

SPECIFIC TRADE CONCERNS (Retirado do documento G/TBT/M/39)

New Concerns

UE x China - Labelling Audit System for Imported Food and Cosmetic Products

China – Labelling Audit System for Imported Food and Cosmetic Products (G/TBT/N/CHN/190)

The representative of the European Communities noted that the above notification, dated 3 April 2006, had informed WTO Members of the AQSIQ Notice No. 44 on: "Modifying the Labelling Audit System for Import and Export Foods and Cosmetics" (24 March 2006). With this notice, the enforcement of mandatory labelling requirements by a central pre-registration mechanism on imported foodstuffs and cosmetic products had been replaced by a decentralized system. According to this system, the control needed to be carried out *after* the arrival of the goods and during the inspection and quarantine processes. While his delegation was in favour of this measure and welcomed in particular the removal of the pre-registration requirements on labelling, some concerns existed regarding the uniform implementation of Notice No. 44 by local offices, now responsible for ensuring that the product labels were in conformity with existing Chinese regulations and standards. For instance, it was noted that there existed diverging interpretations of the requirements and different application at local level for imports of alcoholic beverages and cosmetic products. The delegation of China was requested to inform Members about the measures it intended to take to ensure uniform and coherent enforcement at local level of the existing labelling requirements. China was also asked to provide the Members with copies of the relevant guidelines, procedural rules and any other instruction which had been or would be issued regarding the implementation of Notice No. 44 by local authorities. He stressed that this request did not prejudice any future position of the European Communities regarding the substantive requirements that imported foodstuffs and cosmetic products needed to meet upon importation to China.

The representative of China explained that the nature of the measure taken was one of trade facilitation. In effect, the former pre-registration system had been changed to the new "check upon arrival of shipments" in order to *facilitate* trade. He noted that AQSIQ had direct control over local authorities and that, therefore, uniform application of this measure, as well as other relevant measures, was ensured.

Canadá e Noruega x Bélgica e Holanda - Seal products

Belgium and The Netherlands – Seal products (G/TBT/N/BEL/39 and G/TBT/N/NLD/68)

The representative of Canada was concerned about the impending Belgian and Dutch ban on the importation of seal products. These two delegations were requested to revise or reconsider the relevant legislation, as Canada was of the view that it was inconsistent with the obligations under WTO Agreements. It was recalled that comments had been submitted to the Belgian and Dutch authorities together with a request for a meeting to discuss the matter further. The seal hunt was a sustainable activity based on scientifically proven and sound conservation principles; in fact, the seal population in Canada had grown significantly since the early 1970s. This fact had been echoed by the European Commission on 11 May 2006, which had noted that "the seal population in the Northwest Atlantic has grown significantly since the early 70's, from just under 2 million to around 5.8 million in the case of harp seals". The Canadian delegation welcomed the statement made by the European Commission on 11 May 2006, that "there is no scientific basis linked to the

conservation of the harp and hooded seals for extending the scope of application of Council Directive 83/129/EEC", which oversaw the importation into EC member States of skins of certain seal pups and products derived therefrom. Canada was therefore of the view that the seal population was not endangered. It was furthermore pointed out that the matter was not regulated by the Convention on International Trade in Endangered Species (CITES).

The representative of Norway shared the concerns expressed by Canada. She pointed out that the information provided had not allowed Norway to fully understand and evaluate the scientific basis and the risk assessment upon which the notified measures were based, as required in Article 2.2 of the TBT Agreement. Moreover, the measures could be more trade restrictive than necessary. It was noted that Belgium had invoked reasons of public opinion, and that The Netherlands had invoked the protection of public morals as the objectives of their draft measures. Norway was of the view that these objectives did not conform with the requirements of the TBT Agreement. The delegations of Belgium and The Netherlands were requested to provide necessary documentation to justify the measures, in accordance with Article 2.5 and 10 of the TBT Agreement. Norway was of the view that the ban should not be put in place unless the scientific underpinnings demonstrated and justified the need and the appropriateness of these measures.

The representative of the European Communities recalled that the measures at issue had been notified on the grounds of protection of animal life, as set out in Article 2.2 of the TBT Agreement. She took note of the comments made and pointed out that the draft measures were being examined to assess their compatibility both with European Community and international law. A substantive response would be provided once this procedure was concluded.

