SPECIFIC TRADE CONCERNS (Retirado do documento G/TBT/M/38)

New Concerns

Japão (Israel, Jordânia e EUA) x Noruega - Restrictions on the Use of deca-BDE

Norway - Restrictions on the Use of deca-BDE (G/TBT/N/NOR/6)

The representative of Japan raised concerns regarding a measure notified by Norway (G/TBT/N/NOR/6) which prohibited the content of 0.1 per cent or more of deca-BDE by weight in all products. While Japan understood the need to protect human heath and the environment, his delegation was concerned about the impact of the proposal on trade and investment. He recalled that the European Communities had decided that deca-BDE be excluded from the RoHS Directive, and was of the view that Norway needed to align its measure with this decision. He asked Norway to explain the justification of this measure, in accordance with Article 2.2 and 2.5 of the TBT Agreement.

The representative of Israel shared the concerns in respect of the Norwegian proposal, and recalled that comments had been transmitted to the Enquiry Point of Norway in September 2005. His delegation was of the view that the proposed import prohibition was not based on available scientific and technical information, and that its application would constitute an unnecessary obstacle to trade within the meaning of Article 2.2 of the Agreement. He recalled that, in its notification, Norway had invoked the protection of human health and the environment as the rationale for the measure. While the representative of Israel recognized that these were legitimate objectives under the TBT Agreement, he was of the view that Norway had not demonstrated the existence of a risk and stressed that, in any case, there was no legal basis for a "precautionary principle" in the TBT Agreement.

The representative of Israel noted, further, that Article 2.2 of the TBT Agreement provided that in assessing risks the elements to be considered included available scientific and technical information. He recalled that the European Communities had conducted a risk assessment of deca-BDE which had not identified any risk posed by the substance. On the basis of this result, the European Communities had decided to exempt deca-BDE from the scope of the RoHS Directive. Yet Norway, instead of relying on the overwhelming scientific evidence showing the absence of any risk for human health of the environment, had chosen to base its decision on a single document, therefore not complying with Article 2.2 of the Agreement. Moreover, when examining the need for a new technical regulation, Members had, in line with the TBT Agreement, to consider whether there were alternative, less trade restrictive measures that would achieve the same objective. Israel was of the view that Norway had not considered alternative measures to fulfil its goals. As an example of alternative measure, the representative of Israel mentioned the European Union control measures, including an emission reduction programme and environmental monitoring. Norway was invited to review its proposed measure so as not to impose a ban on deca-BDE in a way that was contrary to Article 2.2.

The representative of Jordan shared the concerns expressed and noted that his country was a major producer of the bromine element used in the production of deca-BDE. He recalled the decision taken by the European Communities to exempt deca-BDE from the RoHS Directive; a decision that had been taken as a result of a 10 year risk assessment, which had concluded that the use of deca-BDE did not pose health or environmental risks. He pointed out that Norway had not made available the scientific or technical information that the proposed ban was based on, nor was it

possible for Norway to show that a risk existed. Norway was thus urged to consider reviewing the proposed technical regulation taking into account the concerns raised by Members.

The representative of the United States noted that her delegation too had provided comments on the notified proposal. It was pointed out that deca-BDE was a flame retardant – manufactured in the United States as well as elsewhere – that was mainly used in electronics and textiles to increase their resistance to fire. Flame retardants such as deca-BDE were credited with the US Fire Marshals for saving lives and properties. She shared the concerns that the Norwegian proposal had failed to take into account the available scientific evidence and noted that voluntary programmes to control and reduce emissions offered Norway an alternative to product bans. She noted that detailed information on studies undertaken by the US Environmental Protection Agency had been provided to Norway.

The representative of Norway highlighted that her country had set a target to substantially reduce emissions on a number of environmentally hazardous chemicals; bromine flame retardants being among them. She explained that Norway had restrictions on the flame retardants penta-BDE and octa-BDE, corresponding to restrictions in the relevant EC Directives. She pointed out that recent data showed that the presence of deca-BDE in Arctic areas was of significant concern, and it was against this background that Norway had proposed to ban the use of deca-BDE with a few, limited, exceptions. She assured the Committee that Norwegian technical regulations, including those related to restrictions on environmentally hazardous chemicals were in compliance with the TBT Agreement, and that these restrictions were based on scientific evidence, respecting Article 2.2 and 2.4 of the Agreement. It was further stressed that comments received from WTO Members, as well as comments received from other different actors in the hearing process, would be taken into account along with the developments in the European Union, before finalizing the regulation on deca-BDE. Moreover, the date of entry into force of the regulation had been postponed from the original date of the 1 July 2006 (indicated in the notification) to a date yet to be decided.

Japão (Israel, Jordânia e EUA) x Suécia - Restrictions on the use of deca-BDE

Sweden – Restrictions on the use of deca-BDE (G/TBT/N/SWE/59)

The representative of Japan raised concerns on the Swedish proposal to prohibit the use of deca-BDE in all products except automobiles and electrical appliances, in concentrations exceeding 0,1 percent by weight (notified on 23 November 2005). While he understood the need to protect human health and the environment, he was concerned about the impact of the proposal on trade and investment. He recalled the study conducted at European level which had concluded that deca-BDE did not pose a risk to human health and the environment and believed that Sweden needed to align with this scientific and technical evidence. He noted that his delegation had submitted comments on this proposal and hoped that Sweden would explain the validity of this proposed technical regulation in accordance with Article 2.2 and 2.5 of the Agreement.

The representative of Israel, Jordan and the United States associated themselves with the concerns raised and recalled that their delegations too had sent comments to the Swedish authorities.

The representative of the European Communities informed the Committee that the proposed Swedish regulation was being analyzed to verify its compatibility with internal market rules within the European Communities. The objective was to arrive to at a solution that would both respect

internal Community legislation as well as take into account the concerns raised by third countries. An update would be provided once the procedure at Community level was concluded.

Japão (EUA, Filipinas, Colômbia, Brasil e Outros) x UE - Draft Commission Decision regarding the Classification of the Reaction to Fire Performance of Construction Products

European Communities - Draft Commission Decision regarding the Classification of the Reaction to Fire Performance of Construction Products (G/TBT/N/EEC/92)

The representative of Japan pointed out that his delegation had submitted comments on the draft Decision notified by the European Commission on 13 October 2005, amending the Decision 2000/147/EC on the classification of the reaction to fire performance of construction products. This draft Decision was intended to secure safety in the event of fire, and stipulated that an acidity test should be conducted for assessing fire performance of cables in the construction sector. The representative of Japan noted that the draft decision did not include any restriction on the amount of monoxide emissions, which, in his view, needed to be given top priority in order to reduce mortality in fire incidents. Instead, the restrictions applied only to the acidity of the emission gases in the case of fire, which was not an aspect of primary importance in international fire safety standards. It was stressed that, under proposed restrictions, the use of PVC coated cables, which had an excellent fire resistance, would become difficult. Japan was concerned that this restriction would lead to an unnecessary obstacle to trade, and requested the European Communities, in accordance with Article 2.5 of the Agreement, to explain the justification of its draft Decision in terms of Article 2.2 and to consider excluding the acidity test from the proposed restriction.

