SPECIFIC TRADE CONCERNS (Retirado do documento G/TBT/M/33)

New Concerns

Jamaica (Barbados, Trinidad e Tobago, México, República Dominicana e Outros) x Argentina - MERCOSUR Regulation on Definitions Relating to Alcoholic Beverages Other than Fermented

Argentina: MERCOSUR Regulation on Definitions Relating to Alcoholic Beverages Other than Fermented (G/TBT/N/ARG/159)

The representative of Jamaica drew the Committee's attention to a MERCOSUR technical regulation on definitions relating to alcoholic beverages, other than fermented, notified by Argentina in G/TBT/N/ARG/159, dated 16 April 2004. She was concerned that this measure could have a significant negative effect on the trade in distilled spirits, such as rum, by Jamaican and other Caribbean distilled spirits producers. Together with the delegations of the Dominican Republic, Barbados, and Trinidad and Tobago, Jamaica had presented comments to Argentina and to its enquiry point. Jamaica expected that these comments would be taken into account and amendments introduced to the technical regulation. Of special concern were the definitions of alcoholic beverages derived from sugar cane under the first paragraph of point XVIII of the Regulation, which defined those beverages as being derived from "simple alcoholic distillates or from the distillation of fermented musts of sugar cane juices or molasses or syrups derived from sugar cane". In the view of Jamaican experts, the production of alcoholic spirits of any kind by a single distillation alone, without prior fermentation, was impossible. The MERCOSUR definition was therefore inaccurate. Jamaica requested that the reference to simple alcoholic distillates should be deleted from this paragraph and also where it was mentioned in the first paragraph of point XIX on rum. Likewise, the definition of rum in the first paragraph of point XIX as being "aged in whole or in part" was inaccurate, as Jamaica, along with other Caribbean producers, had a long tradition of producing, selling locally and exporting high quality rums that were not aged. Longstanding and generally accepted rum definitions, such as those of the European Communities, the United States, CARICOM countries, Australia and South Africa did not specify a requirement for aging. Jamaica therefore requested that the reference to aging be deleted from the definition, as well as the reference to minimum and maximum congener levels that did not find any parallel in other rum definitions of a longstanding and generally accepted nature either. Finally, Jamaica stressed that its technical experts were willing to engage in further dialogue with the MERCOSUR technical experts who were drafting the regulation.

The representative of Barbados fully endorsed the concerns raised by Jamaica and believed that the MERCOSUR technical regulation could have a significant negative effect on trade from members of the West Indies Rum and Spirits Producers Association, of which Barbados was a member. Of special concern was the characterization of alcoholic beverages derived from sugar cane as being derived from simple alcoholic distillates and the regulation's reference to rum as being aged in whole or in part. Barbados also requested the deletion of those references and indicated that their technical experts remained at the disposal of the MERCOSUR technical working group.

The representative of Trinidad and Tobago also supported the comments made by Jamaica and Barbados. The inaccuracies in the description of the distillation process for the production of alcoholic beverages and the definition of rum would have a negative effect on the trade of distilled spirits by Caribbean producers. Trinidad and Tobago was looking forward to receiving the response of Argentina to its concerns and would welcome a dialogue between experts on this matter.

The representative of Mexico shared the comments made by previous speakers. The definition of tequila was of particular concern; it did not correspond to Mexican legislation, which could be tracked back to the 16th century, when the preparation of tequila was first regulated. Moreover, Mexico considered that this technical regulation did not meet the requirements of the TBT Agreement's Article 2.2, namely serving the purpose of the protection of consumers' health or the prevention of deceptive practices. Mexico had sent its comments to Argentina within the foreseen time period. However, a reply was received from the enquiry point that its comments had not been examined by its Technical Group 3 of MERCOSUR, which would be meeting again in October. Mexico urged Argentina to fulfil its obligation under Article 2.9.4 and drew attention to the fact that as this was a MERCOSUR regulation, it would be implemented also by Brazil, Uruguay and Paraguay. Therefore, those Members should consider the comments presented to Argentina as an advance notice to other MERCOSUR countries as well.

The representative of the Dominican Republic supported the statements made by previous speakers and voiced concern that the regulation could have a detrimental and significant effect on the trade of spirit beverages which were distilled from the Caribbean producers. He also requested Argentina to provide answers to the concerns raised.

The representative of the United States associated herself with the previous comments and pointed out that the United States had also provided comments. Although this was a MERCOSUR regulation, she asked why Argentina was the only MERCOSUR member to have notified it. She further wondered whether the notified regulation would have any effect on the previously notified regulation by Brazil, G/TBT/N/BRA/135, on which concerns had already been raised.

The representative of Cuba asked whether the proposed regulation was based on international standards and suggested that Argentina review it accordingly.

The representative of the European Communities associated herself with the concerns expressed and stressed her delegation's willingness to pursue discussions on this matter.

The representative of Argentina stressed that notification G/TBT/N/ARG/159 was only on a *draft* regulation (No. 01/04) of the Common Market Group and that it was a revision of the Common Market Group Resolution No. 77/94. It only altered the scope of distilled spirits of sugar cane, so rum, liquors and tequila would not be affected by what was actually covered by Regulation No. 77/94. During the 19th ordinary meeting of working subgroup N°3 of MERCOSUR held in June 2004, the national coordinators had considered the various comments relating to the draft made by MERCOSUR States Parties and by the delegations which had intervened today. This group had decided to continue looking at the draft at the October meeting. Therefore, the Argentinean representative stressed that the regulation was still in the draft stage and that the comments made by delegations would be given careful attention and consideration. Also, Argentina was ready to contact all the delegations and their technical experts in order to discuss any technical questions which might arise.

