribute to the objective of improving public health.

2.64. The representative of Norway emphasized Norway's support to UK's efforts to combat the tobacco epidemic, and said that it was well within the right of WTO Members to adopt measures necessary to protect public health insofar as they were consistent with the WTO Agreements. Norway recalled that plain packaging of tobacco products was the recommended measure under the Framework Convention on Tobacco Control (FCTC). It was the opinion of Norway that the FCTC

and the relevant WTO Agreements were mutually supportive, and that it was possible to introduce measures for the regulation of tobacco products in line with both sets of obligations.

2.65. The representative of Australia registered its support for the decision by the UK to consider legislation for mandatory plain packaging of tobacco products, and looked forward to supporting the UK as they developed their own plain packaging measures. Australia reiterated its position that Members had the right to implement measures necessary to protect public health while complying with relevant international treaty obligations, including the TBT Agreement. Australia stated that its plain packaging measure was a legitimate public health measure, and that it stood ready to defend the measure in dispute settlement proceedings. Australia argued that it was inappropriate for complainants in these proceedings to use them as justification for halting the implementation of the UK's measure, particularly when these same complainants were simultaneously delaying the proceedings in question.

2.66. The representative of Canada stated that Canada continued to follow with interest ongoing international developments in the regulation of tobacco products and how such measures interacted with both international trade and public health. Canada noted that it had been a pioneer in plain package labelling requirements for tobacco products, and it considered such requirements to be a core component of the right to regulate in the interest of the Canadian public.

2.67. The representative of the European Union acknowledged that the British government was currently considering the possibility of introducing plain packaging for tobacco products, but stated that there was at the time no legislative proposal in this regard. The EU therefore considered any discussion in the TBT Committee on the matter to be premature.

2.2.1.14 Colombia – Steel (G/TBT/N/COL/200)

2.68. The representative of Turkey noted that Turkish exporters had experienced delays of approximately thirty days as a result of detailed inspections carried out by the Colombian Customs Authority. Turkey asked Colombia to provide information regarding the rationale, legal basis, and means of compliance with the inspection procedures. Turkey also drew Colombia's attention to its 20 September 2013 notification of a new draft regulation for plain and deformed steel wire and electrically welded mesh products. Turkey noted that on 2 October 2013 it had sent an email to the Colombian Enquiry Point requesting further information regarding the changes to be introduced by the draft regulation, and that Colombia had informed that an English text of the draft regulation was not available. Further, Turkey's questions regarding the existing requirements and proposed changes for steel import procedures remained unanswered. Recalling Article 2.2 of the TBT Agreement, and citing the urgency and importance of the issue to Turkish steel exporters, Turkey asked Colombia to provide the requested information in a timely and cooperative manner.

2.69. The representative of Colombia responded that his delegation was not able to provide a concrete response due to the fact that the concerns were introduced to the TBT Committee meeting at the last minute. Colombia was nonetheless familiar with the nature of the concerns due to related bilateral consultations, and promised to send these concerns to its relevant authorities requesting a prompt response.

2.2.1.15 Egypt – Bottled water

2.70. The representative of Turkey noted that Turkish bottled water exporters were concerned over their inability to obtain the necessary import permission from Egypt's Supreme Committee for Water. Turkey mentioned that Egyptian authorities gave two reasons for this: (i) that bottled water could not be imported into Egypt as periodic control of its source could not be maintained based on Egyptian Standard No. 2007/1589; and (ii) that bottled water could only be imported from producers based in EU member states that had applied the HACCP system. The Turkish representative noted that his delegation had sought to resolve the issue by seeking additional information on Egyptian requirements and procedures relating to bottled water, and that on 23 June 2013 Turkey had received an email from the Egyptian Enquiry Point stating that Turkey would soon be provided with further information on Egyptian Standard No. 2007/1589, following the revision of mandatory Egyptian food product standards in line with "Codex Standard 227-2001" and "WHO Guidelines for Drinking Water Quality, 2011". Turkey noted that it had not however yet been provided with this information. Turkey expressed its opinion that Egypt's

treatment of imported bottled water was not in compliance with Article 2.1 of the TBT Agreement, nor with relevant articles of the GATT. Turkey added that Egypt's implementation of relevant technical regulations was more trade restrictive than necessary, in violation of Article 2.2 of the TBT Agreement. Emphasizing that the situation constituted a genuine hindrance to market access into Egypt, Turkey requested Egypt to bring its legislation and implementation into compliance with the principles and rules of the WTO and TBT Agreements.

2.71. The representative of Egypt took note of the concerns raised by Turkey and asked that a written version be provided so it could be sent to capital for consideration.

2.2.1.16 Ecuador - Draft Technical Regulation of the Ecuadorian Standardization Institute (PRTE INEN) No. 103: "Sugar confectionery" (G/TBT/N/ECU/123)

2.72. The representative of Panama recalled that it had recently submitted to the Ecuadorian delegation its comments regarding eight sections contained in the proposed technical regulation PRTE INEN 103. Panama was particularly concerned with the testing periods for conformity assessment of confectionary products, and asked Ecuador to extend the testing period time-frame given the difficulty in finding laboratories able to provide the required documentation, and to extend the time-frame for implementation of the legislation. Panama made these requests in order to achieve accreditation through certifying bodies in various countries in accordance with Ecuador's standards. It also requested for additional regulatory references to be included in the requirements contained in NTE INEN-CODEX 192 concerning colourings, flavourings, preservatives and other additives used in the preparation of confectionary products, particularly NTE INEN 2074-2012 ("Food Additives Permitted for Human Consumption"). This would imply that the use of additives not listed in NTE INEN 2074-2012 would be permitted as long as documentation were provided demonstrating authorization for use in FDA regulation CFR 21 or in EU Directives related to food additives, the reliability of which, Panama said, was well-known. Panama argued that the non-inclusion of this clarification in Ecuador's proposed regulation would constitute a significant alteration to the current landscape of permitted food additives, requiring manufacturers to reformulate their products and request new health registrations in the country. Panama concluded by recommending that Ecuador include international references concerning authorization of the raw materials used in packaging, packing, and wrapping of confectionary products.

2.73. The representative of Ecuador took note of Panama's concerns, which, he said, would be given due consideration.

2.2.2 Previously Raised Concerns

2.2.2.1 European Union – Registration, Evaluation, Authorization, and Restriction of Chemicals (EU-REACH) (G/TBT/N/EU/131) (IMS ID 88)

2.74. The representative of Indonesia reiterated his delegation's previous concerns on a number of issues, including the fact that the measures were complex and burdensome, and created additional costs for Indonesian exporters, including SMEs.

2.75. The representative of China raised a concern on the Draft Commission Regulation amending REACH Annex XVII as regards chromium (VI) (hexavalent chromium) compounds. While China appreciates EU's efforts to protect human health, China noted that in the IA report it was indicated that the formation of chromium (VI) in leather and articles of leather can basically be reduced or prevented by the application of two alternative types of techniques: (i) techniques for prevention of the formation of chromium (VI) in chrome tanned leather; or (ii) non chrome tanning of the leather. In this respect, China argued that for developing country members, such as China, both alternative techniques were still unavailable. Therefore, if the regulation would be adopted, it would be burdensome and costly for the manufacturers, especially SMEs, from these countries. Further, as a developing country Member, China asked the EU to develop the measures taking into consideration the technical assistance and special and differential treatment provisions Articles 11 and 12 of the TBT Agreement. China said that concrete examples of the application of these TBT provisions would be to postpone the enforcement of the regulation and provide for an additional transitional period for developing Members. China said that while it was cognizant of the risks of hexavalent chromium as well as the importance of protecting human health, it would still

recommend the EU to use other options to tackle that risk, such as using the warning label during the transitional period so as to alert consumers and let them make their own choice.

2.76. The representative of the United States associated herself with the comments from Indonesia, in particular with respect to SMEs, now that REACH was moving towards the registration requirement for low volume chemicals. While the US shared the EU's objectives of protecting its citizens' health as well as the environment from chemical hazards, her delegation still maintained a number of concerns with this measure. For instance, the US was still concerned with the variation of interpretations of the term "Article", both across EU member states and by ECHA (European Chemical Agency). In this respect, she asked the EU to inform what it was doing to promote uniform application and enforcement of this term. The US was also still concerned with the proliferation of nanomaterial registries among EU member states and asked the EU for an update on the work under way on the consideration of options to adapt the date of requirements for nanomaterials in REACH registration dossiers. The US also asked if trading partners would have an opportunity - preferably before the final proposal was sent to the Council and Parliament - to provide comments in the context of an impact assessment on the issue of nanomaterials that the EU was conducting and was expected to complete in the spring of 2014. She also recalled that under the Commission's roadmap for the evaluation of specific substances of very high concern (SVHCs), at the request of the Commission, a EU member state competent authority or ECHA could conduct a risk management option analysis in order to: (i) determine whether regulatory risk management would be required for a given substance; and (ii) identify the most appropriate regulatory instruments to address a concern. The regulatory decision under this process could be to pursue authorization or restrictions to address the concern via legislation or, instead, to take no action. In this respect, the US noted that these types of regulatory management decisions could have a significant impact on international trade and therefore the EU should consider opening up such a process for comments, including allowing for the provision of evidence and data by non-EU stakeholders (such as US industry and NGOs).

2.77. The representative of Australia said that, in light of findings of the Commission's recent review of the REACH, Australia was interested in hearing what practical steps the EU was taking to mitigate the impact of this measure on SMEs.

2.78. The representative of the European Union first referred Members to the responses her delegation had already provided in previous Committee meetings, which were reflected in the minutes of these meetings. With respect to China's specific question on chromium (VI) in leather and leather articles, the EU informed that on January 2012, the Kingdom of Denmark submitted to ECHA a dossier under REACH Article 69.4 in order to initiate the restriction process in accordance to the Regulation. In that dossier it was demonstrated that exposure to chromium (VI) compounds, when contained in leather articles, or articles containing leather parts coming into contact with the skin, posed a risk to human health: it could induce new cases of sensitization and elicit allergic responses. On 8 April 2013, ECHA sent the opinions of both the Committee for Risk Assessment ("RAC") and the Committee for Social-Economic Analysis ("SEAC") to the Commission. Based on these opinions, the Commission concluded that an unacceptable risk to human health arose when chromium (VI) compounds were present in leather articles and articles containing leather parts coming into contact with the skin. The notified draft prohibited the placing on the marked of these articles if they contained chromium VI in concentrations equal to, or greater than, 3 mg/kg (0,0003 % by weight) of the total dry weight of the leather. It also provided for derogation with respect to consumers who wanted to resell a second-hand leather article. The EU explained that this EU-wide prohibition was necessary because cases of chromium (IV)-induced allergic reaction from leather articles containing this compound have been reported all over the EU territory. She also explained that the limit of 3 mg/kg was based on an existing recognized testing method used by manufacturers and enforcing authorities that could be performed without additional investment. In this respect, the EN ISO 17075 standard method was the only internationally recognised analytical method currently available to detect chromium VI in leather, including leather in articles. EN ISO 17075 standard method was also the only internationally recognized analytical method currently available for the determination and detection of the limit of 3 mg/kg of chromium (VI) content in these articles. She further explained that limiting the content of chromium (VI) in leather could be obtained by using specific additives in the tanning process. These additives were commercially available from the suppliers of tanning chemicals, and manufacturers of leather might find specific mixtures to make the process easier to handle. Finally, the EU considered that the current one-year transitional period provided under the measure fully took into account the typical business cycle of the leather articles covered by the measure. Thus,

for example, for summer shoes that were sold in the spring and summer there would be a one year between supplies.

2.79. With respect to the US' question, The EU noted that the EU's interpretation and implementation of REACH have always been very clear. The EU, in order to increase efficiency of the system, invited competent authorities of its member states to meet regularly under the "Forum for Exchange of Information on Enforcement" (Forum). She explained that the Forum helped spread good practices and highlight problems at the EU level.

2.2.2.2 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) (IMS ID133)

2.80. The representative of Japan expressed concern with Article 10.2 of the revised "Agreement for the Granting of BIS licence", under which only foreign tyre manufacturers were required to provide a bank guarantee of USD 10,000. In this regard, Japan recalled that India had previously explained that the reason why the bank guarantee fee was not required for tyre manufacturers in India was because they were under the supervision of the BIS. However, tyre manufacturers which were located outside India also underwent factory audits and obtained certification of tyres. Therefore, in a way, it could also be said that tyre manufacturers outside India were also under the supervision of the BIS. Japan thus considered that Article 10.2 clearly discriminated between Indian and tyre manufacturers located outside India, as the deleted clause 6.3 did before. Japan strongly requested India to amend this provision so that Indian capital and the companies located outside India could have the same condition of competition. Finally, Japan also believed that it was necessary to improve the way of calculating the ISI Marking fee, which was charged for all tyres manufactured in India, as well as those imported into, or exported outside, the Indian Market, even if they were intended to be just exported outside the Indian market.

2.81. The representative of Korea reiterated previous concerns regarding marking fees that appeared significantly unjustifiable and unreasonable and were imposed only on tyres imported to India. Compared to similar marks issued by other countries, these fees were considerably higher for the ISI system. This was, in Korea's view, a significant barrier to trade. He said that most countries in general did not charge marking fees for tyres. Korea urged the Indian authorities to revoke or amend the requirement so that marking fees would be determined on the basis of importing country, not on ISI mark. Finally, he also requested India to repeal the USD 10,000 performance bank guarantee required for foreign tyre manufacturers outside India and to achieve the measure's stated objectives in a non-discriminatory as well as less trade restrictive manner.

2.82. The representative of the European Union said that her delegation remained highly concerned by the fees charged by BIS for each ISI-marked tyre. This royalty fee on the use of the ISI marking has to be paid on the total production of tyres produced and marked with ISI marking, and not only on those which were actually imported into India. The EU asked India to remove the royalty fees, which were extremely burdensome and much more restrictive than necessary, or at least to modify their calculation so as to limit them to tyres which were de facto exported to India. Furthermore, the US$ 10,000 a foreign manufacturer had to deposit as a bank guarantee, and that BIS could use in case of breach of the BIS Agreement, was considered by the EU as a discriminatory and unjustified practice. Pursuant to Article 3.4 of the BIS Agreement, it appeared that liability for the breach of the Agreement could already be exerted on the authorized representative of the foreign manufacturer in India. India was therefore invited to consider removing this provision. Finally, the EU asked India to take the appropriate steps to accelerate the certification process and to consider extending the validity of the licences.

2.83. The representative of India replied that the bank guarantee fee was intended to protect the Bureau of Indian Standards (BIS) from breach on behalf of the licensee during the tenure of the licence, and covered a civil liability that might arise during the period of the licence or thereafter. He said that bank guarantees were prevalent in international trade, specifically with regard to performance of contracts. He also explained that once a tyre was marked with an ISI mark, the liability fell on the agency providing the particular mark, while the possibility of the particular tyre being re-exported back to India could not be excluded. India believed that its overall fee structure was comparable to, if not lower than, those applied by other Members. On the speed of the certification process, he had been informed that BIS labs were managing their workload adequately.

2.2.2.3 India – New Telecommunications related Rules (Department of Telecommunications, No. 842-725/2005-VAS/Vol.III (3 December 2009); No. 10-15/2009-AS-III/193 (18 March 2010); and Nos. 10-15/2009-AS.III/Vol.II/(Pt.)/(25-29) (28 July 2010); Department of Telecommunications, No. 10-15/2009-AS.III/Vol.II/(Pt.)/(30) (28 July 2010) and accompanying template, "Security and Business Continuity Agreement" (IMS ID 274)

2.84. The representative of the European Union requested an update on recent developments regarding security clearance requirements for equipment to be used in telecommunication networks as laid down in the Uniform Access Service Licence Agreement. It posed the following questions: Would the entry into force of the requirements remain postponed until 1 July 2014 (Notice of the Ministry of Communication and IT, dated 28 October 2013)? Would then, during this period, India continue to accept self-certification by equipment vendors carried out by labs of their choice, including foreign labs? The EU was seriously concerned about the requirements for in-country testing that would kick in after 1 July 2014, which, in EU's view, was unnecessary to meet India's legitimate security objectives. This was particularly so given the fact that India's lack of testing capacity and infrastructure could lead to serious testing bottlenecks and delays. India should therefore continue to accept, beyond 30 June 2014, test results from labs appointed by members of the Common Criteria Recognition Arrangement (CCRA) for the purposes of the required security clearance assurance. Additionally, for any aspect not covered by the Common Criteria international standards, foreign labs holding adequate accreditation from signatories to the International Laboratory Accreditation Cooperation (ILAC) or to the International Accreditation Forum (IAF) mutual recognition arrangements (MLAs) should be allowed by the Indian authorities to issue relevant test reports and certificates. Finally, the EU welcomed the efforts of the Indian authorities to ensure that applicable Indian standards were aligned with relevant international standards and other applicable global initiatives in major ICT foreign consortia. The EU in this respect hoped to see further engagement between the Indian authorities and EU IT industry with a view to developing workable testing methods and procedures that would reflect international practice, especially given that this was a globalized sector.

2.85. The representative of the United States associated herself with the EU's comments and said that while her delegation welcomed India's extension for compliance to July 2014, it was nonetheless concerned with the measure, in particular the new license amendment's testing requirement in the telecom sector. The US continued to disagree with India's premise that domestic testing was necessary or sufficient to meet its legitimate security objectives. She said that this testing requirement was all the more difficult to comprehend given that India has recently been certified under the Common Criteria Recognition Arrangement (CCRA) and should therefore be accepting the results of Common Criteria tests conducted outside India. The US, having supported India's CC certification, was, for this reason, particularly disappointed to see no change in the revised license amendment.

