

# WORLD TRADE ORGANIZATION

RESTRICTED

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## Committee on Technical Barriers to Trade

### MINUTES OF THE MEETING HELD ON 29 JUNE 2001

Chairman: Mr. Joshua Phoho Setipa (Lesotho)

1. The Committee on Technical Barriers to Trade held its twenty-fifth meeting on 29 June 2001.
2. The following agenda, contained in WTO/AIR/1567, was adopted:
  - I. **REQUESTS FOR OBSERVER STATUS IN THE COMMITTEE BY THE OFFICE INTERNATIONAL DE LA VIGNE ET DU VIN (OIV), THE BUREAU INTERNATIONAL DES POIDS ET MESURES (BIPM) AND THE GULF ORGANIZATION FOR INDUSTRIAL CONSULTING (GOIC)..... 2**
  - II. **STATEMENTS ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT ..... 2**
  - III. **FOLLOW-UP OF THE MEETING ON PROCEDURES FOR INFORMATION EXCHANGE ..... 9**
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  - V. **FOLLOW-UP OF THE SECOND TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE TBT AGREEMENT ..... 12**
  - VI. **TECHNICAL ASSISTANCE ..... 18**
  - VII. **OTHER BUSINESS..... 20**

**I. REQUESTS FOR OBSERVER STATUS IN THE COMMITTEE BY THE OFFICE INTERNATIONAL DE LA VIGNE ET DU VIN (OIV), THE BUREAU INTERNATIONAL DES POIDS ET MESURES (BIPM) AND THE GULF ORGANIZATION FOR INDUSTRIAL CONSULTING (GOIC)**

3. The Chairman, after holding informal consultations with a number of delegations, concluded that there was still no agreement among Members on these requests largely due to the unresolved discussions in the General Council on observer status in WTO bodies.

4. The Committee took note of the statements made, and agreed to return to these requests at its next meeting.

**II. STATEMENTS ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT**

5. The representative of Canada raised concerns about European Community (EC) draft Directives relating to waste from electrical and electronic equipment (WEEE) and restriction on the use of certain hazardous substances in electrical and electronic equipment (ROHS). He noted that the European Union Environment Council had reached an agreement on the proposals on the WEEE and ROHS Directives on 7 June 2001. He shared the commitment of the EC to protect health and the environment and endorsed the rationale for the proposals to increase recycling, reduce waste, and minimize potential adverse environmental impact associated with such waste. However, he raised concerns on the rationale behind the substance bans, the lack of transparency in the procedures, as well as the adoption of substance bans that might not be justified by science. He believed that waste management strategies must be based on comprehensive and scientifically sound assessment on the risk posed to humans and the environment. A ban on the proposed substances in electrical and electronic equipments might result in negative environmental impacts by forcing the use of substitutes that could be more damaging to the environment than the substances they replaced. He urged a delay of the ROHS proposal until an appropriate risk assessment could demonstrate the need for particular measures, and that the EC should take into account Article 95 of the Treaty of Rome. He sought clarification on whether the Environment Council had adopted the principle of the proposals or the texts of them, and requested for the recent texts of the proposals. He raised concern about the lack of transparency in the process of elaboration of European Directives that significantly affected industry of third countries. He recalled that Canada had provided comments in the summer of 2000 after EC notifying the draft, and believed that third countries affected by the Directives should be consulted earlier in the process in order to provide comments.

6. The representative of Egypt reiterated his delegation's position, and believed that the Directives could create unnecessary obstacles to trade, in particular limit exports from developing countries which did not have the capability to comply with such Directives.

7. The representative of the United States recalled the long discussion on these proposals in the Committee and reiterated her concerns about the rationale of the Directives and having a meaningful opportunity to comment on them. Her delegation had provided detailed questions to the EC and had not received any reply in writing. She requested the EC to clarify the status of these proposals.

8. The representative of Malaysia, speaking on behalf of the ASEAN countries reiterated her delegation's concerns on the EC proposals expressed at previous meetings and associated herself with the comments made by Canada and Egypt. She shared the concerns made about the rationale of the Directives and the scientific basis for these actions, particularly their impact on SMEs. She invited the EC to clarify.

