

New Concerns

China x UE - Disposable lighters

European Communities – Disposable lighters

The representative of China raised an issue regarding a draft decision by the European Commission on disposable lighters. She informed the Committee that the European Commission was considering a decision to require disposable lighters with an ex-factory unit price, or customs evaluation price, lower than two Euros to be equipped with a child resistance mechanism. In the absence of such a mechanism, these lighters would not be able to be marketed in the European Communities. While China appreciated the legitimate objective of protecting the safety of children, the draft decision raised concerns.

First, in the view of the representative of China, to assume a relationship between the price of a lighter and its safety was against the principles contained in the TBT Agreement: could the European Commission provide scientific evidence that a lighter of 2.01 Euros was safer than one that cost 1.99 Euros? Second, in terms of Article 2.2 of the TBT Agreement, it was noted that the draft decision aimed at protecting children under five from being injured by the misuse of lighters. The intended end-use of lighters (according to the draft decision itself) was that of "deliberately igniting cigarettes, cigars and pipes". Certain statistics showed that more than 90 per cent of families in Europe did not have children under five years of age. China doubted that all parents of the less than 10 per cent of the families (with children of less than five years of age) smoked in the presence of their children, and, even if they did, it was doubtful that they would leave lighters within the reach of children under five. With this analysis, it was obvious that the mandatory requirement for child resistant mechanisms on lighters increased the cost for consumers, and, therefore, was against the interest of a very large proportion of consumers. Such a decision did not comply with Article 2.2 of the TBT Agreement and went beyond the proportionality principle, which the European Communities themselves upheld. Third, a child resistant mechanism was not necessarily the best way to protect children. There were other alternatives which were less trade restrictive, for example, to consolidate the parents' or guardians' sense of responsibility, to advise parents with children under five to only purchase and use lighters with child resistant mechanisms (or buy the more expensive ones), or to put the lighters out of reach of children. Fourth, the data that the draft decision referred to was out of date and lacked scientific rationale. This was not in compliance with Article 2.3 of the TBT Agreement. An official decision on lighters needed to be based on reports in respect of the risk that disposable lighters posed for children less than five years of age. The representative of China had not seen such data. She urged the European Communities to observe its obligations under the TBT Agreement and to lay down safety regulations regarding lighters in a scientific and less trade restrictive manner.

The representative of the European Communities informed the Committee that the draft decision at issue would be notified shortly to the TBT Committee. A reasonable period of time would be given to Members to submit their comments and China was invited to submit comments in that context.

China x Coréia do Sul - Residual Limits and Test methods for Pesticide Residues/Heavy Metals in Herbal Medicines

Korea – Residual Limits and Test methods for Pesticide Residues/Heavy Metals in Herbal Medicines (G/TBT/N/KOR/84)

The representative of China expressed concern about the above-mentioned notified regulation and disappointment that although comments had been sent to Korea on 14 and 15 March 2005, no written response had been received. She urged the representative of Korea to fulfil its obligations under the TBT Agreement by explaining the justification for the technical regulation and by providing relevant scientific evidence for it.

The representative of Korea noted that he would transmit the concerns to capital.

Concerns Previously Raised

Canadá e China x EUA - Country of Origin Labelling

United States – Country of Origin Labelling (G/TBT/N/USA/25 and USA/83 and Corr.1)

The representative of the United States wished to follow up on a concern raised by Canada and China at the last meeting of the TBT Committee. It was recalled that the United States had notified its proposal on a number of occasions, most recently as G/TBT/N/USA/83. She recalled that the comment period – which had been extended – had closed on 2 February 2005 and, on 4 April 2005, the regulation had become effective. During the comment process, the United States had received substantial comments from a number of parties, including Canada. As a result, the US Department of Agriculture's marketing service had made certain changes to the Interim Final Rule. The changes included more flexible labelling requirements with respect to blended products from multi-origins. Moreover, the Agricultural marketing service had broadened the definition of processed food items to include additional products such as canned fish. This was beneficial because processed food items were not subject to mandatory requirements. During the first six months of implementation, the United States would focus its efforts on facilitating compliance, through education, rather than taking any punitive action to address lack of compliance.

