

New Concerns

Turquia, Malásia, Zâmbia, México, Indonésia, Tanzânia, Zimbábue, República Dominicana, Moçambique, Equador, Jordânia, Quênia, Macedônia, Chile, Nicarágua, Honduras, Cuba, Colômbia e UE x Brasil – Draft Resolution No. 112, 29 November 2010; maximum levels of tar, nicotine and carbon monoxide permitted on tobacco products and prohibition of additives (G/TBT/N/BRA/407)

Brazil – Draft Resolution No. 112, 29 November 2010; maximum levels of tar, nicotine and carbon monoxide permitted on tobacco products and prohibition of additives (G/TBT/N/BRA/407)

The representative of Turkey raised concern over Brazil's draft resolution which would define permitted levels of tar, nicotine and carbon monoxide in cigarette smoke and prohibit the use of a comprehensive list of additives (listed in the annex to the resolution) in all tobacco-related products manufactured and sold in Brazil. Turkey did not question the legitimate objective of Brazil's regulation, namely, the protection of human health and prevention of deceptive practices, but was concerned with the procedures that Brazil had chosen to achieve it. The representative of Turkey explained that the additives prohibited included any substance or compound other than tobacco and water, whether used to process, manufacture or pack tobacco-based products including flavourings, aromas and ameliorants.

He explained that some of the banned additives were essential components of Burley and Oriental tobacco, used in blended cigarettes and that as a result, the regulation would effectively ban blended tobacco products from the market. Prohibiting blended tobacco products would unintentionally favour non-blended tobacco products and go against the stated objectives of the regulation. Turkey was of the view that the regulation was more trade restrictive than necessary and would violate Article 2.2 of the TBT Agreement.

Moreover, the representative of Turkey questioned the choice of additives included in the annex to the draft resolution. He explained that some additives were essential components for blended cigarettes and did not give any characterizing flavours to the product, leaving blended and non-blended products with the same taste. Turkey was of the view that Brazil had based its decision on the ingredients exclusively, without considering the effects of such ingredients on the final product. By grouping the additives used during the blending process and those lending strong characterizing flavours into the same category, the regulation would violate Article 2.8 of the TBT Agreement. He asked whether less trade restrictive measures, such as only limiting additives with characterizing flavours, had been considering.

Furthermore, he noted that Brazil had not cited any studies, as required in the TBT Agreement. He claimed that there was no scientific evidence to demonstrate that additives used in blended tobacco made those products either more attractive for consumers, more harmful to health or more addictive. He requested Brazil to provide evidence that the additives used for blending tobacco, as included in the draft resolution, posed increased risk for human health. He also asked for comparative data on the attractiveness of blended versus non-blended cigarettes, and data on the human health risks of additives used for blending versus additives that gave characterizing flavours. He concluded by noting that Turkey produced 80,000 pounds of Oriental tobacco annually, and stated that Brazil's regulation would affect Turkish social, economic and export interests.

The representative of Malawi noted that, in banning additives in tobacco products and prohibiting the manufacture and sale of cigarettes containing any ingredients other than tobacco and water, Brazil's regulation would effectively ban the manufacture and sale of traditional blended cigarettes produced using Burley tobacco. Malawi was of the view that Brazil's draft resolution was even more restrictive than legislation adopted by Canada in 2009 – Bill C-32. He noted however that while traditional blended cigarettes held a very small market share in Canada, they made up almost 100 per cent of the cigarettes currently sold in Brazil. Malawi did not object to Brazil's public health objective of reducing the incentives for young people to smoke, but believed that the proposed legislation was not an appropriate international model for the regulation of ingredients, since it had not been based upon any meaningful scientific assessment or evaluation of ingredients. He noted that Malawi's concerns over Brazil's regulation were the same as its concerns over Canada's Bill C-32.

The representative of Malawi claimed that there was no reliable evidence to suggest that the use of flavours caused minors to begin smoking. Instead, he claimed that evidence, and research that existed on the subject, indicated that ingredients were an irrelevant predictor for smoking. Societal influences including peer pressure, parental or family influence and the desire to be perceived as fashionable, independent and more "grown up" were widely acknowledged as the primary explanations for smoking uptake by young people. Moreover, research had demonstrated that there was no significant difference in smoking prevalence between American blend and Virginia style dominated markets. As such, Malawi was of the view that the legislation proposed by Brazil would pose an unnecessary obstacle to international trade, violating Articles 2.2 and 2.8 of the TBT Agreement.

The representative of Malawi also expressed concern that Brazil's legislative model could be adopted on a wider basis. Should this occur, he explained that many consumers worldwide who traditionally preferred American blend cigarettes would no longer have legitimate access to their preferred product. Such a situation could incentivise illicit trade in counterfeit and contraband cigarette products. Additionally, the ability of tobacco manufacturers to develop new products would become compromised. In particular, he said that the legislation would disproportionately harm producers of Burley tobacco, including the approximately 700,000 farmers who cultivated tobacco in Malawi. He explained that Malawi was the world's largest exporter of Burley tobacco, accounting for approximately 25 per cent of world production, with an approximate annual crop volume of 208,682 metric tonnes. The tobacco industry in Malawi contributed approximately 13 per cent of the country's GDP and 60 per cent of its foreign exchange earnings. Given that tobacco was Malawi's most important cash crop, that the tobacco industry was the main driver of growth for the economy, and that all of Malawi's Burley tobacco was bought by cigarette manufacturers to be used in the international production of traditional blended cigarettes, the consequences of Brazil's proposed legislation being adopted on a wider basis would be unthinkable.

