

Previously Raised Concern

x) Brazil – Alcoholic Beverages (G/TBT/N/BRA/348 and G/TBT/N/BRA/348/Suppl.1)

98. The representative of the European Union recalled that, at the last meeting, Brazil informed Members that the draft legislation on alcoholic beverages was still under analysis and that its publication was not foreseen in the near future. The EU recently became aware that a MERCOSUR alcoholic beverages labelling proposal which was meant to supersede the Brazilian measure notified under G/TBT/N/BRA/348 was under discussion. She requested an update from Brazil on the state of play of the draft proposal, on the eventual MERCOSUR proposal and an indication of when the new draft proposal would be made available and notified to the TBT Committee.

99. The representative of the United States also asked whether this measure would go ahead or be superseded by a future MERCOSUR regulation.

100. The representative of Brazil informed the Committee that this measure had not been published as a final regulation, and the regulatory process involved had been stopped. Preliminary discussions were developing in the context of MERCOSUR, but it was too early for any kind of notification. If the regulatory process resumed in the future, comments provided during the public consultation phase of the previous text would be taken into account and properly addressed.

(xvi) Brazil - Instructions for Registration for Labels of Imported Products of Animal Origin

(G/TBT/N/BRA/385, G/TBT/N/BRA/385/Add.1, G/TBT/N/BRA/385/Add.2)

115. The representative of the United States appreciated Brazil's willingness to address the US concerns including potential for disclosure of confidential business information and other data points that were considered unnecessary. While the US had already received some useful clarifications from Brazil, US regulatory agencies were being asked to certify to Brazilian standards and this was beyond their scope of authority. US regulators were willing to certify that products with animal content were produced in accordance with US requirements, but did not find it appropriate to certify that those products were in accordance with another country's requirements. Additionally, the US

regulatory agencies had already issued a health certification for these products; the need for an additional certification was unclear and most likely redundant.

116. The representative of the European Union maintained concerns on the need to register the labels of products of animal origin for approval before being marketed in Brazil. It must be ensured that this requirement did not create unnecessary delays and costs for the EU's economic operators.

117. The representative of Brazil reminded Members that the aim of these measures was to facilitate trade of products of animal origin. This measure had simplified requirements related to registration of labels of such products, in comparison to previous Brazilian requirements in this area. Brazil had not received any reports on interruption or disturbances of trade due to these measures. These regulations were notified at the end of 2010 and were followed by comments from interested Members. Brazil modified the regulations in order to take those comments into consideration, including the requirement mentioned by the United States on the authority of the exporting country declaring whether products complied with Brazilian standards. This was no longer present in the regulation. Brazil had tried to organize a bilateral video conference with the US on this issue, but due to technical difficulties, it would have to be rescheduled. Brazil remains available for such bilateral talks.

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

127. The representative of the European Union referred to comments made at the previous two Committee meetings on this measure. The proposed measure would imply discontinuation of European exports of traditionally blended tobacco products to Brazil, and would also affect European exports of additives that were currently used in tobacco products. The EU supported Brazil's objective of protecting human health, in line with the WHO Framework Convention on Tobacco Control (FCTC). It explained that it was itself in the process of revising its Tobacco Products Directive and had identified regulation of ingredients as one area of possible change. She recalled questions raised by the European Union at previous meetings to help facilitate understanding of the measure; for instance, had Brazil evaluated alternative legislative solutions to a ban on all additives and why had these alternatives not been considered as effective for

achieving the legitimate health objective? She requested an update on the status of the proposal, and a reply, prior to adoption of the notified draft, to the EU's written comments.

128. The representative of Mexico requested information on the implementation of Brazil's draft resolution, and a formal response from the Brazilian Government on Mexico's comments regarding the draft resolution presented on 31 March 2011.

129. The representative of Nigeria said his delegation was concerned with this draft resolution because his country had a long tradition of both growing and manufacturing tobacco products, and because the draft resolution came from Brazil, the world's third largest grower of tobacco leaf, behind only China and India in both the number of hectares devoted to tobacco growing and the number of tonnes of tobacco leaf harvested each year. ANVISA, Brazil's National Health Surveillance Agency responsible for the draft resolution, continued to review its content and to gather public input. He asked for an update on the latest developments in the public hearing process.

130. He further asked Brazil to reassess the resolution prior to adoption, so as to ensure coherence between the rights and obligations of Nigeria, along with the other African, Caribbean and Pacific countries (ACP) and African Union (AU) member States in the WHO, WTO and other international fora, particularly with respect to agricultural and rural development objectives. He expressed concern with Brazil's intention to impose a regulation that would create an unnecessary obstacle to trade for an agricultural product of great importance to many developing countries. He encouraged Brazil to modify the proposed resolution to ensure that it was fully WTO compatible.

131. The representative of the Philippines echoed concerns raised. In particular, the resolution to ban the use of various types of additives with no reasonable justification equated to a total ban of traditionally blended tobacco products in the Brazilian market. Philippines shared the objective of protecting young people's health. However, this objective could be achieved through less restrictive measures; her delegation encouraged Brazil to base any final decision on this resolution on scientific and technical evidence.