Coréia do Sul x UE - Directive on the Type-Approval of Motor Vehicles with Regard to their Re-Usability, Recyclability and Recoverability

European Communities: Directive on the Type-Approval of Motor Vehicles with Regard to their Re-Usability, Recyclability and Recoverability (G/TBT/N/EEC/61)

The representative of Korea pointed out that he understood the objectives of the proposed Directive on the recycling and recovery of vehicle components and materials notified in G/TBT/N/EEC/61. However, he felt that the burden on industry to comply with this directive was too heavy, as it covered not only new but also used cars. Also, he requested the use of more concrete criteria to calculate the recyclability and asked for an extension of the period for comments.

The representative of the European Communities would report this request back to Brussels.

UE e EUA x Suíça - Ordinance on the Emission Level of Passenger Cars with Compression Ignition Engines

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

The representative of the European Communities recalled that on 3 June 2004 it had submitted comments on the Swiss notification G/TBT/N/CHE/39 of a regulation on the determination of the particle number emission level of passenger cars with compression ignition engines. The European Communities considered that the measurement methods for ultra-fine particles were not established with the necessary levels of accuracy and pointed out that the Swiss measure gave no time for the industry to install, calibrate and become familiar with these new measurement methods. Also, the UNECE Group of Experts on Pollution and Energy was working on a reliable system for measuring ultra-fine particles; therefore, unilateral action to define such measurement methods would only result in trade distortion and uncertainty. The European Communities reminded Switzerland of its obligations under Articles 2.2. and 5.1.2, according to which technical regulations and conformity assessment procedures must not be more trade restrictive than necessary. Switzerland was invited to accept the results of conformity assessment procedures carried out in other states and to provide answers to its comments.

The representative of the United States associated herself with the comments made by the European Communities and pointed out that the United States had also provided comments on the Swiss notification. She shared the assessment by the European Communities regarding the near term viability of the use of particle counts to determine and regulate particular emissions from diesel powered vehicles and noted that the United States did not support this approach, due to the absence of sound scientific theories on the repeatability and reliability of such measurements. There was also no supporting evidence at this time to make decisions on particular emission controls for public health improvements using a particle number system. Therefore, she encouraged Switzerland to take the United States' comments into account.

The representative of Switzerland thanked the European Communities and the United States for their comments and assured them that these would be transmitted to the responsible authorities in capital. However, a response would not be provided before the autumn sitting of Parliament, due to the national decision-making procedure, as the outcome of that sitting would have to be taken into account.

UE x México - Standard for Glazed Pottery Ware, Glazed Ceramic Ware and Porcelain Ware

Mexico: Standard for Glazed Pottery Ware, Glazed Ceramic Ware and Porcelain Ware (G/TBT/N/MEX/69)

The representative of the European Communities reminded Mexico that comments concerning notification G/TBT/N/MEX/69 had been submitted on 10 November 2003. He expressed his country's concern with regard to the lead and cadmium limits introduced by the notified draft measure. These were more stringent than those laid down in the relevant international ISO standards (ISO 6486-1/2), which were not being used as the basis of this measure, contrary to the TBT obligation to use international standards as a basis for technical regulations. The European Communities hoped that the Mexican authorities would accept the results of conformity assessment procedures of ceramic tableware produced in the European Communities in compliance with ISO standards and invited Mexico to provide answers to the comments sent.

The representative of Mexico thanked the European Communities for its comments and recalled that, as indicated by Mexico on 1 August 2003, this regulation had been published for public consultation. During the course of the last five years, the regulation had been revised in its entirety. In the near future, the Official Bulletin would publish all comments and replies, given that the working group had completed its work. He further stressed that the regulation was partially based on the ISO 6486-2 and 7086-2 standards of 1981. Also, the draft regulation had been subject to a regulatory impact study that had established that the benefits were actually higher than the costs.

EUA x Emirados Árabes - Conformity Assessment System and Halal Certification

United Arab Emirates: Conformity Assessment System and Halal Certification

The representative of the United States indicated that it had seen Press reports according to which the United Arab Emirates was planning to launch a new conformity assessment system, which would take effect in August. She wondered whether these reports were accurate and whether the United Arab Emirates would notify the proposal as required under the TBT Agreement. Furthermore, she had become aware of a new requirement for Halal certification: as of October, the United Arab Emirates' authorities would have to accredit directly centres located in other countries and would not recognize those previously accepted. She further noted that the United States had recently tried to use the enquiry point of the United Arab Emirates, but its e-mail contacts did not seem to function. Therefore, she urged the United Arab Emirates to update its contact details and requested the Secretariat to transmit the above-mentioned concerns to the delegation of the United Arab Emirates.

