

SPECIFIC TRADE CONCERNS (Retirado do documento G/TBT/M/35)

New Concerns

UE x Indonésia - Mandatory Standard for Tyre

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

The representative of the European Communities noted that the above notified Decree on compulsory implementation of the Indonesian National Standard on Tyre had been adopted on 23 September 2004. It allowed for a six month delay for implementation. Following bilateral consultations with the Indonesian authorities, the European Communities had requested confirmation that the entry into force of the Decree would be postponed until January 2006, rather than implemented on 23 March 2005 as originally foreseen. The European Communities reiterated its request that the technical guidance be simplified in order to facilitate the implementation of the decree. Clarification was also sought as to whether the Indonesian authorities would accept tyres complying with the UN-ECE regulations.

The representative of Indonesia confirmed that his authorities were planning to postpone the entry into force of the Decree.

EUA x UE - Restrictions on the Use of Certain Phthalates in Toys

European Communities: Restrictions on the Use of Certain Phthalates in Toys

The representative of the United States expressed her delegation's concerns about restrictions on the use of certain phthalates in toys. The directive at issue restricted the use of phthalates in toys and childcare articles for children three years and younger that "can be put into the mouth". Although the European Communities had notified a similar, but less restrictive technical regulation in 1999 (G/TBT/Notif.99/578), the United States requested that the proposed amendment to Council Directive 76/796/EEC, of 28 September 2004, also be notified to the TBT Committee given the significant revision and its potential to affect international trade. The European Communities also needed to explain the rationale and justification for the proposed amendment. The US concern was that the new provision greatly expanded the potential list of products in the industry directly affected by the directive. The representative of the United States was of the understanding that the EC legislation was in the second reading by parliament and she noted that the U.S. Consumer Product Safety Commission had been in contact with its counterpart in the European Commission.

The representative of the European Communities confirmed that the proposal was being examined by the European Parliament and the Council of Ministers and that it had been substantially amended. The adoption of the Common Position by the Council of Ministers was expected to take place in April 2005. After adoption, the draft would be notified under the TBT Agreement and a sufficient time period for comments would be provided.

UE x China - General Standard for the Labelling of Pre-packaged Alcoholic Beverages

China: General Standard for the Labelling of Pre-packaged Alcoholic Beverages (G/TBT/CHN/72)

The representative of the European Communities recalled that his delegation had previously expressed concerns regarding the Chinese TBT notification on labelling for pre-packed food

G/TBT/CHN/33. The European Communities now wished to raise similar concerns with respect to the above notified measure on alcoholic beverages as it was the EC view that this measure could create difficulties for the EU manufacturers of alcoholic beverages when exporting their products to China. The representative of the United States associated herself with the comments made by the representative of the European Communities and recalled that she had raised this issue in the context of China's Annual Transitional Review Mechanism at the last meeting of the Committee.¹

The representative of China noted that, as had been requested by the European Communities, her authorities had agreed to extend the comment period until 31 March 2005, even though adoption of the measure had been set to take place 90 days after the circulation of the notification by the Secretariat.

EUA x Malásia - Hologram Stickers on Pharmaceutical Products

Malaysia – Hologram Stickers on Pharmaceutical Products

The representative of the United States raised an issue regarding Malaysian requirements for hologram stickers on pharmaceutical products. It was the US understanding that on 26 June 2004, Malaysia's Ministry of Health had announced that it had approved implementation of a directive requiring the use of hologram stickers on pharmaceuticals, over-the-counter medications and certain herbal products. That regulation had never been notified as a proposal under the TBT Agreement and Members had therefore not been given an opportunity to comment. The US government and industry had raised the issue with their Malaysian counterparts and, in fact, implementation had been delayed on two separate occasions. Nevertheless, it was now scheduled for 5 May 2005. While the representative of the United States welcomed the cooperation that Malaysia had shown, she remained of the view that a notification needed to be made under the TBT Agreement.

The representative of Malaysia took note of the concern raised and informed the Committee that the notification was being prepared and would be submitted.

Concerns Previously Raised

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

Korea: Import of Fish Heads

The representative of New Zealand reiterated that her authorities did not consider as legitimate the concerns raised by Korea in relation to the import of fish heads: they were not justifiable, whether considered in terms of GATT Article XI or under the relevant provisions of the TBT Agreement. In fact, the representative of Korea had informed New Zealand that his country would continue to prohibit imports of fish heads from New Zealand while allowing imports of edible fish heads from certain other exporting countries. This was despite assurances that New Zealand could process hake heads to an edible standard. Provided the product was accompanied by official certification giving assurance that the product was fit for human consumption, it was New Zealand's view that Korea was obliged to allow the importation. This was the practice with most other sea

food products exported to Korea and would seem to be an appropriate and adequate way of ensuring that any human health or safety concerns were addressed.