Malawi recognized the health risks associated with the use of tobacco products, and was of the view that the development of an appropriate and proportionate international framework to regulate the industry, based on sound scientific evidence, was both necessary and right. However, Malawi considered that the legislation being proposed by Brazil was not an appropriate international model for the regulation of ingredients, given the scientific evidence available and the likely consequences of adopting this legislation more widely.

The representative of Malawi called on Brazil to refrain from implementing the proposed regulations and to consider less restrictive measures that would comply with WTO obligations while safeguarding the economic well-being of Malawi. Furthermore, Malawi called on Canada to overturn Bill C-32, and also called on other Members to refrain from adopting similar legislation in the future. Finally, he noted that Brazil had ratified the World Health Organization's Framework Convention on Tobacco Control (FCTC) and asked Brazil whether its current proposal contradicted or implicitly undermined the purpose and spirit of the

interpretive declaration it had made. He noted that Malawi, and the Executive Council of the African Union, had endorsed the Declaration of the African Ministers of Trade on the Framework Convention on Tobacco Control.

The representative of Zambia explained that while his delegation did not question the objective of Brazil's measure, namely of protecting human health and preventing deceptive practices, Brazil's regulation could have major trade implications, and could violate Article 2.2 of the TBT Agreement. He informed the Committee that the Brazilian measure had been extensively discussed during the WHO FCTC Fourth Conference of the Parties held in 2010. Furthermore, Zambia was of the view that the submissions by the Working Group on Article 9 of the FCTC had not been fully adopted and as a result, the mandate of the Working Group had been extended to the Fifth Conference of the Parties, scheduled for October 2012. In particular, the Working Group on Article 9 would undertake further work on issues relating to the definition and measurability of attractiveness and palatability of ingredients necessary in the production of traditionally blended cigarettes. He noted that Brazil had fully participated in past deliberations.

Because of the potential implications of the Brazilian and other similar measure on traditionally blended cigarettes, and the tobacco varieties specific to blended cigarettes, the representative of Zambia posed a number of questions: What scientific evidence and experience from other countries had Brazil considered in preparing this regulation? On the basis of that evidence, how would banning the production and sale of tobacco-based products containing additives protect human health and deceptive practices in Brazil? What scientific evidence had been used to measure the effect of ingredients on the palatability of tobacco products?

He also questioned why Brazil had gone forward with its regulation, which it had stated was based on the WHO FCTC, when the relevant FCTC Working Group had not finished its work. He reiterated his understanding that the guidelines being prepared by the Working Group would not be completed until October 2012. Because the outcome of the Working Group on Article 9 would serve as useful guidance for countries contemplating possible measures, Zambia saw Brazil's measure as premature.

Moreover, the representative of Zambia said that the Brazilian measure posed systematic concerns for traditionally blended tobacco products. In this regard, he noted that the Fourth Conference of the Parties to the FCTC had recognized the difficulties that could be associated with blanket measures such as a total ban, and that general discussions had favoured restriction over prohibition. He noted that Zambia was ready to engage with Brazil on this matter, either bilaterally or through other channels.

Finally, he commented that tobacco-related trade concerns had been on the agenda of the TBT Committee for some time, and were likely to continue to be discussed as Members adopted such measures to meet their national policy objectives and fulfil regional or multilateral obligations. In order to facilitate coordination at the national level, and to ensure the supportiveness of obligations undertaken by Members in various multilateral fora, the representative of Zambia proposed that the TBT Committee organize a joint meeting with the WTO and FCTC. Zambia was of the view that it was important to find a lasting solution and that this approach would be the most effective way of addressing Members' tobacco concerns in a holistic manner. He highlighted that this discussion closely mirrored similar discussions on specific trade obligations set out in multilateral environmental agreements in relation to WTO rules.

The representative of Mexico stated that his delegation shared Brazil's objective of protecting human health. However, he was worried that the Brazilian measure not only followed the same path as the Canadian Bill C-32, but was in fact more restrictive since it also banned menthol. He noted that while Mexico's exports of tobacco products to Brazil were currently limited as compared to other Members, the proposed regulation would impose a barrier to future growth potential.

The representative of Mexico elaborated four specific concerns with the Brazilian measure. First, relating to Article 2.9 of the TBT Agreement, it was Mexico's understanding that after the deadline of 31 March 2011 for presenting public comments on the draft resolution, Brazil could potentially implement the measure immediately, without Congress examining it. He asked for clarification on whether Brazil intended to implement the measure immediately following the deadline of public consultation.