EUA x India - Mandatory labelling for biotechnology food products and India trade policy requiring approval for importing biotechnology products

India - Mandatory labelling for biotechnology food products (G/TBT/N/IND/12) and India trade policy requiring approval for importing biotechnology products (G/TBT/N/IND/17)

The representative of the United States was concerned that comments would not be taken into account regarding the notified measure for the approval for the importation of biotechnology products. India was to implement the regulation the day after the deadline to submit comments (8 July 2006); in fact, the notification had been made the day after the regulation had been adopted. It was noted that the United States had many questions regarding the two above-mentioned regulations and on how India would implement these rules, including their enforcement procedures to ensure non-discriminatory application to imported products. The representative of the United States hoped that further discussions could be held with India on the development of these regulations and noted that concerns had already been raised bilaterally and would also be raised in the SPS Committee. India was requested to suspend indefinitely the implementation of these measures pending clear guidance on non-discriminatory implementation and enforcement, in order to avoid potential trade disruption.

The representative of India recalled that bilateral talks had been held with US representatives ten days before and that his delegation had informed the United States that the measure notified by the Ministry of Commerce and Industry was not a new regulation, but an existing one which had been in force since 1989. It was explained that the regulation, which was contained in the Environmental Protection Act, provided that any GM food would have to be approved by the Genetic Engineering Approval Committee (GEAC), as per Indian laws. However, this did not apply to importers: the

new regulation was elaborated to enforce the existing regulation also for other countries, and was notified to the WTO for transparency purposes. He recalled that when concerns had been raised, the operation of this regulation had been suspended until 7 July 2006. He pointed out that his authorities were examining the matter further and that replies to the specific questions raised by the United States would be provided bilaterally.

China x UE - Batteries

European Communities – Batteries (G/TBT/N/EEC/98)

The representative of China noted that while his delegation agreed with efforts by the European Communities to protect the environment and consumers, it was stressed that more stringent requirements (as set out in the above-mentioned notification) could not be adopted without taking into account the current level of technology and production in the world, especially the developing world. Over-stringent requirements and standards could be regarded as trade restrictions which were not in compliance with the core principle of the TBT Agreement of choosing the least trade restrictive measure. The representative of China was of the view that the requirements on hazardous substances in batteries were twelve times more restrictive than the previous criteria. Therefore, in his delegation's view, the measure was restricting trade more than protecting the environment and consumers. Moreover, China found the definition of the scope of products subject to exemptions from the directive unclear, and requested the European Communities to provide detailed information on the matter, so that the Chinese industry could operate accordingly. Finally, China was of the view that the minimum criteria for battery recycling were not based on science and requested the European Communities to provide scientific evidence. The European Communities was invited to respond to the written comments which had been provided, and to provide an additional transitional period for developing country Members.

The representative of the European Communities confirmed that comments had been received by the EC Enquiry Point, and that a response was being prepared. With regards to the limits on cadmium, it was stressed that this target had been selected according to several impact assessment studies, and that a partial ban was the most efficient way to protect the environment. The ban would only apply to portable batteries and to batteries where substitutes of cadmium were available. Regarding the exemptions from this prohibition, the representative of the European Communities noted that these were defined in Article 4.3 of the directive, which listed three types of products for which substitutes were not available: emergency and alarm systems, medical equipment and cordless power tools. It was also pointed out that recycling targets had been agreed on the basis of impact studies carried out in 2003 and 2004; the EC delegation could provide copies of these studies to the Chinese authorities. With regards to the transitional period, it was stressed that once the directive was adopted there would be a two year transitional period for EC member States to adopt it, thus leaving enough time for other countries to adapt to the new requirements.

China x Japão - Amendment to Enforcement Order of Industrial Safety and Health Law

Japan - Amendment to Enforcement Order of Industrial Safety and Health Law (G/TBT/N/JPN/166)

The representative of China was concerned that the requirements on bicycles contained in the above-mentioned measure were over-restrictive and therefore not in compliance with the TBT

principle of choosing the least trade restrictive alternative. It was pointed out that there was no scientific evidence that showed the risks of asbestos when used as a friction material for brakes on bicycles. He believed that technology was not sufficiently advanced to produce a substitute for asbestos, and that its use should not be completely restricted in production. China requested Japan to: take the current situation into account; abide by the provisions of the TBT Agreement; provide technical assistance to developing Members upon request; and, provide developing Members with at least a two year transitional period so that industry could adapt its production and accelerate their research on substitute materials.

The representative of Japan took note of the comments made by China.