The representatives of Iceland, the European Communities and Norway expressed similar concerns and hoped that a solution could be found pursuant to bilateral consultations.

The representative of Korea noted that there had been some positive progress achieved in bilateral consultations, particularly with the United Kingdom. More discussions were needed with Norway, Iceland and New Zealand.

Japão (EUA, Austrália, México, Chile e Outros) - Regulation on the Registration, Evaluation and Authorisation of Chemicals(REACH)

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

The representative of Japan noted that her delegation remained concerned about the trade-restrictiveness of the proposed measure. In particular, the provisions for the registration of substances in articles were obscure and implied a heavy burden on registrants. In consultations, the European Communities had responded that there was ample time for manufacturers and importers to get acquainted with this system and that the guidance on substances in articles would be developed. However, Japan could not judge from such expectation-based explanations that an excessive burden to the registrant would not arise. Japan had also emphasized many times the need to avoid duplicative registrations. Regarding the formation of consortia, it was not clear whether every manufacturer and importer who wanted to join a consortium could do so in a timely manner and under fair cost-sharing. In respect of Article 6.5, Japan had emphasized that this provision could be disadvantageous to articles produced outside the European Communities and had not yet received a clear explanation from the European Communities why the phrase "by an actor up the supply chain" was necessary. Nevertheless, Japan appreciated the EC's efforts to explain the proposal in response to Members' concerns.

The representative of the United States noted that the record of the last meeting extensively described Members concerns; the United States would not repeat their own. She thought that it had been helpful to have the EC Commission's experts present at the last meeting and emphasized that given the on-going discussion of the proposal by the European Parliament and Member States, it was premature to draw conclusions and interpretations in particular about compliance with WTO rules, such as those of the TBT Agreement. The United States remained hopeful that the EC Commission would revise its proposal and ensure that it did not become an unnecessary barrier to trade.

The representative of Australia noted that while her delegation supported the basic objectives of the draft regulation, and, in fact, welcomed the harmonisation of chemicals regulation across the European Union, her delegation remained concerned that it was more trade restrictive than necessary to fulfil its objectives; it did not focus on substances that presented the greatest risk. Australia was particularly concerned about the unintended negative consequences of REACH for the minerals and metals industry. An unintended consequence of the legislation was that it was discriminatory in its application to raw inorganic imports such as imports of minerals while exempting organic imports such as coal, gas and oil. This placed the inorganic industry at a competitive disadvantage to the organic sector. To maintain consistency and fair competition the

same approach needed to be taken for alloys as for polymers i.e., to register (and authorise) the use of metal in the alloy but to exempt the requirement to register and authorise the metal in the downstream uses of the alloy. The special qualities of alloys needed to be recognised: they could not simply be treated as the sum of their constituent parts. The inclusion of secondary raw materials in the scope of REACH would discourage recycling within the EU of some metals and alloys and would further disadvantage the metals sector. In Australia's view, REACH had to allow for currently available assessments and data sets, and consideration needed to be given to the use of internationally agreed definitions determined in other fora. The extra requirements imposed by REACH could result in some products, which Australia wished to continue to source, becoming uneconomic to produce and hence being withdrawn from the market. This was of particular concern to Australia as a net importer of chemical substances from the EU. The draft legislation exempted from registration substances in articles that had already been registered for a specific use by an actor of the supply chain. This could induce manufacturers within the EU to source their imports for the registered use from the EU rather than third country suppliers.

The representative of Mexico echoed the concerns voiced by the preceding delegations and agreed, in particular, with the point made by the United States: it was premature to analyse the compatibility of the draft regulation with EC commitments under the TBT Agreement. On special and differential treatment, Mexico recalled that his delegation had indicated that this type of regulation would have an impact on exports from developing countries and that it would therefore be important to take account of the special circumstances prevailing in developing countries so that they would not be unduly affected. On technical assistance, Mexico was of the view that the complexity of the system and the difficulty of implementing it made it clear that technical assistance would be needed. He recalled that his delegation had commented on the original REACH proposal in May 2003 but had still not received any response to those comments.