The representative of the United States, while supporting the objective of ensuring high standards for fire safety of construction products, was concerned about the justification of certain elements of the proposal relating to electric cables, and on their possible adverse impact on international trade. She questioned the scientific basis for the use of acidity as a proxy for toxicity, and pointed out that neither the ISO nor the IEC had validated acidity as a measure of toxicity for fire safety purposes. The representative of the United States requested the European Communities to explain the basis for using this criteria and believed that the Decision's focus on acid gas ignored the toxicity and potential effects of other gases such as carbon monoxide, the leading cause of human fatalities in fires; in fact, she wondered how the Commission proposal addressed the threat of fatalities from carbon monoxide and other gases. It was also noted that electric cables were singled out for the acidity test, and the representative of the United States asked how the Commission had chosen these cables in particular. She believed that the proposed Decision could have the effect of banning wiring cables products, that would otherwise receive the highest fire safety ratings, and could result in the use of *less* fire safe products. The Commission was urged to revise its proposal in light of the concerns raised, and to consider removing the acidity criterion as a classification standard for wire and cable products from its proposal.

The representative of the Philippines was of the view that the proposed Decision had the effect of creating unnecessary obstacles to international trade, as it was more trade restrictive than necessary to achieve the European Communities' legitimate objective of fire safety. While he agreed that fire safety for construction products was a legitimate concern of high priority, it was stressed that it should not be used as a means to take trade-restrictive measures that were not required for safety, such as, in the case of electric cables, the use of the acidity criterion. He believed that such a measure would allow the European Communities to exclude polyvinyl chloride (PVC) from cable sheathing, or to effectively ban the use of PVC-coated cables in the EU market because, while PVC

met safety requirements in all areas, it did not meet the acidity test. Yet, according the scientific evidence, the failure to meet the acidity test did not mean that PVC cables were less safe than other cables. He stressed that PVC material was known to have excellent flame-retardant properties, and that the alternatives to PVC-coated cables were significantly more expensive.

The representative of the Philippines also pointed out that the Decision was not based on international standards, and recalled that the IEC had adopted standards on toxicity testing, which were valid for electric cables. He stressed that Article 2.4 and 5.4 of the TBT Agreement required the European Communities to use these standards if toxicity had to be addressed, and wondered why the European Communities had failed to do so. He further recalled that Article 2.4 provided for an exception where the relevant international standards would be ineffective or inappropriate, and noted that the European Communities had not provided any reason or cited any problems that would prevent the European Communities from basing its technical regulation on the relevant IEC standards. It was also pointed out that the regulation was not performance based. His understanding was that the regulation was designed for material declaration and not for the performance testing of plastic materials' potential reaction to fire. The representative of the Philippines was concerned that the regulation could adversely affect Philippine industries, and reiterated that PVC was safe, affordable and a leading material of choice for many construction materials and other indoor applications. In his view, the proposed Commission Decision did not meet the obligations under the TBT Agreement, in particular those contained in Articles 2, 5 and 12.

The representatives of Colombia, Brazil, Korea and Mexico associated themselves with the concerns raised. The representatives of Colombia and Brazil also noted that that written questions and comments on the proposal had been presented to the European Communities, but that no response had been provided to date.

The representative of the European Communities highlighted that the comments submitted had been taken into consideration in the decision-making process, which was still pending. This was the reason why written replies had not yet been provided. He explained that the Construction Product Directive's essential requirements provided that construction works had to be designed and built in such a way that, in the event of an outbreak of fire: (i) the generation and spread of smoke was limited; (ii) the occupants could leave the works or be rescued by other means; and (iii) the safety of rescue teams was also taken into consideration. Each of these essential requirements might give rise to the establishment of classes corresponding to different performance levels of the relevant construction products. It was pointed out that such classification would be established at the Community level, and that member States might then determine the performance levels to be observed in their territory, in parts of their territory or for certain works, within the classification adopted at Community level. The European Commission had developed a classification of the reaction-to-fire performance of electric cables on the basis of several years of examination and discussion among experts. For each class, one or several test methods were defined, as well as classification criteria and parameters of "additional classification". With regard to the latter, member States would be entitled to regulate according to their needs, but were not obliged to do so.

The representative of the European Communities stressed that electric cables were construction products with particular risks in the case of fire and that in certain hazardous places, for instance in tunnels for passenger transport by rail, potentially high quantities of electric cables were placed. Therefore, it had been considered that the release of so-called hydrogen halides, generally referred to as "acidity" in a case of fire posed a specific risk for the safety of people. The parameter of acidity could be found in some national and international standards on the reaction to fire performance of electric cables, fire propagation and gas emission, and was used in technical

regulations of some EU member States and other WTO Members, such as Japan. The parameter was also included in the technical specifications of bodies responsible for undergrounds, airports and railways.

In the comments received on the TBT notification, and in the concerns raised, EC trading partners appeared to assume that the possibility of classifying according to acidity should be used as a method to detect toxicity. He stressed that this was not correct, and that "acidity" as a parameter could be used as an indicator of the concentration of irritants generated in the case of fire, which were expected to produce the effect of incapacitation or lethality of human beings exposed to smoke. By referring to the proposed additional classification which would include the "acidity" parameter, member States would be allowed to require for certain works the use of electric cables belonging to a so called "low smoke/low/zero halogen" family which would prevent incapacitating effects to occupants allowing them therefore enough time to escape in case of fire and the spread of toxic gases. It was stressed that the purpose of the proposed Decision was not to ban PVC cables, and that it was not going to establish any obligation on EC member States to regulate. Instead, by means of the proposed Decision, those member States wishing to maintain or adopt national regulations could do so without conflicting with European law, and in a common, harmonized way.

Japão e EUA x Coréia do Sul - Recycling of Electrical and Electronic Products and Automobiles

Korea – Recycling of Electrical and Electronic Products and Automobiles

The representative of Japan raised concerns about a new Korean draft regulation, relating to recycling of electrical and electronic products, announced in the Korean Official Journal N° 16160 on 30 December 2005. His delegation was concerned that the implementation and operation of this regulation could constitute a technical barrier to trade. Considering that the regulation was expected to enter into force on 1 July 2007, Korea was requested to notify it at an early and appropriate stage, in accordance with the TBT Agreement. Moreover, the representative of Japan asked whether the Executive Order issued by the President and which was cited in the Law would be notified to WTO Members.

