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Committee on Technical Barriers to Trade

MINUTES OF THE MEETING OF 5-6 NOVEMBER 2014

CHAIRPERSON: MR. FILIPE RAMALHEIRA

Note by the Secretariat[1]

Contents

[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/

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"). He stressed that while 129 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.

2.2. The representative of Canada introduced their proposal on an Article 15.2 statement - Partnering Exercise. The aim of this voluntary partnering initiative, he said, was to help those 31 WTO Members who had not yet fulfilled this obligation by partnering members who had already submitted statements with those who had yet to do so. A meeting on the margins of the TBT Committee had been scheduled to see what the next steps would be.

2.3. The representative of Uganda thanked Canada for their proposal and noted that for those Members who had not yet submitted their statement, it was important that they clearly identify why they had not met this obligation so as to enable developing country Members to have a strategy to overcome the challenges on a case by case basis as the challenges may vary between Members. He proposed that the challenges be identified in an "action plan" that would be prepared by the assisting Member.

2.4. The representative of the European Union suggested that those Members who required assistance in fulfilling this obligation flag their need for assistance and that this assistance be provided under existing technical assistance frameworks.

2.5. The representative of New Zealand agreed with the EU that this be a demand driven exercise and looked forward to meeting later to discuss how this could move forward.

2.2 Specific Trade Concerns

2.2.1 Withdrawn concerns

2.6. The Chairman reported that the following Specific Trade Concerns were withdrawn from the Agenda at the request of the concerned Member:

a. Chile – Draft Energy Efficiency Analysis and/or Test Protocol for Electrical Products (G/TBT/N/CHL/248) - withdrawn by the Republic of Korea.

b. Malaysia – Regulation 28, Food Regulations 1985: Ceramic ware and Guideline on Importation of Ceramic Ware Intended to be used in the Preparation, Packaging, Storage, Delivery or Exposure of Food for Human Consumption (G/TBT/N/MYS/40) – withdrawn by Indonesia.

c. Japan – Wood Use Points Programme (G/TBT/N/JPN/471) – withdrawn by Indonesia.

2.2.2 New Concerns

2.2.2.1 United States – Tire Identification and Recordkeeping (G/TBT/N/USA/916)

2.7. The representative of Thailand noted that the US measure proposed to increase the plant codes from 2 to 3 digits and require a blank space 50 mm after the Tire Identification Number (TIN). Thailand was concerned that this measure could be creating unnecessary obstacles to trade

within the meaning of the TBT Agreement. While Thailand took note of the US's explanation that it was running out of two symbol plant codes for TINs and was therefore changing to three symbol codes, the US was asked to consider adopting a more trade facilitating path available and avoid creating unnecessary burdens to manufacturers. First, it was clear that TIN was by no means related to the improvement of quality, safety or efficiency of tyres. Although the US needed to come up with new codes to identify new tyre plants, there was no need to disrupt the use of the assigned codes that could thus continue to serve the purpose regardless of the US' proposed new TINs. The measure's unnecessary trade restrictiveness was evidenced by the fact that the adoption of new codes would pose additional costs for manufacturers, and eventually also to consumers, without improving product quality, efficiency or safety. There was no safety or quality benefit in requiring the space of 50 mm after TIN on the sidewall either. At present, many regulations already required markings on the sidewall, and some even specified where to place the mark. This resulted in little space left on the sidewall. And in certain cars, tyres were now smaller by design, making it even more difficult to provide the 50 mm blank space. Since this requirement did not improve product quality, efficiency or safety, the US was asked to consider removing it.

2.8. In case the US nonetheless deemed it necessary to introduce the changes proposed, Thailand asked the US to consider the following: (i) allow existing manufacturers to continue production under the current TIN without any adjustment. This was because no duplication of "Plant Code" had been found among the manufacturers who have been assigned the 2 symbol TIN. Hence, there was no need to add symbol "1" before the assigned two symbol plant codes, and continued use of the assigned two symbol plant code should be allowed; (ii) For new manufacturers, who would need to obtain a plant code, they should be assigned the 3 symbol plant code immediately after the 2 symbol plant codes had run out. This would be enough to avoid any duplication and would not impact manufacturers adversely; (iii) the 50 mm space requirement should be removed; and (iv) also consider extending the lead time for industry to comply from five years to ten years.

2.9. To illustrate its concern, Thailand compared TIN to car license plate numbers where Thailand had run out of car licence plate number many times. When there were less cars, license plates contained only a few digits. With more cars, a letter was added in front of the digits, then more letters were needed, and then more digits were put in front of the letters. To date, this system worked well and served its purpose. TIN should consider something similar. Thailand understood that the US did need to make some changes and appreciated its willingness to adopt standardized TINs. In light of the necessary change, Thailand proposed that the US should take the opportunity to consider adopting a more globally beneficial approach through the Global Technical Regulation (GTR). Thailand believed that the US could maximize, as well as contribute to the benefits for future models by harmonizing with the imminent GTR's 15 symbol TIN.

2.10. The representative of the United States said that in the 90 days since the US published the NPRM it had received 13 comments. The final rule would respond to all of those comments and serious consideration was being given to making a variety of changes in the regulation.

2.2.2.2 Russian Federation – Measure affecting imports of Ukrainian juice products

2.11. The representative of Ukraine was concerned with the ban on imports of all Ukrainian juice products, including in the form of baby food, to the Russian Federation, which was enacted on 29 July 2014 by the Federal Service on Customers' Rights Protection and Human Wellbeing Surveillance (Rospotrebnadzor). Russia did not refer to non-compliance of Ukrainian juice products with any particular effective Russian or Custom Union's technical regulation as a reason for the ban. A notice posted in Rospotrebnadzor's website informed that the ban was imposed for the reason that "… Ukrainian juice products did not pass state registration for compliance with the technical regulations of the Customs Union, but were labelled with a 'EAC' sign - a single sign of the Customs Union market access". However the Russian authorities had not given any information as regards particular producers or products which included this alleged charge. Ukraine emphasized fact that Ukrainian producers had all necessary certificates confirming compliance of their juice products with the Technical Regulation for juice products made from fruits and vegetables (Federal Law of 27 October 2008 No.178-3) and with the Unified Sanitary and Epidemiological and Hygienic Requirements for Goods Subject to Sanitary and Epidemiological Supervision (control), approved by Decision of the Commission of the Customs Union of 28 May 2010 No. 299. According to the Decision of the Eurasian Economic Commission No. 880, the above Regulations were in force until 15 February 2015. Ukraine believed that juice products, including baby food, that had certificates of conformity with the relevant valid Russian Federation

technical regulations and were marked with the sign of circulation on the market of the Russian Federation and with the appropriate signs of other importing countries, should be legitimate for importation and circulation on the market of the Russian Federation at least till mid February 2015.

2.12. Ukraine informed that, in accordance with the provisions of Articles 10 and 2.5 of the TBT Agreement, Ukraine made a request on 15 August 2014 for relevant information and clarifications through the TBT/SPS Enquiry Point of the Russian Federation. However, to date no response has been received. In addition, Ukrainian producers have also sent inquiries for clarification to the Russian authorities but the responses they received were quite confusing and vague. Thus, Ukraine requested Russia to provide official detailed clarification and justification of keeping the measure and its compliance with the provisions of the TBT Agreement. Ukraine considered that the ban of import of all juice products, including baby food, of Ukrainian origin, imposed by Russia was a discriminatory measure that accorded treatment less favourable than that accorded to like products of national origin and to like products originating in other countries. Ukraine believed that the Russian measure was not justified, applied in a non-transparent and discriminatory manner and created unnecessary obstacles to trade. Thus, Ukraine considered that this measure was inconsistent with provisions of Articles 2.1, 2.2 and 5.1 of the TBT Agreement. Russia has not provided any written official detailed clarification and justification for the measure and the manner in which it was applied, as required by the provisions of paragraphs 2 to 4 of Article 2 of the TBT Agreement. Thus, in accordance with Articles 10 and 2.5 of the TBT Agreement, Ukraine requested Russia to immediately lift the ban since no scientific information existed to justify the measure.

2.13. The representative of the Russian Federation informed that Russia has introduced restrictions on the import of juice products from Ukraine due to the reason that the necessary conformity procedures applied to such products were not provided. The Russian regulating authority (Rospotrebnadzor) has detected that the labelling of Ukrainian juice products contradicted relevant requirements by providing false information on compliance with technical regulations of the Custom Union. Moreover, these products were labelled by sign for the Eurasian Common Economic Space solely, and this fact represented a violation of the legislation of the Russian Federation and Common Eurasian Market regulation. The usage of single sign of circulation of products in the market of member countries of the Customs Union "EAC" for food products was described in technical regulation of the Custom Union "On labelling of food products" (which was adopted on 9 December 2011) and technical regulation of the Custom Union "On safety of food products" (which was adopted on 9 December 2011). Russia stressed that labelling with such a sign was allowed only for the goods that had their conformity to the Common Eurasian requirements attested. The large number of such precedents appeared to be deceptive practice in internal trade. As the import suspension of juice products represented a measure taken under implementation of the both mentioned technical regulations that had been adopted before the accession of the Russian Federation to the WTO, Russia therefore saw no basis for notifying it. The measure at issue was, in any case, taken in full compliance with the WTO rules and in particular with the provisions of the TBT Agreement (Articles 2.9, 2.10, 5.6, 5.7). In order to lift the restriction, the Russian Federation called the competent authorities of Ukraine responsible for the control of the products to participate in bilateral consultations at the level of the competent authorities of both countries. Rospotrebnadzor was thus ready to develop the procedures, necessary to return such products to the circulation at the territory of the Russian Federation.

2.2.2.3 Russian Federation – Measure affecting imports of Ukrainian beer products

2.14. The representative of Ukraine expressed concern regarding the ban on import of Ukrainian beer products to the Russian Federation, which was enacted on 15 of August 2014 by the Federal Service on Customers' Rights Protection and Human Well-being Surveillance (Rospotrebnadzor). The announced ground for prohibition was alleged incompliance with legislation on consumer's rights protection, in particularly labelling requirements. The measure affected a majority (up to 70%) of import of Ukrainian beer products to Russia. Yet again it should be noted that the measure was applied in a non-transparent and unpredictable manner. Ukrainian beer producers had a long history of credible supply of high quality products to the Russian market. They had all the necessary certificates of conformity and state registration that were required by the Russian Federation legislation and technical regulations. Ukrainian producers effectively applied management systems for quality and safety of food products in compliance with requirements of ISO 9001 and ISO 22000 and had been accordingly certified.

2.15. However, and despite the forgoing, all of a sudden, on 13 of August 2014, a short and incomplete publication was posted on Rospotrebnadzor's website regarding the alleged incompliance by Ukrainian beer producers. Just two days later, all the import of Ukrainian major producers was stopped. Inquiries were sent immediately to the Russian authorities with requests for results of laboratory tests and/or expertise and other relevant information that might be useful to clarify the reasons for such strict measure. However, Ukrainian producers concerned have not received any answer with information as yet. Ukraine believed that this Russian measure was not justified, was applied in non-transparent and unpredictable manner, and was enacted with a view of creating unnecessary obstacles to trade. Accordingly, this measure was inconsistent with provisions of the Articles 2.1, 2.2 and 5.1 of the TBT Agreement. The Russian Federation has not provided any written official detailed clarification and justification for the measure and the manner in which it was applied, as it was required to do by virtue of the provisions of the paragraphs 2 to 4 of the Article 2 of the TBT Agreement. Thus, in accordance with the Articles 10 and 2.5 of the TBT Agreement, Ukraine requested Russia to immediately lift the ban since no scientific information was available to justify this measure.

2.16. The representative of the Russian Federation informed that the import suspension of certain beer products and beer containing beverages produced by some Ukrainian enterprises had been introduced in the Russian Federation due to inconsistencies of these products to the technical regulation requirements in the consumer protection area, particularly due to the incompliance with the requirements on labelling. The Russian competent authority (Rospotrebnadzor) detected numerous cases related to such products in the circulation, for which reason the measures had been introduced to prevent deceptive trade practices, to maintain the appropriate level of protection the safety and life and health of population. Russia stressed that the suspension encompassed only certain Ukraine enterprises, that produce beer, and was not a ban to imports to the territory of the Russian Federation of all the beer products of Ukraine. Russia reiterated that the import suspension of beer products of some Ukrainian companies represented a measure taken under implementation of the existing technical regulation. There was therefore no basis for notifying it. In order to resume the supplies of the products from these Ukraine enterprises to the territory of the Russian Federation, Russia reiterated its call to the competent authorities of Ukraine responsible for the quality and regulation of such products, to start consultations at the bilateral basis at the level of the competent authorities. Rospotrebnadzor was ready to assist in developing the measures necessary to return such products to the circulation at the territory of the Russian Federation. Such a work would accelerate the resumption of Ukrainian beer products imports to the Russian market. The measure at issue was taken in full compliance with the WTO rules and in particular with the provisions of the TBT Agreement.

2.2.2.4 France – Proposal to introduce plain packaging of tobacco products

2.17. The representative of Malawi expressed her delegation's concerns regarding the consistency of the proposed measure with the TBT Agreement. She also requested Ireland to abstain from any tobacco plain packaging legislation until the WTO disputes lodged against Australia's plain packaging measures had been concluded. Malawi's full statement is contained in G/TBT/W/392.

2.18. The representative of Ukraine noted that France's Ministry of Social Affairs, Health and Women's Rights had recently announced that it would develop an amendment to the Health Bill currently under consideration, which would include "neutral" packaging requirements for tobacco products. However, France has not yet released any legislative text or other description of the proposed "neutral" or "plain" packaging measure. Ukraine was thus interested to learn from France more details about the measure under consideration, including what information it has gathered or expects to gather through a regulatory impact assessment of this proposed measure, and the timetable of the development of the proposed measure and its notification to this Committee. Ukraine considered that plain packaging measures raised a host of concerns under Members' WTO obligations, including the TBT Agreement's requirement that technical regulations not be prepared, adopted or applied with a view to or simply "with the effect of" creating unnecessary obstacles to trade. As set out in Article 2.2 of the TBT Agreement, technical regulations must fulfil a legitimate objective and be no more trade restrictive than necessary in so doing.

2.19. As a preliminary point, Ukraine reiterated that the objective of protecting public health by reducing smoking prevalence was undoubtedly legitimate and indeed was an objective shared by Ukraine and France. However, one of the key questions regarding the consistency of proposed plain packaging measures with the TBT Agreement was whether the particular means chosen – the

eradication of almost all trademarks and the standardized labelling, marking and packaging requirements – would actually contribute to the stated legitimate objective. Even though there were certainly notable differences between France's and Australia's measures, an analysis of the situation in Australia, the only Member that has implemented plain packaging to date, was informative. Almost two years after implementation of plain packaging, evidence from the Australian market showed that the measure has failed to contribute to the intended objective and has given rise to a number of unintended consequences. In this respect, Ukraine noted that as a third party to the dispute with Australia, the EU, and thus France, has access to all of the evidence that has been submitted in the context of the dispute on the tobacco plain packaging measure of Australia showing the lack of actual or potential future contribution of this type of measure. Ukraine thus hoped that this information would be taken into consideration in any future regulatory impact assessment as part of the scientific information available to France.

2.20. In light of the forgoing considerations, Ukraine was interested to hear from France regarding the scientific evidence and other data it has considered before announcing this proposal, or that it was planning to consider, to assess the impact of the proposed measure on actual smoking behaviour. In this respect, Ukraine was also interested in hearing from France whether it intended to undertake a regulatory impact assessment and provide for a public consultation process regarding the announced "neutral" packaging measure for tobacco products. Finally, Ukraine would welcome any clarification from France on the timetable of the development of the proposed measure and its notification to this Committee. In addition to raising these questions, Ukraine also encouraged France to reflect on the concerns expressed by Ukraine and other Members in the context of the recent TRIPS Council meeting. Finally, given the fact that plain packaging measures for tobacco products were currently the subject of a WTO dispute, it would appear to be prudent for France to await the objective assessment of the WTO on all of the relevant matters of fact and law relating to plain packaging in order to ensure that its technical regulations would indeed be consistent with its WTO obligations.

2.21. The representative of Indonesia said that, as one of the complainants of the dispute against Australia plain packaging measure, his delegation considered that plain packaging measures were not only inconsistent with Articles 2.1 and 2.2 of the TBT Agreement but also the TRIPS Agreement. Indonesia said that just because tobacco use can be bad for one's health, it did not follow that any form of tobacco control would be good because such measures should respect WTO obligations. Indonesia was not challenging the right to use other forms of tobacco control measures apart from plain packaging. Studies and empirical evidence has shown no evidence that plain packaging in Australia has made any contribution towards reducing tobacco use among youth. Indonesia also asked all Members planning to implement plain packaging to wait until the Australian dispute had reached its conclusion.

2.22. The representative of the Dominican Republic associated herself with the statements made by Malawi, Ukraine and Indonesia.

2.23. The representative of Honduras said that while Honduras fully respected the right of all Members to adopt public health measures, such measures must be WTO compliant. Australia's legislation on this matter was currently subject to a WTO dispute lodged by Honduras and four other Members. The first written submissions the complainants submitted to the Panel in 8 October 2014 included evidence showing that plain packaging was not reducing smoking in Australia. This evidence was used to support their claim that the Australian measure was inconsistent with both the TRIPS and TBT Agreements. Honduras invited France to reconsider its plans to introduce this packaging and urged it to at least wait until the Australian dispute would be over.

2.24. The representative of Australia said that his delegation welcomed the announcement by the French Minister for Health to introduce standardised packaging as part of their proposed comprehensive package of reforms in their ongoing efforts to combat the burden of disease attributed to tobacco products. The important steps made by France in tobacco control demonstrated that efforts to delay the adoption of tobacco plain packaging measures in these countries had not been successful. Australia looked forward to continuing its support of France as they proceed with the development and implementation of their own tobacco plain packaging measures. 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. Tobacco plain packaging was a legitimate measure, designed to achieve a fundamental objective: the protection of human health. The use of tobacco plain

packaging measure was endorsed by leading public health experts as well as the World Health Organization and was supported by extensive peer reviewed research, reports and studies. In this respect, Australia commended the EU and its Members for the tobacco control measures they have implemented to date, including the revisions to the Tobacco Products Directive. The revised EU Directive was a legitimate measure designed to achieve the fundamental objective of the protection of human health, in particular the protection of young people against smoking initiation and uptake. Australia's tobacco plain packaging measure was a legitimate public health measure which was consistent with the WTO Agreement obligations. Australia was currently defending its measure in the WTO. It was therefore inappropriate for complainants in the WTO disputes currently underway against Australia to invoke those proceedings in an attempt to delay or discourage another Member from developing or implementing their own legitimate tobacco control measures.

2.25. The representative of Nigeria associated herself with the concerns expressed by previous delegations and expressed her delegation's preoccupation with the effects of plain packaging measures could pose to international trade and the rights of trademark owners.

2.26. The representative of Cuba stated that her delegation shared the view that Members had the sovereign right to regulate to protect public health. It requested however that France abstain from any tobacco plain packaging legislation until the WTO disputes lodged against Australia's plain packaging measures had been concluded. Cuba also asked France to provide detailed information about the status of the internal process taking place for the adoption of the measure and urged France to notify this proposed measure to the WTO as soon as possible.

2.27. The representative of Nicaragua said that his delegation supported the position of the five complainants of the current WTO dispute involving Australia's plain packaging measures. While Members had the sovereign right to regulate health – and Nicaragua itself was a signatory of various international instruments on this matter – any such measures had to respect WTO rules, including the TBT obligation of not being more trade restrictive than necessary. Concerning plain packaging, Nicaragua believed that this kind of measure was incapable of attaining its ultimate public health objectives. Given the important economic and social impact that this kind of measure could cause in countries like Nicaragua, he urged Members planning to adopt them to wait until the Australian WTO dispute had been concluded.

2.28. The representative of Zimbabwe associated his delegation with the concerns expressed by Malawi, Ukraine, Indonesia, Honduras, the Dominican Republic, Honduras, Nigeria, Cuba and Nicaragua. While Zimbabwe appreciated the efforts made by France to protect consumers, the proposal appeared to be inconsistent with Article 2.2 of the TBT Agreement as this technical regulation would be more trade restrictive than necessary to fulfil its stated legitimate objective. There was no scientific evidence that such kind of measure would influence the behaviour of tobacco consumers or reduce smoking among youth. Tobacco contributed significantly to Zimbabwe's GDP and was a major export. These measures would therefore impact negatively on employment, economic performance and poverty alleviation efforts in Zimbabwe, where tobacco farming was the major economic activity and source of livelihood for millions of its citizens.

2.29. The representative of New Zealand expressed her delegation's support for France's decision to considering the introduction of plain (or standardised) packaging requirements for tobacco and tobacco products. There was an extensive and growing body of international research establishing that plain packaging, as part of a comprehensive tobacco control programme, would contribute to the objective of improving public health. To date, there was no credible evidence proving otherwise. The TBT Agreement recognised the fundamental right of Members to implement non-discriminatory measures necessary to protect public health and provided appropriate flexibilities for Members to do so. New Zealand believed that it was possible for Members to implement a tobacco plain packaging regime that was consistent with all of their WTO obligations, including their respective obligations under the TBT Agreement.

2.30. The representative of Norway expressed her delegation's strong support to France's effort to combat tobacco use. Smoking was still the single factor with the greatest negative impact on public health. Norway belied 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 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 binding obligations.

2.31. The representative of Canada stressed his delegation's interest to follow the ongoing international developments regarding the plain packaging of tobacco products, and how such measures interacted with both international trade and public health. Canada has been a pioneer in package labelling requirements for tobacco products, and thus considered these sorts of requirements, as proposed by France and other Members, a core component of public health.

2.32. The representative of the European Union informed that the French government was currently considering the possibility of introducing plain packaging for tobacco products. However, the measure was not yet finalized and it would be duly notified under internal EU procedures as well as the TBT Agreement. In this context, as the legislative proposal was still in preparation, the EU considered any discussions on this matter in the TBT Committee to be premature at the current stage.

2.33. The representative of the WHO made a statement, the full content of which is contained in G/TBT/GEN/175, and which, as per their request, should be equally applicable to the STCs raised with respect to the plain packaging proposals by Ireland and the UK as well as the plain packaging measure by Australia, discussed later in this meeting.

2.2.2.5 Kingdom of Saudi Arabia – Decree of the Saudi Arabian Ministerial Council on the sale and marketing of energy drinks of 4 March 2014 (G/TBT/N/SAU/669)

2.34. The representative of Switzerland expressed his delegation's concern with the Decree of the Saudi Arabian Ministerial Council "on the sale and marketing of Energy drinks" (N°176; 2/5/1435) of March 4th, 2014. This decree introduced a specific mandatory statement for "energy drinks", as well as restrictions on marketing, sponsoring, advertising, including sales prohibition and constraints. The mandatory statement for so called "energy drinks" reads as follows: "This product has no health benefits, having more than 2 cans a day could lead to health damages. Warning - against taking this product by pregnant and lactating women, people suffering from a heart condition and high blood pressure and diabetes, youth under 16 of age, those allergic to caffeine, athletes during sport." Switzerland shared Saudi Arabia's intents regarding public health and consumer information. While Switzerland considered that there were grounds to mention the caffeine content and to raise awareness to pregnant or lactating women and children, a negative mandatory statement seemed more restrictive than necessary to achieve this goal. It also seemed to go beyond any relevant international standard. In this latter respect, he recalled that the CODEX standards on nutrition provided that declarations on products should not lead consumers to believe that there was exact quantitative knowledge of what individuals should eat in order to maintain health, but rather convey an understanding of the quantity of nutrients contained in the product.

2.35. Given the forgoing, Switzerland asked Saudi Arabia to inform the Committee what were the substances that would justify that producers shall mention that a given product had detrimental effects on health. Additionally, Switzerland asked which international standards on labelling of nutrients and product claims have been followed when designing mandatory statements? Switzerland flag its concerns with the restrictions to sales in educational and government facilities as well as the requirement on selling such beverages in specifically designed fridges and shelves. Negative warnings as well as the far reaching restrictions on sales seemed to go well beyond the criteria of trade restrictiveness under the TBT Agreement. Without a sound scientific basis, they could also be seen as arbitrary and discriminatory. Also, as the described measures differed substantially from previously notified measures, they should have been also notified.

2.36. The representative of the European Union noted that the Kingdom of Saudi Arabia proposal provided for labelling requirements for formulated beverages with caffeine levels above 14.5 mg per 100 ml. The measure also stated that: "any energy drink label shall advise that the product is not suitable for pregnant or lactating women, persons under 16 years, persons with sensitivity to such products, or those who suffer from diseases that may affect their health, especially heart patients, arteries, diabetics, and athletes during exercise." The proposal also required: "labels of energy drinks to further advise on a maximum intake per day which should not be exceeded by

the consumer and that producers of energy drinks shall be liable for such maximum consumption recommendation."

2.37. The EU fully shared Saudi Arabia's public health concerns with these products and noted that the EU has also implemented legislation in this domain, namely the EU Regulation 1169/2011. Similarly to Saudi Arabia proposal, this EU Regulation required labels of beverages which contained caffeine in a proportion in excess of 150 mg/l to include the following information on the label: "High caffeine content. Not recommended for children or pregnant or breast feeding women" followed by a reference in brackets to the caffeine content expressed in mg per 100 ml. The EU Regulation did not require, however, any specific advisory statement for certain diseases or statements about consumption during physical exercise. The scientific assessment carried out by the EU did not conclude that those were necessary. The EU would therefore ask Saudi Arabia to either withdraw those requirements or to share with the EU its scientific assessment for including the specific references to physical exercise, illnesses, cardiovascular patients, and other diseases. As regards the requirement to provide for a maximum intake per day in the label, it was the EU's view that, given that caffeine was also consumed from other sources (such as coffee, tea and chocolate) it would be impossible for the industry to provide for a scientifically sound specific figure on the label and, more importantly, to assume strict legal liability for such statement. Therefore, the EU requested Saudi Arabia to consider the EU labelling requirements in light of the comments it has just provided when deciding on this measure. Finally, the EU also expressed concerns regarding the restrictions on advertising and promotion for energy drinks announced by Saudi Arabia in March 2014. Those measures ban any sort of advertising for energy drinks, including the sponsoring of any event and impose several marketing restrictions, including additional warnings. The EU asked Saudi Arabia to share with this Committee the scientific basis on which these measures were based.

2.38. The representative of Kingdom of Saudi Arabia thanked Switzerland and the EU for their comments and expressed his delegation's wish to discuss this issue bilaterally with them at the margins of the meeting.

2.2.2.6 Brazil – Draft Technical Resolution n° 69, 9 September 2014, Regarding the Requirement of Describing the Chemical Composition, in Portuguese, in the Label of Personal Hygiene Products, Cosmetics and Perfumes (G/TBT/N/BRA/608)

2.39. The representative of Mexico considered that the proposal in question could contravene fundamental principles of the TBT Agreement, such as conformity with international standards, by failing to consider the existence of the widely accepted International Nomenclature of Cosmetic Ingredients (INCI). The representative was also concerned at the distinction that was made under the measure between products from the European Union, and products from Brazil's other trading partners, in particular those in Latin American, in violation of the MFN principle. While Mexico reserved the right to submit comments to Brazil on this measure, the representative submitted a number of requests to Brazil. First, she asked for an explanation of why the INCI system was not accepted under the measure, given that this system was widely recognized by regulatory entities worldwide, as well as by the main product manufacturers and raw material producers. Second, her delegation requested an explanation or justification as to the benefits of translating the names of product ingredients into Portuguese. Bearing in mind that the products used a large number of raw materials with highly complex technical names, she pointed that lay consumers were not familiar with such ingredients and were incapable of distinguishing between ingredients with similar names. Third, Mexico asked Brazil to revoke the provision in question, or if appropriate, at least modify the wording of the provision so as explicitly to allow the use of the INCI. She noted that in the case of Mexico, the use of the INCI was allowed under the Mexican technical regulation on labelling of such products (NOM 141 SSA1/SCFI 2012), Labelling of Pre Packaged Cosmetic Products. Health and Commercial Labelling, in force since 2012. Finally, she sought an explanation of the rationale of the measure and the reasons why it was deemed necessary to translate product ingredients into Portuguese, in relation to the legitimate objective pursued by Brazil.

2.40. The representative of Brazil explained that notification G/TBT/N/BRA/608 referred to a draft measure regarding Portuguese language labelling describing the chemical composition of personal hygiene products, cosmetics and perfumes. The proposed measure was without prejudice to other applicable requirements. He highlighted that current legislation determined that the description of ingredients of personal hygiene products, cosmetics and perfumes was required to follow the International Nomenclature of Cosmetic Ingredients (INCI). According to the Brazilian Consumer

Protection Code, consumers in Brazil had the right to clear and appropriate information about products and services available on the market. He noted that a recent ruling found that the Brazilian Health Surveillance Agency (ANVISA) shall ensure that information about the chemical composition of personal hygiene products, cosmetics and perfumes be made available to consumers in Portuguese. Thus the proposed measure aimed to bring the requirements on information to consumers in line with applicable legislation.

2.41. With respect to the purpose of the INCI, it was the understanding of ANVISA that it served the purposed of indicating, in a simplified and unequivocal way, the list of ingredients in the label of cosmetic products. He said this allowed health professionals to identify technical and scientific information on a given product, by means of universally accepted quantification. It also enabled consumers to identify ingredients that they needed to be aware of due to use restrictions or sensitives, as in the case of allergies or intolerance. The use of INCI allowed for the identification of any ingredient in a clear, precise and immediate manner, in any country in the world. From the perspective of sanitary risks, it simplified actions to protect health in general and also allowed individual protection in case of emergencies or preventive measures. Brazil informed that the draft measure was currently under public consultation, and the final date for comments was 20 January 2015. After the public consultation, ANVISA would then review the comments received, and it was envisaged that once the new regulation was approved, a transition period of 180 days would be provided prior to entry into force.

2.2.2.7 China - National Standard of the P.R.C., Safety Technical Specifications for Children's Footwear (G/TBT/N/CHN/983)

2.42. The representative of the European Union thanked China for the clarifications provided on the Chinese standards and on the restricted chemical substances referred to in the notified draft. However, the EU still requested further clarifications on the odour rating requirements. The notified draft set up five categories of odour ratings for new footwear for children, and the corresponding testing requirements. In this respect, the EU asked for further information on the environmental and human health protection issues that were referred to by the Chinese authorities in the notified draft as justification for the provisions on odour testing and rating. The EU also requested information on the practical implications of these ratings and whether the odour rating had to be indicated on the product. Finally, the EU expressed its doubts that such odour tests could be conducted by humans, as required in the notified draft and asked for further information on the requirements for such testing operator personnel.

2.43. The representative of China underlined that China had provided a detailed written reply to EU comments on 13 January 2014. As this reply had not been duly received by the EU, China resent the reply to the EU a few days before the meeting and hoped it would address their concerns. For the additional questions formulated by the EU, China noted he would refer them back to capital.