The representative of Chile noted that her country shared the concerns of previous speakers, particularly those of Australia. Without prejudice to any possible future modifications to the draft regulation, Chile was interested in knowing how the European Communities would extend technical assistance in order to facilitate compliance. It was particularly important that the rules be specific in order to avoid different interpretations and arbitrary implementation. Chile continued to be concerned that REACH seemed to work as a function of production and export volumes, rather than the risk associated with the product. For instance, as an exporter of minerals to the European Union, the impact of REACH could mean that each shipment would need to be registered. This entailed significant costs.

The representative of Cuba reiterated the concerns expressed by his delegation at the last meeting of the TBT Committee.² While the European Communities had recognised their obligations under Article 11.3 of the TBT Agreement to provide guidance material regarding the implementation of REACH, as well as technical assistance, the representative of Cuba was unaware of any specific action in this respect. He pointed out that the non-existence in the REACH text of any unified list of chemical substances or products made it difficult to comply with the requirements for registration; such a list needed to be created and disseminated. Finally, it was requested that the EC Enquiry Point make public the replies to the comments made on the second notification of REACH.

The representative of Korea noted that his country's chemical industry was concerned about the burden created by REACH, especially with respect to the possibility that confidential commercial information could be released in the process of registration. Also, many countries faced problems

in implementing Good Laboratory Practices (GLP) and the representative of Korea hoped that the European Communities would take this into account.

The representative of China suggested that the European Communities should assess the negative impact of REACH regulations on developing countries and add provisions in REACH specifying the special and differential treatment for chemicals from developing countries. Secondly, there was a need to simplify the requirements of registration and authorisation as well as to cut down application fees to reduce the burden on industry. Small and Medium-sized Enterprises (SMEs) in developing countries needed to be exempt from such expenses. Finally, it was suggested that the European Communities clarify the coverage of REACH on waste chemicals and how duplication or overlap was avoided when other regulations or directives were applicable.

The representative of Uruguay stressed the issue of market access effects on products exported from developing countries and emphasized the need for technical assistance in order to facilitate the implementation of the system.

The representative of the European Communities reminded Members that the proposed REACH regulation was being examined by the European Parliament and the Council of Ministers under the Co-Decision Procedure and the Commission would update its notification to the TBT Committee if there was any major change to the proposal. Moreover, the European Communities would continue its efforts to explain REACH to WTO Members and to develop guidance as well as pursue bilateral and multilateral dialogues. Concerning the request from Mexico to have a written answer to the comments made, the European Communities had not replied formally to any of the 6,000 comments that had been made in response to its internet consultation. In effect, the response to these comments was a change to the proposal itself and the way in which those comments were being taken into account was set out in the explanatory memorandum accompanying the proposal. Nevertheless, the European Communities remained willing to continue the dialogue on outstanding questions. Regarding the point made by Cuba, the answers to the comments received by WTO Members had been made public and were available on the EC TBT website.

Nova Zelândia (Austrália, EUA, Uruguai 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 representatives of New Zealand, Australia, the United States, Uruguay and Mexico recalled their delegations' concerns with the EC Regulation 753/2002 and 316/2004 relating to wine labelling, and stressed that concerns regarding the creation of unnecessary obstacle to trade remained unresolved. They did not find it necessary to repeat concerns raised at every meeting of the TBT Committee since June 2002. For New Zealand it sufficed to note that her delegation continued to seek written responses from the European Commission on the full range of issues that were both substantive and procedural in nature. The representative of the United States expressed frustration at the fact that the European Commission did not seem to appreciate the concerns that had been raised: responses had not been adequately answered and the European Communities appeared merely to be restating that comments had been taken into account and that the wine labelling rules at issue were justified. The representative of Mexico remarked at the difference in openness and transparency, as well as willingness for dialogue, in the case of REACH compared to wine labelling.

The representative of the European Communities stressed that the European rules on labelling had been amended on 20 February 2004 in EC Regulation 316/2004. This amendment had taken into account the comments relating to the previous regulation (753/2002). The European Communities had taken note of further comments made since those amendments were adopted, however, it was their view that the current legislation was legitimate.

UE 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 delegation of Switzerland wished to update the Committee on an issue raised by the European Communities at the last meeting. This was specifically about Point 12 of the above-mentioned TBT notification on requirements for diesel filters used in motor vehicles. Switzerland was not yet in a position to give a definitive response to the comments made by Members as the legislative process in the Swiss parliament was currently underway. Nevertheless, the concerned Members would be informed of the outcome once this process had been completed.

