



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR TRADE

Directorate F - Enforcement, Market Access, SMEs, Legal Affairs, Technology and Security
Dispute Settlement and Legal aspects of trade policy

REPORT TO THE TRADE BARRIERS REGULATION COMMITTEE

**Union examination procedure following a complaint on obstacles
to trade within the meaning of Regulation (EU) 2015/1843 applied
by the Kingdom of Saudi Arabia consisting of measures affecting
the import of ceramic tiles**

COMPLAINT SUBMITTED BY THE EUROPEAN CERAMIC INDUSTRY
ASSOCIATION (CERAME-UNIE)

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ACRONYMS

DSU.....	Dispute Settlement Understanding
CJEU.....	Court of Justice of the European Union
EU.....	European Union
GATT.....	General Agreement on Tariffs and Trade
PCoC.....	Product Certificate of Conformity
SCoC.....	Shipment Certificate of Conformity
SQM.....	Saudi Quality Mark
TBR.....	Trade Barriers Regulation (Regulation 2015/1843 of 6 October 2015 laying down Union procedures in the field of the common commercial policy in order to ensure the exercise of the Union's rights under international trade rules, in particular those established under the auspices of the World Trade Organization)
TBT.....	Technical Barriers to Trade
TBT Agreement.....	Agreement on Technical Barriers to Trade, contained in Annex 1 A to the WTO Agreement
WTO.....	World Trade Organization

EXECUTIVE SUMMARY

A. Introduction

On 23 April 2020, the European Ceramic Industry Association ('Cerame-Unie') lodged a complaint pursuant to Article 4 of the Trade Barriers Regulation ('TBR')¹ on what was described as a complicated system of certification required by the Kingdom of Saudi Arabia ('Saudi Arabia') for the importation of ceramic tiles, creating serious obstacles for the Union producers of ceramics to export. The complaint claimed that the Saudi measures were inconsistent with Articles VIII, X and XI of GATT 1994 and with Articles 5.1.1, 5.1.2, 5.2.1, 5.2.2 5.2.3, 5.2.5, 5.4, 8 and 10.1 of the WTO Agreement on Technical Barriers to Trade ('TBT Agreement'). The Commission, after informing the TBR Committee, initiated an examination procedure on 24 June 2020.

The Commission services gathered information and comments inter alia from the EU ceramic tiles industry and the Saudi Arabia authorities. No verification visit has taken place in the course of this examination given the current context related to COVID 19 and travel restrictions.

The proceedings concern primarily the technical regulations applying to certain ceramic tiles in Saudi Arabia and their actual implementation.

B. Factual background

The EU ceramics industry is a world leader in producing high quality ceramic products such as tiles, bricks, sanitary ware, or vitreous clay pipes. Most manufacturers are innovative small and medium-sized enterprises (SMEs). The ceramics sector provides over 338 thousand jobs in the EU and accounts for EUR 27.8 billion in production value². Around 30% of the output of tableware and tiles is exported outside the EU.

Main challenges for EU exporters of ceramic tiles include both tariffs and non-tariff barriers that make export of EU ceramic tiles difficult and/or costly. Non-tariff measures are a significant issue for ceramic exporters. Particular problems include customs procedures, standards, testing and certification procedures, labelling requirements.

The total consumption of ceramic tiles on the Saudi Arabian market is estimated at approximately 180 million square meters per year.³

¹ Regulation 2015/1843 of 6 October 2015 laying down Union procedures in the field of the common commercial policy in order to ensure the exercise of the Union's rights under international trade rules, in particular those established under the auspices of the World Trade Organization.

² https://ec.europa.eu/growth/sectors/raw-materials/industries/non-metals/ceramics_en

³ According to ACIMAC, total consumption of ceramic tiles in Saudi Arabia in 2018 was equivalent to 176 million square meters; ACIMAC, 'World production and consumption of ceramic tiles', 7th Edition, 2019, <https://www.ceramicworldweb.it/cww-en/statistics-and-markets/world-production-and-consumption-of-ceramic-tiles-5/>

The local production of domestic producers is estimated to be around 70 million square meters per year.⁴

In 2018, Saudi Arabia was the sixth largest market for EU27 exporters of ceramic tiles, accounting for EUR 121.8 million and representing 3.4% of the total extra-EU exports of ceramic tiles. In 2019, Saudi Arabia became the eighth largest market for the EU, as exports of ceramic tiles dropped by approximately EUR 24 million compared to the previous year, amounting to EUR 97.8 million and representing around 2.8% of the total extra-EU exports of ceramic tiles.⁵ This decrease happened mainly in the last quarter of 2019 (see below, adverse trade effect).

Other exporting countries to Saudi Arabia include India, China, United Arab Emirates, Oman, Turkey, and Egypt. In 2018, exports of ceramic tiles products from the European Union accounted for approximately 30% of total imports of ceramic tiles into Saudi Arabia.⁶

C. Compliance with WTO rules – Legal analysis

The complaint concerns alleged trade barriers maintained by Saudi Arabia consisting of two technical regulations on ceramic tiles and their implementation, in particular in terms of conformity assessment procedures.

The examination has confirmed that parts of the two technical regulations at stake on, respectively, building materials and the Saudi Quality Mark (SQM), and their implementation as regards conformity assessment procedures, raise serious questions in terms of compliance with WTO rules.

First, certain claims of the complaint seem to be well founded and certain aspects of the two technical regulations at stake and their implementation seem not to comply with several provisions of the GATT 1994 and of the TBT Agreement. This is the case with regard to the following provisions of the WTO Agreements:

- Article 5.1.2 of the TBT Agreement due to additional costs related to compliance with certain standards, to multiple brands or trademarks, to complex production organisation (separate EU producer/exporter), to multiple conformity assessment procedures for both rectified and non-rectified versions of a same ceramic tile and due to document requirements related to an application for a SQM certificate;
- Articles 5.2.1 and 5.2.2 due to particularly lengthy conformity assessment procedures;
- Article 5.2.3 of the TBT Agreement due to unnecessary information requirements related to an application for a SQM certificate;

⁴ ACIMAC, 'World production and consumption of ceramic tiles', 7th Edition, 2019, <https://www.ceramicworldweb.it/cww-en/statistics-and-markets/world-production-and-consumption-of-ceramic-tiles-5/>

⁵ Statistics refer to HS 6907.21, 6907.22, 6907.23. The same decreasing trend was registered in Q1 2020, as EU exports amounted to around €28,1 million, compared to approximately €38 million in Q1 2019 (Source: Eurostat, Comext, 21/10/2020).

⁶ Source: Eurostat, Comtrade (21.10.2020). Statistics refer to HS 6907.

- Articles 6.1 and 9.3 of the TBT Agreement due to the non-recognition of certificates on conformity with relevant ISO standards provided by internationally accredited bodies;
- Article VIII of GATT 1994 due to certain costs related to conformity assessment procedures that do not correspond to a rendered service;
- Article X:3(a) of the GATT 1994 due to unclear and changing guidelines and contradictory information communicated by SASO and accredited bodies;
- Article XI:1 of the GATT 1994 due to restrictions to EU exports to Saudi Arabia.

Second, with regard to certain claims it is not clearly established whether there is a compliance issue with WTO rules and whether additional evidence would lead to a clear and definitive conclusion. This is the case for:

- possible discrimination against EU producers on the basis of Article 5.1.1 of the TBT Agreement in favour of domestic or other third country producers relating to additional costs in case of multiple brands or trademarks, complex production organisation (separate EU producer/exporter) or ceramic tiles covering multiple water-absorption groups;
- a possible breach of Article 5.2.2 of the TBT Agreement related to information from the competent authorities on possible deficiencies in an application, on its assessment in view of corrective action and on the stage of the procedure;
- a possible breach of Article 5.2.8 of the TBT Agreement related to the existence and functioning of a mechanism for reviewing complaints related to applications for a SQM certificate;
- a possible breach of Article 10.1 of the TBT Agreement as regards the existence and activity of the Saudi enquiry point.

Third, certain claims made within the complaint seem not to breach any provisions of the TBT Agreement or of the GATT 1994, such as the obligation to render compliance with standards mandatory for obtaining a SQM certificate, the availability of information only or mostly in Arabic, the non-recognition of the CE marking or the limited number of conformity assessment bodies accredited by the Saudi authorities abroad.

In consequence, we conclude that certain measures raised in the complaint appear to be inconsistent with the obligations of Saudi Arabia under the TBT Agreement and under the GATT 1994.

D. Adverse trade effects

The obstacles to trade identified in the complaint led to a drop in the quantity of EU exports of ceramic tiles to Saudi Arabia of 75%-80% in the five months following the entry into force of the SQM certificate requirement, i.e. in September 2019 – February 2020 compared with the levels observed in the same periods in previous years. These five months correspond specifically to the period where Saudi Arabia started requiring importers of ceramic tiles to demonstrate compliance with conformity assessment procedures according to the new rules.

EU exports have rebounded since February 2020 and quickly reached and even went beyond the levels of previous years. This trend has been confirmed according to the latest figures available covering the period March-November 2020. This improvement should, however, be considered cautiously due to the following factors:

1. this rebound of EU exports may be temporary and due to a possible catch-up effect after a five-month low in September 2019-February 2020; as the measures are still in place, future EU exports may fall again once this temporary effect wears off;
2. the anti-dumping duties imposed by Saudi Arabia in principle until 2025 on exports of ceramic tiles from China and India, two of the main exporters of ceramic tiles to Saudi Arabia, are favouring EU ceramic tiles;
3. the continuation of the measures which are creating the obstacles to trade identified in the complaint may lead to a similar drop of EU exports in 2022-2023 as in September 2019-February 2020 due to the need to renew SQM certificates, which are valid for three years;
4. the measures in place may have continuous dissuasive effects on potential EU exporters due to the length of time and cost of compliance with the new Saudi measures; this phenomenon is not visible in trade statistics by nature.

EU exporters of ceramic tiles seem to have suffered (although temporarily), continue to suffer at least partly, and may suffer in the near future from adverse effects as a result of the Saudi measures under examination. These adverse trade effects have a material impact on a sector of economic activity and in particular on two Member States of the EU, Spain and Italy as most of EU ceramic tiles exporters are based in these two countries.

The obstacles to trade can therefore be considered as having caused and threatening to cause adverse trade effects, having a material impact on a sector of economic activity and several regions of the EU.

E. EU interest

The EU exporters of ceramic tiles faced an important challenge with the introduction in 2019 by Saudi Arabia of new technical requirements applicable to ceramic tiles and a new conformity assessment system. These changes led to a drop of EU exports of ceramic tiles to Saudi Arabia by 75%-80% for five months, in particular, due to difficulties to obtain SQM certificates. Although EU exports have rebounded since the initiation of this proceeding, the measures at stake are still in place, apply to current and potential new EU exporters and may lead again to major trade effects when the EU exports currently benefitting from an SQM certificate come up for renewal, i.e. from 2022 onwards.

In addition to the Saudi technical regulations applicable to ceramic tiles since 2019, the new conformity assessment system, including the SQM, applies to a number of other products.⁷ The issues identified in the application on ceramic tiles may similarly apply to the conformity assessment procedures relating to these other products. The measures identified in the complaint seem to have a systemic dimension that goes beyond ceramic tiles.