2.2.2.8 Mexico – Draft Mexican Official Standard PROY NOM 142 SSA1/SCFI 2013: Alcoholic beverages. Health specifications. Health and commercial labelling (G/TBT/N/MEX/254)

2.44. The representative of the European Union recalled the comments EU sent to Mexico on 6 May 2013, and asked Mexico for a written reply. In addition, the EU reiterated some of its previous specific concerns. With respect to the definition of ethyl alcohol, the EU expressed its preference for a broader definition, which would cover all ethyl alcohol of agricultural origin. With respect to the establishment of minimum and maximum alcohol levels, the EU was concerned that some EU spirits drinks had alcohol content lower than 25% or higher than 55% and therefore would not be able to be marketed as spirits drinks in Mexico. For instance, whisky was filled into wooden casks for maturation at strength of more than 60%. Some premium, high value whiskies were bottled at "cask strength" in order to preserve the particular characteristics of the spirit coming out of the cask and therefore had more than 55% volume of alcohol. The EU thus requested Mexico to delete this maximum limit. With respect to the establishment of analytical parameters, the EU was concerned with how these limits had been set and how they could affect EU exports to Mexico. In this regard, the EU welcomed further clarifications regarding the necessity and proportionality of the limits and on how those limits would relate to the existing 1997 Mexico EU Agreement on the mutual recognition and protection of designations for spirit drinks. With respect to the indication of alcohol content, the EU invited Mexico to accept additional

abbreviations for the indication of alcoholic content which were widely recognised at international level. With respect to the provision of mandatory information, the EU sought assurances from Mexico that this draft standard did not require the translation of the spirit drink geographical indication into Spanish. Finally, with respect to the differentiation established by the latest available draft between alcoholic drinks depending on their alcoholic content and the related labelling obligations, the EU noted that according to available scientific studies, it was the excessive consumption of alcohol that was harmful for health, regardless of the type of alcoholic beverage. Thus, the differentiation between high alcohol content and low alcohol content products with regards to the warning message could mislead consumers, who could conclude that some alcoholic beverages were more harmful than others.

2.45. The representative of Chile thanked Mexico for replying to its comments and for taking them into consideration regarding the definition of tolerance to alcohol, which was a very important point for Chile to be included in the standard. Chile asked to inform the next steps regarding the publication of the standard.

2.46. The representative of the United States associated herself with the EU's concerns on this issue and noted that the US would be closely monitoring this issue.

2.47. The representative of Mexico noted that it had taken on board all comments on this measure. She highlighted that the comment requiring that Brandy be composed 100% of grapes was also taken into account. She also informed the Committee that a notification containing reference to the publication of the responses to the comments would be circulated. Mexico promised that all the comments made at this meeting would also be taken into account and would be replied to. While she did not have current information on the process, as requested by Chile, she nonetheless noted that this would be included in the replies to comments, as well as with the modified draft standard.

2.2.2.9 South Africa – Labelling and advertising of pre-packaged foodstuff (G/TBT/N/ZAF/66/Rev.1)

2.48. The representative of European Union thanked South Africa for the constructive bilateral meeting where they presented their concerns on the proposed regulation on labelling and advertising of pre-packaged foodstuff. The EU appreciated South Africa's commitment to take into account EU comments even after of the expiration of the deadline for comments.

2.49. The representative of New Zealand noted that it had also engaged bilaterally with South Africa on this issue, and thanked South Africa for its cooperation on this issue to date.

2.50. The representative of South Africa thanked the EU and New Zealand for their comments and for the bilateral meeting, as well as the US for their written comments, and promised to share them all with their national regulator. While the notification that South Africa submitted on 11 June 2014 allowed for a 60-day comment period, South African Department of Health was still considering comments from both domestic producers and trading partners after the deadline. The purpose of the notification was to allow trading partners the opportunity to provide comments on provisions of the draft regulation to ensure there would not constitute unjustified barriers to international trade. Adoption would only take place after comments were considered, and the implementation date would be announced after adoption of the regulation. South Africa therefore welcomed further written comments but asked Members to send them urgently so that the regulator could still take them into account before adoption and would be able to provide a reasonable interval before implementation. South Africa noted that, as indicated in point 8 of the notification, the regulator had utilised international standards as required by Article 2.4 of the TBT Agreement. The Department of Health held it necessary to draft these regulations to provide citizens with adequate information on product labels and enable them to make informed choices and to improve health regulation in South Africa.

2.2.2.10 Israel – Resistance to ignition of mattresses, mattress pads, divans and bed bases (G/TBT/ISR/666 and Add.1)

2.51. The representative of the European Union referred to an Addendum (G/TBT/N/ISR/666/Add.1) to the original Israeli notification indicating that the mandatory

application of the notified standard had been postponed and that further scientific assessments were to be conducted. However, it seemed that at the same time the notified draft had been declared mandatory by way of Israeli standard SI 5418 as of 15 July 2014. While recognizing the legitimate objective of human safety and the need for safe home furnishings, the EU was of the view that the legislation in question created unnecessary barriers to trade for mattresses and mattress pads tested in accordance with other relevant standards, such as European standard EN 597-1 relating to the most commonly occurring fire safety issue of a cigarette smouldering in a sofa or a bed. It ensured an equivalent level of protection, adequately fulfilling the human safety objective pursued by the notified draft, while not requiring the use of flame retardants containing chemicals, an important characteristic for consumers who looked for products with fewer chemicals. The EU wished to receive the results of the investigation mentioned in the Addendum at issue and the scientific evidence, based on which Israeli standard SI 5418 had been made mandatory. Furthermore, taking into consideration the extensive use of other voluntary standards by other WTO Members, the EU asked Israel to consider recognizing other relevant standards and applying Israeli standard SI 5418 only in a voluntary manner.

2.52. The representative of Israel said that although certain parts of voluntary standard SI 5418 were scheduled to become mandatory on 16 November 2014, this had not occurred as the regulation had become the subject of court proceedings at the Supreme Court of Israel. The entry into force of the regulation could be delayed even further depending on the outcome of the case. The regulation was an adaptation of British Standard BS 7177 and only parts of the standard pertaining to mattresses and mattress pads for domestic use were to become mandatory. In addition, during the last revision of the standard adopted by the Technical Committee of the Standards Institution of Israel, it had been noted that two similar standards relating to the same hazard had been adopted by one WTO Member. Furthermore, the Israeli standard fully adopted the prohibition under the Stockholm Convention for the use of flame retardant materials. The need for the standard arose from the real danger stemming from the high ratio of open spiral heaters used in Israel, which had resulted in a high number of accidents caused by burning mattresses.

2.2.2.11 European Union – Common Criteria for Information Technology Security Evaluation (Common Criteria) certification in the EU

2.53. The representative of China noted with appreciation that in November 2013 one of the Common Criteria testing labs in the EU had issued an "EAL 4+" certification for a security chip product developed by a Chinese manufacturer; however, Chinese security chip producers were still facing obstacles while applying for Common Criteria certifications. He asked that the EU explain the relationship between Common Criteria certifications and the market access policies for information security products in EU countries. According to Article 5 of the TBT Agreement on conformity assessment procedures, certification procedures needed to apply equally to domestic and foreign products, be transparent and involve reasonable costs and processing periods in order to minimize their impact on trade. Therefore, China urged EU member states involved in the Common Criteria Recognition Arrangement (CCRA) to treat Chinese security chips with an open and fair attitude and develop transparent and predictable certification procedures and evaluation standards.

2.54. The representative of the European Union said that this concern provided an opportunity to outline the key differences in approach in this area between the EU and China. In the EU, "commercial encryption" and "encryption for national security" were clearly distinguished and handled separately. In the field of commercial encryption, the required level of certification for different commercial applications was set by the market and there were no mandatory certification schemes but only voluntary ones. Neither the EU nor its member states imposed mandatory cryptography standards for conformity assessment procedures as a condition for access the EU market. It was up to individual companies to ensure secure transmission of data over their systems and networks and secure equipment with the most appropriate technology available to meet their needs. European voluntary certification schemes were based on international standards and in particular the ISO/IEC Common Criteria for Information Technology Security Evaluation standard (ISO/IEC 15408). As regards the specific concerns raised by China with respect to the alleged delayed delivery or refusal to deliver voluntary certificates by some certification bodies in the EU, he invited China to detail these concerns with supporting evidence. Although these concerns had no connection or relevance from the point of view of the TBT Agreement, his delegation would be willing to look into them in good faith and provide feedback to China. He also underlined that while some Chinese manufacturers had already been participating in the EU

system and receiving certificates, no foreign company had ever received a commercial encryption licence in China. There was no reciprocity since the Chinese standardization process was closed to foreign companies even if they had important local investments in China while the EU process was open. The EU was interested in seeing a balancing of the situation and a level playing field.

2.2.2.12 European Union – Limits for hexavalent chromium in toys (2009/48/EC)

2.55. The representative of China expressed concerns about the existing as well as proposed limit values for hexavalent chromium in toys or toy components in the EU Toy Safety Directive 2009/48/EC, which officially came into force on 20 July 2013. The annex to the current Directive set the limit values of hexavalent chromium for three types of toy material at 0.02 mg per kg, 0.005 mg per kg and 0.2 mg per kg, respectively, which were even more stringent than the limits specified in the "WHO Guidelines for drinking-water quality"[2] and incorporated in national standards. China associated itself with the EU's goal of enhancing children's protection but wondered at the treatment of toys on the EU market as if they were for eating or drinking. Moreover, the EU Scientific Committee on Health and Environmental Risks had proposed a revision of the existing limit values for hexavalent chromium, which, if applied as proposed, would result in 21 to 25 times stricter limits and would make detection impossible or extremely expensive. Referring to the requirement under Article 2.2 of the TBT Agreement for Members to avoid adopting regulations which were more trade restrictive than necessary to a fulfil legitimate objective, he requested the EU to provide scientific evidence justifying the existing and proposed limit values for hexavalent chromium in the toy safety Directive. In addition, he said that according to Article 35 of EU Directive, the revision should not increase the burden or the expenses for the toy industry, especially for small and medium enterprises. China invited the EU to verify its compliance to this principle prescribed in its own Directive. Finally, in accordance with the recently adopted TBT Committee recommendation on the coherent use of notification formats (G/TBT/35), China urged the EU to notify the proposed revision of the EU toy safety Directive to the WTO and open a new comment period.

2.56. The representative of the European Union said that the concern provided a good opportunity to explain the context and the functions of the EU Scientific Committee on Health and Environmental Risks (SCHER), one of the independent non-food scientific committees that provided the European Commission with the scientific advice it needed when preparing policy initiatives and regulatory proposals relating to consumer safety, public health and the environment. The task of the Committee was to draw the European Commission's attention to any new or emerging problems, which might pose an actual or potential threat, and provide a risk assessment, to be distinguished from risk management, which was the regulator's task. In this particular case, which was related to chemicals, the task of SCHER was to advise on what could be considered as a toxicologically sound, virtually safe limit in light of available evidence. The main trigger for the Commission to request SCHER to look into this issue was a study related to hexavalent chromium in drinking water published in July 2011 by the California Office of Environmental Health Hazard Assessment. The aim of SCHER's draft Opinion, which had been available for public consultation until 28 September 2014, was to consider whether a revision of the migration limits for hexavalent chromium in toys or components of toys was necessary in view of new available evidence, in particular with regard to the carcinogenic effects of chromium VI. SCHER would finalize its Opinion in the coming months, taking into account all the comments received from the scientific community and stakeholders. On the basis of this Opinion, the European Commission, as part of its risk management task, would consider whether the current migration limits for chromium VI set out in paragraph 13 of Annex 2 of Directive 2009/48/EC on the safety of toys needed to be amended. If the Commission decided to propose a revision of the limits, any such proposal would be timely and duly notified to the WTO according to TBT Agreement's notification procedures. He hoped that this intervention clarified the distinction between the Opinion of the Scientific Committee and a regulatory proposal which might follow from that scientific opinion.

2.2.2.13 European Union – Standard on safety of household and similar electrical appliances (EN60335-1:2012)

2.57. The representative of China said that as of 21 November 2014 all household and similar electrical appliances placed on the EU market would have to comply with the EU harmonized

[2] http://www.who.int/water_sanitation_health/dwq/guidelines/en/.

standard EN60334. China was concerned about the unnecessary cost the standard would impose on enterprises. In particular, the additional requirements of this standard would affect compliance of products previously certified according to EN 60335-1:2002 +A11:2001, +A12:2002, +A13, +A14, and +A15 as manufacturers would have to renew certification in accordance with the new requirements even when the previous certificate remained valid. China requested the EU to provide a sufficient transition period for the renewal of certificates when upgrading its standards with a view to avoiding unnecessary barriers to international trade.

2.58. The representative of the European Union explained that the legal framework for placing household and similar electrical appliances on the market was laid down by the Low Voltage Directive 2006/95/EC, which set up the health and safety requirements for these products. Compliance with the Directive could be achieved in different ways, including through demonstration of compliance with the voluntary harmonised EN standards. This provided a presumption of conformity with the requirements of the Low Voltage Directive, which did not require third-party certification. The manufacturer was responsible for the conformity of the product with the requirements of the Low Voltage Directive and needed to draw up the technical documentation, affix the CE marking and sign the Declaration of Conformity. In cases where the manufacturer chose to comply with the requirements of the Low Voltage Directive through the EN60335-1:2012 standard, compliance with this new standard was needed for products placed on the market as of 21 November 2014, when it replaced EN 60335-1:2002. Hence, products, which were in compliance with the previous standard and already placed on the market, were not affected.

2.2.2.14 European Union – Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC. 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (G/TBT/N/EU/143)

2.59. The representative of Indonesia said that while recognizing the intention behind the EU Regulation related to environment and health considerations, Indonesia was concerned that it might pose unnecessary trade barriers to products from other Members. He requested that the EU provide the risk assessment and impact analysis related to the implementation of the Regulation and clarify whether the term vegetable oil therein applied to palm oil only or also to rape seed oil. Indonesia expected the EU to monitor the implementation of the Regulation by EU member states and prevent unfair trade practices and discrimination against particular products such as Indonesian palm oil. Indonesia was particularly concerned that some companies were putting "no palm oil" on the label of their products and wished to pursue the discussions also on a bilateral basis.

2.60. The representative of the European Union said that EU Regulation 1169/2011 on the provision of food information to consumers, which had been notified to the WTO in 2008, would enter in force on 13 December 2014. It provided that the designation "vegetable oils" in the list of ingredients of food product labels needed to be followed immediately by an indication of their specific vegetable origin, for instance palm oil, soya oil, olive oil etc. The relevant provisions respected the principle of non-discrimination as they applied to all types of vegetable oils. The Regulation in question did not require or regulate any form of negative labelling such as "it does not contain palm oil". Nor did it regulate the manufacturers' freedom to indicate that an ingredient had not been used in a food product. The European Commission had produced and updated regularly a Question and Answer document to help food business operators comply with the Regulation's requirements and was ready to address any additional question Indonesia might have at bilateral a level.

2.2.2.15 Russia – Draft of the Eurasian Economic Commission Collegium decision on amendments to Common sanitary-epidemiological and hygienic requirements for products, subjected to sanitary-epidemiological supervision (control) (G/SPS/N/RUS/50)

2.61. The representative of Indonesia thanked Russia for their bilateral meeting and noted that under the Eurasian Economic Commission Collegium decision on amendments to Common sanitary-epidemiological and hygienic requirements for products, Russia had tightened the

peroxide content allowed in palm oil to 0.9 millimoles of active oxygen per kilogram, which also applied in other Eurasian member states. According to the relevant Codex standard, the good quality of vegetable oil was determined by the colour, smell and taste, not by the contents of peroxide, which was permissible up to a limit of 10 millimoles of active oxygen per kilogram. Although the WTO recognized the right of governments to implement measures to protect human health, these needed to be supported by scientific studies and avoid imposing unnecessary trade barriers. The peroxide content limit of 0.9 millimoles of active oxygen per kilogram appeared to be set with the intention of curbing imports of palm oil to Russia as it was unlikely that this requirement could be met by palm oil producers, especially by those from Indonesia. She requested that Russia provide its risk assessment and impact analysis regarding the implementation of this regulation and avoid discriminatory treatment to palm oil from Indonesia.

2.62. The representative of Ukraine associated herself with the concerns raised by Indonesia. Ukraine had also raised concerns regarding this regulation in the SPS Committee and was still waiting for a response to its enquiry submitted on 5 June for clarifications, in particular concerning the peroxide level.

2.63. The representative of the Russian Federation thanked Indonesia for their bilateral meeting and said that the limits of peroxide value were fixed in the Unified Sanitary and Epidemiological and Hygienic Requirements for Goods Subject to Sanitary and Epidemiological Supervision (Control), approved by the Decision of the Customs Union Commission No. 299 of 28 May 2010, and also in Technical Regulations on oil and fat products adopted by the Eurasian Economic Commission in 2011. The value of peroxide specified in both documents was identical, at a maximum level of 10 millimoles of active oxygen per kilogram, and was in full compliance with CODEX STAN 210-1999 as well as Article 2.4 of the TBT Agreement. In accordance with the Decision of the Board of the Eurasian Commission No. 22 of April 2012, the proposal of the Unified Requirements regarding the peroxide value should be excluded, so that only the proposal of the Technical Regulations on oil and fat products applied, with a view to allowing manufacturers in the Customs Union and exporters in other countries to refer to only one document. The draft decision providing a maximum limit for peroxide value of 0.9 millimoles of active oxygen per kilogram was based on scientific findings regarding its impact on human health and had been notified on 2 April 2014 in document G/SPS/N/RUS/50. However, the adoption of the amendment regarding the limit of peroxide value had been suspended.

2.2.2.16 Ecuador - Equivalence Agreement N° 14.241 with the European Union regulations

2.64. The representative of Mexico thanked the Chairman and referred to the Agreement No. 14.241 of the Ecuadorian Ministry of Industry and Productivity, dated 3 June 2014. In this connection, Mexico had expressed some concerns to Ecuador bilaterally, to which no replies have yet been received. For this reason, this STC was submitted on the basis of the following questions: (i) Article 1 of Agreement No. 14 241 stated that "the standards and technical regulations of the European Union and its member countries were recognized as equivalent". To which legislation and technical regulations did this refer?; (ii) In the antepenultimate paragraph of the preamble of the Agreement it was stated that "the technical report of 30 May 2014 recommends the adoption of European standards to assist the Ecuadorian industry". Could information be provided on the way in which it was considered that European standards assist the Ecuadorian industry? On the basis of the foregoing question, could Ecuador specify the relationship between European standards and international standards?; (iii) Did Ecuador agree with the interpretation that the provisions of Articles 2 and 3 of Agreement No. 14 241, in relation to conformity assessment procedures, imply a form of discrimination against products from non-European countries?

2.65. The representative of the United States associated herself with the comments made by Mexico.

2.66. The representative of Ecuador took note of the concerns expressed and informed that they would be further discussed bilaterally, considering that they were recently introduced as part of the agenda.

2.2.2.17 Ecuador - Draft Technical Regulation of the Ecuadorian Standardization Institute (RTE INEN) No. 047: "Metal cable tray, electrical conduit and trunking systems")

2.67. The representative of Mexico noted that this draft Ecuadorian Technical Regulation not only established packaging requirements for metal cable tray, electric conduit and trunking systems, but also contained the requirement to indicate the country of origin and the name of the importing enterprise. Mexico considered that, on the basis of Article 2.1 of the TBT Agreement, this requirement could be discriminatory and protectionist since it applied solely to imported products. Moreover, these requirements were different from the ones normally specified for this type of product, which entailed an increase in their costs. The Regulation also established that products with the Ecuadorian Standardization Institute (INEN) seal of quality were not subject to the requirement of a certificate of conformity for marketing purposes; this seal was only issued for Ecuadorian products, and this, on the basis of Article 5.1.1 of the TBT Agreement, could also have a discriminatory effect on imported products. Taking into account the provisions of Article 2.4 of the TBT Agreement, Mexico considered that the products covered by the technical regulation in question should be governed essentially by the provisions of the International Electrotechnical Commission Standard No. 61537, "Cable tray systems and cable ladder systems for cable management", rather than Ecuadorian Technical Standard INEN 2486, which did not have product safety tests as its main objective. Lastly, it should be noted that the manufacturer or distributor was required to obtain a raw material conformity certificate; in other words, the raw material certificate had to be appended to the conformity certificate for the finished product. This would imply the establishment of requirements that would be in breach of Article 5.1.2 of the TBT Agreement, as they would generate unnecessary duplication, given that the finished product certificate was the document that best served to guarantee that the raw material was suited to the type of product and that it also met the specific manufacturing standards.

2.68. Accordingly, Mexico urged Ecuador to: (i) eliminate the specific packaging requirement for imported products and to make the necessary change to ensure compliance with the principle of non-discrimination provided for in the TBT Agreement; (ii) take international standard IEC 61537 as a basis for fulfilling the objective pursued by Technical Regulation No. 047, and if this would not be deemed appropriate, to provide the necessary justification. In this connection, it was requested that renewed consideration be given to making compliance with Ecuadorian Technical Standard NTE INEN 2486 compulsory, for the reasons mentioned earlier; (iii) eliminate the exemption from requirement of a conformity assessment certificate for products with the Ecuadorian Standardization Institute (INEN) quality seal, because of its discriminatory basis; and (iv) eliminate the requirement for presentation of a raw material conformity assessment certificate, or if this requirement would be maintained, to provide justification for its inclusion among the requirements under this regulation.

2.69. The representative of Ecuador took note of the concerns expressed by Mexico and informed that they would be further discussed bilaterally, considering that they were recently introduced as part of the agenda.

2.2.2.18 Ecuador - (PRTE INEN) No. 111: Energy efficiency, clothes dryers labelling

2.70. The representative of Mexico thanked the Chairman and expressed its trade concern with respect to Ecuadorian Emergency Technical Regulation (RTE INEN) N° 111, entitled "Energy Efficiency, Clothes Dryers, Labelling", which was notified by means of document G/TBT/N/ECU/152 of 28 January 2014. Mexico did not find in the regulations any specification or reference concerning unexpected events of an urgent nature that might have justified their issuance on an emergency basis. Moreover, Mexico noted that the Ecuadorian Government took no account of the formal comments transmitted to Ecuador on 24 February 2014. Mexico also considered that the technical regulation could imply a violation of the proportionality principle established in Article 2.2 of the TBT Agreement by defining excessively high ranges of energy efficiency which would limit the access of products to the Ecuadorian market (only ranges "A" and "B" would be admitted). According to information from industry sources, there were no precedents for such a measure at international level, since even under schemes such as that of the European Community, the eco-design directive for clothes dryers still permitted the marketing of range "C" products. In this connection, Ecuador was requested to supply information providing justification for these requirements in the light of the legitimate objective pursued by Emergency Technical Regulation RTE INEN 111.

2.71. Mexico also expressed its concern at two specific requirements included in the technical regulations - which provided for different certification schemes, such as certification "by batch" or "by scheme" - and which were applicable to other household electrical goods, namely: Emergency Technical Regulations RTE INEN 109 (gas water heaters); RTE INEN 196 (lighting chains); RTE INEN 077 (washing machines); RTE INEN 124 (washer-dryers); RTE INEN 072 (Air conditioners); and RTE INEN 036 (fluorescent lamps). No provision were made, however, for certification "by type" of product. Mexico requested that these Ecuadorian technical regulations also admit this latter type of certification or, if necessary, that justification be provided for it not being admitted. Furthermore, despite the fact that certificates and test reports on the technical regulations had been submitted in Spanish, Ecuador has maintained the requirement that they be authenticated by apostille. Ecuador was thus requested to provide information justifying this requirement in the light of the principles contained in Article 5.1 of the TBT Agreement.

2.72. The representative of Ecuador took note of the concerns expressed by Mexico and informed that they would be further discussed bilaterally, considering that they were recently introduced as part of the agenda.

2.2.3 Previously raised Specific Trade Concerns

2.2.3.1 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 and G/TBT/N/IND/40/Rev.1) - IMS Item No. 133

2.73. The representative of Japan said that according to Article 10.2 of the revised "Agreement for granting of BIS licences", tyre manufacturers outside India were required to pay a bank guarantee fee of USD 10,000, resulting in unnecessary and different competition conditions for factories inside and outside India. Japan requested the government of India to consider amending the regulation. India had explained that the bank guarantee was needed to recover expenses related to breach of agreement by manufacturers outside India. Japan requested India to show evidence that such bank guarantee fees were common internationally. Further, Japan was of the view that the ISI marking fee in India was more expensive than in other countries and requested India once again to show evidence that the ISI marking fee in India was equivalent or not more expensive compared to other countries. Finally, Japan requested India to consider shortening the time for certification procedures as it was always taking a long time, around four to five months, to obtain certification for any tyre size.

2.74. The representative of the Republic of Korea reiterated concerns about the Indian Quality Order on Pneumatic Tyres and Tubes for Automotive Vehicles, regarding which no solution had been found although the issue had been raised repeatedly by Korea and other Members since 2010. Through bilateral meetings, Korea and India had made some meaningful progress regarding the ISI mark on tyres to be exported to third countries. However, there were two outstanding issues, namely the ISI marking fee and the discriminatory bank guarantees, which Korea requested India to reconsider and resolve. The marking fee issue could be resolved easily if the possibility of reciprocal treatment was considered, namely if Korea required that Indian companies pay a heavy charge on Indian products with the Korean standard marker heading to other markets.

2.75. The representative of the European Union reiterated concerns with regard to the Indian Quality Order on Pneumatic Tyres and Tubes for Automotive Vehicles, which introduced a certification procedure with a mandatory marking for tyres. The EU requested India once again to reconsider its marking fee system, which currently applied to each ISI-marked tyre and not only to those actually sold on the Indian market. The EU asked India to remove these royalty fees, which were extremely burdensome and much more restrictive than necessary, or at least to limit them to tyres which were sold on the Indian market. Furthermore, as already indicated in previous meetings, the EU considered that the USD 10,000 bank guarantee that the BIS could use in case of breach of the BIS Agreement was both discriminatory and an unjustified practice because it applied only to foreign manufacturers. In fact, 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 a foreign manufacturer in India. India was therefore once more invited to explain the rationale for introducing a new bank guarantee when other legal means already existed in order to ensure compliance with the BIS Agreement and to remove this provision. Finally, the EU

requested India to confirm that it was possible to get the licences renewed for two or three years without the need for additional plant inspections.

2.76. The representative of India said that the "Pneumatic Tyres and Tubes for Automotive Vehicles (Quality Control) Order, 2009, which applied to both domestic and foreign manufacturers, had been issued on 19 November 2009 and entered into force on 13 May 2011. By virtue of this Order, pneumatic tyres could be imported to India only if they conformed to the specified standards and bore the Standard Mark of BIS. For this purpose, foreign manufacturers desiring to export their goods to India were required to enter into an Agreement with BIS to be granted the BIS licence and use the BIS Standard Mark on their goods. The foreign manufacturer was also required to furnish a bank guarantee of USD 10,000 in favour of BIS for due compliance with the provisions of the BIS Act, rules and regulations, and terms and conditions of the license. The bank guarantee was necessitated in view of a default by a foreign manufacturer on its payment of dues to BIS, which could not be realized even after the matter was taken up with the Embassy of that country. It was intended to protect the interests of BIS during the tenure of the license and was invoked only in case of breach of any condition of the agreement signed between BIS and licensee. It essentially covered any possible loss of revenue to BIS on account of non-payment of requisite marking fee dues to BIS and also took care of legal expenses, if any. In case of any violation of the BIS Act, rules and regulations, or non-payment of the marking fee by a domestic manufacturer, BIS could seek compensation through domestic Court, whereas this law could not be enforced in foreign countries. During the previous meeting, one Member had suggested that the liability for the breach of the Agreement could be exerted on the authorized representative of the foreign manufacturer in India and that bank guarantee was therefore not needed when other legal means already existed to ensure compliance with the BIS Agreement. However, he pointed out that the authorized representative might not have any control on the manufacturing process of the manufacturer and, as per law, could not be held responsible for any breach of contract by the manufacturer.

2.77. He indicated further that the BIS charged a fee on all goods produced and marked with ISI. Some Members had asked that the marking fee be calculated only on those goods, which were exported to India. He noted that the marking fee would not be charged in case the manufacturer supplied their goods to other countries without the ISI mark, but they were liable to pay a royalty fee to BIS if they covered that supply with the ISI mark. Moreover, there was a possibility that the goods sold in overseas market might eventually land in India on a later date. It was also important to mention that the marking fee was being charged on domestic manufacturers not only for goods they sold domestically but also for goods that they exported with the ISI mark. Marking fee was charged at the same rate on foreign as well as domestic manufacturers and varied from 0.01% to 0.2% of the cost of the product. For example, the cost of a commercial vehicle tyre was approximately Rs. 20,000 and the marking fee was Rs. 2 per tyre, which came to 0.01%. Therefore, the marking fee could not be considered as exorbitant. In the previous meeting, one Member had sought clarification on the levy of an additional certification fee of USD 90 when a factory applied for certification for a new tyre size. He explained that a processing fee of Rs 5,000 in equivalent USD was charged for inclusion of new varieties of tyres on each occasion irrespective of the number of tyre sizes to be included. This fee and the renewal application fee of Rs 1,000 were the same for domestic as well as foreign manufacturers. Other concerns raised by Members were being forwarded to the capital and a response would be conveyed to the concerned delegations in due course.

2.2.3.2 India – Drugs and Cosmetics Rules 2007 (G/TBT/N/IND/33) - IMS Item No. 167

2.78. The representative of the European Union reverted to concerns regarding the registration of cosmetic products in India, which had entered in force in March 2013. On 2 January 2013, India had issued Guidelines on the Registration of Imported Cosmetics, establishing that the label of imported cosmetics had to bear the registration certificate number of the brand and name and address of the registration certificate holder and that stickering of labels containing this information may be allowed to be carried out after import at a suitable place approved by the licensing authority. The EU welcomed the fact that stickers providing this India-specific information were allowed but also reiterated its request for India to extend the possibility of providing information via stickers at customs bonded ware houses to all aspects of cosmetics labelling, including the list of cosmetic ingredients or any other information relevant for the consumer. This was a very important trade facilitating measure that did not jeopardise India's legitimate health

and safety objectives and was particularly relevant for manufacturers that exported small quantities and found it difficult to adapt the labels to requirements of different geographical regions. In this respect, on 29 September 2014 the Office of Drugs Controller General of India had issued a memorandum stating that "it had been decided under rule 148-A of the drugs and cosmetics rules, 1945 to permit relabeling or stickering on the label of cosmetics which have been imported under universal labelling and packaging without concealing the original label, to conform to the labelling requirements of the said rules before these are marketed for sale". According to the EU, this latest memorandum permitted importers to re-label or place a sticker on products to comply with all Indian labelling requirements and not only the India-specific ones. The EU asked India to confirm whether this reading was correct.

2.79. On a related matter, on 16 June 2014 the Indian Central Government had amended the legal metrology Packaged Commodities Rules 2011 to require that cosmetic products bear a red or a brown dot at the top of the principal display panel for products of non-vegetable origin and a green dot for products of vegetable origin. The rules had not been notified to WTO Members under the TBT Agreement and had entered into force 15 days after publication. The EU reminded India of the notification obligations and the absolute need to provide sufficient time for market operators to adapt to new labelling requirements. In this context, the EU asked India to notify the measure, provide time for comments and postpone implementation deadlines. In addition, the EU invited India to clarify how the vegetarian/non-vegetarian information would need to be provided and whether stickers would be allowed. Finally, the EU was concerned with the application of a new importing checklist to check compliance of imported products with the Indian requirements, which was requiring market operators to provide data and tests that were not foreseen in the basic Cosmetics Law of 2010. The previous checklist used by DCGI had been in line with the Indian Cosmetics Law and guidance documents issued in 2013. Regular changes in the importing procedures and labelling requirements were seriously disrupting trade flows. In this context, the EU called on India to take the necessary steps to ensure a predictable business environment in this area and adopt less restrictive means to fulfil its legitimate objectives.