2.86. The representative of Japan supported the concerns expressed by the EU and the US.

2.87. The representative of Canada also shared the concerns expressed by the EU and the US and expressed her delegations' view that India's in country security testing regulations for telecoms products would hinder or possibly even shut Canadian exporters out of the Indian market. Canada considered that India should instead allow accredited foreign conformity assessment bodies to test and certify these regulatory requirements thus reducing testing costs and allowing exporters to bring their products to the Indian market more quickly. In this respect, Canada noted the existence of well-established international standards for evaluating the competencies of conformity assessment bodies, particularly ISO/IEC 17025 and ISO/IEC 17065. She recalled that ILAC and IAF MLAs provided for peer review systems to ensure the competence of signatory accreditation bodies. Recognition by India ILAC and IAF MLAs accredited conformity assessment foreign bodies would minimize the negative impact on companies wishing to export to India, while at the same time providing assurance to India that these bodies were competent.

2.88. The representative of India explained that under the measures, in country security certification testing of telecom equipment has been mandated because in this modern age these products were more vulnerable to spyware and malware attacks, which were problems not adequately addressed by the Common Criteria testing given that they were processed-based and not within the security compliance of commercial communications. Additionally, Common Criteria testing did not address the requirements of national security concerns that went much beyond

mere commercial communication requirements and were only limited to IT and IT related products, whereas there were many other network elements in telecom networks for which such testing had no specific standards and testing mechanisms. Telecom equipment standards were governed by 3GPP and 3GPP2 standards, which were a sub group concerning various aspects of the security of telecom products and established the security standards for them. Internationally, different members had different approaches to dealing with the issue of security testing of telecom equipment. In some Members, equipment sourced from specific countries' companies had been banned. Further, in some EU member countries testing was conducted against the domestic standards of those countries. He also confirmed that the timelines for the domestic testing of telecom equipment in India has been extended and would now only be in force as from 1 July 2014. Finally, he said that international standards from ITU, such as 3GPP and 3GPP2, would be considered when formulating and adopting the relevant security standard for the specific network elements.

2.2.2.4 Republic of Korea – KS C IEC61646:2007 Standard for Thin-film Solar Panel (IMS ID 271)

2.89. The representative of the United States reverted to previous interventions in the Committee since June 2010, and continued to seek a resolution to its concerns with respect to market access for US-produced thin-film solar panels. She encouraged Korea to continue the development of a relevant leaching standard through an appropriate working group. She also asked Korea to provide a temporary resolution to the issue pending development of an international standard, based on "standard testing" (not "availability testing"). The US considered this temporary resolution to be important given that it would take several years for any relevant standard to be developed, if one would be developed at all. She asked Korea for an update on its process for providing a certification pathway for the CIGS PVs panels that passed the Korean Test Labs' tests.

2.90. The representative of Korea referred to the last TBT Committee meeting and Korea's suggestion of holding an expert-level dialogue between the two countries in order to discuss more in depth the issue of thin-film solar panel testing method. Korea expressed the hope that this could be a useful opportunity for the two sides to narrow the gap on this matter. He also informed that, following last October 2013 TBT Committee meeting, the certification process for CIGS modules, which had started in July 2013 on a pilot basis, resulted in certifications that were issued in December 2013. The full-fledged certification system had been officially started in 2014. Korea would refer other points raised to their competent authorities.

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

2.91. The representative of the European Union reverted to his delegation's previous request for an update on the state-of-play of the revision of the 1999 Regulation on commercial encryption products by the Office of State Commercial Cryptography Administration (OSCCA). The EU was informed that this revision aimed at making the regulation less strict then the current situation. It would apparently provide, for instance, for the elimination of the current discrimination between domestic and foreign suppliers of commercial encryption products, which had been preventing them from applying for, and obtaining, the relevant certification and approval by OSCCA. The EU appreciated these changes but nevertheless asked for an update on the revision process in terms, for instance, of timeline and modalities for consulting stakeholders. It was the EU's understating that these dossiers were listed in the work programme of the State Council's Legislative Affairs Office for 2014. The EU thus also expected that, at proper stage, TBT notification would be made of the draft revised regulation. The EU's representative also asked for an update with respect to the revision process of the Multi-Level Protection Scheme (MLPS). He recalled that at the last meeting China had explained that this revision had already started with respect in particular to the clarification of the definition of "critical infrastructure". He also recalled, in this respect, that the EU requested that in this revision process a clear distinction be made between IT systems for commercial use and those relevant for national security.

2.92. With respect to information security standard setting practices, the EU further reiterated the need, in compliance with the TBT Code of Good Practice, for more predictability and transparency and for all interested parties to have meaningful opportunities to participate in the development of

standards that support the Chinese regulatory infrastructure for IT security. In this respect, the EU welcomed the fact that draft standards developed by China's National Information Security Standards Technical Committee (TC 260) were increasingly open for public comments. However, these comment periods were normally extremely short. For example, ten particular draft standards recently developed by TC 260 had a public comment period only from 8 to 22 December 2013, thus falling short of the minimum 60 day period enshrined in paragraph L of the Code of Good Practice.

2.93. Finally, the EU reiterated its previous request that China consider basing its national standards on relevant international security standards, such as the "Common Criteria for Information Technology Security Evaluation" (ISO/IEC 15408). He said that security functions were growing in globalized IT products and applications. It was thus critical to ensure interoperability between security functions in products and systems. Given the global nature of these products, countries should avoid fracturing the global digital infrastructure by developing home-grown solutions that were disconnected from global practices.

2.94. The representative of Japan supported the EU's intervention and said that his delegation followed with great interest the various schemes and regulations within China, from the perspective of how they could negatively affect the trade of information security products.

2.95. The representative of the United States supported the interventions by the EU and Japan.

2.96. The representative of Brazil supported the interventions by the EU, Japan and the US. He said that, while Brazil acknowledged the objective of the protection of "essential security interest" as established in the preamble of the TBT Agreement, it was also concerned that the proliferation of independent standards for information security products created uncertainty and could negatively affect exports of telecommunication products and systems used on-board aircrafts. More generally, Brazil was concerned that the measure could result in unnecessary technical obstacles to trade, contrary to Article 2.2 of the TBT Agreement. Even if such measure could contribute to the protection against "cyber-attacks" they could still harm trade flows amongst Members. Brazil asked China to notify the measure to the TBT Committee so as to enable Members to be acquainted with them and make comments.

2.97. The representative of China informed that the "Regulation on Commercial Encryption Products" had been listed in the 2014 Legislation Plan of the State Council of China, and currently the Regulation was being drafted in line with the Legislation Law and Rules on Formulation of Administrative Laws of China. She said that OSCCA would undertake scientific evaluation and public consultations to ensure openness in the legislation process. As for MLPS, she explained that the essence of the "Regulation on Classified Protection of Information Security" was to classify protection on information systems, aiming at safeguarding the basic information network and important information systems so as to ensure national security and public interests. In China, the security of information systems in banking, education, healthcare, transportation and other public utilities was of great importance due to their close relationship with the welfare of Chinese citizens. Therefore, the "importance" of information systems was not necessarily decided by the sensitivity of that industry but rather by the possible damage it could cause to, inter alia, national security, social order, economic development and public interests. In addition, these systems only covered a very limited portion of all the information systems in China. Therefore, in China's view, it was unlikely that it would cause "significant" effect to international trade.

2.2.2.6 China – Provisions for the Administration of Cosmetics Application Acceptance, Cosmetics Label Instructions Regulations and Guidance for the Cosmetics Label Instructions (G/TBT/N/CHN/821 and G/TBT/N/CHN/937) (IMS ID 296)

2.98. The representative of Japan requested China to accelerate the examination of new ingredients as only four new ingredients had been registered since the implementation of the Guidance in May 2011. Japan also considered requirements with regard to safety data on isolated components of plant extracts and fermented solutions as excessive and trade-restrictive. Japan requested China to revise the Guidance, taking into account the practices of safety evaluation of cosmetic ingredients currently taken in many countries, including Japan, the US and the EU, with a view to cosmetic manufacturers being able to register new ingredients without additional processes. In addition, Japan asked China for an explanation on (i) scientific grounds for

evaluating a complex ingredient with a single component; and (ii) the assumed risk on the product safety, when a complex ingredient was evaluated as a complex ingredient without isolation.

2.99. The representative of Korea supported Japan's statement. He noted China's Food and Drug Administration (CFDA) required cosmetic manufacturers to follow additional registration process and submit additional documents when using new ingredients which were not included in the list of existing ingredients. This measure was therefore burdensome for manufacturers because the current "positive list" of the CFDA did not fully include existing ingredients which have been approved with safety and used widespread in many Members. In this respect, Korea welcomed CFDA's intention to expand the list in January 2014. Korea nonetheless suggested the Chinese authorities to follow a "negative list" approach, rather than a "positive list" approach, in order to prevent the use of the ingredients which have been prohibited universally in the world, thus reducing the burden for manufacturers to implement the regulation. Korea also expressed concern with the possibility that China was going to enforce similar regulations for labelling of cosmetics prepared by the two different regulatory bodies. This could lead to overlapping and even conflicting regulatory requirements that could increase unnecessary burden and confusion for manufacturers to comply with the regulations. In this regard, Korea requested the Chinese authorities to harmonize the draft requirements of the CFDA with existing regulations of the Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), which was based on ISO standards.

2.100. The representative of Canada said that cosmetics were fast moving innovative consumer products and access to new ingredients, timely registration and approval was thus critical for the success of new cosmetics on the market. China Food and Drug Administration's (CFDA) burdensome approval and registration process for cosmetic, coupled with the lack of progress in approving new ingredients, was a serious barrier to trade. The creation of a "positive list" negatively impacted the ability of Canadian cosmetic companies to export cosmetic products to China. A "positive list" approach did not ensure an improvement in safety compliance and was redundant with regulation mechanisms already in place. Canada was concerned that the "positive list" approach would, in fact, prevent Chinese consumers' access to safer and more innovative cosmetic products. The current registration process created severe delays in product approvals and raised doubts about CFDA's capacity to manage such a system in a timely and efficient manner. CFDA's intention to define what was "a new" vs. "an existing" ingredient according to a "positive list" risked a sudden characterization of thousands of ingredients that were currently used on the Chinese market as suddenly "new". China's "new ingredient" registration approvals' process decreased competitiveness in the cosmetic industry. Once a company had committed time, money and resources for testing and the application of a "new ingredient", that ingredient would no longer be considered as "new" and be available for use by competitors at no additional cost. Canada was also concerned that domestic cosmetic manufacturers were being able to register "new ingredients" without an additional application process. Further, Canada was deeply concerned that China applied a different registration process for its domestic cosmetics manufacturers than it did for importers. These measures severely impacted Canadian cosmetics exporters. In Canada's view, streamlining the approval process for imported cosmetics and applying to foreigner products the same registration process applied to domestic cosmetic products would create a fair trade environment for the cosmetic industry, consistent with the TBT Agreement.

2.101. The representative of the European Union said that, as indicated in previous meetings, the EU was still concerned with the lack of adequate progress on the approval of new ingredients, and of cosmetic products with new ingredients to be sold in China. Since 2010, only four new ingredients (and one product containing a "new ingredient") out of a total of over 120 applications have been approved in China. During this time, several hundred new ingredients have been introduced safely outside China. The EU appreciated that, following regular technical discussions between the EU and China, much better clarity has been achieved with regard to the ingredients registration process. Nevertheless, the EU considered that this registration process continued to be quite burdensome and needed further improvements with regard to the speed, efficiency and predictability necessary for such a fast-moving and innovative sector. Significant further efforts were necessary to ensure that the registration of ingredients, and of products with new ingredients, increased back to levels comparable to those prior to the introduction of these requirements. The EU therefore asked China for an update on the steps taken to solve the situation. In this context, the EU expressed concern with regard to the recent CFDA "Inventory of used cosmetics ingredients in China", an approach that may result in a large number of ingredients

that were already used in cosmetics sold on the Chinese market, being classified as "new" and subjected to the above-mentioned onerous registration procedure, leading to even more market access delays. Such concerns, she said, were validated by the recently published "Inventory", which omitted some common ingredients that have long been used in products sold in China; other ingredients' names appeared to be based on obsolete versions of the International Cosmetics Nomenclature (INCI), and not the most recent one. Further, she said that the EU had learned that the list would only be used as a reference in order to take stock of ingredients existing in China, but would not be an exhaustive "positive list". The EU asked China to confirm whether this was the case, and, if so, asked for a written notice confirming this fact. Alternatively, if this was not the case, the EU asked China to reconsider its approach. While appreciating the fact that the CFDA published this "Inventory" on its website with a 30-day comment period, the EU also noted no TBT notification appeared to have been submitted to the Committee. The EU therefore requested China to notify the draft Inventory and provide a 60-day comments period, in order to allow interested Members to comment on it.

2.102. The EU further noted that, on 23 January 2014, CFDA published a "Call for Comments" on the "Adjustment of Cosmetic New Ingredient Registration Management", which was subsequently notified to the TBT Committee (G/TBT/N/CHN/1019). This measure foresaw that, once the approval to register a certain new ingredient was granted, it could only be used by the company who applied for registration. Other companies would only be able to benefit from the approval of the new ingredient after a four-year surveillance period has passed. The EU understood that the CFDA considered that this change would help accelerate the registration process by providing more incentives to undertake the registration procedure – which was apparently acknowledged by CFDA to be heavy and, as a result, hampering innovation. She said that the EU was also informed that the adjustment has been proposed with the apparent objective to further enhance safety: by installing a four-year surveillance period with only one licensed user, the CFDA was aimed to avoid wide-scale use of the new ingredient. However, despite the foregoing, the EU failed to understand the rationale of this "adjustment", and thus encouraged Chinese authorities to instead concentrate efforts on simplifying the registration procedure for new ingredients, and bring it in line with international practice thus alleviating this longstanding issue that has hampered cosmetics imports into China since 2010. More generally, the EU expressed its appreciation of the constructive regulatory dialogue between the European Commission's Directorate General for Health and Consumers, and China's Food and Drug Administration (CFDA), which has contributed to gradual improvement and greater understanding on a number of trade issues.

2.103. The representative of the United States associated herself with points made by previous speakers. She reiterated concerns regarding CFDA's June 2011 reclassification of special function cosmetics, and emphasized the virtual standstill in approvals for cosmetics containing new ingredients. In addition to delays in the marketing approval process, China's existing guidelines lacked clarity in specific provisions regarding the application for permission to introduce products with, and for evaluation of, new ingredients for cosmetic products. The US stilled continued to be concerned about the CFDA's creation of a "positive list" of ingredients, and urged China to consider approaches to conformity assessment that were more commensurate with the risks involved, such as post-market surveillance and internationally recognized good manufacturing practices (GMPs). In the US's view, companies should be allowed to demonstrate that ingredients indeed "exist" by means other than appearance on a positive list. The US also echoed the previous EU comments on missing ingredients in, and need of updating of, the list. The US was also concern with the lack of a universal ID number on the list for certain substances, where the substance is only listed in Chinese or where there were questions regarding the translations. In this respect, the inclusion of CAS numbers and/or INCI IDs was critical to ensuring a global understanding of which ingredients were included in the list. Finally, the US asked China about the status of the comments its industry had submitted on these issues.

2.104. The representative of China said that her delegation had been cooperating closely with its trading partners in the implementation of the regulation, including by organizing trainings and consultations with producers and industry representatives and soliciting opinions. As a result, the number of cosmetic products approved by CFDA was increasing annually. For instance, in 2013, the number of cosmetic products approved by CFDA has reached 17,879, a 23.4% rise as compared with 2012. As for the approval of "new ingredients", she explained that the CFDA has issued a "Notice on Matters Relating to Adjustment of Cosmetic New Ingredient Registration Management" ("Exposure Draft") so as to improve the approving process. The notice has been notified as G/TBT/N/CHN/1019. She also said that the "Cosmetics Label Instructions Regulations

and Guidance", which came about in the context of the CFDA's legislative adjustment, might result in new regulations on cosmetics label that would be eventually notified before promulgation.

2.2.2.7 China – Testing and certification requirements for medical devices (IMS ID 143)

2.105. The representative of the European Union recalled her delegation's previous concerns with the ongoing revision of China's Order 276 on Medical Devices, and more generally the regulatory framework applicable to medical devices imported and sold in China. She also asked China for an update on the state of play of the revision of its medical devices legislation, in particular if it already was approved by China's State Council on 12 February 2014 and, if this was indeed the case, how did it address EU's previously expressed concerns. Additionally, if this was the case, the EU expressed its disappointment that this measure has not been notified to the TBT Committee as it was a technical regulation with significant impact on trade. The EU urged China to do so and also provide a sufficient implementation period of at least 1 year between the publication of the revision and its entry into force.

2.106. The representative of China said that, as this measure was still under revision, she would simply refer Members to the parts of the minutes of the previous meetings dealing with this matter.

2.2.2.8 European Union – Draft Implementing Regulations amending Regulation (EC) No. 607/2009 laying down detailed rules for the application of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products (G/TBT/N/EEC/264 G/TBT/N/EEC/264/Add.1) (IMS ID 345)

2.107. The representative of Argentina reiterated his delegation's concern that the EU legal regime granting its member states the exclusive right to use certain traditional expressions in their respective languages was not consistent with the EU's obligations under the TBT Agreement. Both regulations restricted the right of third States to use these expressions in their wine labels, seriously affecting exports of Argentine wines to the EU. These traditional terms constituted indications of quality that fell within the scope of the TBT Agreement and not the TRIPS Agreement. This meant that neither the registration nor the granting of exclusive rights over these terms were appropriate. Argentina was particularly concerned about requiring the registration of these terms when there was not a single and unequivocal definition at the European Union level that provided clear, objective and transparent quality parameters for the use of the traditional terms "Reserva" and "Gran Reserva". On the contrary, he recalled that there were divergent definitions of such terms at the EU level used by producers from different places within the EU along with the definitions applied by exporter countries which, by virtue of bilateral agreements with the EU, were exempted from a registration requirement. His delegation considered this situation amounted to a clear discrimination against Argentina and other countries wishing to place wines in the EU market containing the terms "Reserva" and "Gran Reserva". Such multiplicity of definitions –accepted through different mechanisms - showed that the policy objective of the EU was neither to protect consumers against deception nor the characteristics associated with these terms. Nevertheless, with the objective of finding a constructive solution to overcome the obstacles of the EU regulations, Argentina has been discussing with the EU the parameters for the terms "Reserva" and "Gran Reserva".