Cuba (Austrália, Japão, Canadá, Chile e Outros) x UE - Regulation on the Registration, Evaluation and Authorisation of Chemicals (REACH)

European Communities – Regulation on the Registration, Evaluation and Authorisation of Chemicals (REACH) (G/TBT/W/208 and G/TBT/N/EEC/52 and Add.1)

The representative of Cuba recalled that several delegations had expressed concern about the draft REACH regulation. The European Communities was requested to provide more information on the progress that had been made on the draft. He also asked whether the agency responsible for administering the implementation of the system had drafted or implemented any measures aimed at assisting affected developing countries.

The representative of Australia remained concerned that the EC draft legislation on REACH was more trade restrictive and cumbersome than necessary to fulfil its objectives and that it did not

focus on the substances that presented the greatest risk. She wished to draw the Committee's attention to some points which were additional to previously raised concerns. First, regarding Article 2.1 of the TBT Agreement (national treatment), Members had to provide, for technical regulations, treatment no less favourable than that accorded to like products of national origin. Although the REACH legislation required registration of chemical products regardless of origin, the fact that substances already registered in the European Communities were not required to be re-registered when bought by a downstream producer in the European Communities was likely to put imported products at a competitive disadvantage. EC producers that used chemical substances were more likely to source substances that had already been registered from within the European Communities, rather than to source the substance from outside the European Communities and have to assume the registration obligation themselves. This raised concerns as to whether the European Communities was acting consistently with its national treatment obligation under the TBT Agreement.

Second, the representative of Australia recalled that Article 2.2 (on trade restrictiveness) provided that technical regulations should not be more trade restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Australia was concerned that, by including them within its scope, REACH created unnecessary restrictions on trade in minerals, ores, concentrates and metals. These elements posed minimal risk to public health. Requiring registration and/or authorization of ores and ore concentrates that presented minimal danger to public health was not necessary to fulfil the objectives of REACH. A less trade restrictive alternative would be to exclude from the scope of REACH ores and ore concentrates that posed minimal risk to public health and the environment. Australia had similar concerns with regard to metals in massive forms.

The representative of Japan noted that her delegation had yet to receive any adequate response from the European Communities to concerns expressed at previous meetings, as well as on other occasions – such as in bilateral dialogues. Many of these concerns remained valid. Moreover, she drew the Committee's attention to the many comments on the proposal that had been made by stakeholders *within* the European Communities.

The representative of Canada noted that her Government had recently submitted recommendations on the REACH legislation to the Industry, Research and Energy Committee of the European Parliament. Canada urged the European Communities to consider these recommendations. While Canada supported the general goals of REACH, it was concerned with the workability of the EC proposals and the impact that REACH could have on trade. In Canada's case, the adverse consequences resulting from the draft legislation included effects on exports to the EC market of metal and minerals, as well as pulp and paper and recyclables. Among the recommendations made, Canada had recommended a risk-based alternative to the proposed use of volume thresholds for the registration of substances under REACH. She asked the European Communities to provide an update on the current REACH legislative process and confirm whether an additional WTO notification would be provided before implementation.

The representatives of Chile, China, Korea, Mexico, United States, and Uruguay associated themselves with the comments and concerns expressed by previous delegations. While their own concerns remained on the table, they chose not to repeat them at the current meeting. The US delegation hoped that there would still be opportunities for the REACH proposals to be made more streamlined and effective. The representatives of Mexico, Chile and Uruguay emphasized the need for technical assistance to facilitate the implementation of the REACH proposal. In particular, there was a need to clearly identify the ways in which the specific situation of developing countries was

being considered, and what programmes or alternatives were being envisioned in terms of technical assistance.

The representative of the European Communities noted that there appeared to be no new concerns or issues raised at the current meeting. He stressed that the European Communities had answered the written comments submitted in the framework of the TBT notification procedure with a written reply on 28 October 2004. This reply had, at that time, been accompanied by a process description of more than 100 pages. Moreover, the European Communities had made a very detailed presentation of the REACH proposal at the November 2004 meeting of the TBT Committee. It had also informed the Committee, in March 2005, that the proposal was being examined by the European Parliament as well as the Council of Ministers under the Co-Decision Procedure. The first reading in the European Parliament was still ongoing. The European Communities would update its notification to the TBT Committee if there was any major change to the proposal. However, if that was the case, it would probably not happen before the end of 2005 when the Common Position by the Council was expected. Meanwhile, the European Communities would continue its efforts to explain REACH to Members, to develop good quality guidance and to pursue bilateral and multi-lateral dialogues.