2.80. The representative of Canada expressed appreciation for India's willingness to provide additional clarifications of its Medical Device Regulatory System during meetings held on the margins of previous TBT Committee meetings as well as in responding to Canada's questions in the context of the WTO Trade Policy Review of India in September 2011. However, Canada still had not received sufficient detail and clarity regarding specific aspects of the regulatory system and welcomed any additional details on India's future plans for medical device regulation and the status of the Drugs and Cosmetics (Amendment) Bill, 2013, which as Canada understood, had not been passed by Parliament and contained provisions for a new medical device regulatory system. Regarding the Guidance Document on Common Submission Format for Registration/Re-Registration of Notified Medical Devices in India, which had been published by the Central Drugs Standard Control Organization (CDSCO) in October 2012 and entered into force in January 2013, Canada sought information on whether: (i) medical devices approved by Health Canada would be recognized on the same terms as those bearing the European Union's CE marking approval; (ii) certificates/licences needed to be notarized/attested by the Indian Embassy in the country of origin; and (iii) medical devices needed to be approved for sale in the country of origin. Canada also welcomed further details on whether India's requirements for country of origin labelling of medical devices differed from those of member countries of the former Global Harmonization Task Force (GHTF).

2.81. The representative of India indicated that comments had been received from the capital regarding a suggestion made by a delegation during the previous Committee meeting that stickers be allowed on imported cosmetics for providing information on all aspects of cosmetics labelling, including list of ingredients and any other information for consumers. In this regard, he noted that as per Rule 129H of the Drugs and Cosmetics Rules, the label of imported cosmetics shall bear the registration certificate number of the product and the name and address of the registration certificate holder for marketing the said product in India. Furthermore, the Guidelines issued on 2 January 2013 allowed stickering of labels containing this information after goods were imported and at a suitable place approved by the Licensing Authority. Subsequently, on 29 September 2014 (as per Office Memorandum No. DCGI/MISC/2014(44), permission had been granted for stickering on the label of imported cosmetics, without concealing the original label and conforming to the labelling requirements of the said Rules, before they were marketed for sale. However, only the registration certificate number of the brand and the name and address of the registration certificate holder were permitted via stickers while stickering of any other information pertaining to

cosmetics labelling, such as list of ingredients, was not allowed under the Drugs and Cosmetics Rules. If stickers were allowed to display all mandatory information, such a facility would be liable for misuse by unscrupulous traders after the goods were cleared into the domestic market. Thus, the policy objective of informing the consumers would not be properly served if all requisite information was displayed using stickers on the packages. He said that concerns raised would be forwarded to the relevant authorities in the capital and their response would be conveyed to the interested delegations in due course.

2.2.3.3 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, G/TBT/N/CHN/937) - IMS Item No. 296

2.82. The representative of Japan thanked China for its efforts, but reiterated its concern on two points regarding guidance for application and evaluation of new cosmetic ingredients ("the Guidance"). Firstly, he noted that since the implementation of the guidance in May 2011 only four new ingredients had been registered so far, and there still remained significant resistance to exports of cosmetic products to China with new ingredients. Japan therefore asked China to accelerate examination of new ingredients. Secondly, the guidance required safety evaluation data to be submitted for each single molecule isolated from plant extracts and fermented solvents. Japan underlined that such requirement was excessive and trade restrictive because they were not applied by other Members, such as United States, the European Union or even Japan. Japan therefore asked China to revise the guidance in a way that cosmetics manufacturers could register new ingredients without isolation of new ingredients. In case China did not accept this request, Japan asked China to share the scientific basis for requiring evaluation of single molecules isolated from a complex ingredient, as well as the risks that China saw in evaluating complex ingredients without isolation.

2.83. The representative of Canada reiterated concern regarding China's Food and Drug Administration's (CFDA) burdensome approval and registration process for cosmetic products. He insisted that the lack of progress in approving new ingredients was a serious barrier to trade. According to Canada, the "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 actually prevent Chinese consumers' access to safer and more innovative cosmetic products. 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 already sold on the Chinese market as suddenly "new". Canada was also concerned that domestic cosmetic manufacturers were 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. He argued that streamlining the approvals processes for imported cosmetics and applying the same registration process applied to domestic cosmetic products would create a fair trade environment for the cosmetic industry, consistent with the TBT Agreement.

2.84. The representative of the Republic of Korea underlined his delegation's respect for China's efforts to protect consumer safety and noted that Korea's cosmetics manufacturers were trying to comply with the regulation as far as possible. Regarding the labelling requirements notified under G/TBT/N/CHN/937, Korea reiterated its concerns that the mandatory regulations of the CFDA and AQSIQ were overlapping and had even conflicting requirements. He considered that the Chinese measures conferred unnecessary burden and confusion to many producers. Therefore, Korea requested China to harmonize the regulation of the CFDA with the existing regulation of AQSIQ which was based on ISO standards.

2.85. The representative of the European Union joined the delegations of Japan, Canada and Korea and asked China to update the Committee on the measures taken since last meeting to accelerate the procedure for new ingredients authorisation. The EU was of the opinion that the new registration procedure of "new ingredients" (G/TBT/N/CHN/1019), was unlikely to deliver the speed efficiency and predictability essential in the cosmetics sector. She noted that as several new ingredients were developed per year and only four were registered in the last four years, a new system should offer a more efficient approval of ingredients. The EU mentioned that an authorization system restricted to only certain ingredients, such as such as UV filters, colorants and hair dyes, would be more adequate, as cosmetics were not pharmaceuticals. For the remaining ingredients which were the majority of cosmetic ingredients, the safety characterization

and assessment should be done under the responsibility of the manufacturer. In this context, the EU suggested to China to limit the procedure for registration of new ingredient to priority substances - i.e. higher risk substances - and allow a lighter procedure for lower risk substances; and share the safety responsibility for new ingredients between China's Food and Drug Administration (CFDA) and the registrant company for low risk substances.

2.86. The representative of China reminded the Committee that since the notification of the measure in July 2011, the CFDA offered specialized training and guidance on the difficulties enterprises had met in the implementation of this measure. In addition to cooperation at the governmental level, CFDA had kept bilateral channels open and formed several working groups on this issue with several Members. The approving procedure was thus being carried out orderly. She said that, by 30 September 2014, CFDA had approved 10,367 imported cosmetics applications, which was more than the average number of the same period last year. China promised to remain available to discuss the issue bilaterally and welcomed further cooperation and valuable inputs from interested parties.

2.87. Regarding Canada's concern on the positive list, China explained that there was no "positive list" and that the "inventory of used cosmetics ingredients in China" was still under drafting. China explained that it was not a "positive list" on cosmetic materials, but instead a list to distinguish whether a material was used in cosmetics produced or sold in China. The document designed a sole standard on approving new cosmetic materials, to prepare for devolving responsibility of managing imported "normal cosmetic" registrations to provincial level authorities. CFDA had carried out two rounds of public opinion soliciting, and the industry had added over 10,000 existing materials to CFDA. Except the materials banned for safety hazards, all cosmetic materials that were used in the Chinese market were going to be included in this document. Every kind of material would be marked by both Chinese and INCI name. Regarding the "Adjustment of Cosmetic New Ingredient Registration Management" (G/TBT/N/CHN/1019), China explained it was issued to accelerate the approval procedure of new cosmetic materials through an adjustment on administration level. As for the "Cosmetics Label Instructions Regulations and Guidance", China explained that, due to the adjustment of CFDA's legislation plan, there would be a new regulation on cosmetics labelling before the end of 2014, which would be notified to WTO.

2.2.3.4 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 Item No. 274

2.88. The representative of the European Union thanked India for its willingness to engage in discussions with European Industry and with the EU and said that, according to his knowledge, following a decision by the Department of Telecommunications of Indian Ministry of Communications and IT of 7 July 2014, the entry into force of the in-country testing of telecom products for security reasons was postponed to 1 April 2015. The EU welcomed this postponement, as they it did not consider the proposed system as being ready for implementation. Until then, the EU was under the understanding that a *status quo* would apply and that foreign test results would continue to be accepted. The EU welcomed confirmation by India that relevant tests would have to be carried out according to international standards, namely the common criteria ISO/IEC15408 standards, ISO27000 for information management system, and the standard developed by the third generation mobile technology project, 3GPP and 3GPP2, as regards telecom and telecom network elements problems. He also was under the understanding that India was in the process of joining the 3GPP2, a step also welcomed by the EU towards ensuring lasting adherence by India to standards developed by this platform. The EU understood that test results from laboratories appointed by the common recognition arrangement would continue to be accepted also beyond 1 April 2015 for the purpose of the required security assurance, which would be in line with India's obligations as a full member of the CCRA. The EU invited India to continue discussing with telecom equipment suppliers to develop working methods and procedures reflecting international practice. As for security aspects of mobile telecom elements which were not covered by the common criteria standards, the EU asked that India accept results of qualified foreign laboratories holding accreditation from ILAC signatories beyond 1 April 2015, and that India therefore not require exclusively in-country testing, and that India, instead, continue to

accept foreign test results as a basis for any certification to be issued in India by appointed certification bodies.

2.89. The representative of the United States welcomed India's positive efforts as well as the delaying of the implementation to a better time. She associated itself with the EU's comments, requesting India to accept test results from accredited laboratories that are ILAC and IAF signatories, and not exclusively India-based laboratories.

2.90. The representative of Japan supported the EU and US positions, and confirmed Japan's interest to the Unified Access Service Licence Agreement.

2.91. The representative of Canada supported the comments made by the EU, US and Japan, noting it was not aware of the most recent developments. Up until very recently they were concerned that the order continued to hinder, and possibly shut, Canadian exports out of the Indian market, due to delays in registration and testing. He underlined the relevance of relying on well-established international standards for evaluating the competence of conformity assessment bodies, particularly ISO/IEC17025, and ISO/IEC17065. The ILAC/IAF mutual recognition agreements (MLAs) also provide for a peer review systems to ensure the competence of signatory accreditation bodies. They asked India to confirm they were moving in this direction. He agreed with other concerned Members that recognition by India of test results by foreign conformity assessment bodies accredited by the signatories of ILAC and IAF MLAs to test and certify to India's regulatory requirements would minimise the negative impact on companies wishing to export to India, while at the same time providing assurance to India that the recognized conformity assessment bodies are competent. Allowing accredited foreign conformity assessment bodies to test and certify to India's regulatory requirements would reduce testing costs and allow exporters to bring their products to the Indian market more quickly. Finally, Canada noted that substantive amendments to the Order, such as those with respect to marking and labelling requirements, should be notified to the TBT Committee, and any update by India on these points would be welcome.

2.92. The representative of India reiterated that in-country security testing of telecom equipment was mandated for "national security reasons" due to the fact that in modern age telecommunication equipment was vulnerable to spyware and malware attacks. Therefore, in May-June 2011, telecom service providers were instructed by the Department of Telecommunication that they "shall induct only those network elements into their telecom network, which have been got tested as per relevant contemporary Indian or International Security Standards". For example, IT and IT related elements were to be tested against ISO/IEC 15408, and Information Security Management System against ISO 27000 series. These tests were to be conducted from any international agency/labs of the standards such as Common Criteria Labs in case of ISO/IEC 15480 standards, until 31 March 2013. As from 1 April 2013, the certification was to be got done only from authorized and certified agencies/labs in India. This deadline was subsequently extended from time to time; and the latest extension of 9 months had been granted from 1 July 2014 to 1 April 2015 for complying with the mandatory requirement of in-country testing.

2.93. India also reiterated its view that the Common Criteria was not sufficient for the purpose of security testing of telecom equipment because its testing was limited to IT and IT-related products. Moreover, being a process-based testing, while the Common Criteria largely addressed the issues of commercial security consideration, it did not however address national security issues. Therefore, in respect of testing of IT products to be used in telecom networks which have already been tested under CCRA, it was India's understanding that due leverage should be given to the CC testing, and additional tests, when they were required to be carried out as per the prescribed systems, processes and standards. Finally, India explained that when an IT product was used in telecom network, it became a telecom network element where functional or operational requirements were governed by 3GPP or 3GPP2 standards. India informed intended to use the 3GPP and 3GPP2 standards also for testing and certification of telecom equipment. In this regard, India was taking necessary steps for participating in the exercise of formulating security standards by 3GPP/3GPP2 Sub-Groups.

2.2.3.5 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 Item No. 294

2.94. The representative of the European Union asked India to provide an update on the OSCCA regulation on commercial encryption products that had been on the agenda of the Council legislative office for several years. He also requested China to confirm that there would be a TBT notification in timely and due manner of the final draft of the proposed revisions in order to allow Members for a meaningful opportunity to provide comments. Any update on the substance of the revisions would be welcome, beyond what the EU already knew, i.e. the fact that the new regulation would remove the discriminatory provisions that prevented suppliers from applying for certifications. The EU was also concerned with the implementation of the multilateral protection scheme, in particular the definition for "critical infrastructure" and the current restrictions that prevented the procurement of products incorporating foreign technology for using critical infrastructure. The EU also mentioned that standardisation remained another are of concern due to the possibility of foreign stakeholders, even if they have investments and were established in China, to meaningfully participate in this process. The EU invited China to make use of relevant international standards in this field and to play a full role in the development of such international standards. Finally, the EU noted that in the margins of the large Government Authorities Meeting of Semi-conductors (GAMS) meeting, a Seminar on Commercial Best-Practices in Encryption Licensing and Certification took place in Tokyo, with participation from EU, India, Japan, Korea, the US, among others. This event helped foster exchange of information about current approaches in the field of encryption and highlighted the need to step up international cooperation in this area.

2.95. The EU stressed the importance of international cooperation to address global issues, and develop resilient systems deploying the best possible technology on the market. He underlined that it was in no Member's interest to segregate markets for encryption purposes by foreclosing the possibility of using foreign technology in their own market against cyber-attacks that could originate anywhere in the world. The GAMS endorsed the principle of promoting greater transparency regarding relevant regulatory policy developments, and the EU underlined that transparency and cooperation go hand-in-hand. The EU stated that it looked forward to further discussions and dialogue with the Chinese authorities going forward.

2.96. The representative of Japan reiterated its support the EU's position and noted that Japan paid particular attention to various schemes and regulations within China on information security, and how they could negatively affect trade of information security products.

2.97. The representative of China informed that the Regulation on Commercial Encryption Products was due for revision. This revised version aimed to ensure equal treatment for foreign and domestic businesses and take the development of information industry into account. This revision had the purposes of: (i) protecting information security; (ii) safeguarding the legitimate rights and interests of citizens, legal persons and other organisations; and (iii) protecting national security and public interests. China also continued bilateral and multilateral negotiations with EU and other Members. The draft had just been submitted to the legal affairs office of the State Council. OSSCA had been open and transparent, carrying out reviews and public consultations during the drafting.

2.98. China also updated the Committee on the state of the revision process of the Multi-Level Protection Scheme (MLPS). The essence of the Regulation on Classified Protection of Information Security was to classify the protection on information systems, aiming at safeguarding the basic information network and important information systems to ensure national security and public interests. The security of information systems in banking, education, healthcare, transportation and other public utilities were all issues to which China attached great importance, due to their close relationship with citizens' welfare. Therefore, the "importance" of information systems was not necessarily decided by the sensitivity of that industry but also 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, it seemed very unlikely that the measure would be able to cause "significant" effects to international trade. China reiterated that in terms of intellectual property protection and government procurement, all enterprises within China would be treated equally in accordance with the non-discrimination principle of the TBT Agreement.

2.2.3.6 Russian Federation – Draft on Technical Regulation of Alcohol Drinks Safety (published on 24 October) (G/TBT/N/RUS/2) - IMS Item No. 332

2.99. The representative of the European Union requested an update on the status and timeline for adoption of this draft technical regulation, scheduled to be finalized during summer 2014. It also requested that Russia notify this new draft to the TBT Committee as it would likely include substantial change as compared with the text notified in 2012. The EU also noted it had also submitted detailed written comments in 2013, and encouraged Russia to take them into consideration. The EU also made various comments on the substance of the new draft. Concerning wines, the EU welcomed the fact that the use of ''concentrated must'' and ''rectified concentrated must'' were recognized as an oenological practice in the new version of the draft. In this respect, the EU asked for the confirmation that wines enriched with ''must'' were not considered "table wines". The EU also asked for a guarantee that EU geographical indications (GIs) would be duly protected and that wines with GIs would continue to be allowed to be bottled in Russia and maintain the GI designation. Concerning beers, the EU asked for confirmation that the limit on sugar content of beers would be removed and the use of fruits as well as additives would not trigger the obligation to label beers containing such components as "beer beverages". The EU also requested confirmation that brewery products were still excluded from the ban on PET packaging.

2.100. The representative of Mexico recalled that her delegation had sent written comments to Russia in December 2011 and April 2012, but had not yet received any formal responses. She also requested Russia to provide updated information on the state of progress on the elaboration of the regulation and the current state of play with regard to its final adoption. She also asked Russia to explain how the Mexican comments were taken into account in relation to the final text of the regulation in question and to provide a written formal response to those comments.

2.101. The representative of Australia reiterated that both Australia and Russia shared the 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. Australia submitted comments on Russia's notification on 6 February 2013, focusing on a number of commonly used additives and processing aids that did not affect the safety of the alcoholic product. Australia noted that it had been joined in its concerns by a number of other Members who considered the new measures to be both overly burdensome and repetitive. In the light of this, Australia once again 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 remained 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 again that Russia introduce a six-month transition period for these products to enable industry sufficient time to implement the stated labelling requirements. Australia also reminded Russia of their concerns over the requirements relating to the bottling location of wines which include a GI in their description and presentation.

2.102. The representative of the Russian Federation informed that the internal adjustment of the draft of the technical regulation on the safety of alcoholic products was still in process, and that Russia remained open for further bilateral discussions and willing to keep Members informed of the process.

2.2.3.7 Republic of Korea – Regulation on Registration and Evaluation of Chemical Material (G/TBT/N/KOR/305) - IMS Item No. 305

2.103. The representative of the United States said that while her delegation acknowledged the extensive stakeholder engagement on this issue, the US remained concerned about the protection of confidential business information (CBI). The US thus encouraged Korea to develop a strong definition of CBI so as to include at least the possibility of protecting the specific chemical identity, composition, and uses, while respecting the legitimate government interest in allowing for reporting of generic chemical names, and for providing adequate hazard information to downstream users. The K-REACH framework should include additional provisions to help prevent any disclosure of CBI to the public or other manufacturers and importers. She insisted that Korea should tighten the definition of "hazardous substance" so as to avoid confusion and an overly broad application that would de facto prevent claims of CBI for any substance. Specifically, the US considered that the phrase "other chemical substances that either pose or raise the concern of

hazard or risk" should be deleted from the definition. The US also encouraged Korea to give greater consideration to industry requests for a delay of the implementation date in light of the practical issues that have been raised. Finally, the US mentioned that the role of the Korean Chemical Manufacturers Association (KCMA) needed to be defined and it needed to guarantee a level playing field for domestic and foreign registrants.

2.104. The representative of Japan associated himself with the US comments. Regarding products containing around 500 hazardous substances, not less than 0.1% by weight and not less than 1 ton per year in total, he said that it would be necessary to notify the authority of the production, sales and import of them. Japan reiterated its request for Korea to introduce the regulation by stepwise manner according to the priority of hazardous substances, as Japan had not received any reply yet. Japan was under the understanding that the enforcement regulation stipulated the necessary test items for registration on this regulation, and that the National Institute on Environmental Research's public notice was the instrument regulating in detail the conduct of the examination process. However, Japan believed that this would represent heavy burdens for the Japanese industries, which would have to carry out a lot of test items on the enforcement regulation. Japan thus requested Korea to alleviate the mandatory testing in cases where the test results required further registration under the regulation could reasonably be estimated from: (i) other test results on the same substance the registration of which it was applied for; (ii) existing reliable knowledge on the substance the registration of which it was applied for, such as published articles, or publically accessible database and documents; and (iii) publically known test results regarding other substances constitution of which it was similar to that of the substance the registration of which it was applied for.

2.105. The representative of the Republic of Korea informed the Committee that the Presidential and Ministerial Decrees to the Act on Registration and Evaluation of Chemical Substances would be published in November 2014. The Act and the Decrees were scheduled to take effect on 1 January 2015. Regarding protection of confidential business information (CBI), he pointed out that CBI including composition and contents of chemical materials would be excluded from the scope of information to be provided. CBI submitted during the registration process was going to be protected upon request if CBI corresponded to that stipulated in the "Unfair Competition Prevention and Trade Secret Protection Act". In addition, although R&D substances and low-concern polymer compounds were exempted from registration, they shall be applied for exemption as "Toxic Chemicals Control Act (TCCA)" required it currently. However, there were changes with respect to the test data required by the Act on Registration and Evaluation of Chemical Substances as compared with test data required by the TCCA. For impurities and by products which were unintentionally produced, or those which existed in other chemicals, those substances shall not be registered if they were not commercially distributed or circulated. He also noted that the Korean Ministry of Environment had already replied in writing to the United States on 7 April 2014. He informed that the other issues that had been raised at the present Committee meeting would be sent to the competent Korean authorities.

2.2.3.8 Indonesia - Technical Guidelines for the Implementation of the Adoption and Supervision of Indonesian National Standards for Obligatory Toy Safety (G/TBT/N/IDN/64, G/TBT/N/IDN/64/Add.2) - IMS Item No.328

2.106. The representative of the European Union expressed regret with the fact that the new regulation on compulsory testing on toys according to the Indonesian mandatory standard for toy safety was implemented on 30 April 2014 without taking into account the substantive concerns raised by a number of Members and their toy industries. He noted EU exporters' continuing concerns with the implementation of Decree No. 24 of Ministry of Industry (and related technical guidelines), including with the lack of clarity about the process. One area of remaining concern was the burdensome and discriminatory conformity assessment procedures between imported and domestically produced toys. For imported toys testing based on sampling was required for each batch, which compared unfavourably with tests of samples taken every six months from the production line for domestic products. Despite some revisions in the sampling procedures, the EU exporters still reported difficulties and delays in getting clearance for their products. The EU therefore invited Indonesia to reconsider the full issue of conformity assessment and sampling for tests and testing procedures for imported toys in order to ensure a level playing field with domestic products. The EU also understood that a technical working group had been set up in the Ministry of Industry to allow for discussions between authorities and affected toy manufacturers. The EU welcomed this development and invited the Indonesian Ministry of Industry to work with

the technical working group to propose amendments to the existing legislation to address the concerns raised. Regarding testing, he noted that the current 2-year grace period allowing the acceptance of foreign tests by laboratories accredited by ILAC MRA signatories, was due to expire in November 2016. The EU thus urged Indonesia to extend the acceptance of these foreign tests beyond the expiry of this grace period as the capacity of local laboratories would be insufficient to deal with the current demands. In this respect, he stressed that there was no prospect of the capacity to be increased to meet expected demands by November 2016.

2.107. The EU also raised concerns regarding the revised labelling requirements to toys (also linked to STC ID 436[3]). He noted that in Indonesia toys were subject to two separate sets of labelling requirements: one stemming from the specific toys regulation, and another from the mandatory labelling in Indonesian language. Since the label required under the toys regulation needed to include the shipment tax number, which could only be obtained after the shipment had reached customs, the combined application of the two sets of requirements entailed that every single item had to be handled manually twice, a.i., before shipment, according to the general requirements for labelling in Indonesian language, and after importation, in order to meet the specific labelling requirements under the toy regulation. This created a disproportionate burden and cost for toy manufacturers and importers, as well as unnecessary delays in placing the products on Indonesian markets. In addition, the requirement of permanently affixing labels on certain types of toys could in itself give rise to safety concerns. This was so because, as permanent labels could be removed by children playing with the toys, this could damage the toy and expose the children to materials not supposed to be accessible for them. The EU also asked Indonesia to allow enough time for discussions with toy manufacturers on feasible labelling solutions capable of meeting policy objectives, while ensuring proportionality and coherence between the two different sets of labelling requirements applicable to toys, and not compromising toy safety.

2.108. The representative of the United States associated herself with the EU concerns. She said that while toy safety was an objective the US shared with many Members, it nonetheless also noted that Indonesia's toy regulatory regime included several aspects that were considerably more restrictive than those adopted by other Members. In this latter respect, the US continued to have concerns related to laboratory accreditation, testing frequency, sampling, documentation, and substance restrictions. Despite efforts by both the US Government and other trading partners, as well as the toy industry coalition, few of these concerns were addressed prior to the regulation coming into effect at the end of April 2014. She argued that increased costs and decreased quantity and variety of safe toys from compliant companies, due to these restrictive requirements, would cause consumers to look for alternatives in the grey market, thereby decreasing consumer safety. The US remained interested in working through the remaining issues of concern with the new Indonesian administration to resolve these matters and help ensure that Indonesian consumers have access to safe toys.

2.109. The representative of Japan reiterated that the Indonesian toy safety regulation was inconsistent with its obligations under the TBT Agreement, and regretted that the revised regulation was put into effect although the concerns remained unsolved. He requested that the new Indonesian administration would amend the toy regulation so as to make it consistent with TBT Agreement obligations.

2.110. The representative of Indonesia informed that since the new amendment of the regulation stipulated by Regulation of Minister of Industry No. 55/M-IND/PER/11/2013, notified under G/TBT/N/IDN/64/Add.2, there had been no further changes in this regulation. Information regarding the availability of regulation was available on Ministry of Industry's website. Regarding certification procedure, as stated in the technical guidance on the implementation of toys safety, local and foreign manufactures, could submit their application to conformity assessments bodies designated by the Minister of Industry. In addition, foreign manufactures were to appoint their representative which was functioning as importer or manufacturing importer. On the issue of testing period for toys, she explained that the current regulation's requirement for sample-taking was based on the batches of shipments. A shipment could consist of several batches which were determined in terms of every trademark of toys which fell within the same HS code; such an improved requirement had significantly reduced the time for testing. Regarding acceptance of test

[3] *Indonesia – Regulation of Minister of Trade No. 10/M-DAG/PER/1/2014 concerning Amendment of Regulation of Minister of Trade No. 67/M-DAG/PER/11/2013 concerning Affixed Mandatory Label in Indonesian Language for Goods*.

result issued by foreign laboratories, she said that Indonesia granted a 2-year grace period for the result to be recognized. However, this kind of special treatment during this grace period could only be extended beyond the period if the government of the country where the laboratories were based already had a mutual recognition agreement with the Indonesian Government. She further explained that all requirements about marking and chemical substances contained in toys were set up in the technical guidance on this matter. The affixing of the label in Bahasa Indonesia in goods, particularly on toys, could be done through embossed printing or a firmly attached label on the packages, depending on the characteristics of the product.

2.2.3.9 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 Item No. 345

2.111. The representative of Argentina reiterated Argentina's concern with the unjustified delay in resolving this long-standing STC, a conduct it considered to be inconsistent with the principle of national treatment. Regulations (EC) No. 479/08 and (EC) No. 607/09, which, on one hand, granted EU member states the exclusive right to use certain traditional expressions in each of their respective languages, on the other hand, restricted the right of third states to use these expressions in their labelling. This seriously affected wine exports from Argentina to the EU which used the terms "*Reserva*" and "*Gran Reserva*". Seeing this as inconsistent with the TBT Agreement, Argentina recalled that it had presented a dossier on these terms to the EU in July 2009. This dossier was then approved in March 2012 by the European Commission's Wine Management Committee. Although the substantive procedure was completed in March 2012, the final formal step, namely the adoption of the Argentine dossier by the College of Commissioners and its publication in the Official Journal of the EU, had not yet been taken. The substantive procedure took two years and seven months, from July 2009 until the approval of the dossier in March 2012, while the time taken to complete a single administrative act of a formal nature had already reached two years and eight months, from March 2012 to November 2014. Argentina insisted that such delay was unjustified: neither had the process been concluded in a reasonable period of time, nor had a reasonable explanation been given for the delay. The total delay amounts to five years and 3 months, amounting to an obstacle to trade. Argentina urged the EU to find a prompt solution.

2.112. Argentina further argued that the declared aim of not misleading consumers could not be achieved by the Community's legal regime reserving the use of traditional terms, including the terms "*Reserva*" and "*Gran Reserva*" as there was no uniform definition of these terms at the Community level. Argentina considered that the EU failed to comply with its obligation of national treatment, as the same conditions of access and marketing were not applied to wines from outside the Community compared with the conditions enjoyed by Community wines. For instance, the traditional expressions "*Reserva*" and "*Gran Reserva*" were not provided for at Community level in the case of Spain. In fact, in the single Annex to Regulation (EC) No. 881/98, entitled "List of additional traditional terms referred to in Article 3(1)", the traditional terms "*Reserva*" and "*Gran Reserva*" were not reproduced in relation to Spain, although 14 other expressions were listed for Spain in that Annex, which made the absence of the terms all the more noteworthy because the terms "Reserve", "*Vieille Reserve*" and "*Grand Reserve*" were listed in the case of Greece. Argentina therefore questioned why exclusive rights were assigned to Spain for the use of such expressions when they were not even provided for initially.

2.113. Argentina also noted that the World Wine Trade Group (WWTG) (a grouping of wine producing countries - Argentina, Australia, Canada, Chile, Georgia, New Zealand, South Africa and the United States) transmitted four notes to the European Commission, the first on 4 June 2013, but had not yet received a satisfactory reply to the request to register and publish the traditional expressions requested by the non-Community countries, since the inordinate delays were not justified from the technical standpoint. Lastly, Argentina recalled that in a previous TBT Committee meeting, in 1999, the EU had stated, for instance, that "the purpose was to avoid misleading the consumer and unfair competition" and "stressed that the legislation would provide national treatment in that it allowed third countries to use the terms on similar conditions as applied to EC member States." She noted that 15 years after those statements, the reality still had not changed, despite continuous flagging of the concern. Argentina saw this as a case of clear protectionist policy and urged the EU to eliminate the unjustified restrictions on exports of quality

wines. She insisted that the Commission address this matter and publish the relevant regulatory act in its Official Journal.

2.114. The representative of the United States recalled its previous concerns and requested the status of the applications submitted by the US wine industry over four years ago. The US noted that some US suppliers that currently used the terms referred to in the EU measure had been unable to ship their products. The US was also concerned with the lack of transparency in the application process for the use of traditional terms. This process continued to undermine US exports of wine to the EU, as companies that used those terms legally in the USs and third markets had been unable to sell their wines to the EU. She thanked the EU for reconsidering the traditional terms for wine schemes and requested more information on this review. In this respect, she asked what were the objectives and parameters of such review, the scope of the stakeholder participation in the review, and, in particular, whether foreign stakeholders could participate in the process. The US noted, grower, that information about the Wine Advisory Group, specifically regarding its plans for the approval of the use of Traditional Terms on wine by the US and other leading wine producing nations, had not been shared with key trading partners. Furthermore, it appeared that the Wine Advisory Group had been replaced by a Civil Dialogue Group on Wine. She noted that key trading partners had not yet received information on the composition and intentions of this new group regarding traditional terms, further exacerbating the lack of transparency and undermining trade. The US urged the Commission to resolve this barrier to trade without further delay.