Second, it was the view of Mexico that the measure was inconsistent with Article 2.2 of the TBT Agreement as it was more trade restrictive than necessary to achieve the legitimate objective of protecting public health. He explained that other countries had successfully used less restrictive measures, such as limits on additive levels, without banning their use, to reach their human health objectives. He also echoed previous interventions to the effect that, to date, no study or scientific evidence supported regulation of the type proposed by Brazil's draft resolution.

Third, he noted that technical regulations should be based on the use of products rather than design or descriptive characteristics. As such, by regulating ingredients *per se* instead of only tobacco products that presented certain characteristic additives, he believed that Brazil's regulation was contrary to Article 2.8 of the TBT Agreement.

Fourth, he stated that the fact that Brazil's draft regulation was purportedly based on the WHO FCTC had no relevance as to whether the measure was in line with WTO Agreements, as would be the case with any convention in another international organization directing the actions of Members, since the WTO Law System was in general self-contained. Moreover, he claimed that Brazil's proposed measure did not even fall within the mandate of the FCTC. At the FCTC's fourth Conference of the Parties (COP 4) in November 2010, Parties had partially adopted the guidelines of implementation of Articles 9 and 10 of the FCTC. He elaborated that section 3.1.2 of these guidelines had established that measures considered necessary to regulate ingredients of tobacco products would have to be based on conclusive scientific evidence and on the experience of other countries.

In spite of the fact that these guidelines allowed for restrictions on the use of ingredients, he explained that Parties at COP 4 had deemed it necessary to have additional scientific evidence to establish links between the banning of ingredients and the addictiveness or toxicity of tobacco products. Indeed, this point was to be further discussed at COP 5 in 2012. As such, Mexico was of the view that Brazil's proposed measure was premature. Moreover, Mexico was concerned that a tobacco producer such as Brazil was following a precedent that could lead to confusion for other Members as to how they should regulate tobacco products. He echoed Zambia's proposal to organize a joint meeting with the WHO Secretariat of the FCTC so as to increase awareness of TBT issues and coherence with other international organizations.

The representative of Indonesia requested clarification on a number of issues related to Brazil's draft regulation. First, regarding the definition of tobacco products, he asked whether these definitions extended to crafted cigarettes. Second, he asked what international laws Brazil had referred to in establishing maximum levels of permissible tar, nicotine and carbon monoxide. Also had sought further explanation as to the rationale for the inclusion of each additive, and whether the prohibition applied to both smoke and smokeless products.

Third, he explained to the Committee that Article 4 of the draft resolution prohibited the use of any description on tobacco product packaging or advertising materials that could give consumers misleading information. Referring to words such as class, ultra-low content, low content, soft, light, mild, moderate, and high-content, he asked Brazil to clarify which words were prohibited and provide examples of words still permitted. In this regard, he asked whether Brazil planned to initiate a process to pre-approve packaging and whether the use of brand names which contained prohibited words would also be banned.

Fourth, he noted that Annex I to the Brazilian draft resolution outlined a number of exceptions to the ban on the use of additives, for instance, additives that were required to manufacture tobacco products had been excluded. He asked Brazil to explain how and why certain types of additives could be excluded from the ban. Fifth, he observed that in Article 3 of the draft resolution, limits for tar, nicotine and carbon monoxide in the cigarettes sold in Brazil had been determined by quantitative laboratory analysis. He asked which standard Brazil had used to determine quantitative analysis and the kinds of laboratories that were recognized to perform the analysis.

Finally, in relation to Article 2.9.2 of the TBT Agreement, he noted that Article 4 of Brazil's draft resolution stated that the measure would take effect immediately. He asked for clarification on this matter, and in particular, if and how long a transition period for compliance would be permitted for manufacturers and importers of cigarettes. If the measure was to apply immediately, he asked if this meant that Brazil regarded the problem as urgent, as described in Article 10 of the TBT Agreement.

The representative of Tanzania noted that Tanzania was one of Africa's major tobacco growing countries, and that Brazil's proposed law would disrupt his country's tobacco leaf exports and imports. He explained that the Brazilian market was predominantly a traditional-style blended cigarette market. Traditional blended products used different grades of Burley, Virginia and Oriental tobacco and required blending with certain ingredients, which the Brazilian law sought to prohibit. As such, tobacco manufacturers in Brazil would no longer be able to manufacture traditional blended cigarettes for the Brazilian market, or for export, which would have a negative impact on imports of tobacco into Brazil, including tobacco from Tanzania.

The representative of Tanzania further explained that the Brazilian draft resolution would introduce significant changes in tobacco blends, which would in turn impact demand for different leaf grades of Burley, Virginia and Oriental tobacco. Tanzania was of the view that the draft resolution was more trade restrictive than necessary to meet the legitimate objective of protecting public health. In particular, the draft resolution would have a devastating impact on Tanzania's tobacco leaf exports and Tanzania's long-term tobacco crop development prospects. Tanzania produced an annual crop of approximately 12,000 metric tonnes, the majority of it being Virginia tobacco. Moreover, approximately 100,000 families were involved in growing tobacco, with over 95 per cent of the crop being exported to manufacturers worldwide, including Brazil. This generated annual revenue of USD231 million in export earnings. He noted that any measure that restricted blended cigarettes would therefore have devastating implications on Tanzania's earnings. Other cash crops had been struggling in global markets in terms of price, and tobacco had become the leading cash crop in Tanzania.