The representative of Mexico asked the European Communities, with respect to the possible future notification, and with a view to maintaining the principle of transparency, to make a notification even if the amendments were not substantial, or even if these changes merely entailed, for instance, making the registration process simpler. It was worthwhile keeping all Members up to date with any change made.

Suíça - Ordinance on the Emission Level of Passenger Cars with Compression Ignition Engines

Switzerland – Ordinance on the Emission Level of Passenger Cars with Compression Ignition Engines (G/TBT/N/CHE/39)

The representative of Switzerland referred to the previously raised issue regarding a draft Swiss regulation on particle filters for diesel engines about which some Members had expressed their concerns. She confirmed to WTO Members that the Parliamentary Committee at the origin of this draft had now withdrawn the proposal.

UE x Indonésia - Mandatory Standard for Tyre

Indonesia - Mandatory Standard for Tyre (G/TBT/N/IDN/13)

The representative of the European Communities thanked the delegation of Indonesia for postponing the entry into force of the Mandatory Indonesia National Standard for Tyres until 23 March 2006. However, some substantial questions relating to the possible trade-restrictive effects of the Indonesian measure remained open. The European Communities asked the Indonesian authorities to clarify, in particular, whether tyres which complied with UN-ECE regulations would be accepted on the Indonesian market. The European Communities was also interested in knowing to what extent the Indonesian authorities would simplify the applicable technical guidelines in order to facilitate the implementation of the Decree.

The representative of Indonesia stated that she would pass on the EC questions to her capital.

EUA (Canadá, China, Japão e México) x UE - Directive 2002/95/EC on the Restriction of the Use of certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) and Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE)

European Communities – Directive 2002/95/EC on the Restriction of the Use of certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) and Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE)

The representative of the United States stressed that with some limited exceptions, in July 2006, companies would have to comply with the above-cited Directive. Despite this, companies were facing significant commercial uncertainties: lack of sufficient, clear and legally binding guidance. For instance, companies that had sought clarification on the exact product scope of RoHS, or how parts or service units that entered the European Union prior to July 2006 would be treated, had not got definitive guidance. In fact, the European Commission had often been unable to clarify. It had provided a document called *Frequently Asked Questions* in May 2005 but this document was intended to provide guidance to its member States and contained a disclaimer which meant that it could not be considered definitive. Moreover, there was a general lack of guidance about what conformity assessment procedures and test methods would be used to demonstrate conformity with RoHS. In general, it appeared that EU member States were ill-equipped to answer specific questions about how they would enforce RoHS.

More specifically, in cases where technically viable alternatives did not exist, businesses faced a lengthy, onerous, uncertain and non-transparent exemption process. This exemption process was overseen by the European Council's Technological Adaptation Committee (TAC). In March 2005, the European Parliament challenged the procedures employed by the TAC, calling into question the entire process that companies had been told to follow and creating more delays, uncertainty, and confusion regarding the status of the exemptions currently pending before the TAC. It was possible that companies would not receive a final ruling on whether RoHS applied to them until January 2006 or later, which could be too late for production design and manufacturing decisions.

Given the substantial impacts of RoHS on international trade, the United States urged the European Commission to provide sufficiently detailed and legally binding guidance to give companies seeking to comply with RoHS greater commercial certainty. The United States also called on the European Commission to make the TAC exemption process more efficient and transparent so that companies could have definitive answers more promptly on whether and how the Directive would apply to their products.

The representatives of Canada, China, Japan and Mexico shared the US concerns, especially those regarding the lack of sufficiently detailed guidance, the non-transparent exemption clauses and the functioning of the conformity assessment procedures. The representative of China was particularly concerned about the fact that the European Communities had not set up relevant testing methods. She suggested that the European Commission postpone the enforcement of the Directive and provide legally binding technical guidance and testing methods so as not to stop trade in electrical and electronic equipment with third countries. The representative of Canada emphasized the need for EC member States to handle enforcement in a consistent manner across the European Communities.