The representative of the United States supported the comments made by Japan and sought clarification from Korea regarding whether a notification would be made.

The representative of Korea informed the Committee that a public hearing had been held recently on the proposal and that, as a result, amendments to the original text were being made. He noted that the proposal had similarities with the EC RoHS and WEEE Directives. He assured the Committee that a notification would be made and that a 60 day comment period would be provided.

UE (Japão e EUA) x China - Revision of list of toxic chemicals severely restricted in the People's Republic of China in the regulation for environmental management on the first import of chemicals and the import and export of toxic chemicals

China - Revision of list of toxic chemicals severely restricted in the People's Republic of China in the regulation for environmental management on the first import of chemicals and the import and export of toxic chemicals

The representative of the European Communities referred to the above-mentioned Chinese regulation, dated 1 March 1994. She pointed out that an amendment to the Annex which listed several severely restrictive toxic chemicals had been introduced on 27 December 2005 and that, on 31 December 2005, the Chinese authorities had submitted a list of toxic chemicals banned in China. Both lists had entered into force on 1 January 2006. He noted that the two lists had not been notified to the TBT Committee and had entered into force a few days after the publication in the Chinese Official Guide, leaving trade partners without the possibility of submitting comments or adapting to the new situation. This had resulted in several shipments from the European Communities to China being blocked at the Chinese border for not complying with the new requirements.

The representative of the European Communities stressed that Article 2.12 of the TBT Agreement stated that, except for urgent reasons, Members should allow a reasonable interval between the publication of a technical regulation and its entry into force in order to allow trade partners to adapt to the new requirements. She sought clarification about how China had assessed the relevant risk and asked for copies of the technical and scientific information that supported the measure. She also sought information as to whether the provisions applied equally to domestic products.

The representative of Japan also expressed his country's concerns about the Chinese measure. He noted that the Chinese State Environment Protection Agency (SEPA) had announced through a circular that it had revised the "Highly Restricted Imported and Exported Toxic Chemicals" list and that, from 1 January 2006, it would be necessary to comply with the regulation at issue, and to obtain both a registration certificate and clearance notification in order to import toxic chemicals contained on the list. He noted that several chemicals such as dichloromethane and chloroform, which were widely used in industry, had been added to the revised list of toxic chemicals. The representative of Japan further noted that reports had been received from several Japanese exporters that the duration between announcement and enforcement had been too short, and that chemicals which had been contracted for before the announcement had also been stopped at customs in Shanghai and other ports as of 1 January 2006. This had generated confusion among the exporters, as they were unexpectedly told that they needed to obtain a registration certificate from SEPA which would cost USD 10,000 per contract, as well as a clearance notification for import, which would cost 2,000 Yuan, per shipment.

His delegation was concerned that the registration system at issue was an import restriction, and could damage the operation of Japanese manufacturing sites in China by blocking their supply-chains, and also interfere with Japan's chemical exports to China, depending on how the registration system would be implemented in the future. He request China to reviews the system and its methods of enforcement, in order to maintain consistency with WTO rules. In particular, with regard to industrial-used chemicals and agrichemicals, the registration system regulated the characteristics of products that did not contain chemical substances specified as toxic chemicals in the list, and imposed registration and/or other obligations on exporters when importing chemical products that contained listed toxic chemicals. This registration system could therefore be regarded as a technical regulation under the TBT Agreement. He noted that the registration system imposed

requirements for the acquisition of registration certificate and clearance notification only for imported chemicals, and was concerned that this might be inconsistent with Article 2.1 of the TBT Agreement, which stipulated no less favourable treatment between imported products and products of national origin. The registration system levied fees on imports in excess of those necessary for registration certificates and clearance notifications and Japan was concerned that this might be inconsistent with Article 2.2 of the Agreement, which stipulated the prohibition of unnecessary import restrictions.

Furthermore, the representative of Japan stressed that China had not provided a reasonable interval between the publication of a measure and its entry into force, and this was not consistent with Article 2.12 of the Agreement. Moreover, China had not provided Members with the possibility to submit comments, thereby not acting in conformity with Article 2.9. His country was of the opinion that the reason why this problem occurred was that although SEPA had released a draft of "Import and Export Registration Regulation of Dangerous Chemicals" for public comment in September 2002, this directive had not yet been implemented due to delayed coordination among government agencies. The directive clearly stipulated the abolition of the present "Regulation for Environmental Management on the First Import of Chemicals and the Import and Export of Toxic Chemicals" simultaneously with the date of enforcement of the new regulation. His delegation requested China to immediately implement this new regulation, which was considered to be more consistent with WTO rules. Japan also requested China to provide an adequate interval for Members to review the new regulation and submit comments on it after receiving the TBT notification.

The representative of the United States associated her delegation with the comments and concerns expressed by the previous speakers; she supported the request made for China to notify the measure so as to allow WTO Members an opportunity to provide comments, and to allow a reasonable period of time to comply. She appreciated the efforts that SEPA had made to delay the entry into force until the end of March 2006, but still found it not in line with WTO rules and, like Japan, had substantive concerns about the fees which had been imposed. The representative of the United Stats also sought clarification about the efforts under way in some Chinese Ministries to revise the regulations at issue.

The representative of China recalled that in February 2006, a meeting had been held between officials of the Japanese Embassy in Beijing and representatives of the Ministry of Commerce and the State Environment Protection Agency. At this meeting, the Japanese delegation expressed its concerns, and replies had been provided. First, on the newly added list of dangerous articles, the representative of China recalled that in 2002 the State Council had issued a new regulation on the control and safety of dangerous chemicals with an annex that listed more than 4,200 types of dangerous chemical products and explained that most products on the list caused severe harm to the environment. Second, on the transition period, he highlighted that a transition period was provided from 1 January to 31 March 2006, and explained that if a contract had been signed before 1 January 2006, the companies could first apply for the release declaration and then for the certificates for the importation of toxic chemicals. In this case, there was no registration fee. It was further noted that if a contract had been signed after 1 January, then the companies should apply for the release declaration and the import certificates jointly. Third, it was pointed out that the registration fee arose from the implementation of the Regulations for Environmental Management on the First Import of Chemicals and the Import and Export of Toxic Chemicals issued in 1994. The regulations were being amended by the Chinese authorities and the issue of the registration costs was being taken into consideration. The concerns raised would be transmitted to the competent authorities and further information would be provided at a later stage.