He stated that the Brazilian draft resolution could easily be implemented in a less trade restrictive manner, while still meeting its objective. He reminded the Committee that Article 2.2 of the TBT Agreement prohibited WTO Members from adopting technical regulations that had the effect of creating unnecessary obstacles to trade meaning that technical regulations shall not be more trade restrictive than necessary to fulfil a legitimate objective, taking into account the risks that non-fulfilment will create. He asked Brazil to explain how its draft resolution was consistent with these requirements.

The representative of Tanzania also noted that only partial guidelines on Articles 9 and 10 of the WHO FCTC had been adopted during its Conference of the Parties in November 2010. In particular, section 3.1.2 of the guidelines had placed emphasis on the need for scientific foundation of measures. Tanzania was also of the view that Brazil had not demonstrated that traditional blended cigarettes exhibited discernable flavours.

Finally, he explained that Article 12.3 of the TBT Agreement required Members to ensure that their technical regulations did not create unnecessary obstacles to exports from developing

country Members. According to Tanzania's information, Brazil imported over USD6 million of tobacco from least-developed countries, Tanzania included, and over USD60 million from other developing countries. As such, Brazil's resolution would negatively impact developing countries, particularly LDCs, whose development Brazil had always supported. He urged Brazil to adopt a regulation that would take these concerns and obligations into account.

The representative of Zimbabwe also supported the health objective behind Brazil's regulation, but cautioned that this topic needed to be addressed in a scientific manner, which did not contradict the TBT Agreement. He explained that Zimbabwe was one of the major producers of Burley and Virginia tobaccos; that the industry generated employment for many Zimbabwean families; and that tobacco was the country's largest foreign currency earner. If implemented, the measure would have a devastating effect on employment, foreign currency earning and on the general state of the Zimbabwean economy. He urged Brazil to wait until after COP 5 of the FCTC to proceed with its legislation on this topic. He noted that basing regulations on scientific evidence and the TBT Agreement would facilitate trade rather than obstruct it.

The representative of the Dominican Republic shared the concerns of others and explained that by prohibiting additives, Brazil's regulation constituted a *de facto* prohibition on the manufacture and sale of traditional blended cigarettes, and the additives used therein. As a result, this would give rise to a prohibition on the use of Burley and Oriental tobacco in Brazil. Conversely, Brazil's regulation would allow the continuous production of cigarettes free of additives, using only cured tobacco, of which Brazil was the world's largest producer.

The Dominican Republic was of the view that Brazil's measure did not comply with Articles 2.2 and 2.8 of the TBT Agreement. He elaborated that in order to determine whether a measure was excessively trade restrictive, Members had to consider scientific and technical information. In particular, he expressed concern that the measure was more trade restrictive than necessary. His delegation believed that the measure sought to prohibit traditionally blended cigarettes, notwithstanding the lack of scientific evidence showing that they provided tastes and flavours different from the characteristic ones of tobacco. Furthermore, the measure was incompatible with Article 2.8 of the TBT Agreement, since it was based on design or descriptive characteristics. As an alternative, the representative suggested that Brazil prohibit tobacco products that presented fruity or sweet flavours, different from tobacco.

He asked whether Brazil's proposed measure had been based on scientific evidence. Specifically, he asked whether scientific evidence existed showing that flavours that do not provide distinctive flavours such as fruit or sweets could give rise to an increase in smoking. Furthermore, he inquired if there existed evidence showing that traditional cigarettes were particularly attractive to youths as compared to cured tobacco, or that additive-free tobacco products were less harmful or addictive than tobacco products containing additives. If such evidence existed, he requested that it be shared with the Committee. He also asked if other legislative solutions had been examined and how effective these alternatives were in terms of reducing the incidence of smoking as compared to the proposed measure. Finally, he inquired whether Brazil had carried out an evaluation of the potential impact of the draft resolution on the production and trade in cigarettes.

The representative of Mozambique noted that while his delegation did not object to the objective of protecting human health, behind Brazil's proposed regulation, Mozambique, as a tobacco growing country, was concerned about the possible implications for tobacco leaf exporters. He claimed that by banning additives, the measure would effectively ban traditional blended cigarettes and ban the use of Burley and Oriental tobacco in Brazil. He expressed concern that the measure would negatively affect Mozambique's export revenue and economic and development prospects.

He explained that Mozambique exported USD2 million per year in terms of tobacco to Brazil. This amount was significant for Mozambique who hoped to see increased tobacco export volume to Brazil. He requested that Brazil adopt a measure that did not create technical barriers to trade for tobacco originating from developing countries, for which tobacco was often a main export product. He supported Zambia's proposal to organize a joint discussion between the WHO and WTO on this matter.