9. The representative of Japan also reiterated his delegation's concerns expressed in previous meetings and shared concerns expressed by the previous speakers.

10. The representative of Australia supported the previous speakers and reiterated Australian concerns expressed regarding the trade impact of the EC's proposed measures.

11. The representative of the European Communities took note of the concerns expressed. He recalled an expert discussion at a previous meeting, and it had been explained that the notification had been made at an early stage of the preparation of the Directive. It was for this reason that a final text of the draft could not be provided. He explained that since the draft was currently under discussion in the European Parliament and Council, it was not possible to reply in detail to the questions raised. Concerning the adoption of the texts, he explained that the adoption procedure, called co-decision, consisted of two readings at the Parliament, followed by a conciliation procedure between the Parliament and the Council if there were no agreement on all amendments. The second reading would take place after the summer break, and he believed that there would not be an agreement on all the amendments. A conciliation procedure would take place most probably in early 2002. He suggested that Members should contact the EC Enquiry point at a later stage when the text would be available.

12. The representative of Canada raised concerns on a draft Bill currently before the Dutch Parliament with respect to mandatory labelling of wood products. He believed that the proposed measures aimed to impose unilateral discriminatory measures created unnecessary obstacles to trade. Should these measures be implemented, it would be inconsistent with WTO rules, particularly with Articles 2.1 and 2.2 of the TBT Agreement. He noted the diverse forest types in Canada covering 417.6 million hectares (100 times the size of the Netherlands). 244.6 million hectares were commercially productive forests, of which only 118.9 million hectares were currently managed for timber production. This meant that 70 per cent of Canada's forests were not in commercial use. Forests were a vital natural resource, and Canada was a strong advocate of promoting better forest management practices and combating deforestation in the tropics. However, he believed that the proposed legislation would not meet its declared objectives of sustainable forest management nor combat deforestation in the tropics. He believed that the Bill would create an unreasonable and a disproportional burden on industry. It contained a de facto requirement for traceability throughout the supply chain which was not a standard practice. Mandatory labelling was not a step which the majority of suppliers would be ready to implement in the time-frame proposed. There were also problems on terminology, since the Bill adopted unclear Dutch domestic definitions. For example, "oerbossen" was translated as primary or old grown forests. However, there was no internationally accepted definition on this term. Canada had been committed to developing international standards and multilaterally agreed approaches. The bill imposed Dutch national requirements using Dutch national definitions which would add an additional layer of bureaucracy for companies exporting to the Netherlands. If other countries followed this approach, the administrative burden for a company supplying multiple destinations would be severe.

13. He noted that only 4 per cent of wood consumed in the Netherlands was certified by the Forest Stewardship Council. If the Bill were to pass without significant changes, the majority of the wood imported into the Netherlands would have to be tagged "red" – indicated not sustainable forest managed. This overwhelming negative publicity for forest products could discourage the use of wood and encourage substitution by other materials. The Bill would not necessarily combat deforestation in developing countries and could not produce the economic incentive for good forest management. It imposed a certification requirement without the recognition of capacity building that might be needed to develop a certification regime appropriate to local circumstances and to achieve certification. It discriminated against developing countries unable to achieve certification, and as a result would reduce their market access and harm their economies. It would not enhance consumer choice, since consumers would not be able to distinguish between good or bad wood based on the marking. The label would only indicate whether a formal certification had been adopted, ignoring the fact that wood products could be sustainably produced without being certified. He noted that there were a number of

ways tailored to particular national or regional circumstances to promote sustainable forest management; certification was just one of those. Many governments, including Canada, had set out regulations to ensure sound forest practices. Multilateral agreements as well as capacity building in developing countries would be the other channels. While he supported voluntary certification, he was conscious that its efficiency had not yet been proven, and recognized that it was not the sole way to promote sustainable forest management. Mandatory certification was a simplistic approach to the issue, but for the reasons given above, he believed it was counter-productive.