Concerns Previously Raised

China x EUA - Measure on Refillable Lighters

United States: Measure on Refillable Lighters

The representative of the United States recalled a concern raised at the last meeting by China on a regulation of the US Consumer Product Safety Council (CPSC) concerning refillable lighters. China had requested a notification of the measure and a scientific justification for setting a

relationship between the price and the safety of lighters. On 14 April 2004, the CPSC had published a notice in the Federal Register to clarify that the figure in its safety standard for cigarette lighters had been adjusted for inflation. The Regulation, which was in force since 1993 and had been preceded by the publication of a draft and an opportunity for comments (which had been considered), was therefore neither new nor amended. The recent announcement had not increased the scope of products covered by the Regulation. The only change was the adjustment of the way disposable lighters were defined in terms of customs valuation or an ex-factory price of under US$ 2. The adjustment had occurred in November 2003 and the CPSC had only provided a notice – first as a press release on 5 January 2004 and then in the Federal Register – as it had been concerned that there might be confusion about the timing in the increase without a specific notice. The United States officials had since then met with their Chinese counterparts bilaterally and had provided further details of the rationale for the original Regulation. The United States remained of the view that it did not need to notify the adjustments.

The representative of China informed the Committee that China had held bilateral meetings with the United States. She appreciated the documents provided by the United States on the drafting of the standard and the rationale for a relationship between safety and price for lighters. These documents would be brought back to capital and studied. However, even assuming that the rationale for the measure was scientific, in China's view the change of price for lighters in the safety standard of the United States meant the change of coverage of the regulation, which would be an amendment of a significant nature within the scope of TBT Article 1.6, and hence requested the United States to make a notification. Furthermore, the international standard ISO 9994 for lighters had become available last year and she asked why this standard could not meet the objective of the United States.

UE x Índia - Homologation of Vehicles

India: Homologation of Vehicles (G/TBT/N/IND/9)

The representative of the European Communities had raised concerns at the last meeting on the issue of the importation of vehicles and vehicle components into the Indian market. His concerns were about the practical problems linked to the importation of components and aggregates for vehicle production and the fact that the Indian type approval test agency (ARAI) did not seem to have appropriate test facilities for large engines. Manufacturers had to establish their own facilities or use those of competitors, which created problems of unfair competition. Those procedures were considered to be excessively burdensome, and he requested India to solve the problem.

The representative of India had previously responded to some of the issues and had explained the rationale of the measure on second-hand vehicles. On the issue of ARAI facilities in Pune, he emphasized that the upgrading of facilities in any country was a continuous process. He understood that ARAI had been accepting certification from officially authorized and recognized testing agencies in Europe for those items and components for which there were no commensurate facilities in India; however, he could not comment on it at the moment. He would inform the authorities in capital of the concerns and he expressed a willingness to engage in bilateral discussions to arrive at a better understanding of the measure.

Cingapura (Tailândia, EUA, Malásia, Austrália 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 Singapore drew the attention of the Committee to the fact that, at its last meeting, some ASEAN countries had indicated their intention to look at the REACH proposal and comment on it, which they had done in writing in the meantime. On behalf of the ASEAN countries, Singapore supported the rights of its trading partners to take measures to protect health, safety and the environment. While Singapore welcomed the improvements in the revised draft REACH regulation, it remained concerned about the potential adverse impact of such a complex and broad regulatory initiative on international chemical and downstream trade. Singapore was particularly concerned that the requirements under REACH, though non-discriminatory in appearance, could be discriminatory in practice, as non-EU producers and suppliers would face greater difficulties in complying with the complex requirements as compared to their EU counterparts. Moreover, compliance in itself was seen as so onerous as to constitute a significant trade barrier, particularly for developing countries and Small and Medium-Sized Enterprises (SMEs), which might not have sufficient resources and expertise to meet the proposed requirements. The current scope of coverage would have an impact on a wide range of downstream producers, many of whom would not be able to comply at a reasonable cost. Of further concern were the issues of retrospective liability, lengthy waiting periods for authorization, and on-the-spot trade that could negatively affect traders in the ASEAN region.

In order to minimize the negative impacts of REACH, especially on SMEs and developing countries, Singapore requested the European Communities, on behalf of ASEAN countries to: (i) reform its current legislation on sharing of information to ensure that smaller and non-EU companies had easier access to the necessary information; (ii) explicitly state that all substances need only be tested once; (iii) adopt a risk-based approach founded on prioritization and sound science; (iv) streamline the various processes in a single agency; (v) reduce the scope of REACH and allow for broader, clear-cut exemptions, thereby reducing the burden of downstream producers and traders; and (vi) address any other specific concerns raised. It was also important that the European Communities incorporate special and differential treatment, as well as technical assistance programmes for developing countries and in particular their SMEs. Taking into account these concerns, Singapore suggested that the timeframe for the implementation of REACH be extended for five years.