The representative of Ecuador noted that his country was an exporter of tobacco and tobacco blends to Brazil. He his delegation recognized the legitimacy of the objective of protecting human health. However, he reminded the Committee of Members' obligations to not adopt regulations that could create unnecessary barriers to trade, in line with Articles 2.2 and 2.8 of the TBT Agreement. He elaborated that for measures to be in compliance with the TBT Agreement, they needed to be backed by technical analysis and sufficient scientific evidence to justify their adoption or promulgation. Ecuador was of the view that Brazil had alternative political options, which could be effective in reaching their legitimate objective without prohibiting in a *de jure* or *de facto* way, the trade of tobacco in the Brazilian market. Finally, he supported Zambia's earlier proposal, noting that this would help clarify the necessary measures for the control of tobacco consumption and the obligations that Members have under the multilateral trading system.

The representative of Jordan noted that his delegation supported the Brazilian measure's objective of protecting human health. However, he suggested that when dealing with human health, scientific evidence needed to exist. Hence, he questioned whether scientific evidence existed in this regard and whether the Brazilian measure was in line with Brazil's obligations under Article 2.2 of the TBT Agreement. Jordan was of the view that the Brazilian measure was far more restrictive than necessary.

The representative of Kenya informed the Committee that his delegation would submit written questions to Brazil later that day.

The representative of the Former Yugoslav Republic of Macedonia expressed concern with the direct effect of the implementation of Brazil's proposed regulation on trade in Oriental tobacco, of which Macedonia was the second largest exporter to Brazil in 2010. Moreover, he cautioned that such a regulation would jeopardize the vulnerable economies of countries in transition and least developed countries, especially in a period when Members were not progressing on the Doha Development Agenda, and were feeling the negative effects of the global economic crisis.

The representative of Chile was concerned that this type of measure could act as an unnecessary barrier to trade. For this reason, he called on Brazil to provide the scientific evidence upon which they had based their measure. He reiterated that the WHO FCTC guidelines detailed the necessity of scientific evidence before taking regulatory decisions. While Chile supported the legitimate objective of reducing the consumption of tobacco products in order to protect public health, they considered this measure more trade restrictive than necessary.

The representative of Nicaragua considered that Brazil's regulation would restrict trade in tobacco products more than necessary. More specifically, the measure would form an obstacle to trade, violating Article 2.2 of the TBT Agreement. She explained that while the objective behind the measure that Brazil had set forth in its notification to the WTO was recognized under Article 2.2 of the TBT Agreement, Nicaragua was not aware of any scientific evidence upon which the measure had been based, notably pertaining to the use of additives and human health. She requested that Brazil provide information on the scientific evidence upon which they had based the development of this measure.

The representative of Honduras joined others in voicing concern over the impact that Brazil's regulation would have on its exports. She noted that Honduras recognized the protection of

public health as a legitimate objective, but was of the view that the Brazilian measure was excessive and would generate unnecessary barriers to trade. She explained that the measure would prohibit virtually all additives (including menthol) instead of only prohibiting pertinent additives, as was the case in other jurisdictions. As such, this could represent a *de facto* prohibition to the trade of certain tobacco products.

She noted that the Brazilian measure would prohibit the use of Burley tobacco in Brazil, which Honduras produced. This would cause Honduras' exports to fall, lead to job loss, and dampen the country's economic prospects, especially given the scarcity of alternatives for Honduras. Moreover, she claimed that the measure had not been based on scientific evidence proving that a specific flavour or certain additive would give rise to a certain pattern of consumption or make tobacco products more attractive.

She recalled Articles 2.2 and 2.8 of the TBT Agreement, and suggested that other types of measures could be put in place that would not have an impact on the final elaboration of the product. Moreover, regarding Article 12.3 of the TBT Agreement, she noted that Brazil's measure would create an unnecessary obstacle to the income of developing countries. She asked Brazil to explain how they would take into account the special circumstances of developing countries.

The representative of Cuba echoed the concerns expressed by others regarding Brazil's draft regulation. His delegation was of the view that no scientific evidence existed which proved a causal relationship between the use or patterns of tobacco smoking and the flavour and additives they contained; or that cigarettes with additives were more harmful or more attractive to youth than those which did not contain additives. As such, Cuba was of the view that this measure was unlikely to contribute to decreased tobacco consumption in Brazil.

While Cuba fully supported the objective of reducing the incidence of smoking habits among young people and the population in general, they were of the view that the regulation would unnecessarily restrict trade. Additionally, he explained that his delegation was concerned that the regulation could create a precedent, leading other Members to establish their own lists of additive restrictions, in turn leading to uncertainty and unnecessary obstacles in terms of trade flows. He suggested that Brazil consider adopting a less restrictive regulation, similar to other countries that had banned tobacco products highly flavoured with aromas. This approach was preferable since the regulation was based on the performance of the product rather than design and descriptive characteristics, as enshrined in Article 2.8 of the TBT Agreement.

The representative of Colombia believed that Brazil's regulation violated Article 2.2 of the TBT Agreement. He explained that while Colombia was ready to abide by the commitments it had made under the FCTC, discussions on questions of additives in tobacco products should be dealt with at the WHO.