2.115. The representative of South Africa showed its support to the statements made by Argentina and the US. The EU and South Africa could resolve only three longstanding concerns relating to traditional terms in their economic partnership agreement negotiations. All other issues, also pertaining to the subject of this STC, were moved to a *rendez-vous* clause to be negotiated at a later stage. As previously stated, South Africa had been using quite a few of the "traditional terms" referred to by the EU since the time when European Settlers first started wine production in the Western Cape province of South Africa in 1685. He noted that these terms therefore form part of South African valued heritage. As a member of the World Wine Trade Group, South Africa joined the other Members and cosponsored four letters to the EU, dated 18 December 2013, 22 May 2014, 4 June 2014, 7 October 2014, sent by the WWTG Chairman to the DG Agriculture and the Rule Development of the European Commission on the issue of "traditional terms" within the framework of the European legislation, in particular regarding EC Regulations 478/08 and 607/09. South Africa therefore urged the EU not to use general terms commonly used in many languages for the description of wine such as "*classique*" or "*reserve*" as a trade barrier. He also asked the EU to engage with concerned Members to ensure that common solutions could be found.

2.116. The representative of the European Union informed that the new Regulation establishing a common organization of the markets in agricultural products was adopted by the European Parliament and the Council in December 2013 (Regulation (EU) No. 1308/2013). Following its publication, an internal assessment on "traditional terms" had been carried out within the EU with stakeholders and experts from the Member States (in accordance with Article 114(3) of that Regulation). The consultation was still ongoing and included the conditions and specificities under which these traditional terms could be used on the labels of products from third countries. The possible derogations, based particularly on minimum requirements for production methods and controls under product specifications of the wines concerned, were covered by this discussion. Nevertheless, after three meetings no final conclusions were reached and, at this stage, the EU was waiting for the new Commission to take office before a decision could be made. The EU promised to continue to make the possible and necessary efforts to bring new elements into its policy on protection of traditional terms and their indication on the labels of wines in order to accommodate trade partners' concerns. She assured Members that their concerns had been taken into account in the assessment process currently carried out in the EU which was of a complex nature. The procedures under consideration (whether from EU Member States or third countries) would be taken once this evaluation was be finalized. The EU remained open to discussion with trade partners bilaterally at expert level.

2.117. The representative of Argentina underlined again what it saw as a lack of transparency in the EU's approach since it declared to be attempting to bring in a new measure which would continue to delay the resolution of this issue.

2.2.3.10 India – Food Safety and Standards Regulation - Food labelling requirements - IMS Item No. 298

2.118. The representative of the European Union recalled that in October 2011 and January 2014 India issued *ad hoc* guidelines under which certain India-specific information, such as the vegetarian/non-vegetarian logos and the name and address of the importer, was considered "rectifiable" information and could be affixed through stickers by the importer in customs warehouses. However, the guidelines specified that several compulsory food labelling elements, such as list of ingredients, were "not rectifiable", which meant that they could not be communicated by means of stickers but rather had to be printed on the food package. The EU noted that in most economies worldwide food products could be labelled by means of stickers provided they were accurate and not easily detachable. She said this was a very important trade facilitating practice that allowed producers to serve different regions with different language requirements without the need for separate production lines, while duly protecting the consumer. In this respect, she mentioned standard CODEX STAN 1-1985, relevant to the labelling of pre-packaged foods, and which stated: ''if the language on the original label is not acceptable, to the consumer for whom it is intended, a supplementary label containing the mandatory information in the required language may be used instead of relabeling''. It also stated: ''in the case of either relabeling or a supplementary label, the mandatory information provided shall be fully and accurately reflect that in the original label.'' For the forgoing reasons the EU expressed its view that the October 2011 guidelines were too burdensome and were not therefore in compliance with Articles 2.2 and 2.4 of the TBT Agreement. She asked India to bring its implementing guidelines in line with CODEX and to allow all types of labelling information - and not only the India-specific information - to be provided by stickers (for example at customs bonded warehouses). This was a sound alternative to labelling in the country of origin that would allow India to fulfil its legitimate objectives in a non-trade restrictive way.

2.119. Concerning alcoholic drinks, the EU representative noted that Indian legislation required that the labels to these products contain the full list of ingredients. As already stated, stickers were not allowed and, in addition, the labels had to be pre-registered in different Indian States with the state excise authorities. In this context, the EU encouraged India to provide more detailed information to market operators regarding the formulation of ingredients, and to allow sufficient time for implementation – up to 9-12 months depending on the excise cycle. She stressed that approval of labels by State authorities needed to take place before the implementation date. If this did not occur, the requirement to list ingredients in the label of alcoholic drinks could result in a major market access disruption. In addition, and supplemental to the transition period for implementation, the EU asked India to ensure that all products presently exported could continue to be marketed until stocks were exhausted. Finally, the EU was aware that the Food Safety and Standards Authority was preparing a technical regulation on alcoholic drinks, and enquired about the envisaged timeframe for notification to WTO.

2.120. The representative of Switzerland echoed the concerns of the EU, and the view that all labelling information should be "rectifiable" by stickers. He noted cases of firms pulling out of the Indian market due to these restrictive measures. Switzerland urged India to bring this measure in line with CODEX standards.

2.121. The representative of Japan supported the concerns expressed by the EU. She noted that certain information (such as the list of ingredients and nutritional information) were considered as "not rectifiable" and could not therefore be labelled by means of stickers under the measure. As previously reported, the implementation of these guidelines has had a significant negative effect on importation of food product to India from Japan. She cited Article 2 of CODEX STAN 1-1985, which defined a label as "any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to, a container of food." She further cited Article 8.2.1 of this standard, which said: "if the language on the original label is not acceptable, to the consumer for whom it is intended, a supplementary label containing the mandatory information in the required language may be used instead of relabeling"; as well as Article 8.1.1, which said: "labels in pre-packaged foods shall be applied in such a manner that they will not become separated from the container." The representative said that this well-balanced standard reflected real world practices whereby many countries, including Japan, allowed food products to be labelled by means of stickers provided they were accurate and not easily detachable, achieving consumer protection while, at the same time, avoiding unnecessary trade disruption. Japan stated that India did not use the CODEX standard as the basis for these

guidelines, and asked India to revise the guidelines so as to bring them in line with the CODEX standard in accordance with Article 2.4 of the TBT Agreement. Moreover, Japan considered the guidelines to be overly burdensome, particularly for companies exporting to India in small quantities. Her delegation believed that the guidelines created unnecessary barriers to trade in the sense of Article 2.2 of the TBT Agreement, and asked India to revise them accordingly.

2.122. The representative of Australia expressed continued concerns with India's food standards and their enforcement by the Food Safety and Standards Authority of India (FSSAI). He noted that Australia had previously supported the efforts of FSSAI to harmonize Indian food standards with CODEX standards, a process that began in early 2013. Australia had provided extensive information to FSSAI about Australian food standards and their enforcement. His delegation was encouraged about recent reports that India was reviewing national food regulations and requested confirmation as to whether a new review of regulations had indeed begun or if this simply reflected the ongoing FSSAI process to harmonize with CODEX standards. If India had indeed begun a new review, he asked about the scope and objective of the review, which elements of the food regulations were targeted, and whether the new review would build on the CODEX harmonization process. And, if not, he asked whether the CODEX harmonization process would then be abandoned.

2.123. The representative of New Zealand said her delegation continued to follow this issue with interest, and had expressed its concerns to India bilaterally. Like Australia, New Zealand was encouraged by reports of a comprehensive review of India's Food Safety and Standards Act 2006. She asked about the parameters of the review, and in particular which aspects of the Act would be within its scope, the timeframe for the review process, and how interested parties would be able to engage, to which New Zealand looked forward.

2.124. The representative of India said that, with respect of food labelling requirement, the regulatory situation had not changed since the last meeting, and encouraged interested delegations to refer to India's statement at the previous meeting. He stressed that if stickers with all mandatory information were allowed on packages, this may be misused by unscrupulous traders for manipulating or tampering with the labels of imported food stuff. For instance, once a package was allowed with sticker declaring sensitive information - such as "best before date" - this sticker could be easily replaced with another one with a different "best before date" once the goods entered into domestic market. Therefore, his delegation did not believe that allowing use of stickers to declare all mandatory information would properly serve the policy objective, which was informing consumers of what they were consuming. Moreover, India did not have track and trace facilities to identify the source of such food items if a manipulated label was detected at a subsequent stage in the market. In view of this, India did not see any problem with maintaining its existing labelling requirements. He informed that the queries raised by some Members regarding a review of existing food labelling requirements would be forwarded to the capital and a response would be sent to the interested delegations in due course.

2.125. He also explained that the reason for the labelling requirements of alcoholic beverages was to inform that these requirements were mandated under the Food Safety and Standards (Packaging and Labelling) Regulations 2011, which came into effect on 5 August 2011. These regulations were notified to the WTO in July 2010 at the draft stage. He recalled that paragraph 2.2.2.2 of these regulations mandated that, except for single ingredient food, a list of ingredients shall be declared on the label. This was also applicable to alcoholic beverages, if additives - including colour, water and preservatives - were used in the manufacture of these products and were present in the final product. He explained that the addition of flavours need not be declared specifically, but a statement to this effect shall be given on the label. If the alcoholic beverage was a "single ingredient product", no ingredient list was required to be declared on the label. Finally, he noted certain exemptions from specific labelling requirements for some alcoholic beverages, namely: (i) "best before" date shall not be applicable for wine and liquors, nor for alcoholic beverages containing 10% or more by volume of alcohol; (ii) declaration of vegetarian/non-vegetarian was not required on the label of alcoholic drinks; and (iii) nutritional information was not required for alcoholic beverages.

2.2.3.11 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, G/TBT/N/CHL/282) - IMS Item No. 370

2.126. While expressing support for Chile's policy objective of promoting healthy dietary choices and reducing obesity and related non-communicable diseases, the representative of Canada reiterated previous concerns and encouraged Chile to consider less trade restrictive alternatives. Canada was concerned that the regulations published on 19 August 2014 deviated from international standards, were not be based on science, and were likely to be more trade restrictive than necessary. In addition, Canada was concerned that the regulation could prohibit the use of trademarked characters, potentially infringing on intellectual property rights, as well as prohibit the use of complementary nutritional information, such as Guideline Daily Amounts. He urged Chile to consider a less trade restrictive alternative to achieve its policy goals, consistent with international standards and based on science. Finally, he asked Chile to clarify if and when the 19 August 2014 regulations would enter in force.

2.127. The representative of Mexico recalled previous concerns with Chile's Food Health Regulations on the nutritional composition of food and on food advertising (including labelling), which aim at informing the public of the energy, sugar, sodium and saturated fat content of the foods they consume. She first noted that, although the statute establishing the amendment to the Food Health Regulations (Law No. 20.606) was a technical regulation within the meaning of Annex 1 to the TBT Agreement, Chile had failed to notify it to the WTO as required by Article 2.9 of the Agreement, an omission that prevented Mexico from being able to submit comments on the draft. The representative noted that the amendment to the Food Health Regulations specified that "it shall be compulsory to highlight the nutritional characteristics of any type of food or food product when its energy, sodium, total sugar or saturated fat content is not the same as in natural form and exceeds the value established in table No. 1 of this Article". She explained that the table in question set forth limits on the energy, sodium, sugar and saturated fat content of foods. Foods that exceeded the established limits were thus required to highlight this fact by means of the descriptive stamp with the term "EXCESS", followed by the following terms: "SATURATED FATS", "SODIUM", "SUGAR" or "CALORIES".

2.128. Mexico considered that this proposed amendment was inconsistent with the principles of the TBT Agreement, specifically Article 2.4, because it was not based on the General Guidelines on Claims of the CODEX Alimentarius (CAC/GL 1 1979, Article 3.5). Moreover, Mexico considered that every food possessed inherent nutritional characteristics, and for that reason no food could be characterized as "good" or "bad" in relation to its nutritional content. Thus the provisions relating to the label "EXCESS" could arouse fear in consumers by leading them to assume that non-communicable diseases, such as obesity, were caused by the consumption of specific foods. Mexico requested Chile to provide information in support of this provision of the technical regulation, in the light of the principle of proportionality set forth in Article 2.2 of the TBT Agreement. Furthermore, she observed that the proposed amendment stipulates that "foods or food products whose nutritional composition comprises energy, sodium, sugars or saturated fats in amounts higher than those specified in table No. 1 of Article 120 of the Regulations (referred to above), may not be advertised in the media or channels of communication targeting minors aged under 14 […]. This prohibition on advertising does not apply to foods containing energy, sugars, sodium, or saturated fats in a natural form, consistent with the Dietary Guidelines of the Ministry of Health." In this respect, Mexico enquired as to the scientific or technical evidence justifying this prohibition on advertising to minors aged 14 or less, as well as the exception established for products whose energy, sugar, sodium or saturated fat content was in a natural form.

2.129. Accordingly, Mexico requested Chile to conduct a public consultation on the proposed amendments to the Food Health Regulations, and to harmonize the requirements set forth in the regulations with the General Guidelines on Claims of the Codex Alimentarius (CAC/GL 1 1979, Article 3.5). She also asked for an explanation of the scientific and technical evidence supporting the use of labels bearing the term "EXCESS" in the light of the legitimate objective pursued by the amendment to the Food Health Regulations. Chile was also requested to modify the classification of foods on the basis of a distinction between liquid and solid foods and, in accordance with international parameters, to classify foods according to the category to which they belong. The representative further asked Chile to provide information in support of the prohibition on advertising certain foods to minors aged 14 or less and to clarify and, if necessary, eliminate the exemption for foods whose energy, sugar, sodium or saturated fat content was in natural form.

Finally, Mexico asked Chile to consider extending the date of entry into force of the amendments to the regulations from 6 to 18 months, and to take into account the formal comments made by the Government of Mexico on the final text of the regulation in question, as transmitted to the Chilean Government through its enquiry point on 22 October 2014.

2.130. The representative of the European Union said that her delegation remained concerned about the lack of notification of Law No. 20.606, an omission which had seriously curtailed any significant discussion on the implementing measures. The EU fully shared Chile's policy objectives to combat obesity and related non-communicable diseases, and she stressed that her delegation's intervention today must be understood as fully supporting Chile's ultimate aim. Nevertheless, she expressed her delegation's disagreed on how these objectives could be best met, also noting that the EU had opted for a different approach which recognised the importance of the relationship between diet and health and empowered consumers to make informed choices based on factual information. As a general remark, the EU noted that the TBT Committee was currently discussing the second draft of these measures. She regretted that significant time had been spent in the TBT Committee and at a local level to deal with issues in the first notification only to have Chile reopen the measure just a few weeks prior to its entry into force. Although the EU welcomed this new opportunity to provide comments, and hoped for a more positive outcome, she emphasized concerns regarding legal uncertainty created by these successive modifications. Moreover, her delegation was concerned that this new exercise appeared to render these measures more stringent, rather than enhance their compatibility with the TBT Agreement. The EU requested Chile's clarifications in this respect.

2.131. The EU also recalled its previous concerns regarding the lack of scientific basis for the definition of the maximum levels for the concerned nutrients, noting the absence of international guidelines backing up this measure. It also again expressed its doubts on their proportionality and effectiveness. In particular, the EU was concerned about the use of warning messages, which in the form of a "stop sign" would bear the inscription "excess of" sugar, saturated fats, sodium or calories. The EU believed that the use of these warnings was not in line with CODEX General Guidelines on Claims (CAC/GL 1-1979), as it risked arousing fear in consumers regarding consumption of products that, when consumed in moderation, can be part of a healthy diet. Furthermore, the use of the term "excess" may lead consumers to believe that there were limits above which the consumption of certain nutrients was bad for their health. The EU asked Chile if they had considered aligning their measure with these international guidelines. In this regard, the EU recalled that for certain nutrients there was evidence of a positive association between intake and the risk of developing a disease or disorder, but there was no scientific evidence suggesting an identifiable threshold above which the risk existed. She cited the CODEX Guidelines on Nutrition Labelling (CAC/GL 2-1985), which stated that the nutrient declaration "should not lead consumers to believe that there is exact quantitative knowledge of what individuals should eat in order to maintain health, but rather to convey an understanding of the quantity of nutrients contained in the product". Therefore, the EU requested an explanation as to the scientific basis for imposing the limits in the regulation. This was particularly relevant given that the established limits would mandate warning icons and messages on a vast majority of products, leading to a system that would make it difficult for consumers to identify, among the different food categories, the variants for a healthier diet. She also requested further information on Chile's assessment as to the quantity of products that would be affected by these measures, bearing in mind that if a wide scope of products were affected by the new warnings, its effect on consumer perceptions might be substantially reduced.

2.132. She also mentioned additional concerns about the prohibitions on the labelling and advertising of foods involving, for example, children's characters, animations, cartoons, animals and toys in relation to products that were protected by trademarks. The EU asked for Chile's views on how these provisions would impact such existing and future trademarks. Concerning entry into force, she noted that while the transition period of 6 months was in line with WTO recommendations, it might not be sufficient given the extensive re-labelling procedures that companies would have to undertake, and which would require significant investments. For comparison, EU legislation provided for a transitional period of 3 years. The EU requested that Chile reconsider extending the implementation deadlines. Finally, she asked Chile to clarify how this new set of obligations would relate to the provision of voluntary consumer information labelling schemes, and if such schemes were permitted.

2.133. The representative of the United States expressed her delegation's strong support for Chile's public health objectives of reducing obesity and related non-communicable disease, and her delegation's appreciation for the extensive bilateral discussions on this issue. Nevertheless, the US was concerned about the trade impacts of the proposed measure, particularly for imported pre-packaged foods, and implementation some of its provisions. Since the new regulation covered significantly more food categories, the preliminary estimate from USDA/FAS was that the regulation could affect USD 250 million worth of commerce in pre-packaged food exports to Chile. In the view of US industry, the current proposal imposed onerous labelling requirements for pre-packaged foods and may constitute an unnecessary obstacle to international trade. The US was therefore interested in exploring less trade restrictive labelling measures that included flexibility in the placement or shape of the icon, and also reflected consumer information based on common serving sizes that would help them achieve a balanced and healthy diet. In this respect, she asked whether Chile had considered a less stringent labelling approach in combination with a more comprehensive approach to consumer education in support of its public health goal, which was an approach strongly supported by her delegation. The US also sought opportunities to work further with Chile both bilaterally and in the TBT Committee as the proposal was developed.

2.134. She noted that the labelling approach of the revised regulations appeared to strengthen the "warning" element of the icons of the December 2013 final regulation. She asked Chile to explain why the decision was made to strengthen the warning elements of the regulation, and whether an analysis was performed on the additional benefits of the new draft approach as opposed to the December 2013 regulation. She further queried why the proportion of space occupied by the "excess of" icon varied greatly between different packages sizes, instead of a fixed ratio. For example, on a package that was 200 square centimetres the icon would occupy 4.5% of the label face, but on a package of 75 square centimetres the icon would occupy 8.33% of the label face. She noted that a single food could bear up to four icons, and for some packages with four icons, between 18% and 42% of the package surface could be covered.

2.135. She then asked Chile to explain the basis for the limits for sodium and energy in solid foods. She noted that Chile's initial nutrient limit for sodium (solids 400 mg/100 g or liquids 100 mg/100 mL) appeared to be based on 20% of the CODEX Nutrient Reference Values – Non-communicable Disease (NRV-NCD) of 2000 mg/day. Chile was proposing to reduce the sodium limit by 5% per year to 150 mg/100 g. For solid foods, she recalled, CODEX indicated 2000 kcal as a reference. The regulation's 275 kcal/100 g limit would translate to roughly 13% of 2000 calorie energy intake level. Further, the amendment continued to prohibit (positive) health claims and complementary information for any product that had to carry the "excess of" icon. In this respect, the US asked Chile to explain how consumers would benefit from only receiving information on nutrients to be *restricted* in the diet, without also being provided information on nutrients that would be *beneficial and encouraged* in a healthy diet. She noted that such prohibition on (positive) claims may impact a consumer's ability to differentiate nutrient-reduced foods, such as low-fat margarine. Chile's approach, she said, could, in fact, result in "stop-sign" warnings for this entire category of products. Also, preventing the inclusion of factual voluntary claims could decrease the incentives for the food industry to develop certain foods with an improved nutrient content, if industry could not call attention to new formulations designed to present consumers with healthier alternatives.

2.136. She also enquired as to the basis for setting labelling requirements according to an across-the-board serving size of 100 grams or 100 millilitres. She observed, for instance, that: 100 grams of butter would amounted to 10 individual serving sizes of butter; 100 grams constituted approximately 37 sticks of gum; and 100 grams was approximately five and a half pieces of white bread. This was clearly well about what most people would consume in one serving, and may make it more confusing for consumers to identify healthy eating options. Recognizing that CODEX also allowed for the use of serving sizes, she asked if Chile would instead consider using serving sizes that reflected the consumption patterns of the Chilean population, which would adjust the serving size based on the type of product. She suggested Chile consider labelling which put "consumer advisory icons" in the context of daily dietary consumption, especially for foods where the average portion of the consumed food was typically significantly larger or smaller than the 100 grams or 100 ml baseline utilized for the proposed "stop-signs", or where the food may provide other valuable nutrients. For example, "food A" with 275 calories/100 grams that was rich in other key nutrients - such as calcium, iron, vitamin A and vitamin C - was very different from "food B" with 275 calories/100 grams with no other significant nutritional value. She said that the US employed a multitude of consumer education programs and

resources to help consumers understand how daily intake values related to a healthy diet and to reducing risks for NCDs. She also noted that WHO had established nutrient intake recommendations for sodium and sugar; a revised sugar recommendation was in process. The Codex Committee on Food Labelling and the Committee on Nutrition and Foods for Special Dietary Uses undertook a work plan to implement the recommendations of the 2003 WHO Global Strategy regarding reduction of NCDs. As part of this work plan, she stated, Codex developed additional claims with respect to nutrients of concern, defined helpful nutrients like dietary fibre, developed upper limits for claims for healthy nutrients, and made recommendations to implement mandatory nutritional labelling. WHO member states had since adopted the WHO "Global Action Plan for the Prevention and Control of Noncommunicable Diseases 2013-2020"[4], which included a global target to reduce sodium intake by 30% and actions for WHO, member states and the private sector related to food labelling.

2.137. Finally, she also expressed concern with the short implementation timeline for compliance by July 2015, which may pose difficulties for some US exporters of pre-packaged food. She noted that other countries often gave a longer timeline for compliance with such requirements. For example, when FDA issued two proposed rules for nutrition labelling (TBT/N/USA/893 and TBT/N/USA/894), a two-year implementation timeline from the publication of the final rule was proposed. Once final requirements were determined, she requested that Chile consider a two-year implementation timeframe, especially given that the labelling regulations were revised two months before the previously scheduled compliance date.

2.138. The representative of Switzerland reiterated his delegation's previously expressed concerns, which were still pertinent to the latest notified draft of the measure, and echoed the statements of other delegations. Switzerland had submitted comments on the latest draft, and looked forward to engaging bilaterally with Chile. He asked Chile to explain how the latest draft reduced restrictive effects on trade as compared to previously notified measures, and how Chile intended to take into account concerns by Member raised in the TBT Committee on the latest and previous drafts. While sharing Chile's objective of reducing the prevalence of NCDs, Switzerland was concerned about the lack of harmonization to relevant international standards. Several countries were proposing and enacting nutritional labelling measures, many of which had been discussed in the TBT Committee, and Switzerland was concerned about the use of divergent negative messages and pictograms, and the multiplication of uncoordinated parameters worldwide, for instance, thresholds at which a food was considered high in a certain nutrient.

2.139. The representative of Australia expressed support for Chile's right to implement measures to provide consumers with information to make appropriate dietary choices and reduce the risk of diet related NCDs, provided such measures were implemented in a manner consistent with Chile's WTO obligations. He suggests 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. Australia was pleased that Chile had taken a number of actions in response to concerns raised in the TBT Committee. He expressed appreciation for 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. Further, he recalled that Chile notified to the WTO, on 13 March 2014 (G/TBT/N/CHL/219/Add.2 and G/TBT/N/CHL/221/Add.1), a compilation of replies to the comments submitted by Australia and other countries received during the public consultation period. Australia was also pleased that Chile had changed the proposed front of pack labelling requirement based on suggestions by other countries, including Australia. However, he noted that the labelling scheme was still mandatory for some food categories, including some dairy foods. He additionally noted certain inconsistencies between the requirements for imported and domestic products. Finally, he observed that Chile had extended the original date of entry into force to 30 June 2015, and that Australia looked forward to working cooperatively with Chile to ensure trade between Australia and Chile was not disrupted unnecessarily.

2.140. The representative of Brazil shared the concerns expressed by other delegations on this measure. His delegation appreciated the bilateral meeting held that morning with Chile, and would remain engaged in this discussion.

[4] http://apps.who.int/iris/bitstream/10665/94384/1/9789241506236_eng.pdf?ua=1.

2.141. The representative of Costa Rica echoed the concerns expressed by Canada and US, and looked forward to receiving information from Chile on how the concerns raised by Members would be addressed.

2.142. The representative of Colombia recalled comments submitted his delegation submitted comments on the proposed amendment, notified by Chile in G/TBT/N/CHL/282, and he appreciated the prompt reply from Chile to Colombia's comments.

2.143. The representative of Chile said Supreme Decree No. 977/96 was notified to the WTO as G/TBT/N/CHL/282 on 22 August 2014, and that this notification replaced all previous notifications and their addenda. The deadline for comments was 22 October 2014, and Chile received 16 sets of comments which were transmitted to the relevant regulatory body. She also noted a public consultation held on the proposed amendment, to which over 300 comments were received from interested parties. The Chilean government had also engaged in a nationwide dialogue on the relevance and significance of the regulation. Chile intended to take all reasonable measures available to meet its obligations under the TBT Agreement, and to respond to all queries and provide information to trading partners and WTO Members. The representative noted that a multisectoral technical committee, led by the Health Ministry, would be working further on the regulation, and would consider the options available. She expressed appreciation for support received, and for comments and questions, all of which would be taken into account in the regulatory process.

2.2.3.12 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 Item No. 367

2.144. The representative of the European Union thanked India for their bilateral meeting on this issue and commended India for having set up two advisory committees to allow for discussions between government and industry. This was a good practice that could be taken as an example by other Members. The first of these two newly-created committees was a Technical Advisory Committee to deal with technical matters relating to the implementation of the compulsory registration for electronics and IT goods (as per a 2012 Order from the Minister of Communication). The second was a Policy Advisory Committee under the Bureau of Indian Standards to address issues such as marking and labelling requirements accompanying this scheme. However, the EU still saw scope for streamlining the current registration scheme, suggesting in particular: (i) a wide acceptance of test reports issues under the IECEE CB scheme; (ii) limiting local testing only in cases of suspected non-compliance of products; (iii) making the registration and online process with clear intermediate deadlines for the procedure to move forward in order to reduce delays to the minimum for completing the registration; (iv) extending the validity of the certificate from 3 to 5 years thus covering the life-cycle of products; (v) extending the validity of test reports from 90 days to at least 12 months, as it was the case in international practice in order to cover the useful life of each product model; (vi) requiring that tests should only be repeated if there was a change in design and components that would affect its safety properties; and (vii) having only one registration number per product and not per factory, as manufacturing process was identical among different factories producing the same brands, and the factories could be traced using serial numbers.

2.145. EU also noted that there was a plan to rely on further on market surveillance to check conformity with mandatory standards for these products, and thus requested India for further information. The EU noted that the requirements concerning marking and labelling were amended following consultations with the industry. He understood that these amendments were implemented by an order of the Bureau of Indian Standards of 31 July 2014. This concerns the modality for the display of the word "self-declaration" conforming to the Indian standards on the products. These amendments granted some flexibility to manufacturers, in particular with regards products with small dimensions for which marking and labelling may not be affixed on the product itself due to small dimensions. A choice of option had been given as to fixing the labelling on the product or the packaging. It was too early, he said, to say whether these amendments would fully address the concerns of industry and fit the nature of the products concerned, but they seemed to go in the right direction in providing greater flexibility to manufacturers, and therefore the EU welcomed these developments. He recalled that these revisions were applicable as of 31 August 2014. The EU therefore recommended that the Policy Advisory Committee set up at the BIS continue to be used to discuss any issues concerning marking and labelling requirements.

Finally, the EU noted that on 8 September 2014, on the Indian Gazette, there was a publication of a public consultation document concerning a proposed expansion of the scope of the compulsive registration scheme to 15 additional product categories. He asked India for an update on the state of play and to timely notify any proposed amendments under the TBT notification procedure to allow the opportunity for WTO Members to submit comments. The EU mentioned that the European Industry had submitted comments in this regard hoping they would be taken into consideration.

2.146. The representative of the United States associated herself with the EU's concerns and suggested that rather than requiring additional testing, BIS should instruct the appointed labs to review and routinely accept a test report issued by labs approved under the IECEE CB Scheme. The US argued that appointed labs should only require a product sample unit to conduct verification testing if the labs cannot resolve a suspected non-compliance issue from 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. The US also required BIS to remove the expiration date from the test report, as no other national certification agencies had expiration dates on their test reports. She asked when labs outside of India would be approved to perform the testing. She also said that the US remained concerned for burdensome over-labelling and regulation and requested that the list of products under the HSE exemption list should be broadened to include more products that pose little risk to consumers. She noted that industry had raised concerns regarding the expanded list as it would create disruptions, and asked about the rationale behind such expansion. She expressed concerns that the expanded list would create similar problems as under the original product scope, including delays in testing. The US gathered from informal discussions that a market surveillance program would be launched, and asked India to notify it to the TBT Committee with a reasonable comment period.

2.147. The representative of India informed that in October 2012, India issued the "Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order, 2012" mandating fifteen categories of electronics items under the Compulsory Registration Scheme, based on their compliance to specified safety standards. The Order envisaged manufacturers/importers/sellers/distributors of the notified goods to conform to the specified standards. The Order was applicable to both domestic manufacturers and foreign suppliers uniformly. Industry needed to get goods tested with laboratories recognized by BIS. On meeting requisite standards, BIS granted a unique registration number. Industry needed to mark a self-declaration of conformity on their products in a prescribed manner, followed by Registration numbers.

2.148. On the issue of accepting CB test reports for the purpose of ascertaining compliance of goods, India informed the Committee that the matter had been deliberated in detail during a visit of a senior delegation of IECEE to New Delhi in the month of October 2013. The Indian delegation pointed out that while India was not opposed to acceptance of CB test reports, the Compulsory Registration Order was an act of the regulator which was completely independent, and even Indian CB test labs had to follow the rules. CB test reports were accepted for granting provisional clearance of goods covered under the Scheme. India was accepting IECEE Certificates and Test Reports for the Safety Critical Components being used for products under the Compulsory Registration Scheme. Based on these deliberations, a Communiqué, issued jointly by IECEE and the government of India on 24 March 2014, declared that India had not made any infringement of the rules of IECEE. A copy of this Joint Communiqué was available on IECEE's website at: http://www.iecee.org/. India's position in this matter had also been voted for in the meeting of Certification Management Committee of IECEE CB held in 2014.

2.149. On the concerns expressed by some delegations regarding the new labelling requirement issued on 11 April 2014, India informed the Committee that the requirement was subsequently revised on 31 July and its implementation was postponed until 31 August 2014. The process of revision was carried out through a series of intensive stakeholder consultations. Further, the draft amendment was placed on BIS website seeking comments from all stakeholders before it was finalised. He explained that the new labelling requirement was quite flexible and allowed for mandatory marking along with other markings, such as ratings, specification or model number, on the data plate or on the product itself.