China x EUA - Measure on Refillable Lighters

United States: Measure on Refillable Lighters

The representative of the United States reverted to an issue raised by China regarding a US regulation on refillable lighters. China had asked a specific question about the possible use of the ISO 9994 standard, a safety specification for lighters. The United States informed the Committee that the U.S. Consumer Products Safety Commission was currently considering the issue and her delegation would report back when a final decision had been reached.

The representative of China reiterated her country's concerns as expressed at the previous three meetings of the TBT Committee regarding the US safety standard on lighters. China had also requested that the United States notify the measure to the WTO, in accordance with Article 1.6 and 2.9 of the TBT Agreement. While China was pleased to hear that US government agencies were working on the possibility of taking the afore-mentioned international standard into consideration, China was also concerned that over the past two years, the US child resistant standards had been followed by some other Members of the WTO. The representative of China strongly urged the United States to abide by the rules of the TBT Agreement and to amend the standard so as to bring it in line with ISO 9994:2002.

The representative of the United States reminded the Committee that the regulation in question had originally been published in 1993 and that the ISO standard which China had referred to dated to 2002. The United States had provided Chinese officials with the original documentation and studies that supported the approach taken by the U.S. Consumer Products Safety Commission which, in fact, showed that price had a relationship to safety. In terms of the notification, in April 2004, the U.S. Consumer Products Safety Commission had published a notice which was about an inflation-related adjustment (change in the whole-sale price index). This did not in itself constitute a change in the regulation, nor was it an amendment to the regulation. The fact that a notice had

been published was simply an additional measure of transparency; the regulation, as published in 1993, remained unchanged, and, accordingly, the United States did not think that there was a basis for making an additional notification.

Canada e China x EUA - Country of Origin Labelling

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

The representative of Canada wished to raise a number of its ongoing concerns regarding the United States' mandatory country of origin labelling program set out in the US Farm Bill and referred to as "COOL". In particular, some aspects of the Bill affecting the imports of fish and seafood, were due to be implemented in April 2005. It was noted that the stated intent of the legislation was not to address food safety or animal health concerns but rather to provide consumers with additional information on which to base their purchase decisions. The Canadian government was of the view that COOL was inconsistent with the US obligations under the TBT Agreement as it was more trade restrictive than necessary to fulfil the stated objective. Canada had yet to be provided with evidence justifying the adoption and implementation of COOL. In Canada's view, mandatory COOL also ran counter to the US industry's long term interests and that of other countries, including Canada. As the USDA's own cost benefit analysis had indicated, the volume of US exports for all covered commodities would decline as a result of COOL as would US imports from other countries, and this would negatively affect the American food processing industry. The US government had not provided any evidence that mandatory COOL would benefit consumers as a retail labelling program. On the contrary, mandatory COOL in the United States could set a precedent for more extensive and trade restrictive non-food safety related labelling schemes internationally. There was evidence of this in the ongoing debates on the necessity of developing COOL standards in the Codex Committee on Food Labelling. The Interim Rule for Fish and Shellfish, due to be implemented on 4 April 2005 (all other covered commodities being delayed until 2006), would place that entire sector at a competitive disadvantage relative to the other covered commodities including the poultry sector which, seemingly arbitrarily, was *not* covered by the labelling program. It was requested that the implementation of the Interim Rule be delayed and the Final Rule repealed.

The representative of China supported the above-mentioned concerns raised by Canada.

The representative of the United States stated that she was aware of Canada's concerns and would revert to them.

UE x Peru - Labelling of footwear

Peru: Labelling of footwear (G/TBT/N/PER/4)

The representative of Peru wished to refer to comments made by the European Communities at the TBT Committee meeting of 4 November 2004. It was pointed out that the above-mentioned regulation had been notified twice; it had been adopted six months after last notification, and all of the comments to the first notified measure had been taken into account. In respect of the recent EC comments, the representative of Peru recalled that the labelling regulation stated that the country of origin information had to figure on printed, stamped or sewn labels. The information with respect

to the corporate tax number could be struck on, or glued. Regarding imported goods, this same information could be given by the manufacturer or the importer once the goods had entered the territory of Peru.

UE x México - Pre-packaged products and Mexico: Standard for Glazed Pottery Ware, Glazed Ceramic Ware and Porcelain Ware

Mexico: Pre-packaged products (G/TBT/N/MEX/95) and Mexico: Standard for Glazed Pottery Ware, Glazed Ceramic Ware and Porcelain Ware (G/TBT/N/MEX/69)

The representative of Mexico informed the Committee that with respect to both the above-mentioned technical regulations, bilateral consultations were ongoing and some agreement had been reached on how to deal with the comments previously raised by the European Communities.