⁷ E.g. gas appliances & accessories, steel, cement, ready mixed concrete, Iron Plate, aluminium composite panel for claddings, plastic degradation auxiliaries, power strips, and sockets.

On this basis, the EU has a clear interest in tackling the obstacles identified in the TBR complaint.

F. Conclusion

The Saudi measures have had a clear negative economic impact on EU exports of ceramic tiles, in particular during the five months following their entry into force. The measures are still in place and continue to impact EU exports with an expected renewed negative impact from 2022 onwards at the time when SQM certificates will come up for renewal, possibly leading to a similar significant drop of EU exports similar to that seen in 2019.

Certain of the claims of the TBR complaint raise serious concerns in terms of WTO compliance. A second group of claims would require additional evidence to confirm possible compliance issues as regards Saudi Arabia's obligations under the GATT and the TBT Agreement. A last group of claims do not appear to raise compliance issues under WTO rules, although they clearly increase the costs and formalities associated with EU exports to Saudi Arabia.

It appears from this examination that it is in EU's interest to act in respect of the obstacles to trade identified. It is recommended that a negotiated solution is sought with Saudi Arabia in order to remove all the obstacles as quickly and as efficiently as possible. At this stage, an action before the WTO is not recommended. Depending on the prospect of reaching a negotiated solution, this could be reconsidered.

A. INTRODUCTION

A.1. The complaint

On 23 April 2020, Cerame-Unie lodged a complaint pursuant to Article 4 of the TBR. This complaint is about what is described as a complicated system of certification with regard to imports of ceramic tiles, creating serious obstacles for the EU producers of ceramic tiles to export to Saudi Arabia.

The main elements of this system consist of two technical regulations applicable to ceramic tiles adopted by Saudi Arabia and in force since, respectively, June and September 2019, as well as their implementation. The complaint concerns the requirement to obtain SQM certificates indicating conformity of products with the technical requirements and the procedures for obtaining them.

The complaint raises more particularly a number of issues related mostly to the conformity assessment procedure such as:

- the requirement under both Saudi technical regulations and their implementation to include mandatory compliance with Saudi and international standards and related audits and testing, including when ceramic tiles or producers already comply with these standards;
- the requirement by the Saudi authorities of multiple conformity assessments for a single product in order to obtain certificates of conformity if that product is distributed under a different brand or trademark;

- the requirement of multiple audits for each economic operator of a single production chain in the EU including audits of the manufacturer and of the traders exporting to Saudi Arabia;
- the requirement of multiple conformity assessment procedures for rectified and non-rectified versions of the same type of ceramic tiles produced by a single manufacturer;
- the costs of the conformity assessment procedures necessary for obtaining SQM certificates that are significantly increased due to several of the points above;
- the limited access to reliable information of the Saudi authorities on the handling of conformity assessment procedures and the related documentation requirements;
- the documentation and information requirements related to the conformity assessment procedures of ceramic tiles that are disproportionate;
- the length of the SQM conformity assessment procedures, delays occurring during the procedure and missing indication of the state of progress;
- less favourable treatment of EU exports compared with other exporters and with domestic producers;
- limited number of accredited conformity assessment bodies in Europe;
- the non-recognition of certificates issued by conformity assessment bodies in the EU indicating that ceramic tiles are in conformity with the Saudi technical requirements;
- the imposition of a *de facto* quantitative restriction to EU imports of ceramic tiles.

According to the complaint, the two new Saudi technical regulations and their implementation almost led to a “total blockage” of EU exports of ceramic tiles to Saudi Arabia from September 2019 onwards. EU companies spent some six months or more trying to obtain the necessary certificates demonstrating the conformity of their products with the necessary requirements, in vain. Still according to the complaint, Saudi Arabia is a strategic country for exports from several EU Member States (Spain and Italy in particular), which has led EU producers and exporters based in these Member States in particular to continue producing and stockpiling ceramic tiles for the Saudi market with the hope to be able to restart exporting soon.

The complaint claimed that the Saudi measures were inconsistent with Articles VIII (Fees and Formalities connected with Importation and Exportation), X (Publication and Administration of Trade Regulations) and XI (General Elimination of Quantitative Restrictions) of GATT 1994 and with several provisions of Articles 5 (Procedures for Assessment of Conformity by Central Government Bodies), 8 (Procedures for Assessment of Conformity by Non-Governmental Bodies) and 10 (Information about Technical Regulations, Standards and Conformity Assessment Procedures) of the TBT Agreement.

A.2. Standing of the complainant

The complainant is a Brussels-based trade association representing the European ceramic industry. Cerame-Unie is an umbrella organisation which members and associate members are both federations of national associations and direct members. It qualifies

therefore as "association, having or not legal personality, acting on behalf of one or more Union enterprises" in the sense of Articles 2(1) and 4(1) of the TBR.

For the standing of the complainant it is not relevant that some members of Cerame-Unie are either an association based in a third country and representing enterprises based in that third country (Russia, Switzerland, Turkey, UK) or individual enterprises based in third countries (e.g. Norway, Switzerland, UK).⁸

A.3. The product

The product at issue is described in the complaint as ceramic flag and paving, hearth or wall tiles manufactured in the EU and classified within Chapter 6907 of the Harmonised Customs Nomenclature under the following HS codes: 6907.21, 6907.22 and 6907.23 (hereinafter referred to as "ceramic tile").

A.4. Initiation of the examination

The Commission announced the examination procedure in the Official Journal of the European Union on 24 June 2020, in line with Article 9(4) of the TBR, after determining that the complaint contained sufficient evidence to justify the initiation of an investigation.⁹

A.5. Conduct of the examination

The Commission services gathered information on the product subject to examination, on the legislation and its enforcement in Saudi Arabia, on the relevant Saudi, EU and world markets and industries and on the adverse effects claimed by the complainant.

This information has been collected *i.a.* by means of questionnaires addressed to:

- the complainant, Cerame-Unie, including EU producers (two questionnaires, both replied by Cerame-Unie);
- the government of Saudi Arabia (two questionnaires, both replied to by Saudi Arabia).

No other interested party in the sense of Article 9(5) of the TBR expressed interest to the European Commission.

Due to the travel restrictions applicable in reaction to the COVID-19 pandemic throughout the examination procedure no verification visit could be conducted in any Member State or on the territory of the country concerned.

No hearings were requested by interested parties within the 45 days deadline after launching the examination procedure. However, the European Commission invited the parties concerned for a hearing, in accordance with Article 9(5) of the TBR. The hearing with Cerame-Unie and industry representatives took place on 3 February 2021 and the hearing with the Saudi authorities was held on 8 March 2021.

⁸ <http://cerameunie.eu/members/countries/>

⁹ OJ C 210, 24.6.2020, p. 30-31.

The Commission services have taken particular care to ensure that both Cerame-Unie and the Saudi government could fully exercise their rights in the framework of this TBR examination despite the challenging conditions related to the COVID-19 pandemic.

B. FACTUAL BACKGROUND

B.1. Ceramic tiles, characteristics and market

Ceramic tiles are composed mainly of natural products such as sand and clay and may comprise porcelain, earthenware or stoneware. They are used as floor or wall coverings in residential, commercial, and industrial buildings. They may be classified in different categories depending, for example, on their intrinsic characteristics (glazed, porcelain etc.), their application (floor tiles, wall tiles etc.) or their end-use (residential, commercial etc.). Some of these distinctions do not change the characteristics of the products, while some others may have a significant effect. Both the EU and the Saudi Arabia markets have their specificities. Although the aim of this examination report is not to be exhaustive on these points, this part will shed light on them on the basis of information obtained from different sources.

Ceramic tiles can be defined on the basis of their physical characteristics, depending on the operations they have been subject to in their production process. Certain of these operations are limited to changes related to the appearance of the product without changing its physical characteristics while certain production phases change the very nature of the product. The following specifications are far from being exhaustive and only aim at underlining certain relevant differences among ceramic tiles.

A first difference is whether ceramic tiles are “rectified” or not. A rectified tile refers to a tile where the edges have been ground or sawed after firing so that the overall size of the tile is more precise or exact. This operation does not affect the properties of the ceramic tiles as such¹⁰ although it affects physical appearance.

A second difference is whether a ceramic tile has been glazed or not. Glaze, which is a coat of enamel or liquid glass, may be applied to ceramic tiles. “Glazed” means that a thin coat of glaze has been applied on the top of the ceramic tile before or after it has been fired in a kiln. The glaze fuses to the top surface of the tile. “Unglazed” means that no such layer of enamel or liquid glass has been added on the top of the tile. Unglazed tiles may be less slippery (although glazed tiles may also have specific anti-slippery characteristics) but also less stain resistant as they may absorb liquid.¹¹ Glazing does, therefore affect the properties of ceramic tiles.

A third distinction between ceramic tiles depends on the water-absorption capacity. Water absorption measures how much moisture a specific type of tile is likely to absorb on an ongoing basis. The water absorption rate reflects the density of the tile body. A

¹⁰ <https://www.thespruce.com/rectified-tile-basics-production-process-1821263>
<https://tiledevil.co.uk/blogs/advice/what-is-a-rectified-tile>;
<https://build.com.au/rectified-tiles-vs-non-rectified-tiles-whats-difference>

¹¹ <https://tiledevil.co.uk/blogs/advice/what-is-the-difference-between-glazed-tiles-and-unglazed-tiles>
https://hipages.com.au/article/glazed_vs_unglazed_ceramic_tiles

high water absorption rate exposes more a ceramic tile to crackling and failure by regular salt attack and freeze thaw. A low water absorption means in general a more sustainable tile and may be preferred in certain uses (e.g. outside applications, heavy rainfall, better stain resistance etc.)

B.2. EU market and EU producers' specificities

The EU ceramics industry is a world leader in producing high quality ceramic products such as tiles, bricks, sanitary ware, or vitreous clay pipes. Most manufacturers are small and medium-sized enterprises. The ceramics sector provides over 338 000 jobs in the EU and accounts for EUR 27.8 billion in production value.¹²

EU producers are particularly concentrated in Italy and Spain.¹³ They produced respectively 530 and 416 million square meters ceramic tiles in 2018, accounting for 4% and 3.2% of the total global production and ranking fifth and sixth among the world leading manufacturing countries of ceramic tiles.¹⁴ In 2018, Spain and Italy were the world's second and third largest exporter countries and registered the highest share of exports as a percentage of production – 78.1% and 78.8% respectively.¹⁵ Most of the EU companies impacted by the Saudi measures are established in these two Member States.

Considering the ratio between the production and the export by EU companies, export destinations in third countries represent important markets for EU ceramic products manufacturers. Products with high weight and low price (bricks, roof tiles) have local or regional markets, whereas tableware and tiles are traded over long distances. Around 30% of the output of tableware and tiles is exported outside the EU.¹⁶ If the USA is the EU's biggest export market, followed by Switzerland, Russia, and Israel, Saudi Arabia remains one of the most important destination for EU exports of ceramic tiles with EUR 97.8 million in 2019, representing a share of 2.8% of total EU exports of ceramic tiles.¹⁷

The main challenges for EU exporters of ceramic tiles include both tariffs and non-tariff barriers that make exports more difficult and more costly. Non-tariff measures – notably technical barriers to trade – are significant issues for ceramic exporters. Particular problems include customs procedures, standards, testing and certification procedures, labelling requirements.