2.150. India also maintained that 90 days was a sufficient time period for the submission of test reports along with application for registration. He noted that as per the BIS Rules, the test reports issued by BIS recognized labs had to be submitted along with application for grant of registration. For this purpose a period of 90 days had been specified in the BIS Rules. On the issue of Highly Specialized Equipment (HSE), raised by some delegations in the previous meeting, India noted that the process of their exemption had already been simplified. There was no longer a need for a HSE certificate issued by the Department of Electronics and Information Technology, as a declaration of specification from manufacturer was enough for customs clearance.

2.151. For testing purposes, India maintained that the authorized labs were well on track. A list of recognized labs was available on websites of DeitY and BIS. He underlined that these labs were well-equipped, and worked under International Safety Certification program. In fact, three of the recognized labs had parent companies of foreign origin (e.g. UL India Pvt Ltd., in Bangalore and Inter Tech Pvt Ltd., in New Delhi). Concerned authorities had no feedback of any delay in testing. In respect of allowing other labs for testing purposes, India said that the laboratories aspiring to test under the scheme would have to seek recognition from the BIS. However, he insisted that there were no capacity constraints in the authorized labs. On the registration side, he informed that as of 28 October 2014, more than 1200 registrations were granted without facing any implementation related problem. Finally, India considered it premature to discuss the proposed review of the Compulsory Registration Order for expanding the list of products.

2.2.3.13 Peru – Act to Promote Healthy Eating Among Children and Adolescents - IMS Item No. 383

2.152. The representative of Canada said that while Canada supported Peru's objective of reducing obesity and other non-communicable diseases, it was nonetheless still concerned that this measure could be more trade restrictive than necessary to achieve this objective. Canada asked Peru to clarify whether the proposed regulations were based on international standards, and when would they come into force. Canada encouraged Peru to provide a transition period so as to allow industry time to adjust to any new labelling requirements.

2.153. The representative of Switzerland endorsed the comments made by Canada while also lending its support Peru's efforts to combat diet related non-communicable diseases. He noted that his delegation had submitted comments on previous versions of the measure, and looked forward to engaging with Peru on a bilateral basis to understand better which international standards were used to determine the food categories that would be subject to compulsory labelling for being "high in" certain nutrients. He asked what was being done to ensure that consumers understood the fat content of foods, and whether stickers could be used for compliance. He also recalled that several countries were proposing and enacting nutritional labelling measures, many of which had been discussed in the TBT Committee. Switzerland was therefore concerned about the use of divergent negative messages and pictograms, and the multiplication of uncoordinated parameters worldwide. Switzerland encouraged Members to follow relevant international standards to promote harmonization of approaches.

2.154. The representative of Costa Rica echoed the concerns expressed by Canada and recalled that at last the meeting Peru reported that the measure would be revised based on comments received by the deadline of 18 August 2014. He asked to what extent the comments would be taken into account and whether Peru would be notifying a new draft.

2.155. The representative of Guatemala reiterated past concerns on this issue, and noted comments submitted by her delegation during the public comment period. Guatemala looked forward to receiving a reply from Peru, and asked when Peru would notify new draft legislation.

2.156. The representative of Peru said the regulation was aimed at promoting healthy eating amongst children and adolescents, and was notified as G/TBT/N/PER/59 on 23 May 2014, with a comment period ending on 18 August 2014. All comments received were forwarded to the Health Ministry, which was still in the process of evaluating them in order to see how they could be taken into account. If, as a result of this process, a decision would be made to the effect that substantial changes to the measure would be necessary, a new draft would be developed and the WTO would be notified.

2.2.3.14 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 Item No. 389

2.157. The representative of Canada supported Indonesia's objective of reducing the risk of non-communicable diseases, but was nevertheless concerned that the regulatory proposals may have a significant impact on trade and were likely to be more trade restrictive than necessary. He recalled that Canada had raised this issue with Indonesia at the March 2014 TBT Committee meeting. At that time, Indonesia indicated that testing for sugar, salt and fat content had to be conducted by accredited in-country laboratories. He asked if Indonesia had considered opening up such testing to foreign laboratories, and if not, whether this would be considered. Finally, he asked when the Regulation would enter into force and what type of transition period would be provide for industry to adapt.

2.158. The representative of the European Union said that her delegation looked forward to the implementing provisions for the Regulation that would be issued by the Indonesian Ministry of Health and which would address product coverage in detail – as indicated in a written response to the EU comments. She recalled its request that the implementing regulations be notified to the TBT Committee while still in draft form, and Members be provided sufficient time to comment on them. The EU was also interested knowing more about the guidelines of the Indonesian Ministry of Health and the National Agency for Drugs and Food which would address other details of the Regulation – as also indicated in a written response to the EU comments. The EU also reiterated its concerns with respect to the mandatory warning message on salt, sugar and fat content that would have to be included on the label of all processed food products. In this respect, Indonesia was invited to consider whether the objectives of the Regulation could be achieved with less trade-restrictive means. Some issues which, in the EU's view, still required Indonesia's clarification were: (i) the placement of nutrition information and related health warnings; (ii) testing methods for nutrition levels; and, (iii) the conduct of risk assessment related to non-communicable diseases. She noted the EU was informed about a study on total diet being undertaken by the Indonesian Ministry of Health, with the aim to determining types of food to be included in the high risk and low risk classifications. She expressed her delegation's interest in the results of this study.

2.159. Referring to Indonesia's written response to the EU comments, she said the EU was still interested in receiving more detailed information on how the Indonesian authorities would address a possibility of acceptance of test results issued by laboratories other than those accredited by the Indonesian National Accreditation Body (KAN). The EU also restated that compliance with the CODEX Alimentarius Guidelines on Nutrition Labelling would require the amount of saturated fat and sodium or salt to also be labelled when the nutrition labelling was provided. Finally, her delegation welcomed Indonesia's written confirmation that the use of stickers would be allowed for labelling. However, she stressed the importance of having the possibility to place the stickers on products after importation, and before being placed on the market in Indonesia – for instance, in customs warehouses – as means to show compliance with the Regulation. The EU was of the view that this was a sound alternative to labelling in the country of origin that would allow Indonesia to fulfil its legitimate objectives in a non-trade restrictive way.

2.160. The representative of the United States endorsed the EU comments, while also supporting Indonesia's regulatory and public health efforts to improve nutritional literacy and raise awareness among Indonesians about healthy lifestyles. She thanked Indonesia for notifying the Regulation in January 2014, but also expressed her delegation's concern that the notification had occurred after the measure had been adopted, and given the lack of a public comment period, she said this called into question whether alternate approaches or potential challenges for implementation were considered. The US also wondered how Members' concerns would be addressed, given the limited flexibility at this stage of Indonesia's rule making process. She recalled the US submitted comments on 6 March 2014. Her delegation was concerned that the Ministry of Health Decree lacked clear guidance on how to implement and comply with the new labelling regulations. Moreover, the need for laboratory testing to establish label conformity seemed excessive given the relatively low risk posed by the inclusion of nutrition information. Lastly, she asked if there was a more definite timeline as to when the Ministry of Health would issue further technical guidance for implementation, as promised during previous discussions in the Committee, especially since the measure had already become effective.

2.161. The representative of Australia said that his delegation recognised and supported Indonesia'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. However, it was important that such measures were not more trade-restrictive than necessary to achieve this objective. Australia supported the harmonisation of labelling standards to help reduce the cost and complexity of imports and exports particularly for small to medium enterprises, and urged Indonesia to consider the negative impact of this Regulation. He noted the fact that Indonesia would be one of the first countries in the world to implement a mandatory scheme for foods containing sugar, salt and fat and, in this respect, stressed that there were other less-restrictive measures available to promote consumer health being considered by other countries, including Australia. He asked Indonesia to clarify why it considered a mandatory scheme necessary to achieve its objectives of public health and informed consumer choice. He noted the Decree was published in the Official Gazette on 16 April 2013, entering into force three years after promulgation. The Decree, however, was not notified to the WTO until 13 January 2014. He encouraged Indonesia to notify any further amendments and guides on the operation of the Decree through the WTO TBT transparency process. Indonesia had indicated at the previous Committee meeting that an implementing Decree for this Regulation would be issued. Australia thus requested that this Decree be notified to the TBT Committee in a timely manner so that WTO Members would have sufficient time to provide comments.

2.162. The representative of Switzerland echoed previous concerns, in particular concerning the need for approval of the label by Indonesian authorities. Switzerland had presented comments to Indonesia on this regulation, and in reply to a question on the difference between the Regulation and the CODEX Guidelines on Nutrition Labelling (CAC/GL 2-1985). Indonesia's explanation to that question was that the inclusion of nutrition values in absolute numbers was not related to health, but that, nevertheless, consumers would pay more attention to such absolute numbers. While Switzerland shared Indonesia's objective of protecting health, it seemed confusing to provide consumers with information that did not pertain to health. More generally, Switzerland was concerned about developments relating to negative messages, and asked for an update from Indonesia on the measure.

2.163. The representative of Indonesia restated that the labelling requirements involved "health messages", not "health warnings". Further, the Regulation did refer to the Codex Standard for Labelling. Indonesia also clarified that it did not intend to prevent or prohibit the public from consuming particular foods. The legitimate objective of the Regulation was, instead, to increase consumers' awareness on the importance of knowing the amount of sugar, salt and fat in the processed food they consumed and the recommended daily intake. Such awareness was important to control the risk factors that contributed to non-communicable diseases. Indonesia was still in the process of preparing technical regulation for guidance on implementation of this Regulation. Other subsequent arrangements would be included in this technical regulation. To ensure transparency, the implementation regulation would be notified to the WTO.

2.164. Regarding conformity assessment procedures, Indonesia explained that, as previously stated, the Regulation required testing of sugar, salt and fat content, as well as other quality parameters, to be conducted by laboratories accredited by Indonesian National Accreditation Body (KAN), or by other competent institutions that had mutual recognition arrangements with KAN. Such test results must be provided by producers when they registered (or re-registered) with the National Agency of Drugs and Foods Controls (BPOM), or when they formulated ingredient lists. The possibility to accept test results from other laboratories, including in the country of origin, would be addressed at a later stage. With respect to the amount of saturated fat and sodium for processed food, this was stipulated in the Regulation of the National Agency of Drugs and Foods Controls, on the Control of Claim on Processed Food Labelling and Advertisement, notified as G/TBT/N/IDN/58. She expressed willingness to continue discussions with concerned Members bilaterally.

2.2.3.15 European Union – Revised Proposal for the Categorization of Compounds as Endocrine Disruptors of 19 February 2013 by DG Environment - IMS Item No. 393

2.165. The representative of the United States noted that the EU had notified the Committee of its work to assess, classify and regulate endocrine disruptors, which she believed could significantly disrupt trade, particularly of agricultural products. The US thanked the European Commission for informing the TBT Committee of the launch of the public consultation on defining criteria for

identifying endocrine disruptors. In this respect, they requested an explanation of how comments from WTO Members would be taken into account. The US also appreciated that the EU extended the usual consultation period, allowing a total of 16 weeks for interested parties to comment. She mentioned that a long consultation period would be appropriate in this case, which involved complicated scientific issues and with significant potential for disruptive effects on agricultural trade.

2.166. The representative of Mexico reiterated its interest in the pesticide registration process provided for in Regulation (EC) No. 1107/2009. She informed that Mexico was preparing comments to be submitted to the public consultation process which was informed by the EU. She expressed her delegation's hope that the result of this consultation process and the provision published by the EU would duly respect the principles enshrined in the TBT Agreement.

2.167. The representative of the European Union reiterated its intention to carry out a comprehensive impact assessment to analyse different options for defining criteria for the identification of endocrine disruptors and their corresponding health, socio-economic and environmental effects, once incorporated in different pieces of EU legislation. In this context, the European Commission published in mid-June 2014 a roadmap setting out the scope of such impact assessment and presenting the policy options that would be assessed. She explained that at least two studies supporting the impact assessment were needed. The first one had already started and would assess the chemicals that might be identified as endocrine disruptors under each of the various options for the criteria. The second one would then assess the socio-economic, health and environmental impacts of the implementation of the various options for the criteria into the relevant legislations. As part of this impact assessment process, on 26 September 2014 the European Commission launched a public consultation on the definition of criteria for identifying endocrine disruptors in the context of the implementation of the EU's plant protection products regulation and the biocidal products regulation. This public consultation would provide information relevant to the impact assessment. The public consultation was meant to last until 16 January 2015. The usual consultation period of 12 weeks had been extended to allow all stakeholders sufficient time to provide input. The EU called on all interested stakeholders, including WTO Members, to actively participate in this public consultation. She explained that once the consultation was closed a feedback report would be issued with an assessment of all replies received. Such factual, quantitative report would feed into the work for the impact assessment whose outcome would not prejudge or constitute the announcement of any position on the part of the European Commission, but would allow the Commission to take an informed decision as regards further EU legislative work as appropriate. The EU promised to present proposals for the establishment of scientific criteria to identify endocrine disruptors in the EU's plant protection products regulation and biocidal products regulation only after the conclusion of the impact assessment. The EU would continue updating the Committee on this matter.

2.2.3.16 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 Item No. 398

2.168. The representative of the United States said that some US exporters have been unable to obtain Ecuadorian Certificates of Conformity and Certificates of Recognition, that trade continued to be disrupted, and that many companies had therefore decided to withdraw from the Ecuadorian market entirely. The US noted that Ecuadorian certification bodies' lack of capacity to meet the demand for conformity assessment. Moreover, US certifying bodies asserted that they could not issue the requisite certifications. The US further noted that Ecuador already had in place stringent measures to control the quality of goods entering its market. She therefore asked if Ecuador could explain what benefits additional attestations of conformity would confer. She also asked Ecuador to explain the legitimate objectives of requiring additional certification requirements for each product.

2.169. The representative of Brazil shared the concerns expressed by the US delegation and informed the Committee of ongoing bilateral negotiations on this issue.

2.170. The representative of Ecuador recalled that the TBT Agreement recognized the legitimate objectives of addressing safety, the protection of life, human and animal health, plant health, the

protection of the environment as well as the protection of the consumer. It was to apply these objectives and protect consumers against damaging practices and certain food practices that an Inter-ministerial Committee on Quality of Ecuador was, according to article 9.1 of the law on the Ecuadorian System of Quality, established as the body in charge of formulating the policies on the basis of which products would have to comply with technical regulations and conformity assessment procedures before they were traded. Inter-ministerial Committee on Quality of Ecuador established the resolution 001 about the General conformity assessment framework for Ecuador and the Handbook of procedures. This resolution established guidelines for the trading of products according with the requirements of the technical regulations, and the way in which they would be applied. To this end, the procedure required that the import of goods produced outside the country or the marketing of products in the case of domestic production of goods were subject to Ecuadorian technical regulations, would have to comply with Ecuadorian assessment framework regulations, or the equivalent compulsory regulations. The certification of conformity or inspection would have to be carried out by a body recognized by the Ecuadorian authorities. The importer, before the importing of the goods subject to such technical regulations, must obtain a certification of conformity assessment. The assessment document would have to prove the validity and the scope of the accreditation of the certification bodies or of the inspection body within a period of 5 days after reception of the technical documentation. The national institute of standardisation, on the basis of these certification documents, would issue, through the Ecuadorian bodies, a recognition certificate for the product which would then be marketed. This certificate of recognition would then be issued within a period of 5 days from reception of the document. All this process was electronic and fell within the framework of trade facilitation. INEN could suspend or cancel any recognition certificate if it was proved that the document presented had been tampered with or when it was established that the product did not conform with the requirements of the technical regulations, without prejudging the administrative sanctions to be applied. Ecuador underlined that the measures adopted were not a restriction to imports, but a useful process to establish conformity with Ecuadorian technical regulations. She also noted that they had been notified as required by the TBT Agreement.

2.2.3.17 Russian Federation – Measure affecting import of Ukrainian confectionary products - IMS Item No. 399

2.171. The representative of Ukraine reiterated her delegation's concerns with the ban on imports of Ukrainian confectionery products to the Russian Federation that had also been extended to the transit of Ukrainian confectionery products to the occupied territory of the Autonomous Republic of Crimea. She noted that initially this ban concerned major producers and was enacted on 29 July 2013 by the Decision of the Federal Service on Consumers' Rights Protection and Human Well-being Surveillance of the Russian Federation (*Rospotrebnadzor*). However, she said, on 5 September 2014 this unjustifiable and discriminatory import ban had been expanded to all confectionery products of Ukrainian origin. With regard to the reason for imposing this restrictive measure, she recalled that the Russia had referred vaguely to its legislation on consumer rights concerning labelling requirements (Federal Law No. 2300-1, of 7 February 1992). As its *modus operandi*, Russia applied its measures in a non-transparent manner, limiting relevant information to very general notices on the *Rospotrebnadzor* website and failing to respond to enquiries of Ukrainian producers and authorities concerning specifics of alleged inconsistencies. She stressed that no evidence concerning violation of legislation on consumer protection was officially submitted to Ukraine. Ukraine also emphasized that official results of the inspection of Ukrainian factories conducted in October 2013 had not yet been provided to the producers and authorities. Ukraine further highlighted the lack of cooperative and constructive communication from Russian authorities in resolving this particular concern, including disregarding information provided by the Ukrainian authorities.

2.172. She also noted that Ukraine had not yet received any written response to additional questions raised under this STC at previous meetings. She recalled that Russia was asked to provide: (i) a clear explanation of the reasons why the ban was introduced, including transmission of laboratory test results; (ii) an official detailed clarification and justification for measure and how it complied with Articles 2.1 and 2.2 of the TBT Agreement; and (iii) the official results of the inspection of Ukrainian factories that was conducted in October 2013. She further noted that according to Russian Federation legislation (Articles 14.7, 14.8, 14.15, 14.43 of the Code on Administrative Offences), violation of requirements on consumer protection would result in a fine for Russian producers, but no ban on the placing on the market was envisaged. Thus, she stated the import ban for Ukrainian producers was clearly inconsistent with national treatment provisions

of Article 2.1 of the TBT Agreement. Ukraine believed that the measure was not justified, and was discriminatory as well as applied in non-transparent manner with a view to creating unnecessary obstacle to trade. Ukraine also noted the significant economic impact of this ban, which resulted in a reduction of 480 million US dollars per year of trade in these goods – which were traditionally exported to Russia – representing 45% of the total export of confectionary products from Ukraine. In accordance with the Articles 10 and 2.5 of the TBT Agreement, Ukraine therefore requested the Russian Federation to immediately lift the ban since no scientific information was available to justify the measure.

2.173. The representative of the Russian Federation indicated that the measure affecting confectionery products of the Ukrainian company *Roshen* was introduced due to inconsistencies of these products with Russian labelling requirements. Labelling requirements for food products were established in 2011 by the Customs Union Technical Regulations on Food Product Labelling. 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. The measure at issue was introduced to protect consumer rights for valid information and to prevent deceptive trade practices. 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. With regard to concerns about national treatment, his delegation did not see any basis for such concerns and stated that the legislative requirements and their enforcement were applied in a manner fully compliance with the national treatment principle.

2.174. Russia also informed that after the detection of the first violation of the Technical Regulations on Food Product Labelling by Ukrainian producers, *Rospotrebnadzor* paid further attention to Ukrainian products, and this revealed many additional violations. As a result, as from 5 September 2014, a prohibition on importation of all Ukrainian confectionary products was introduced due to inconsistency with labelling requirements. The results of test were shared with Ukrainian authorities at bilateral meetings held in August, October and December 2013. The majority of tested products did not meet the requirements of the technical regulation. During the December 2013 bilateral meeting, the State Inspection of Ukraine for Protection of Consumers' Rights recognized the inconsistencies. In the process of consultation, an agreement was reached that would allow the trade of confectionary products of *Roshen* to be resumed. Unfortunately, the Ukrainian side has still not taken steps to implement the agreement reached. In order to lift the ban, Russia called on the competent authorities of Ukraine to participate in bilateral consultations with the competent authorities of the Russian Federation.

2.2.3.18 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, G/TBT/N/ECU/19/Add.5, G/TBT/N/ECU/19/Add.6, G/TBT/N/ECU/19/Add.8) - IMS Item No. 411

2.175. The representative of Canada said that while his delegation supported Ecuador's objective of reducing the risk of non-communicable diseases, it was nonetheless still concerned that the regulatory proposals could have a significant impact on trade and were likely to be more trade restrictive than necessary. Given reports that the measure had entered into force on 29 May 2014, Canada asked Ecuador to clarify the status of the measure. If the measure had indeed entered into force, Canada was concerned that Ecuador had not provided trading partners the appropriate transition period prior, which was required under the TBT Agreement. He recalled that when this issue was last raised with Ecuador at the March 2013 TBT Committee meeting, Ecuador had indicated that it was taking WTO Members' concerns into consideration when amending the regulation. Canada thus asked Ecuador for an update regarding any such amendments.

2.176. The representative of Costa Rica recalled concerns about the difficulties faced by Costa Rican food product exporters to comply with Ecuador's conformity assessment procedures. He was pleased to report that these difficulties had been overcome according to reports from the Costa Rican food industry. Nevertheless, his delegation remained concerned about provisions relating to "traffic light" labelling for fat, sugar and sodium content. These were set forth in the Ecuadorian Technical Regulation (RTE INEN) No. 022 "Labelling of processed and packaged food

products", adopted by Resolution No. 14413 of 22 August 2014 of the Under-Secretariat for Quality of the Ministry of Industry and Productivity. In this respect, Canada expressed the view that this "traffic light" system was not based on scientific evidence nor was it covered by any CODEX reference standard. Given that it was not based on any recognized international practice, he stressed that such labelling requirement would have a considerable impact on trade, including the fact that exporters would have to adapt product labelling specifically for the Ecuadorian market. He additionally expressed ongoing concerns about the labelling requirements for food products manufactured from transgenic ingredients. Costa Rica questioned the scientific basis and proportionality of these requirements in relation to the provisions of Article 2.2 of the TBT Agreement. He asked to be informed of the terms in which these matters were regulated in the final regulations and of the way in which concerns expressed by various delegations at previous meetings of the Committee had been taken into account.

2.177. The representative of Mexico reiterated its overarching concerns about Resolution No. 116 of the Ecuadorian Foreign Trade Committee, by which the "certificate of recognition" requirement was established for a series of documents listed in the same document. She noted that this topic had been the subject of bilateral dialogue with Ecuador, in which the following was requested from Ecuador: (i) the notification of the measure in question to the TBT Committee; and (ii) the provision of information to justify the establishment of this requirement for a wide range of products. Given the variety of products covered by Resolution No. 116, Mexico requested Ecuador to provide information on the contribution made by the new requirement to fulfilment of the legitimate objectives pursued by the different technical regulations governing the specifications of the various products covered.

2.178. Mexico also reiterated its continued concerns about Ecuador's draft revision, PRTE INEN 022 (1R) of the Ecuadorian Standardization Institute Technical Regulation, entitled "Labelling of processed and packaged food products", which was notified to Members in document G/TBT/N/ECU/19/Add.8. With respect to this notification, her delegation was concerned that Ecuador had failed to comply with transparency obligations laid down in Article 2.9 of the TBT Agreement since this measure was a technical regulation and Ecuador had not provided Members with the opportunity to submit comments. On the specific provisions of the draft revision of PRTE INEN 022, Mexico considered that the definitions of "food", "processed food", "nutritional claim", as well as the system of colour coded charts, all may contravene the provisions of Article 2.4 of the TBT Agreement, as they were not based on relevant international standards, such as the "General Standard for the Labelling of Pre-Packaged Foods" of the CODEX Alimentarius (CODEX STAN 1 1985, point 2). She said the same point applied for labelling with references to non-caloric sweeteners and transgenic contents. Mexico argued that the system of colour coded charts (showing "high", "medium" and "low" concentration of total fats, sugars and salts) may contravene the principle of proportionality provided for in Article 2.2 of the TBT Agreement by not constituting the least restrictive alternative necessary to fulfil the desired legitimate objective. She was concerned that the system did not help the consumer make an appropriate choice of products for consumption; rather, the messages could instead arouse fear in the consumer. Further, the measures on advertising, which prohibited the use of images of real or fictitious persons and animals in labelling, could be contrary to the provisions of the TRIPS Agreement, which governed the protection countries were required to provide for the owners of an intellectual or industrial property right.

2.179. The representative reiterated a series of requests to Ecuador. First, she called on Ecuador to notify the "Sanitary regulations for the labelling of processed foods for human consumption", in accordance with the provisions of the TBT Agreement, so that comments on the regulations could be submitted. Second, she requested that PRTE INEN 022 be amended so that concepts such as "food" and "nutritional claim" coincided with the provisions of the CODEX Alimentarius, and that the difference between "food" and "processed food" was eliminated. Third, Mexico asked for an explanation of the justification and scientific evidence for the colour coded system of charts specifying the "high", "medium" or "low" concentration of three components: total fats, sugars and salts, respectively. Fourth, she requested that justification be provided for – or if appropriate, consideration be given to eliminating the requirement of – including the term "transgenic" on the label, in case of transgenic content. Fifth, Mexico asked that the restrictions on advertising in labelling be reconsidered.

2.180. The representative of the European Union echoed concerns expressed by other delegations on PRTE INEN 022 on the labelling of processed and packaged food products. This technical

regulation imposed nutrition food labelling obligations comprising "high in" warnings and a traffic light warning system. While the EU fully shared Ecuador's public health objectives regarding the provision of adequate nutritional information to consumers, the representative expressed doubt that the approach taken in the notified draft was neither the best way to achieve these objectives, nor proportional to the aim pursued, which should be to empower consumers to make an informed choice in order to foster effective competition and consumer welfare. The EU recalled previous interventions on this specific trade concern regarding the lack of proportionality of the measure, its departure from CODEX guidelines, and the use of the "high in" warnings, which were well recorded in the minutes of the last meeting of this Committee, document G/TBT/M/63.

2.181. The representative of the United States supported concerns raised by other Members on PRTE INEN 022, and referred Members to comments made by her delegation under another STC concerning an equatorial measure (*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*).

2.182. The representative of Brazil shared the concerns raised by other delegations, expressed appreciation for the bilateral dialogue with Ecuador on this matter, and said Brazil would remain engaged in this discussion.

2.183. The representative of Colombia recalled that his delegation had sent comments to PRTE INEN 022 (G/TBT/N/ECU/19/Add.8) on 26 August 2014, but to date had not received a response for Ecuador. He requested that Ecuador provide a prompt reply.

2.184. The representative of Ecuador explained that Foreign Trade Committee (COMEX) with Resolution No. 116, adopted on 19 November 2013, was not a technical regulation, but rather was an administrative measure for customs which outlined the product headings which were subject to the requirement to submit a certificate of recognition.. She also stressed that the measure was not an unnecessary barrier to trade, and was consistent with multilateral trade rules.

2.185. With respect to RTE INEN 022, she explained that the Ministry of Public Health had carried out a national survey on health and nutrition, which revealed some worrying trends. In light of this situation, the Ministry of Public Health adopted a comprehensive policy taking certain measures to promote health and to improve the living standards of the population, including this measure on " Health regulation labelling of processed food for human consumption". In Article 12 of the measures, it was specified that any processed food for human consumption must comply with the requirements of RTE INEN 022, including a color-coded bar with graphics. On 26 January 2014, the Regulatory Agency on Health made available to users a data processing system to accessthe new labelling system. Several workshops were held throughout the territory to make firms aware of the labelling system, including visit from technical personnel to ensure correct implementation. On 12 March 2014, Ecuador notified this measure in document G/TBT/N/ECU/19/Add.4. Aware that firms needed some additional time to comply and adapt to the requirements, the national authority brought the measure into force in a staggered was accordance to the size of the firms. She noted that SMEs were given additional time to meet the labelling requirements.

2.186. The representative noted that Ecuador had taken on many of the comments and concerns raised by other Members, including with respect the placement of the label, the prohibition of depictions of animals and children, and the use of stickers. To date, according to the monitoring carried out by Ministry of Public Health, more than 80% of firms had brought their labelling in line with the requirements, and the remaining firms still had additional time to do so. On this basis, she concluded that firms had managed to adapt to the new requirements.

2.2.3.19 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) - IMS Item No. 420

2.187. The representative of the United States asked the European Union for an update on the revision of the draft decree, which the US understood would provide more flexibility to industry in meeting the labelling requirements, including the option of posting recycling information on a

website. She asked how companies would be made aware of these requirement changes. Without this revision, she said, foreign manufacturers could incur significant costs. She asked that France continue consultation with producers and manufacturers on alternative less costly options that would still increase recycling rates, such as a consumer education programme. The US welcomed the exemption of glass from the proposal in the law published on 2 January 2014, but asked whether aluminium/plastic closures would still be subject to the recycling logo requirement. In the event that there would not be a revision to the draft decree, she said it was unclear how companies would comply with some of the labelling requirements. It was their understanding that if there were "significant and disproportionate economic, regulatory or technical obstacles", the information could be provided by placing the label on either the packaging or the manual of the product. However, it was not clear how this option would provide the appropriate information to the consumer.

2.188. The representative of Canada supported comments made by the US and invited Members to refer to the comments made by Canada on this issue at previous Committee meetings.

2.189. The representative of the European Union informed the Committee that the requirement regarding the affixing of the TRIMAN logo had been changed. With regard to the waste sorting instructions, the TRIMAN logo should be affixed, preferably on the product, on the accompanying product manual if it would not be possible to do so on the product itself, or on any supporting documentation (including dematerialised forms), if the other means had not been used. The obligation to label a product with the TRIMAN logo was now on those placing the product on the French market for the first time.

2.2.3.20 Russian Federation – Safety of products for children and adolescents - IMS Item No. 418

2.190. The representative of the European Union reiterated concerns sent to the Russian authorities on 28 February 2014, and also raised in previous Committee meetings, in particular the issue concerning the definition of "synthetic or artificial leather" and the abolishment of the ban on the use of synthetic or artificial materials in the products for children and adolescents. She asked Russia to provide more detailed information on the possible changes of the notified amendments and on the timeline foreseen for their adoption and entry into force.

2.191. The representative of Norway associated her delegation with the statement and concerns raised by the EU and looked forward to updates and written replies from Russia.

2.192. The representative of the Russian Federation thanked the EU and Norway for their comments on the amendments to the Customs Union technical regulation on the safety of products for children and adolescents which entered into force on 1 July 2012, with a transitional period for implementation which expired on 15 February 2014. Subsequent amendments to the technical regulation were notified to the WTO in G/TBT/N/RUS/29. Public hearings on amendments to the technical regulation started in December 2013 and, based on requests from WTO Members, were extended until April 2014. Comments from interested parties had been received and were being considered in the draft amendments being developed. He added that procedures for the introduction of amendments to technical regulations were similar to those for the introduction of the regulation itself. In answer to the EU request for a timeline, he stated that the amendments would most likely not be adopted before January 2015, with entry into force no earlier than July 2015. Until then the existing technical regulation would continue to be applied. He said the use of artificial and/or synthetic material in the lining of footwear for children and adolescents (Annexes 14 and 15 to the technical regulation) was not prohibited.