2.108. During the substantive procedure, that lasted more than two years (July 2009 to March 2012), Argentina replied all comments and provided additional information to the requested clarifications. As a result, the Argentine dossier was approved by the European Commission's Management Committee for Wine in March 2012. Since that date, and for two years, it has unjustifiably still not been included in the agenda of, nor adopted by, the Commission and published in the EU's Official Gazette. According to the European Commission, an ad hoc group within the DG-AGRI was currently revising the totality of the requests to use these terms, which could have extended the delay of the adoption and publication of the Argentine dossier, even when it had already been approved two years previously. He said that the EU's replies to Argentina's numerous requests for an explanation and estimated date of adoption and publication were unsatisfactory. This situation affected the access of Argentine wines of high quality and differentiated price level to the EU market, thereby placing them at a disadvantage against competitors that could accede to European consumers who preferred wines identified and labelled with such quality. He reminded the Committee that Argentina had tried to obtain a satisfactory

answer from the EU, both bilaterally and at multilateral fora (before this Committee and the World Wine Trade Group), so as to justify this two-year delay in concluding a merely formal step since the approval of the dossier in March 2012. At the last two Committee meetings of June and October 2013, the EU replied that "there were no further updates", while at the meetings of November 2012 and March 2013 the EU replied that "formal adoption of the draft regulation regarding reserve and gran reserve was still pending". He recalled that this particular STC was the third one in the history of the Committee both in terms of frequency (26 meetings) as well as quantity of Members that raised the same concern (13), which supported the protectionist intent given by the EU to this sector to the detriment of wines from other Members. Finally, he again requested the EU to eliminate the unjustified restrictions that harmed Argentina's high quality wine exports by including this topic in the agenda of the College of Commissioners and publishing the relevant regulatory act in the EU's Official Gazette.

2.109. The representative of the United States associated herself with the concerns from Argentina and asked the EU to provide an update on the status of the applications that were submitted by the US wine industry nearly four years ago. She recalled that the US had suppliers that used these traditional terms and that were unable now to ship those products to the EU. The US believed that the EU was creating a barrier to trade for US wines through this lengthy application process. She also recalled that the World Wine Trade Group, on behalf of its Members (Argentina, Australia, Canada, Chile, Georgia, New Zealand, South Africa, and the US) once again reminded the EU of these critical concerns to their respective trade industries in a letter submitted to the EU on 18 December 2013. The US expected a prompt and positive response to this communication.

2.110. The representative of the European Union informed that her delegation took note of the concerns raised by Argentina and the US. However, the EU had no updates on this issue. She referred delegations to the minutes of the previous Committee meetings.

2.2.2.9 Russian Federation – Draft on Technical Regulation of the Customs Union on Alcoholic Products Safety (published on 24 October) (IMS ID 332)

2.111. The representative of the European Union inquired about the status and timeline for adoption of the draft regulation, and recalled certain previously raised concerns. Regarding *wines*, she reiterated that enrichment with "concentrated must", "rectified concentrated must" or "sucrose" should be allowed under the measure for all types of wines given that these were oenological practices widely accepted at internationally level. In this respect, she asked if Russia was now prepared to remove the obligation to label "enriched quality wines" with the denomination "table wine", given that the latter was perceived as having a depreciative connotation. Regarding *geographical indications*, the EU noted that wines and spirit drinks should be allowed to be labelled with the corresponding protected geographical indication or protected designation of origin, even if bottled outside the production region. Additionally, the EU asked for assurances that EU geographical indications were duly protected and that some missing definitions of alcoholic drinks were added to the regulation. Regarding *beers*, the EU asked if Russia would be prepared to: (i) remove the limit on sugar content of beers; and (ii) allow beers containing fruits and additives to be labelled as beers instead of "beer beverages", given that the latter was perceived as having a depreciative connotation. Regarding *production control procedures and conformity assessment procedures*, the EU requested Russia to confirm that they would not be applicable to production sites that had been already duly controlled by EU national authorities. Finally, regarding the *specific draft measure on the ban of PET packaging of drinks sold in quantities over 0.5 litres*, the EU requested Russia to reconsider such measure.

2.112. The representative of Mexico supported the comments made by the EU and reiterated the concerns her delegation had expressed in previous meetings. She also inquired about the status of the regulation drafting process and asked Russia to take into consideration the comments made by Mexico when finalizing this measure.

2.113. The representative of Australia reiterated that Australia and Russia shared a commitment to adopt internationally accepted standards for alcoholic products as recommended by the International Organisation of Vine and Wine (OIV), and to avoid creating unnecessary obstacles to trade in wine. He recalled that Australia had submitted comments on this notified measure at the TBT meeting in February 2013. Such concerns focussed on a number of commonly used additives and processing aids that did not affect the safety of the alcoholic product. Australia, together with

a number of other Members, considered these new measures to be both overly burdensome and repetitive. In light of this, Australia suggested that Russia consider adopting the OIV list of approved additives and processing aids, as set out in the "International Oenological Codex" and the "International Code of Oenological Practices". Australia was also concerned about the legal status of wines which conformed to the health warning statement under the previous legislation and were in circulation at the time the draft regulation entered into force. Australia asked Russia to introduce a six-month transition period for these products so as to enable industry sufficient time to implement the stated labelling requirements. With respect to wines which used an Australian geographical indication (GI) in their description and presentation, Australia asked whether Russia has considered treating these wines as a "protected geographical indication" under the new technical regulations, and that the relevant exemptions from the regulations relating to wines with a "protected geographical indication" would also apply. Regarding the requirements relating to the bottling location of wines which include a GI in their description and presentation, Australia asked whether the Customs Union regulations required such wines to be bottled within the boundary of the GI stated in the description and presentation of that wine.

2.114. The representative of the Russian Federation informed that the draft technical regulation was still being developed and, in fact, in December 2013 its text was changed substantially. Currently, the text of a new regulation was being prepared by the Eurasian Economic Commission (EEC). If and when this new text was approved, it would be publicly available at the website of the EEC. Then, after the publication of this new draft text, it would be placed for the consideration and adoption of the Council of the Customs Union. He expressed his delegation's expectation that this new text would be adopted not earlier than this summer. He also said that, in accordance with the procedures of development and application of technical regulations of the Customs Union, the minimum period between adoption and entry into force of this new measure would be six months. Moreover, in accordance with EEC procedures, any product that had already been approved for circulation under a previous technical regulation that has been superseded by a recently adopted regulation, could still circulate within the CU market before the end of the expiry date of such products. In this respect, he recalled that alcohol had a very long validity lifespan. With respect to the issue of definitions included in the current text of the draft regulation, he explained that they were drafted on the basis of international practices, such as those in the OIV and Codex. However, taking into account the specificity of alcohol consuming practices within the CU's territory as well as the general level of awareness of consumers of these products, additives and processing aids (such as "concentrated must" or "rectified concentrated must"), which did not affect the safely of these alcoholic products mentioned by the OIV, were fully reflected in the current text of the regulation. This text, took into account oenological practices that were authorized for use under the regulatory mechanism of the member states of the Customs Union. Regarding fruit additives (such as fruit colourings, stabilizers, flavour enhancers), he clarified that the current version of the regulation did not set specific requirements with respect to their use in the production of alcoholic products. Such requirements were instead set both in the CU's technical regulation for fruit safety (adopted on 9 December 2011) and in the CU's technical regulation on safety requirements for fruit additives, flavourings and processing aides (adopted on 20 July 2012). With respect to the issue of GIs, he explained that the current draft regulation did not contain a list of alcoholic products with protected GIs. This was an IP rather an alcohol safety issue. Additionally, the draft regulation did not contain provisions regarding production control procedures of foreign production sites. On the use of PET bottles, he confirmed that the ban on these products has been lifted. Finally, he informed Mexico that his delegation was working on the responses to their questions.

2.2.2.10 Republic of Korea – Regulation on Registration and Evaluation of Chemical Material (G/TBT/N/KOR/305)(IMS ID 305)

2.115. The representative of the United States appreciated the extensive bilateral engagement on this issue, and said that her delegation would appreciate any additional information Korea could provide on the status of the Act, the new implementing legislation which was currently under the "comment period". The US also offered the following additional comments. She noted that new chemicals registered from 1 January 2012 to 31 December 2014 should be published in the official gazette three years from the date of registration. After publication, they should be considered as existing chemicals and be listed on the existing chemical inventory. The US therefore urged Korea to consider the benefits of grandfathering new chemicals registered during that period. The US also asked for more detailed information from the Korean Ministry of Environment regarding its plans for establishing four bands, or levels of tonnage limits. For example, what were the specific tonnage limits and how would they be applied? The US believed that volume should not be limited

after K-REACH entered into force, when the new chemical would be registered under TCCA between 1 January 2012 and 31 December 2013. The US also called Korea's attention to the issue of the confidential composition of data, which should not be disclosed as a result of K-REACH. The US believed this could be handled in two ways. Importers could, for example, report information on a Material Supply Data Sheet and Letter of Confirmation, which would not include confidential business information (CBI). Alternatively, the Only Representative could be able to register the total tonnage of a certain chemical for all importers that it represented. Given the complicated supply chains involved, and the importance of protecting CBI, US industry would prefer to be afforded the option of reporting either by the manufacturer or the importer. Finally, the US asked for further clarification on whether the results of internationally recognized conformity assessment bodies would continue to be recognized under K-REACH, which was an issue of critical importance to US industry given its impact on the cost of compliance with this proposed regulation.

2.116. The representative of Japan supported the statement of the US and expressed his delegation's concerns about the "Act on Regulation and Evaluation of Chemicals of Republic of Korea", and its cabinet and ministerial orders, published for public hearing on 19 February 2014. He said that Japanese chemical industries would submit their specific concerns by the end of March of this year and Japan looked forward to Korea's responses to these questions.

2.117. The representative of Korea informed that Korea has already notified the enforcement Decree and the enforcement Regulation of the proposed Act on 28 February 2014, providing a sufficient comment period to stakeholders. He said that Korea has been drafting this proposed Regulation in close consultation with relevant stakeholders. For instance, more than twenty meetings and dedicated sessions had so far been held, in Korea. These meetings and sessions were attended by many local and foreign companies and associations (such as the American Chamber of Commerce), in which they also submitted comments. He also said that during these meetings and sessions Korea tried to reflect most of the comments received from these stakeholders. With respect to the US point on tonnage restriction, he clarified that under the draft Regulation small quantities of new chemicals were not subject to full registration process, thus minimizing submission of dossiers and reducing registration period in such cases. With regard to the US point on CBI, he explained that the Act stated that, if requested, documents submitted for the reporting, registration, review and risk assessment of chemicals, should not be open to the public. The Act also said that only safety-related information, such as those on hazard, restricted or banned use, would be shared within the supply chain. Otherwise, information directly related to business secrets, such as chemical composition and manufacturing processes, would be kept secret.

2.2.2.11 European Union – Renewable Energy Directive (EU RED) (IMS ID 307)

2.118. The representative of Indonesia requested information on the calculation method for determining sustainability criteria under Article 17 of the amendment of Directive 2009/28/EC. He also asked which international standard the EU used to calculate the Green House Gas saving.

2.119. The representative of the European Union expressed her delegation's view that the sustainability criteria for biofuels outlined in the Directive fell outside the scope of the TBT Agreement and this Committee was therefore not an appropriate forum for discussing this issue, or providing a reply to Indonesia's queries.

2.2.2.12 Indonesia – Technical Guidelines for the Implementation of the Adoption and Supervision of Indonesian National Standards for Obligatory Toy Safety (G/TBT/N/IDN/64)(IMS ID 328)

2.120. The representative of the European Union thanked Indonesia for their bilateral discussions. He said that it was the EU's understanding that, according to Decree No. 55/2013 of the Indonesian Ministry of Industry of 11 November 2013, the mandatory implementation of the Indonesian National Standard on Toy Safety pursuant to Decree No. 24/2013 had been postponed until 30 April 2014. Further, he noted that revised technical guidelines had been issued on 17 January 2014 and that, pursuant to Regulation No. 52/2013, which was adopted by the Ministry of Industry on 16 October 2013, eight certification bodies and seven laboratories had been approved to conduct testing under these new rules. He asked Indonesia to confirm if this understanding was accurate and also whether existing stocks of toys already placed on the Indonesian market prior to

the entry into force of the new rules would not be affected by these rules and would therefore be able to continue to be sold until such stocks were exhausted.

2.121. The EU also recalled some specific issues of concern that still remained with regard to this new regulatory framework for toy safety. First, conformity assessment procedures continued to discriminate between toys manufactured in Indonesia and imported toys. While samples of imported toys were required to be tested from each and every shipment, samples of domestic toys had to be only tested every six months from their production line. The Indonesian authorities seemed to be claiming that this difference did not amount to discrimination because, for them, one shipment of imported toys was equal to six months of domestic production. The EU however disagreed with such correlation, for which there was no basis. Additionally, the EU considered that the Indonesian sampling requirements were at odds with international practice and thus recommended that manufacturers be instead free to select samples that they considered representative of the lot under examination. He said that another issue of concern was the continued acceptance of foreign test results beyond the entry into force of the new rules. In this respect, the EU welcomed the fact that Decree No. 55 provided a two-year grace period for testing to be performed at foreign labs that have been accredited by signatories of the ILAC MRA. The EU asked Indonesia if this meant that foreign manufacturers would consequently have the free choice of labs, provided that they would meet accreditation requirements. The EU also asked that such freedom of choice should in fact be kept permanently and sought clarification based on the extension request procedure under Regulation No. 52. He also reiterated a previous concern with respect to the requirement for a list of production equipment to accompany a request for certification, and failed to see what the rationale for that requirement was. Finally, the EU was still concerned with the fact that restrictions for phthalates, azo dyes and formaldehydes were not completely aligned with requirements enforced in other major markets.

2.122. The representative of the United States associated herself with the comments made by the EU and referred to her delegation's interventions on the issue in previous meetings. While the US welcomed the delay of the entry to force of the measure, it still continued to have a number of questions and concerns regarding the new testing and certification requirements for toys for the Indonesian market, including frequency of testing, existing inventory, laboratory accreditation, and factory audits. The US also welcomed Indonesia's decision to accept testing from ILAC accredited labs for two years and urged Indonesia to make permanent this temporary provision. The US was also open to further bilateral consultations with the Ministry of Industry and the Ministry of Trade to address the remaining concerns before the regulation would come into force.

2.123. The representative of Japan supported the statements made by the EU and the US and said that his delegation appreciated the revision of the Indonesian toy regulation, dated November 2013, which had incorporated the accreditation of international testing laboratories. However, Japan was still concerned with certain aspects of the revised toy regulation scheduled to be put into effect on 30 April 2014. First, in Japan's view, several requirements of the regulation were more restrictive than necessary to fulfil the stated legitimate objective, and were thus inconsistent with the TBT Agreement. Japan was concerned in particular with the fact that the testing requirement for each-and-every import shipment was unnecessarily frequent, and that the accreditation requirement for international testing laboratories was unprecedented and unreasonable. Further, Japan considered that the materials to which the Phthalate, Azo and Formaldehyde restrictions apply were overly broad and consequently more restrictive than necessary. Additionally, Indonesia's toy regulation would, in Japan's view, bring significant negative impact on business activities such as serious port delays and congestion. Japan was afraid that if the toy regulation would be implemented without substantial revision, serious confusion would occur, resulting, again, in mounted containers of toys in the ports.

2.124. The representative of Indonesia informed that Minister of Industry Decree No. 24/M-IND/PER/4/2013 on Mandatory Implementation of Indonesia National Standard (SNI) for Toys has been amended through Decree No. 55/M-IND/PER/11/2013, issued on 11 November 2013 and notified under G/TBT/N/IDN/64/Add.2. This regulation would be effectively implemented on 30 April 2014. Indonesia did not intend to postpone its implementation since it regarded consumer protection as very important. He also recalled that Decree No. 55 provided an opportunity for recognition of test results issued by foreign testing laboratories listed in the Mutual Recognition Agreement (MRA) under APLAC/ILAC scheme. Furthermore, foreign testing laboratories accredited by their respective accreditation bodies could be recognized, provided that the countries where the laboratories were based had a bilateral Agreements (MOU) on technical

regulations with the Indonesian Government and they were appointed by the Minister of Industry. Further, testing laboratories accredited by the Indonesian Accreditation Body (KAN), under the Ministry of Industry, were listed in the Decree of the Minister of Industry No. 52/M-IND/PER/10/2013. The procedure for sampling, testing and marking requirements was set up in the technical guideline on the implementation of Indonesia National Standard (SNI) for Toys No. 02/BIM/PER/1/2014, dated 17 January 2014. Sampling taken at the port of loading was accepted, while sampling taken at unloading ports was not. SNI labelling could be done after custom clearance under the condition that manufacturers already had the Certificate of SNI (SPPT SNI).

2.125. He also clarified that differences in time for taking samples between domestic products (which was every 6 months) and imported products (for every shipment) were based on the consideration that the domestic production capacity reached around 5,000 pieces every 6 months, while imported products could exceed 5,000 pieces in one shipment. This was also based on the fact that Indonesia was a developing country where most toy producers were SMEs with low production capacity, and the few large-scale toy industries in Indonesia only produced their products for export. Additionally, with respect to these Indonesian SMEs, the measure took into account the fact that they took a long time to change toy models. With regard to Japan's concern, Indonesia said that toys products distributed in the market after 30 April 2014, which did not meet the requirements of the current regulation, were prohibited and should be withdrawn from the market by their manufacturers. In relation to chemical substances, he explained that the limit of phthalates covered in the Decree must be less than or equals to 0.1 %. This applied to all phthalates classification. The regulation stipulated that the use of azo dyes was not allowed while the use of formaldehyde was set not to exceed 20 ppm. Testing of formaldehyde and azo was applied for all toys made of textiles.