14. The representative of Malaysia, speaking on behalf of ASEAN countries, agreed with the concerns raised by Canada that the Dutch initiative was not consistent with WTO objectives, particularly with Article 2.2 of the TBT Agreement. This proposed legislation had serious trade implications, particularly on developing countries' exports of wood. She reiterated ASEAN's concerns on this Bill as expressed at previous meetings, and agreed that multilateral solutions to labelling issues would be more preferable than unilateral trade restrictive measures. She urged the Dutch authorities to further reconsider this Bill and to withdraw it.

15. The representative of the European Communities informed the Committee that the draft Dutch Bill was still pending and awaiting debate in the Netherlands Senate. The Senate had requested the Government to formulate its views before it took up the proposal. Usually, at the end of the legislative process after the voting procedure in the Senate, the Government would decide whether to countersign the Bill or not. He stressed that the Bill had been proposed by a single Member Parliament to be debated by the Dutch Government, and it was expected to be debated after the summer. He would transmit the comments made for the consideration of the Dutch authorities.

16. The representative of Canada recalled that at the last meeting, his delegation had expressed concerns about the potential trade-restrictive nature of a proposed social labelling initiative in Belgium to promote socially responsible production (notified on 16 January 2001 - G/TBT/N/BEL/2). He noted that the draft Bill though voluntary, regulated with penalties. Canada had requested information through enquiry points and was still awaiting a reply. His delegation would examine the draft carefully, and sought a response from the Belgian authorities.

17. The representative of Malaysia, speaking on behalf of ASEAN countries, drew attention to a submission (G/TBT/W/169) containing ASEAN's concerns regarding the proposed Belgian law. A similar note had been sent to the Belgian Enquiry Point in May 2001. She believed the proposed legislation constituted an arbitrary and unjustifiable discrimination against trade, particularly trade with developing countries. It attempted to impose unilateral social standards and targeted mainly developing countries. This discriminatory legislation could erode developing countries' share in world trade and endanger their development prospects. She urged the Belgian government again to withdraw this proposal.

18. The representative of Egypt shared the Canadian and ASEAN's views. He reiterated Egypt's concerns on the implications of the proposed Belgian labelling scheme based on non-trade-related social issues. The proposed law touched upon an issue that developing countries had been resisting; that was the use of a labelling scheme as a disguised measure for protection. It was discriminatory and would create unnecessary obstacles to trade. The draft covered all products and services and was based on non-product related production and processes methods (PPMs), rendering it inconsistent with WTO principles. He had doubt about the objective of the law to provide an incentive for developing countries to develop socially responsible enterprises. He questioned if it would serve the development needs of developing countries. It applied unilateral measures, ignoring the Ministerial Decision in Singapore which rejected the use of labour standards for protectionist purposes. He reiterated that the ILO, and not the WTO, should be the right forum to deal with labour standards. He welcomed the clarification that the draft was intended to be a voluntary scheme. However, his concerns remained and he urged Belgium to reconsider the draft.

