

# WORLD TRADE ORGANIZATION

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Committee on Technical Barriers to Trade

## MINUTES OF THE MEETING OF 15-16 JUNE 2011

Chairperson: Ms Denise Pereira (Singapore)

Note by the Secretariat<sup>1</sup>

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<sup>1</sup> This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members and to their rights and obligations under the WTO.

with interested parties given the opportunity to comment for a period of two months. Nonetheless, notification to the TBT Committee of the communiqué was under consideration.

(xxii) *Italy - Law on "Provisions concerning the marketing of textile, leather and footwear products (G/TBT/N/ITA/16)*

249. The representative of India said that the proposed law required compliance with a large number of regulations and the provision of information at each stage of processing. He argued that an industry premised upon global and multiple sourcing would find it difficult to meet these criteria; particularly the exporters from developing countries. Indeed, the requirements proposed by Italy could be more restrictive than necessary and inconsistent with the requirements of Article 2.2 of the TBT Agreement. Furthermore, the requirements imposed under the Marketing Law modified the condition of competition for imported products from developing country Members and could result in less favourable treatment for imported products as comparable to products from Italy - this was inconsistent with the requirements of Article 2.1 of the TBT Agreement and Article III.4 of the GATT. In addition, the requirement to provide details of employment was a non-product related process and production methods (PPM) that was not covered within the scope of the TBT Agreement. He explained that India believed that this information requirement was clearly unwarranted as it sought to interlink labour issues with trade. Such non-product related PPMs also altered the conditions of competition to the detriment of imported goods and therefore violated the provisions of GATT 1994.

250. The representative of India also raised concerns about the reference to compliance with regulations on the environment and he questioned the inter-linkage between trade and environmental issues, arguing that this would constitute a trade barrier affecting exports from developing countries. He sought clarification as to whether Italy had given due consideration to less trade-restrictive regulatory alternatives in pursuit of its objectives and asked whether the concerns of Indian industry over the proposed regulation had been taken into consideration.

251. The representative of Argentina requested clarification from Italy and the European Union as to whether other European countries applied laws or dispositions or implemented standards with similar characteristics. He asked for information on which International Labour Organization (ILO) and environmental agreements had been referred to by this law and what mechanisms were in place to certify an environmental or labour standard - and how and by whom the certification would be done.

252. The representative of the European Union referred to previous Committee meetings where these concerns had been noted. As explained then, the application of the Italian law concerning the marketing of textile leather and footwear had been postponed until the adoption of an Inter-Ministerial Decree pursuant to Article 2 of the Law. This decree had not been adopted and was not foreseen to be adopted in the near future. It was therefore currently not necessary to discuss the detailed questions put forward by Argentina and India.

(xxiii) *Brazil - Draft Resolution No. 112, 29 November 2010; maximum levels of tar, nicotine and carbon monoxide permitted on tobacco products and prohibition of additives (G/TBT/N/BRA/407)*

253. The representative of the European Union supported the objective of protecting human health, which Brazil had indicated as the rationale behind its draft resolution, but referred to previous comments. Specifically, the proposed measure would imply that EU exports of traditionally-blended tobacco products to Brazil and its exports of additives currently used in tobacco would be discontinued. She highlighted that the European Union was itself in the process of revising Directive 2001/37/EC on the approximation of laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products and had identified the

regulation of ingredients as one policy area that could potentially change. She recalled that a number of questions had been raised by the European Union at the previous meeting and, while acknowledging Brazil's helpful responses to several, noted that others remained unanswered. Specifically, she invited Brazil to clarify the grounds justifying a ban on additives over setting limits on use. At the previous meeting, Brazil had indicated that previous attempts to regulate aromas and flavours had been unsuccessful, but had offered no clarifications as to how this justified a complete ban. Furthermore, the European Union was also interested in whether Brazil had conducted an impact assessment, including on the consumption of tobacco products, as well as on growers and employment - particularly if Brazil had considered possible consumption shifts to additive-free cigarettes, such as Virginia tobacco. She requested a copy of any impact assessment, or a summary of its conclusions, if one had been carried out. Additionally, at the previous meeting Brazil had mentioned that its authorities had information indicating that additives enhanced the effect of nicotine, thereby making cigarettes more addictive. She requested more information on those studies, including the references of these studies to enable their evaluation by EU experts. Finally, the representative of the European Union requested an update of the state-of-play and asked Brazil to provide a written reply to its comments on the TBT notification before the adoption of the notified draft.

254. The representative of Mexico endorsed the European Union's concerns and asked for assurance that comments had been taken into account, if a written response to submitted comments would be forthcoming, and details about when Brazil planned to implement the regulation.

255. The representative of Chile requested time to prepare supporting evidence, citing the WHO document on tobacco control which supported governments giving consideration to scientific and any other kind of technical evidence. He supported the aim of reducing consumption to protect the health of young people but argued that these objectives could be achieved through less-restrictive barriers to trade.