Canadá x Grécia - Ban on wheat

Greece – Ban on wheat

The representative of Canada expressed concern about the fact that Greece continued to maintain inspection and testing requirements for imported, non-EU grain, and that these requirements were unnecessary, discriminatory, unjustifiable and contravened international trade obligations. While the Greek measure had significant SPS-related elements, her delegation was of the view that there were also technical elements which were inconsistent with the provisions of the TBT Agreement. In particular, the Canadian delegation stressed that: (i) the regulations were discriminatory as they applied only to grain imported from third countries (and not Greece or the EC members States); (ii) the conformity assessment requirements were more trade restrictive than necessary, therefore creating unnecessary obstacles to trade; (iii) the regulations required the inspection of all shipments for the presence of genetically modified organisms, including GM varieties of wheat, even though no such variety was approved in Canada or was commercially grown anywhere in the world, and no validation methodologies for GM wheat existed. This would result in a significant proportion, possibly even 100 per cent of Canadian shipments being inspected without any justification. It was the Canadian understanding that also the European Commission was concerned about the Greek measures and had provided written comments; her delegation appreciated the efforts of the European Communities on this matter and urged Greece to remove these WTO inconsistent regulations. It was pointed out that other avenues to address this issue might be sought if the concerns were not satisfactorily addressed.

The representative of the European Communities recalled that the issue had been discussed in the SPS Committee for some time. Her delegation hoped to provide a detailed response to the TBT Committee at its next meeting.

UE x Israel - Connection Boxes for Electrical Installations

Israel – Connection Boxes for Electrical Installations

The representative of the European Communities raised concerns on certain requirements imposed by the Israeli standard SI 145, regarding connection boxes for electrical installations. He noted that the standard SI 145, when it was originally adopted in 1994, was identical to the relevant IEC international standard. In 2000, however, requirements had been introduced that did not correspond to the requirements or recommendations of IEC 60670-1 and IEC 60670-2 on boxes and enclosures

for electrical accessories for household and similar fixed electrical installations. One of the additional requirements was the obligation to use a mechanical partition inside the connection box in order to keep each device separated from each other. The introduction of the partition had been justified by the Israeli authorities with the possible danger arising from the presence of different devices in the same box. He pointed out that, according to the opinion of the experts in this field, the presence of partitions inside the boxes did not bring about any additional protection. Therefore, it had not been foreseen by the relevant international standard. Another requirement which deviated from IEC 60760 was that the "glow wire test value" was set for all parts of connection boxes at the value of 850° Celsius. However, the IEC standard required this high test value only for certain parts of the box. According to the IEC standard, a test value of 650° Celsius, which was significantly lower than the value required by the Israeli standard, was sufficient for parts of the insulating material, not necessary to retain current-carrying parts in the partition boxes.

The European Communities had been informed that at the forthcoming meeting of the relevant technical committee of the Israeli standardization body, the standard SI 145 would be discussed. He expressed his delegation's encouragement to the Israeli authorities to align the legal requirements of this standard with the requirements of the relevant international standard, and to apply national regulations in accordance with the TBT Agreement – i.e., in a non discriminatory way and in a way which was not more trade-restrictive than necessary.

Argentina x China - Leather and leather products

China – Leather and leather products (G/TBT/N/CHN/174)

The representative of Argentina enquired whether if the measure to which the notification referred had already entered into force or not.

The representative of China noted that his delegation would provide the information required bilaterally.

EUA x China - Duplicative testing and certification requirements for medical devices

China – Duplicative testing and certification requirements for medical devices

The representative of the United States recalled that her delegation had raised bilaterally with China the issue of duplicative testing and certification requirements on medical devices. She welcomed the recent commitment made by China to eliminate these duplicative requirements, which were applicable to eight categories of imported medical devices. To this end, a notice (Notice N° 70) containing an announcement of a single unified testing laboratory process had been published on 30 April 2003. The United States sought further information from China on its plans to eliminate the remaining redundancies, in particular the two application processes to the State Food and Drug Administration (SFDA) and to China National Accreditation Administration (CNCA), the two application fees and the two on-site factory inspections and audits.

The representative of China noted that a relevant reply would be provided either through bilateral channels or at the next meeting of the TBT Committee.

Concerns Previously Raised

Japão (Jordânia e EUA) x Noruega - Restrictions on the Use of Deca-bromo diphenylether (deca-BDE)

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

The representative of Japan recalled that, at the previous meeting of the Committee, her delegation had asked Norway to explain, in accordance with Article 2.5 of the TBT Agreement, the justification for the proposed prohibition of deca-BDE. She noted that Norway's explanation was that the draft regulation was based on scientific evidence and public hearings, and requested Norway to provide information about the risks based on scientific data. Her delegation was also interested in knowing more about the discussions held during public hearings.

The representative of Norway informed the Committee that the proposed regulation would not enter into force, as originally planned, on 1 July 2006. She explained that the Norwegian Ministry of Environment was considering several inputs from different groups and that these would be taken into account before finalizing the position regarding the regulation. She took note of the comments made by Japan.

The representative of Jordan thanked Norway for the update, and hoped that the revised decision on the ban on deca-BDE would also take into account the comments made by WTO Members. He shared the comments made by Japan.