2.2.2.13 Kenya – Alcohol Labelling: The Alcoholic Drinks Control (Licensing) Regulations, 2010: Legal Notice No. 206: 2010 (G/TBT/N/KEN/282)(IMS ID 311)

2.126. The representative of the European Union remained concerned that alcoholic drinks sold in Kenya were still required to bear health warning labels comprising not less than 30% of the total surface area of the package. This requirement had been recognised by Kenyan courts as impossible to implement, and she therefore sought clarification about the state of play of this matter in Kenya. She encouraged Kenya to proceed with the proposed amendments regarding the size of the warning, as established by the Alcoholic Drinks Control Amendment of 2012, in order to provide legal certainty to economic operators. The representative furthermore expressed concern about the rotation requirement for health warning labels which established that "all the warning labels specified in the Second Schedule shall be randomly displayed in each twelve month period on a rotational basis and in as equal a number of times as is possible, on every successive fifty packages of each brand of the alcoholic drink and shall be randomly distributed in all areas within the Republic". She requested clarification as to how this requirement would be enforced in light of the disciplines of Article 2.2.

2.127. The representative of Kenya responded to the concerns raised by the EU. Kenya's full statement containing such responses is contained in G/TBT/W/389.

2.2.2.14 Brazil – Draft ANVISA Resolution on used, refurbished, rented and lent medical devices (IMS ID 362)

2.128. The representative of the European Union requested that Brazil update the Committee on the expected timeframe for adoption of this ANVISA draft resolution.

2.129. The representative of Brazil said that ANVISA had suspended work on this regulation following a public consultation. A new draft regulation would be prepared in the future taking into account additional technical research, including that conducted by other government bodies, as well as comments received during the previous public consultation. He said that developments on this aspect would be notified to the TBT Committee at an appropriate time so as to allow Members time to comment on the new draft regulation.

2.2.2.15 India – Food Safety and Standards Regulation - Food labelling requirements (G/TBT/N/IND/34 G/TBT/N/IND/43 G/TBT/N/IND/46 G/SPS/N/IND/69) (IMS ID 298)

2.130. The representative of the European Union expressed concerns regarding the implementation of this Indian regulation, which was published in the Indian Gazette in August 2011. Her delegation regretted that this text had been notified only to the SPS Committee despite the fact that it contains several TBT related aspects, such as labelling and packaging requirements. In addition, a number of *ad hoc* guidelines that could be considered technical regulations in the sense of the TBT Agreement had been published by Indian authorities, and had also not been notified. Her delegation was concerned that several EU food containers had been blocked in Indian ports on the grounds that compulsory labelling information, such as list of ingredients, could not be provided by means of stickers and that that information had to be printed on the food package, despite EU's various requests that Indian authorities find a flexible solution to this matter. In particular, for those consignments already in India, the EU asked Indian authorities to allow importers to adapt the relevant labels in customs warehouses by the application of stickers that fulfil the labelling requirements of India. This practical solution, she said, would minimize the major economic burden that economic operators would face if the containers were returned to Europe.

2.131. She also noted that the August 2011 Indian Regulation defined what a food label was, elaborated the type of information a food label must contain, and specified that the label shall be applied in such a manner that it would not become separated from the container. She recalled that in October 2011 India issued *ad hoc* guidelines spelling out that certain information, which was India-specific (such as the vegetarian/non-vegetarian logos and the name and address of the importer), was considered "rectifiable" information and could be affixed by the importer in customs warehouses. However, the same guidelines stated that several labelling elements, such as list of ingredients, were "*not* rectifiable". The EU was of the view that the October 2011 guidelines were too burdensome, and did not comply with Article 2.2 of the TBT Agreement. She explained that in most economies worldwide, food products could be labelled by means of stickers (provided they were accurate and not easily detachable). This was a very important trade facilitating practice, which allowed producers to serve different regions with different language requirements without having separate production lines, while, at the same time, duly protecting the consumer. The EU thus requested that India bring its October 2011 guidelines in line with international practices and allow all types of labelling information – not only the Indian-specific information – to be provided by means of stickers. She submitted that this was a sound alternative to labelling in the country of origin, which would allow India to fulfil its legitimate objectives in a non-trade restrictive manner. Finally, regarding alcoholic drinks, her delegation was also very concerned that several EU containers were detained in Indian ports because the bottles did not display the full list of ingredients, and India had also refused to allow importers to correct the labels by means of stickers. She likewise urged India to release the containers by allowing importers to amend the labels by means of stickers.

2.132. The representative of the United States said that while her delegation appreciated the publication and on-line availability of the measures, like the EU, it reminded India that these amendments should be also notified to the WTO so as to allow Members opportunity to make comments. She noted that India's Department of Consumer Affairs and the Ministry of Commerce and Industry also maintained packaging and labelling requirements, and encouraged the Indian government to be more proactive in soliciting input from WTO Members on technical regulations promulgated by these agencies, prior to their implementation. The US sought flexibility in provision of certain India-specific information that was required on food labels, as India completed its harmonization efforts with international standards, which she understood, would be completed by December 2014. In particular, the FSSAI logo and licence number requirements, as well as the maximum retail price requirements, were of specific concern. She also made the following request when India chose to develop mandatory requirements that exceed international standards to meet their specific needs: that India should provide additional information on the body of evidence that was considered and used to support such deviations, and explain how those requirements advanced safety, efficacy or quality of the products in question. In this respect, she said that the US had identified certain circumstances where labelling and packaging requirements overlapped and contradicted one another, for example, in the contradictory definition and labelling for wholesale foods between the requirements of the FSSAI and the Department of Consumer Affairs.

2.133. The US also enquired why the Indian Department of Consumer Affairs was implementing requirements for the designation of genetically modified content in food, as it did not appear to be the agency with jurisdiction to develop such requirements. She asked India to explain its internal process for central government review of regulations to ensure coherence across ministries, and the actions taken to coordinate among the approaches taken by its ministries. She reported that US products were being denied access to the Indian market due to the creation of mandatory package sizes as part of India's legal metrology rules. These requirements were not notified to the WTO until the occasion of their third amendment. Many US packages were in imperial rather than metric measurements, and India's legal metrology rules effectively barred these products from the market; India should thus eliminate such requirements.

2.134. The representative of Japan shared the concerns raised by other Members, noting that India's requirements only allowed the use of stickers for the vegetarian/non-vegetarian logo and the name and address of the importer, which meant that all other labelling elements had to be printed directly onto packages in the country of origin. His delegation recognized the importance of food labelling, since it was the primary means of communication between the producer and purchaser on the one hand, and the purchaser and consumer on the other. However, Japan accepted labelling by sticker in order to avoid unnecessary trade disruptions, as did other Members such as the EU. He stated that Indian requirements were overly burdensome especially for companies exporting in small quantities, since they would have to prepare a special printing just for the Indian market. Therefore, his delegation asked India to review the guidelines on its policy for limited use of stickers.

2.135. The representative of India reiterated that his delegation had notified the Draft Food Safety and Standards (Packaging and Labelling) Amendment Regulation, 2013 on 24 October 2013 in G/TBT/N/IND/46. Regarding the draft technical regulation on alcoholic beverages, he said that it would be notified to the Committee as soon as it was finalized.

2.2.2.16 European Union – Tobacco products, nicotine containing products and herbal products for smoking. Packaging for retail sale of any of the aforementioned products (G/TBT/N/EU/88) (IMS ID 377)

2.136. The representatives of Ukraine and Malawi expressed concern with the measure's consistency with two Agreements, including the TRIPS and TBT Agreements. Their full statements are contained, respectively, in G/TBT/W/382 and G/TBT/W/386.

2.137. The representative of Nigeria said that her delegation aligned itself with the positions taken by Malawi and Cuba on this matter. She stated that her country had interest in this issue given its long tradition as a grower of tobacco leaves and manufacturer of tobacco products, activities that provided employment and income to many Nigerian farmers. She said that the EU measure was more trade restrictive than necessary to achieve its stated health objective. She stated the importance of seeking coherence between the rights and obligations of Nigeria along with other African Union and ACP member states in the WHO, WTO and other international fora, particularly with respect to their agricultural and rural development objectives. In this respect, she urged the EU to take the concerns of Members into consideration before adopting its own measure.

2.138. The representative of Honduras echoed previous statements by Malawi and Nigeria. Her delegation was particularly concerned about the lack of coherence of the EU measure with the TRIPS Agreement. While Honduras fully shared the objective of protecting human health, it also believed that the measures were more trade restrictive than necessary. She asked the EU to provide responses to questions posed under other related STCs discussed at this meeting.

2.139. The representative of Nicaragua said that his delegation supported previous statements of Cuba, Malawi and Nigeria on the matter. While recognizing the right of Members to take measures to protect human health, he was concerned about inconsistencies of the measure with the TBT Agreement, in particular Article 2.2, since such requirements were more trade restrictive than necessary and lacked scientific basis. He encouraged Members not to adopt tobacco plain packaging until there was a clear ruling on these measures in relevant disputes, and encouraged them to work towards a resolution with concerned Members.

2.140. The representative of Guatemala said that while his government shared the EU's objective of improving public health by discouraging the use of tobacco products, it was unclear how the proposed measure would achieve this legitimate objective. Given that the proposed measure was more trade restrictive than necessary, he asked the EU to consider a less trade restrictive alternative.

2.141. The representative of Australia considered the EU measure to be a legitimate way to achieve the protection of human health, in particular the protection of young people against smoking initiation and uptake. He noted the measures proposed were endorsed by leading public health experts as well as the World Health Organization (WHO), and were supported by extensive research reports and studies that were available in the public domain.

2.142. The representative of New Zealand lent support to the EU decision to introduce further controls on the packaging of tobacco products, in particular because smoking was the single largest cause of preventable death and disease in New Zealand. New Zealand also supported individual EU member states' measures further controlling tobacco products.

2.143. The representative of Norway signalled her delegation's support to the EU's effort to combat the tobacco epidemic. She recalled Norway's long history in tobacco control. In 1973, the Norwegian parliament adopted the first tobacco control act banning advertising, setting up an age limit for sale of tobacco, and mandating health warnings. A new national tobacco strategy for the period 2013-2016 was launched in February 2013, and was focused on protecting children and young people from the harmful effects of tobacco. The long term version was a tobacco-free future. She recalled that it was within the rights of each WTO Member to adopt measures which were necessary to protect public health, and that such measure could be in accordance with WTO Agreements.

2.144. The representative of Canada welcomed the EU tobacco measure and noted that tobacco use continued to be a significant problem in Canada and around the world.

2.145. The representative of the European Union recalled that it already provided detailed explanations on the rationale of the various provisions in the draft Directive in previous Committee meetings of March, June and October 2013, and referred Members to the minutes of those meetings. She instead provided Members with an update on the state of play since the last Committee meeting, and a brief outline of some of the contents of the final proposal which had been mentioned by various Members. She reminded Members that the proposal was put forward by the European Commission on 19 December 2012, and was notified to this Committee as notification G/TBT/N/EU/88 on 18 January 2013. During 2013 and early 2014, the proposal went through the EU's legislative process, whereby both the Council of the European Union and the Parliament had to give their approval in order for the proposal to be adopted. She explained that since the last Committee meeting, the final substantial steps towards adoption were taken – namely, an agreement on a compromise text was reached between the Council and the European Parliament on 16 December 2013, which was adopted by the European Parliament on 26 February and by the Council of the EU on 14 March 2014. The publication of the final text in the Official Journal of the European Union would follow in the next few weeks, and a transposition period of two years was foreseen for EU member states to bring national legislation in line with the revised Directive. She highlighted that this Directive was the result of thorough consultations with all stakeholders involved, and provided for a broad range of measures which were non-discriminatory, and proportionate to the legitimate health objectives pursued. This Directive joined a broad array of legislative and non-legislative initiatives (such as excise duties, public awareness campaigns, bans on smoking in public places, prohibition of advertising), at both EU and member state level. The objective was to increase awareness of tobacco risks, reduce the appeal and attractiveness of tobacco products, and therefore contribute to a decrease in smoking rates and smoking initiation, particularly among youngsters. Her delegation was fully convinced that the Directive was consistent with the EU's international commitments, including its obligations under the TBT Agreement. On substance, this new Directive contained provisions covering several policy areas, including ingredients, packaging and labelling, traceability, novel tobacco products, and cross border distance sales.

2.146. With respect to labelling and packaging, she explained that the new Directive notably foresaw mandatory combined (picture and text) health warnings covering 65% of the front and the back of cigarette packs, and further text warnings on 50% of both lateral sides. Furthermore, no

promotional or misleading features would be allowed on the packs. To ensure the visibility of the health warnings, all packs would be required to have a cuboid shape and each pack would have to contain at least 20 cigarettes. Further, the use of slim, "lipstick-style" cigarette packs targeted at young women would be prohibited. She emphasized that the proposal did not set limits on the use of trademarks or branding on the remainder of the pack; in other words, it did not mandate cigarettes to be sold in plain packaging. Nevertheless, EU member states maintained the right to regulate autonomously aspects not covered by the prescriptions of the Directive or other Union legislation. Any national rules concerning aspects not covered by Union legislation had to be adequately justified and compatible with the Treaty on the Functioning of the European Union and with international agreements binding the Union. They would also be the object of a notification to the TBT Committee, if the relevant conditions were met.

2.147. With respect to ingredients, she explained that the new Directive prohibited cigarette and roll-your-own products with a so-called "characterising flavour". This did not mean however that individual additives were banned altogether, but that they should not be used in quantities which would give the product a distinguishable flavour other than tobacco. The use of additives essential for the manufacture of tobacco products, and which did not result in a characterising flavour, was not prohibited. She also clarified that other tobacco products - such as cigars, cigarillos and smokeless products -, were exempted from the ban on characterising flavours, as long as there was no substantial change in current circumstances. Mandatory reporting of ingredients was foreseen for all tobacco products through a standardised electronic format (to be developed by the European Commission), which would enable regulators to gain more information on the ingredients contained in tobacco products and their effects on health and addictiveness. Furthermore, in line with the previous Directive, there would be mandatory reporting of emissions of tar, nicotine and carbon monoxide for cigarettes, as well as other emissions where such information was available.

2.2.2.17 Chile – Proposed amendment to the Food Health Regulations, Supreme Decree No. 977/96 (G/TBT/N/CHL/219 G/TBT/N/CHL/219/Add.1 G/TBT/N/CHL/221) (IMS ID 370)

2.148. The representative of the United States said that her delegation supported and shared the important health objective of reducing obesity and combatting associated non-communicable diseases. The US appreciated the changes Chile made to its draft technical regulation to implement Law No. 20,606 on nutrition and composition of food and its advertising, notified as G/TBT/N/CHL/219 and G/TBT/N/CHL/219/Add.1. She positively noted that the final regulation, which was published in Chile's official journal on 17 December 2013, had improved the nature of proposed nutrition composition labelling by adopting a less alarming and more trade facilitative approach. In this respect, this final regulation: (i)reduced the size of the nutritional icons on the front display panel or front-of-pack (FOP) from 20 percent of the surface of the package to 7.5 per cent; (ii) changed the 8-sided hexagon stop sign to a 6-sided hexagon shape;(iii) allowed multiple icon background colour choices like blue or green, versus only red or black; (iv) adopted a standard font for the icon text versus an emphasized or bold font; (v) changed the Ministry of Health signature on the icon to a statement indicating the linkage to the 2004 WHO Diet recommendations; (vi) allowed the use of supplemental labels; (vii) exempted existing commercial inventory and restaurant foods; and (viii) extended periods for compliance.

2.149. She said however that, despite the forgoing improvements, the US still had additional concerns with the measure. First, she noted that the six-sided hexagon could still potentially be mistaken for the internationally recognized stop sign, and therefore requested that Chile instead adopt a circular or square shape. Second, while acknowledging that there was no single approach to nutrition labelling, she expressed regret with Chile's choice to adopt a labelling approach that negatively targeted certain foods and food categories. By narrowing the scope of food categories, Chile created concerns about the scientific basis for food categorization, and how domestic foods were considered as opposed to imported pre-packaged foods. Third, the US considered that alternative approaches could convey similar information to consumers. For example, the use of voluntary health and diet claims such as "low" or "non-addition claims", which were based on science and which had been considered by Codex. Over the last six years the Codex Committee on Food Labelling had devoted its resources to evaluating such claims and establishing nutrient thresholds for them, as a way to assist countries in implementing the recommendations of the 2004 WHO Global Strategy on Diet, Physical Activity and Health and the 2008 WHO Strategy on Non-Communicable Diseases. Finally, while the US appreciated the extended period for

compliance, US industry would have preferred a compliance period of 18 months across all nutrients.

2.150. The representative of the European Union was disappointed with the final approval of Chile's measures on nutrition labelling. While sharing Chile's concerns on health matters, the EU was still concerned with the trade restrictive character of this measure, its appropriateness to tackle the issue at hand and the lack of certainty, still present today, regarding its practical implementation.

2.151. The representative of Mexico associated herself with the concerns raised by the EU and US.

2.152. The representative of Australia expressed concern with the measure's mandatory nature of the front-of-pack nutrition labelling requirements and the lack of clarity around many issues involved with the measure's implementation. He noted that there may be other measures available to promote consumer health, which could achieve Chile's objective and which were being considered by other countries, including Australia. He recalled that at previous meetings, Chile cited an obesity epidemic, especially among young children who consumed large quantities of the food categories subject to mandatory front-of-pack nutrition labelling. His delegation supported Chile's right to implement measures to provide consumers with information to make appropriate dietary choices and reduce the risk of diet related non-communicable diseases, provided that such measures were implemented in a manner that was consistent with Chile's WTO obligations. His delegation also appreciated the clarification provided by Chile that the warning label would no longer take the form of an octagonal "STOP sign" but would instead be a coloured hexagon and its size would be established in relation to the size of the total area of the products. He further noted that Chile provided for the possibility of using stickers for the warning label. He also appreciated the fact that Chile had welcomed the contribution of a number of experts from other countries during preparation of the final version of this regulation, including the EU and US, and integrated their contributions as well as developments from TBT Committee meetings. However, the implementation deadlines for labelling obligations would now be six months from the final date of publication. His delegation was concerned that this period was too short for industry to be able to comply with such comprehensive legislation. Therefore, he requested Chile to consider providing a longer deadline to allow companies to respond to the new arrangements. Finally, he noted that Law No. 20,606 was published in the Official Gazette on 7 June 2012, with a one year implementation date, but the Law was not notified until January 2013. He encouraged Chile to continue to notify to the WTO any technical regulations or laws guiding the operation of the Food Health Regulations.