The representative of the European Communities noted that there had been extensive publicity and consultations regarding the Directive at issue. Aside from consultations with stakeholders and third countries, which had been taking place since 1997, third countries had had the opportunity to express concerns both bilaterally and in the TBT Committee. Efforts had been made to take these comments into account. In this respect, the Committee's attention was drawn to a paper on Frequently Asked Questions on the RoHS and WEEE Directives. It was pointed out that this guidance document, which contained detailed explanations on definitions, scope and coverage of the Directive, would be regularly updated.

The Committee was informed that the European Commission would soon adopt a decision fixing the maximum concentration values regarding the RoHS Directive. In the first draft of the proposal the European Commission had proposed a maximum concentration value of 0.1 per cent by weight, for lead, mercury, hexavalent chromium, and 0.01 per cent by weight for cadmium.

With respect to conformity assessment and testing methods, the representative of the European Communities noted that the Directive itself did not foresee any compliance procedures or testing methods; it was up to the member States to develop these testing methods and procedures. In a workshop which had been organized recently by the European Information & Communications Technology Industry Association (EICTA), preliminary discussions had been held on the approach that member States and industry would take for RoHS compliance. The starting point had been the assumption that products placed on the market after 1 July 2006 would be RoHS compliant. The producer would thus demonstrate this compliance through a self-declaration (SDoC). Nevertheless, should serious concerns arise about a specific product, the Market Surveillance Authorities would test it. Further details about the self-declaration procedure, as well as testing methods to be used, would have to be worked out by member States and would be notified to the TBT Committee if appropriate.

UE e EUA x Malásia - Hologram Stickers on Pharmaceutical Products

Malaysia – Hologram Stickers on Pharmaceutical Products (G/TBT/N/MYS/5)

The representative of the European Communities welcomed the Malaysian notification concerning the use of a hologram security device on medicinal products sold in Malaysia. Nevertheless, he recalled that according to Article 2.9.2 of the TBT Agreement, notifications had to be made at an appropriately early stage, when amendments could still be introduced and comments taken into account. As the European Communities would be submitting written comments, Malaysia was urged to take these comments into account and, if necessary, to modify the text which had already been adopted at the time of notification.

The representative of the United States was, like the European Communities, concerned that procedures and opportunities foreseen by the TBT Agreement on transparency could have been undermined. While the stated opportunity for comment was 60 days, the regulation, notified on 29 April 2005, had entered into force on 1 May 2005. This called into question Malaysia's willingness to consider the comments as required by the TBT Agreement. Nevertheless, the United States remained hopeful that Malaysia would give due consideration to the comments it received.

The representative of Malaysia stressed that in the Malaysian notification G/TBT/N/MYS/5 of 29 April 2005, a period of 60 days had been given to all Members for comments. Malaysian

authorities would take into consideration all comments received during this period for ongoing reviews of this regulation. Moreover, the date of implementation of the regulation had been postponed twice to take into account such comments.

Nova Zelândia (Noruega e UE) x Coréia do Sul - Import of Fish Heads

Korea – Import of Fish Heads

The representative of New Zealand reiterated her delegation's concern with regard to fish head exports to Korea. She noted that the Government of the Republic of Korea had informed her authorities that it would continue to prohibit imports of fish heads from New Zealand while, at the same time, allowing imports of edible fish heads from certain other Member countries. In bilateral discussions with the Republic of Korea, New Zealand had provided information which supported the request that Korea should allow the import of all edible fish heads on the same basis that it allowed other sea food imports. New Zealand did not regard the concerns raised by Korea in relation to the import of this product as being legitimate or justifiable in terms of either GATT Article XI, or the relevant provisions of the TBT Agreement.

The representative of Norway shared the concerns expressed by New Zealand and noted that the solution needed to be based on the principles of national treatment and most favoured nation; i.e., according the same treatment to like products irrespective of the source.

The representative of the European Communities expressed some satisfaction with regard to progress made in bilateral discussions. Both sides had agreed that trade in edible cod heads needed to commence at the earliest opportunity. She hoped that Korea would soon overcome the remaining obstacles so that the arrangement could be concluded without further delay.