The representative of the United States recalled that her delegation had also raised concerns and thanked Norway for the update.

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

Korea - Import of Fish Heads

The representative of New Zealand recalled her delegation's concern with respect to the issue of edible fish head imports by the Republic of Korea, a matter that her delegation had been raising since 2001 in the TBT Committee. She noted that edible hake heads were caught in New Zealand waters and processed by New Zealand boats, but were prohibited from entering the Republic of Korea. By contrast, hake heads caught in New Zealand waters but processed by Korean boats were allowed entry into the Korean market. She also recalled that, in August 2005, Korea had proposed new requirements that would continue to prevent the import of hake heads from New Zealand, and stressed that her delegation had demonstrated through correspondence with Korea how these proposed requirements would continue to prevent trade. The representative of New Zealand urged Korea to grant hake heads caught in New Zealand waters and processed by New Zealand boats a treatment no less favourable to that accorded to hake heads caught by Korean boats. She stressed that, despite the bilateral talks with Korea and the many times the issue had been raised in the TBT Committee, Korea had not been able to provide on any occasion, a WTO justification for its discrimination against products caught by New Zealand boats. Her delegation was in the hope that rapid progress towards the resolution of the issue could be made.

The representative of Norway shared the concerns expressed by New Zealand and recalled that her delegation had also been engaged in bilateral talks with Korea, in addition to raising the issue in the

TBT Committee. Her delegation hoped that Korea and all concerned Members could come together to discuss all aspects of the issue in order to find a mutually satisfactory solution as soon as possible.

The representative of the European Communities reported that good progress had been made with Korea under the on-going bilateral discussion. She hoped that the two parties would be able to finalize an arrangement in the next few months.

The representative of Korea stressed that his country was ready to allow the import of edible fish heads; however, for safety issues, his authorities were trying to establish sanitary standards for the product. He noted that while bilateral discussions with New Zealand were still on-going, New Zealand had not agreed on the proposed standards. It was stressed that Korea would treat the issue in a non-discriminatory manner.

Nova Zelândia e México 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 with the overall EC approach to wine labelling, as reflected in Regulation 753/2002 and in the amending Regulation 316/2004. These appeared to remain in conflict with the core principle of the TBT Agreement, in particular with Article 2. She recalled that her delegation had raised its concerns, both substantial and procedural, bilaterally with the European Communities as well as at almost every TBT Committee meeting since 2002; yet the issue remained unresolved.

The representative of Mexico associated his delegation with the comments made.

The representative of the European Communities took note of the concerns expressed and reminded the representative of New Zealand that several informal discussions had been held on the issue of wine labelling. Her delegation looked forward to engaging in additional fruitful discussions on the matter.

Japão (EUA e Jordânia) x Suécia - Restrictions on the use of Deca-bromo diphenylether (deca-BDE)

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

The representative of Japan recalled that, at the previous meeting, her delegation had requested Sweden to provide a justification to its proposed prohibition of deca-BDE, in accordance with Article 2.5 of the TBT Agreement. She also recalled that the European Communities had explained that the regulation was being examined, and requested them to provide details of this evaluation.

The representative of the United States referred to the previous meeting of the Committee, where it had been noted 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 that result, the European Communities had decided to exempt deca-BDE from the scope of the RoHS Directive. She hoped

that Sweden would take into account the concerns raised by Members and the potential impact on trade of its proposed prohibition.

The representative of Jordan recalled that his delegation too had expressed concerns, and sought an update of the situation.

The representative of the European Communities informed the Committee that the internal consultation process had not been concluded yet and that her delegation would revert to the issue at the next meeting.

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 the United States provided an update on the concern raised by China at the previous meeting of the Committee. She recalled that on 23 November 2005 the US Enquiry Point had notified a Federal Register publication by the U.S. Department of Energy, which was a technical amendment and clarified that the notification had been made by mistake. The purpose of the technical amendment was to incorporate the energy conservation standards and related definitions that the Congress had prescribed into the Code of Federal Regulations which, it was explained, was the compilation of all regulations. It was not a proposal for comments as foreseen in WTO rules. She noted that written comments by China had been received and that the Enquiry Point had transmitted them to the Department of Energy, which had provided a written response to China.