19. The representative of Mexico supported the comments made by Canada, ASEAN and Egypt.
20. The representative of Hong Kong, China associated himself with the previous speakers and reiterated his delegation's concerns raised at the previous meeting.
21. The representative of the United States sought clarification on the voluntary/mandatory nature of the Belgium draft law and whether it was applicable to domestic production.
22. The representative of Cuba supported the previous statements and in particular the one made by ASEAN.
23. The representative of the European Communities took note of the comments made. He explained that the draft law had come from a member of the Belgian Parliament to meet the demand of certain non-governmental organizations and consumers. In reflection of the fact that certain private social labels had already existed and that they could confuse consumers, the Belgian Parliament considered the preparation of a law stating the conditions for the use of social labels. The use of such labels would be entirely voluntary and would apply without discrimination to Belgian and foreign manufacturers. The Belgian authorities took into account the WTO obligations of non-discrimination and transparency. This was why a notification had been issued in January 2001 and the comment period had been extended until 1 June 2001.
24. He noted that the transparency procedure that had been chosen might raise concerns. The provision being voluntary could be considered as a standard and therefore should have been notified to the ISO/IEC Information Center. However, the Belgian Parliament was not a central government body nor a central standardization body and could not sign on the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the Agreement), and as a result could not follow the procedure which is foreseen for standards. The option which had been chosen by Belgium was to ensure the best transparency in sending a notification under the procedure of Article 2.9 of the Agreement. He clarified that the labelling scheme was introduced by a piece of legislation provided for sanctions in case of misuse of the scheme. However, the use of the scheme was voluntary. Article 4 of the Agreement provided that "Members shall ensure that their central government standardizing body accept and comply with the Code of Good Practice". However, this could not be applied to the Belgian Parliament, and as a result the two notification procedures described under the Agreement did not match exactly the regulatory situation in Belgium. That was why this voluntary labelling scheme introduced by a piece of legislation had been notified under Article 2.9. If the Committee did not consider the procedure proper, Belgium would be willing to follow any other procedure recommended. He noted that there had been cases of withdrawal of notifications by Members, although no such provision was provided in the Agreement.
25. Belgium had received written and oral comments regarding the notification, and these were currently being considered by the Parliament. As it was a Parliamentary initiative, it was not under the control of the Belgian Government nor the Commission. For this reason, it was difficult to report to the Committee on the progress of the text in the coming months. He would reply to the questions made when more information could be obtained. He ensured Members that the Belgian Parliament was committed to take into account all comments made, and reminded that more information would be available at the Belgian enquiry point in due time.
26. The Chairman took note of the question of the EC on the interpretation of the transparency provisions concerning mandatory technical regulations and voluntary standards under Article 2.9 and Annex 3 of the Agreement. He proposed the Committee to come back to it at its next meeting.
27. The representative of Canada raised the following issues related to genetically modified organisms (GMOs): (i) the on-going work in the Codex Alimentarius Commission and (ii) the EC proposed Directives on labelling and traceability on GMOs. Canada did not support mandatory

labelling based on non-product-related PPMs, such as biotechnology. Such a labelling scheme could be considered a technical barrier to trade as it treated similar products differently based on methods of production. Acceptance and endorsement of such mandatory labelling schemes could set a precedent with implications extending to many other sectors, such as agro-food, forestry, mining, fishery and manufacturing, including those related to labour standards. He believed that a voluntary scheme similar to that being developed by the Canadian General Standards Board (G/TBT/W/134) was a practical means of providing information to consumers while upholding WTO obligations.

28. With respect to the Codex Committee on Food Labelling (CCFL), he believed the draft guideline on labelling of foods derived from biotechnology could be problematic from a TBT perspective, if non-health and safety aspects were applied in a mandatory fashion by governments rather than voluntary by commercial partners. He noted that during the 29th session of the CCFL held in Ottawa in May 2001, the issue was deferred until next year's meeting when a full day would be dedicated to its discussion. In the interim, he encouraged other Members to consider the TBT-related implications of such a guideline, and whether to support such a Codex standard that could be used as a basis for mandatory labelling schemes. Canada supported the development of a GMO labelling standard that could be applied by the private sector on an internationally consistent voluntary basis.

29. He noted that the EC was considering new legislative proposals with respect to the traceability and labelling of novel food, feed and seed relating to biotechnology. He raised concern that the draft could impede trade in a number of areas, such as corn, wheat and canola. He believed that the proposals were not commensurate with the risks which could arise and inconsistent with the EU policies concerning similar risks in other situations. He invited other Members to consider the broader trade implications of the EC's proposals.

30. The representative of the European Communities clarified that the draft legislation was still under preparation by his authorities, and the one Canada had studied might not be the final draft.

31. The representative of Egypt believed that having guidelines on labelling of foods derived from biotechnology would be helpful. However, mandatory labelling requirements might be troublesome. The guidelines should not be binding, and countries should not be required to abide by them unless they proved to be consistent with countries' needs and abilities. He reserved his right to come back to this issue at the next meeting in light of results of the Codex 24th Session held in July.