The representative of Thailand raised concerns about the scope of REACH, applying both to the manufacture and import of all chemicals as well as any finished products that contained chemicals, for which producers and importers would be held liable. Even the revised proposal remained largely unclear, too complex, overly expensive, burdensome as well as costly and had the potential of causing unnecessary obstacles to international trade, especially for developing countries, disrupting international chemical markets and downstream manufacturers, adversely impacting trade, inhibiting innovation and limiting global competitiveness. As areas of special concern that were likely to incur excessive costs and difficulties and thereby disadvantage industries competing in the EU market, she pointed at: (i) the test to identify the type and quantity of substances contained in articles, which was complicated and expensive; (ii) registration fees to cover the administrative costs of the Agency; (iii) the need to appoint a representative in the EU to fulfil the obligations on importers; (iv) the preparation of data (CSA and CSR) if the substance had not been registered or the substance manufacturer refused to do so; (v) the negotiation with the substance manufacturer to include identified uses in the registration; (vi) the mandatory data-sharing principle allowing the first registrant, who would be likely to reside in the EU or other developed countries,

to charge 50 per cent of the cost from each of the subsequent registrants upon their property rights, which could make it unfeasible for developing countries to export, especially downstream products; and (vii) the rules on the substitution for less hazardous chemicals or changing the current production process or method. She also pointed out that each stage of REACH was extremely time-consuming.

As Thailand was not a chemical manufacturer but a chemical importer, these chemicals were only used as minor ingredients or in a small quantity, so that the article producers had no bargaining power to demand further information from suppliers if they refused to provide such data. Thailand was concerned that the REACH system was neither WTO consistent nor harmonized with the UN Globally Harmonized System of Classification and Labelling of Chemicals (GHS), and other criteria set by the IFCS and the Stockholm Convention on Persistent Organic Pollutants (POPs). Thailand suggested that the accreditation of recognized institutions in other countries, such as EPA in the United States, could save time and costs to the downstream users on evaluation. The legislation on chemicals should be justified and transparent and must not create discrimination among countries or regions. Due to the far-reaching impacts on a wide range of industries, the timeframe for the registration of products should be extended for five years and possibly longer to allow developing countries such as Thailand to adapt their production methods before the regulation was strictly enforced. Thailand also suggested that the "identified uses", as mentioned in Articles 3(25) and 29(6-7), be a heading in the data sheet, which the chemical manufacturer would be obliged to supply to the chemical users without having to be so requested, to avoid obstacles to chemical users. Also, the scope of Article 6 should exempt substances in articles (such as polymers) from registration, as developing countries would either have difficulties controlling or be unable to control and already have to bear the costs for testing. Furthermore, Article 22, allowing the notifier of substances under Directive 67/548/EEC to automatically become the first registrant under REACH and to charge 50 per cent of the registration costs on subsequent registrants, was unfair to subsequent registrants. In addition, there seemed to be a lack of correspondence between Article 26(2)(b) referring to phase-in substances manufactured or imported in quantities of 1 ton or more per year and Article 21(2), which referred to 100 tons or more per year.

The representative of the United States commended the European Communities for its notification of the REACH proposal before the adoption of the common position by the European Council, which allowed for a more meaningful opportunity to provide comments, in consistency with TBT obligations. The United States had provided comments and reiterated its interest in the proposal.[1] She noted that the scope of the REACH regulation was still unclear and that it could affect the majority of US exports to the EU of over a US$ 150 billion in 2003. With the recent expansion of the EU to 25 countries, the potential impact would be even greater. She was still concerned that the proposal appeared to adopt a particularly costly, burdensome and complex approach, which could prove unworkable in its implementation, disrupt global trade and adversely impact innovation. It also discounted substantial resource constraints facing governments and industry. Furthermore, some uncertainties remained regarding: (i) the decision-making process, involving member State authorities, the European Commission and the new Chemicals Agency, such as the question of which chemicals and which uses would be subject to restrictions once REACH was implemented; and (ii) unclear and imprecise regulatory standards, i.e. whether or not industry could "demonstrate that the risk from the use of the substance can be adequately controlled or that the socio-economic benefits outweigh the risk".

The United States encouraged the European Communities to: (i) reduce the scope of the regulation to better focus on substances that were likely to pose the highest risk and ensure robust, science-

based regulation; (ii) to develop an EU approach, which supplemented rather than supplanted international cooperative efforts to effectively address the risk posed by existing chemicals; (iii) to clarify, simplify and enhance transparency concerning the process by which regulatory decisions would be made; and (iv) to ensure that the regulation's impact, both positive and negative, was fully and transparently assessed. As the European Council and Parliament would consider and revise the Commission's proposal, these institutions should also ensure that the approach was fully consistent with the EU's WTO obligations. In view of the scope, the far reaching implications and the global interest in this extensive regulation, the United States urged the European Communities to provide for meaningful consideration of the comments received and requested that the TBT Committee be kept informed as the draft regulation continued to move forward through the EU's decision-making process.

The representative of Malaysia raised two specific concerns in addition to common concerns of the ASEAN countries. He noted that the chemical preparations formulated or manufactured in the EU were exempted from registration requirements according to Article 5 of the regulation, which was believed to be inconsistent with GATT Article III. Also, according to Article 6a, non-EU-based suppliers were required to appoint an EU-based representative to whom they had disclosed their formulations for purposes of registration, which could compromise the protection of their intellectual property rights. He requested the European Communities to give due consideration to these concerns.

The representative of Australia noted that on 18 June 2004 Australia had submitted comments on the REACH regulation. He welcomed the changes in the proposal but remained nonetheless concerned that the draft regulation was more restrictive than necessary to fulfil a legitimate objective and threatened to have disproportionate negative effects on like products originating from third countries, including Australia. Therefore, he supported the concerns of many of the preceding speakers and was looking forward to a response from the European Communities.