UE e EUA x Índia - Regulation on Medical Devices

India – Regulation on Medical Devices (G/TBT/N/IND/19)

The representative of the European Communities recalled that on 6 October 2005, India's Ministry of Health and Family Welfare had declared that a list of ten sterile medical devices had to be considered as drugs under the relevant acts. Guidelines for import and manufacture of medical devices described both the import licensing and the manufacture procedures to be respected in India for these ten medical devices. It was noted that these guidelines appeared to set mandatory requirements and that they therefore had to be considered as technical regulations or conformity assessment procedures in terms of the TBT Agreement. Thus, his delegation regretted that these had not been notified pursuant to Article 2.9.2 and 5.6.2 of the Agreement and that interested parties from Members had not been given an opportunity to provide comments before the guidelines had entered into force. Therefore, the attention of the Indian authorities could not be drawn at an early stage to the fact that the submission of medical devices to the legal regime applicable to drugs was contrary to the global regime. The many unanswered questions rendered the task of compliance more difficult for the European industry. India was requested to allow for a reasonable transition period for industry to comply with the guidelines. In addition, India was requested to involve stakeholders in the development of clear and detailed guidance on the implementation of the

guidelines, as well as with respect to the ensuing comprehensive regulations for medical devices which were under preparation, and which needed also to be notified to the TBT Committee.

Concerning conformity assessment, the representative of the European Communities requested India to ensure that adequate and appropriately qualified resources were made available within the government and private bodies to ensure efficient, impartial, transparent and predictable conformity assessment procedures. He sought confirmation from India on the following points: (i) that India would accept CE marking as evidence of substantial compliance with India's requirements; (ii) that international standards and Global Harmonization Task Force (GHTF) guidance would be recognized without national deviations as a primary basis for demonstrating compliance with India's regulatory requirements; and, (iii) that for all medical devices, the guidelines would be applied in a non-discriminatory fashion and without regard to the country of origin. Finally, the representative of the European Communities stressed the potential value of India's participation in regional and international regulatory harmonization initiatives, such as the Asian Harmonization Working Party and the Global Harmonization Task Force. Additional detailed technical comments would be provided directly to the delegation of India.

The representative of the United States associated herself with the request to India to make a notification of these proposals to the TBT Committee and sought an update of the situation from India.

The representative of India noted that the standards at issue were country specific, and that the United States and the European Communities had their own standards as well, as no international standard was available. If there was a need to harmonize them at international level, India would certainly associate itself with this process, as this would improve trade. He stressed that his country understood and was committed to the WTO principles, and that these measures would be notified.

China x UE - Disposable lighters

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

The representative of China remained concerned about the above-mentioned measure, and recalled that his delegation had had many discussions on the issue with the European Communities. His delegation's concerns related mainly to the following points: (i) the discriminatory treatment of lighters: refuelable lighters with over five years lifetime were exempted from having to be child-resistant whereas other lighters were obliged to comply with this requirement; (ii) the TBT Agreement provided that technical regulations should be based on performance rather than descriptive characteristics or design, and normal lighters with child-resistant or equivalent device could fully meet these requirements; (iii) the transitional period: while the European Communities were providing a ten month transitional period, the time needed by industry and enterprises to adapt their production to the new requirements was longer, and a period of at least twenty months needed to be provided; and, (iv) equivalent measures needed be taken into account as the TBT Agreement recognized that different measures with the same objective might be considered as equivalent: child-resistant devices were not the only option and other measures such as increasing weights over 8.5 pounds could prevent children from igniting lighters.

The representative of the European Communities informed the Committee that the EC decision had been adopted on 11 May 2006, and that the new requirements would enter into force in March 2007. She explained that the Commission was drafting a practical implementation guide which

would indicate how the requirements would have to be met and thanked the Chinese authorities for providing inputs in this respect. On the Chinese request for an extension of the transitional period, she pointed out that Chinese companies were already complying with the requirements in standards from other countries, such as the United States and Canada, so they had already adapted their production. The European Communities hoped that China could meet the ten month transitional period provided.

EUA (México, Chile, Australia e China) 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 the United States recalled that on many occasions her delegation had stated its support for the objectives of the protection of human health and the environment sought by the REACH proposal, but that the regulatory approach to meet these objectives had to be workable. In her delegation's view, the REACH proposal remained, in overall terms: expensive, burdensome and difficult to implement effectively. She encouraged the European Communities to adopt a more streamlined and transparent regulation, based on science and on cost-effectiveness. The US delegation had identified some areas for priority attention. On the implementation, it was noted that many important workability decisions would be made during the REACH implementation project, and expressed her delegation's interest in working with the European Communities to develop useful and workable documents.