32. The representative of Codex clarified that the 24th Session of the Codex Alimentarius Commission would consider issues such as amendments to the general standard for labelling of pre-packaged foods, including the modifications to Section 4.2.2 of the standard concerning allergens introduced by GMOs through food products. It would also consider draft definitions concerning food and food ingredients obtained through certain techniques of genetic modification and engineering, definitions on genetically modified or engineered organisms as well as on modern biotechnology. The controversial issue relating to labelling of GMOs was still subjected to the debate at the Codex CCFL. He pointed out that one of the controversial issues related to GMOs was the subject of traceability. This subject first came up at the Codex Committee on food inspection and certification systems. It would be discussed in a general sense at the forthcoming Commission meeting, and this work might entail detailed analysis in several committees, including the food inspection and certification committee.

33. The representative of Canada informed the Committee of draft Canadian regulations to improve nutrition information on food labels (G/TBT/N/CAN/8) and invited other Members' comments. Comments could be submitted to the Canadian enquiry point till 14 September 2001. Small businesses would be provided with an additional year to comply with the requirements, giving them three years in total to achieve compliance.

34. The representative of the United States reiterated her interest in receiving information from the EC on the proposal to ban nickel-cadmium rechargeable batteries. She recalled that her delegation had made repeated requests to the EC for clarification on the scientific basis or rationale of the proposed ban and its consideration of alternatives. She emphasized the importance of transparency to ensure a meaningful opportunity to comment. She recalled that it had been two years since she first raised concerns on this proposal. However, no notification had yet been made.

35. The representatives of Canada and Egypt associated themselves with the comments made by the US.

36. The representative of the European Communities explained that the draft had been made available at a very early stage of its preparation. A number of comments on the draft had been received. However, it was not possible to make a notification at the present moment since the draft regulation was still under preparation and internal discussion between experts and various authorities. He welcomed further comments and ensured that they would be taken into account.

37. The representative of the United States raised concerns on the draft EC Measuring Instrument Directive which she believed to be departing from the widely used standards developed by the International Organization of Legal Metrology (OIML). She sought information as to when the proposed Directive would be notified and opportunities for comments would be provided.

38. The representative of the European Communities would need to verify if the measure should have been notified or not, and if it was the case, notification would be made in the near future. He informed the Committee that the relevant text had been made available in the Commission Internet site since September 2000, and the proposal was not expected to enter into force before 2004. He noted the related work under way in the OIML, and anticipated development in this area.

39. The representative of the United States recalled that her delegation had raised concerns on the protocols to the European agreements on conformity assessment (PECAS) (G/TBT/W/152 in November 2000). She noted that the agreement between the EC with Hungary and the Czech Republic had been concluded, but it had not been notified under Article 10.7 to the Committee. She believed PECAS contained restrictive origin requirements and would discriminate against products from third countries not justified under the TBT Agreement. She continued to seek clarification from the EC, Hungary or the Czech Republic on the rationale for the origin requirements and the timing of the notification.

40. The representative of Canada believed the introduction of rules of origin in PECAS could negate Canada's benefits under the Canada-EC mutual recognition agreement (MRA). It would be a step back from the concept of the European common market. Canada expected that the improved access for Canadian products gained under the Canada-EU MRA could be extended to countries acceding to the European Union. There was no safety or technical reason to deny access for Canadian products to the EU extended territory, since the products would have already been tested and accepted by European union authorities under the Canada-EC MRA. He found no logical rationale in the additional testing requirements under PECAS.

41. The representative of the European Communities noted the concerns raised by the US and Canada, and recalled that his delegation had already replied to the questions raised at the last meeting. His authorities had been in touch with the US Department of Commerce and USTR in order to clarify the provisions and functioning of these agreements. He explained that PECAS were interim agreements (with an average duration of around three years) to prepare countries for accession to the European Union. They were familiarization agreements for candidate countries to align with EC legislations. He believed PECAS provided an improvement to exporters interested in the EU market and those of its applicant countries through an early harmonization of requirements, as it permitted economies of scale and removed barriers to trade. He confirmed that PECAS had currently been

concluded with Hungary and the Czech Republic. The first one had entered into force in June 2001, and the latter would enter in July 2001. The notification of these agreements was under preparation.