More specifically, he commented that Brazil's broad restrictions on tobacco products and additives would be detrimental to cigarette trade, especially for Burley tobacco, which required additives to process this tobacco into American blend cigarettes. The representative claimed that the WTO was not the forum to discuss whether or not the measure would affect the smoking patterns of youth. Regarding the broader objective of protecting public health, he claimed that no evidence existed showing that tobacco products containing additives were more addictive. He highlighted that Brazil had raised similar concerns over Canada's draft tobacco regulation at previous TBT Committee meetings, causing Colombia to question why Brazil was now going forward with its own similar legislation.

His delegation was of the view that local tobacco producers in Brazil had influenced the adoption of this regulation. According to 2008 figures published by the Brazilian farming sector, Virginia tobacco represented 80 per cent of all Brazilian tobacco production, Burley

tobacco 14.8 per cent, and others 5.4 per cent. Because the measure would be easier to implement for Virginia tobacco producers, he expressed the view that the measure would discriminate against those Members that produced other varieties of tobacco.

The representative of the European Union stated that the proposed Brazilian measure would imply that exports of traditionally blended tobacco products to Brazil would have to be discontinued. Moreover, it would affect exports of additives used in tobacco products from the European Union. She confirmed that the European Union supported the objective of protection of human health, which was in line with the WHO FCTC. She noted that the European Union was itself in the process of revisiting its Tobacco Directive in order to implement the recommendations of the WHO and in this regard had some questions for Brazil.

First, she asked for the background regarding Brazil's approach and reasons motivating the proposed ban on all additives, including sugars. Moreover, she inquired as to the grounds justifying a ban on additives, rather than setting limits. She asked whether Brazil had evaluated other legislative solutions, and whether it had carried out an assessment to determine if these alternative solutions were less effective in decreasing smoking rates than the proposed approach. She recalled that the Partial guidelines for implementation of Article 9 and 10 of the WHO FCTC recommended that Parties consider scientific evidence when determining new measures on ingredients.

Second, she enquired as to whether Brazil had assessed the impacts of the measure, including impacts on the consumption of tobacco products. In particular, she asked if Brazil considered whether smokers might shift to other type of cigarettes that did not contain additives, such as Virginia tobacco. If an impact assessment had been carried out, she asked that its conclusions be shared with the Committee.

Finally, she enquired about the timing for the adoption of the proposal, and whether it would be necessary to issue any implementing measures before these requirements could be put in force.

The representative of Brazil clarified some points regarding its National Health Surveillance Agency (ANVISA)'s Draft Resolution No. 112. He stressed that the proposed technical regulation had been notified to the TBT Committee. In addition, a period of four months, ending 31 March 2011, had been given to Members to make their comments. He confirmed that all comments received would be duly taken into account before the final technical regulation was published.

He confirmed that the objective of the measure was to protect public health through the reduction of cigarette attractiveness. In response to Mexico's claim, he noted that Brazil was an important producer and consumer of Burley tobacco, and that there was no reason to suggest any kind of discrimination in this measure. He clarified that there would be no requirement for this measure to be approved by the Brazilian Congress, as it was completely under the scope of ANVISA's competencies. He also confirmed that the measure had been based on the WHO FCTC and its implementing guidelines.

With regard to the adequacy and necessity of the proposed technical regulation, Brazil was of the view that the measure was adequate. Since the evaluation of the presence of aromas and flavours is subjective, previous attempts to prohibit them without prohibiting additives had proven to be ineffective. He also noted that the Brazilian Government had received indications that the tobacco industry had mastered the technology to process Burley tobacco without additives since 1996, thus leaving no grounds for allegations that prohibiting additives would *de facto* prohibit Burley tobacco. In addition, he noted that some countries produced and sold blended cigarettes using Burley tobacco without the additives that this measure intended to prohibit.

He informed the Committee that the Brazilian regulatory authorities had information indicating that additives increased the effect of nicotine, thus making cigarettes more addictive. Sugar for example, when burned, became a substance known as Acetaldehyde, which made cigarettes more addictive. Additionally, some additives themselves were harmful to human health since when burnt they released carcinogenic substances. He noted that he had references to all of these studies and would be willing to share them with Members. Finally, he expressed an openness to further discuss this issue bilaterally with interested delegations.

Peru, UE e Noruega x Brasil – Canned Sardines - Ministerial Act N° 406, 10 August 2010 (G/TBT/N/BRA/386)

Brazil – Canned Sardines - Ministerial Act N° 406, 10 August 2010 (G/TBT/N/BRA/386)

The representative of Peru raised concern about Brazil's draft technical regulation for the identity and quality requirements for canned sardines. She informed the Committee that her delegation's concerns were laid out in detail in document G/TBT/W/334. She explained that for many years, exporters of Peruvian sardines had faced difficulties entering the Brazilian market. While Peru had tried to export the *Engraulis* species of sardines to Brazil under denominations "Sardines X", Brazilian authorities had not allowed the use of this denomination, in spite of their inclusion in Codex Stan 94 for tinned sardines. This new regulation would make it even more difficult for the exporters of Peruvian sardines to enter the Brazilian market, as it would exclude from trade denominations "Sardines X". Peru was of the view that this regulation contravened Articles 2.2 and 2.4 of the TBT Agreement, and ignored Codex Stan 94 as a relevant international standard.