¹² https://ec.europa.eu/growth/sectors/raw-materials/industries/non-metals/ceramics_en.

¹³ In 2014, Spanish and Italian producers together sold more than 78% of all ceramic wall and floor tiles in the EU. <https://www.etekina.eu/ceramic-industry/>.

¹⁴ ACIMAC, 'World production and consumption of ceramic tiles', 7th Edition, 2019, p.52. <https://www.ceramicworldweb.it/cww-en/statistics-and-markets/world-production-and-consumption-of-ceramic-tiles-5/>.

¹⁵ ACIMAC, 'World production and consumption of ceramic tiles', 7th Edition, 2019, p.56. <https://www.ceramicworldweb.it/cww-en/statistics-and-markets/world-production-and-consumption-of-ceramic-tiles-5/>.

¹⁶ https://ec.europa.eu/growth/sectors/raw-materials/industries/non-metals/ceramics_en.

¹⁷ Source: EUROSTAT - Comext (21.10.2020). Statistics refer to EU27 exports of HS 6907.21, 6907.22, 6907.23.

In certain EU Member States, such as Spain, several companies forming one single production chain produce and export ceramic tiles abroad. Some companies of such production chains only produce tiles while some others, dealing only with export operations, trade the same tiles abroad. The complaint describes such an organisation by indicating that the companies of such a group may share staff, offices, quality procedures and quality standards. This specific organisational aspect of EU ceramic tile production may be different from another model where one single company both produces and sells or exports ceramic tiles.

Another specificity of EU producers of ceramic tiles is the wide variety of products offered, including for exports. This broad offer is expressed by different products with different characteristics (size, resistance etc.) in certain cases, or by different brands or trademarks applied on similar or same products in other cases. Developing specific brands, for identification purpose, may be a strategy for EU producers to differentiate from competitors from other countries with lower production costs¹⁸.

B.3. Saudi Arabia market

Saudi Arabia is the largest consumer and producer of ceramic tiles in the Gulf Cooperation Council region. The total consumption of ceramic tiles on the Saudi Arabian market is estimated at approximately 180 million square meters per year¹⁹. The local production of domestic producers is estimated at around 70 million square meters per year²⁰. The market has been driven by rising demand, at least until 2019, for residential and commercial buildings, technological advancements and increasing construction activities. However, Saudi Arabia's market has been stagnant since September 2019, due to the introduction of new requirements, such as product quality certification, among others.²¹

Saudi Arabia has been among the ten main ceramic tile consumers in the world for many years, and due to its low local production, has been highly dependent on ceramic tile imports, thereby, making it the second-largest ceramic tile importer in the world after the US. According to the EU industry, overall imports of ceramic tiles in Saudi Arabia meet some 60-70% of the domestic needs.

In 2018, Saudi Arabia was the sixth largest market for EU27 exporters of ceramic tiles, accounting for EUR 121.8 million and representing 3.4% of the total extra-EU exports of ceramic tiles. In 2019, Saudi Arabia became the eighth largest market for the EU, as exports of ceramic tiles dropped by approximately EUR 24 million compared to the

¹⁸ <http://ec.europa.eu/DocsRoom/documents/1990/attachments/1/translations>.

¹⁹ According to ACIMAC, total consumption of ceramic tiles in Saudi Arabia in 2018 was equivalent to 176 million square meters; ACIMAC, 'World production and consumption of ceramic tiles', 7th Edition, 2019, <https://www.ceramicworldweb.it/cww-en/statistics-and-markets/world-production-and-consumption-of-ceramic-tiles-5/>.

²⁰ ACIMAC, 'World production and consumption of ceramic tiles', 7th Edition, 2019, <https://www.ceramicworldweb.it/cww-en/statistics-and-markets/world-production-and-consumption-of-ceramic-tiles-5/>.

²¹ "Saudi Arabia Ceramic Tiles Market - Growth, Trends and Forecasts (2020 - 2025)", 2019, Mordor Intelligence: <https://www.mordorintelligence.com/industry-reports/saudi-arabia-ceramic-tiles-market>.

previous year, amounting to EUR 97.8 million and representing around 2.8% of the total extra-EU exports of ceramic tiles.²²

Other exporting countries to Saudi Arabia include India (already the largest exporter in 2018), China, United Arab Emirates, Oman, Turkey, and Egypt. In 2018, exports of ceramic tiles products from the EU accounted for approximately 30% of total imports of ceramic tiles into Saudi Arabia.²³

SAUDI ARABIA Imports Ceramic products (in million €)	HS 6907 : Ceramic flags and paving, hearth or wall tiles; ceramic mosaic cubes and the like, whether or				Chap 69 : CERAMIC PRODUCTS			
	2016 (6907 + 6908)	2017	2018	2019	2016	2017	2018	2019
WORLD	521,8	534,0	447,0	459,7	803,4	811,4	743,9	826,9
CHINA	130,0	83,9	53,3	40,2	273,5	225,3	231,8	248,4
INDIA	125,6	181,1	173,6	223,0	145,1	199,5	186,7	238,0
EU 27	154,9	181,3	134,8	113,6	221,9	249,2	191,9	178,4
UNITED ARAB EMIRATES	72,4	53,3	51,3	53,6	82,6	58,9	56,6	59,7
TURKEY	5,8	9,5	9,4	6,3	10,5	15,3	16,0	16,7
USA	0,5	0,2	0,2	0,2	5,9	7,4	5,5	15,8
OMAN	18,0	16,5	14,2	14,9	18,0	16,6	14,2	14,9
BRAZIL	0,7	0,6	0,3	0,3	2,1	2,4	6,7	14,9
EGYPT	11,8	6,3	7,6	7,0	19,8	15,9	13,3	14,1
OTHERS	20,6	18,0	16,6	15,7	47,9	44,9	40,9	56,8

Source: EUROSTAT

The COVID-19 outbreak is expected to have a double effect on the ceramic tile sector in Saudi Arabia. First the industry weaknesses are likely to be exacerbated following the lockdown in 2020 to curtail the spreading of the virus and the low global demand and a prevailing weak domestic demand scenario. Second, domestic demand is also expected to remain weak following significant negative impact on its end consumer industry, the real estate sector, given the expected slowdown in project execution and new launches.²⁴

B.4. Antidumping duties on certain ceramic tiles from China and India

Saudi Arabia has established antidumping duties on imports of certain ceramic tiles from China, India and initially Spain. An antidumping investigation on imports of certain ceramic tiles from China, India and Spain was initiated on 5 November 2018. The products subject to investigation are classified under HS code 6907 with the exception of HS code subheading 6907.30.

On 21 October 2019, the Gulf Cooperation Council (GCC) notified the WTO that a preliminary determination has been concluded deciding to continue the investigation without the imposition of provisional duties. On 6 June 2020, the GCC imposed a definitive duty on imports of the products at stake from India and China for a period not

²² Statistics refer to HS 6907.21, 6907.22, 6907.23. The same decreasing trend was registered in Q1 2020, as EU exports amounted to around €28,1 million, compared to approximately €38 million in Q1 2019 (Source: Eurostat, Comext, 21/10/2020).

²³ Source: Eurostat, Comtrade (21.10.2020). Statistics refer to HS 6907.

²⁴ “Saudi Arabia Ceramic Tiles Market - Growth, Trends and Forecasts (2020 - 2025)”, 2019 <https://www.mordorintelligence.com/industry-reports/saudi-arabia-ceramic-tiles-market>

exceeding five years, i.e. until 2025. The rate of duty on imports from China is between 23.5% and 76%. The rate of duty on imports from India is between 17.6% and 106%. No definitive duty was imposed on imports from Spain as they were found as having no effect on the prices and the economic situation of the GCC industry in general.²⁵

C. THE CHALLENGED MEASURES AND OBSTACLES TO TRADE

C.1. Introduction

The complaint challenges two Saudi technical regulations applicable to ceramic tiles and their implementation, in particular relating to conformity assessment procedures established to implement those regulations. These two technical regulations have been adopted by the Saudi Standard, Metrology and Quality Organisation (SASO) which has been empowered to do so on the basis of the Royal Decree No. 216 of 30 May 2010.

The first technical regulation regulates the production of building materials including the ceramic tiles concerned by the complaint.²⁶ Its latest amended version was published in the Official Gazette of Saudi Arabia on 22 March 2019 and entered into force six months later.²⁷ It aims at determining the main requirements for certain products, including ceramic tiles, and the conformity assessment procedures for ensuring that these products conform to “*the main requirements aimed at preserving the environment, and consumer health and safety, and facilitating the market surveillance procedures*”. This regulation has replaced the previous conformity assessment system applicable to the relevant products with a new one called the Saudi Product Safety Program (SALEEM) supported by the SABER electronic platform from 15 June 2019 for ceramic tiles.

The second technical regulation regulates the allocation and the use of the SQM.²⁸ The allocation of a SQM certificate confirms compliance of a product with the technical requirements in force in Saudi Arabia concerning the relevant product. This regulation started applying to ceramic tiles on 13 September 2019.

The manner in which these two technical regulations have been prepared, adopted and applied, and in particular as regards the related conformity assessment procedures, are, according to the complaint, not compliant with a number of Saudi Arabia’s obligations under the TBT Agreement and the GATT 1994.

²⁵ Official Gazette of 30 April 2020, GCC-Bureau of Technical Secretariat for Anti Injurious Practices in International Trade. <https://morbitiles.org/wp-content/uploads/Antidumping-measures-for-Indian-and-Chinese-tiles.pdf>.

²⁶ Technical Regulation for Building Materials - Part 4: Bricks, Tiles, Ceramics, Sanitary Appliances, and Related Products, published in the Official Gazette on 15/07/1440 AH (22/03/2019).

²⁷ Cf Article 11/1 of Technical Regulation for Building Materials - Part 4: Bricks, Tiles, Ceramics, Sanitary Appliances, and Related Products.

²⁸ General Technical Regulations for Saudi Quality Mark, published as updated in the Official Gazette on 13/06/1441 AH (07/02/2020 AD).

C.2. Mandatory standards and excessive technical requirements

C.2.1. Description of the measure

The complaint identified the obligation for a manufacturer to comply with several different standards, when applying for a SQM certificate, as an obstacle to international trade given the conformity assessment has to be carried out by a third party. Two more specific issues are at stake here: first, the compliance with the Saudi standard SASO-ISO-13006, which defines different categories for ceramic tiles and specific testing for each category; second, compliance with requirements relating to two additional standards on quality management (ISO 9001) and environmental management (ISO 14001). The Saudi authorities justified these obligations by reference to consumer and environment protection objectives. According to Cerame-Unie, SASO grants SQM exemption for “*products for a government project for a main contractor*”²⁹, which would contradict the consumer protection objective in certain cases.