42. The representative of Australia drew attention to documents G/TBT/2/Add.8/Rev.1 and Suppl.1 (an update of Australia's notification under Article 15.2). The Australian arrangement was a cooperation between federal, state and territory authorities sharing specified responsibilities under the Australian constitution in the field of standards and regulations. This situation could be met by other Members, particularly developing country Members to implement the Agreement, as well as in the context of the provision of technical assistance.

43. The representative of the European Communities drew attention to G/TBT/Notif.00/342, a notification on a draft regulation in Hong Kong, China which required taxis registered after 1 January 2001 to be equipped only with positive ignition engines. His delegation had made comments on the notification and had received responses. He supported the objective to strengthen environmental protection and to improve air quality. However, he was concerned about the measure applied. It might be counter-productive for long-term protection by introducing mandatory requirements to equip taxis with certain engines only. He believed the use of newer engines and fuel technologies could also meet the emission requirements as laid down in the regulation. Hong Kong, China should avoid a ban on any other technology. EC would further study the response received and might come back to this in the future.

44. The representative of Hong Kong, China would convey the EC comments to his authorities.

45. The representative of the European Communities drew attention to G/TBT/Notif.00/580, a notification concerning the designation of a new generic fibre name in the US called "synterra". This proposal amended Rule 7 of the rules and regulations under the Textile Fibre Products Identification Act to designate a new generic fibre name and establish a new generic definition for a fibre manufactured by a specific company. The new name "synterra" had been suggested for the fibre described as polylactide and referred to as "PLA". European industry argued that the name lacked sufficient reference to the chemical composition of the fibre or to its physical properties, but instead gave the impression of being a commercial trade name. Quantitative and qualitative analysis methods to determine the fibre in textile blends had not been provided. It would be difficult to identify such fibre and to check in the market place on whether labelling bearing such name was correctly carried out. The EC had sent comments to the US in February 2001, but regretted that no reply had been received.

46. The representative of the United States took note of the comments made.

47. The representative of the European Communities drew attention to a notification from Indonesia concerning food labelling (G/TBT/Notif.00/478 of 29 September 2000). The EC had submitted comments on this legislation which covered food as well as wines and spirits. He believed that certain general requirements imposed on food should not be applied to wines and spirits, in particular concerning labelling. He believed this would be an example for the reflection of the Committee on the need to develop guidelines on labelling to prevent technical barriers to trade. He would come back to the issue in the light of any reply received from Indonesia.

48. The representative of Indonesia took note of the comments made and would reply as soon as possible.

49. The Committee took note of the statements made.



### III. FOLLOW-UP OF THE MEETING ON PROCEDURES FOR INFORMATION EXCHANGE

50. The Chairman reported to the Committee under his own responsibility on the outcome of the Special Meeting on Procedures for Information Exchange held on 28 June 2001 (Annex 1). He summarized the following proposals made for the consideration of the Committee: (i) The creation of a central depository for notifications on the WTO web site, which would enable Members to fill in their notification forms on the Internet and send them instantaneously to the Secretariat. The depository would increase the efficiency of the Agreement's transparency provisions; (ii) the preparation by the Secretariat of a booklet on transparency provisions of the TBT Agreement, similar to the one under the SPS Agreement; (iii) the placing of the list of TBT enquiry points on-line whereby Members could themselves update it; and (iv) the reflection on the languages to be used on the requests and replies relating to enquiry points. In some cases, replies provided by enquiry points were in native language, and could create problems. The Committee might wish to consider how best to address this, such as to recommend replies to be made in one of the WTO languages.

51. The representative of Uruguay found the special meeting useful. He was interested in the Canadian presentation and its "export alert" system on notifications. He believed it could serve as a model for other Members and technical cooperation. He supported the proposals on the handbook of transparency provisions and to update on-line information on enquiry points.