The representative of Japan appreciated the European Communities' efforts to consider his country's comments on the proposed REACH regulation, which had improved in comparison to the previous version. However, Japan was still of the view that further improvements were needed in order to avoid negative impact on trade and investment. As a response to the European Communities' notification of 21 January 2004, Japan had submitted comments explaining that: (i) the REACH system should not impose excessive burdens of compliance on broader industrial sectors in light of its objectives; (ii) it should not impede exports to the EU market nor create unnecessary obstacles to international trade; (iii) it should be consistent with international harmonization activities, like those of the OECD and other international organizations; and (iv) it should ensure standardization, transparency and fairness in its application in each member State. He stressed the need to introduce a mechanism to avoid duplication of risk assessments and hazard assessments for the registration of chemicals, in order to ensure that REACH did not impose excessive obligations or burdens, or create unnecessary obstacles to international trade. In the APEC Chemical Dialogue held in May, many economies raised concerns about the costs and burdens of complying with REACH. Furthermore, at the June Meeting of APEC Ministers Responsible for Trade, Ministers expressed continuing concern over REACH's adverse trade implications as a result of its complex regulatory system. While Japan appreciated the transparency and openness of the process followed by the European Communities, it requested that it address the concerns of its trade partners, including Japan.

The representative of Uruguay reserved his country's right to continue its as yet unfinalized technical examination of the new draft regulation and its possible negative effects on trade in the sectors involved.

The representative of Mexico reiterated his concerns with respect to the REACH system, on which Mexico had submitted comments within the time-limit and was still awaiting a reply. Mexico wished to keep in contact with the European Communities in order to find alternatives to this system, as the burden of the proposed system would, in certain cases, be insurmountable for Mexican industry.

The representative of Canada reminded the European Communities of its written comments submitted on 21 June 2004 and expected them to be taken into account. Canada shared the goals of REACH to protect human health and the environment, promote competitiveness of the chemical industry, increase transparency and increase integration with international efforts. Canada also believed that international cooperation was essential to achieve those goals, as the assessment and management of chemical risk was a global challenge. The ongoing consultation was seen as a clear signal of the European Communities' willingness not only to benefit from the experience of other jurisdictions but also to fulfil its obligations under the TBT Agreement. In its written comments, Canada outlined specific provisions that might require rethinking in order to reduce the risk of creating unnecessary barriers to trade, such as the following seven items: (i) the registration process was seen as unnecessarily costly, burdensome and too complex; (ii) the criteria and procedure for including a substance in Annexes II and III lacked clarity; (iii) the possible anti-competitive behaviour of manufacturers resulting from voluntary consortia; (iv) the use of production volume thresholds instead of an incremental approach to information submission; (v) the apparent unwillingness of the European Communities to accept the use of data generated outside the EU in an importers' registration; (vi) the absence of clear rules for the fair allocation of costs by consortia members; and (vii) the extra-territorial application of the EU's policy on animal testing. Canada wished to continue the ongoing dialogue on chemical policy with the European Communities, including on regulatory cooperation.

The representative of China stated that the Chinese Government fully understood the legitimate objectives of the European Communities to protect human health and environment, but was interested in knowing how the European Communities would guarantee that the REACH proposal would not impose restrictions beyond what was necessary to fulfil these objectives. Having submitted comments on the REACH notification on 21 June 2004, she believed that the definition of "manufacturer" in REACH would accord less favourable treatment to manufacturers outside the European Communities and their intellectual property rights would not be properly protected. Also, the payment of 50 per cent of the total cost for sharing information with relation to tests on vertebrate animals was not in all cases justified by an animal protection objective, deprived foreign enterprises of a competitive advantage, was too high and would seriously restrict the production and export to the European Communities of relevant products of SMEs in developing countries.

Furthermore, China considered it unnecessary to have all chemicals subjected to the REACH regulation, especially those substances whose characteristics and performance were already clear through their long-term use. It would seem a waste of resources to ask countries to undergo the registration, evaluation, authorization and restriction procedures again. Also, Article 6.1 of REACH, which required registration of chemicals where they were present in articles in quantities totalling over 1 ton per producer or importer per year, would bring heavy burdens to all chemical-using enterprises, as the importers would be required to prove that the chemicals in their products did not pose a risk, rather than the authorities having to show the presence of a risk. China wondered why such a reversal of the burden of proof, also with respect to chemicals that had long been used without any known risks, was necessary to meet a legitimate objective. China also asked how the 1 ton threshold would be calculated in practice and how the concept of "product type" would be defined and interpreted. In addition, China believed that the REACH regime should not be based simply upon the volume of production and/or import of chemicals, but their potential risks

should be considered as well. In accordance with the TBT Agreement, the European Communities should also accept the testing data provided by non-EC laboratories fulfilling ISO/IEC 17025 General Requirements for the Competence of Testing and Calibration Laboratories and further shorten its registration timeframe.

China considered that the European Communities had not conducted a sufficient impact assessment of the negative effects of REACH on the chemicals industry in developing countries, given the huge gap between the European Communities and developing countries in production technology and production level of chemicals. The new regulation could trigger the transfer of many raw material-type industries, characterized by low added value but high pollution, to developing countries, hence confronting developing countries with the risk of "chemical pollution". Therefore, China requested that the European Communities explain how the process of preparing the REACH regulation complied with the TBT Agreement and in particular Article 12.3. Finally, she stressed that eleven ministries, trade associations, large enterprises and research institutes had participated in comments on the proposal. She therefore hoped that the European Communities would take them into consideration and provide a written response.