The United States was of the view that it was critical that the European Communities review the REACH proposal in order for it to be made consistent with other international chemical regulatory efforts. On the issue of the coverage of articles, in order to increase the workability and flexibility of the regulation, her delegation supported the European Council's version which required only intentional release substances in articles to be registered, if above one tonne. The United States also supported the retention of Council language in Article 6.5 of the regulation, which excluded substances in articles already registered for a particular use from the registration and notification requirements. Additionally, if any substances released unintentionally from imported articles required a notification, she recommended a limited inclusion of such unintentionally released substances to those on the list contained in Annex 13. The representative of the United States further stressed that, in her delegation's view, it was difficult to justify the REACH provision that required registration of non registered monomers in polymers, as these monomers were reactive, and not chemical substances being imported. On authorization, the US continued to believe that an approach which allowed for risk-based decisions in determining the list in Annex 13 would ensure that registration data would be better used and allow a more cost-effective regulation. On substitutes, it was stressed that decisions needed to be made on the basis of the risk and performance attributes, for example energy or product efficiency associated with substitutes. The United States supported the European Council's inclusion of the consideration in Articles 61.4 of the risks that might arise from the use of substitutes, although the need for the qualification was still questioned. Finally, the representative of the United States questioned the practicality of the five years maximum time limit on authorization, which was added in the European Parliament version. Depending on how this was interpreted and implemented, it could result in a forced phase-out period without regard to the risks of the alternatives. She urged the European Communities to take into account the concerns of its trading partners at this crucial stage in the decision making process.

The representative of Mexico thanked the European Communities for its transparency and openness on the issue of REACH, but stressed that his delegation remained concerned about the proposed regulation and agreed with the points made by the United States. In light of the broad impact that the regulation would have, Mexico stressed the need for technical assistance (Article 11), and special and differential treatment (Article 12). In particular, Article 12 of the TBT Agreement provided for various situations in which special and differential treatment could be provided to developing countries. For example, a tiered entering into force of the regulation could be a way to enable countries to implement the regulation more effectively and smoothly.

The representative of Chile appreciated the efforts made by the European Communities to improve the draft regulation in light of the comments received. She recalled that during bilateral meetings her delegation had made various proposals on the proposed regulation. One of these was that greater relevance needed to be given to risk assessment and to scientific evidence with respect to the authorization process. Another was that minerals and metals should be completely excluded from the scope of application of REACH, with the exception of those which were dangerous. Also, the regulation should not be extended beyond the borders of the European Communities, as was the case with respect to quality labels for articles and the so called "duty of care". Finally, Chile was of the view that the registration of substances contained in articles should be limited only to those which were considered dangerous. Chile concurred with Mexico's comments in respect of the need for technical assistance to third countries to facilitate the implementation of the regulation.

The representative of Australia thanked the European Communities for its willingness to consider Members' concerns in the development of the proposed regulation. Nevertheless, her delegation remained concerned that some aspects of REACH, in particular its authorization requirements, were more trade restrictive than necessary to meet its objectives. For instance, the authorization requirements on ores and ore concentrates containing substitutes that presented minimum dangers to public health were unnecessary to achieve the objective of protecting human health and the environment. In her delegation's view, subjecting such a broad range of materials to authorization was unnecessary for two reasons. First, materials would be captured which, while containing the requisite amount of a substance, presented little danger to human health. Second, the safety aspects of minerals and metals were adequately regulated by other legislation in the European Communities, for example Council Directive 96/61/EC. A clear exclusion of ores and ore concentrates posing a minimal risk to public health and the environment from the scope of REACH would be a less trade restrictive alternative, which would not compromise the ability of REACH to meet its objectives, as those substances that posed significant risks to health and safety would remain within its scope.

The representative of China recalled that recently the United States had raised concerns on some specific items, such as the list of hazardous substances, information release and substitution. China shared all these concerns and supported the points made by the US delegate. He expressed his delegation's request to the European Communities to take into account the comments received from Members, including China, and to bring the regulation into compliance with the TBT Agreement, thus reducing the negative impact on international trade. He also urged the European Communities to take into account the special interest and concerns of developing members in the drafting process of REACH. Finally, he thanked the European Communities for providing detailed information and hoped that this would continue.

The representative of the European Communities welcomed the positive feedback received concerning the transparent and cooperative manner in which his delegation had dealt with the issue and thanked the United States for their positive comments on the European Council's version of the proposed regulation. He explained that the European services were waiting for the formal adoption

of the common position by the Council, which was expected to take place in the near future. After that, the Parliament and the Council could complete a second reading and REACH could possibly be adopted by the end of 2006, to enter into force in the spring of 2007. It was stressed that, at all stages of the procedure, the institutions involved had ensured that WTO rules were respected.

The Council text, which was fully supported by the European Commission, did not show any discrimination between European producers and exporters sending substances to the European Union. The current text was more effective and more workable, and addressed some specific concerns voiced by Members. For example, it exempted minerals, ores and ore concentrates from the registration obligation, if these substances were not chemicals, not modified and not dangerous. On technical assistance, the representative of the European Communities agreed that guidance was needed for the stakeholders, to ensure consistent, cost effective and smooth implementation of REACH. He informed the Committee that the European Commission was in the process of preparing such guidance, and that the agency which was going to be set up would also be asked to provide technical assistance and scientific support, as well as training and information seminars to interested parties. He noted that, once the common position was adopted, an amendment to the original notification would be submitted to the TBT Committee, outlining the main changes that had been introduced, and explaining in details some provisions, for instance Article 5.3 on monomers.