2.153. The representative of Canada restated its support for Chile's policy objective of promoting healthy dietary choices and reducing obesity and related non-communicable diseases. Nevertheless, she continued to encourage Chile to consider less trade restrictive alternatives. After raising this issue with Chile in a variety of fora, her delegation had been assured that Chile was reconsidering its regulations with a view to make them WTO compliant. While Chile appeared to have taken some of these concerns on board in its new regulations published on 17 December 2013, Canada was still disappointed that Chile did not go further. She asked how Chile intended to administer and enforce these regulations, and also requested additional time for industry to comply.

2.154. The representative of Guatemala reiterated comments from previous meetings, and awaited further information from Chile on this measure.

2.155. The representative of Brazil said that while his delegation considered the protection of human health a legitimate objective, it was nevertheless still concerned with food product labelling requirements of the new Chilean law. He understood that the measure entered in force in December 2013, and that it aimed only at industrialized food when tackling obesity. This could lead to stigmatization of certain types of food, when current medical research suggested that obesity was a condition that developed over time due to a complex interplay of habits and lifestyle, and not only due to the consumption of industrialized foods. In this respect, the measure was selective, discriminating against products in a way that seemed inconsistent with multilateral trade rules, while frustrating its own stated objective. Assuming that one of the habits that led to obesity was the continuous consumption of food rich in certain ingredients - such as fat, sugar and salt-, he failed to see the justification for the exemption of certain types of food, such as meals sold in fast food chains, as well as products such as cheese, sausage, hamburger and chocolate. By

excluding certain types of food, he argued, the new measure was not effective in keeping consumers informed about the quantity of fat, sugar and salt found in food; nor was it effective in promoting awareness amongst frequent consumers of certain foods deemed to be as pernicious as those covered by the measure.

2.156. The representative of Chile explained that Law No. 20,606 was one of the first steps taken in Chile to tackle its epidemic of obesity and related non-communicable diseases. She noted that the final version of the regulation was published on 17 December 2013 in the Official Gazette, and that comments received during public consultation were taken into consideration. The regulation would gradually enter into force over a period of the next 6 to 18 months. Under this final version the warning label would no longer take the form of an octagonal "STOP sign" but rather a coloured hexagon and its size would be established in relation to the size of the total area of the products (7.5%). The regulation also established the graphic standards which included health messages and food information. She reported that Chile had published in the week preceding this meeting its responses to comments received during the public consultation period. This was notified to the WTO as an addendum (G/TBT/N/CHL/221/Add.1), and could also be found on Chile's Ministry of Health website. Her delegation was open to receiving any additional comments from Members, and looked forward to collaborating with Members to clarify any remaining issues. Finally, she emphasized that her delegation was of the view that it had complied with all of its obligations under the TBT Agreement.

2.2.2.18 India – Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012 G/TBT/N/IND/44, G/TBT/N/IND/44/Add.1 G/TBT/N/IND/44/Add.2, G/TBT/N/IND/44/Add.3) (IMS ID 367)

2.157. The representative of Japan said that a survey of Japanese industries as of 3 January 2014 indicated that delays in testing and registration had stopped supply of certain products to the Indian market. He said Indian industries also faced the same issue. Taking due consideration of this situation, his delegation urgently requested relief of these products and more efficient and rapid testing procedures. He elaborated that Japanese industries reported that supply of certain products had been halted as a result of long waits for completion of testing and registration; in worst cases, industry had waited more than 10 months for testing, and more than 7 months for registration. Regarding projectors, Japanese industry reported that no registration had yet been issued. In light of this situation, Japan requested India to suspend the regulations and give industry an extra transitional period at least until 3 July 2014 in order to relieve products which had been waiting for completion of testing and registration for a long time. In addition, in order to shorten lead-time of testing, Japan continued to request that India utilize IECEE CB certificates and CB test reports issued by National Certification Bodies (NCBs) in the other countries.

2.158. The representative of the European Union echoed the concerns raised by Japan. He noted that the full entry into force of the Order had been further postponed until 3 April 2014, and put forward the recurring three-month postponements as evidence that the system was not yet ready for full enforcement of the requirements. He urged Indian authorities to heed concerns expressed by foreign industry, and to continue to discuss with foreign suppliers of products concerned, with a view to finding workable solutions to the implementation problems raised. The EU reiterated its serious concerns about the in-country testing requirements and the lack of sufficient testing capacity. The EU viewed this scheme as excessively burdensome in view of the low safety risks associated with the products concerned. Instead, these risks could be managed with a lighter scheme allowing manufactures to self-certify their products on the basis of tests carried out by laboratories of their choice. In this respect, he welcomed the assurance given by the Indian authorities that for safety critical components, test and certificates generated under the IECEE CB scheme would be accepted, not only as part of the transitional period, but after entry into force as well. This would also apply to test reports produced by any laboratory holding accreditation by an accreditation body that was a signatory to the ILAC MRA. He believed that these measures would alleviate to an appreciable extent the burdens on manufacturers associated with compliance with the new scheme. Nevertheless he expressed concerns with administrative delays linked to the registration with BIS. Although efforts had apparently been made to streamline this procedure, registration could reportedly take several months, with peaks of up to 9 to 10 months in certain cases. In addition, test reports were subject to an unnecessary expiration date of 90 days after their issuance. Moreover, for some of the products covered by the scheme, which were re-launched every quarter, this long period exceeded their own lifecycle, and this was another reason

why it was important to ensure a streamlined process with short time to market and expeditious registration procedures.

2.159. He also noted that other issues, which were still being discussed between EU industry and Indian authorities, included exemptions for highly specialized equipment (HSE). The current exemptions of 100 units per year fell short of the needs of industry, and there was a need for simple and predictable processes that allowed for more flexible exemptions. He flagged another concern about exemptions for prototypes and test samples; at the moment only five units per model were automatically exempted, which was way too low to support product development in India. EU industry reported that at least 500 or more units per year would need to be exempted to allow for meaningful product development. He said a streamlined and predictable exemption process that created a favourable business and investment climate was needed. Finally he welcomed assurances that India standards supporting the scheme would remain fully aligned with the corresponding IEC standards, which was a fundamental prerequisite for ensuring full acceptance of tests and certificates generated under the IECEE CB scheme.

2.160. The representative of the United States echoed the statements of other Members on this measure and noted that while India implemented the testing requirements of the measure on 3 January 2014, it had delayed the labelling requirement until April 2014. With respect to the requirement that testing be conducted solely in labs domiciled in India, she recalled previous interventions on this issue, and noted serious concerns about this localization requirement on testing for an industry with complex global supply chains. Rather than require additional testing, she said BIS should instruct the appointed labs to review and routinely accept a test report issued by labs approved under the IECEE CB Scheme. Appointed labs should only require a product sample unit to conduct verification testing if the labs could not resolve a suspected non-compliance issue from the information exchanges between the Certification Body issuing the CB test report and/or the manufacturer. This would provide immediate relief to manufacturers and allow India's labs to learn how to correctly perform necessary testing. In addition, she maintained that BIS should remove the expiration date from the test report; she noted that no other national certification agencies had expiration dates on their test reports, which, in her delegation's view, was an unnecessary and unduly burdensome requirement. She further noted that at least 18 foreign labs had applied to be approved to perform testing as early as July 2013. She enquired when India planned to grant these foreign labs approval. In addition, her delegation continued to be concerned about India's regulation by FAQ documents; a practice whereby problems that were conveyed by industry were taken into account by issuing question and answer documents. Her delegation believed that these FAQ documents were inadequate regulatory tools and continued to find them problematic, particularly in terms of labelling requirements.

2.161. The representative then noted confusion across Indian government agencies with respect to the HSE exemption, and recommended that India's Customs agency follow Circular No.2, as written and accept manufacturer's or brand owner's declaration that their products meet the HSE exemption criteria. She further believed that the India Department of Electronics and Information Technology (DeitY) should clarify that an Exemption Order was not required for exempted HSE or other development prototypes or testing prototypes to clear Customs. The law stated that a manufacturer may choose, but was not required, to request that DeitY issue an Exemption Order. To support this option, she suggested that DeitY put in place a process for the manufacturer to request the Order. The application form should be simple. For example, it could require a copy of the product's marketing brochure with the ability to link to further information electronically. The US representative also said that DeitY should specify a time frame for the process to be completed and identify a contact person for related inquiries.

2.162. The representative of Switzerland reiterated concerns with India's use of lengthy conformity assessment procedures which were not proportionate to the risks of the products. He believed that these measures were more restrictive than necessary and continued to encourage the use of international standards and recognition of the internationally accepted schemes for tests and assessments of conformity by international laboratories in the area of IT goods.

2.163. The representative of Norway aligned her delegation with the comments and questions raised by other Members.

2.164. The representative of India said that as per the notification dated 30 September 2013, the Order had come into effect as from the 3 July 2013 but some manufacturing units with specific

conditions have been provided an additional period until 3 January 2014 to comply. The representative noted that the lists of recognized test laboratories were hosted both on the websites of DeitY and BIS. Furthermore, notifications G/TBT/N/IND/44/Add.1 and G/TBT/N/IND/44/Add.2 provided clarification on the scope and other aspects of the regulation. These addenda had emanated from questions raised by Members in the TBT Committee, as well as bilaterally. Regarding delays, he mentioned that the laboratories were well on track and were adequately addressing demand for testing under this particular Order. This fact would also dispel the concerns that the procedures were cumbersome. On the question of the time-period for amendment or withdrawal, he said that for this regulation there had been no amendment or withdrawal. He considered unfair to claim that Indian labs were ill-equipped, as most of the labs recognized by BIS had been testing under an international safety certification programme. In fact, three of the recognized labs had parent companies of US origin. For example, he mentioned UL India Private Limited, in Bangalore and Inter Tech Private Limited, in New Delhi. He said that in total 700 applications had been received for registration, and that 667 applications had been granted to date. The total number of product models/series covered in registrations granted to date was over 4,000. He further noted that the total number of BIS recognized labs was 11, and that four multinational labs were recognized by BIS. Finally, he mentioned that the total capacity of testing labs recognized by BIS was 761 applications, and current workload of test labs was approximately 250.

2.2.2.19 New Zealand – Proposal to introduce plain packaging of tobacco products in New Zealand (G/TBT/N/NZL/62, G/TBT/N/NZL/62/Add.1) (IMS ID 361)

2.165. The representatives of Cuba, Ukraine and Malawi expressed concern regarding the consistency of the proposed measure with the WTO Agreements, in particular the TBT and TRIPS Agreements. They also requested New Zealand to abstain from any tobacco plain packaging legislation until the WTO disputes lodged against Australia's plain packaging measures had reached a conclusion and the results could be assessed. Cuba's, Ukraine's and Malawi's full statement are contained, respectively, in G/TBT/W/381, G/TBT/W/384 and G/TBT/W/388.

2.166. The representative of Nigeria recalled her delegation's statement at previous meetings concerning Nigerian manufacturing facilitates in the tobacco sector, which generated significant economic activity, tax revenue and employment. Nigeria was also a significant producer of tobacco leaf, which generated employment and income to many Nigerian farmers. Her delegation was concerned about the broad systemic implications of New Zealand's tobacco measure and its practical commercial consequences, both direct and indirect, for the Nigerian economy. While her delegation was not opposed to legitimate measures to protect public health, she said that this particular measure was inconsistent with New Zealand's obligations under the TRIPS and TBT Agreements. She believed that there were less trade restrictive, WTO-compliant alternative measures that could achieve New Zealand's objectives.

2.167. The representative of Guatemala said that while his government shared New Zealand's objectives of public health and tobacco control, he expressed hope that, following public consultations on this measure, New Zealand would consider a less trade restrictive alternative to achieve such legitimate health objectives.

2.168. The representative of Honduras said that while her delegation shared New Zealand's objective of protecting human health, it was nevertheless concerned that these measures were inconsistent with the TBT and TRIPS Agreement, in particular, TBT Articles 2.2 and 12.3. Given the various cases in the DSB, her delegation had hoped that there would not be a proliferation of similar legislation in other Members. Her delegation encouraged New Zealand to reconsider the introduction of plain packaging and hoped that there would soon be a conclusion to the disputes.

2.169. The representative of Nicaragua expressed his government's concern with the proliferation of draft legislation on plain packaging, given that the adoption of such measures would have negative impacts on production, trade and employment in his country. While recognizing the right of Members to take measures to protect human health, he said these measures should not be more trade restrictive than necessary (Article 2.2 of the TBT Agreement). He encouraged New Zealand not to adopt tobacco plain packaging until there was a clear ruling on these measures in relevant disputes.

2.170. The representative of Australia welcomed the decision by New Zealand to join Australia in legislating for the mandatory plain packaging of tobacco products, and looked forward to supporting New Zealand as it underwent the development of its own plain packaging measures. As consistently stated at past meetings, Australia was of the firm view that Members have the right to implement measures necessary to protect public health, while complying with relevant international treaty obligations, including the TBT Agreement. In his delegation's view, tobacco plain packaging was a legitimate measure, designed to achieve a fundamental objective: the protection of human health. He said that tobacco plain packaging measures were endorsed by leading public health experts as well as the World Health Organization (WHO) and were also supported by extensive research reports and studies, which were available in the public domain. Conversely, some Members have referred to research on measures taken by Australia, and his delegation questioned both the methodology and findings of those studies. He noted the continued interest of other Members in Australia's initiative, and acknowledged the support they have received. Australia was fully confident in its case before the WTO, and he expressed his delegation's concern with the fact that some Members were suggesting possible early resolution of that dispute while at the same time taking every opportunity to delay prosecution of those proceedings.

2.171. The representative of Norway thanked New Zealand for information about its plain packaging initiative. Public health and tobacco control were issues of particular interest to her delegation, since smoking was still the single factor with the greatest negative impact on public health. It was her delegation's firm view that it was within the rights of each WTO Member to adopt measures which were necessary to protect public health, in accordance with WTO Agreements. Plain packaging of tobacco products was a recommended measure under the Framework Convention on Tobacco Control (FCTC). Norway belived that the FCTC and WTO Agreements were mutually supportive, and that it was possible to implement measures to regulate the packaging of tobacco products in line with both sets of binding obligations. She commended New Zealand on its measures to combat the tobacco epidemic and signalled support for introducing this measure in consistency with its WTO obligations, to fulfil its obligations under the FCTC, and to protect public health.

2.172. The representative of Uruguay supported New Zealand's measure which, in the view of her delegation, was WTO-compliant. She also noted that the Guidelines for implementation of Article 11 of the FCTC were adopted by consensus by all parties. Public health remained within the competency of states, and therefore each state could decide its level of public health protection as recognized in the FCTC. She reminded governments not to forget their international commitments with regard to the protection of public health.

2.173. The representative of Canada reiterated interest in the ongoing international developments regarding tobacco products. She noted that Canada had been a pioneer in package labelling requirements for tobacco products, and recalled that in the year 2000 Canada was the first country to require pictorial health warnings on tobacco packaging when it adopted the Tobacco Products Information Regulations. Her delegation considered these sorts of requirements, and related international developments, a core component of each country's right to regulate in the interests of its public.

2.174. The representative of New Zealand informed that since the last TBT Committee meeting legislation to implement such tobacco plain packaging proposed measures was drafted and the "Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill" was introduced to Parliament on 17 December 2013. On 11 February 2014, the legislation passed its first reading in Parliament and, as a consequence, it was referred to a parliamentary select committee for further consideration. He noted that there were 121 members of the New Zealand Parliament, and of these, 119 members voted on whether the legislation should be read for a first time; 118 members voted in favour, and only one member voted against. He highlighted that the tobacco plain packaging Bill was draft legislation. In accordance the New Zealand's domestic legislative process, and obligations under the TBT Agreement, his government had invited submissions in respect of the legislation. He noted that the deadline for Members to provide any comments or submissions was 18 April 2014, as outlined in G/TBT/N/NZL/62/Add.1. Any comments or submissions received would be considered by the parliamentary select committee before it reported back to Parliament on its views and recommendations in respect of the legislation. Before the Bill could become a law in New Zealand, it must also pass two further debates in Parliament, called the second and third readings, and then be signed by New Zealand's Governor-General. Full

information about the draft law and the parliamentary process could be found on the website of the New Zealand parliament.[3] He noted that the text of the draft law, full transcripts of the parliamentary debate, and full information about the parliamentary process, were all available. Once the Bill became law, it would enable regulations to be made to set out the detailed requirements for the design and physical appearance of any packaging used or intended for use with tobacco products. These regulations would be developed at a later date, the representative said. His government would conduct further consultations in respect of those draft regulations at an appropriate time. He emphasized that it would be those regulations that would in fact implement tobacco plain packaging in New Zealand.

2.175. The representative then provided a brief summary of the reasons that justified these measures. He stressed that his government's decision was made in order to protect public health. Smoking was the single largest cause of preventable death and disease in New Zealand. Since 1990, New Zealand had implemented extensive controls on the marketing, advertising and promotion of tobacco products. In response, tobacco companies had increasingly sought to modify and diversify the design and appearance of products and packaging as a way to make their products more desirable and to promote their use. He stated that tobacco packaging had been used as an effective form of tobacco marketing, supported by innovations in tobacco product design and appearance. He held that there was compelling evidence that current tobacco packaging glamorised smoking, undermined the efficacy of other tobacco control measures, and misled consumers about the harmful effects of smoking or using tobacco products. The legislation sought to remove what was in effect the last major promotional mechanism available to the tobacco industry. He then listed the specific objectives of the legislation: (i) reducing the appeal of tobacco products and smoking, particularly for young people; (ii) further reducing any wider social acceptance and approval of smoking and tobacco products; (iii) increasing the noticeability and effectiveness of mandated health warning messages and images; and (iv) reducing the likelihood that consumers might acquire false perceptions about the harms caused by tobacco products. He further explained that the broader purpose of the legislation was to improve public health in New Zealand. He said that the legislation, in combination with the other elements of his country's comprehensive programme of tobacco control measures, would also: (i) discourage people from taking up smoking, or using tobacco products; (ii) encourage people to give up smoking, and to stop using tobacco products; (iii) discourage people who have stopped smoking, or no longer use tobacco products, from resuming smoking or tobacco use; (iv) reduce people's exposure to smoke from tobacco products; and (v) support New Zealand's ability to meet its obligations and commitments under the FCTC.