256. The representative of Honduras was of the view that the Resolution would prohibit practically all types of additives, including menthol, representing a *de facto* ban on the marketing and sales of products containing certain types of tobacco, such as Burley and Oriental tobacco. Honduras remained concerned as Burley tobacco represented a significant proportion of its production and the draft Resolution would ban its use in Brazil, decreasing Honduran exports and national production. He argued that even though additives did not necessarily produce a specific flavour, the majority would be banned without supporting scientific or technical evidence; he added that no scientific evidence suggested that specific flavours would create a consumption pattern or make smoking more attractive. Honduras was concerned about the negative impact on its economy in the long-term.

257. The representative of Turkey questioned the definition of additives listed for prohibition in all tobacco-related products, specifically the inclusion of any substance or compound other than tobacco or water used to process, manufacture or pack tobacco-based products, including flavourings. The extensive list of prohibited additives and lack of supporting scientific evidence of any increased risk to human health concerned Turkey as the draft resolution would prohibit Burley and Oriental tobacco used in traditional blended products. Turkey had submitted comments and urged Brazil to consider them and amend the draft resolution to comply with its TBT obligations.

258. The representative of Colombia asked how Brazil would make use of the comments and queries received, suggesting they would prove a useful basis for a resolution more in-line with the TBT Agreement. He asked Brazil to provide updates on progress and reiterated concern that the draft would be set out and implemented as notified under G/TBT/N/BRA/407. He also asked for access to the scientific evidence used to justify the prohibition of the additives in question and any studies demonstrating the ineffectiveness of less-restrictive measures.

259. The representative of the Philippines was of the view that the draft resolution was arbitrary and unjustified discrimination, which would potentially result in a total ban of traditional blended cigarettes.

260. The representative of Brazil informed the Committee that the draft regulation and the comments received were still under consideration, that responses would be forthcoming and that he was unable to indicate when the final regulation would be published. He stressed that the objective was the legitimate protection of public health, with particular attention given to Article 1.2.1.1 of the partial guidelines to the implementation of Articles 9 and 10 of the WHO's Framework Convention on Tobacco Control. He recalled that the name "partial guidelines" only indicated that some parts of the instrument were pending further discussion while others were already fully approved. Article 1.2.1.1 was one of the provisions that had been unanimously approved by WHO and stated that, from a public health perspective, there is no justification for permitting ingredients such as flavouring agents, which made tobacco products more attractive. He observed that Articles 3.1.2.1 and 3.1.2.2 of these guidelines were similarly unanimously approved, and stated that regulation of ingredients aimed at reducing product attractiveness could contribute to reducing the prevalence of tobacco use and dependence among new and continuing users. Those articles also stated that attractiveness and its impact upon dependence should be considered when designing regulatory measures; and that the harsh and irritating character of tobacco smoke provides a significant barrier to experimentation and initial use. He referred to tobacco industry documents describing significant efforts to mitigate those negative characteristics of tobacco smoke. He cited a survey conducted by the Brazilian National Institute on Cancer (INCA) that had found that 45 per cent of people aged 13-15 consumed flavoured tobacco products.

261. For Brazil the measure was necessary given the failure of previous efforts to prohibit flavoured products rather than additives, due to the subjectivity of assessing flavouring and smells of products. Furthermore, according to information received by the Brazilian Government, the processing of Burley tobacco without additives was technologically feasible since 1996. He explained that evidence existed that some additives (including acetaldehyde, levulinic acid, gamma-valerolactone and ammonia) strengthened the effect of nicotine. In addition, some studies indicated that, besides increasing the addictiveness of tobacco products, some additives, when burnt, could augment the carcinogenic properties of cigarettes. He informed Members that Brazil had compiled scientific references related to the properties and effects of additives and offered to share them with interested Parties. Finally, he referred to Brazil's production of Burley tobacco, highlighting that the measure did not differentiate between domestic and foreign producers and was thus non-discriminatory.

(xxiv) *China – Requirements for information security products (including, inter alia, the Office of State Commercial Cryptography Administration (OSCCA) 1999 Regulation on commercial encryption products and its on-going revision and the Multi-Level Protection Scheme (MLPS)*

262. The representative of the European Union referred to previous statements on the issue and requested an update on the timeline of the revision process of the Regulation on commercial encryption products managed by OSCCA, which at the previous meeting China had confirmed to be part of the 2011 State Council legislative agenda. In particular he enquired as to how transparency would be ensured, and specifically how consultation of interested parties would take place in accordance with China's domestic regulations and when a TBT notification would be made. In this regard, he highlighted the need for that consultation and the TBT notification to take place at an early appropriate stage, in order to provide stakeholders with a meaningful opportunity to provide input. On the implementation of the MLPS, he noted that China had previously clarified that the MLPS was a regulation that classified information security systems according to the level of their sensitivity for national security, and had confirmed that not only governmental bodies but also the financial and banking sectors as well as public utilities were impacted by the classification as critical infrastructure.