132. The representative of Indonesia informed that her delegation had consulted with Brazil on the follow up of its official letter of 4 April 2011 to the Minister of

Development, Industry and Foreign Trade. She asked Brazil to clarify the date of the public hearing on the Draft Resolution No. 112.

133. The representative of Turkey said her delegation was closely following this measure.

134. The representative of Colombia supported the concerns raised, and asked Brazil to explain any progress made with respect to this resolution. He was concerned that the draft resolution could be confirmed as notified, and believed it ran counter to Article 2.1 of the TBT Agreement.

135. The representative of Honduras, Zambia and the Dominican Republic reiterated previously raised concerns on the draft resolution and requested an update from Brazil on the measure. The latter asked if Brazil could reassess the resolution in favour of a less trade restrictive alternative?

136. The representative of Zimbabwe joined other delegations in requesting an update from Brazil on the status of this draft resolution. His delegation had submitted written comments expressing its concerns and awaited Brazil's response.

137. The representative of Chile shared the concerns raised, in particular that the measure was more trade restrictive than necessary. Her delegation did not oppose the legitimate objective of the measure, but believed there were alternative measures to achieve the objective in a less trade restrictive way. She asked for an update on the current status of this measure.

138. The representative of the Russian Federation, speaking as an observer shared Brazil's objective of protecting human health and of reducing the incidence of smoking amongst young people and the general population. Nevertheless, he supported concerns raised, in particular that the measure was more trade-restrictive than necessary and violated Article 2.2 of the TBT Agreement. There was insufficient scientific evidence to demonstrate that additives used in blended tobacco made those products either more attractive to consumers, more harmful to health, or more addictive. Could Brazil provide the evidence upon which the draft resolution was based? His delegation was particularly interested in comparative data on the health impact of blended versus non-blended cigarettes, and on the risk to human health of additives used for blended products versus additives that give characteristic flavours.

139. The representative of Brazil reiterated that the objectives of this measure were to protect public health by reducing the attractiveness of certain tobacco products particularly to children and youth. Tobacco addiction usually began at a young age, when individuals were more vulnerable to tobacco products' appeal; flavourings could increase their appeal. A previously cited study conducted by the National Institute on Cancer in Brazil showed that 45 per cent of smokers in Brazil between 13 and 15 years of age consumed tobacco products with flavour. In addition, the WHO, through its partial guidelines linked to the implementations of Articles 9 and 10 of the FCTC, had recognized that from the perspective of public health there was no justification for permitting the use of ingredients such as flavouring agents which help make tobacco products attractive. With respect to the status of this measure, the draft resolution had not yet been published as a final regulation. His delegation was consolidating comments received on the draft resolution; given the large amount received, additional time had been required but all comments would be answered prior to final adoption. Also, a public hearing on the draft regulation was tentatively scheduled for December 2011.

140. Regarding the scientific basis of the measure, Brazil had compiled the scientific references that served as a basis for this measure. These had been shared with Members that expressed concerns during the last TBT Committee meeting; he would offer it to other interested delegations. On the question of why Brazil had chosen to prohibit additives instead of flavoured products, he reiterated that previous attempts in Brazil to prohibit flavoured products rather than additives proved inefficient, given the subjective nature of the assessment regarding the presence of flavours and smells in a product. Moreover, certain additives, such as acetaldehyde, levulinic acid, gamma-valerolactone, and ammonia, apart from their flavouring properties, could potentiate the addictive effects of nicotine. Finally, studies indicated that in addition to increasing the addictiveness of tobacco products, some additives when burned could augment the carcinogenic properties of cigarettes.

141. Regarding the impact of the draft resolution on traditional blended products, the tobacco

industry had possessed the technology to produce blended tobacco products without additives since 1996; for example, processing burley tobacco without sugar. Finally,

both domestic and foreign producers were required to comply with the requirements of the draft resolution.

(xxii) Brazil - Canned Sardines - Ministerial Act N° 406, 10 August 2010

149. The representative of Peru referred to the above-mentioned documents and noted that Peru had engaged constructive bilateral consultations of technical nature in Brasilia in September 2011. Unfortunately, it had not been possible to find a solution. Peru was concerned that Brazil was not using relevant international standards as a basis for national regulations, in particular: Resolution 1 was not covered. Further consultations could not be ruled out and neither could recourse to the dispute settlement mechanism of the WTO.

150. The representative of the European Union referred to the above-mentioned notification which set the identity and quality requirements for canned sardines marketed in Brazil. She was concerned over the final Brazilian text measure which still showed a significant divergence from the international Codex standard for canned sardines and sardine-type products (Codex Stan 94- 1981).

151. The representative of Brazil reaffirmed Brazil's openness to pursuing the issue bilaterally with Peru, aiming to achieve a mutually satisfactory outcome.