2.176. The representative said that there was a substantial body of evidence that plain packaging of tobacco products, in combination with a comprehensive programme of tobacco control measures, would make a significant contribution to achieving each of those objectives. He referred Members seeking further information to the minutes of the TBT Committee meetings of October 2012 and March 2013, at pages 7 of G/TBT/M/58, and page 33 of G/TBT/M/59, respectively. He also referred to New Zealand's notification to the TBT Committee (G/TBT/N/NZL/62/Add.1). He acknowledged the request that his government stop its legislative process and wait for the outcome of the WTO disputes regarding Australia's plain packaging measures. He said that New Zealand's legislative and regulatory process allowed ample opportunity for New Zealand to take into account the dispute settlement process in relation to Australia's plain packaging measures before finalising and implementing its plain packaging measures. His government was confident that tobacco plain packaging measures could be implemented in a manner that was consistent with a Member's WTO obligations. Finally, he recalled that Article 3.3 of the Dispute Settlement Understanding provided that the prompt settlement of disputes was essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members.

2.2.2.20 Ireland – Proposal to introduce standardised/plain packaging of tobacco products in Ireland (IMS ID 380)

2.177. The representatives of Cuba, Malawi and Ukraine expressed concern regarding the consistency of the proposed measure with the WTO Agreements, in particular the TBT and TRIPS Agreements. They also asked Ireland to suspend implementation of the measure until the

[3] http://www.parliament.nz

WTO disputes against Australia's plain packaging measure have been definitely decided. Their full statements are contained, respectively, in G/TBT/W/380, G/TBT/W/387 and G/TBT/W/383.

2.178. The representative of Guatemala stated that while Guatemala shared Ireland's policy objectives related to public health and tobacco control; it was nevertheless concerned with the proposed legislation and encouraged Ireland to consider less trade restrictive alternative measures.

2.179. The representative of Nicaragua stated that while Nicaragua shared Ireland's legitimate policy objectives, it was nevertheless concerned over the inconsistency of plain packaging measures with WTO rules. Nicaragua reiterated its concern with the negative effect that these measures could have on income, employment and other economic sectors. It also voiced concern over the proliferation of plain packaging measures, while various developing counties were disputing these measures under the WTO DSB. Nicaragua therefore encouraged Ireland to abstain from adopting plain packaging measures until there was a clear resolution by the DSB on the legitimacy of such measures.

2.180. The representative of Honduras supported the statements made by Cuba, Malawi, Guatemala and Nicaragua, and requested an update on the status of the process. Honduras was concerned that Ireland was adopting a measure similar to that of Australia, which was currently subject to five dispute settlement proceedings in the WTO, including one initiated by Honduras itself. Honduras urged Ireland to reconsider its decision to adopt WTO-inconsistent plain packaging measures, and to wait for the conclusion of the disputes lodged against Australia.

2.181. The representative of Uruguay expressed her delegation's view that the Irish plain packaging measure was compatible with WTO rules. In implementing such a measure, Ireland would be merely exercising its sovereign right to protect public health by giving effect to the obligations it has undertaken as a party to the WHO FCTC, in particular its Article 11 and relevant implementing guidelines.

2.182. The representative of Nigeria expressed concern over the precedent that the Irish plain packaging measures could set, particularly regarding the imposition of similar restrictions on heavily regulated products such as alcoholic beverages, snack foods and carbonated drinks. Nigeria did not object the objective of protecting human health, but was uncertain as to whether plain packaging measures could contribute to the achievement of such objective. She said that these measures appeared to be more trade restrictive than necessary to fulfil their objective.

2.183. The representative of Australia reiterated that Australia was of the firm view that Members had the right to implement measures necessary to protect public health, while complying with relevant international treaty obligations including the TBT Agreement. He said that tobacco plain packaging was a legitimate measure, designed to achieve a fundamental objective: the protection of human health. He encouraged Members to take proper note of the weight of the studies conducted by leading public health experts as well as the WHO on the merits of tobacco plain packaging, and to compare that with the surveys referred by certain Members to this Committee, which had questionable methodology and unsound findings. Finally, he said that Australia was committed to the prompt settlement of its own tobacco plain packaging disputes.

2.184. The representative of Norway expressed that her delegation had a new national tobacco control strategy for 2013 to 2016, which was focused on protecting children and young people from the harmful effects of tobacco and with a long term vision of a tobacco-free future. She recalled her delegation's stance that it was within the rights of each WTO Member to adopt measures necessary to protect public health, and that introducing plain packaging could be done in a way that was fully consistent with both WTO obligations and commitments undertaken under the WHO FCTC. Norway therefore supported Ireland in the adoption of plain packaging measures.

2.185. The representative of New Zealand stated that his delegation supported Ireland's move to consider introducing controls on the packaging of tobacco products. There was an extensive and growing body of international research that established that plain packaging, as part of a comprehensive tobacco control programme, would contribute to the objective of improving public health. The WTO Agreements did not prevent Members from taking legitimate measures to protect the health of their citizens. WTO rules, including those in the TBT Agreement, contained

appropriate flexibilities to enable WTO Members to regulate for health and other public policy purposes. New Zealand was therefore confident that Ireland and other Members would be able to introduce plain packaging regimes in a manner consistent with their obligations both under the WTO Agreements and the commitments undertaken under the WHO FCTC.

2.186. The representative of Canada noted Canada's interest in plain packaging measures. Tobacco posed a significant problem in Canada and around the world. In Canada alone, 37,000 people died annually from tobacco use. Tobacco products were also the only goods that were the subject of a legally-binding health treaty: the WHO FCTC. Canada suggested that, as Members move forward in their discussions on this topic, they may want to consider the complete economic picture regarding tobacco control, including whether tobacco may actually be a net economic drain for many countries. Canada was looking forward to further views from other Members on the appropriate balance between tobacco regulation, international trade and public health.

2.187. The representative of the European Union reiterated that in May 2013 the Irish government decided to begin the process of developing legislation introducing plain packaging for tobacco products sold in Ireland. It was therefore, in the EU's view, premature to discuss this issue in the context of the TBT Committee.

2.2.2.21 Peru – Act to Promote Healthy Eating Among Children and Adolescents (IMS ID 383)

2.188. The representative of the European Union regretted that, because this law had not been notified to the Committee, WTO Members had not had the opportunity to comment on it. The EU noted that according to the second transitional disposition, some of its provisions would come into force 120 days after the publication of the implementing regulation. The EU highlighted that adaptation to the new labelling requirements would require significant investment for manufacturers and a redesign of the packaging for some categories of products which were not defined yet. The EU therefore asked Peru to postpone the entry into force of the measure and provide a reasonable implementation period in accordance with Article 2.12 of the TBT Agreement. In this respect, the EU noted that its own legislation, adopted in 2011, would come into force in 2014 for the requirements on food labelling, and in 2016 for the nutritional labelling requirements. Finally, the EU requested an update on the status of the development of the implementing regulations in Peru.

2.189. The representative of Guatemala reiterated his delegation's concern regarding the Peruvian measure and requested an update on the implementation of the measure.

2.190. The representative of Mexico supported the statement made by the representative of the European Union. She expressed her delegation's concern with the fact that the Peruvian measure had not been notified to the WTO. Mexico asked Peru to share the final text of the measure and the technical parameters in place for its implementation.

2.191. The representative of Brazil encouraged Peru to promptly notify the measure to the TBT Committee. He expressed concerns regarding the balance between the measure and its purpose, as the measure seemed to be more trade restrictive than necessary to fulfil its objective.

2.192. The representative of Canada said that while her delegation supported Peru's objective of reducing obesity and other non-communicable diseases, it was nevertheless concerned that this measure may be more trade restrictive than necessary to achieve this objective. Canada encouraged Peru to consider less trade restrictive alternatives to pursue its objective. Canada also shared other WTO Members' concerns that this measure was not properly notified to the WTO for comments, and thus recommended that Peru notify this measure, along with a copy of the full text of the proposed regulation.

2.193. The representative of Peru explained that there were no updates to report and reiterated that the Multisectorial Commission that was drafting the implementing technical regulation was ready to publish a draft with respect to the parameters to be used to establish the content in sodium, sugar and saturated fat. This draft would be notified to the WTO with a 90-day period for comments, and the comments would be taken into consideration by the Peruvian authorities.

2.2.2.22 Indonesia – Ministry of Trade Regulation 82/M-DAG/PER/12/2012 on imported cell phones, handheld and tablet computers (G/TBT/N/IDN/78) (IMS ID 388)

2.194. The representative of Canada expressed the view that the Indonesian regulation created unnecessary costs and barriers to trade for legitimate exporters of electronic goods to the Indonesian market, while not protecting Indonesian consumers from illegally imported goods. She enquired whether the objective and means of the regulation were worthwhile.

2.195. The representative of the United States enquired about the reasoning behind Indonesia's requirement to provide product identification numbers up to a year in advance, and asked when Indonesia expected the KOMINFO regulation to take effect. The US was concerned with the amendments to Ministry of Trade Regulation 82 of 2012 as contained in Ministry of Trade Regulation 38 of 2013, and sought clarification regarding these changes. Finally, she enquired about the amendments to Ministry of Industry Regulation 108 of 2012 that were under consideration, and urged Indonesia to notify these measures to the TBT Committee.

2.196. The representative of the European Union echoed the concerns of Canada and the US on the Indonesian regulation.

2.197. The representative of Indonesia expressed that Indonesia had address the concerns of Canada, the US and the EU at the October 2013 TBT Committee meeting. He said that the Minister of Industry Regulation No. 108/M-IND/PER/11/2012 concerning the Provisions of Product Registration for Cell Phones, Handheld Computer and Tablet Computers and Regulation of Director General of High Technology-Based Industries No. 5/IUBTT/PER/1/2013 on Technical Guidelines for Issuance of Product Registration of Cellular Phones, Handheld Computer and Tablet Computer required domestic and foreign manufacturers to register the product to be distributed in Indonesia. Regarding the concerns with the registration of products, he explained that they were valid for one year and that the provisions for conveying the IMEI number were intended to aid in import planning and used to evaluate the realization of products. Relating to label affixing using Bahasa Indonesia (SKPBLI), he explained that the affixing could be done before products entered Indonesia's custom area. The application of SKPBLI could be submitted through INATRADE or directly to the Directorate of Consumer Empowerment, Directorate General of Standardization and Consumer Protection, the Ministry of Trade.

2.2.2.23 Indonesia – Ministry of Health Regulation 30/2013 on the inclusion of sugar, salt and fat content information, as well as health messages on the label of processed foods (G/TBT/N/IDN/84) (IMS ID 389)

2.198. The representative of the European Union recalled that this Indonesian regulation required mandatory nutrition labelling for salt, sugar and fat content of processed foods. Such nutrition declarations must be based on tests carried out by accredited labs. Furthermore, a mandatory health warning message would have to be included on the label of all processed food products. Firstly, with regard to procedure, the EU wondered how the notification of the regulation, dated 13 January 2014 with a proposed date of adoption of 16 April 2014, complied with the requirements of Articles 2.9 and 2.9.4 of the TBT Agreement. In this context, the EU also noted that Indonesia had indicated in the last TBT Committee meeting that an implementing Decree for this Regulation would be issued. The EU therefore requested that this Decree be also notified to the TBT Committee while still in draft form, and that Members be provided sufficient time to comment on it. While supporting Indonesia's goals of providing nutritional information to consumers so as to prevent diet-related chronic diseases, the EU wondered whether these objectives could not be achieved with less trade restrictive means, such as, for example, promoting healthy lifestyle and eating habits, rather than through a warning message applicable to all pre-packaged products. In this regard, the EU stated that the notified text was not in line with the Codex Alimentarius Standard Guidelines on nutrition labelling – CAG/GL 2-1985 – which applied to pre-packed foods only. The EU was also concerned with the lack of clarity as to how these requirements would apply. For instance, it was not clear where on the label the nutritional information and related health warning should be placed. What methods would be used for the tests verifying the nutrition declarations? Would tests performed by foreign laboratories, or in-house laboratories of companies be accepted? It was also unclear to the EU how the gradual implementation of the Regulation would take place. For instance, how would the risk of products with respect to non-communicable diseases be assessed? Finally, the EU enquired whether

Indonesia would allow, as a means to show compliance with the Regulation, stickers to be affixed after importation and before the product would be placed on the market in Indonesia.

2.199. The representative of the United States associated herself with the comments made by the EU. She noted that because Indonesia finalised the regulation without the benefit of a public comment period, it was unclear how Members' concerns would then be taken into account at this stage of the regulatory process. She asked for clarification regarding whether the trade impacts of the regulation were evaluated to ensure that the measure was not more trade restrictive than necessary to achieve Indonesia's objective. The US also enquired whether Indonesia considered using the Codex Nutrient Reference Values for labelling purposes. She also asked for research conducted to indicate how consumers would process the information contained in the mandatory health message. The US sought information regarding the issuance of additional technical guidance concerning the implementation of the regulation. The US requested clarification with respect to the testing provisions set forth in Article 6, which seemed to establish a strict testing procedure that would not allow minimum normal variations between batches and would possibly include unnecessary shipment by shipment inspections. The US was of the view that random testing and sampling was sufficient for monitoring and enforcing the accuracy of nutritional declarations. Finally, the US suggested the use of existing international tools to help verify the accuracy of nutritional declarations without additional testing.

2.200. The representative of Canada associated herself with the comments made by the EU and US.

2.201. The representative of Australia said that his delegation shared the same concerns voiced, and had the same questions posed by the EU in its intervention. While Australia supported measures to help consumers make informed dietary choices so as to reduce their risk of developing diet-related non-communicable diseases, Australia also wondered whether Indonesia could consider less trade-restrictive alternative measures that could also achieve its consumer health objective.

2.202. The representative of Indonesia informed that the regulation would enter into force three years after promulgation. He clarified that the regulation was not intended to prohibit consumers to consume sugar, salt and fat. Rather, the purpose was to better inform consumers on nutrition in order to prevent certain non-communicable diseases. In addition, the inclusion of a label and health message was part of a broader policy in favour of a healthy diet. He further informed that the Ministry of Health was currently drafting implementing regulations which considered inputs received from various stakeholders and referred to existing international regulation. These implementing regulations would address food categories in detail. Other details would be regulated through guidelines issued by the Ministry of Health and the National Agency for Drugs and Food Control. Rules on how to affix labels were already provided through existing regulations, such as Government Regulations No. 69 of 1999, and the regulation of the National Agency for Drugs and Food Control (BPOM) No. HK.03.1.23.11.11.09605 of 2011. Regarding testing, the new regulation required testing to be conducted by laboratories accredited by the Indonesian National Accreditation Body (KAN) or other competent institutions. Test results had to be provided when producers registered or re-registered at BPOM, or when they reformulated the ingredients of the products. The possibility for accepting test results issued by other laboratories was going to be addressed at a later stage. The text of the label and health message was based on the Balance Nutrition Guidelines and related 2008 WHO recommendation. Finally, Indonesia did not distinguish "natrium" and "sodium" because Indonesian consumers were more familiar with the term "natrium".

2.2.2.24 European Union – Proposal for a Regulation on Fluorinated Greenhouse Gases (G/TBT/N/EU/91) (IMS ID 391)

2.203. The representative of Japan reiterated Japan's concern that the measure would create unnecessary obstacles to international trade and requested the EU to: (i) withdraw the prohibition of pre-charging; (ii) clarify the method for quota allocation of hydrofluorocarbons (HFCs) and ensure the non-discriminatory application of such method; and (iii) withdraw the ban on the use of HFCs. Finally, while Japan welcomed the fact that the regulation adopted on 12 March 2014 took into consideration its concerns, it considered that it was equally important that European Union would also take into consideration Japan's concerns with respect to the implementing measures of the regulation.

2.204. The representative of the European Union explained that the adopted EU text of the measure had taken into consideration the concerns previously raised by Japan and the US so as to include, inter alia, the following elements: (i) the ban on imports of pre-charged equipment was eliminated; (ii) the "new entrants reserve", i.e. the quotas for importers or producers of HFCs which had not reported imports or production in the period of 2009 to 2012 had been increased from 5% to 11%, which corresponds to the quantities of HFCs imported in pre-charged equipment in accordance with the figures provided in the Impact Assessment; and (iii) there was not a total phase out of HFCs by 2020, but only specific bans for a limited number of appliances for which there were acceptable alternatives to the use of high Global Warning Potential HFC gases.

2.2.2.25 European Union – Revised Proposal for the Categorization of Compounds as Endocrine Disruptors of 19 February 2013 by DG Environment (IMS ID 393)

2.205. The representative of the United States welcomed the EU's decision to conduct an impact assessment on the plant and biological side, and mentioned independent impact assessments that suggested significant trade impact from a horizontal approach. However, she noted that there were impact assessments conducted by independent organizations that suggested significant trade impact from a hazard-based approach. She said that US industry was uncertain as to the timing of the process ahead, and opportunities for stakeholder participation and transparency.

2.206. The representative of the European Union explained that the EU had decided to carry out a comprehensive impact assessment that would analyse different options for defining criteria for the identification of endocrine disruptors and their corresponding health and socio-economic effects once incorporated in different pieces of EU legislation. As part of the impact assessment, the European Commission would publish a detailed roadmap to outline the impact assessment structure and the options that would be assessed. Moreover, a three-month public consultation would be launched in 2014. After the impact assessment was concluded, the European Commission would present proposals for introducing criteria to identify endocrine disruptors in different pieces of EU legislation.