UE (EUA e Japão) 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 once again raised concerns about the new requirements on toxic chemicals in China, which had entered into force on 1 January 2006. It was recalled that at the previous meeting of the Committee, China had been requested to provide clarification with regard to the absence of a TBT notification – as well as clarification on how the risks had been assessed. An answer was still pending. The EC delegation requested an extension of the transition period which would allow for the application for the registration certificate and the release notice at the same time. Clarification was sought on progress made on the rules for mixtures. In addition, the European Communities requested China to lower the registration fees so that they reflected the real administrative cost of the service rendered.

The representative of the United States shared the comments made by the European Communities and sought an update on China's plans to notify the regulation. While the representative of the United States appreciated the fact that two grace periods had been granted, she was of the opinion that a six month extension should be given in order to address all the questions and concerns raised.

The representative of Japan echoed the comments made.

The representative of China recalled that in order to protect human health and the environment, the chemical regulations had been modified in 2005 and that POPs and PICs conventions had been integrated into the Chinese control list. Taking into consideration the concerns by Members, China had provided a three month transitional period, and this period had been extended for an additional

three months. Concerns raised by Members were under consideration by the environmental protection authorities and information would be provided in due time. With regards to the notification concerns, the Committee was informed that the relevant notification was under preparation and would be submitted shortly.

UE (Japão e EUA) 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 the European Communities thanked China for the response provided to comments made and noted that further comments were being prepared as some issues remained unclear. The European Communities asked if China could provide a specific timetable for issuing a catalogue of products which would be covered by the measure. Also, in relation to the mandatory certification under the CCC certification scheme, which was required for products listed in the catalogue, the EC representative enquired whether another procedure, such as the self declaration of conformity (SDoC) had been considered. Finally, the European Communities was seeking clarification on certain definitions: for instance, the "designer", the "manufacturer" and the "producer", so that responsibilities as regards product conformity could be clarified.

The representative of Japan recalled that his delegation too had raised concerns on the issue and requested China to provide a response.

The representative of the United States recalled that China had pointed out that the regulation was of a framework nature and that specific catalogues of products subject to it would be developed in the future. She wondered if these catalogues would be notified, with an additional opportunity for comments provided. It was also flagged that the US industry had particular concerns about the anticipated entry into force of the measure, on 1 March 2007. In particular, the industry was concerned about its ability to comply with the new labelling requirements, and had estimated that they needed 12-18 months to adjust to the new requirements once the details were known.

The representative of China highlighted that the catalogue of products was under preparation, and pointed out that his country would fulfil its transparency obligations, including to provide a comment period. He noted that a reply to Japan's comments was being prepared.

Japão x Arábia Saudita - International Conformity Certification Programme

Saudi Arabia – International Conformity Certification Programme (ICCP)

The representative of Japan stressed that Japanese companies found the Saudi Arabia programme too complicated and strict, and that too many procedures were in place in order to get the certification. Another problem was the unclear product coverage of ICCP. His delegation hoped that Saudi Arabia could simplify the programme and make it more transparent.

EUA x UE - Directive 2002/95/EC on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS)

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

The representative of the United States noted that the RoHS Directive would enter into force in July 2006. It was her delegation's understanding that the technical adaptation committee, which could decide on the coverage exemptions, would meet before the entry into force of the measure. However, that meeting had been postponed and this was creating a difficult situation for companies seeking exemptions and which could be found in violation of using banned substances, even if an exemption was subsequently granted by the technical adaptation committee.

The representative of the European Communities pointed out that several exemptions had already been granted for different products and that this was an on-going process. She would provide more information about exemptions given at a later stage at the next meeting of the Committee. It was also pointed out that a guidance document on the implementation of the RoHS Directive had been developed and, although it was not legally binding, it would provide clarity to industry on how producers might demonstrate compliance with RoHS requirements. The guidance document would be reviewed whenever more specifications were agreed. The representative of the European Communities further noted that the practical responsibility of assuring compliance with the RoHS directive remained with the EC member States, which had already reached a common understanding on the approach to take on RoHS compliance. From 1 July 2006, products placed on the market would be considered as RoHS-compliant if the producer could demonstrate this with a supplier's declaration of conformity (SDoC). In case serious concerns about a product arose, the market surveillance authorities would carry out the necessary tests. It was also noted that the European Commission was carrying out a conformity check of national measures transposing the directive so as to address any possible conformity issues in a systemic manner.