UE (EUA, Japão, México e Canadá) x China - Import and Export Inspections; Paper articles; Wireless Local Area Network Products with WAPI functions

China – Import and Export Inspections (G/TBT/N/CHN/182); Paper articles (G/TBT/N/CHN/183); Wireless Local Area Network Products with WAPI functions (G/TBT/N/CHN/187, 188 and 189)

The representative of the European Communities noted that at the beginning of 2006, China had made the above-mentioned TBT notifications *after* the adoption of the corresponding technical regulations. He stressed that the transparency provisions laid down in Articles 2.9.2 and 5.6.2 of the TBT Agreement provided that a notification of a proposed technical regulation or conformity assessment procedure should be made at an early appropriate stage, when amendments could still be introduced and comments taken into account. In particular, the notifications related to the Wireless Local Area Network (WLAN) products (G/TBT/N/CHN/187 to 189) were dated 31 January 2006 and the corresponding measures' date of entry into force was 1 February 2006, thereby preventing WTO Members from the possibility to assess the relevant documents and provide comments. It was recalled that the European Communities had continuously expressed its concerns regarding WLAN products with WAPI functions in numerous bilateral meetings with Chinese authorities. Finally, the representative of the European Communities thanked China for having provided a summary of the draft regulations in English, which had been forwarded to the experts who would be assessing it and would provide comments, if necessary.

The representative of the United States asked why the notifications related to the WLAN products had been made one month after the corresponding measures had been adopted. She also sought clarification from China whether these were mandatory measures applicable to all WLAN products manufactured, used and sold in China and whether an opportunity for comments was provided.

The representative of Japan shared the concerns expressed by the previous speakers. His delegation understood that the Chinese authorities would disclose the content of WAPI six months before to domestic manufacturers only. He was concerned that this might be inconsistent with the obligations under Article 2.1 of the TBT Agreement, as China seemed to thereby to be giving preferential treatment to products of national origin. He was also concerned that WAPI seemed to be incompatible with relevant international standards such as WPA WIFI protected access, developed by IEEE and WIFI alliance. He stressed that the Chinese regulation could therefore be inconsistent also with Article 2.2 and 2.4 of the Agreement. Clarification was sought form China on these points.

The representative of Mexico recalled that his delegation had, on various occasions, raised the issue that many notifications failed to give a deadline for comments and pointed out that the Chinese case was not the only one. He believed that the debate needed to be considered in a horizontal manner in the context of the Fourth Triennial Review of the TBT Agreement.

The representative of Canada associated her delegation with the comments made on the notifications on WLAN products and asked for a summary of the measures in English. She was particularly concerned about the need for providing a period for Members to formulate comments on the measures.

The representative of China fully understood the concerns raised, which would be transmitted to the competent authorities in capital; answers to the specific questions would be provided.

UE x China - Domestic Gas Cooking Appliances

China – Domestic Gas Cooking Appliances

The representative of the European Communities raised an issue concerning a mandatory Chinese standard on domestic gas cooking appliances, in particular gas cookers, gas roasters and gas and electric double function cookers. The issue had already been raised at the bilateral level. EU manufacturers had informed the Commission that a revision of the mandatory standard regarding these appliances was underway, and that the new measure would replace the standard GB 16400.10 of 1996. Some EU manufacturers whose products did not fully comply with the proposed new standards were experiencing a significant reduction in their orders coming from China. His understanding was that a relevant international standard for the products concerned did not exist.

The European Communities requested China to notify the proposed amendment to the mandatory standard in accordance with Article 2.9.2 of the TBT Agreement, and reiterated the importance of fully complying with the transparency provisions. Information was also sought on the current state of play of the adoption procedure of the standard and the objectives pursed by the amendment. His delegation understood that the proposed amendment was aimed at improving the safety level for Chinese consumers, but was concerned that some proposed technical requirements of the amended standard would constitute an unnecessary obstacle to trade. In particular, he noted that the amended standard imposed a requirements that a burner should have a 3.5 Kilowatt minimum output on each cooking appliance, and was concerned that the European experts could not see any justification for such requirement, which would lead to higher energy consumption and higher pollution in terms of CO_2 and nitrogen oxide. Instead, this requirement would effectively ban the European burners from the Chinese market.

The representative of the European Communities was also concerned about the requirement of a minimum temperature resistance of the burner material, which he believed to be set at 700 degrees Celsius. It was stressed that none of the existing standards in Japan, the Unite States, Australia and the European Communities had such a minimum temperature resistance requirement, as this was not necessary for safety reasons. Instead of setting an abstract resistance capacity of the material, the temperature resistance of the material of the burner should be related to the working temperature of the burner. He also highlighted that it seemed technically unreasonable to fix a minimum temperature resistance for the material of the burner, as this parameter varied greatly with the burners' design and the material used. As an example, he pointed out that cookers made of aluminium and with an air intake from above were suitable to pass all relevant safety standards, however, they would not be able to comply with the minimum resistance temperature of 700 degrees Celsius as laid down in the draft Chinese standard. In technical terms, only cookers made of cast iron or brass would be able to respect such minimum temperature requirement. He noted that the gas cooking appliances produced in China mostly used such cast iron or brass, while in Europe the production of such cookers had been substantially abandoned due to environmental concerns, as they contained a high concentration of lead. He invited Chinese authorities not to ban advance technology cookers from the market which ensured high safety standards and energy efficiency. The proposed amendment should not be more trade restrictive than necessary to fulfil the legitimate objectives pursued, in accordance with Article 2.2 of the Agreement.

The representative of China stated that the comments received from the European Communities by the Chinese Enquiry Point would be analyzed. He stressed that the standard on gas appliances was still in the drafting phase, and that when a final draft would be available, it would be notified to WTO Members. He welcomed any further information exchange in this regard.

UE x Índia - Fifth Amendment to the Central Motor Vehicles Rules

India – Fifth Amendment to the Central Motor Vehicles Rules (G/TBT/N/IND/11)

The representative of the European Communities raised concerns in respect of the above-mentioned measure, adopted on 16 September 2005, that established rules on, among other things, a new certification system for tyres. On procedure, it was pointed out that the notification had been made six weeks *after* the adoption of the measure, and that India had also failed to provide, upon request, a copy of the technical regulation in order to allow Members to assess the text and to make comments. On substance, the European Communities was concerned that the new certification scheme, which he understood would become be applicable as of 1 July 2006, established that tyre manufacturers would have to emboss the logo of the Bureau of Indian Standards on the tyres (BIS logo), along with an approval number, in order to have access to the Indian market.

The representative of the European Communities stressed that adding this marking would have a significant financial impact on tyre manufacturers, because the moulds for all tyres would have to be adapted. Moreover, additional costs would be generated by factory inspections of Indian officials and testing procedures. Although enhancing road safety and protecting the life of passengers were legitimate objectives, the requirements as they stood were more trade restrictive than necessary to fulfil these objectives. In particular, it was stressed that tyres which were in conformity with the relevant UNECE tyre approval procedure and marked accordingly, ensured a high level of quality and security. The European Communities requested the Indian authorities to admit such tyres as equivalent to tyres which were BIS marked pursuing to the new Central Motor Vehicles rules. It was pointed out that many problems related to the import and export of motor vehicles and parts thereof could be avoided if India and other Members would adhere to the 1958 UNECE Agreement on International Technical Harmonization in the motor vehicle sector.