2.2.3.21 China – Regulations for the Supervision and Administration of Medical Devices (Order No. 650 of the State Council) (G/TBT/N/CHN/1022, G/TBT/N/CHN/1023, G/TBT/N/CHN/1024, G/TBT/N/CHN/1025, G/TBT/N/CHN/1026, G/TBT/N/CHN/1029) - IMS Item No. 428

2.193. The representative of Canada expressed his delegations' continued concerns with the far reaching effects of this measure on the medical device industry in China as well as foreign suppliers of medical devices. Given the number of implementing regulations related to Order No. 650 that had been issued in recent months, more time would be required to fully comprehend the

potential impact for foreign medical devices companies. He asked whether there were plans to hold debriefing or training sessions in China. He also requested clarification on certain aspects of the new implementing regulations, in particular Order No. 4 (Medical Device Registration Administration Methods), and Order No. 5 (In Vitro Diagnostic Products Registration Administration Methods). He noted that Article 13 of Order No. 4 and Article 15 of Order No. 5 stated that imported products for which registration or listing applications were being made "should have obtained permission to be entered into the market and sold in the country (region) where the applicant registered or produced the product". Did this this mean that imported medical devices and in vitro diagnostic products had to have prior approval in their country of origin? He said such a requirement might be difficult for Canadian exporters who may not necessarily seek regulatory approval domestically. Could applications be made for Canadian-originating medical devices or in vitro diagnostic products which had received approval in other leading jurisdictions, such as the US or EU, but which were not approved in Canada? Additionally Orders No. 4 and No. 5 required the applicant to provide registration inspection samples of Class II and III medical devices and in vitro diagnostic products. This form of duplicative type testing appeared to be unnecessary and burdensome for imported devices that had already been approved in other markets. Canada requested China to clarify whether foreign clinical trial data was applicable or whether the trials had to be conducted in China as this was not clear from Article 22 of Order No. 4, which only stated that clinical trials should be conducted for Class II and III medical devices. Canada also had concerns with Article 35 of Order No. 5, which specifically stated that, for in vitro diagnostic products, a focused clinical evaluation should be conducted in China, which constituted an unnecessary and duplicative clinical trial requirement for Canadian exporters that had received prior regulatory approval in other leading foreign jurisdictions, including Canada. He said this duplicative requirement would result in additional time and expense being incurred by Canadian medical device exporters wishing to enter the Chinese market. Canada asked whether China intended to issue additional implementing regulations concerning medical devices in the future and looked forward to receiving a detailed response to its questions.

2.194. The representative of the European Union welcomed the efforts made by Chinese authorities to amend the regulations on medical devices, and the constructive dialogue between the Chinese and EU authorities. However, like Canada, the EU still had some concerns with the regulations, and in particular Article 17 of Order 650, which stated that if the safety and effectiveness of the medical device could be proven by using data obtained from the clinical trial of similar products or during clinical applications, then the product was exempted from clinical trials and listed in a catalogue. Did this mean that that Medical Devices not listed in the catalogue would have to be subject to clinical trials conducted in China? The EU also had concerns that the draft lists of Class II and Class III devices exempted from clinical trials were too limited. She asked CFDA to put in place a robust system that allowed for swift updates of exemption catalogues, as experience had shown that the pace of the regulatory mechanism to update such lists sometimes lagged significantly behind the pace of innovation.

2.195. She also noted that for products not listed in the catalogues duplicative and redundant clinical trials would have to be conducted in China. The EU was of the view that due consideration should be given to studies that had taken place outside China, especially where the studies had been conducted in a jurisdiction which, like China, was a member of the International Medical Device Regulators Forum (IMDRF). The study results might then only require small bridging studies to ensure its relevance to China. She reiterated the importance of avoiding any duplication of clinical trials which would cause additional delays in placing products on the Chinese market, without any added benefit. Excessive trials, she said, also presented ethical problems. The EU failed to understand the rationale for the requirement to register medical devices in the country of origin, as all medical devices marketed in China (whether already registered in the country of origin or not) needed to comply with comprehensive Chinese authorization requirements.

2.196. Finally, concerning the Electromagnetic Compatibility (EMC) testing, the EU reiterated its request that CFDA accept test reports from foreign laboratories accredited by accreditation bodies that were members of ILAC, as an alternative to in-country testing in China. The EU also stressed that the registration certificate should exclude the potentially confidential "Product Technical Requirements" documentation. Finally, the EU requested that Chinese authorities provide a transitional period of three years as these new provisions introduced major changes. Further guidelines, she said, would also be welcome.

2.197. The representative of the United States supported comments made by Canada and the EU. While appreciating China's efforts in notifying the implementing regulation of CFDA's overall medical devices regime, Order No. 650 did not appear to provide sufficient transition periods for industry to fully adjust to the multiple new requirements, in particular for Class I medical product conformity assessment procedures. She asked whether China would take into account comments received from industry on the necessity of a transition period of two to three years.

2.198. The representative of China informed the Committee that CFDA had communicated directly with relevant foreign and domestic enterprises and associations on the measures and had taken comments into account, including those received from the EU and US chambers of commerce in China. Prior to implementation, she said, CFDA had held specialized training sessions to help enterprises and organizations to understand better the measures. Comments from stakeholders and interested parties would continue to be taken into account.

2.2.3.22 Egypt – Bottled water - IMS Item No. 421

2.199. The representative of Turkey reiterated concerns regarding exports of bottled water to Egypt. Turkish exporters of bottled water still could not obtain permission for importation from the Supreme Committee for Water of Egypt's Ministry of Health. He recalled that in previous Committee meetings Egypt had argued that Egyptian Standard No. 2007/1589 was in conformity with the relevant Codex Standards and WHO Guidelines, and was equally applied to domestic bottled water companies. However, in previous discussions, in June 2013, Egyptian authorities had informed his delegation that the mandatory Egyptian Standards were being revised according to "Codex Standard 227-2001" and the "WHO Guidelines for Drinking-Water Quality, 2011". The representative sought clarification as to whether the Egyptian Standard was in conformity with these two relevant documents and asked Egypt to explain why it had initiated such a revision of the standard. Turkey also requested Egypt to provide any additional information on the current status of the revision initiated by Egyptian authorities.

2.200. With respect to Egypt's argument that domestic and imported products were accorded equal treatment, he reminded the Committee of the fact that Turkish exporters of bottled water could not obtain permission for importation from the Supreme Committee for Water. The explanation given by Egypt was that periodic control of its source could not be maintained based on Egyptian Standard No. 02007/1589. In this respect, in April 2014 Turkey had invited a technical committee of Egyptian officials to conduct inspection visits and to control the water source of Turkish exporter firms of bottled water on-site. When no reply was received to this request, on 14 October 2014, Turkey had reiterated this meeting request to the relevant Egyptian authorities. Turkey had not yet received a reply to either request.

2.201. He also recalled that at the last Committee meeting, Egypt had stated that the requirement limiting importation of bottled water to those producers with an EU reference applying the HACCP system had been removed. His delegation considered this to be a positive development, since such requirement was a clear violation of Egypt's WTO MFN obligations. Turkey requested additional information from Egypt as to how the requirement was removed and how its effective implementation would be ensured. Furthermore, in reference to the decisions of the Supreme Committee for Water, Turkey posed the following questions: (i) what were the requirements for exporting bottled water to Egypt; (ii) from which countries did Egypt allow importation of bottled water; (iii) how did Egyptian authorities maintain periodic control of the source of the bottled water coming from these countries; and, (iv) whether they conducted inspection visits, or required test reports or certificates? Turkey again expressed its readiness to invite a technical committee from Egypt to conduct inspection visits and control the water source if this was the requirement applied by Egypt to its other trading partners. His delegation continued to believe that Egypt's policies and practices constituted an unnecessary obstacle to Turkey's bottled water exports to Egypt. He asked Egypt to cooperate with Turkey to find a mutually satisfactory solution to this issue and once again recalled Egypt's existing obligations under WTO Agreements in general, and the TBT Agreement in particular.

2.202. The representative of Egypt stated that imports of bottled water were subject to Egyptian Standard No. 2007/1589, mandated by Ministerial Decree No. 130-2005, which was notified to the TBT Committee as G/TBT/N/EGY/1. This standard was publicly available at the premises of the

Egyptian Organization for Standardization in Cairo, as well as online.[5] The Egyptian Standard requirements included that authorities conduct regular checks on water resources, along with all other specifications requested. In this regard, she underlined that in 2012 the Egyptian government had suspended seven bottled water companies due to non-compliance with the standard's requirements. Egypt applied this decree equally to domestic and foreign bottled water companies, and was therefore fully compliant with Article 2.1 of the TBT Agreement. She further stated the Egyptian standard was in conformity with relevant CODEX standards and WHO guidelines. Finally, she stated the Egyptian Standard was not more trade restrictive than necessary, as the measure was necessary for consumer health, safety and protection. The representative said she would convey all other requests for clarification from Turkey to her capital, and would reply in due time.

2.2.3.23 India – Labelling Regulations for Canola Oil - IMS Item No. 413

2.203. The representative of Canada said that until February 2014, canola oil had entered India since 2007 without incident, and was marketed as canola oil and labelled as "Ingredients: Imported Refined Canola Oil". In July 2014, India's Food Safety and Standards Authority of India (FSSAI), which had apparently banned the marketing and labelling of canola oil, published an import clearance notice reaffirming India's position that the product must be labelled and marketed as "Imported Refined Rapeseed Oil - Low Erucic Acid." Canada said that such sudden and seemingly irrevocable decision to apply such labelling requirements to canola oil shipments without notice, directly and immediately affected exports, marketing and sales of canola oil in India. Canada was of the view that India was therefore in violation of its WTO obligations for having failed to notify Members of changes to its labelling regulations. Moreover, he said India's regulation could be more trade restrictive than necessary to achieve its legitimate objective of food safety, which would be a violation of Article 2.2 of the TBT Agreement.

2.204. Canada was also concerned that the labelling requirements for canola oil, contained in India's Food Products and Food Additives Regulations 2011, did not conform to the relevant guidelines recommended by CODEX Alimentarius, as CODEX Standard 210-1999 deems "canola oil" and "rapeseed oil – low erucic acid' as synonyms. He said India's labelling requirements appeared to discriminate against the legitimate term "canola oil", which was of equivalent status to "low erucic acid – rapeseed oil" according to CODEX Alimentarius guidelines. Despite claims to contrary by FSSAI, Canada reiterated that "canola oil" was not a trademark name but rather an internationally recognized vegetable oil applauded for its health benefits. Since India's regulation differed from the international standard, in this case the CODEX standard, Canada was of the view that India's regulation may violate Article 2.4 of the TBT Agreement. Furthermore, he noted that the Bombay High Court ruled in favour of an importer, by issuing a stay order against the FSSAI labelling guidelines for "canola oil". Canada encouraged India to consider an alternative measure to the currently enforced labelling requirements for "canola oil", which would follow CODEX Alimentarius guidelines, and would not create an unnecessary barrier to trade.

2.205. The representative of Australia considered the requirement to use the term "rapeseed oil – low erucic acid", as specified by India in its Food Products and Food Additives Regulations 2011, and only permitting the use of the term "canola oil" as a secondary term, as an unnecessary labelling burden for Australian exporters of refined "canola oil" to India. His delegation believed this regulation contradicted CODEX Alimentarius Standard for named vegetable oils, which permitted the use of synonym descriptors for "rapeseed oil", including "canola oil" (Codex Standard 210 - 1999, section 2.1.16). Australia understood that the term "canola oil" was often used to describe domestic products that were available for local sale in India. He said India's Plant Quarantine Order 2003, which outlined India's import quarantine requirements for plants and plant products, allowed the use of the alternative terms "rape and canola". Australia continued to express support for FSSAI's initiative of harmonising India's food standards with CODEX that commenced in early 2013.

2.206. The representative of India said "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, and India believed that "canola oil" was a given trade name. He noted that in the CODEX standard the product was listed as "rapeseed oil, low erucic acid". In accordance with

[5] www.eos.org.eg.

the CODEX, India's Food Safety and Standards (Packaging and Labelling) Regulations 2011 required that the product be labelled and marketed as "Imported Refined Rapeseed Oil- Low Erucic Acid". He stated the manufacturer may, if desired, write "Canola Oil" in parenthesis. He informed that in an e-mail message from FSSAI, dated 26 May 2014, the Canadian High Commission in New Delhi was informed about this labelling requirement. It was also informed that the labelling of canola oil should conform to Food Safety and Standards (Packaging and Labelling) Regulations 2011, which was effective from 5 August 2011. This regulation, he reminded Members, was duly notified to the WTO in July 2010 and Members were given 60 days for comments. The objective of the marking requirements was to ensure protection of the interests of consumers and to provide a basis for consumers to make informed choices in relation to the foods they consumed. The representative noted that it entailed only a simple change of product declaration on the labels. Instead of writing the "brand name", he explained suppliers were henceforth required to declare the "generic name" on the product labels for the sake of consumer information. He stressed that this measure could not be characterized as more trade restrictive than necessary.

2.2.3.24 Thailand – Draft Notification of the Alcoholic Beverages Control, Re: Rules, Procedure and condition for Labels of Alcoholic Beverages, issued under B.E. (G/TBT/N/THA/437) - IMS Item No. 427

2.207. The representative of Canada recognized Thailand's right to impose measures to protect consumer health and safety, and provide consumers with adequate information to make informed choices. He expressed appreciation for Thailand's briefing at the margins of the Committee meeting, and applauded its efforts to reduce youth consumption of alcohol. Canada was, however, concerned that Thailand's proposed labelling regulations may be more trade restrictive than necessary to meet their objective, and in turn, may have an undue impact on the trade of Canadian alcoholic beverages to Thailand. He noted that Clause 2(2) and Clause 3(1-6) of the proposed rules prohibit the use of wine labels that contained: (i) images of athletes, artists, singers or cartoons; and (ii) messages that were affiliated with activities such as sport, music, and contests. Seeing some of the images displayed by Thailand during the briefing session, Canada understood Thailand's concerns. However, some of the definitions in the regulations were unclear and might be overly injurious to certain labels considered as "cartoons". For instance, some Canadian wine labels portrayed images which were not, however, intended to appeal to children or promote irresponsible alcohol consumption. His delegation understood that the amended proposed regulation of September 2014 had been expanded to consider the use of graphic warning labels and messages unique to Thailand. He asked for further information about next steps on this regulatory proposal. He also noted that the amended proposed regulation had not been notified to the TBT Committee, and therefore encouraged Thailand to make that notification and to comply with the related entry into force obligations under the TBT Agreement.

2.208. The representative of Mexico thanked Thailand for the information session and for meeting with her delegation bilaterally. Mexico reiterated concerns with this Thai measure, notified to the TBT Committee on 28 March 2014 in document G/TBT/N/THA/437. Her delegation was concerned that Thailand may be contravening basic principles of the TBT Agreement with respect to the preparation of technical regulations, such as those relating to: (i) non-discrimination, as contained in Article 2.1 of the TBT Agreement; (ii) proportionality, as contained in Article 2.2; and (iii) conformity with international standards, as contained in Article 2.4. She noted that the technical regulation established an exception for beverages manufactured in Thailand or imported for re-export, or for those prepared for purposes of non-commercial sampling, analysis, or research within the country. In this respect, Mexico asked Thailand to adhere to the TBT principle of non-discrimination Mexico also asked Thailand to ensure compliance with the TBT principle of proportionality in the light of the legitimate objective pursued by this regulation. She recalled that the regulation imposed graphic warning labels on the harmfulness and toxicity of alcoholic beverages, using colour coded graphics authorized by the Alcohol Control Committee of the Department of Disease Control. In addition, the regulation imposed prohibitions on the labelling of alcoholic beverages (such as messages on product quality or characteristics), instead of promoting measures to help the public obtain accurate information on the effects of alcoholic beverage consumption, so that consumers could make informed choices. Bearing in mind the obligations in Article 2.2 of the TBT Agreement, Mexico asked Thailand for information on the justification or scientific evidence supporting the labelling proposal, including the aforementioned prohibitions, in light of the legitimate objective pursued by the regulation. Similarly, she requested information on the alternatives considered by Thailand to achieve the objective defined by the technical

regulation, such as the use of public information campaigns on the effects of excessive alcohol consumption.

2.209. Furthermore, Mexico considered that these measures could constitute violations of the TRIPS Agreement due to the wide range of prohibitions established on the use of images (athletes, artists, singers and cartoon pictures), which could unjustifiably encumber the use of trademarks in the ordinary course of trade. Accordingly, Thailand was requested to take due account of the provisions of Section 2 of Part II of the TRIPS Agreement. Finally, Mexico reserved the right to submit formal comments to the government of Thailand and, in the meantime, expressed continued concerns that the measures proposed could be considered as restrictive and discriminatory, which could lead to the creation of parallel markets for unrecorded alcohol and give rise to adverse economic effects as well as health problems, including for Thai citizens.

2.210. The representative of the European Union reiterated concerns regarding the draft on Alcoholic Beverages Control notified by Thailand on 28 March 2014 (G/TBT/N/THA/437), intended to replace the old measure dated 21 January 2010 (G/TBT/N/THA/332). The notified draft law laid down requirements for labelling of alcoholic products, including mandatory text warning statements. The EU thanked Thailand for the presentation organized on the margins of the meeting, and for the clarifications provided. In particular, the EU welcomed Thailand's commitment to re-notify the measure if a decision would be taken to re-introduce graphic health warning labels. The EU requested confirmation on this point from Thailand, and considered that the substantial changes to the March 2014 draft in the area of graphic health warnings should be re-notified to the WTO, and that sufficient time should be allowed for comments. Thailand was currently carrying out a public consultation on the Alcoholic Beverages Control and the amended March 2014 draft, as available online, included provisions on graphic health warning labels. Furthermore, the EU requested Thailand to clarify how previous EU comments had been taken into account and also clarify the status of the most recent amended draft. She recalled that her delegation submitted comments on 23 May 2014, and was still looking forward to receiving Thailand's reply. With respect to graphic warning health messages, the EU saw the recent online draft (which had not been notified) as a step backwards. The draft notified to the WTO by Thailand in 2010 (G/TBT/N/THA/332) contained similar requirements which were eventually not adopted and which were not present in the March 2014 draft following the comments submitted by various WTO Members, including the EU. She reiterated the request to Thailand whether they could take into consideration less trade restrictive measures or, failing this, clarify on which basis and evidence Thailand concluded that different, less costly and burdensome alternatives than the indication of a graphic health warning, would be insufficient to address the objective pursued.

2.211. Furthermore, the EU remained concerned about the strict labelling requirements proposed in the notified draft and its departure from international standards. In particular, referring to Article 2.4 of the TBT Agreement, the EU invited Thailand to clarify the reasons for a deviation from the definition of a label and a container as provided in the text of CODEX STAN 1-1985. She reiterated concerns regarding the lack of clarity of the provisions of the notified draft relating to messages on the labels which may lead to inconsistent interpretations by economic operators. Finally, the EU believed that the administrative complexity of the label approval process (intended to be dealt with by two separate government agencies), and the short implementation deadlines for compliance, constituted serious market access barriers. In this respect, she reiterated the request for Thailand to allow the sale of all products existing on the market until stocks had been exhausted. She requested that Thailand take these comments into account and respond to them before the adoption of the draft regulation.

2.212. The representative of the United States echoed comments of other Members, and expressed concerns with Thailand's most recent proposal requiring graphic labels and warning statements on all alcoholic beverages sold in Thailand. The US submitted comments to the notification of the original text notified by Thailand in March 2014, as G/TBT/N/THA/437. The US was particularly concerned that Thailand had made substantive updates to its March 2014 proposed measure, but that it had not yet notified those amendments to the WTO for comment by other Members. These updates included drafts of Thailand's proposals for the graphic labels and warning statements that would be required on any alcoholic beverage sold in Thailand. In line with WTO customary practice, and taking into account the recommendation of the TBT Committee on "Coherent use of notification formats" (G/TBT/35), she urged Thailand to notify the amendments to its March 2014 proposal immediately and to delay implementation of this measure until after Members had an opportunity to submit comments. She emphasized that this measure, as

proposed, entailed unnecessary obstacles to trade with significant potential impact on US and other Members' exports to Thailand. She urged Thailand to take into account the serious concerns expressed by Members over this issue, and to consider less trade alternatives as a means of achieving its policy objectives. Once the final requirements were determined, she asked Thailand to consider flexibility regarding implementation, including adequate transition periods to facilitate industry's adjustment to the new labelling scheme, and the possibility to allow sale of products on the market until exhaustion.

2.213. The representative of Australia recognised the right of governments to take measures necessary to protect public health, provided that such measures complied with relevant international trade obligations. He welcomed information provided by Thailand to date, and looked forward to receiving further information on the proposed measure.

2.214. The representative of Chile supported the statements of other Members, and expressed significant concerns about the provisions and implementation of the proposed measure. While Chile agreed with the objective pursued by Thailand to safeguard consumer health and safety, she believed that this measure was more trade restrictive than necessary within the meaning of Article 2.2 of the TBT Agreement. She asked Thailand to consider alternative measures to achieve their policy objective, which were common international practice. In particular, Chile was concerned about implications of the measure for various declarations about the quality and characteristics of the product normally displayed on labels of wines and other alcoholic beverages, such as "reserve", "grand reserve", "special", amongst others. For instance, she noted the importance of such terms for differentiating qualities of *Pisco*; *special Pisco*; *reserve Pisco*; *gran reserve Pisco*. She also cited possible implications for geographic indications and appellations of origin, and highlighted their importance for helping consumers identify a product as originating in a certain territory with a certain quality and reputation, and other characteristics which could be attributed directly or indirectly to the geographic origin. Her delegation expressed concern that the Thai measure may not allow for such information on labels, denying consumers important information. Furthermore, there was a lack of clarity on the prohibition on using images. Chile did not understand how various evocative images, such as of sculptures, angles, abstract pictures or images relating to sport or caricatures, could incite alcohol consumption. Chile enquired as to the scientific basis for such prohibitions. She also sought clarification about how the rule would be applied in the period prior to entry into force, and the sanctions for non-compliance. Finally, she urged Thailand to take account of the various concerns expressed by Members.

2.215. The representative of New Zealand thanked Thailand for the briefing session. New Zealand acknowledged and supported Thailand's right to adopt new regulations to address public health concerns, and appreciated that in seeking to address the harmful use of alcohol, the draft technical regulation was directed towards achieving a legitimate public health objective. New Zealand appreciated Thailand's recent request by its Ministry of Health for public comment on its draft regulation. However, New Zealand requested that Thailand notify this regulation to the TBT Committee in accordance with its WTO obligations, as Thailand has previously done on previous versions of the regulation. In this light, she welcomed recent comments that Thailand intended to notify the revised version of the regulation in due course, and requested that Thailand provide reasonable time for Members to provide comments as per WTO obligations.

2.216. New Zealand also reiterated concerns that the labelling requirements were unnecessarily trade restrictive and was particularly concerned that the new version of the regulation envisaged a more restrictive approach than the regulations previously notified in March 2014. She asked for an explanation of the rationale behind the change in this revised draft regulation. New Zealand was particularly concerned that Clauses 2 and 3 of the draft regulation were subjective and open to interpretation that could lead to uncertainties for manufacturers and importers as to whether certain labels were consistent with the regulation. New Zealand also asked for clarity regarding the interpretation of the provisions on pictures of athletes, artists and singers, and the definition of "recreation". Finally, she noted that the draft regulation allowed labels used before the entry into force of the regulation to be used for a transition period of 180 days after the regulation came into force. This was a positive inclusion that would limit the impact on trade. However, she was concerned that the period may not be appropriate for alcoholic beverages such as wines and spirits with a longer shelf life, and asked Thailand to consider extending it.

2.217. The representative of South Africa thanked Thailand for bilateral discussions. South Africa shared concerns outlined by other Members, but also understood the need to inform consumers

about the danger of alcohol abuse. His delegation was concerned that Thailand had not officially stated in its draft regulation (G/TBT/N/THA/437) which graphic depictions would need to be included in the health warning. South Africa understood that it would be the picture of a drunk-driving accident. Furthermore, the draft regulation, as notified, did not state the content of the other warning statement that would need to be included in the label. Therefore, South Africa requested Thailand to provide further details regarding the photo and the content of the warning statement, and to provide further opportunity to allow trading partners to provide comments on these labelling requirements before implementation. Finally, Thailand was requested to provide a reasonable period of at least 6 months between adoption and entry into force of the regulation to allow producers time to adapt.

2.218. The representative of Thailand was of the view that the Draft Ministerial Announcement was in clear conformity with TBT Agreement obligations. The draft regulation pursued the objective of consumer information consistent with Article 2.2 of the TBT Agreement. The regulation would apply equally to both imported and local products, as per Article 2.1 of the Agreement. Moreover, Thailand had properly notified the draft in accordance with Article 10.6 of the Agreement, allowing a comment period of 60 days. The representative stated that all comments had been taken into consideration by the Disease Control Department of the Ministry of Public Health. She also informed Members that prior to the meeting, Thailand convened a plurilateral discussion with representatives of concerned Members, which provided an opportunity for Thai experts (from the Disease Control Department and International Health Policy Programme of the Ministry of Public Health) to explain the rationale for the measure, and which made clear that the regulation was only about addressing concerns of Thai population. Regarding the draft regulation on graphic health warnings raised by Members, she informed the Committee that Thailand had first collected in-country comments. The comments of internal stakeholders would then be carefully considered, and a decision would be taken on the question of pictorial warning labelling, which in any event would serve the purpose of consumer protection and comply with the TBT Agreement. However, Thailand assured Members that further details about the content of the photo and warning statement would be provided by notifying to the TBT Committee without delay. She assured Members that all other comments received would be forwarded for consideration by the Department of Disease Control of the Ministry of Public Health.

2.219. The Thailand representative of the International Health Policy Programme said that alcohol consumption was the leading national health risk factor, and that control of alcohol-related health problems was firmly on the Thai national agenda. She said alcohol consumption caused serious social problems, and harmed socio-economic development. Most importantly, while there was low risk and high risk alcohol consumption, risk free alcohol consumption did not exist. Therefore, Thailand did not regard alcohol as an ordinary commodity. She reported that the Ministry of Public Health had been tasked with protecting society from alcohol, with particular concern for the young generation. To achieve this goal, and as recommended by the WHO, Thailand pursued a comprehensive policy framework including a variety of interventions aiming at different target groups through different mechanisms in sustainable ways. Alcohol marketing was the most powerful determinant of alcohol consumption. She said marketing was effective with consumers by shaping attitudes to products and the decision to purchase and drink. Evidence had shown that packaging and labelling of alcoholic beverages could increase appeal to consumers, including drinkers and potential drinkers. It could also minimize and distract from potential harm caused by the product.

2.220. Due to legal loopholes, she explained that alcohol packaging and labelling had been used aggressively as a marketing channel in Thailand. There were many pictures of celebrities, athletes and singers on alcohol containers and packages. These were not only attractive labels in their own right; they were also cunningly used as creative marketing tools by linking to ongoing promotions campaigns or activities. A 2011 study carried out in Thailand showed that more than half of the Thai respondents found the containers, packages and labels of alcoholic beverages to be colourful, attractive, and persuasive to purchase and consume. Therefore, the Thai government could not take the sport and music marketing strategy of the alcohol industry for granted, and needed effective tools to control it to and protect citizens. In line with the principle of consumer protection, and taking account of the recommendations of the WHO's "Global Strategy to Reduce Harmful Use of Alcohol" on controlling alcohol beverage labels to reduce the negative impacts of drinking and intoxication, Thailand developed this draft notification with the aim of reducing attractiveness and appeal of alcohol to drinkers, especially young people. The prohibition on displaying images of celebrities, athletes, film stars, singers, and cartoons on alcohol beverage labels were intended to

eliminate the positive attitude towards alcohol products. The representative said the draft regulation did not aim to block responsible communication, or the right to show trademark names or the symbol of the company, but to work as an extension of the Alcohol Beverages and Control Act 2008.

2.2.3.25 Indonesia – Regulation of Minister of Trade No. 10/M-DAG/PER/1/2014 concerning Amendment of Regulation of Minister of Trade No. 67/M-DAG/PER/11/2013 concerning Affixed Mandatory Label in Indonesian Language for Goods (G/TBT/N/IDN/85) - IMS Item No. 436

2.221. The representative of the European Union said the EU continued to have concerns with the burdensome, time-consuming and costly compulsory registration procedure for sample labels as a precondition for obtaining the labelling certificate (SKPLBI). The overall requirements for the labelling and label content were more restrictive than necessary to fulfil the stated objective of consumer protection and prevention of deceptive practices. The EU asked whether the same objectives could be achieved through a general requirement for local and foreign manufacturers/importers to submit a sample label for information to Indonesian authorities prior to first placing of a product on the Indonesian market. The EU considered the requirement for permanently affixed labels through, for instance engraving or embossing, as well as the prohibition to affix labels in the form of stickers while products were still in Indonesian customs, to be excessively constraining for many products and not in tune with market reality for globally traded products. Concerning automotive spare parts labelling requirements, the EU pointed out that international practice did not require, in addition to the homologation markings, any specific printings on the tyres themselves. Therefore, the EU invited Indonesia to consider that for automotive spare parts, and in particular tyres, a marking attesting conformity to UNECE regulations be accepted on the Indonesian market without further requirements at customs. Further labelling requirements could be applied at the point of sale, without requiring any marking on the product itself, such as affixing labels to the packaging of tyres or by providing the required information by signs, brochures or other similar ways. Finally, he reminded the Committee that the EU had already raised concerns with respect to the application of the labelling requirements for toys, notified in G/TBT/N/IDN/64.

2.222. The representative of the United States associated her delegation with the comments made by the EU. She said the US continued to have concerns with the Indonesian practice of notifying measures *after* adoption and reminded Indonesia of the transparency requirements of the TBT Agreement, in particular allowing time for comments to be taken into account. She queried whether products already on the market would have to meet these labelling requirements.

2.223. The representative of Japan supported the comments made by previous delegations and invited Indonesia to ensure that the regulation was not more trade-restrictive than necessary.

2.224. The representative of Indonesia thanked the EU, US and Japan for raising their concerns, and also thanked the EU for their bilateral meeting. This labelling regulation, he said, ensured that consumers were properly informed on products purchased. The new regulation and its amendments on the affixing of labels in Indonesian language contained several improvements on the previously notified regulation on obligatory labelling (G/TBT/N/IDN/47). He mentioned the following as examples of such improvements: (i) the increase in the number of products covered, from 103 to 127; (ii) adjustments in the HS codes; and (iii) the requirement for permanent labelling through embossed print or firmly attached labels. He explained that importers or producers of products not listed in the attachment of the regulation may put labels in the Indonesian language, adjusted to the characteristics of the products. Those listed in the attachment of the regulations, and who had their products already distributed on the Indonesian market, were granted a transitional period until 24 December 2014 so as to adjust to the required label. For new products, the regulation applied since 24 June 2014. He observed that some types of products were exempt from this regulation, such as basic materials for production processes, products in bulk, temporary imported products and several other categories. Exemption was also given to producers, trademark holders, general importers and suppliers of automotive products who submitted a "letter of exemption" to the Directorate of Consumer Empowerment of the Ministry of Trade. Indonesia welcomed bilateral discussion with Members on more specific aspects of the regulation.