UE e Japão x China - Wireless Local Area Network Products with WAPI functions

China - Wireless Local Area Network Products with WAPI functions (G/TBT/N/CHN/189)

The representative of the European Communities expressed his delegation's continued interest in the Chinese encrypted standard on Wireless Authentication and Privacy Infrastructure, known as WAPI, and thanked the Chinese authorities for their willingness to engage in a dialogue. He sought clarification on the scope of application of WAPI: in particular, he wondered whether WAPI was mandatory only for public procurement of wireless local area network or if it went beyond this sphere, for instance covering not only government procurement but also procurement for other state owned entities. The representative of the European Communities referred to the on-going international standardization work aimed at integrating encryption requirements into the existing international standards on wireless local area network equipment (ISO IEC 8802-11). He expressed his delegation's encouragement to China to continue working with the ISO and IEC, with a view to developing a satisfactory globally standardized solution, which was able to ensure the interoperability of wireless local area network equipment worldwide. He stressed that a unilateral decision by China to adopt mandatory specific encryption requirements in an area where an international standard was being prepared would be inconsistent with Article 2.4 of the TBT

Agreement, which stated that, where international standards existed or their completion was imminent, Members should use them as a basis for their technical regulation. Finally, he pointed out that the European Communities and most other economies left the setting of encryption mechanisms to the market, and this raised the question of whether there was a need to regulate at all in this field.

The representative of Japan recalled that, at the previous meeting of the Committee, her delegation had asked specific questions on the issue, and invited China to provide a reply.

The representative of China recalled that WAPI standards were developed to protect national information safety, and stressed that this was in line with the TBT Agreement. The process of development of these standards had started in 2003; a notification had been made and comments from Members had been taken into account. He further stressed that attention had been paid to the work of the ISO and IEC and that his authorities would continue to do so. He took note of the concerns expressed, which would be transmitted to the competent authorities in capital.

Japão (China e 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 Japan recalled that the European Communities had explained that the above measure was of a framework nature, and that product categories and detailed regulations would be described in the subsequent implementing measures. It was her delegation's understanding that some studies had suggested that there would be implementing measures for 14 product categories, such as copiers and computers, and she believed that implementing measures stipulating concrete numerical criteria might be more trade restrictive than necessary. She expressed her delegation's request to the European Communities to clarify when the implementing measures would be drafted.

The representative of China shared the concerns expressed by Japan, and sought further information from the European Communities on the drafting of the catalogue for energy using products ("EuP"). He stressed the importance of transparency in the process.

The representative of the United States associated herself with the comments made, and welcomed the statement made at the previous meeting by the European Commission that a notification of the implementing measures would be made.

The representative of the European Communities confirmed that, at this stage, no notification had been made since studies were being conducted; moreover, no implementing measures had been drafted to date. The candidate products for the implementing measures were taken from the catalogue which was provided in the EuP Directive. Concrete proposals for the implementing measures would be subject to the European consultation mechanism, which included public consultation; these were expected at the earliest for the summer of 2007. This date would coincide with the expiration of the transition deadline for EuP Directive in EC member States. She stressed

that third countries, as well as their manufacturers or other economic operators, would have the possibility to submit comments at the first stage of the preparation of the proposals, by means of an open on-line consultation. Governments would then have the possibility to submit comments in the context of the TBT notification.

Japão 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 welcomed the answer provided by Korea to the comments submitted by the Japanese delegation to the effect that the Korea would observe WTO rules. She noted that further comments had been sent through the national Enquiry Point in May 2006, and invited Korea to provide an answer to those as well.

The representative of Korea recalled that several comments on the proposed regulation had been received from Members and that replies had been provided. He noted that consultations were still ongoing and that his authorities were in the process of finalizing the draft, the final version of which would be communicated to WTO Members.

Japão 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 noted that at the European Communities' 62nd meeting of the Standing Committee on Construction Products, a positive opinion had been expressed on the draft Commission decision regarding the classification of reactions to the fire performance of electric cables. Her delegation wondered if the comments made by WTO Members and the discussions in the previous meeting of the TBT Committee had been taken into account by the Standing Committee.

The representative of the European Communities confirmed that the Standing Committee on Construction Products had supported the European Commission draft decision, and noted that a comprehensive answer to all comments received was under preparation. He stressed that the acidity criteria which had raised concerns among Members was an optional classification criteria, which allowed EC member States to require the use of certain cables in certain construction works, for instance in tunnels. The reply would be sent to all Members who had submitted comments, and also posted on the EC TBT website, where all comments and replies were made available.