The representative of India explained that the mandatory certification was applicable to internal as well as outside manufacturers, and that the main criteria for establishing these rules was related to meeting the environmental and road conditions of his country. He stressed that the system would ultimately benefit consumers, and that there would not be any issue of discrimination. It was recognized that some minimal costs would be associated with the system, but stressed that there were higher considerations of human safety to be taken into account. Discussions were being held domestically on the possibility for India to sign on to the 1958 UNECE Agreement WP 29. Until such time, his country would not be in a position to accept test approvals issued by authorities of other countries. However, it was noted that the Indian national standards were aligned with the corresponding EC regulations and that tyres which met the EC requirements were expected to be approved when tested in India.

UE e EUA x Índia - Regulation on Medical Devices

India – Regulation on Medical Devices

The representative of the European Communities drew the Committee's attention to a proposed Indian regulation on medical devices, which would treat certain medical devices in the same way as drugs. This would imply that medical devices would have to be subject to licences by the central government in order to be manufactured, sold or distributed in India. He stressed that such a system was not in conformity with global practice and encouraged India to harmonize its medical devices regulations with the rest of the world, in particular with a system developed by the global

harmonization task force for medical devices, whose funding members were Australia, Canada, the European Union, Japan and the United States. This would facilitate trade with emerging markets. He also noted that the proposed regulation should be notified to the TBT Committee.

The representative of the United States noted that, in the autumn of 2005, the Bombay High Court had ordered the drug Controller General of India to begin regulating medical devices and to post a notification of its regulatory plans. In March 2006, guidelines for the registration of medical devices had been issued. It was recalled that several enquiries about the regulations and the opportunity to provide comments on them had been forwarded to the Indian authorities through the US Enquiry Point, but that no reply had been received. The representative of the United States pointed out that the regulations at issue raised several questions for the US industry, and that they could have a direct impact on trade. India was requested to notify the regulations and allow a reasonable transition period for suppliers to comply be provided.

The representative of India agreed that every country needed to move towards harmonization in this area, and pointed out that his country was moving in that direction. He took note of the concerns raised, in particular those about the notification of the measure.

China e UE x Japão - Amendment to the Enforcement Order of the Law for the Promotion of Effective Utilization of Resources

Japan – Amendment to the Enforcement Order of the Law for the Promotion of Effective Utilization of Resources (G/TBT/N/JPN/156, Add.1 and Corr.1)

The representative of China raised concerns about the above-mentioned measure, which had been notified on 28 November 2005 and was due to enter into force on 4 July 2006. It was recalled that the Chinese delegation had sent comments to Japan. China was concerned with the fact that one of the mentioned objectives of the measure was to address the increase of imported products; this was not in accordance with the TBT Agreement, and Japan was requested to provide scientific justification in this regard. He noted that the measure also requested that manufacturers or importers provide information on six specific chemical substances (mercury, cadmium, light, chromium, PPB and PPD) for seven types of electrical and electronic equipment. However, no standards or other requirements for these substances had been specified. In the view of the representative from China, the measure created an unnecessary obstacle to trade and did not comply with the principle of the least trade restrictive option under the TBT Agreement. Japan was requested to provide information on the notified regulation and the relevant standards; to reconsider the date of its enforcement, and to consider providing technical assistance to developing Members.

The representative of the European Communities recalled that comments had been sent to Japan and that a written reply had been received. He hoped to continue the dialogue with the Japanese authorities on this matter.

The representative of Japan explained that, in recent years, the imports of products such as personal computers had increased. However, the eco-design measures of the Law for the Promotion of Effective Utilization of Resources only applied to domestic manufacturers. Therefore, the amendment of the Enforcement Order of the Law had proposed to require the same measures for both domestic and imported products so as to ensure equal treatment for both manufacturers and importers. He noted that Japan had allowed an adequate period of time for comments and that replies had been provided to comments received. Japan also highlighted that his authorities had

provided relevant information on the provisions of the Order. In respect of the transitional period, it was stressed that the regulation of the matter was of an urgent nature to Japan, and that an adequate period for business entities to take the necessary steps to adapt had been provided. Therefore, Japan was not going to postpone the date of enforcement of the measure. Finally, it was clarified that the measure at issue did not restrict the use of certain hazardous substances, but stipulated the provision of information regarding their presence. Moreover, when products complied with the EC Directives, they were not required to be labelled.

Brasil x Eslováquia - Textiles Products and Fibers

Slovakia – Textiles Products and Fibers (G/TBT/N/SQV/7)

The representative of Brazil noted that his delegation had provided comments on the above-mentioned measure, and thanked the European Communities for providing an answer and for taking the comments into account in terms of a possible amendment of the measure.

Brasil x Costa Rica - Fruit Juices

Costa Rica – Fruit Juices (G/TBT/N/CRI/14 and Add.1)

The representative of Brazil noted that his delegation was examining the answer provided to comments they had made on the Costa Rican notification on fruit juices.

China x UE - Fireworks and other Pyrotechnic Articles

European Communities - Fireworks and other Pyrotechnic Articles (G/TBT/N/EEC/97 and Add.1)

The representative of China appreciated the fact that the European Communities had extended the period to provide comments on the above notified draft directive. His delegation agreed with the objectives to ensure safety in the transportation, storage and use of pyrotechnical articles so as to improve consumers' protection. However, it was pointed out that some of the technical requirements were of a too general nature, for instance the requirement of low water and high temperature resistance, and asked the European Communities to provide specific requirements and standards. The representative of China also sough clarification about the certification procedure, and whether certificates issued in EC member States would still be accepted. It was also noted that the proposed directive required that pyrotechnical articles be subject to a type approval testing; China considered this to be too burdensome for the manufacturers. China requested that the European Communities established a reasonable classification of pyrotechnic articles on a scientific basis. It was also of concern that the directive did not provide sufficient protection of intellectual property rights for the manufacturers and was of the view that the directive could prejudice the interests of the pyrotechnic industry of China, which was well known and established.

The representative of the European Communities explained that the proposed directive aimed at replacing the 25 different national legislations with one single European system for the approval of pyrotechnical articles, including fireworks. This would make it easier for exporters to place

products in the European market, since they only had to meet *one* set of standards for all the EC member States. On the concerns raised about the water and temperature resistance, these would be discussed in the Council working group during the legislative process. Regarding certification, it was clarified that pyrotechnic articles of a similar nature were being grouped together, and that minor changes in the chemical composition would not result in each subtype being tested separately. Existing approvals would still be valid for a maximum of 12 years from the entry into force of the directive. Finally, he assured China that the European Communities took all necessary measures to protect intellectual property rights, which were an important field in European law. He explained that the European conformity assessment bodies had to be independent of the manufacturers of pyrotechnic articles, and that there was no need to introduce specific provisions on intellectual property rights in the proposed directive.