She explained to the Committee that Codex Stan 94 listed 22 species from which sardines, canned sardines or other types of sardines could be prepared. She expressed concern that the Brazilian regulation moved away from Codex Stan 94, which permitted the use of the denomination "Sardines X" for tinned sardines from 21 of the 22 species listed under the international standard, including *Engraulis Ringens*. Article 3 of Brazil's draft regulation excluded 14 of these species, including *Engraulis Ringens*, and Article 5 prohibited the products of the *Engraulis Ringens* species from using the denomination "Sardines X". The representative questioned why Brazil deviated from Codex Stan 94, or why it considered this international standard inappropriate or inefficient to meet its objectives.

Peru was of the view that this draft regulation was incompatible with the TBT Agreement, since the Agreement specified that international standards should be used as the basis for technical regulations. She stated that Codex Stan 94 was considered as an international standard and noted that many WTO Members, with heterogeneous consumption patterns, e.g. EU, Canada, Colombia and Uruguay, followed the standard, making it possible for the *Engraulis ringens* species to be used for the processing of tinned "Sardines X". Moreover, the representative of Peru expressed concern that this regulation would have negative implications for Peruvian exports of *Engraulis ringens*.

She asked that Brazil align its regulation with Codex Stan 94, namely, accepting the denomination of "Sardines X" for *Engraulis ringens*. Furthermore, she asked for clarification on Brazil's objective in putting in place this technical regulation, how it was justified under Articles 2.2 and 2.4 of the TBT Agreement, when it would come into force, and why Brazil had not applied Codex Stan 94.

The representatives of the European Union and Norway, like Peru, were concerned that the Brazilian regulation significantly diverged from the international standard for canned sardines, Codex Stan 94. The representative of the European Union asked why Brazil had not aligned its measure with this standard, and requested an update on the state of play of the draft regulation.

The representative of Brazil informed the Committee that the final version of its draft technical regulation on the quality and identity of sardines had not yet been published, and there was no forecast as to when the publication would take place. All comments received during the public consultation, including those received from Peru after the deadline, would be taken into account. He concluded that the Brazilian government was in the process of analysing the comments, and that his delegation remained open to further discuss the issue bilaterally.

México x Brasil – Disposition (Portaria) n° 371, December 29th 2009 and Annex; INMETRO approves Conformity Assessment Requirements for Security of Electronic Appliances (G/TBT/N/BRA/343 and Add.1)

Brazil – Disposition (Portaria) n° 371, December 29th 2009 and Annex; INMETRO approves Conformity Assessment Requirements for Security of Electronic Appliances (G/TBT/N/BRA/343 and Add.1)

The representative of Mexico referred to conformity assessment issues for electronic and other domestic items related to Brazil's notification G/TBT/N/BRA/343/Add.1. He first stated that Mexico shared Brazil's legitimate objective of ensuring consumer safety through conformity assessment. The original notification of this measure was made on 4 September 2009, which stated that public consultations would be held by INMETRO related to the conformity assessment procedures for security and safety of electronic appliances.

The representative explained that the second and final conformity assessment requirements were laid out in government provision 371 of December 2009, published in the Official Journal on 31 December 2009, as notified in G/TBT/N/BRA/343/Add.1. A transition period was also established: as of 1 July 2011, all household manufactured appliances would have to comply with the provisions; as of July 2012, market entry for all appliances would be conditional on meeting the requirements; and, as of January 2013, the marketing of these goods would have to occur in accordance with relevant provisions of the new conformity assessment requirements.

He noted that there was a compulsory certification process for this type of appliance that had to be carried out by an INMETRO accredited certification body. The mechanism for conformity assessment would be mandatory certification of the importing producer, thus permitting use of the seal of compliance. The representative explained that the seal of compliance was designed to communicate the level of confidence in product conformity with relevant product standards, according to the legal provision of Brazil. He noted that the seal must be granted by a certification authority, and must be marked both on the labelling and the packaging, and be visible and readable. Furthermore, it must be buttressed by a system of redress for consumer concerns or complaints. Two types of authorization were envisaged for use the seal: certification with evidence; and evaluation of the quality certification through inspection. The former involved an extensive process of gathering evidence, evaluating product quality, and production processes, including special evaluations in certain cases. The latter involved certification per batch of products, through inspection on a per need basis.

The representative of Mexico recognized the right of Brazil to implement conformity assessment requirements that it deemed appropriate. However, in this particular case he was

concerned about the excessive and unjustified cost imposed on Mexico's export industries by mandatory compliance. Therefore, he hoped that alternatives could be found to facilitate bilateral trade of these products, which would guarantee their security and safety, yet be less cumbersome and difficult for countries concerned.