The representative of Chinese Taipei thanked the European Communities for its flow chart specifying actions to be taken and requirements to be met in relation to different provisions of the REACH proposal and associated herself with the concerns previously raised. Of special concern were the registration requirements of substances in articles and the volume based-approach of management. Chinese Taipei believed that not only finished articles, but also chemical substances with low or no risk concerns should be exempted from REACH. A risk-based approach to management instead of a volume-based approach should be adopted, considering the legitimate objective pursued. She hoped that the comments would be taken into account and looked forward to being informed of any changes.

The representative of Chile indicated that his country had already made comments to the European Communities on REACH and discussed them. He still had many concerns with respect to the increase in transaction costs. Chile was likely to be most affected by the volume-based, and not the risk-based, approach of the regulation. Also, different compositions of the same product might require separate registrations in the case of complex chemicals, which could become repetitive and bureaucratic. He was also concerned about aspects of the operation and the sanctions applied to countries and their uniform application. Moreover, the effect of the regulation on Chilean products, using these chemicals but not releasing them into the environment, was unclear. He sought further clarification on the issue of whether tests needed to be carried out in the European Union or outside. He requested the European Communities to continue to simplify the proposal.

The representative of Korea associated himself with the previous statements. Korea had submitted comments bilaterally and requested that, in the case of chemicals with simple physio-chemical characteristics, the EU authorities accept data from internationally accredited regulatory bodies such as the ILAC (International Laboratory Accreditation Cooperation).

The representative of Brazil indicated that comments on the REACH regulation had been sent on 21 June 2004 to the European Communities' enquiry point and requested a response.

The representative of Colombia reiterated the concern of the Colombian pharmaceutical industry and supported the request made by some delegations that the European Communities make a general presentation on REACH in the TBT Committee, in addition to providing answers to comments.

The representative of the European Communities noted that it had received written comments from Australia, Brazil, Canada, China, Japan, Singapore, Chinese Taipei, Thailand and the United States on the REACH Proposal. The European Communities would provide written answers to all comments and a response would also be published on the new web page of the European Commission dedicated to the TBT notification procedure.

Nova Zelândia (México, Austrália, Uruguai, EUA e Outros) 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 once again raised concerns over Regulations 753/2002 and 316/2004 on wine labelling, which had been implemented since 15 March 2004. New Zealand had commented in detail on Regulation 753/2002 and the potential impact of EC policies in this area that stretched back to 1998. At the last meeting, New Zealand had supported the amendments made to Regulation 753/2002 through Regulation 316/2004 and in particular the acknowledgement that traditional terms or expressions were not Geographical Indications (GI) and should not be treated as such. She also supported the amendment allowing alternative regulatory approaches to be used, but remained disappointed that they did not go further. New Zealand had submitted detailed written comments in August 2002, both on substantive and procedural concerns. On substance, New Zealand was concerned that the limitation on the use of terms relating to vine varieties, production methods, and vintage to wines carrying a GI disregarded fundamental TBT requirements, as it might prevent accurate consumer information. On procedure, New Zealand was concerned that the notification and consultation of Regulation 753/2002 fell short of TBT requirements. While New Zealand welcomed the delay provided for the implementation of the Regulation, it was disappointed at the short time period between publication and notification of the amending Regulation 316/2004 and its implementation, which was not sufficient for Members' comments to be taken into account in accordance with Article 2.9 of the TBT Agreement. Furthermore, many of New Zealand's concerns had not been addressed by Regulation 316/2004 and a written response had never been received. New Zealand reiterated its request to receive a response in light of the promise given by the European Communities at the last meeting to get back to all interested Members. The EC's overall approach to wine labelling and regulation as reflected in Regulations 753/2002 and 316/2004 was in conflict with TBT principles, and in particular with the obligation not to create unnecessary barriers to trade and to ensure that technical regulations are not more trade restrictive than necessary to fulfil a legitimate objective contained in Article 2 of the TBT Agreement.

The representative of Mexico was disappointed that his country's comments regarding Regulation 753/2002 had neither been responded to nor taken into account. Moreover, the special conditions of a developing country, like Mexico, to comply with the regulations, and elements of special and differential treatment had not been considered. He believed that Regulation 753/2002 violated a number of fundamental procedural and substantive provisions of the TBT Agreement: it did not have a legitimate objective, violated the principle of proportionality, and introduced an unnecessary technical obstacle to international trade. Even the revised regulation did not address Mexico's concerns. He hoped that Mexico's comments would be taken into account.

The representative of Australia supported the comments made by Mexico and especially New Zealand, which reflected many of Australia's concerns raised at a number of meetings. He was

concerned that the European Communities, wine labelling regulation was not TBT consistent and requested a written response.