China x EUA - Energy Conservation Standards for Certain Consumer Products and Commercial and Industrial Equipment

United States - Energy Conservation Standards for Certain Consumer Products and Commercial and Industrial Equipment (G/TBT/N/USA/154)

The representative of China raised a concern about the amendments to the energy conservation standards for 15 types of consumer products and commercial and industrial equipment, to be placed in the Code of Federal Regulations, and recalled that detailed comments had been submitted by his delegation. While he appreciated the efforts made by the United States in the energy saving and environmental protection, he was concerned about the certification and enforcement programmes. In particular, the notified standards specified that manufacturers were subject to DOE certification, and that their products needed to meet energy conservation or energy design standards set by EPACT 2005. He sought clarification from the United States on the type of conformity assessment procedure that would be adopted. It was also pointed out that the notified standards specified that all eliminated exit signs should meet the Energy Star programme; and the United States was requested to provide detailed information about this programme. In addition, the representative of China pointed out that the energy efficiency ratio for small and large air conditioning equipment was higher than the present internal level in the United States. This would increase the costs for the design, manufacturing and consumption of raw materials, which would negatively affect energy conservation. Therefore, he requested the United States to modify the energy efficiency ration to bring it into line with the internal level.

The representative of the United States noted that she would follow-up on the issue with the Chinese authorities.

EUA x Arábia Saudita - International Conformity Certification Programme

Saudi Arabia – International Conformity Certification Programme (ICCP)

The representative of the United States welcomed the delegation of Saudi Arabia to its first meeting as a Member of the TBT Committee. She noted that several enquiries had been received from US companies that were confused about the requirements of Saudi Arabia's International Conformity Certification Programme (ICCP). It was the US understanding that the previously requested pre-market approval had been withdrawn and replaced by a conformity certificate

statement. However, the United States was concerned about the lack of publicly available information on the new requirements. Moreover, the company which had been contracted to provide services to support the ICCP was falsely advertising through the Internet and claiming that its services were a mandatory requirement for access to the Saudi market. Saudi Arabia had clarified that the required statement had to be printed on the letterhead of the manufacturer or third party conformity assessment body established in the country exporting to Saudi Arabia. It was the US representative's understanding that there were still some technical difficulties associated with the publication of the relevant information in English on the Internet, but that Saudi Arabia was taking steps to address these. The United States welcomed any additional effort that Saudi Arabia might undertake to ensure transparency in its new requirements.

The representative of Saudi Arabia stressed that his country was abiding to the commitments in the Working Party Report. He noted that the information about the ICCP on the Internet, which was a commitment made in the Working Party, would be clarified for the benefit of all Members.

Concerns Previously Raised

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

Korea – Import of Fish Heads

The representative of New Zealand recalled that edible hake heads which were caught in New Zealand waters and processed by New Zealand boats were prohibited from entering the Republic of Korea, while hake heads caught in New Zealand waters but processed by Korean boats were allowed entry into the Korean market. She noted that, in August 2005, Korea had proposed new requirements that would continue to prevent the import of all hake heads from New Zealand and stressed that New Zealand had demonstrated, through correspondence with Korea, how the proposed new requirements would continue to prevent trade. The representative of New Zealand urged Korea to accord hake heads caught in New Zealand waters and processed by New Zealand boats a treatment no less favourable than that accorded to those hake heads processed by Korean boats. It was stressed that her delegation had raised the issue repeatedly, both bilaterally and in the Committee; yet Korea had not been able to provide a WTO-consistent justification for its discrimination against the product caught by New Zealand boats. The representative of New Zealand expected rapid progress towards the resolution of the issue and was willing to engage in further discussion with Korea.

The representative of the European Communities informed the Committee that, with regard to trade in edible cod heads, good progress had been achieved in the on-going bilateral discussion with Korea. It was hoped that the two parties would be able to finalize an agreement in the near future.

The representative of Norway shared the concerns expressed by New Zealand and recalled that his delegation had raised the issue at previous meetings. He hoped that Korea and all concerned Members could come together to discuss all the relevant aspects of the issue in order to find a mutually satisfactory solution.

The representative of Korea noted that bilateral negotiations were going on and expected that the issue would be resolved in the near future.

Nova Zelândia 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 representative of New Zealand remained concerned that the EC Regulations 753/2002 and 316/2004, relating to wine labelling, contained provisions that were unnecessary obstacles to international trade. She recalled that her delegation had raised the issue at every meeting of the Committee since June 2002 and continued to seek written responses to the concerns raised.

The representative of the European Communities took note of the concerns expressed and recalled that extensive discussion had taken place on this issue. She referred to the responses that the European Communities had provided at the Committee meetings of March 2004 and November 2004.

Japão (Austrália, EUA, Chile, China 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 Japan noted that his delegation had submitted a Room Document summarizing the concerns on the REACH proposal. He pointed out that some of the concerns previously expressed had been addressed, namely the "one substance, one registration" issue and the qualification of substances to be notified and incorporated in the text. However, other concerns remained. With regard to the manufacturing of polymers mentioned in Article 5.3 of the proposal, he noted that the exclusion from the registration of monomers in polymers was limited only to the registration by the upper monomer manufacturers in the supply chain. In practice, the manufacturers in the European Communities did not need to register monomers. On the other hand, even if the polymer had been produced in the European Communities, the importer of the polymer from non-EU countries had to register all composed monomers of the same polymer separately. The representative of Japan considered that this different treatment was not consistent with the WTO non-discrimination principle. He stressed that the provision in the REACH text should be improved, and that if the composed monomers in polymer had already been registered, then the exclusion of the registration on the monomers should be allowed both in the case of the polymer manufacturer and the polymer importer. He hoped that the European Communities would continue the dialogue with its trading partners and that the REACH proposal could be made consistent with WTO rules.

The representative of Australia was also of the view that REACH needed to be brought in fuller consistency with the TBT principles and that it was more trade restrictive than necessary to achieve the objectives enshrined in Article 2.2 of the Agreement. He was of the view that subjecting such a broad range of materials containing substances to authorization obligations captured also minerals or metals, that presented little danger of risk.

The representative of the United States associated herself with the comments made. She noted that a result from the internal processes in the European Communities that would show that Members' concerns had been taken into account had yet to be seen.