2.2.2.26 China – China Food and Drug Administration (CFDA) EMC Enforcement Notice for medical devices of 19 December 2012 (IMS ID 387)

2.207. The representative of the European Union recalled previously raised concerns in relation to the Chinese measure enforcing in-country testing of electro-magnetic compatibility (EMC) for Class III medical devices as of 1 January 2014, and Class II medical devices as of 1 January 2015. She explained that the testing was mandated to ascertain compliance with a Chinese mandatory standard equivalent to IEC standard 60601-1-2. She also recalled that at the latest meeting, China informed the Committee that the Chinese standard was identical to the IEC one. The EU requested that the CFDA accept test reports from foreign laboratories accredited by ILAC members, as an alternative to in country testing in China. The EU considered that this would avoid unnecessary duplication of testing, as medical devices imported into China were already tested in accordance with the IEC standard. Moreover, this would ensure that there was no disruption in the importation of medical devices into China due to a lack of necessary infrastructure to perform the EMC testing.

2.208. The representative of the United States associated herself with the comments made by the EU, particularly those relating to ILAC and the need for in country testing for medical devices. She enquired about the rationale for such a mandate on domestic testing and the change for China's long standing practice in this regard. Finally, she noted China's failure to notify these testing requirements to the WTO Secretariat and to take comments into account.

2.209. The representative of China stated that "standard YY20120505 Medical Electrical Equipment Part 1 2: General Requirements for Safety, EMC Standard Requirements and Test Standards for Medical Devices Industry" was an identical transposition of the IEC international medical electrical equipment electromagnetic compatibility test standard IEC 60601 1 2. She said the standard was set to ensure a safe environment for medical devices so as to protect public health. As IEC 60601 1 2 was a recognized international standard in this area and was widely used by WTO Members, it was her delegation's view that the promulgation of YY20120505 would not have a significant impact on international trade. Regarding concerns on laboratory capacity, China had fully taken into consideration its domestic capacity and ensured the smooth implementation of the standard.

2.2.2.27 Peru – Implementing Regulations of 14 November 2012 for Moratorium on Planting Genetically Engineered Crops (IMS ID 392)

2.210. The representative of the United States noted that the US has also raised this concern during Peru's recently concluded trade policy review. The US then asked Peru to explain its failure to notify the measure given that conformity assessment procedures conducted were: (i) not in line with the relevant guides and recommendations of international standardizing bodies; and (ii) the measure might have a significant impact on trade. The US also asked Peru to identify the guides and recommendations issued by international standardizing bodies that, in Peru's view, the measures were in accordance with. In addition, the US considered that the implementing regulations included overly restrictive penalty provisions, and expressed disagreement with Peru's assertion that the moratorium was not a technical regulation within the meaning of the TBT Agreement. The US considered the moratorium to be an administrative measure designed to protect the environment and requested Peru anew to notify it, while providing an opportunity for comments. Finally, she requested an update on US' comments raised at the October 2013 meeting.

2.211. The representative of Peru explained that the moratorium on genetically engineered crops was an environmental measure designed for a period of ten years. There was therefore no need to notify it given that it was not a technical regulation within the meaning of TBT Agreement, but instead an environmental measure to protect Peru's biodiversity. Peru informed that the issue would further be discussed at the bilateral level

2.2.2.28 Ecuador – Resolution establishing the "General conformity assessment framework for Ecuador" and the "Handbook of procedures to be observed prior to all stages of the customs clearance, marketing and market surveillance of manufactured, imported and marketed goods subject to Ecuadorian technical regulations (G/TBT/N/ECU/44 G/TBT/N/ECU/44/Add.1 G/TBT/N/ECU/44/Add.2 G/TBT/N/ECU/44/Add.3) ((IMS ID 398)

2.212. The representative of the United States considered these conformity assessment procedures to be more strict than necessary. In this regard, the US was unclear about Ecuador's inconsistent notification of measures affecting conformity assessment. While Ecuador had notified the Ecuadorian National Quality Council (CONCAL) Resolutions 009-2009 and 010-2010 as G/TBT/N/ECU/44, no comment period had been provided for. Moreover, she noted that the Ecuadorian Foreign Trade Committee of the Ministry of Production, Employment and Competitiveness had published Resolution 116 in December 2013, which vastly expanded the list of products requiring a certificate of recognition and conformity for export to Ecuador. The US enquired whether Ecuador planned to notify Resolution 116 in accordance with Article 5.6.2 of the TBT Agreement and provide time for comments. Furthermore, new measures issued by Ecuador had led to negative trade impacts due to the lack of prior notice, failure to provide for a comment period, and absence of transition periods. This included Resolution 116, which required exporters to obtain a certificate of recognition, as well as many technical regulations that prohibited the importation and sale of products not complying with new conformity assessment requirements. The US expressed concern with regard to exporters' ability to obtain the certificate of recognition as required under Resolution 116 due to insufficient information provided on requirements to obtain such certificates as well as the insufficient number of conformity assessment bodies approved by the Ecuadorian Accreditation Organization to issue conformity assessment certificates. Along those lines, she also noted that the Ecuadorian Foreign Trade Committee had once again expanded the scope of products subject to these conformity assessment requirements through Resolution 006-2014 on 14 January 2014. The US questioned what were the benefits conferred by these requirements. It also requested Ecuador to explain what were the legitimate objectives justifying these additional certification requirements. The US also asked Ecuador to suspend the measures until they could be notified and opportunity for comments on it had been given. In case the measures were justified, she also asked Ecuador to suspend its implementation for one year so as to allow economic operators to comply with its new requirements without interrupting trade. Further, a reasonable interval should be given between the publication of the measure's new requirements and their entry into force.

2.213. The representative of the European Union raised concerns regarding the Ecuadorian conformity assessment framework notified as G/TBT/N/ECU/44 and the two specific COMEX Resolutions 116 of 19 November 2013 and COMEX Resolution 6 of 14 January 2014. While none of

these had been notified to the WTO, they had entered into force immediately after publication in violation of Article 5.6 of the TBT Agreement. Resolution 116 extended the range of products subject to controls prior to being imported. Products as diverse as food and beverages, paints, steel wire, irrigation systems, electric trains, lifts, electrical cables and conductors had to present a certificate of recognition as a supporting document to the customs declaration. This requirement had been extended to additional categories of products with COMEX Resolution 6 on 14 January 2014. While the EU fully shared Ecuador's aim of improving the quality of imported products, she reminded that conformity assessment procedures should not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade (Article 5.1.2 of the TBT Agreement). Hence, import procedures should be simplified by removing the need to obtain a certificate of recognition issued by the Ecuadorian Standardization Institute, which could only be obtained after issuance of a certificate of conformity issued by a certification body recognised by the Ecuadorian Accreditation Body (OAE). She asked Ecuador to explain the rationale of imposing a system of double certificates. The EU also noted that Ecuador had recently been issuing numerous technical regulations which, in some cases (e.g. cosmetics), had been adopted under the urgency procedure and established third party certification requirements. The EU had been made aware that it was often impossible for companies to obtain a certificate of conformity as the Ecuadorian Accreditation Organization (OAE) had not recognised any certification bodies that could provide those services. In some other cases (e.g. ceramics), technical regulations established third party certification for every single batch of imported products, thereby imposing disproportionate burden on manufacturers in third countries. The cumulative effect of these new requirements, coupled with their immediate entry into force, caused containers to be blocked in customs. The EU invited Ecuador to explain why no transitional period had been provided to adapt to the new requirements, and enquired how the lack of available certification bodies recognised by the OAE had been taken into account for some of the recently introduced technical regulation.

2.214. The representative of Costa Rica reiterated its request that requirements be suspended until clarity on transparency and proportionality had been achieved. There should be an adequate balance between the right to achieve legitimate goals and the trade impact that these regulations could have once implemented. Finally, he enquired for further information on conformity assessment certificates and whether this was open to all products listed in Annex 1 of Resolution 116.

2.215. The representative of Ecuador said that the Inter-ministerial Committee on Quality in Ecuador was tasked with the formulation of policies to establish those goods and products the importation of which needed to comply with technical regulations and conformity assessment procedures. Ecuador considered that the measure at issue was not a restriction to trade, but rather a mechanism which allowed assessing the fulfilment of requirements that were set out in the Ecuadorian technical regulations. The certificate of compliance was introduced to guarantee the quality of a product. Ecuador also said that that technical regulations pointed out in previous resolutions had been notified in a timely manner as set out in the TBT Agreement.

2.2.2.29 United States – EPA Palm Oil Biofuels Regulatory Program (IMS ID 408)

2.216. The representative of Indonesia reminded that the U.S. Environmental Protection Agency (EPA) had released an analysis on palm oil used as a feedstock to produce biodiesel and renewable diesel under the Renewable Fuel Standard (RFS) programme, a mandatory minimum volume of biodiesel to be used in the national transportation fuel supply under the enactment of the Energy Independent and Security Act 2007 (EISA). EISA specifically directed EPA to evaluate the aggregate quantity of GHG emission related to the full lifecycle and established a threshold for lifecycle GHG emission reduction in which biofuel derived from palm oil as feedstock should reduce lifecycle GHG emission by at least 20% to qualify as a renewable fuel. Biodiesel and renewable diesel produced from palm oil however were excluded as renewable fuel under the RFS programme as they did not meet the minimum 20% threshold. Indonesia considered that the threshold and method of calculation of the lifecycle GHG emission reduction had been arbitrarily set. Indonesia had submitted the result of its calculation of the level of lifecycle GHG reduction to US authorities, which had shown that the level for biofuel from palm oil was far above the threshold of 20% and that Indonesian palm oil should have qualified as renewable fuel under the RFS programme. He reiterated that EPA had failed to reply and address Indonesia's concerns by taking into account the result of alternative calculations.

2.217. The representative of the United States appreciated the input provided by Indonesia for consideration in the US EPA's science-based process. Since publication of the 21 January 2012 Notice of Data Availability (NODA), EPA had gathered new information and data. Moreover, EPA was conducting a science-based review of information gathered on peat soil as well as other issues raised, such as methane capture and palm oil mills, and was supporting a peer review to gather additional scientific information about GHG emissions from palm oil expansion on tropical peat swamps. She noted that EPA's evaluation would not affect palm oil exporters to the US for food or other purposes. This determination would also not restrict the ability of palm oil biofuels to be imported to the US, but would only help to determine whether such fuels were eligible under US law to be used to comply with the renewable fuel mandates of the RFS programme. Moreover, biofuel facilities, domestic and foreign, that had commenced construction prior to 19 December 2007 and completed prior to 19 December 2010 were not required to meet the 20% GHG threshold to qualify as renewable fuel. The US informed that EPA would continue the dialogue with government, industry, civil society and scientific experts and would only make a final determination once data and analysis were scientifically robust. On land use change mapping and policy implementation, she added that EPA was considering new data sources and research available since the publication of NODA. EPA was coordinating with various agencies and organizations currently undertaking scientific studies and developing mapping tools in the region, as well as seeking information on the extent to which new policies on land use change were being effectively implemented and enforced.

2.2.2.30 Turkey – Draft Communiqué on Warning Messages Placed on Containers of Alcoholic Beverages; and, Draft Regulation Amending the Regulation on Procedures and Principles Concerning Domestic and Foreign Trading of Alcohol and Alcoholic Beverages (G/TBT/N/TUR/42 and G/TBT/N/TUR/42/Add.1) (IMS ID 407)

2.218. The representative of the European Union said the EU was still concerned with Article 4 of the draft text, according to which brand, identification or distinguishing signs used on alcoholic beverages should not be used on non-alcoholic beverages and vice versa. The provision further specified that the Tobacco and Alcohol Market Regulatory Authority might be able to determine a risk of confusion between an alcoholic product and an alcohol-free product from the same brand. Hence, EU brewers, that normally used a uniform mark for their entire product range, would not be able to sell their alcohol-free beer in Turkey if its variant containing alcohol was already on the Turkish market and vice versa. The EU considered that Article 4 of the Regulation and provisions contained therein were imprecise, created legal uncertainty, and left the authority to decide on a case-by-case basis. As this could lead to arbitrary decisions, the EU suggested that Turkey revised its law with a view to eliminating Article 4.

2.219. The representative of Turkey recalled the EU's view that Article 4 of the proposed measure (renumbered as Article 3 in the adopted version) left a broad margin of discretion to Turkish authority, and might hence create legal uncertainty. He informed that, conversely, this Article laid out rules for the Turkish authority to follow, including whether the two items to be compared: (i) had the same form and were designed in respect of packaging or content, or had clear and direct identification, similarity or connotation in respect of elements included in brands, identifications or distinguishing signs; (ii) were aimed to promote, directly or indirectly, alcoholic beverages through elements of the product or a firm, encouraged drinking alcoholic beverages directly or indirectly, or had an encouraging effect; and (iii) had a legal or actual link or association of interest. In addition, he explained that the provisions of related law and resolution concerning brand stretching, such as distinguishing signs, would be evaluated by a scientific commission comprised of experts in commercial law, administrative law, and in the field of trademark, patent and business. Consequently, the relevant authority would receive the commission's evaluation for every brand that created ambiguity. According to another Turkish Resolution, on principles and procedures on the sale and service of tobacco products and alcoholic beverages, alcoholic beverages should not be advertised and introduced to consumers under any circumstances. In this respect, non-alcoholic beverages placed on the market and carrying the same brand posed the hidden advertisement risk for alcoholic beverages as these products carried the same name as the non-alcoholic products. He clarified that the main objective of this provision was to prevent awareness of alcoholic beverages among consumers under the age of 18 and thus to prevent young people from consuming alcoholic beverages. The provision applied to domestic and foreign products without discrimination and in pursuit of the objective of human health and safety. Hence, the measures were not disproportionate and would not result in unnecessary barriers to trade.

Turkey had taken additional comments provided by the EU into consideration, and would provide a written reply within the coming days.

2.2.2.31 Ecuador – Resolution No. SENAE-DGN-2013-0300-RE relating to post entry control of imported alcoholic beverages (IMS ID 394)

2.220. The representative of Canada understood that the Regulation had entered into force only 30 days after its publication. Canada noted that the Regulation applied only to imports, and that liquor not properly labelled at its origin could be returned to its country of export (Article 4). Canada expressed concern of the Regulation being in violation of Articles 2.1 and 2.2 of the TBT Agreement. Finally, she noted that Ecuador had so far failed to reply to its letter of 4 October 2013.

2.221. The representative of the European Union expressed her delegation's continuous concern on the measure's implications on imported products, including the fact that the Regulation required some imported spirits to bear a country-specific front label detailing the name of the Ecuadorean importer. Furthermore, the Ecuadorian legislation required that the front label had to be applied at origin and that the use of stickers was not allowed. The EU recalled Article 2.2 of the TBT Agreement and enquired about the rationale for requiring front label importer identification and for excluding the acceptance of stickers. The EU requested Ecuador to consider applying less trade restrictive labelling measures.

2.222. The representative of Ecuador pointed out that the resolution on the Regulation of post-control of imported alcoholic beverages had been published in the Official Register 86 on 23 September 2013. He said that the labelling measure for bottles was a customs measure implemented by the national customs service of Ecuador. Its exclusive purpose was to avoid the entry of illegal alcoholic beverages. In this respect, Ecuador's trading partners had been requested to assist Ecuador by providing statistical information on their export of alcoholic beverages. This information would assist the customs service to assess data and to make a finding in the short term as to facilitate compliance with these requirements. He reported that, to date, the national customs service intended to revise this measure and would be evaluating alternatives proposed.

2.2.2.32 Mexico – Draft Mexican Official Standard PROY-NOM-032-ENER-2013: Maximum electrical power limits for equipment and appliances requiring standby power. Test methods and labelling (G/TBT/N/MEX/263, G/TBT/N/MEX/263/Add.1 and G/TBT/N/MEX/214) (IMS ID 406)

2.223. The representative of the United States acknowledged the update provided by Mexico on NOM-032, published on 24 January 2013, including the information that an extended implementation period of 240 days was provided. While the US shared Mexico's goal of energy conservation, she reiterated that the final version of the measure continued to reflect issues previously raised by US industry, including the misaligned efficiency requirements and the onerous testing and labelling regime. She enquired how comments had been taken into account, and expressed concern over duplicative labelling and conformity assessment requirements. She also asked how these would result in energy efficiency for consumers, and enquired for implementation guidance, as well as information on third-party testers. The US understood that no Mexican labs were currently certified to provide testing, and asked for a list of labs approved for certification. Moreover, she enquired how the measures achieved Mexico's goal of energy conservation and encouraged Mexico to temper its Regulation with a view to harmonization with US and Canadian programmes.

2.224. The representative of Korea noted that, according to notification G/TBT/N/MEX/263/Add.1, and in case the product was subject to both energy efficiency and the standby power labelling requirement, only the standby power mode might be used in terms of avoiding duplicative regulation. Mexico's regulation specified that standby power labels only carried information about the standby power, while energy efficiency labels carried hourly power consumption in both "on" and "standby" modes. Korea understood that energy efficiency labels provided more clear information for consumers and requested the Mexican authorities to allow the use of energy efficiency labels for products which were subject to both labelling requirements. As regards the test method of microwave ovens using a clock function, he requested that Mexican authorities provide information on how to test microwave ovens without the clock function. He also said that

the standby power regulation for commercial microwave ovens was not imposed in many countries since those ovens were normally on-mode during the entire using time. He enquired on commercial microwave ovens subject to the standby power regulation, and asked whether test result issued by a laboratory accredited under the scheme on international laboratory accreditation cooperation (ILAC) would be accepted.