As regards standard SASO-ISO-13006, which is compulsory according to Article 4/1 and Appendix (1) of the regulation on building materials, the conformity assessment procedure requires audits and testing in each application for an SQM certificate, even if applicant has already been assessed by an internationally accredited body in terms of compliance with the international standard ISO 13006. According to the Saudi authorities, the Saudi standard SASO-ISO-13006, which is only available in Arabic, is a mere transposition of the international standard ISO 13006 and does not contain any additional requirements.

On the standards relating to quality management (ISO 9001) and to environmental management (14001), certification of the producers is not mandatory. However, the Saudi technical regulation on building materials includes the assessment of the producer with regard to the existence of a quality management system and of an environmental management system. While the latter is explicitly set out in Article 4/2/2 of the technical regulation on building materials, the quality management requirement results from the nature of ISO 13006, which has been made part of the technical regulations for building materials for the quality determination of ceramic tiles.

In practice, the concerned producers of ceramic tiles are assessed on business organisation criteria similar to those set out in the standards ISO 9001 (Quality Management) and ISO 14001 (Environmental Management Systems), independently from the fact that these producers already were granted certificates from internationally accredited bodies demonstrating compliance with these two international standards. In other words, even if a producer already has a certificate on compliance with these two certificates, an application for a SQM certificate requires them to undergo additional audits and testing on conformity with requirements corresponding to these two international standards and the related costs.

²⁹ This assertion has been shared with the European Commission with some evidence at a very late stage of the examination procedure. The European Commission could not verify this information nor to seek for Saudi Arabia’s reaction.

C.2.2. Compliance with the TBT Agreement

Article 5.1.2 of the TBT Agreement provides that Members shall ensure that “*conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means inter alia, that conformity assessment procedures shall not be stricter or applied more strictly than is necessary to give the importing Member adequate confidence that products conform to the applicable technical regulations or standards, taking in to account the risks non-conformity would create.*”

The obligation to comply with the SASO-ISO-13006 standard as well as the requirement to have a quality management and an environmental management system which complies with standards ISO 9001 and ISO 14001, raises several issues under this provision.

First, Saudi Arabia opted for obligatory third party conformity assessment. Whereas third party conformity assessment as such is not non-compliant with Article 5.1.2, Saudi Arabia made this regulatory choice although ceramic tiles can be considered relatively low-risk products.

Given the low-risk character of the product, it would seem sufficient to allow for general acceptance of already existing valid certificates issued by conformity assessment bodies accredited by ILAC/IAF.³⁰ Members, even if not established in Saudi Arabia. Such certificates should provide for an adequate level of certainty that the products comply with corresponding technical requirements. It is to be noted that the Gulf Cooperation Council Accreditation Center, established by the Gulf Cooperation Council to which Saudi Arabia is a member, is a signatory of ILAC Mutual Recognition Arrangement. Therefore, in this context the obligatory third party conformity assessment may create an obstacle to international trade in that it is stricter than is necessary to verify that the products conform. Saudi Arabia could have opted for more trade facilitating options, such as suppliers’ declaration of conformity or acceptance of already existing valid certificates issued by internationally accredited conformity assessment bodies.

Second, as Saudi standard SASO-ISO-13006 transposes the international standard ISO 13006 with no substantial changes, where a product is shown to conform with the international standard, in principle it also conforms to the Saudi standard. Hence certification indicating compliance with the ISO 13006 standard also demonstrates compliance with the Saudi standard SASO-ISO-13006. In the cases where companies already have a certificate from internationally accredited bodies demonstrating compliance of their products with the international standard ISO 13006, the refusal by the Saudi authorities to accept this as evidence of compliance with the Saudi standard appears to be stricter than is necessary. By requiring audits and testing in cases where the applicant companies already have ISO 13006 certificates, Saudi Arabia’s conformity assessment procedures on ceramic tiles seem to be more strict and applied in a more strict manner than necessary to give the adequate confidence that the ceramic tiles conform with the substance of the SASO-ISO-13006 standard. Therefore, both the non-recognition of ISO 13006 conformity certificates and the requirement of additional audits and testing required in the framework of the conformity assessment procedure for

³⁰ International Laboratory Accreditation Cooperation and International Accreditation Forum.

obtaining a SQM certificate appear to give rise to unnecessary obstacles to trade contrary to Article 5.1.2 of the TBT Agreement.

Third, the requirement to have quality management and environmental management systems assessed on the basis of the international standards ISO 9001 and 14001 in case applicant companies already have certificates of internationally accredited bodies showing compliance with these standards raises similar concerns as regards Article 5.1.2 of the TBT Agreement. The audits and testing required are obstacles to international trade due to the time, operations and related costs induced. They are unnecessary when applicant companies already have certificates from internationally accredited bodies that demonstrate their compliance with the two standards in question as these audits and testing aim to demonstrate compliance with these two standards, too. Hence, the Saudi requirement seems to be applied in a more strict manner than necessary to give Saudi Arabia the adequate confidence that the companies applying for SQM certificates have the required quality management and environmental management systems corresponding to the standards ISO 9001 and 14001.

Fourth, the SQM certificate exemption for *“products for a government project for a main contractor”* raises the question whether the requirement to comply with certain standards mentioned above is more restrictive than necessary and hence an obstacle to trade. Article 1.4 of the TBT Agreement provides that *“purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of [the TBT Agreement] but are addressed in the Agreement on Government Procurement”*. The SQM exemption mentioned above fall under Article 1.4 of the TBT Agreement as *“government projects for a main contractor”* imply that government bodies order projects with ceramic tiles for their use. Hence such purchases are not subject to the TBT Agreement, including Article 5.1.2. In addition, as Saudi Arabia is not a party to the Agreement on Government Procurement, this agreement does not apply to such *“government projects for a main contractor”*.

Fifth, Article 6.1 of the TBT Agreement provides that *“Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures.”* As already mentioned above, it seems possible and sufficient to allow for acceptance of existing valid certificates related to the three ISO standards in question (ISO 13006, 9001 and 14001) issued by conformity assessment bodies accredited by ILAC/IAF. Such certificates would provide an assurance of conformity with the Saudi technical requirements enshrined in the two technical regulations on ceramic tiles.

Moreover, Article 9.3 of the TBT Agreement provides that WTO members *“shall ensure that their central government bodies rely on international or regional conformity assessment systems only to the extent that these systems comply with the provisions of Articles 5 and 6, as applicable.”* By virtue of this provision, Saudi Arabia has therefore an obligation to rely at least on ILAC/IAF certification to which it is part. The non-recognition by SASO and accredited bodies of certificates on compliance with the three ISO standards in question (13006, 9001 and 14001) delivered by conformity assessment bodies accredited by ILAC/IAF seems not to comply with this obligation.

On this basis, the requirements appear to be contrary to Articles 5.1.2, 6.1 and 9.3 of the TBT Agreement.

C.3. Additional costs in case of different brands or trademarks

C.3.1. Description of the measure

According to the complaint, the conformity assessment procedures assessing the compliance with both technical regulations on ceramic tiles give rise to additional costs in case of a ceramic tile with several brands or trademarks. In other words, the technical regulations on ceramic tiles require that, where manufacturers want to market the same product under different brands or trademarks in Saudi Arabia, they are required to pay certain fees in the framework of the conformity assessment procedure as many times as the product in question has brands or trademarks.

The technical regulations on, respectively, SQM and building materials, require that the applications for a SQM certificate mention possible trademarks. The technical regulation on SQM also specifies that additional costs apply in case of an application for a SQM certificate for multiple trademarks (Article 22/5). More precisely, it indicates that all costs related to the procedure for obtaining a SQM certificate apply for the first trademark, and that “*only costs specified in Clause (5) or (6) [of the table which is part of the regulation] shall be added to each additional trademark*”.

Clauses (5) and (6) of table (1): Costs of granting the Saudi Quality Mark

5	<p>The costs of the authority to obtain the licence to use the optional quality mark of the product. (For the Organization)</p> <p>Products refer to all items and types of goods that are under one standard specification</p>	1 - When awarding the licence, the following value shall be calculated:	
		20000 from (1 - 20) products (first 3 years)	25000 more than (20) products (first 3 years)
		2 - When renewing the licence, an annual fixed value of 5000 shall be charged	
6	<p>The costs of the authority to obtain the licence to use the mandatory quality mark (annually) (for the Organization)</p> <ul style="list-style-type: none"> • Products refer to all items and types of goods that are under one awarding procedure. • This clause shall be applied to goods for which a mandatory quality mark is required in accordance with the relevant technical regulations. 	5000 / per products (annually)	

The Saudi authorities indicated that one single application was sufficient for one single product accompanied with multiple brands or trademarks and registered in the same establishment. They recognised however that additional fees are applied in case of multiple trademarks and explained that they corresponded to the right to use the trademarks in Saudi Arabia.

As regards brands, the technical regulations on ceramic tiles do not mention any additional fees in case of a conformity assessment procedure on one type of ceramic tiles from one producer with several brands. However, it appears from this examination that the same additional fees applicable in case of multiple trademarks also apply in case of multiple brands.

It appears from these elements that certain fees related to conformity assessment procedures depend on the number of brands or trademarks under which a company wants to market a given product in Saudi Arabia. The whole procedure does not seem to be repeated for each brand or trademark of a single product. However, certain costs of the procedure are multiplied by the number of brands or trademarks related to one single product.

C.3.2. *Compliance with the TBT Agreement*

This measure raises potential issues under both Article 5.1.1 and Article 5.1.2 of the TBT Agreement.

Article 5.1.1 of the TBT Agreement provides that Members shall ensure that conformity assessment procedures “*are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation...*”

First, the complaint states that the additional costs induced by multiple brands or trademarks for a single product from a single producer favour domestic producers. Saudi domestic producers market their products under a limited number of brands and with limited trademarks while EU producers export a wide variety of products to Saudi Arabia with numerous brands and trademarks.

When assessing whether the measure in question complies with Article 5.1.1 of the TBT Agreement, the first point to consider is whether EU exported ceramic tiles and Saudi domestic ceramic tiles are like-products. This serves to define the scope of products that should be compared to establish whether “less favourable treatment” is being accorded. The central element of the test is the nature of the competitive relationship between the products in question. When assessing the nature and the extent of the competitive relationship between products, this must be done objectively.

A first objective element is the end-use of ceramic tiles. Both imported and domestic ceramic tiles are mainly used for walls and floors in residential and commercial buildings. A second objective element is the consumer preference for innovative design ceramic tiles, which is traditionally a strength of EU products and in which Saudi domestic producers have invested recently.³¹ A third objective element is the continuous increase in Saudi Arabia’s market of ceramic tiles in 2019 and 2020 despite the sharp decrease of EU exports in September 2019-February 2020.³² While EU’s exporters could not satisfy demand, Saudi domestic manufacturers and possibly other third country

³¹ <https://argaamplus.s3.amazonaws.com/03e4bbfe-0067-41b9-9971-33eb8e6c1ea7.pdf>

³² https://www.reportlinker.com/p05917991/Saudi-Arabia-Ceramic-Tiles-Market-Growth-Trends-and-Forecasts.html?utm_source=GNW

exporters continued trading ceramic tiles. A fourth objective element consists of analyses of the Saudi ceramic tile market, which consider *i.a.* that domestic manufacturers face a stiff competition from imports from India, China and Spain.³³ Competition of ceramic tiles from these countries has also been shown by anti-dumping duties on products from India, China and Spain – although after investigation, the Saudi authorities decided to establish such duties only on imports from India and China.