The representative of Chile shared the concerns expressed. In particular, she stressed that the final text needed to be: simpler; reduce the costs for the application of the system; contain a better approach to risk based on science; and, avoid any duplication of information. The representative of Chile was of the view that REACH should not become an unnecessary obstacle to trade by being more trade restrictive than necessary. She also recalled the concern of developing countries in terms of technical assistance that could be provided by the European Communities for the correct application of the regulation.

The representative of the China associated his delegation with the comments made by the previous speakers. He was of the view that REACH was trade restrictive and not in compliance with the principles of the TBT Agreement. He was also concerned about the broad scope of REACH on its impact on trade. He encouraged the European Communities to continue sharing information on REACH and to provide updates on its development. He reiterated his delegation's request that the European Communities provide technical assistance to developing country Members, as well as take special and differential treatment into consideration.

The representative of Cuba agreed with Chile and China that technical assistance and special and differential treatment to developing countries needed to be taken into consideration.

The representative of Mexico thanked the European Communities for their efforts in terms of transparency, but highlighted the importance of taking into account the comments made and to consider technical assistance at the appropriate time, as well as special and differential treatment to developing countries.

The representative of the European Communities informed the Committee that, in mid-November 2005, the European Parliament had given its first reading opinion on the text presented by the European Commission in 2003 and had proposed numerous amendments regarding, *inter alia*, the scope of the future regulation, the registration and authorization requirements and the future responsibilities of the Agency which REACH would establish. Following that, the European Council had come to a unanimous political agreement on the REACH proposal on 13 December 2005, which had taken into account many of the key amendments made by the European Parliament. On 8 March 2006, the Committee of Permanent Representatives had agreed on the recitals for REACH.

It was stressed that the European Commission had expressed its full support for the Council's political agreement, which was consistent with the EC objectives on competitiveness and innovation, while achieving an improvement in the protection of health and environment. The political agreement had to be cast into a Common Position. He explained that the drafting was expected to be finished by May 2006, and that a Common Position, which was expected to be endorsed by the Commission, could be formally adopted by 30 May 2006. Subsequently, in the summer or autumn of 2006 – and on the basis of the Common Position – the Parliament would hold its second reading. At this point the Parliament could either reject or agree to the Common Position or, more likely, propose further amendments. The further amendments would have to be agreed by the Council: if it did not agree, then a conciliation procedure between the European Parliament and the Council would have to be established. This meant that the formal adoption of REACH would ideally take place by the end of 2006, and its entry into force was planned for 1 April 2007.

The main changes adopted by the Council in its political agreement related to a number of issues. The first amendment, on exemptions, related to (i) the clarification that waste was exempt; (ii) exemption of certain substances from registration, in particular noble gases and cellulose pulp; (iii) exemption of minerals and ores from registration if they had not been chemically modified.

The second amendment related to substances in articles, and provided that all substances intended to be released from articles had to be registered, according to the same timetable as for substances not in articles. Substances subject to authorization but not intended to be released had to be notified to the Agency. The third amendment related to reduced requirements for the registration of non-priority low volume substances and to increased requirements for prioritised low volume substances. A fourth amendment gave the Agency greater powers, particularly in evaluation procedure. Finally, all requests for authorisation had to be accompanied by an analysis of alternatives and all authorisations had to be subject to time-limited review periods.

The representative of the European Communities pointed out that, after the adoption of the Common Position by the Council, an Addendum to the original notification would be submitted, which would also explain how REACH would operate, while focussing on the major changes of the Common Position compared with the original proposal. He stressed that the revised REACH proposal was fully compatible with WTO rules, in particular with Article 2.1 and 2.2 of the TBT Agreement, as products were treated the same way and possible obstacles to trade were justified by the objectives to protect health and the environment. He would convey specific questions raised in the current meeting to the experts. The European Communities also recognized the EC obligations under Article 11.3 of the TBT Agreement and highlighted that extensive guidance material would be prepared and that appropriate technical assistance, and, on the Commission's request, capacity building activities to industry and authorities in developing countries were planned.

China e EUA 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 China reiterated the concerns on the above-mentioned measure, raised both in previous TBT Committee meetings and bilaterally with the European Communities. His delegation considered that China's comments had not been taken into account, and further comments had been submitted in January 2006, which remained unanswered. The European Parliament had approved the proposed amendments to the directive 76/769/EEC on 6 October 2005. Therefore, his delegation believed that the European Communities had not acted in compliance with Article 2.5 of the TBT Agreement, which requested Members preparing, adopting or applying a technical regulation to explain its justification upon request. The representative of China was of the view that the notified measures lacked scientific evidence. For instance, the three phthalates DIMP, DIDP and DNOP had not yet been proved to be harmful to children's' health, and there was no scientific evidence that supported the limits of 0.1 per cent of phthalates set by the EC measure. He requested the European Communities to provide scientific basis for this restriction, and to bring the measure into conformity with the TBT Agreement by adopting the ISO Standard 8124, which set the testing methods for harmful substances in toys.

The representative of the European Communities recalled that the directive concerned six phthalates: three of them had been identified as toxic in the risk assessment undertaken, and therefore had to be banned in toys and childcare articles. For a second group, including the DIMP, DIDP and DNOP mentioned by China, scientific information was either lacking or conflicting and, on the basis of precautionary considerations, restrictions on their use in toys and childcare articles had also been introduced. However, following the principle of proportionality, these restrictions would be less severe. He informed the Committee that a guidance paper, which would be publicly available on-line, was being prepared by the experts. A written reply to China's comments would

be provided and European experts remained willing to further explain the measures, including the possible alternative substances that could be used by manufacturers.

The representative of the United States referred to the guidance paper that the European Communities was preparing and recalled that her delegation had asked the European Communities to prepare legally binding guidelines in the context of the RoHS Directive in order to give companies seeking to comply with this directive commercial certainty. She noted that on the Commission website there was a section on Frequently Asked Questions which also included the respective answers, but that it was not legally binding. She sought clarification on the status of the guidance paper which would be prepared on phthalates.

The representative of the European Communities clarified that the guidance document on the phthalates in toys would not be legally binding, because the Commission could not give legally binding guidance on a directive which had been adopted by the European Parliament and the Council. Ultimately, only the European Court of Justice could interpret and instruct specific provisions of a legal act adopted under Community rules. The guidance was instead aimed at helping manufacturers and industry to comply with the obligations contained in the directive.