The representative requested that Brazil provide information as to the possibility of creating mutual recognition agreements for the conformity of such products, and whether they were envisaging accreditation of existing conformity assessment bodies in other countries in this context. He asked what considerations led Brazil to demand mandatory certification and use of the seal of conformity for these products. He also sought information on the deadlines and timeframes required to obtain these certifications, and whether the necessary infrastructure existed in order not to create unnecessary barriers to trade through delays. Finally, the representative inquired as to whether Brazil envisaged extending the scheme to other products beyond domestic electrical appliances.

The representative of Brazil explained that Ministerial Act No.371 of 29 December 2009 was notified to TBT Committee through document G/TBT/N/BRA/343 and G/TBT/N/BRA/343/Add.1. The act was published after a public consultation process, which was initiated six months before the publication of the final technical regulation. He stated that compliance with the requirements of the regulation would become mandatory in July 2011, July 2012 and January 2013, depending on the goods concerned. Members therefore had reasonable time to participate in the regulatory process, and to adapt to the new requirements.

The representative responded that the decision for mandatory certification was based on the assessment of the risks posed by these products. He noted that the objective of the measure was to ensure the safety of electrical appliances commercialized in Brazil, and that the regulation was applied without discrimination between domestic and foreign products. Furthermore, the regulation was based on relevant IEC standards for household electrical appliances. The representative explained that foreign bodies could perform the certification, provided that those bodies met the requirements laid out in Article 13 of the regulation. With regard to MRAs, he stated that Brazilian regulatory authorities examined the adequacy of negotiating such instruments on a case-by-case basis. Finally, with respect to extending compulsory certification to other sectors, he clarified that the need to establish mandatory certification depended on assessments performed by regulatory authorities, especially related to the risks posed by products, and any future decisions related to certification would follow this principle.

UE, EUA e México x Brasil – Alcoholic Beverages (G/TBT/N/BRA/348 and Suppl.1)

Brazil – Alcoholic Beverages (G/TBT/N/BRA/348 and Suppl.1)

The representative of the European Union requested an update on the state of play, having been informed at the last TBT Committee meeting that Brazil was in the process of reviewing responses to its public consultation and TBT notification. She also requested an indication of when a draft proposal was likely to be made available.

The representative of the United States stated that comments had been submitted prior to the last meeting, which went into detail on many questions and concerns, including the treatment of abbreviations, illustrations on labels, registration numbers, certain font requirements, and implementation periods. He asked for an update on the process for taking these, and other concerns, into account in the publication of the final measure.

The representative of Mexico also requested an update on the state of play, and enquired as to whether or not previous comments had been taken into consideration.

The representative of Brazil informed the meeting that the Brazilian authorities were still in the process of examining comments received on its draft regulation on beverage labelling, and assured Members that their comments would be taken into account before publication of the final measure. He emphasised that the draft measure had the legitimate objective of guaranteeing an adequate level of protection and information to consumers, without creating unnecessary obstacles to the regular flow of beverage exports to Brazil, and the requirements laid down in the draft regulation would apply equally to domestic and imported alcoholic beverages.

Referring to questions raised in previous TBT Committee meetings concerning the obligation of including an import identification number on the label, he explained that this requirement aimed to adequately protect consumers, as information concerning the importer was crucial in establishing legal responsibility. He clarified that labels would not necessarily require redesign for the Brazilian market, as the import identification number and other mandatory information could be included on a supplementary label. He reaffirmed that the prohibition of illustrations would not impede the use of established trademarks, and restriction of use on terms such as "home made", "reserve" and "colonial" were designed to protect consumers from being misled as to the quality of the products. Finally, he welcomed further discussions through bilateral channels for clarification of other specific issues, and stated that no forecast had been made for the publication of the final version of this measure.

EUA e UE x Brasil – Instructions for Registration for Labels of Imported Products of Animal Origin (G/TBT/N/BRA/385 and Adds 1 and 2)

Brazil – Instructions for Registration for Labels of Imported Products of Animal Origin (G/TBT/N/BRA/385 and Adds 1 and 2)

The representative of the United States expressed its gratitude to Brazil for responding to the comments submitted by the United States on this issue in November 2010. He reported that the United States greatly appreciated Brazil's willingness to address the United States' concerns by amending the registration form for labels of imported products of animal origin. In addition, he noted that Brazil and the United States continued to have constructive discussions in this regard, and expressed its impression that Brazil was keen to continue to cooperate with the United States to clarify the United States' remaining concerns on this issue. Finally, he expressed the United States' interest in holding a meeting between the technical experts of both countries, especially considering that Brazil's measure was to enter into force on 1 April 2011.

The representative of the European Union expressed her delegation's concern regarding the need to register the labels of products of animal origin and have them approved before they could be marketed in Brazil. She stated that the European Union continued to monitor the situation to ensure that this requirement was not creating unnecessary delays and costs for EU exporters.

The representative of Brazil informed the meeting that the proposed measure had been reviewed at the end of 2010, taking into account the comments received from other Members on the issue. Additionally, he reported that the deadlines to comply with the new requirements had been extended and expressed his hope that these modifications would help to alleviate some Members' previous concerns.