On the basis of the evidence available, both imported and domestic ceramic tiles subject to these regulations should be considered to be ‘like’ as they are of the same type and compete with each other on the Saudi market.

The second issue is whether access to conformity assessment procedures has been granted to EU exports under less favourable conditions than those accorded to suppliers of domestic ceramic tiles. Although the technical regulations applying to ceramic tiles do not explicitly distinguish between imported and domestic products in terms of conformity assessment procedures, and are not, therefore, *de jure* discriminatory, the elements available within this examination do not exclude the possibility of *de facto* discrimination between Saudi domestic producers and EU exporting companies in terms of their access to the procedures in question. Further elements would be needed, in particular as regards the number of brands and trademarks related to EU exports and Saudi domestic ceramic tiles, respectively, to confirm definitely the state of play of these different economic operators. Should the existence of less favourable treatment be confirmed, this claim under Article 5.1.1 of the TBT Agreement may be well founded.

As regards Article 5.1.2 of the TBT Agreement, as set out above, the central question is whether the measure, in this case the additional costs in case of multiple brands or trademarks, as provided in the technical regulation on SQM and as applied by SASO and accredited bodies, are unnecessary obstacles to trade.

First, it is necessary to determine whether the measure creates an obstacle to international trade. Given that the market analysis shows that EU exporters supply ceramic tiles using multiple trademarks and brands, the additional costs due to those multiple trademarks and brands represent an obstacle to international trade as they make such exports more expensive than exports of the same products marketed under one single brand or with one single trademark.

Second, it is necessary to examine whether this measure is more trade restrictive than necessary to fulfil the legitimate objectives it allegedly pursues. In this case, this requires consideration of whether the measures are necessary to give Saudi Arabia adequate confidence that products in questions conform to the relevant technical regulations. In the present case, the higher costs of the conformity assessment procedure for multiple brands or trademarks do not correspond to any additional guarantee in terms of conformity of the tiles with the relevant technical regulations. In other words, a conformity assessment procedure with the same costs for ceramic tiles with single and multiple brands and trademarks would offer the same guarantee in terms of conformity as the same audits and testing would be carried out.

³³ <https://argaamplus.s3.amazonaws.com/03e4bbfe-0067-41b9-9971-33eb8e6c1ea7.pdf>

On this basis, the additional costs in question do not seem to be justifiable under Article 5.1.2 of the TBT Agreement because they go beyond what is necessary to fulfil the objectives they pursue. Therefore, they are stricter than what is necessary and it appears that the measure is not compliant with this provision.

C.4. Multiple audit requirement

C.4.1. Description of the measure

The complaint challenged the multiple audits requirement on the basis of the production organisation of one single production and exportation chain. Certain ceramic tiles are produced and exported from the EU to Saudi Arabia by a group of EU companies with different roles. In such a group, a first company produces the ceramic tile and one or several separate companies export the products to Saudi Arabia. These different stakeholders all contribute to the production and the exportation on the same product. However, each of them has to apply for a SQM certificate and undergo the comprehensive conformity assessment, including the audit of the production plant. This is also the case for companies that deal only with exportation of ceramic tiles, where the necessary audits includes the premises of the separate producing company, even if the latter has already been granted a SQM certificate.

The criterion applied by SASO and the accredited bodies is the tax ID number: as soon as an EU company has a separate tax ID number, even if it trades ceramic tiles without producing them, it needs a SQM certificate for exporting to the Saudi Arabia which includes certain redundant audits and testing and the related costs. The treatment granted by SASO and the accredited bodies to the organisation of such groups of companies in the EU appears different from that for other types of production chains (e.g. one single company producing and exporting) in other WTO members and in Saudi Arabia.

C.4.2. Compliance with the TBT Agreement

The requirement to obtain multiple SQM certificates for one single product coming out of a single production chain composed of several companies raises issues under Articles 5.1.1 and 5.1.2 of the TBT Agreement.

The first issue is whether this measure complies with the obligation under Article 5.1.1 of the TBT Agreement to ensure that conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favourable to those accorded to suppliers of like products of national origin (non-discrimination).

The question of whether or not the products are 'like' was addressed above: imported and domestically produced ceramic tiles in Saudi Arabia should be considered to be like products on the basis of the available evidence.

The second issue is whether access to conformity assessment procedures in question is granted on terms that are less favourable to imported products than to domestic products. The requirement of several SQM certificates does not stem directly from the terms of the relevant technical regulations, which are silent on this issue, but from the implementation of those technical regulations by SASO and the accredited conformity assessment bodies. SASO and the accredited bodies require a SQM certificate for each of the economic operators of a complex production chain (separate producer and traders). However, given

the evidential elements available, we are not in a position to confirm the extent to which Saudi domestic producers also follow a complex production chain (i.e. separate producers and traders) and whether the domestic economic operators also have to obtain several SQM certificates for marketing ceramic tiles domestically. We are not, therefore, in a position to determine definitively that conditions less favourable are granted to EU exporting companies than for Saudi domestic companies, although it has also been unable to discard a possible breach of Article 5.1.1.

It is, therefore, not possible to determine definitively that less favourable conditions are granted to EU exporting companies than for Saudi domestic companies, although it has also been unable to discard a possible breach of Article 5.1.1.

The second issue is whether the Saudi measure creates an unnecessary obstacle to international trade contrary to the requirements of Article 5.1.2 of the TBT Agreement

The first stage in the analysis is to examine whether the measure in question creates an obstacle to international trade. Obtaining several SQM certificates in order to be able to export ceramic tiles to Saudi Arabia entails compliance with administrative procedures, takes a certain amount of time and results in additional costs compared to obtaining one single SQM certificate. Therefore, the requirement to obtain multiple SQM certificates for one single product from one single producer creates an obstacle to international trade.

The second stage of the analysis is to determine whether this obstacle to international trade is unnecessary. Where there is a production chain composed of several economic operators (one producer, several traders/exporter), the requirement of one SQM certificate for each of these operators based only on different tax ID numbers implies audits of one single production plant and testing of samples of the same product several times.

In comparison with obtaining a SQM certificate for a product made and traded by one single company, the technical aspects of the conformity assessment procedure (audits and testing) would be the same, although repeated several times in case a production chain composed of several companies. The requirement of obtaining several SQM certificates in such cases appears to be unnecessary to give Saudi Arabia adequate confidence that products in questions conform to the relevant technical regulations.

On this basis, the requirement for multiple SQM certificates in case of complex production organisation does not appear to comply with Article 5.1.2 of the TBT Agreement because it goes beyond what is necessary to give the importing Member adequate confidence that products conform with the applicable technical regulation.

C.5. Multiple conformity assessment procedures for rectified and non-rectified versions of the same ceramic tiles

C.5.1. Description of the measure

According to the complaint, the Saudi conformity assessment procedure requires separate audits for rectified and non-rectified ceramic tiles of a same kind, i.e. with the same physical characteristics. Article 4/1 of the Saudi Technical Regulation for Building Materials makes compliance of ceramic tiles with the SASO-ISO-13006 standard, which is a transposition of the international standard ISO 13006, mandatory for those products to be marketed in Saudi Arabia.

If a ceramic tile has different technical features (e.g. glazed or not, different water absorption), it must be tested separately from other types of ceramic tiles. According to the complaint, separate testing of ceramic tiles of the same kind but rectified and non-rectified are also required by SASO and the accredited bodies, although rectifying or not rectifying a ceramic tile only adjust slightly the shape of the product for aesthetical reasons and does not change its physical characteristics. Applying double testing on both versions of the same product, rectified or not, increases consequently the cost of the audit. The Saudi authorities have not denied that the conformity assessment procedure requires separate audits for rectified and non-rectified versions of a ceramic tile. They justified it on the basis of a different size of the product.

C.5.2. Compliance with the TBT Agreement

As is reflected in Article 5.1 of the TBT Agreement, WTO members may require a positive assurance of conformity with technical regulations or standards. The obligation that imported ceramic tiles undergo conformity assessment procedures to demonstrate compliance with the SASO-ISO-13006 standard, as provided by the Saudi Technical Regulation for Building Materials, does not, in itself, establish any contravention of the TBT Agreement. However, one issue is whether the requirement of separate testing for rectified and non-rectified ceramic tiles of the same kind complies with the obligation enshrined in Article 5.1.2 of the TBT Agreement.

The Saudi Technical Regulation for Building Materials only refers to the SASO-ISO-13006 standard, which is in identical terms to the international standard ISO 13006, without making any distinction between rectified and non-rectified ceramic tiles. The standard ISO 13006 includes a distinction between rectified and non-rectified ceramic tiles but only by foreseeing testing to indicate slight size differences. For the remaining testing requirements in the standard ISO 13006 (water absorption, abrasion etc.), there is no distinction between rectified and non-rectified versions of a same ceramic tile. The standard ISO 13006 does not require separate testing for rectified and non-rectified ceramic tiles on all the other tests. It appears therefore, that the requirement of separate testing has been established by SASO and the accredited conformity assessment bodies on the basis of a distinction made in the SASO-ISO-13006 related to dimensional characteristics without taking into account the absence of differences in terms of other physical and chemical characteristics. This separate testing is a requirement going beyond what the standard ISO 13006 – and thus SASO-ISO-13006 – requires.

First, the multiple testing for rectified and non-rectified ceramic tiles of the same type is an obstacle to international trade insofar as it duplicates the necessary testing, with the time and cost related consequences.

Second, to determine whether this obstacle to international trade is necessary or not, it is needed to examine the nature of the difference between rectified and non-rectified versions of a same type of ceramic tile. The characteristics of ceramic tiles may vary from one sort to another due to the differences in their production process. The water-absorption capacity of a ceramic tile may vary, making the product more solid or more fragile. Whether a ceramic tile has been glazed or not makes for example the tile more or less slippery or fire-resistant. However, a rectified and a non-rectified versions of the same tile have the same properties in this respect. The only difference lies in small shape differences as the rectified version of a ceramic tile must correspond to an exact size while the non-rectified version is not adjusted after coming out of the kiln.

As both rectified and non-rectified versions of a same ceramic tile have the same characteristics, with the exception of their size, the requirement of separate testing appears to be stricter than is necessary. On this basis, the measure in question seems to be an unnecessary obstacle to international trade since it is not required to give Saudi Arabia adequate confidence that products in questions conform to the relevant technical regulations and thus seems not to comply with Article 5.1.2 of the TBT Agreement.

C.6. Limited access to reliable information on conformity assessment procedure

C.6.1. Description of the measure

The complaint states that EU companies willing to export to Saudi Arabia have limited access to information on conformity assessment procedures related to ceramic tiles.