2.225. The representative of Mexico reported that on 12 November 2013, the Federal Commission of Regulatory Improvements had issued its final ruling on the proposed draft as NOM-032-ENER-2013 related to maximum electrical power limits for equipment and appliances requiring standby power test methods and labelling. On 28 November 2013, the National Advisor Committee for Standardization had approved the replies to comments received during the public consultation fora NOM-032 in 2013, as well as the official Mexican definite standard. The replies to comments received during the consultation period had been published in Mexico's Official Bulletin on 19 December 2013 and the transitional articles of the standard had been modified, indicating that the official Mexican standard would enter into force 240 days following its publication. As from that date, all equipment and devices requiring standby power included within the scope of application of the Mexican standard would have to be certified on the basis of this standard. Verification of the requirement established concerning labelling would be as from 90 days following the entry into force of the standard. On 23 January 2014, the Official Bulletin had published NOM-032-ENER-2013 as a definitive standard. Mexico informed that five laboratories had begun accreditation procedures to the Mexican accreditation authority as well as two certification agencies. The standard would enter into force approximately in December 2014. In December 2013, the Mexican government held a telephone conference with the US government and representatives of their regulatory body at which it was agreed that channels would remain open to meet any concerns that the US might have. Mexico welcomed any further comments in view of the fact that the standard would enter into force on the basis of the definitive version published in its Official Bulletin.

2.2.2.33 Chile – Safety for Printers and Energy Efficiency for Printers (IMS ID 403)

2.226. The representative of the United States welcomed the delay in implementation of the "Safety for Printers" and "Energy Efficiency for Printers" to March and June 2014, respectively, and asked for more certified laboratory options as well as more time to comply. Industry reports indicated that there were only three certified labs at the moment, none of which however based in the US. Industry was highly concerned about obtaining certification in light of the large number of companies, the wide range of products to be certified, and the ongoing measurement issue as certification took place. The US asked for clarification on the "sleep vs. standby mode" issue, and, in case this would affect certification, the US asked that additional time be required beyond the three-month extension.

2.227. The representative of Chile referred to meetings between their regulatory bodies and representatives of the US interested companies, and pointed out that Chile had complied with all its commitments contained in the TBT Agreement. Chile had been working on a timely basis to take into account all suggestions made with regard to these two protocols regarding security and the energy efficiency for printers. She stressed that there had been a delay with respect to the measure's entry into force from December 2013 to March and June 2014. Furthermore, new accredited laboratories had been included to facilitate the certification process. She informed that, to date, there were accredited Chilean laboratories, as well as some in Argentina and China, as stated in Articles 18 and 22 of the Decree 298 for the Certificating of Electrical Products and Fuels. She indicated that new facilities would be provided for the labelling packaging requirements. As regards to the "sleep vs. standby mode" issue, she informed that a new Resolution had been sent to the US and welcomed any new comments thereon. Moreover, Chile's regulatory body was assessing a change in Decree 298, which would broaden the scope of accreditation. This would be notified to the WTO pursuant to Article 2.9 of the TBT Agreement.

2.2.2.34 Russian Federation – Measure affecting import of Ukrainian confectionary products (IMS ID 399)

2.228. The representative of Ukraine expressed concerns regarding the Russian Federation's measure affecting the import of Ukrainian confectionary products. Ukraine's full statement is contained in document G/TBT/W/385.

2.229. The representative of the Russian Federation said that suspension of imports of confectionary produced by the company *Roshen* had been introduced due to inconsistencies of the products with provided labelling confirmation. Labelling requirements for food products had been established in 2011 through a technical regulation of the Customs Union on labelling of food products adopted on 9 December 2011. Hence, the circulation in the territory of the Customs Union of food products not in compliance with the provisions of the technical regulation was prohibited. In 2013, the Russian regulating authority *Rospotrebnadzor* had detected that the labelling of confectionary produced by the company *Roshen* had contradicted relevant requirements by providing false information on the content of proteins fat and carbohydrates in the products. To protect consumer rights for valid information and to prevent deceptive trade practice, the measure at issue had been introduced. He reiterated that the import suspension of confectionary produced by the company *Roshen* represented a measure taken under the existing technical regulation. Hence, Russia did not see any basis for notification. He emphasized that the suspension of imports applied to specific products manufactured by the specified Ukrainian company. Although, in a way, the measure represented a ban on imports of confectionary from Ukraine to the Russian Federation, this measure was taken in full compliance with WTO rules, and in particular with the provisions of the TBT Agreement, including national treatment principles. He explained that the import suspension of confectionary produced by the company *Roshen* was introduced due to inconsistency of the products with provisions of the Customs Union technical regulation and in accordance with the federal law of the Russian Federation on protection of consumer rights.

2.2.2.35 Thailand – Draft Thai Industrial Standard for Ceramic Tiles (TIS 2508-2555) (G/TBT/N/THA/407) (IMS ID 401)

2.230. The representative of the European Union noted that the measure entered into force on 15 January 2014. The EU enquired why this mandatory Thai Industrial Standard was needed for products that complied with the relevant ISO standards for ceramic tiles, in particular ISO 13006:2012. The EU asked Thailand to explain why its standard contained differences in comparison to the ISO standard, such as water absorption thresholds. With regard to the implementation of the Thai Industrial Standard, the EU reiterated its concerns in relation to the conformity assessment procedure provided, which required product testing and an on-site audit to inspect a manufacturer's quality control system by the Thai Industrial Standards Institute (TISI). According to TISI, its marking had to be affixed on each and every tile, and not alternatively on the packaging. She said that these marking requirements implied significant costs and were not in line with ISO 13006:2012. The EU also asked Thailand to consider less burdensome conformity assessment procedures for ceramic tiles (Article 5.1.2 of the TBT Agreement). Finally, the EU enquired whether test results from EU laboratories and certificates from EU conformity assessment bodies would be accepted.

2.231. The representative of Thailand informed that the standard became mandatory as from 15 January 2014. The purpose for enforcing this standard as mandatory was to protect the consumers from the negative effects of low quality non-complying products. Thailand informed that the assessment procedure, product testing and marking were under consideration, and that the result of this would be notified in due course.

2.3 Exchange of Experiences

2.3.1 Thematic Session on Standards (held on 18 March 2014)[4]

2.232. The Chairman reported on the thematic session held on 18 March 2014 based on an advance copy of his report made available to Members in the room.[5] On a personal note, the Chairman said that the event had been both comprehensive and informative. It was a useful way of building mutual understanding between Members on what was clearly a very complex topic. He noted the close relationship between standards, on the one hand, and regulatory activities on the other. Clearly, governments had different approaches. One matter that came across strongly was the importance of distinguishing between the activity of setting standards and the activity of regulating. The former (standard-setting) could be done by many different types of bodies,

[4] A background document by the Secretariat is contained in JOB/TBT/65.

[5] The full report, provided on the Chairman's own responsibility and with comments from Members taken into account, is contained in G/TBT/GEN/144/Add.1.

including private. Regulating, however, was the domain of governments: governments set policy, not standardizing bodies. The relationship was nevertheless complementary because policy-makers could draw on the knowledge contained in standards as a basis for regulation.

2.233. The representative of China thanked the Chairman for a nice report. However, he noted that the report did not cover some points that had been made in the question-answer session. He requested the Chairman to include more information in his report. Moreover, the reference to the presentation by UNCTAD was too brief.

2.234. The representative of El Salvador expressed appreciation for the good summary report and noted the usefulness of the thematic sessions as a means of bringing forward the work of the Committee on the triennial reviews. In the view of El Salvador, the thematic sessions were proving to be a good opportunity for debate and information-exchange in the Committee.

2.235. With respect to the comment from the representative of China, the Chairman noted that the full presentations were available to Members on the Members' website. His report was intended to be a summary and not an exhaustive rendition of the discussion. In any case, China's comments would be taken into account before circulation of the final version of his report.

2.3.2 Thematic Session on Good Regulatory Practice

2.236. The Chairman also reported on the second thematic session held on 18 March 2014 – on Good Regulatory Practice. Again, this was based on an advance copy of the report made available to Members in the room.[6] In his report, the Chairman took the opportunity to report on the informal meeting held in the morning of 19 March 2014 regarding the Committee's work on the non-exhaustive list of voluntary mechanisms and related principles of GRP (JOB/TBT/44/Rev.3). He noted that, as agreed in the informal meeting, the final deadline for comments on JOB/TBT/44/Rev.3 was **30 April 2014**. Thereafter, a final version of the non-exhaustive list of voluntary mechanisms and related principles of GRP would be circulated by the Secretariat in advance of the June 2014 meeting of the Committee. He intended to enable the Committee to be in a position to adopt the final version of the GRP list at its June 2014 meeting.

2.3.3 Other Matters

2.3.3.1 Transparency - The Coherent Use of Notification Formats (JOB/TBT/68/Rev.1)

2.237. The Chairman recalled that the European Union had circulated a paper in June 2013 entitled "A Coherent approach to notification formats" (JOB/TBT/48). Since that time, a substantial amount of work had been undertaken. The Committee had heard from the SPS Secretariat on related working practices; it had held a number of informal discussions; and, several delegations had tabled written comments. The Chairman noted that the latest revision of the Committee's draft recommendation was contained in document JOB/TBT/68/Rev.1. As this new revision had only recently been circulated (14 March 2014) he proposed that the Committee not engage in an in-depth discussion at the current meeting. Instead, he asked Members to consider JOB/TBT/68/Rev.1 and provide any comments in writing by **30 April 2014** and to be prepared to revert to the document at the June 2014 meeting of the Committee. It was so agreed.

2.3.3.2 Topics for next thematic session (17 June 2014)

2.238. The Chairman recalled that Paragraph 26(d) of the Sixth Triennial Review (G/TBT/32) stated that: "In 2014 and 2015, Members will continue to hold thematic discussions as appropriate pursuant to the decisions and recommendations before the Committee." In light of this, he proposed that the Committee revert to the topic of transparency while leaving a window open to also address other issues, depending on progress made and submissions provided by Members.

2.239. The representative of Brazil suggested that delegations discuss the theme of mutual recognition agreements (MRAs) for the next session.

[6] The full report, provided on the Chairman's own responsibility and with comments from Members taken into account, is contained in G/TBT/GEN/143/Add.2.

2.240. The representative of the United States noted that there had already been a discussion on conformity assessment procedures, including MRAs at the last thematic session – there had even been a presentation by South Africa on that very topic. She noted that the thematic discussions were intended to follow-up on recommendations from the triennial reviews. She therefore asked the delegation of Brazil if they could expand on what precisely they had in mind with respect to MRAs and how it would relate to a particular Committee recommendation.

2.241. In response to the question from the United States, the representative of Brazil noted that they would provide a paper to more precisely explain their ideas on the subject.

2.242. The representative of Chinese Taipei noted that many of the concerns raised in the TBT Committee related to food labelling. He referred to standards developed by the WHO/FAO Codex Alimentarius Commission. He suggested that the Committee could invite the FAO or the WHO to present their work on labelling in the Committee.

2.243. The representative of the European Union noted that the Committee had a number of important tasks before it. It needed to finalize the GRP document; time would also have to be allocated to the draft recommendation on coherence in the use of notification formats[7]; a third topic would be transparency and in particular an exchange of experiences on use of the new online NSS. In the view of the representative of the EU, this was the core work for the next thematic session and while he remained open to other suggestions, it would be important to clarify how these would fit in to the follow-up to the Sixth Triennial Review recommendations.

2.244. In summing up, the Chairman noted that the thematic sessions needed to be driven by submissions from Members and needed to remain focused on the mandate set out in the Sixth Triennial Review.[8] With respect to the suggestion from the representative of Chinese Taipei to have a discussion on labelling, he suggested that this could be raised for discussion under the regular agenda of the Committee. On the points made by the EU, the Chairman noted that his understanding was that the thematic sessions were essentially about information exchange: it was an opportunity for Members to learn from each other. The Committee's document on GRP would be finalized in informal mode – and then adopted in formal mode (there was no need to hold a thematic session to do this). In other words, the thematic session should focus on an exchange of information. Based on the Chairman's proposal, for the next meeting, it was decided that delegations would address the topic of transparency while leaving a window open to also address other issues, depending on submissions provided by Members.

3 NINETEENTH ANNUAL REVIEW

3.1. The Committee adopted the Nineteenth Annual Review of the Implementation and Operation of the TBT Agreement as contained in G/TBT/34 and G/TBT/34/Corr.1. The Committee took note of document G/TBT/CS/2/Rev.20 containing a list of those standardizing bodies that have accepted the Code of Good Practice since 1 January 1995.

4 TECHNICAL ASSISTANCE

4.1. The representative of China thanked the WTO Secretariat for technical assistance on the TBT and SPS Agreements received at a seminar that had been held in Beijing and in which some 80 officials from various agencies had participated.

4.2. The representatives of the BIPM drew the Committee's attention to two workshops being planned for developing countries in Africa. One was a two-week workshop on legal metrology and was scheduled for the second half of 2014. A shorter workshop would be held in June 2014 in Addis Ababa and was related to participation in the BIPMs CIPM MRA (a mutual recognition agreement).

4.3. The Chairman reported on his participation, funded by the Government of Japan, in a WTO TBT Regional Workshop that took place in Windhoek, Namibia on 4-6 March 2014. The workshop was designed to assist English-speaking African Countries in consolidating their knowledge of the

[7] JOB/TBT/68/Rev.1, dated 14 March 2014.
[8] G/TBT/32, para. 26.

principles and disciplines of the TBT Agreement. It placed particular emphasis on transparency and provided a forum for participants to share experiences with respect to challenges related to the implementation of the TBT Agreement in Africa. The Chairman's contribution had been two-fold: he provided his experience as the Chairman of the Committee and, second, the experience of Japan in implementing the Agreement. He also encouraged other Members to contribute to this type of event.

4.4. The Secretariat thanked the Chairman for his contribution to the regional event. It was stressed that this type of input directly from Members to the Secretariat's technical assistance activates was enriching for participants. A document containing information on the Secretariat's technical assistance activities was made available.[9]

5 UPDATING BY OBSERVERS

5.1. The representative of the UNECE drew the Committee's attention to the work of UNECE Working Party on Regulatory Cooperation and Standardization Policies (WP.6) – a body that encourages regulatory cooperation between countries, including with respect to specific sectors. She noted that the Working Party had held a conference that led to the adoption of recommendations about how to reference standards in regulations in a way that preserved the voluntary nature of standards while respecting the intellectual property that they incorporated.[10] In other work, she said that the UNECE had issued studies on how to evaluate the trade restrictiveness of regulatory and procedural barriers to trade; this work established a methodology that was available online. Two studies based on this methodology (Belarus and Kazakhstan) had been completed and one additional, for Tajikistan, would be published shortly.[11]

5.2. The Committee took note of information provided by the representatives of BIPM[12], IEC[13] and the Codex Alimentarius Commission.[14]

6 ELECTION OF CHAIRPERSON

6.1. The Chairman informed delegations that consultations were being carried out on the selection of Chairpersons for the sub-committees under the Council for Trade in Goods. The Committee would revert to this agenda item at its next meeting.

7 OTHER BUSINESS

7.1 Observers' presence at the Committee's thematic discussions

7.1. The representative of the United States said that the thematic discussions had been both productive and useful. She noted that because the Committee had decided to hold the thematic sessions in informal mode one possibly unintended consequence had been the exclusion of observer organizations (unless specifically invited and put on the programme). This was unfortunate in that issues of interest to observer bodies were discussed and, conversely, the work of observer bodies was of interest to the Committee. For example, the Committee has just heard about relevant work in the OECD on good regulatory practice. The representative of the United States was therefore of the opinion that the Committee should allow observers to participate in the thematic discussions.

7.2. The representative of the European Union supported the US proposal, especially in light of the "workshop" nature of the thematic discussion that was based on a substantive discussion of various topics dealt with by the TBT Committee. However, this invitation would not extend to

[9] G/TBT/GEN/163.
[10] Recommendation D on "Reference to standards": http://www.unece.org/fileadmin/DAM/trade/wp6/documents/2013/Rec_D.pdf.
[11] Evaluation Methodology: "Assessing regulatory and procedural measures in trade: An Evaluation Methodology" available at http://www.unece.org/tradewelcome/studies-on-procedural-and-regulatory-barriers-to-trade.html.
[12] G/TBT/GEN/165.
[13] G/TBT/GEN/164.
[14] G/TBT/GEN/166.

informal discussions by delegations on Committee guidance documents, for instance GRP or recommendation on the use of notification format.

7.3. The representative of El Salvador supported the proposal.

7.4. The Committee agreed to allow observer bodies to attend the Committee's thematic discussions.

7.2 Unrealized functionalities of the TBT IMS

7.5. The representative of the United States said that the TBT Information Management System (TBT IMS) was essential to the work of preparing for Committee meetings; particularly the functions related to specific trade concerns (STCs). However, some contemplated functionalities appeared not yet to be fully operational. A functioning TBT IMS was essential for those officials writing instructions and preparing for interventions in TBT Committee meetings. She therefore urged the TBT Secretariat, in cooperation with IT experts, to fully operationalize the facility. In respect of the TBT on-line Notification Submission System (TBT NSS), there were still some areas where the Committee could discuss experiences and improvements – and the June thematic session could be an opportunity for delegations and Enquiry Points to engage on this.

7.6. The representative of Canada agreed that work was needed to improve the functionality of the IMS. She offered to engage directly with technical staff at the WTO.

7.7. The representative of the European Union appreciated that since the launch of the TBT NSS the time between submission (to the WTO Secretariat) of a notification and circulation to WTO Members had been reduced. However, some improvements could still be made. For example, the European Union still wanted to have an option to upload completed pdf forms; his delegation intended to offer more technical feed-back separately in this regard before the June meeting. On the IMS, the EU delegation stressed that an efficient well-functioning IT system was a key way to ensure that full use was made of the TBT Agreement's transparency provision. Indeed, that is why the EU had developed its own EU TBT database. The EU would support any improvements to the TBT IMS and particularly stressed the need for user-friendly access to all information relating to a particular notification, including more intuitive search tools. The presentation made by the ITC on the "Standards Map" could be a source of inspiration. This was a topic that would merit further attention at the Committee's June thematic session.

7.8. The Secretariat thanked Members for their suggestions and said that it would, together with IT colleagues, continue to explore improvements and enhancements of its TBT-related IT tools. The Secretariat would need to consider financial constraints related to the development of new functionalities. He welcomed any direct technical feedback and engagement from Members.

8 DATE OF NEXT MEETING

8.1. The next regular meeting of the TBT Committee is scheduled for 18-19 June 2014. It will be preceded by a thematic session on 17 June 2014.

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