The representative of Korea stressed that while bilateral discussions were still ongoing, differences in views remained and it could take some time to reach consensus.

EUA (Japão e China) x UE - Restrictions on the Use of Certain Phthalates in Toys

European Communities – Restrictions on the Use of Certain Phthalates in Toys (G/TBT/N/EEC/82)

The representative of the United States referred concerns voiced by her delegation at the last meeting of the Committee and drew Members' attention to G/TBT/N/EEC/82, dated 11 May 2005, concerning the proposed amendment to the existing Council Directive (76/769/EEC). She drew Members' attention to the fact that there now existed an opportunity for comment.

The representatives of Japan and China expressed similar concerns to those previously raised by the United States. In their view, the measure had the potential to upset international trade. The representative of Japan asked the European Communities to give a rational explanation for the new proposal. The representative of China, while appreciating the stated legitimate objective of the measure to protect children under three years of age, was particularly concerned with the trade restrictiveness of the measure.

The representative of the European Communities stressed that Members had been given 60 days (from the date of notification) to submit comments – i.e., until 11 July. These comments would be

given due consideration. Currently the proposal was under discussion at the European Parliament. In respect of China's concerns on the trade-restrictiveness of the measure, it was noted that new scientific data had become available, and, as a result of risk assessments carried out, one group of phthalates had to be classified as a carcinogen, mutagen and reprotoxic. Due to the risk this presented to the health of children it was necessary to ban this group of phthalates in all toys and childcare articles. Moreover, based on the principle of precaution, a second group of phthalates needed also to be banned but only in toys and child care articles that could be placed in the mouth by children under three years of age, since these children belonged to weakest and most vulnerable group of consumers.

Canadá e Noruega x Nova Zelândia - Ban on the Importation of Trout

New Zealand – Ban on the Importation of Trout

The representative of Canada reiterated her Government's concerns with New Zealand's ban on trout imports. In particular, her government did not consider the ban to be scientifically justified; no evidence had been received to this effect. In light of this, she expressed disappointment that New Zealand had extended the ban for another three years, i.e., until November 2007. While New Zealand allowed some access for "personal use", this was not considered adequate: Canada was seeking commercial access. She informed the Committee that in a recent meeting held with New Zealand, officials had been tasked with finding alternative measures well before the 2007 expiry date of the ban. Canada wished to be informed about any progress in identifying such alternative measures and New Zealand was again requested to immediately restore trade in trout.

The representative of Norway expressed his delegation's interest in receiving any answers provided by New Zealand to Canada.

The representative of New Zealand noted that her delegation had provided detailed background at the November 2004 meeting of the TBT Committee regarding the measure at issue.¹ At that point, it had been explained how the measure had arisen from particular concerns over the conservation of trout in New Zealand. She confirmed that the order in Council, which prohibited importation of trout in commercial quantities into New Zealand, had been extended in October 2004 to ensure the integrity of the domestic sales prohibition. At the time of extending the prohibition order, the New Zealand Government had tasked officials to report back on alternative measures before the expiry of the temporary measure in 2007. While New Zealand was not in a position at the current meeting to provide information on this work, she assured the delegations of Canada and Norway that they would be kept up to date on progress.

Austrália (Nova Zelândia, México, EUA e Uruguai) x UE - Regulation on Certain Wine Sector Products

European Communities – Regulation on Certain Wine Sector Products (G/TBT/N/EEC/15, Corr.1-2 and G/TBT/N/EEC/57)

The representatives of Australia, New Zealand, Mexico, United States and Uruguay reiterated previously raised concerns with respect to EC regulations on wine labelling. Although these

concerns had been expressed over the last three years in the TBT Committee, these delegations continued to seek written responses to the issues raised. The representative of the United States noted that while there were ongoing bilateral negotiations with the European Commission on a wine agreement and a labelling protocol, she wished to stress that the outcome of that negotiation would not resolve the issues raised in respect of the wine labelling regulations.

The representative of the European Communities recalled that during the March 2004 meeting of the TBT Committee, her delegation had responded exhaustively to the questions raised by delegations.