Japão (EUA e UE) x China - Administration on the Control of Pollution Caused by Electronic Information Products

China – Administration on the Control of Pollution Caused by Electronic Information Products (G/TBT/N/CHN/140

The representative of Japan reiterated his delegation's concerns about the Chinese measure on the control of pollution caused by electronic information products. His delegation appreciated the answers from China that WTO rules were being followed, but requested China to reply to the specific comments and questions posed. First, with regard to the electronic units and components and to electronic materials, he requested China to reconsider excluding them or changing their names, in line with the international practice. Second, clarification was sought on the names of electronic information products and on the kind of products defined as household electronic products. The representative of Japan also asked whether spare parts of the products sold before the date of implementation of the law, as well as re-used products would be out of the scope of the law. Third, Japan sought clarification on compulsory product certification and imported product inspection. His delegation had received the answer that electronic information products received in the catalogue should pass the compulsory certification. The representative of Japan asked whether supplier's declaration of conformity (SDoC) would be allowed, so as to reduce unnecessary technical obstacles to trade. Finally, with regard to the sectoral standards, he wondered whether these would be notified to WTO Members.

The representative of the United States thanked China for the response provided to the comments made, but had similar concerns to those expressed by Japan. For instance, it was her delegation's understanding that the catalogue would provide important information on the type of assurance of conformity, and whether this could be the CCC mark or supplier's declaration of conformity (SDoC). However, she noted that this information was not yet available, and that also the related technical standards and testing methodologies were still under development. The United States asked whether China would notify Members, for instance by means of an addendum to the original notification, when these additional documents became available and whether there would be an opportunity for comments. She also sought additional information on the scope of the

products covered and on the criteria, timeline and definition of the new "environmentally friendly use period" of electronic information products labelling requirements.

The representative of the European Communities associated herself with the comments made by the United States.

The representative of China recalled that, at the request of the European Communities, an extension of the comment period of one week had been provided. Comments had been received by eleven governments or enterprises from the United States, Japan, the European Communities and Singapore. The comments were being analyzed and responses to specific questions such as the ones on conformity assessment or SDoC would be provided through the Enquiry Point. He pointed out that the regulation was of a framework nature and that specific catalogues of products subject to this regulation would be developed in the future. It was stressed that China would continue to fulfil its obligations on transparency and that it was willing to continue the dialogue with its trading partners.

China x EUA - DTV Tuner Requirements

United States - DTV Tuner Requirements (G/TBT/N/USA/128)

The representative of the United States wished to follow up on a concern raised by China at the last meeting of the TBT Committee. She informed the Committee that, on 3 November 2005, the Federal Communication Commission had taken the decision to amend the rules taking into account the comments made by China and that this information, along with the text of the measure, had been provided to China. Information was also available for other Members on the FCC website.

China x UE - Disposable lighters

European Communities - Disposable lighters (G/TBT/N/EEC/89)

The representative of China noted that the above measure on child resistant lighters notified to the TBT Committee had taken into account some of the concerns raised by his delegation in previous TBT meetings. While his delegation understood the efforts to improve children's protection, concerns remained about a number of issues. First, his delegation believed that there was no factual support for the exemption of child resistant requirements on certain refillable lighters. This would result in a different treatment granted to different groups of products that ha the same function in an arbitrary fashion which was not consistent with the TBT Agreement.

Second, the representative of China was also concerned about the prohibition of placing on the market of novelty lighters. He noted that a US study on the effectiveness of child resistant requirements, which had been cited in the draft EC measure, reported a 60 per cent reduction in accidents; this proved that child-resistant devices on lighters could effectively prevent children from operating lighters. His delegation believed that the EC draft measure failed to justify why novelty lighters complying with child-resistance requirements should be prohibited from being sold in the European Communities. He further stressed that most of the novelty lighters on the European market came from China and that the prohibition would constitute a *de facto* discrimination against China. He requested the European Communities to lift this prohibition and to conduct a risk assessment of child resistant novelty lighters after one year of the enforcement of the measure.

Third, China was doubtful that the European Communities recognized testing bodies could conduct all the child-resistance tests within ten months as stipulated and requested that the transition period be extended to at least 20 months. He also recommended that the draft should presume that the force that needed to operate the lighter should exceed 8.5 pounds and that relevant testing centres and procedures be developed in order to avoid using several children as testing tools. Finally, the representative of China also sought clarification on the mutual recognition of test results and on the list of EC recognized testing bodies, in particular those in China. Clarification was also sought on certain definitions such as luxury and semi-luxury lighters, repairable ignition mechanism and about the requirements and procedures of the specialized service centre based in the European Communities.

The representative of the European Communities appreciated the recognition by China of the importance of ensuring a high level of protection for children from the risks caused by lighters and explained that the draft text, which had been notified to the TBT Committee on 5 July 2005, had been reviewed to take into account the comments received from several WTO Members, including China – both in the Committee and at a bilateral level. It was pointed out that the scope of the decision had been modified and that it was no longer based on a monetary value of 2 Euros which had been criticized by China, but on a technical definition of luxury and semi-luxury lighters. These were defined as lighters which were designed, manufactured and placed on the market so as to ensure a continued safe use over a long period of time and which were covered by a written guarantee and the benefit of after-sale replacement or repair.

The representative of the European Communities stressed that studies showed that the misuse of luxury and semi-luxury lighters had caused less accidents, and, given that the risk they posed when used by children was lower, they did not require child resistant mechanism. In this sense the European Communities had limited the scope of the measure to what was necessary to protect children; it was the least trade-restrictive option. The draft decision also included a provision regarding the placement on the market lighters that resembled toys or other objects which were commonly recognised as appealing or intended for use by children younger than 51 months, the so-called novelty lighters. She explained that this provision was based on the consideration that child resistant mechanisms only guaranteed an 85 per cent level of resistance which was considered sufficient for normal lighters but not for novelty lighters. Finally, it was stressed that the draft measures would apply equally to domestic producers and to those from third countries and that the ban was temporary. The European Communities acknowledged receipt of further comments from China on the amended measure, and noted that a reply would be provided.

EUA x UE - Directive 2005/32 of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council

European Communities – Directive 2005/32 of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council

The representative of the United States referred to the concerns raised by China about the above-mentioned measure at the previous meeting of the Committee and appreciated the information provided by the European Commission that the implementing measures associated with

the directive would be notified. She sought information about the status of development of the directive, which she understood to be a "New Approach" directive with some unique characteristics associated with it such as the subsequent implementing measures which were not going to be standards. She asked about the products to be covered by these measures and the time frame for its development. The representative of the United States also sought information about the conformity assessment requirements and whether there would be criteria for evaluating the equivalence with other standards. It was noted that equivalence was an approach chosen by the European Communities for some of its directives, and recalled that her delegation had raised concerns in the past about the lack of transparency on its implementation. It was her delegation's understanding that there would be a consultation with stakeholders and that the European Commission was establishing a eco-design consultation forum. The United States was interested in knowing how interested parties from non-European countries could provide an input to this process at a sufficiently early stage so as to have meaningful consideration in the implementation process of the directive.

The representative of the European Communities confirmed that the implementing measures would be notified and pointed out that the questions posed by the United States would transmitted experts. He further suggested that some issues could be clarified bilaterally.