The representative of Uruguay supported the comments made by New Zealand, Mexico and Australia, given that the Regulation would also affect the wine-producing sector in Uruguay. Uruguay also reiterated its concern about EC Regulation 316/2004, which went beyond the disciplines established by the TRIPS and TBT Agreements. The approach taken by the European Communities on traditional expressions and varieties of vine and grapes implied the imposition of significant trade barriers. He stressed that traditional expressions - or generic expressions - were not linked to geography. "Traditional expressions" were not provided for in the TRIPS Agreement, nor did they meet the characteristics of geographical indications. They did not refer to a quality which identified a product as coming from a territory of a Member or a region of this territory and, therefore, could not be attributed to a specific geographical origin. He concluded that, while geographical indications were linked to the specific geographical area where the product came from, traditional expressions were, by definition, terms that had become, through use and custom, part of the wine-growing world. They had been used systematically by all countries having a wine-growing culture and tradition. It was, therefore, difficult to determine who had been the first to use a specific expression and had the right to regulate its use. He felt that regulating the use of such expressions by third parties not only went beyond TRIPS, but also ran counter to other fundamental WTO provisions, notably the obligation under the TBT Agreement not to create unnecessary obstacles to international trade. Similarly, with regard to grape varieties, he asserted that the names of grapes and their synonyms could not be linked with the term "geographical indications" and, therefore, could not be protected for reasons linked to geographical origin. The designations of various forms of grape responded to general technical criteria, which were of universal use. They had also been part of wine-growing traditions and continued to be used as technological and scientific terms. He concluded that legislation could not go beyond the strictly technical area of labelling, excluding reference to specific traditional expressions. He announced that his comments would be submitted to the relevant EC authorities in Brussels.

The representative of the United States associated herself with the comments made and reminded the Committee that this item had been the subject of several notifications, written comments, bilateral and plurilateral discussions. The United States continued to have serious substantive and procedural concerns with the wine labelling regulations. At the last meeting, the United States had asked the European Communities to suspend the enforcement of its regulation to leave an opportunity for comments, to take them into account before the final adoption, and in order to have a reasonable interval of time before the entry into force as required under the TBT Agreement.

The representative of Argentina shared the views expressed so far and felt that the modified regulation was still inconsistent with WTO Agreements and, in particular, constituted an obstacle to the exports of wines to EC markets in breach of the TBT Agreement.

The representative of the European Communities explained that amendments to Community labelling rules had been adopted on 20 February 2004 through Commission Regulation 316/2004, which took into account comments relating to Commission Regulation 753/2002 raised in the TBT Committee, in the two rounds of informal consultations and also submitted in writing. Further written comments had been received subsequent to this regulation from Uruguay, and the European Communities would reflect on all comments, including those raised orally in the TBT Committee and would be pleased to pursue explanatory discussions with interested delegations in the near future.

EUA e Japão x Coréia do Sul - Average Fuel Economy Standards for Passenger Cars

Korea: Average Fuel Economy Standards for Passenger Cars

The representative of the United States associated herself with a concern raised by the European Communities at the last meeting on Korea's average fuel economy programme. She reminded Korea of its notification obligation under the TBT Agreement and indicated that the United States had been in contact with Korean authorities bilaterally and had submitted comments.

The representative of Japan supported Korea's efforts to reduce greenhouse gas emissions and its commitment to improve the fuel efficiency of automobiles in the lower transportation sector, but remained concerned that Korea's new fuel efficiency standard might lead to an excessive technical regulation to imported car manufacturers. He requested that Korea make a TBT notification at an early appropriate stage when amendments could still be introduced and comments taken into account in accordance with Article 2.9.2 of the TBT Agreement.

The representative of Korea explained that the rationale behind the introduction of the average fuel economy standard was for environmental and energy saving purposes. Nevertheless, the drafting of the regulation and the consideration of comments from industry and major trading partners was not finished. In spite of the stated concerns, Korea saw no discrimination between domestic cars and imported cars, but intended to provide a longer grace period for imported cars to address these concerns. He suggested continuing the consultations with Japan, the United States and the European Communities.

UE x Índia - Labelling of Pre-packaged Consumer Products and Mandatory Quality Standards for 133 products

India: Labelling of Pre-packaged Consumer Products and Mandatory Quality Standards for 133 products (G/TBT/N/IND/1)

The representative of the European Communities reminded India of its comments on notification G/TBT/N/IND/1 on 9 March 2002 concerning the two texts notified under the same code and reiterated the request to receive answers thereto.

The representative of India pointed out that India had discussed these measures bilaterally in an attempt to clarify their rationale. He emphasized that the same requirements were also applied to domestically manufactured products. In the case of new regulations, equivalent conditions would immediately be ensured for imported products. As a result of the review of the regulations on some steel items listed in the certification list of the Ministry of Steel, the mandatory requirements for imports of all of these items had been dispensed with. He also expressed India's willingness to continue discussion with the European Communities.

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

Korea: Import of Fish Heads

The representative of New Zealand reiterated her country's concerns, for the fourth time, on the issue of fish head imports to Korea. She was disappointed that, despite specific requests, Korea had

not provided legal justification for its measure banning imports of edible fish heads. The concerns had not changed since the last meeting and, as set out in a follow-up written statement provided to Korea, New Zealand continued to believe Korea's measures to be in violation of GATT Article XI.1 or the relevant provisions of the TBT Agreement. She announced that New Zealand was now actively working with other interested exporting countries and would like to have a discussion with Korea on principles for quickly removing restrictions on trade in line with Korea's WTO commitments.

The representative of the European Communities shared the concerns expressed by the delegation of New Zealand and invited Korea to address these issues.