A first issue is the availability of relevant sources in English or in other languages than Arabic. The Saudi Technical Regulation for Building Materials, the amendments to the SASO-ISO-13006 standard as well as a number of other relevant documents seem not to be available in English or with delay. The Saudi authorities confirmed the availability only in Arabic of certain documents but underlined that some relevant documents were available in English and additional ones were under translation. In addition, application for SQM certificates can be introduced in English. It is to be noted that the official language of Saudi Arabia is Arabic.

A second issue is the access to detailed information on the standard procedure on conformity assessment procedures and, in particular, related to SQM certificates. Although general information has been made available by SASO (the two technical regulations on ceramic tiles and a presentation of the conformity assessment procedure), the conformity assessment bodies accredited by SASO do not seem to be in a position to reply consistently to questions of EU exporters. This was particularly acute right after the entry into force of the two technical regulations applicable to ceramic tile and seems to remain an issue for the first upcoming renewal of SQM certificates, which are valid for a period of three years.

A third issue is the absence or lack of information from SASO on the stage of the procedure for individual companies having applied for a SQM certificate and in case of incomplete applications. SASO cancelled a certain number of applications for SQM certificates by EU companies without indicating the state of the application, what parts of the application were missing or incomplete or with deficiencies and without proposing any correction mechanism. The Saudi authorities however indicated that SASO or the accredited bodies generally communicate with the companies on possible missing elements in their applications and that a mechanism for reviewing complaints by applying companies exists.

The fourth and last issue, according to the complaint, is related to SASO's enquiry point. Although this contact point was confirmed by the Saudi authorities under the email info@saso.gov.sa, EU industry's attempts to obtain information from this contact point have remained unanswered or were followed by automatic error replies. However, another email address for Saudi Arabia's TBT enquiry point can be found on the WTO

website (ENQUIRYPOINT@saso.gov.sa).³⁴ The European Commission is using this email address in its frequent contacts with Saudi Arabia's TBT enquiry.

C.6.2. *Compliance with the TBT Agreement and the GATT 1994*

The TBT Agreement does not specify any language obligation for conformity assessment procedures. The complaint pointed at Article X:3(a) of the GATT 1994, which provides that each WTO member “*administer all laws, regulations, rulings and judicial decisions in a uniform, impartial and reasonable manner*”, but does not require publication in a specific language.

Saudi Arabia, does not breach Article X:3(a) by only issuing technical regulations and other documents relating to ceramic tiles in Arabic. English is not a mandatory language for WTO members' conformity assessment procedures or their related documents. Should Saudi Arabia offer all the documents related to conformity assessment of ceramic tiles only in Arabic, this would not in itself give rise to a breach of either the TBT Agreement or the GATT 1994.

The complaint also argues that SASO did not issue clear guidelines, has changed criteria without official guidelines, EU exporters received contradictory information from certification bodies and usually received only verbal and not timely requests from SASO. For example, only the certification bodies, not SASO, informed EU exporters about the required product tests for rectified ceramic tiles and this led to further delays. On the basis of the elements available, the implementation of the conformity assessment procedures raises serious doubts in terms of compliance with Article X:3(a) of the GATT 1994.

The complaint also raised an issue related to Article 8 of the TBT Agreement as regards non-governmental bodies in charge of conformity assessment procedures. This Article provides that WTO Members “*shall take such reasonable measures as may be available to them to ensure that non-governmental bodies within their territories which operate conformity assessment procedures comply with the provisions of Articles 5 [Procedures for Assessment of Conformity by Central Government Bodies] and 6 [Recognition of Conformity Assessment by Central Government Bodies]*” Given the Saudi authorities have accredited such bodies abroad only, Article 8 of the TBT Agreement is not applicable here.

The situation appears to be different as regards the third issue. Article 5.2.2 of the TBT Agreement requires Members to ensure that the standard processing period of each conformity assessment procedure is published or that the anticipated processing period is communicated to the applicant upon requests. Moreover, if the applicant so requests, the applicant is to be informed of the stage of procedure. Article 5.2.8 of the TBT Agreement requires Members to ensure that there is a procedure to review complaints concerning the operation of the conformity assessment procedure and to take corrective action when the complaint is justified.

³⁴ <http://tbtime.wto.org/en/NationalEnquiryPoints/Search>

On the basis that, upon request, there is a lack or absence of information on the stage of the procedure for the processing of an application, being by SASO or by accredited bodies, this would not comply with Article 5.2.2 of the TBT Agreement. However the elements available do not allow to reach a definitive conclusion on whether such a lack or absence of information concerned a limited number of cases or whether this corresponds to a more general situation. Similarly, the elements available do not allow to conclude definitively on the existence and features of the Saudi complaint review mechanism. As a consequence, it is not possible to confirm a possible breach of Articles 5.2.2 (information to the applicant on the application and the assessment) and 5.2.8 (complaints review mechanism) of the TBT Agreement.

Finally, Article 10.1 of the TBT Agreement requires that each WTO Member ensures that an enquiry point exists for answering all reasonable enquiries from interested parties in other WTO Members. This requirement seems to be respected by the Saudi Authorities as it exists.

Whilst there were difficulties obtaining responses, this could be due to the email address provided. The Saudi authorities indicated to EU industry as well as to the European Commission in the framework of this examination that the following email address should be used to contact the enquiry point: info@saso.gov.sa. However, Saudi Arabia indicated the following email address to the WTO: ENQUIRYPOINT@saso.gov.sa.

In the framework of other TBT issues, the European Commission is using the latter email address and receives replies to its queries sent to this email address. The reason for this double email address and the use made by the Saudi authorities of both is unclear. However, there seems to remain a question on the activity and reactivity of this enquiry point, particularly when it is contacted using the address it provided to industry. In addition the absence of replies to questions from interested parties in other Members (here EU exporters) may not respect the obligation of Article 10.1 of the TBT Agreement. However it is not possible to determine definitely whether these failures were due to punctual technical problems or whether the enquiry point never replies to any request from interested parties and, as a consequence, whether there is a breach of Article 10.1 of the TBT Agreement.

C.7. Document and information requirement for conformity assessment

C.7.1. Description of the measure

According to the complaint, the application for a SQM certificate must be accompanied with a number of documents which goes beyond what should be considered necessary for that purpose. The required documents include information concerning the producer and the production site, including on production capacity, catalogues of products manufactured, trademarks, plant layout, number of employees and information on the employees. The two technical regulations on ceramic tiles do not include such a detailed list of documents required in the framework of a conformity assessment procedure. These documents are however requested by conformity assessment bodies accredited by SASO.

C.7.2. Compliance with the TBT Agreement

Article 5.2.3 of the TBT Agreement provides that information required in the framework of a conformity assessment procedure is to be “*limited to what is necessary to assess conformity and determine fees*”.

- Information relating to product characteristics or their related processes and production methods appears to be necessary to determine whether a product complies with the relevant technical requirements.
- Information related to the functioning of a production plant and on environment management may be relevant if they are needed for demonstrating the conformity with technical requirements related to a legitimate policy objective. In the present case, compliance with standards SASO-ISO-13006 (ceramic tile characteristics), ISO 9001 (quality management) and ISO 14001 (environment management) was justified by the Saudi authorities on the basis of consumer protection and environment protection objectives. Requiring related information on the production plant appears to be necessary for assessing the conformity of the products.
- Information related to other aspects, which are not necessary for verifying that ceramic tiles and production plants comply with the technical requirements of the two technical regulations or their implementation, should not be required by SASO or accredited bodies. In particular, just to take a few elements required when applying for a SQM certificate, catalogues of products have a marketing purpose; a vicinity map of the factory audited does not provide any indication as regards compliance with requirements such as related to quality or environmental management; the requirement on brand registration certificates raise similar concerns as it does not add any indication on the product characteristics nor to the other requirements related to the conformity assessment procedures applicable to ceramic tiles.

Based on these elements, the information required by SASO and the accredited bodies seem to go beyond what is necessary for assessing conformity of ceramic tiles with the relevant technical requirements. This measure seems not to comply with Article 5.2.3 of the TBT Agreement.

Documentation and information that is required for obtaining a SQM certificate also raises concerns in terms of compliance with Article 5.1.2 of the TBT Agreement. First, this requirement is an obstacle to international trade as exporter have to provide these additional elements in order to be able to export ceramic tiles to Saudi Arabia. Second, this requirement is not necessary to give Saudi Arabia adequate confidence that ceramic tiles conform to the applicable technical regulations or standards. The pieces of information related to other aspects, as mentioned above, have no pertinence as to the compliance of the products or of the production plants with the technical requirements applied by Saudi Arabia. On this basis, this measure seems not to comply with Article 5.1.2 of the TBT Agreement either.

C.8. Length and delays in SQM conformity assessment procedures

C.8.1. Description of the measure

The complaint indicates that EU companies applying for SQM certificates have faced substantial delays. Certain of the EU companies having applied for a SQM certificate

since the entry into force of the Technical Regulation on SQM have been waiting up to one year for obtaining a SQM certificate. However, according to the Saudi authorities, the maximum time for granting a SQM certificate would “*not exceed 11 weeks, without counting the payment period for each stage and conclusion of the observations recorded about the establishment (if any) and waiting for the test reports*”. Although this indication is not precise, the time indicated seems to be clearly below a period of one year.

C.8.2. Compliance with TBT Agreement provisions

Article 5.2.1 of the TBT Agreement provides that “*conformity assessment procedures are undertaken and completed as expeditiously as possible*”. Article 5.2.2 also provides that the body competent for conformity assessment procedures must “*promptly*” examine the completeness of the documentation received within an application.

These provisions neither contain a fixed time (e.g. X days from the application) nor a defined period of time (e.g. within X months) for carrying out conformity assessment procedures. They require that the procedure is undertaken and completed expeditiously, adding that this should be done to the extent possible or, in the case of the “*promptly*” indication, in qualitative manner.

On the basis of these elements, it is not possible to determine a precise period of time beyond which a conformity assessment to obtain a SQM certificate would be deemed not to have been undertaken and completed quickly or promptly enough. However, on the basis of additional elements, it should be possible to consider a certain period of time beyond which a conformity assessment procedure should be considered as taking too much time. For example it is questionable whether a period of one year between the application and the delivery of a SQM certificate complies with the requirement of Article 5.2.1.

In light of the 11-week period of time indicated by the Saudi authorities as the maximum time for granting a SQM certificate, even if additional time should be taken into account for e.g. the payment for each stage or the test reports to be delivered, a one-year or more period of time seems to be exceeding it by far. In the cases where SASO and the accredited bodies grant SQM certificates within a much longer period of time, e.g. one year or more after the applicant country has submitted an application, the obligation of completing conformity assessment procedures “*as expeditiously as possible*” or “*promptly*” seems not to be respected.

In all these cases, it seems likely that there is a breach of Articles 5.2.1 and 5.2.2 of the TBT Agreement due to the length and delays of these conformity assessment procedures.