2.2.3.26 Kingdom of Saudi Arabia – Certificate of Conformity (not notified) and GSO marking requirements for toys - IMS Item No. 435

2.225. The representative of the European Union thanked Saudi Arabia for their extensive replies to concerns raised at the previous meeting of the Committee, and for the bilateral meeting which had taken place and looked forward to future bilateral discussions. He reiterated his delegation's support for the harmonization efforts being made within the gulf region on toy safety and said the EU was willing to exchange experiences and provide any clarification regarding the EU's own experience with technical harmonization in toy or other sectors as this may help in ensuring more uniform implementation across the region. The EU's main concerns were with inconsistencies in implementation practices of individual Gulf States. There were differing interpretations of the requirements on the fixing of the "G mark", and on the registration number placed next to the "G mark" – for example, whether labels were to be permanent or non-permanent. Secondly, there appeared to be a trend in some gulf states to introduce additional duplicative conformity assessment requirements, for example the Saudi Certificate of Conformity (CoC) or the Abu Dhabi Trustmark. More positively, he noted that foreign laboratories that were ILAC accredited to ISO17025 were allowed to perform the required testing. Concerning the process whereby each toy model was assigned a registration number which had to be fixed next to the "G mark", the EU understood that GSO was considering ways to facilitate the registration process allowing registration numbers to be assigned to each manufacturer or importer rather than to each model. He understood a guidance document was being prepared which, he said, was being eagerly awaited by industry.

2.226. The representative of the United States also thanked Saudi Arabia for their bilateral discussions and for the document they had provided which helped clarify the use of the "G mark" for toys. The US continued to look forward to working with both the GCC and the individual members as the "G mark" was being further implemented for toys and other products.

2.227. The representative of Canada appreciated the technical harmonization efforts undertaken by Saudi Arabia and other Gulf Cooperation Council (GCC) members through the GCC Standardization Organization (GSO). Nonetheless, his delegation shared some of the concerns expressed by the EU and the US regarding transparency issues on notifications by GCC members of regional GSO technical regulations. Differences in notification practices by GCC members over the same regional technical regulation, including non-notification or variations in content or timeframe, could lead to difficulties for all members reviewing those notifications. To this end, Canada had written to the GSO, copying Saudi Arabia, on the subject of notification practices by GCC members on the same regional technical regulations. Canada appreciated that the GSO itself, in its presentation at the Thematic Session on Transparency at the June 2014 meeting, acknowledged the potential for confusion on this issue. Canada encouraged GCC members to streamline and coordinate their regional notification efforts where possible.

2.228. The representative of the Kingdom of Saudi Arabia thanked delegations for their comments and looked forward to continuing discussions bilaterally. All comments would be sent to capital where full answers would be prepared and relayed to Members.

2.2.3.27 China – Safety Requirement for Lithium Ion Cells and Batteries used in Portable Electronic Equipment (G/TBT/N/CHN/1016) - IMS Item No. 425

2.229. The representative of the Republic of Korea thanked China for their bilateral meeting and looked forwarded to continued cooperation so as to resolve the concerns. Many Members, including Korea, adopted technical regulations on lithium ion cells and batteries which were harmonized with international standards. However many of China's test requirements for their safety regulation did not correspond with either the current IEC62133 or its draft revision. He requested that China harmonize those requirements with international standards. For those that were not, China should provide the scientific rationale and background. Concerning Article 11, he asked that China eliminate the requirement from the National Standard or exclude it from mandatory requirements since the safety requirement for system protection circuit could be complied by portable electronic equipment manufacturers rather than cells and batteries manufacturers.

2.230. The representative of China said that as lithium batteries were the cause of many injuries and even death, China had drafted a national standard safety requirement in order to protect consumer's health and safety. An ad hoc working group established in 2008 developed this standard. This working group was consisted by more than 40 lithium producers and science research institutes, both domestic and abroad, including many foreign enterprises. After three years of in-depth discussion and industry surveys, and three rounds of requests for comments, a final version of the draft standard was formulated. It should be noted, she said, that China had transformed IEC62133 into national standard GB/T28164-2011 and that the standard under discussion was a supplement improving GB/T28164-2011. Other Members had done likewise, such as the relationship between the Japanese standard JIS C8712:2006 and IEC62133:2002, and JIS C8714:2007, and the Korean standard KS C IEC62133:2005 and IEC62133:2002 IDT and KS C8546:2008. She said that, due to a different scope of application, the Chinese standard did not directly correspond to IEC62133. It adopted the relevant criteria of IEC62133, when appropriate, and improved the IEC standard according to the characteristics of the lithium battery. A number of proposals based on this Chinese standard had been adopted by the IEC, which illustrated its effectiveness. Therefore, the Chinese standard, based on the relevant international standard, did not violate any TBT Agreement provision or principle.

2.2.3.28 Russian Federation – Measure affecting import of Ukrainian dairy products - IMS Item No. 426)

2.231. The representative of Ukraine informed the Committee that on 7 April 2014 the Russian Federation imposed an import ban on dairy products from 6 Ukrainian producers. The ban was imposed on the ground of alleged noncompliance with requirements of the "Technical regulation on milk and dairy products", approved by Federal Law No. 88 FZ. Since that time, this ban was expanded to 27 Ukrainian producers. She said that this measure was being applied in a non-transparent manner as producers were still unaware of the specifics of their alleged noncompliance and have not received any documents regarding the results of the tests conducted by the relevant authority of the Russian Federation (Rospotrebnadzor). She noted that all producers affected by the ban held certificates of conformity in accordance with the requirements of the Technical Regulation on milk and dairy products. These certificates were issued by accredited certification bodies listed in the register of the certification bodies of the Customs Union. For the purposes of ensuring safety and quality of their products, she explained that these producers additionally achieved: (i) voluntary certification for their dairy products in the accredited regional centres in Ukraine for standardization, metrology and certification; (ii) control for product safety and quality by the Ukrainian State laboratories of veterinary medicine, in accordance with requirements of the ISO/IEC 17025:2006; and, (iii) certified management systems for safety and quality of food products based on Hazard Analysis and Critical Control Points (HACCP) principles.

2.232. Ukraine considered that Russia was applying this measure with a view to, and with the effect of, creating unnecessary obstacles to trade, in violation of Article 2.2 of the TBT Agreement. In addition, Ukraine believed that the unpredictability and the lack of transparency in respect of this measure made the measure inconsistent with national treatment and MFN provisions of the Article 2.1 of the Agreement. She informed Members that Ukrainian dairy products, some of them from international global companies with decades of excellent standards, had been traditionally exported to the Russian Federation for many years. Some of the producers exported up to 70% of their production to the Russian market. Through these measures, however, Russia had effectively cut by half the imports of Ukrainian dairy products. Finally, she urged Russia to immediately lift the ban in accordance with the Articles 10 and 2.5 of the Agreement, since no scientific information was available to justify the measure.

2.233. The representative of the Russian Federation said that the import suspension of dairy products of some Ukrainian companies was introduced due to inconsistencies of these products with the technical regulation of the Russian Federation. He reported that requirements for dairy products were established in 2008 by the provisions of Federal Law of the Russian Federation "Technical regulation on milk and dairy products" that was adopted on 12 June 2008. As of 1 May 2014, the technical regulation of the Customs Union "on safety milk and dairy products" (adopted by Decision of the Council of Eurasian Economic Commission No. 67 on 9 October 2013) entered into force. Circulation within the territory of the Russian Federation of food products that were not in compliance with the provisions of the technical regulation was prohibited. In 2014, he explained, the Russian regulating authority (Rospotrebnadzor) had detected that the dairy products produced

by the some Ukrainian companies contradicted relevant requirements on fat, proteins and moisture content.

2.234. He further explained that the measure at issue was introduced to protect consumer rights for valid product information and to prevent deceptive trade practices. Given that the decision to suspend dairy products imports from some Ukrainian companies was taken as part of the enforcement of the existing technical regulation, Russia saw no basis for notifying such decision to the TBT Committee. In addition, the import suspension applied to specific products manufactured by specific Ukrainian companies. In any event, he said, the decision at issue was taken in full compliance with the WTO rules, in particular with the provisions of the TBT Agreement. The representative reported that Rospotrebnadzor was ready to assist the competent authorities of Ukraine in developing the measures necessary to resume the circulation of the at issue products in the territory of the Russian Federation. He said this would lead to the quickest resumption of the trade in Ukrainian dairy products on the Russian market. The competent authorities were also ready to discuss the questions on a bilateral basis in order to avoid any restrictions in the future.

2.2.3.29 Ecuador – Draft Technical Regulation of the Ecuadorian Standardization Institute (PRTE INEN) No. 189: "Labelling of alcoholic beverages" - IMS Item No. 433

2.235. The representative of Canada noted that the new customs regulation on spirits imports covering whisky, vodka, tequila and rum had been approved on 9 August 2013, published in the official registry on 23 September 2014 with entry into force 30 days later. This regulation only appeared to apply to imported spirts and required labels to be affixed in the country of origin, which was contrary to standard practice in the internationally traded spirits industry. The usual practice was to apply, in the country of production, generic front labels providing mandatory information and to affix, in the import market any other market specific information on the back or secondary label. He asked Ecuador to explain how this requirement was not more trade restrictive than necessary to fulfil a legitimate objective and therefore a violation of Article 2.2 of the TBT Agreement. He also asked Ecuador to provide an update with respect to any revisions to the regulation.

2.236. The representative of Mexico expressed concern with the fact that the measure did not provide for any possibility of labelling or relabeling in the primary area of the product. She was also concerned with the requirement that the name of the Ecuadorian importer be affixed on the label. She said that Mexico considered that these requirements could be in contravention of the TBT Agreement, specifically Article 2.2, as it was debateable whether this measure constituted the least restrictive alternative to fulfil the legitimate objective pursued. She requested that the requirement of a label of origin with the name of the importer in Ecuador be removed, and that Ecuador reply to the comments formally submitted by Mexico on 2 July 2014.

2.237. The representative of Ecuador informed the Committee that this draft regulation on the requirements for the labelling of alcoholic drinks was to protect human health and safety, and prevent deceptive practices. This measure applied to both domestically produced and imported to beverages. National and importing producers had to prove compliance through the submission of an inspection certificate. This certificate could only be accepted in Spanish. She said the competent authorities were looking at revising the measure in view of the comments received

2.2.3.30 European Union – Proposal for a Directive of the European Parliament and of the Council amending Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic (COM(2013) 195 final) (G/TBT/N/EU/109) - IMS Item No. 434

2.238. The representative of the United States thanked the EU for the bilateral discussion on this issue, in particular the EU's confirmation that the proposal allowed for derogations from the fixed dimensions. Her delegation appreciated that the EU had noted the US concern that any technical specifications developed for type approval include the ability to use an aerodynamic cabin to qualify for such derogations. She also appreciated that industry would be able to participate in stakeholder meetings on this subject.

2.239. The representative of the European Union thanked the US and looked forward to continued discussions bilaterally.

2.2.3.31 Ireland – Proposal to introduce standardised/plain packaging of tobacco products in Ireland (G/TBT/N/IRL/1, G/TBT/N/IRL/1/Add.1) - IMS Item No. 380

2.240. The representative of Malawi expressed her delegation's concerns regarding the consistency of the proposed measure with the TBT and TRIPS Agreements. She also requested Ireland to abstain from any tobacco plain packaging legislation until the WTO disputes lodged against Australia's plain packaging measures had been concluded. Malawi's full statement is contained in G/TBT/W/393.

2.241. The representative of Ukraine said that this proposed plain packaging measure raised concerns under WTO law, including Article 2.2 of the TBT Agreement requiring that technical regulations be not be more trade restrictive than necessary to fulfil a legitimate objective. While protecting public health by reducing smoking prevalence was unquestionably a legitimate objective, Ukraine also believed that the available scientific evidence and data indicated that plain packaging did not contribute to that objective and would, in fact, have unintended consequences against the attainment of this objective. She also said that, as a third party to the dispute Ukraine and four other Members have lodged against Australia over its plain packaging measure, the EU, and thus Ireland, would have already seen the evidence showing the lack of contribution the Australia measure was able to make towards its stated objective. Ukraine therefore reiterated its concern that plain packaging measures, such as the one proposed by Ireland, appeared to violate Ireland's obligations under the TBT and TRIPS Agreements. Further, Ukraine understood that a number of EU member states have registered objections with the European Commission regarding the impact of the proposed Irish measure on the EU Common Market. Given this state of affairs, Ukraine would appreciate an update on the internal EU process and the impact this process may have on the Irish proposal in terms of substance and timing. Finally, Ukraine considered that it would be prudent for Ireland to await the recommendations and rulings of the Dispute Settlement Body in the dispute over Australia's similar measure to ensure that its proposed technical regulation would be adopted in line with its WTO obligations.

2.242. The representative of the Dominican Republic associated herself with the statements made by Malawi and Ukraine and urged Members that were planning to implement tobacco plain packaging measures to wait until the conclusion of the Australian disputes.

2.243. The representative of Australia reiterated his delegation's strong support for the decision by Ireland to legislate for the mandatory plain packaging of tobacco products. In particular, Australia welcomed the presentation of implementing legislation to the Irish Parliament in June 2014. The important steps made by Ireland in tobacco control demonstrated that efforts to delay the adoption of tobacco plain packaging measures in these countries have not been successful. Australia firmly believed that Members had the right to implement measures necessary to protect public health, while complying with relevant international treaty obligations, including the TBT Agreement. Tobacco plain packaging was a legitimate measure designed to achieve a fundamental objective: the protection of human health. The adoption of tobacco plain packaging measures was a policy choice endorsed by leading public health experts as well as the World Health Organization and was supported by extensive credible peer reviewed research, reports and studies. Australia's own tobacco plain packaging measure, currently being litigated in the WTO, was consistent with Australia's obligations under the WTO Agreements. It was inappropriate for complainants in these disputes underway against Australia to invoke those proceedings in an attempt to delay or discourage another Member from developing or implementing their own legitimate tobacco control measures.

2.244. The representative of Guatemala stated that while her delegation 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.

2.245. The representative of Cuba stated that while her delegation shared the view that Members had the sovereign right to regulate to protect public health, such measures had to be drafted respecting Members' WTO obligations. Cuba continued to have reservations with respect to the

usefulness of plain packaging and was concerned with its trade restrictiveness. She also requested Ireland to abstain from any tobacco plain packaging legislation until the WTO disputes lodged against Australia's plain packaging measures had been concluded.

2.246. The representative of Honduras stated her delegation's concern that Ireland was introducing a measure – tobacco plain packaging - similar to a measure, by Australia, currently being challenged by five disputes before the DSB, and which had also being object of concerns from many Members in this Committee as well as other WTO bodies. Honduras informed that, as a complainant in the Australian dispute, it had submitted its first written submission to the Panel on 8 October 2014, which included concrete evidence showing that this kind of measure was not reducing tobacco consumption in the Australian population. Honduras also reiterated that it was not calling into question Members' right to adopt measures to protect public health; but only that, in as far as they do so, such measures needed to be based on solid scientific evidence and comply with WTO rules. Honduras therefore urged Ireland to reconsider the introduction of this measure which lacked scientific basis, was unnecessarily trade restrictive and also constituted a violation of intellectual property rights such as trademarks and geographical indications. In this context, Honduras asked Ireland to wait for the conclusion of the Australian plain packaging WTO dispute before taking a decision on its own similar measure.

2.247. The representative of Indonesia requested Ireland to abstain from any tobacco plain packaging legislation until the WTO disputes lodged against Australia's plain packaging measures had been concluded.

2.248. The representative of Zimbabwe associated himself with the concerns expressed my Malawi, Ukraine, Dominican Republic, Cuba, Honduras and Indonesia.

2.249. The representative of Uruguay was of the view that the proposed Irish plain packaging measure was compatible with WTO rules and fell within the sovereign rights Members had to legislate to promote public interests. Such a right was reaffirmed by the "Punta de Este Declaration", adopted during the FCTC's 2010 COP, and the "Moscow Declaration", adopted during the FCTC's 2014 COP. In implementing such a measure, Ireland would be thus merely exercising its sovereign right to protect public health by giving effect to the obligations it had undertaken as a party to the WHO FCTC, in particular its Article 11 and relevant implementing guidelines, which were adopted by consensus. Uruguay requested that this statement to be equally applicable to the subsequent SCTs on the plain packaging measures by the UK and Australia.

2.250. The representative of Norway referred Members to her delegation's previous statement made under the new STC with respect to the proposed tobacco plain packaging measure by France. She also rejected the view that other Members should wait the end of the Australian dispute before implementing their own plain packaging measures.

2.251. The representative of New Zealand supported Ireland's decision to commence the process of introducing a plain packaging regime for all tobacco products. She also referred Members to her delegation's previous statement made under the new STC with respect to the proposed tobacco plain packaging measure by France.

2.252. The representative of Nigeria expressed her delegation's concern that plain packaging for tobacco could serve as a dangerous precedent for other heavy regulated products, like foods and carbonated drinks, in particular due to their effects to the intellectual property rights related to these products. She also requested Ireland to abstain from adopting any tobacco plain packaging legislation until the WTO disputes lodged against Australia's plain packaging measures had been concluded.

2.253. The representative of Nicaragua said that the statement his delegation made in the present meeting in the context of the STC on France's proposed plain packaging measure was equally applicable to this STC as well as the next two concerns involving similar measures by the UK and Australia.

2.254. The representative of the European Union noted that tobacco products have being recognised as having harmful effects on human health. In this sense, Article 2.2 of the TBT Agreement included the protection of human health as a legitimate objective. The Agreement also

recognised that any measure pursuant to this legitimate objective must not be more trade restrictive than necessary and create unnecessary obstacles to international trade. It should also be noted that Article XX(b) of the GATT 1994 emphasised the importance of public health by justifying measures "necessary to protect human … health". She called Member's attention to the Irish government's statement that the Bill aimed at further reducing the smoking prevalence in Ireland by reducing the attractiveness of tobacco products, especially among young people, and that the measures were a response to the packaging design strategies developed by tobacco companies in recent years, which were aimed at young people, including young women. The notified draft forms – which constituted the latest strand of a comprehensive range of tobacco control legislation already in place in Ireland aimed at decreasing tobacco consumption. Such other measures under existing Irish law included the following: (i) a comprehensive smoke free legislation; (ii) a ban in place on smoking at the workplace; (iii) a ban on tobacco advertising and sponsorship; and (iv) a ban on the display of tobacco products in shops. In addition, all tobacco products placed on the Irish market must display combined text and graphic health warnings. Certain types of sale promotions were also prohibited. Further, the smoking of tobacco products in vehicles where children were present would also be prohibited by a law to be enacted by the end of 2014.

2.255. In addition to the notified draft, Ireland made available to TBT Committee Members, through a TBT notification, an explanatory memorandum that detailed the rationale of the measure and its expected health impacts, a regulatory impact analysis and several scientific studies on the impact of plain packaging on smoking prevalence. In parallel with the WTO notification, Ireland has also notified the proposed measure to the European Commission in accordance with internal EU requirements for notification of draft national technical regulations under Article 8 (1) of Directive 98/34/EC and under Article 24 (2) of the Tobacco Products Directive 2014/40/EU. Under these internal EU procedures, Ireland received detailed opinions and comments from some EU member states. These comments were currently being analysed and considered by the Irish authorities. As regards comments that may be received from WTO Members under the WTO TBT notification procedure, these would be equally examined and written replies be provided in due course.

2.2.3.32 United Kingdom – Proposal to introduce plain packaging of tobacco products (G/TBT/N/GBR/2) - IMS Item No. 424

2.256. The representative of the Dominican Republic expressed her delegation's concerns regarding the consistency of the proposed measure with the TBT and TRIPS Agreements. The full statement of the Dominican Republic is contained in G/TBT/W/397, the content of which it, by their request, is to be equally applicable to the following STC on Australia's plain packaging measures.

2.257. The representative of Malawi expressed her delegation's concerns regarding the consistency of the proposed measure with the TBT and TRIPS Agreements. She also requested the UK to abstain from any tobacco plain packaging legislation until the WTO disputes lodged against Australia's plain packaging measures had been concluded. Malawi's full statement is contained in G/TBT/W/394.

2.258. The representative of Australia reiterated its delegation's strong support for the decision by the UK to legislate for the mandatory plain packaging of tobacco products. Australia welcomed, in particular, the UK's release of draft regulations on standardised packaging of tobacco products for public consultation. This followed the findings of an independent review that concluded that "standardised" packaging of tobacco products would be very likely to reduce the rate of children taking up smoking and have a positive impact on public health. In the interest of efficient use of time, Australia said that it would not repeat in full its earlier statements, but rather refer Members to the comments it have made on similar issues, and in particular: (i) that Members had the right to take action in the interest of public health concerns; (ii) that measures be based on credible evidence; and (iii) Australia's firm belief that plain packaging measures were fully compliant with Members' WTO commitments. Australia welcomed the references to the DSB proceedings on its own measures. However, as these proceedings were still ongoing, he suggested that the correct approach under Article 14 of the TBT Agreement was to leave substantive discussion of Australia's measures to that specific WTO body.

2.259. The representative of Ukraine stated her delegation's concern that plain packaging measures were more trade restrictive than necessary to fulfil their health protection objective as they failed to actually contribute to reducing smoking while being trade restrictive. Such measures therefore appeared to be contrary to Article 2.2 of the TBT Agreement. With respect to the UK's proposed measure, Ukraine would appreciate to receive from the UK an update on the status of the proposal. Since the last meeting of this Committee, the UK conducted a public consultation on the proposed measure. Ukraine would be particularly interested to know when the results of this consultation process would be released. In closing, Ukraine would like also to suggest that it would be prudent for the UK to await the recommendations and rulings of the DSB in the dispute over Australia's measure to ensure that this proposed technical regulation would be consistent with its WTO obligations.

2.260. The representative of Honduras expressed her delegation's concern with the proposed measure's inconsistencies with the TRIPS and TBT Agreements. While Honduras fully shared the aim of protecting human health, it also considered these measures to be more trade restrictive than necessary for achieving these objectives. Honduras recalled that in its first written submission as a complainant in the Australian dispute, it had made it clear that the plain packaging measures at issue were not based on sufficient scientific evidence and were an unnecessary trade restrictive, and also that they were affecting Honduras' intellectual property rights, which were key elements for the economic development of a country. Honduras urged the UK wait the conclusion of the Australian dispute before implementing its own plain packaging measure.

2.261. The representative of Cuba expressed concern regarding the consistency of the proposed measure with the WTO Agreements, in particular the TBT and TRIPS Agreements. Cuba considered that the proposed measure lacked scientific basis and was more trade restrictive than necessary to the attainment of its stated public health objective. It also requested the UK to abstain from implementing 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.

2.262. The representative of Indonesia supported the concerns raised by the Dominican Republic and Malawi and asked Members intending to implement plain packaging measures to wait until the conclusion of the Australian dispute. Indonesia also referred to the arguments it had made in the present meeting with respect to the STCs raised with respect to the proposed plain packaging measures by France and Ireland.

2.263. The representative of Guatemala supported the concerns raised by the Dominican Republic and Malawi and said that, while her delegation acknowledged the legitimate rights the UK government had to protect public health, it nevertheless considered that this had to be done in a less trade restrictive way possible. Guatemala asked Members intending to implement plain packaging measures to wait until the conclusion of the Australian dispute. Guatemala asked these points to be also equally applicable to the next STC on Australia's plain packaging measures.

2.264. The representative of Norway referred Members to its previous statements under the STCs raised with respect to the proposed plain packaging measures by France and Ireland and commended the UK on its measures to combat the tobacco epidemic.

2.265. The representative of Nigeria stated its concerns with the negative impact of the proposed measure on branding and consumers as well as on the Nigerian economy, given that Nigeria is an important producer of tobacco leaves, a sector that provides income to its farmers. Nigeria considered that this proposal would be in breach of the EU's WTO obligations, including under the TRIPS and TBT Agreements.

2.266. The representative of New Zealand lent support to the EU decision to introduce further controls on the packaging of tobacco products. She also noted the recent findings of the independent review into the public health effects of standardised packaging of tobacco products, commissioned by the UK Government. In particular, she quoted the following conclusion of Sir Cyril Chantler's report: "… after a careful review of all of the relevant evidence before me I am satisfied there is sufficient evidence derived from independent sources that the introduction of standardised packaging as part of a comprehensive policy of tobacco control measures would be very likely over time to contribute to a modest but important reduction in smoking prevalence especially in children and young adults. Given the dangers of smoking, the suffering that it causes,

the highly addictive nature of nicotine, the fact that most smokers become addicted when they are children or young adults and the overall cost to society, the importance of such a reduction should not be underestimated."

2.267. The representative of Zimbabwe shared the concerns expressed by the Dominican Republic, Malawi, Ukraine, Honduras, Cuba, Indonesia, Guatemala and Nigeria, and stated that Zimbabwe's statement was equally applicable to the next concern on Australia's plain packaging measure.

2.268. The representative of the European Union noted that tobacco products have being recognised as having harmful effects on human health. In this sense, Article 2.2 of the TBT Agreement included the protection of human health as a legitimate objective. The Agreement also recognised that any measure pursuant to this legitimate objective must not be more trade restrictive than necessary and create unnecessary obstacles to international trade. It should also be noted that Article XX(b) of the GATT 1994 emphasised the importance of public health by justifying measures "necessary to protect human … health". She informed that the UK's decision to proceed with the Regulations has not yet been made. If taken forward, she said, the UK draft Regulation on Standardised Packaging of Tobacco Products aimed at further reducing the smoking prevalence in the UK by: (i) discouraging uptake of tobacco use by young people; (ii) encouraging and supporting tobacco users who want to quit; and (iii) reducing people's exposure to second hand smoke. The proposed UK measure would form the latest strand of a comprehensive range of tobacco control legislation already in place in the UK aimed at decreasing tobacco consumption. Under such existing legislation, there were already: (i) a ban on advertising tobacco products to the general public; (ii) a ban of tobacco sponsorship to sports and cultural events; and (iii) a prohibition for companies to give out free samples of tobacco. Furthermore, pictorial warnings on tobacco products were also required in the UK and the sale of these products from vending machines was prohibited, including, as from 2015 on, tobacco displays in all shops being prohibited.

2.269. In addition to the notified draft, the UK made available to TBT Committee Members, through a TBT notification, an explanatory memorandum that detailed the rationale of the measure and its expected health impacts, a regulatory impact analysis and several scientific studies on the impact of plain packaging on smoking prevalence. In parallel with the WTO notification, the UK has also notified the proposed measure to the European Commission in accordance with internal EU requirements for notification of draft national technical regulations. Under these internal EU procedures, the UK received detailed opinions and comments from some EU member states. These comments were currently being analysed and considered by the UK authorities. As regards comments that may be received from WTO Members under the WTO TBT notification procedure, these would be equally examined and written replies be provided in due course.

2.2.3.33 Australia – Tobacco Plain Packaging Bill 2011 (G/TBT/N/AUS/67, G/TBT/N/AUS/67/Add.1, G/TBT/N/AUS/67/Add.2) – IMS Item No. 304

2.270. The representative of Ukraine explained that the reason why Ukraine requested that this "old" agenda item be reintroduced the Committee agenda was to allow Ukraine to provide a brief update to the Committee on the facts relating to this measure, which was currently the subject of a WTO dispute settlement proceeding. This update was mainly a matter of courtesy and transparency for the whole of the WTO membership, given that the parties and third parties to the disputes have now seen the full presentation of Ukraine's evidence and arguments in its first written submission in the context of that dispute. Ukraine considered that it would be useful for all Members to be informed of developments in respect of the concerns that Ukraine previously raised over Australia's measure from the perspective of the TBT Agreement, now almost two years after its entry into force. The evidence available to date, which has been submitted in the context of the dispute settlement process, showed that the Australian tobacco plain packaging measure was not contributing to the stated objective of improving public health by reducing smoking prevalence in Australia. The measure, however, was already distorting competition in the market and it was highly realistic that the perverse market dynamic that this measure set in motion would continue, leading to the opposite result than the intended objective of reducing smoking. The quantitative and qualitative evidence available to Ukraine demonstrated that this measure was an unnecessary obstacle to trade because it restricted trade without making any contributing to the fulfilment of its legitimate objective (and, actually, it even went against that objective). Ukraine looked forward to the WTO Panel's objective assessment of the evidence presented by Ukraine as well as to the

Panel's analysis of the legal arguments. Australia would, of course, be able to present its case to the WTO Panel as well and that was the way concerns over measures covered by the WTO Agreements were to be resolved in accordance with the rules of the DSU. In this respect, Ukraine informed the Committee that this dispute settlement process should move forward in the most expeditious way possible.

2.271. The representative of Honduras shared the concerns expressed by Ukraine with regard to the possibility that other Members would follow Australia's example and adopt legislation on plain packaging for tobacco products. As one of the co complainants of the ongoing dispute lodged against Australia's plain packaging measure, Honduras has presented its first written submission to the Panel. In that submission, Honduras included expert and empirical evidence with regard to the effects of the measure in the Australian market. This evidence demonstrated that plain packaging was an experiment that has failed. The empirical data following the implementation of the measure in December 2012 confirmed that plain packaging has not reduced tobacco use in Australia. Instead of this, this measure has in fact led to a phenomenon, known as "substitution effect", which made that consumers replaced high priced brands by cheaper brands. In its written submission to the Panel Honduras had made it clear that the dispute was not whether smoking was a danger or whether it affected public health. Clearly, the response was yes for both questions. Honduras also shared Australia's objective to reduce the use of tobacco and this was why Honduras itself also had various strict tobacco control rules. On the other hand, in Honduras's view, Australia's measure on plain packaging was an unprecedented instrument that resulted in the elimination of all registered trademarks used a product that was legally sold in Australia. As Honduras has explained to the Panel, Australia had at its disposal various less trade restrictive alternative measures. The existence of alternative measures that could contribute to the declared public health objectives in the same level as plain packaging, confirmed the unjustifiable and unnecessary character of plain packaging. For the forgoing reasons, the Australian measures violated its obligations under the TRIPS and TBT Agreements. Finally, Honduras urged other Members planning to introduce similar plain packaging measures to wait until the Australian dispute would be over and the compatibility of its measures with WTO disciplines had been reviewed by the DSB.

2.272. The representative of Canada expressed his delegation's support for the efforts of France, Ireland, UK and Australia with respect to tobacco control. Tobacco use was a very significant problem in Canada and in the world. In Canada alone 37,000 people died annual from tobacco use, making it Canada's leading cause of preventable deaths by disease. Tobacco products were also the only goods that were subject to a legally binding international treaty, the WHO's FCTC. Canada believed that Members should engage in these discussions bearing in mind the complete economic picture regarding tobacco control, including the question whether tobacco constituted a net "economic drain" for many countries with respect to its health costs. Canada was interested in the further discussions on the appropriate balance between regulation, international trade and public health.

2.273. The representative of Cuba said that her delegation supported the statements made by its other fellow co complainants in the Australian dispute, Ukraine and Honduras. She also said that the statements Cuba made in this meeting in context of the other STCs involving plain packaging proposed measures were equally applicable to this STC.

2.274. The representative of Indonesia informed that, as the other co complainants in the Australian dispute, it had also presented to the Panel its own first written submission on 8 October 2014. Indonesia believed that public health regulations should not be more trade restrictive than necessary. More specifically, Indonesia noted that after two years in force, the Australian measure was not working as intended. Indonesia also asked all Members currently planning to implement similar plain packaging measures to wait until the Australian dispute was over. Finally, Indonesia asked this statement to be considered as equally appliance to the other STCs discussed in this meeting involving proposed plain packaging measures by France, Ireland and the UK.

2.275. The representative of Nigeria stated its concerns with the negative impact of the proposed measure on international trade and asked that her delegation's previous statements with respect to the other STCs on proposed plain packaging to be considered as equally applicable to this particular STC.