The representative of Norway associated himself with the statements made and the concerns previously expressed. He hoped that Korea and the other concerned Members would find a mutually satisfactory solution as soon as possible.

The representative of Korea explained that Korea's main objective concerning the regulation of hake head imports was health protection, which was articulated under several relevant WTO Agreements. As stressed at the last meeting, this issue needed to be dealt with very cautiously, taking into account its social and political impacts. Korea was willing to discuss with New Zealand how to work out the legitimate standards and requirements to guarantee consumers' health protection, and the relevant Korean authorities remained open for bilateral consultation. Korea had also sought to accommodate the concerns raised by the European Communities and Norway and hoped for some more detailed consultations.

Canadá e UE x Holanda - "Vos" Bill on Wood Products

Netherlands: "Vos" Bill on Wood Products (G/TBT/N/NLD/62)2

The representative of Canada was pleased to see the direction of the recent amendments brought forward on the "Vos" Bill covering forest products, notified in G/TBT/N/NLD/62. However, she was still concerned with a number of provisions within the revised proposal that Canada believed were discriminatory and trade restrictive. She thanked the Netherlands for the opportunity to provide written comments on its draft legislation and indicated that formal comments would be submitted to the Dutch enquiry point by the end of July 2004 upon completion of the legal assessment of the revised bill. She expected the Canadian comments to be taken into account.

The representative of the European Communities informed Canada that the draft notified by the Netherlands was being examined at the European level to assess its compatibility with Community law and that a dialogue on the draft was in place between the European Commission and the Dutch authorities. The European Communities further pointed out that, as yet, no comments had been received from third countries. However, written answers would be provided to all comments received, once the examination of the draft had been carried out at the EC level.

Canadá x Nova Zelândia - Ban on the Importation of Trout

New Zealand: Ban on the Importation of Trout

The representative of Canada recalled his country's concern regarding the New Zealand ban on the importation of trout based on an order entitled "Customs Import Prohibition (Trout) Order 1998". The ban was put in place, as stated by New Zealand, on a temporary basis. Canada had made several high level representations to New Zealand on that issue since 1998 and had raised the issue at several meetings of the TBT Committee, including those of October 2001 and March 2002. Prior to the October 2001 meeting, Canada was informed of the extension of the ban until 7 November 2004. The ban had now been in place since 7 December 1998. Canada was disappointed by the measure and by the fact that it had never received science-based evidence in support of the ban. Canada sought confirmation from New Zealand that the ban would expire this year.

The representative of New Zealand pointed out that, as she had not been given advance notice that Canada intended to raise this issue, she was not in a position to comment in detail, but would report back to capital and speak with the Canadian delegate on this issue.

Canadá x UE - Traceability and Labelling of Biotech Food and Feed Products

European Communities: Traceability and Labelling of Biotech Food and Feed Products (G/TBT/N/EEC/6-7 and Add.1-3; G/TBT/N/EEC/53 and Add.1)

The representative of Canada recalled that at the March 2004 meeting, Canada had raised concerns regarding the European Communities traceability and labelling of biotech food and feed products (G/TBT/N/EEC/6-7 and Add.1-3; G/TBT/N/EEC/53 and Add.1). Canada remained concerned that the Regulations, which entered into force on 18 April 2004, were overly burdensome and created unnecessary barriers to trade for Canadian exporters. Canada would continue to monitor implementation to ensure that Canadian exports were not delayed. She stressed that the labelling and traceability measures created uncertainty for exporters and that the European Commission had not been forthcoming in clarifying the application of these Regulations. In the absence of clear guidance, it was unclear how Canadian exporters, especially small manufacturers of value added products, would be able to comply with these measures. Regarding the recent notification G/TBT/N/EEC/53 including Add.1 of the Commission Recommendation regarding sampling and detection, Canada remained concerned as to how traceability and labelling would be implemented, given the absence of segregation systems and internationally accepted testing methodologies to validate the presence of GMOs.

The representative of the European Communities pointed out that the measures concerning traceability and labelling of GMOs were notified in G/TBT/N/EEC/6-7 plus the addenda, to keep Members informed. Likewise, the draft Commission recommendation on technical guidance for the sampling and detection of genetically modified organisms and material produced from genetically modified organisms had been notified in February 2004 in G/TBT/N/EEC/53; an addendum with an updated version taking into account the comments received had also been notified. Therefore, a highly transparent approach had been pursued at every stage. The regulation relating to the traceability and labelling of GMOs was intended to facilitate product withdrawal in the case of unforeseen adverse effects on human health or the environment after product authorization. It was also

intended to facilitate the implementation of risk management measures such as post-market monitoring, thereby reassuring the European consumer. In addition, the measures served the better functioning of the EU market and facilitated trade by evening out differences between member States' legislative and administrative rules on traceability of biotech products. However, it remained the responsibility of EU member States to ensure that inspections and control measures were carried out to ensure compliance with the relevant regulations. The technical guidance on the sampling and testing of GMOs should facilitate a coordinated approach for those inspections and assist the proper functioning of the market in this area. It had to be kept in mind that the EU traceability rules for GMOs and derived products were primarily based on a "paper trail"; testing was therefore expected to be used only to monitor compliance or if a suspicion of non-compliance existed.