C.9. Costs of conformity assessment procedures

C.9.1. Description of the measure

Article 22 of the Technical Regulation on SQM and its related table provide with a list of items for which a specific cost is indicated. Articles 22/8 and 22/9 provide additional indications on the costs of certain aspects of the conformity assessment procedures, namely travel and accommodation costs “*for the awarding authority*” and costs related to sample testing. In addition, the cost of several of the items of the abovementioned table depend on the number of water absorption groups of the ceramic tiles to be examined:

those costs will be of a certain amount for ceramic tiles belonging to one to two water absorption groups but will be higher if they belong to three to four water absorption groups and so on and so forth.

The complaint lists a certain number of costs related to conformity assessment procedures for obtaining a SQM certificate for ceramic tiles that it claims are excessive or non-justified. Among these, the additional costs are due to, *inter alia*:

- redundant verification of compliance with quality management and environment management even in case of existing certificates demonstrating compliance with ISO 9001 and 14001 standards,
- multiple brands or trademarks for one single products,
- multiple audits in case of complex production organisation (producer separate from traders/exporters),
- multiple conformity assessment procedures for rectified and non-rectified versions of the same product,
- increasing factors depending on the number of water absorption groups of the ceramic tiles to be verified.

C.9.2. Compliance with the GATT 1994/TBT Agreement

This measure raises several legal questions. A first issue is whether the additional costs identified correspond to a treatment of EU exports of ceramic tiles that is less favourable than the one accorded to domestic products in view of Article 5.1.1 of the TBT Agreement. This has already been discussed in this report in the parts related to several points mentioned above (standards, brands/trademarks, complex production organisation, rectified/non rectified tiles).

A similar reasoning shall be applied on the last one on the number of water-absorption groups. The factor related to the number of water-absorption groups of tiles to be verified applies equally to imported and domestic products. However, EU exporters would be more penalised by this system as they offer a larger array of ceramic tiles with different water-absorption capacities compared with domestic producers. In the absence of precise quantitative elements concerning both EU exporters and domestic producers, this examination is not in a position to determine definitively whether there would be a clear different situation between EU exporters and domestic producers and, thus whether this measure complies or not with Article 5.1.1 of the TBT Agreement.

Fees related to conformity assessment procedures shall comply with Article 5.2.5 of the TBT Agreement. They must be “*equitable*” compared to the fees chargeable to conformity assessment procedures of other like domestic/imported products or those originating in any other country. The comparison must also take into account “*communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body*”.

It appears that the additional costs identified in the complaint apply equally to conformity assessment procedures on ceramic tiles exported by the EU, exported by any other third country and on domestic products, with some differences between domestic and imported products related to travel and accommodation costs, which are not applicable for domestic products. On the latter, they take into account the necessary transport and

other costs of SASO's or the accredited bodies' representatives given the difference between the location of facilities of the applicants and of the conformity assessment bodies. On this basis, the additional costs identified seem to comply with Article 5.2.5 of the TBT Agreement.

Article VIII of the GATT 1994 requires that fees and charges imposed on or in connection with importation shall be limited in amount to the approximate cost of services rendered. Article VIII of the GATT 1994 applies to "*all fees and charges of whatever character*" (paragraph 1(a)), including the examples given in paragraph 4 of this Article such as licencing, analysis and inspection. On this basis, Article VIII of the GATT 1994 applies to the measure at stake. More precisely, the costs related to conformity assessment procedures shall comply with the obligation to correspond to the "*approximate cost of service rendered*" provided in Article VIII of the GATT 1994.

In some of the instances mentioned above, the costs seem related to specific services. The costs related to the verification of compliance with ISO standards 9001 and 14001 seem to correspond to the necessary audits; the costs related to testing of rectified and non-rectified version of the same version of a ceramic tile seem to correspond to additional audits or testing; the higher procedural costs depending on the number of water absorption groups of tiles examined seem to correspond to an increased work. On one instance, the question remains open: in case of multiple audits and testing in the event of a complex production organisation (one producer, separate exporters), the additional costs would correspond to a rendered service only in case the additional audits and testing are relay carried out on the same product and not a simple copy of the previous audits and testing on the same product. In the instance related to brands and trademarks, the additional costs do however not seem to correspond to a rendered service as no particular service is related to this additional cost. On this basis, it seems that, in at least one of the additional costs identified, there are no corresponding rendered services.

To that extent, the measure at stake seems not to comply with Article VIII of the GATT.

C.10. Non-recognition of EU conformity assessment certificates

C.10.1. Description of the measure

The complaint recalls that the CE marking, applicable in the EU, indicates that a product with such a marking has been assessed as conforming to EU's relevant technical requirements. These requirements could be recognised by the Saudi authorities as corresponding to the technical requirements established with SASO's technical regulations on ceramic tiles. However the Saudi authorities indicated that the CE marking would not be sufficient for obtaining a SQM certificate and that additional testing and audits would be necessary. In addition, there is no mutual recognition agreement between the EU and Saudi Arabia in this sector.

C.10.2. Compliance with the TBT Agreement

Article 6.1 of the TBT Agreement establishes an obligation for WTO members to accept whenever possible the results of conformity assessment procedures in other Members, even if those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures.

Whereas this could provide a basis assert that Saudi Arabia should recognise the CE marking for EU exports of ceramic tiles to Saudi Arabia, the obligation is no absolute.

The fact that the CE marking exists in the EU for EU producers is relevant and even if it is different from the Saudi conformity assessment system, it may be taken into consideration by Saudi Arabia. The Saudi authorities have not indicated that recognising EU's CE marking would not be possible as such.

However, according to the Saudi authorities, the CE marking would not suffice as such but would require additional audit and testing. Whilst EU industry claims that the CE marking indicates that the product concerned comply with technical requirements that are at least equivalent as those included by the Saudi technical regulations on ceramic tiles, given the Saudi authorities are not satisfied that the CE marking offers an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures, it is not possible to conclude that the Saudi non-recognition of CE marking contravenes Article 6.1 of the TBT Agreement.

C.11. Limited accredited conformity assessment bodies in Europe

C.11.1. Description of the measure

According to the complaint, the conformity of ceramic tiles produced in the EU with Saudi technical requirements could only be assessed by SASO (in Saudi Arabia) or a number of accredited conformity assessment bodies in Europe limited to five. The complaint also indicates that, within these accredited conformity assessment bodies, only a very limited number of auditors based in the EU have been accredited by SASO. As a consequence, even within the accredited conformity assessment bodies based in Europe, the auditors in charge of assessing the conformity of ceramic tiles produced in the EU are based in Saudi Arabia or in countries of the region.

Based on information from both the EU industry and the Saudi authorities, the examination has determined that SASO has accredited at least five conformity assessment bodies in Europe for assessing the conformity of ceramic tiles produced in the EU:

Conformity assessment bodies in Europe authorized by SASO

Societe Generale de Surveillance (SGS) – based in Switzerland
TUV Austria Services GmbH
TÜV Rheinland LGA Products GmbH
UL International DEMKO A/S
Intertek

As to the number of auditors accredited by SASO within accredited conformity assessment bodies in Europe, the exact number could not be determined with certainty. Neither could the country (and in particular Spain and Italy) where they are based.

It is to be noted that the assessment of conformity of ceramic tiles produced in the EU may also be carried out by SASO itself.

C.11.2. Compliance with the TBT Agreement

The complaint raised the question of the compliance of this limited number of accredited conformity assessment bodies and auditors within these bodies with Articles 5.1.1 and 6.1 of the TBT Agreement.

In the present case, the conformity assessment procedures as defined in the two Saudi technical regulations applicable to ceramic tiles provide for the same requirements for both imported- and domestic products. The fact that the technical regulations apply the same conditions has been confirmed by Saudi Arabia.

As to the implementation of these technical regulations, the assessment of the conformity of the products with the relevant technical requirements can be carried out by SASO under the same conditions for both ceramic tiles produced in Saudi Arabia and imported products. In other words, both Saudi domestic producers and EU exporters have the same access to conformity assessment procedures carried out by SASO. By accrediting additional conformity assessment bodies abroad, the Saudi authorities have further facilitated access to the conformity procedures for importers.

On this basis, the fact that there are only a limited number of existing conformity assessment bodies outside Saudi Arabia does not seem to represent a breach of Article 5.1.1 of the TBT Agreement.

In addition, Article 6.1 of the TBT Agreement provides that WTO member “*shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted*” when this offers an assurance of conformity that is equivalent. This provision does not establish an obligation for a WTO member to accredit conformity assessment bodies in third countries as the Article recognises that prior consultations may be necessary to arrive at a mutually satisfactory understanding concerning accreditation. The fact that the number of conformity assessment bodies accredited by SASO, and within these bodies the number of accredited auditors, are limited depend on SASO’s approval. Given the elements available, the examination has not managed to determine whether any application of conformity assessment bodies for being accredited by SASO was rejected neither on what basis such applications would be rejected.

Given the elements mentioned above, the information obtained during the examination does not demonstrate that the limited number of conformity assessment bodies and auditors based in Europe and accredited by SASO creates conditions less favourable for imported ceramic tiles than those accorded to suppliers of similar products of national origin and represent a breach of Article 5.1.1 of the TBT Agreement. Nor does the information obtained in the examination suggest that the limited number of accredited conformity assessment bodies does not comply with Article 6.1 of the TBT Agreement.

C.12. A *de facto* quantitative restriction

C.12.1. Description of the measure

The conformity assessment procedures introduced in 2019 by the two technical regulations applicable to ceramic tiles led to a sharp decrease in EU exports of ceramic tiles to Saudi Arabia in September 2019-February 2020. According to the EU industry, no EU exporter managed to obtain a SQM certificate by December 2019 and EU exports of ceramic tiles reached a situation of extremely scarce exports during that period of time.

C.12.2. Compliance with the GATT 1994

The complaint raised the question of the compliance of this situation in terms of EU exports to Saudi Arabia with Article XI of the GATT 1994.

According to Article XI:1 of the GATT 1994, "*No prohibitions or restrictions (...) whether made effective through quotas, import or export licences or other measures shall be instituted or maintained by any contracting party on the importation of any product*". The WTO jurisprudence has interpreted this provision in a broad manner so as to apply to any measures instituted or maintained by a Member prohibiting or restricting the importation or exportation of goods other than measures that take the form of duties, taxes or other charge.³⁵

In the present case, the decline in EU exports was due to the difficulties EU exporters faced to obtain SQM certificates. The question is therefore whether the SQM certificates may qualify as "*quotas, import or export licences or other measures*" and whether those make effective prohibitions or restrictions to EU exports to Saudi Arabia.

On the first point, the SQM certificate requirement may qualify as "*non-automatic licensing*", which is one of the categories of measures listed by the Council for Trade in Goods corresponding to possible quantitative restrictions.³⁶ For exporting ceramic tiles to Saudi Arabia, EU exporters have to demonstrate that their products comply with the relevant requirements, which they may do by obtaining a SQM certificate. In other words, the Saudi authorities grant import licences (SQM certificates) on a non-automatic basis (depending on the compliance of the products with technical requirements).

On the second point, it is necessary to examine whether the SQM certificate requirement makes effective a prohibition or a restriction to EU exports to Saudi Arabia. As such, this measure is a technical requirement which aims to make sure that Saudi imports of ceramic tiles conform to the relevant requirements. Provided that the products at stake conform to this requirement, they may be imported in Saudi Arabia.