2.276. The representative of Australia noted the continued interest of other Members in its initiative to require the plain packaging of tobacco products, and acknowledged the significant amount of support it has received for this important measure. As other Members were aware, Australia's measure was currently before the DSB for resolution following the initiation of dispute settlement proceedings by Ukraine, Honduras, Indonesia, the Dominican Republic, and Cuba. In this respect, he draw Members' attention to Article 14 of the TBT Agreement, which stated that the settlement of disputes "with respect to any matter affecting the operation of this Agreement shall take place under the auspices of the [DSB]". Australia was therefore both disappointed and surprised to see this issue raised again in the TBT Committee. Australia did not consider it appropriate for Ukraine to raise this measure as a STC for discussion as Australia's measure was no longer a matter for the TBT Committee's consideration. Discussion of Australia's tobacco plain packaging measure in this Committee would create a "parallel process" alongside the ongoing dispute settlement proceedings, which would undermine the rules and procedures for participation of Members in those disputes, particularly for the 41 Members that have requested participation in the related tobacco plain packaging disputes as third parties. Australia's tobacco plain packaging measure has already been raised as a STC and been the subject of detailed debate at several previous TBT Committee meetings in 2011 and 2012, prior to the commencement of dispute settlement proceedings. It was clear from the fact that the measure was now subject to dispute settlement proceedings that the views of Members raising this measure as a concern remain unchanged. Re consideration of this measure by the TBT Committee was therefore unnecessarily duplicative, and was contrary to Rule 27 of the Rules of Procedure for Meetings of the TBT Committee, which provided that: "Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record." Australia expressed its hope that such unnecessary use of this Committee's time would not be repeated in the future.

2.2.3.34 Ecuador – Proposed Motor Vehicle Safety Regulatory Requirements (RTE INEN 034) (G/TBT/N/ECU/32, G/TBT/N/ECU/32/Add.1, G/TBT/N/ECU/32/Add.2, G/TBT/N/ECU/32/Add.3, G/TBT/N/ECU/32/Add.4, G/TBT/N/ECU/32/Add.6) - IMS Item No. 409

2.277. The representative of Mexico said that despite bilateral discussions (held in 2003), Mexico's observations had not been incorporated in the most recent publication of RTE INEN 034. Mexico considered that Ecuador had failed to comply with Article 2.4 of the TBT Agreement because its proposed technical regulation was only based on the requirements established by the United Nations Economic Commission for Europe (UNECE) without also considering as valid references the other existing standards, such as those from of the United States, Japan or Korea. With respect to the "third party" certification requirement, under the measure' section dealing with conformity assessment procedures, Mexico considered that Ecuador should bear in mind that third party certification must be exceptional in the automotive sector, given that this was a sector regulated internationally with vehicles normally being certified at the origin. Regarding the transition period for the entry into force of the regulation, a period of 180 days (six months) was established for implementation of the compulsory safety provisions. Mexico considered, however, that this was an insufficient period for producers to be able to introduce the requested changes. On the basis of the foregoing, Mexico requested Ecuador: (i) to extend to 2-years transition period for implementation of the changes envisaged in the technical regulation, as from the date of its publication; (ii) with regard to the safety requirements, to accept the conformity assessment in accordance with the rules of the United Nations Economic Commission for Europe (UNECE), as well as the regulations of the United States ("Federal Motor Vehicle Safety Standards" – FMVSS), Japan (SRRV), the Republic of Korea ("Korea Motor Vehicle Safety Standards" – KMVSS) and Brazil ("National Transit Council" – CONTRAN); and (iii) with regard to the assessment of conformity with the technical regulation in question, it was requested that the alternative process of "self-certification" be allowed, since bearing in mind the specific characteristics of the automotive sector (a sector regulated internationally), the reports of tests carried out by the manufacturer could be recognized as valid.

2.278. The representative of Brazil said that his delegation was following this concern very closely and that it shared the concerns raised by Mexico.

2.279. The representative of Ecuador said that her delegation took note of the points made by Mexico and Brazil, which would be also included in their next bilateral meetings, considering that they were recently introduced as part of the agenda.

2.3 Exchange of Experiences

2.3.1 Preparation of the 7th Triennial Review

2.280. The Chairman recalled that the Committee was scheduled to complete the Seventh Triennial Review at its 3-5 November 2015 meeting in line with the Article 15.4 of the TBT Agreement. He stressed that, as usual, the Review would be based on substantive proposals – and he encouraged Members to submit these as soon as possible. The following timeline[6] was agreed:

a. **4-6 November 2014**: TBT Committee meeting (discussion on approach and any substantive proposals submitted);

b. End-February 2015: circulation by Secretariat of outline compiling relevant information available to the review;

c. **17-19 March 2015**: TBT Committee meeting (discussion of substantive proposals);

d. 1 June 2015: deadline for the submission of substantive proposals by Members;

e. **16-18 June 2015**: TBT Committee meeting (discussion of substantive proposals);

f. July 2015: circulation by Secretariat of first draft report of the Review;

g. End-August 2015: submission of written comments from Members on the first draft;

h. End-September 2015: circulation of second draft report of the Triennial Review;

i. **3-5 November 2015**: TBT Committee meeting (adoption of the Seventh Triennial Review).

2.281. The representative of El Salvador thanked the Chairman for having provided a clear timeline for the 7th Triennial Review process and stressed the importance her delegations attributed to the Committee's triennial review mandate.

2.282. The Chairman proposed that the thematic sessions in 2015 focus on proposals made in the context of the 7th Triennial Review. He suggested that the time scheduled for the thematic sessions (informal mode) be used to discuss specific proposals from Members and also to reflect on how to address relevant existing recommendations. This would not preclude discussion on other topics if Members came forward with specific proposals. This would mean that the first thematic session for 2015 (scheduled for 17 March 2015) would focus on any 7th triennial review proposals tabled by then.[7] It was so agreed.

2.3.2 Transparency

2.283. The representative of Canada introduced his delegation's proposal contained in document JOB/TBT/109. He stressed that the objective of the proposal was to enhance transparency and dissemination of existing information pertaining to all WTO Members' domestic regulations that can impact trade. It was Canada's view that the information available through the WTO Secretariat could be better disseminated to interested entities inside and outside Member governments. In this way, rather than 160 national systems, there would be only *one* system managed through the WTO Secretariat. There would be a "push" email system which would allow users to identify countries or sectors that they would be interested in monitoring. The service would consolidate on a daily basis the most recent TBT notifications posted on the WTO website and would send it in an

[6] JOB/TBT/108.

[7] For more detail see the Chairman's follow-up communication of 4 December 2014 (sent by fax to all Members).

automatic e-mail to subscribers (it would include relevant information, such as: dates, links to texts). While he acknowledged that several Members had created such national systems (e.g., US, EU, Kenya) there would clearly be efficiencies from the WTO developing a *single* global export alert system for existing TBT notifications.

2.284. The representative of El Salvador asked if this would system be implemented on a voluntary or mandatory basis.

2.285. The representative of Chile noted that Canada had raised a fundamental issue in the area of transparency. Currently, different Members were making efforts to improve procedures aimed at alerting the public and private sector about TBT measures, and, in particular their potential impact on exports. While there might be duplication, the WTO was in a good place to establish a system which would be more efficient and this would be of particular importance to those developing countries that did not have the resources to set up their own systems. It was also important to bear in mind that public consultations had little effect if the TBT notifications did not reach the interested stakeholders at the right time. In this regard, the WTO Secretariat could deliver a better service than the one rendered currently. Canada's proposal therefore needed to be maintained on the work programme of the Committee.

2.286. The representative of Mexico recognized that the aim of the Canadian proposal was to develop a common, joint platform – improving on the existing system – to optimize resources aimed at creating national systems for alerts. This would, in Mexico's understanding, represent a new mechanism for dialogue between regulators, private sector and other stakeholders involved in the implementation of the TBT Agreement. Mexico stressed the importance of reviewing this proposal in the Committee.

2.287. The representative of Uganda supported the Canadian proposal and made substantive additional suggestions. His detailed statement is reflected in full in document G/TBT/GEN/176.

2.288. The representative of the United States noted that the Canadian proposal could be particularly important for those countries that did not already have their own alert systems. She expressed her delegation's concern that, while the Canadian proposed system was intended as a complement, the development of a WTO-based system could negatively impact Members which already had such a system in place, or those which were currently either planning for a new system or for upgrading existing ones. Members with existing alert systems might have to face a situation of possible reductions in subscribers, confusion among stakeholders, a potential a loss of data on subscriber activity, increased circumvention of enquiry points to submit comments, and reduced contacts between Members, industry and various stakeholders. The US also stressed dependence of existing systems on the current version of the IMS and Docs-Online and warned that possible changes to the current system – because of the development of a new one – could have a negative impact. Nevertheless, the US supported efforts to increase awareness among stakeholders of measures notified to the TBT Committee. She informed the Committee that the US was currently in the process of developing an updated version of its own alert system.

2.289. The representative of Switzerland characterized the instrument proposed by Canada as an inclusive public good, crucial for the adequate functioning of the TBT notification procedures – and at the heart of how to better involve the private sector. He said that the current WTO IMS would benefit from an upgrade and that it needed to be made more user-friendly. In this regard, he recalled the contributions made to the Committee's 6th Triennial Review and, in particular, the proposal tabled by the European Union[8] which, among other things, called for an enhancement of current WTO IT information systems.[9] Switzerland proposed that the Committee request an upgrade of current systems in the context of the Committee's upcoming 7th Triennial Review.

2.290. The representative of Brazil welcomed the Canadian proposal and considered it a helpful contribution that would be useful for both governments and the private sector. Brazil viewed this proposal complementary to national initiatives, such as Brazil's own alert system (*Alerta Exportador*[10]); in other words, the systems could live side-by-side. Brazil stressed the importance of making available, as suggested in paragraph 2.6 of Canada's proposal, the full regulatory text

[8] G/TBT/W/354, dated 12 June 2012.
[9] See, in particular, the recommendations contained in paragraphs 17 and 18 of G/TBT/32.
[10] http://www.brasilexport.gov.br/alerta-exportador.

(e.g., via a hyperlink). He stressed the importance of such texts being made available for download in an accessible file format that could be processed by translation tools.

2.291. The representative of China asked who would be responsible for daily maintenance of alert system, whether it would use only the WTO working languages, and whether there would be a budget for the project.

2.292. The representative of the European Union recalled, like Switzerland, the Committee's previous discussion in the context of the 6th Triennial Review on how to improve the TBT IMS, including the initial discussions on an alert system. He also recalled that in that occasion the Committee had concluded that any improvement on TBT IMS would be beneficial to those who did not have resources to develop their own web-based applications. In general, the EU expressed its interested in engaging in a discussion of further improvements to IMS, particularly on with respect to increase the system's user-friendliness. Like the United States, he noted, however, that some Members had already invested significant financial and human resources in developing their own national alert systems. Thus, the implications of future WTO-based alert system for existing systems needed to be carefully considered. He also pointed out that national systems could, to some extent, be even better than a global one at reaching certain categories of stakeholders. He said that the EU would give serious consideration to the Canadian proposal and noted that the Committee could – along with the topic of transparency and IT more broadly - discuss it further at the upcoming thematic session on the 7th triennial review in March 2015.

2.293. The representative of Ukraine supported the Canadian proposal and noted the benefits it could have for stakeholders. She was of the view that to have a common platform, operated by the WTO, could be the optimal solution for many enquiry points and notification authorities considering their own limited resources. Nevertheless, further consideration and discussion was necessary in the Committee.

2.294. The representatives of Cuba, the Dominican Republic, Guatemala, the Philippines, Chinese Taipei and Trinidad and Tobago welcomed the Canadian initiative as it built on the transparency provisions of the TBT Agreement. The importance of an efficient and effective alert system that facilitated a dissemination of information to stakeholders, in particular in developing countries, was noted. The representative of Chinese Taipei informed the Committee that its notification authority would join the online TBT notification submission system (TBT NSS) on 1 January 2015.

2.295. The representative of Canada responded to a number of issues raised. With respect to the voluntary or compulsory nature of the proposal, he stressed that the proposal was not intended to create any additional requirements on Members; rather, it was intended to make existing information more readily available and interpretable for stakeholders or governments. It was about "packaging" the information, not requesting more of it. Canada further noted that UN DESA was currently considering a similar initiative aimed at least developed countries (LDCs) and that synergies could be explored. With respect to the role of national initiatives, Canada drew the Committee's attention to paragraph 2.9 of its proposal which suggested that Members' Enquiry points could login to the alert notification system that would filter and provide Enquiry Point staff with a database of subscribers registered in their country – this could actually enhance the information provided and make the proposed system more relevant. On China's point about operation, working languages and budget – this would have to be discussed subsequently.

2.296. The Secretariat noted that it was open to enhancing the existing TBT IMS and that it had done so previously on a step-by-step basis in response to Committee recommendations. Should the Canadian proposal further evolve and a mandate established by the Committee, for instance in the form of a recommendation, the feasibility of implementing the project would be assessed, including with respect to resources needed.

2.297. The Chairman noted that there was substantial interest for the Canadian proposal and that several ideas were on the table, including a number of substantive, procedural and budgetary issues that remained to be addressed. He encouraged further discussion in the Committee to find a common understanding and noted that the Committee could build on this work in the forthcoming triennial review.

2.3.3 Chairman's Report on the 4 November 2014 thematic session

2.298. The Chairman presented his report on the thematic session held on 4 November 2014 on the topics of conformity assessment procedures, and technical assistance and special and differential treatment. The full report, including a brief summary of each presentation, is contained in G/TBT/GEN/174.

2.3.4 Good Regulatory Practice (JOB/TBT/119)

2.299. The Chairman reported on his consultations and work related to the list of voluntary mechanisms and related principles of Good Regulatory Practice (GRP). He recalled the mandate before the Committee[11] and noted that this work had been going on for some time. He further recalled that after the September 2014 informal meeting the Committee had agreed on a two-track approach. Under the first track, and on the one hand, he had – as Chairman – addressed substantive issues in the text of the document itself. In this vein, a new round of comments was opened and several comments had been received from Members. The Chairman stressed in this process he took a minimalist approach when taking into account the comments received, i.e. he reflected those comments which sought to clarify the text and that did not substantially change its meaning. He explained that he had done this because the text that the Committee had looked at in June 2014 had already been considered quite stable. His proposals were eventually issued as JOB/TBT/119 on 27 October 2014. Then, in parallel, the second track involved a process of consultations on systemic issues, namely those relating to the legal status of the document.

2.300. The chairman stressed that, for the current meeting, the time had come to merge the two tracks he had just outlined. He had therefore circulated a Room Document (in all three languages) containing an only slightly revised version which incorporated only six changes compared to the original proposal (JOB/TBT/119). He also informed that a "track change version" had been made available for Members so that they could see exactly what modifications had been made. The Chairman stressed that the Committee had spent quite some time debating the issue at hand and, in his view, everyone's positions were clear. The document, he said was the result of a compromise, a delicate balance. In this respect, he thought appropriate concluding his remarks by quoting the renowned Portuguese poet Fernando Pessoa, who said: *We worship perfection because we can't have it; if we had it, we would reject it. Perfection is inhuman, because humanity is imperfect*.[12]

2.301. The representative of India thanked the Chairman and the Secretariat for a draft text which took into account the sensitivities of all Members and said that, in his delegation's view, the Committee was on the verge of a final balance. He said India could only offer some preliminary comments since the revised draft proposal had only been issued late the previous day. India considered that there were a few loopholes in paragraph 3 that needed to be rectified. First, what had originally been three sentences had been merged into one. It needed to be considered whether a different meaning had been conveyed, in particular with respect to the word "thereof" at end of the second sentence in paragraph 3. He asked if this word qualified the phrase "TBT Agreement" or only the phrase "any other WTO agreement". He noted that the Committee had started with two clear sentences. India's intention was to ensure that the list did not constitute any interpretation of the TBT Agreement. He also expressed his delegation's doubts with the meaning of the word "list". Did it refer to the complete table? Or, instead, did it refer only to the list of "possible steps and examples of mechanisms", i.e., not including the third column of the table? This was not clear because the first sentence in paragraph 3 only referred to the "list of possible steps and examples of mechanism". India was also of the view that the disclaimer needed to stand alone as it had done before – and not be merged as this added to ambiguity and confusion.

2.302. Second, the Indian delegation did not endorse the use of the word "authoritative" as this was subjective. Moreover, if used, it would imply that there were some other kinds of interpretations that were still possible which would *not* be authoritative. In this regard, the basic purpose of the document was to list voluntary mechanisms and principles of GRP for the purpose of assisting policy makers in implementing the Agreement; it was *not* about deriving any legal interpretation of the Agreement. More work was therefore necessary to finalize the document.

[11] Paragraph 4 of G/TBT/32.
[12] *Autobiografia sem Factos*, p. 249.

2.303. The representative of China shared the concerns expressed by India. He thanked the Chairman and Secretariat for the consultative process and the positive progress that had been made. However, he regretted that not all his concerns had been clearly reflected. First, he noted that in the e-mail conveyed to Members by the Secretariat on the evening before the current meeting, six changes had been incorporated in the latest version of paper. China regretted that a seventh suggestion by China[13] – the deletion of the word "may" – had not been reflected. While this was not a "life or death" issue for China, it was an important one because it helped reinforce the relatively weak Special and Differential Treatment mechanisms in the GRP paper and thus brought some comfort to developing country Members, and particularly LDCs. He asked other Members whether for them this change was so important that it could be characterized as a "life or death" issue.

2.304. The disclaimer (paragraph 3) was, in China's view, the core issue that divided Members. While China was pleased with the information session held on 4 November 2014 to educate delegations about WTO Committee documents referenced to in WTO Panel and Appellate Body reports, it was now necessary to take some time to digest the Secretariat's compilation. China was seeking more clarity on the language regarding "authoritative interpretation" and its added value. According to Article IX:2 of the WTO Agreement (on Decision-Making), the "Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements" – this included the TBT Agreement. The language contained in the proposed legal disclaimer meant the same thing. As the GRP paper would be adopted by the TBT Committee rather than as a Ministerial Declaration or as General Council document, it went without saying that this document did not constitute an interpretation by the Ministerial Council or the General Council. Thus the language did not have any added value. The mechanisms could still be used by a WTO Panel to interpret the relevant provisions of the TBT Agreement. Preliminarily, the Chinese delegation said that they could manage with a language similar to that of the SPS document; that is: replacing "constitute and authoritative interpretation" with the language "provides any interpretation".

2.305. The representative of the United States said that it was unfortunate that India and China did not feel that the compromises that had been struck during the informal consultations had been enough. The US delegation, together with other delegations, had worked very hard to come up with a compromise solution that would make everyone comfortable. In light of the many concessions that it had already made, the US was not therefore comfortable with further changes to the document.

2.306. The representative of the European Union thanked the Chairman for consultations that had been well-handled and had proved effective. They were effective because the number of open issues had been reduced to only a few – and the Committee did, indeed, have a largely agreed outcome document. The attainment of such small number of outstanding issues (currently reduced to the term "may", mentioned by China) was possible because all other requests from China, India and other delegations had been considered and accommodated in the text, including their requests: (i) to add elements on special and differential treatment in various places of the text; and (ii) to clarify certain provisions in order to make them appear less "burdensome" (there were in any case voluntary in nature) for developing countries. In other words, some Members had had made genuine efforts to bridge positions and to accommodate the requests of others, and the EU had made a number of compromises and concessions on the originally proposed text. It was therefore unfortunate and regretful that this had been met with inflexibility.

2.307. He said that the EU nevertheless still remained persuaded that the document did not require any disclaimer in the first place. For instance, every second line of the text contained language such as "may", "non-prescriptive", "illustrative", "for example", "according to administrative capacity", or "depending on the level of economic development". And yet, reluctantly, the EU had accepted the compromise put forward by the Chairman. The EU was not willing to go any further. Now it was up to other Members who had not shown flexibility to take responsibility for the Committee not being able to adopt the document. The EU also noted that the majority of Members looked forward to the document because it was considered to contain useful guidance, especially for developing countries in the process of setting up regulatory systems, administrative procedures, and processes for rule-making. Indeed, it was a useful compendium of

[13] Shown highlighted in yellow in the middle of page 6 of JOB/TBT/119/Rev.1.

existing practices – basically a menu of tools which each Member could pick and choose from depending on whether it would fit their systems or not.

2.308. The EU further noted that the presentation at the informal information session had also demonstrated that in no case had a Panel or Appellate Body used a Committee document as the basis for their interpretation. They reached the interpretation of specific provisions according to other criteria, and then they looked at Committee documents to see if there was anything that would contradict their interpretation or could confirm their interpretation. But in no way – regardless of various disclaimers used – was a recommendation used or rejected as a possible source of interpretation of provisions in Agreements. Hence, the issue of legal interpretative value had been overly exaggerated in the context at hand. What was currently on the table was a very balanced document.

2.309. The representative of Argentina noted that the main point of contention appeared to be the disclaimer. One possibility was to accept paragraph 3 as it currently stood (leaving it unchanged) and eliminate column three in the document (where articles of the TBT Agreement were quoted).

2.310. The representative China insisted that his delegation had been constructive throughout the process. It was important to address legitimate concerns of LDCs. China drew the Committee's attention to discussions in the SPS Committee were delegations were discussing a simple working definition for "private standards" for more than three years without consensus. Part of the reason for the failure to achieve consensus on such definition in that Committee was the fact that some large Members had insisted on including a strong legal disclaimer to that simple working definition. If the EU was asking about responsibility for failure, the representative of China wished to turn that same question back: who should take responsibility for a lack of consensus in the SPS context? Moreover, China could not agree with the reading of Panel and Appellate Body reports that the EU had provided, particular the *US - Tuna II* Reports. In this case the WTO Panel and Appellate Body had clearly regarded the TBT Committee document on the "Six Principles"[14] as a "subsequent agreement". The Appellate Body had thus used this decision to interpret what constituted an international standard. This justified China's concern and that of other Members.

2.311. The representative of Brazil thanked China, India and other Members for raising an important systemic discussion. As the Chair, he also mentioned the Portuguese poet Fernando Pessoa, who, he recalled, wrote a book called "*The Book of Disquiet*,"[15] a title that also described how he felt with these discussions. He wished to comment on the discussion from two different points of view. It was a given that Members must be fully aware and cognisant of what they do and decide in WTO Committees in which they participate. It was also important that they be careful and cautious about implications and the impact of what they together agreed in a document. On that same side of the equation, he recalled – as China and others had done – that some disclaimers had been inserted in several documents; there were two or three important precedents in the SPS Committee with somewhat different language used in each case. This needed to be taken into account. On the other hand, the Committee would do well to take time to ponder the implications of the reinforcement of this precedent, namely: the insertion of all kinds of disclaimers in the work of all Committees in which we Members participate. Delegations needed therefore to ask themselves: what room would be left for the work of Committees, which convened and worked according to Article III of the Marrakesh Agreement (on the Functions of the WTO), to further the objectives of the Agreements and to facilitate their operation and administration? If the Committee would decide to insert – without prejudice as to whether this was right or wrong, good or bad – a very strong disclaimer language in a document called a voluntary "list", then the representative of Brazil would venture to say that all other documents that came out of the Committee that were more than a list would have to have a disclaimer.

2.312. The representative of Brazil stressed that he was not making any particular affirmation; rather, he was simply calling for thoughtful consideration. As regards the list of Panel and Appellate Body Reports presented at the Committee's informal information session (4 November 2014), he noted that 20 were Panel Reports and 4 were Appellate Body Reports. With respect to the Appellate Body decision in *US – Tuna II*, while, of course, it could be said that the Appellate Body went too far, the real question was another one: what should we (the TBT Committee) do

[14] G/TBT/1/Rev.11, Annex 2, page. 45.

[15] "*Livro do Desassossego: Composto por Bernardo Soares, ajudante de guarda-livros na cidade de Lisboa)*", published posthumously in 1982, 47 years after Pessoa's death.

about it this? What should be done when such a decision was not to the Committee's liking? Do we put a disclaimer on all we do? Another option was to tell the Appellate Body that it was *not* a good decision. This could be done in future cases, in a statement in the DSB – there were several ways of influencing future decisions. All this needed to be considered so that the Committee could find an acceptable path that would not haunt or hobble its future work.

2.313. The representative of India associated himself with the points made by the delegation of China. India could also support the proposal made by Argentina. On the issue of taking responsibility, India noted that this was about bridging the few remaining gaps, a goal India was ready to work towards to. At the same time the gaps were ambiguous and needed further work. It was important not to delve in constructive or deliberate ambiguity in trying to achieve a compromise.

2.314. The representative of the European Union appreciated the statement by Brazil. Consequences of disclaimers needed to be considered. What would happen if the Committee started to put into question what it did by adding disclaimers to what had been agreed? He stressed that the document was part of an overall package, it was a balanced compromise. On the point made by China, the EU stressed that there was an important difference with the work done in the SPS context on private standards. He explained that in the SPS context the document being discussed would have given the impression that there was agreement that private standards fell within the scope of the SPS Agreement. The disclaimer had, in that case, been a precondition by the EU to accept a discussion of private standards in the SPS context. GRP in TBT context was an altogether different matter as there was no question about GRP being an important component of the effective implementation of the TBT Agreement. There was consensus about this and the matter had been reiterated since the Second Triennial Review – thus the contexts were not comparable.

2.315. The representative of Mexico thanked the Chairman and the Secretariat for the transparent process of the negotiation on the document. Moreover, the informal information session of 4 November 2014 had been very useful. She expressed her delegation's disappointed with the lack of agreement. Clearly, the document was not perfect – but it came close and the Committee had worked on it for a long time and had a mandate to do so. Mexico remained convinced that the use of disclaimers would have repercussions further down the line. She thanked Brazil for their intervention in this regard. Mexico was not fully comfortable with the use of a disclaimer but, in the spirit of compromise, had accepted the Chairman's text. She expressed Mexico's doubts on what the next step should be. Mexico could accept the text as it stood, as a package. Mexico would therefore feel unconfutable with the idea of introducing more changes to the document.

2.316. The Chairman thanked all Members for their interventions. He said that the discussion had been useful in that at least there was agreement on the whole text, except for the disclaimer (in paragraph 3) and for the word "may" in the middle of page 6.[16] He noted that no other issue had been raised by delegations. To the contrary, many delegations stressed the value of the document – it was, after all, a list aimed at deepening the understanding of the ways in which Members could implement the TBT Agreement. Also, eventually, it was important to show that this organization could agree – albeit at a different level (this was not the DDA) – but agree nonetheless on a document, by consensus. It was important to reflect if the issue of the disclaimer – having it or not having it – was so important as to block the adoption of the document. He also stressed that he was not taking any side on this – simply trying to facilitate an agreement. With respect to the comments made on whether or not drafting suggestions by Members had been taken into account, he noted that this was always difficult. When one Member's comments were taken into account another had to concede. The negotiation of the text could be described as a formula for an "equal distribution of pain". The Chairman promised therefore to continue to "distribute pain". For now, and for clarity, he asked that the Committee confirm: the text was *closed* except for the disclaimer (in paragraph 3) and the word "may" (on page 6). It was so agreed.

3 TECHNICAL COOPERATION ACTIVITIES

3.1. The Secretariat updated the Committee on technical assistance activities undertaken and planned for the 2014-2015 biennium, which contained an intense TA agenda, due to, in great part,

[16] Highlighted in yellow and within square brackets in JOB/TBT/119/Rev.1 (circulated subsequent to the meeting, on 4 December 2014).

a large number of national TBT-specific activities: 20 (10 undertaken in 2014, and 10 planned for 2015). He said that demand has been particularly high from Latin America from which almost half (8) of such requests came from. Many of the requests for national and regional activities (10 in total) were for joint TBT-SPS activities. Such joint activities were organized in partnership with SPS colleagues from the Agriculture Division. The Secretariat has also organized (or planned to organize) 6 TBT-specific regional activities. He highlighted that some of the workshops, in particular, regional workshops, were organized in partnership with the host country. In this respect, he took the opportunity to thank the Brazilian Government, in particular Inmetro, for the financial, logistical, and intellectual support given at the IADB/WTO workshop for Latin American countries that had taken place in Brazil in September 2014. The Secretariat also informed the Committee that the Fifth Advanced Course on the TBT Agreement would take place in March 2015, where 25 participants would be selected to attend the two week course. She encouraged developing country Members to submit candidatures. A document containing information on the Secretariat's technical assistance activities was made available.[17]

3.2. The representative of Brazil thanked the WTO Secretariat for the assistance provided in the organization of the national workshop on TBT held back to back with the regional workshop in September 2014. This event, he said, was attended by government officials and stakeholders and provided a highly qualified forum for TBT related issues.

3.3. The representative of El Salvador thanked the WTO Secretariat for its support at a national workshop on the TBT and SPS Agreements which had taken place in September 2014, attended by officials from technical regulations body, the consumer defence committee and the Ministry of Agriculture.

3.4. The representative of Paraguay expressed his delegation's interest in holding a national workshop in 2015.

3.5. The representative of the IEC updated the Committee on its technical assistance related activities[18], including the Conformity Assessment Committee (CAC) launched by the African Electrotechnical Standardization Commission (AFSEC), a two day training seminar in Paraguay on IECEE conformity assessment activities and a new technical mentoring partnership between Uruguay. He also informed the Committee that the 78th General Meeting would take place in Tokyo from 10-14 November.

3.6. The representative of the BIPM informed the Committee that the BIPM, along with OIML had participated in the AFRIMETS Legal Metrology School in Tunisia in October 2014. He also said that the BIPM would be proposing to extend its current practice of allowing staff from national metrology institutes from developing countries to spend time at BIPM so as to have a better understanding of metrology.

4 UPDATING BY OBSERVERS

4.1. The representative of ISO informed the Committee that a new publication on using and referencing ISO and IEC standards to support public policy and technical regulations was now available.[19] He also highlighted the continued development of the ISO Academy[20] which pulled together numerous training and development initiatives to build the capacity of members to meet their commitment to good standardization practices. Further updates on courses and partnering initiatives with members would be made available in the coming months.

4.2. The representative of the BIPM informed the Committee that Sudan and Yemen had recently become associates, bringing participation to 56 member states and 41 associate states and economies. He said the General Conference would take place from 18-20 November, the agenda of and related documents of which were on the BIPM website.[21] Concerning the scientific progress

[17] G/TBT/GEN/171/Rev.1.
[18] Full details are on the IEC website (http://www.iec.ch).
[19] http://www.iso.org/sites/policy/documents/Using%20and%20referencing%20ISO%20and%20IEC%20standards%20to%20support%20public%20policy%20-%20EN.pdf.
[20] http://www.iso.org/iso/home/about/training-technical-assistance.htm.
[21] http://www.bipm.org/en/cgpm-2014/.

towards the revision of the international system of units (SI), he said this would bring significant future proofing to the scientific community, but that the changes were not expected to have an impact on the trade community.

4.3. The representative of UNECE informed the Committee that WP6 recently had recommendations on references to standards and education related standards, both of which would be the focus of the annual session taking place on 24-26 November.[22]

4.4. The representative of the Kingdom of Saudi Arabia proposed that the Committee accept the application for observer status submitted by the GCC Standardization Organization (GSO). The proposal was supported by Qatar, Egypt, United States, Jordan and Canada. The Committee therefore agreed to grant *ad hoc* observer status to the Gulf Cooperation Council Standardization Organization (GSO).

5 REPORT (2014) OF THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE

5.1. The Committee adopted its 2014 Report to the Council for Trade in Goods (G/L/1092).

6 DATE OF NEXT MEETING

6.1. The next regular meeting of the Committee is scheduled for **18-19 March 2015**. It will be preceded by a thematic session to be held on **17 March**.

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[22] http://www.unece.org/trade/wp6/welcome.html.