³⁵ Panel Report, *Argentina – Import Measures*, para. 6.440.

³⁶ Decision on notification procedures for quantitative restrictions adopted by the Council for Trade in Goods on 22 June 2012.
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/L/59R1.pdf&Open=True>

However, the measures identified that appear to violate the TBT Agreement and GATT 1994 (namely the additional costs, lengthy conformity assessment procedures, unnecessary information requirements related to an application for a SQM certificate, certain costs related to conformity assessment procedures that do not correspond to a rendered service) show that Saudi Arabia imposed restrictions on importation of EU-made tiles. The design and operation of these measures has the effect of limiting importation as it makes it harder for EU companies to obtain SQM certification.

The fact EU exports to Saudi Arabia never completely stopped or that they recovered is not determinative as these measure have a limiting effect on the quantity or amount of imports of EU tiles into Saudi Arabia. The very potential to limit trade of the Saudi measures is sufficient to constitute a restriction on the importation.³⁷

Based on the above, Saudi Arabia's abovementioned measures regarding the SQM certification qualify as "*quotas, import or export licences or other measures*" and have made effective restrictions on EU exports to Saudi Arabia.

Another important element is the exception of Article XI:2(b) of the GATT 1994 which provides that Article XI:1 shall not extend to "*import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade*". Saudi Arabia's two technical regulations condition the marketing of ceramic tiles in Saudi Arabia on their conformity with technical requirements. As the measures at stake are not likely to be necessary to the application of the technical requirements on ceramic tiles, this exception is not applicable here.

Based on these elements, the measures at stake seem not to comply with Article XI:1 of the GATT 1994.

C.13. Conclusions

Parts of the two technical regulations on ceramic tiles, namely those relating to building materials and to SQM, as well as the manner in which they are implemented through conformity assessment procedures raise serious questions in terms of compliance with WTO rules.

First, certain claims of the TBR complaint seem to be well founded and certain aspects of the two technical regulations and their implementation seem not to comply with several provisions of the TBT Agreement and of the GATT. It appears that Saudi Arabia has not acted in accordance with the following obligations:

- Article 5.1.2 of the TBT Agreement due to additional costs related to compliance with certain standards, brands or trademarks, complex production organisation (separate EU producer/exporter), multiple conformity assessment procedures for both rectified and non-rectified version of a same ceramic tile and due to documents requirement related to an application for a SQM certificate.

³⁷ Panel Reports, *China –Raw Materials*, para. 7.1081.

- Articles 5.2.1 and 5.2.2 due to particularly lengthy conformity assessment procedures;
- Article 5.2.3 of the TBT Agreement due to unnecessary information requirements related to an application for a SQM certificate;
- Articles 6.1 and 9.3 of the TBT Agreement due to the non-recognition of certificates on conformity with relevant ISO standards provided by internationally accredited bodies;
- Article VIII of the GATT 1994 due to certain costs related to conformity assessment procedures that do not correspond to a rendered service;
- Article X:3(a) of the GATT 1994 due to unclear and changing guidelines and contradictory information communicated by SASO and accredited bodies;
- Article XI:1 of the GATT 1994 due to restrictions to EU exports to Saudi Arabia.

Second, certain claims may not be compliant with WTO rules but would require additional evidenced to lead to a clear and definitive conclusion. This is the case for:

- possible discrimination against EU producers on the basis of Article 5.1.1 of the TBT Agreement in favour of domestic or other third country producers relating to additional costs in case of multiple brands or trademarks, complex production organisation (separate EU producer/exporter) or ceramic tiles covering multiple water-absorption groups;
- a possible breach of Article 10.1 of the TBT Agreement as regards the existence and activity of the Saudi enquiry point;
- a possible breach of Articles 5.2.1 and 5.2.2 on a possible non-respect of the obligation to carry out conformity assessment procedures promptly and as expeditiously as possible;
- a possible breach of Article 5.2.2 of the TBT Agreement related to information from the competent authorities on possible deficiencies in an application, on its assessment in view of corrective action and on the stage of the procedure;
- a possible breach of Article 5.2.8 of the TBT Agreement related to the existence and functioning mechanism for reviewing complaints related to applications for a SQM certificate.

Third, however, certain claims of the complaint seem not to breach any provisions of the GATT or the TBT Agreement. This is the case of the obligation to follow the SASO-ISO-13006 standard, of the release by the Saudi authorities of information only or mostly in Arabic, of the non-recognition of the CE marking by the Saudi authorities or of the limited number of conformity assessment bodies accredited by the Saudi authorities abroad.

D. ADVERSE TRADE EFFECTS

Article 2 of the TBR defines ‘adverse trade effects’ as “*the adverse effects which an obstacle to trade causes or threatens to cause, in respect of a product or service, to Union enterprises, on the market of any third country, and which have a material impact on the economy of the Union or of a region of the Union, or on a sector of economic activity in the Union; the fact that the complainant suffers from such adverse effects shall not be considered sufficient to justify, on its own, the Union institutions proceeding with any action*”.

The complaint indicates that EU exports of the ceramic tiles subject to the two Saudi technical regulations at stake dropped in 2019 and in the first months of 2020. It indicates in particular two falls of EU exports to Saudi Arabia, in June and September 2019, which correspond to the entry into force of the two technical regulations. The first drop, in June 2019, corresponding to the entry into force of the Technical Regulation for Building Materials, was followed by an important rebound in EU exports already in July and August 2019. The second drop, in September 2019, corresponding to the entry into force of the Technical Regulation on SQM, was followed by very low EU exports in the following months.

The technical requirements and the conformity assessment procedures applicable on ceramic tiles introduced in 2019 by Saudi Arabia have been directly followed in September 2019 by a drop of EU exports to this country from EUR 13 million in August 2019 to 3,3 million in September 2019, according to Eurostat’s figures. Between September 2019 and January 2020, EU exports even further dropped below one million euro in November 2019 before modestly growing up during the next two months. During this period, EU exports remained however reduced by 75%-80% compared with the summer 2019 levels. Concretely, the effect of the entry into force of the Saudi measures created a major obstacle to EU exports, reducing them by three quarters compared to the levels observed in the previous years on the same periods.

From spring 2020, however, EU exports have reached again the levels of the previous years and went even beyond. Still according to Eurostat figures, February 2020 was the first month with EU exports figures which were close to previous levels of EU exports with EUR 9 million. The latest figures available, between March and November 2020, show a vigorous rebound of EU exports reaching between EUR 12 million and EUR 22 million monthly during this period.

First, this much better situation takes place after a five-month period of very low EU exports of ceramic tiles to Saudi Arabia. The introduction of the SQM certificate system applicable on ceramic tiles has clearly created important problems for EU exports.

Second, the rebound observed since March 2020 may be explained by a compensation of the previous low-level months. As a consequence, the higher figures in March-November 2020 may reflect only a compensation dynamic which may slow down in the following months.

Third, the obstacles to trade created by the introduction of the new SQM certificate mechanism have not been solved and may create new slow-downs as the end of the three-year period of validity of the SQM certificates approaches. EU companies may face similar problems in 2022 when they will request SQM certificate renewals as they faced in the second semester of 2019.

Fourth, EU exporters have benefitted from a favourable competitive environment in the Saudi market due to the anti-dumping duties that Saudi Arabia has imposed in principle until 2025 on imports of ceramic tiles from China and India, two major exports to those products in Saudi Arabia.

A fifth element does not appear by examining trade statistics. The length and the cost of the Saudi conformity assessment procedures introduced in 2019 may have discouraged a number of EU exporters to even apply for an SQM certificate, in particular small and medium-sized enterprises. According to Cerame-Unie, almost two hundred EU companies, which used to exports to Saudi Arabia before summer 2019 and the new Saudi conformity assessment system, have not even tried to obtain a SQM certificate since then.

All in all, the economic impact of the two new Saudi technical requirements on ceramic tiles and the related conformity assessment procedures almost stopped EU exports for a five-month period following the entry in force of this new system. However, the figures of EU exports since March 2020 nuance the striking figures of the previous period. Given the possible explanation above, we still cannot definitively conclude that the problems related to the new Saudi measures were exclusively related to the early period of a new system. On the basis of the elements available, it is not possible to assess definitively at this stage the economic impact of the Saudi measures at stake.

One additional element is the concentration of the EU ceramic tiles production. A huge majority of EU exporters are based in Italy and Spain. While a handful of companies from other Member States also export or try to export to Saudi Arabia, the bulk of EU exports comes from Italy and Spain. The impact of a slow-down of EU exports of ceramic tiles hits mostly these two EU Member States.

E. EU INTEREST

The EU exporters of ceramic tiles faced an important challenge with the introduction in 2019 by Saudi Arabia of new technical requirements applicable on ceramic tiles and a new conformity assessment system. These changes led to a drop of EU exports of ceramic tiles to Saudi Arabia by 75%-80% for five months in particular due to difficulties to obtain SQM certificates. Although EU exports have rebounded in between, the measures at stake are still in place, apply to current and additional EU possible exporters and may lead again to major trade effects when the EU exports currently benefitting from an SQM certificate will want to renew them, i.e. from 2022 onwards.

Beyond the Saudi technical requirement applicable to ceramic tiles since 2019, the new conformity assessment system, including the SQM, applies to a number of other products.³⁸ The issues identified in the application on ceramic tiles may similarly apply to the conformity assessment procedures on other products. The measures identified in the complaint seem to have a systemic dimension that goes much beyond ceramic tiles.

On this basis, the EU has a clear interest in tackling the obstacles identified in the TBR complaint.

³⁸ gas appliances & accessories, steel, cement, ready mixed concrete, Iron Plate, aluminium composite panel for claddings, plastic degradation auxiliaries, power strips, sockets.

F. CONCLUSION

The examination carried out following the TBR complaint in April 2020 respected the requirements of the TBR, including by seeking information from the EU industry and from the Saudi authorities and by hearing these two parties in two dedicated meetings.

It has found that the two technical regulations applicable to ceramic tiles and their implementation, in particular as regards conformity assessment procedures, have led in 2019 and early 2020 to a very significant drop in EU exports of ceramic tiles to this country, that these measures are still impacting negatively the EU ceramic tile sector and are expected to have a similar effect on trade as in the previous years, if they are not withdrawn or substantially corrected.

The examination has also led to the conclusion that the numerous claims in the complaint fall into three different categories. Some of the claims of the complaint have been confirmed by the findings within this examination, some others are not yet sufficiently substantiated and would require, inter alia, additional elements in order to draw definitive conclusions and a third category of claims do not raise compliance issues, but rather relate to issues that could be solved by goodwill and improved technical arrangements by the Saudi authorities.

It can therefore be concluded that it is in the interest of the EU to act in respect of the obstacles to trade identified in this examination. It is recommended that a negotiated solution is sought with the Kingdom of Saudi Arabia in order to remove all the obstacles as quickly and as efficiently as possible. At this stage, an action before the WTO is not recommended. Depending on the achievement of a negotiated solution, this course of action could be reconsidered.