52. The representative of Switzerland appreciated the meeting. An expert from the Swiss enquiry point had attended and had been able to share experience on how enquiry points functioned. He appreciated in particular the Canadian presentation, since it had been his delegation's idea to develop a similar mechanism in the Swiss enquiry point. The information provided at the meeting could serve as a basis for further exchange. He reiterated his delegation's concerns on the way written comments to notifications were handled. He believed that discussions should take place, if so requested, and written answers should be provided following receipts of written comments. He regretted that this was not always the case. He welcomed the proposal to develop a handbook on transparency provisions, and suggested reflecting his delegation's above-mentioned concerns in the handbook.

53. The representative of Chile found the Canadian system to distribute notifications to alert exporters useful. He believed it was an important part of the notification provisions - the obligation to notify and the opportunity for the private sector to be aware of the notifications. He agreed with Uruguay that the Canadian system could serve as a sort of technical assistance arrangement between Canada and other Members, including Chile. Concerning the proposal to set up a central depository for notifications, he thought that a parallel system could be established to enable Members to be aware of work under way on draft regulations in other Members before the actual notifications were issued. This mechanism could ease the problems relating to delays in translation and circulation.

54. The representative of the Philippines thanked New Zealand for organizing the attendance of a number of APEC Members in the meeting. The meeting assisted Members to realize what needed to be done to fulfill their transparency obligations. He welcomed future meetings of this sort.

55. The representative of Canada thanked the positive reaction expressed on the Canadian "export alert" system and invited interested Members to contact the Canadian enquiry point. He had been approached by a number of delegations and would be pleased to work with them on this subject. Referring to the proposal to create a central depository system for notifications, he informed the Committee that Canada was developing a project called Government on-line (targeted for 2004). This project intended to provide opportunities to consumers, industry and the general public to interact with the Canadian government (such as in terms of doing business for the government) by means of e-commerce. He believed that was an efficient and effective way to communicate, such as to provide multiply database links. He indicated his delegation's willingness to work with the Secretariat in

trying to elaborate similar system to improve the effectiveness and efficiency of the notification system and in other areas. He informed the Committee of an APEC project related to the implementation of the Agreement undertaken by New Zealand. He believed the project could contribute to the ongoing work of the Committee. It had enabled a number of APEC developing country members to participate in TBT meetings. Part of the project related to transparency provisions could make a contribution to the preparation of the proposed handbook.

56. The representative of Peru thanked APEC for financing her participation in the meeting. She was interested in the Canadian "export alert" system, and would contact Canada to seek assistance for the establishment of such a system in Peru to facilitate the transmission of information to domestic producers and exporters. She appreciated the ISO presentation, in particular the part related to the establishment of a web site in national standardizing bodies, and believed that the ISO Mediterranean-2000 project to enhance electronic information exchange could be introduced to other regions. She would explore with ISO on the possibility of obtaining such technical assistance.

57. The representative of Botswana found the presentations at the meeting of a high standard and congratulated the Chairman for his summary. He supported the concept of a central depository for notifications to facilitate the procedures. He appreciated ISO's efforts to assist developing countries in information exchange, and looked forward to its response on the possibility of extending the Mediterranean project to other regions, so that more developing countries could take part in electronic communication and benefit from it. He supported the proposal to update the enquiry points information on line. He could understand concerns expressed on the languages to be used to respond to requests at enquiry points. He looked forward to the future work of the Committee in these areas.

58. The representative of Zimbabwe thanked the organizers and the sponsors of the meeting. She found the presentations and discussions useful and could reflect upon Zimbabwe's concerns. She informed the Committee that the enquiry point of her country was taking shape, and believed the information obtained at the meeting could assist its work and meeting TBT obligations.

59. The representative of the United States appreciated the special meeting and was particularly interested in the Canadian presentation. She supported further exploration of the proposal on a central depository for notification, and found the idea of sending notifications instantaneously to other Members and the Secretariat interesting. Ways could be found to facilitate the dissemination of information during holiday periods. Referring to the proposal for a handbook on transparency provisions, she had doubt on the Swiss comments on how Members should respond to comments, and believed there was a need for further reflection. The Secretariat should be careful not to interpret the provisions of the Agreement when developing such a handbook. She found the SPS handbook lengthy, and had doubts about the need for such a lengthy handbook for the TBT Agreement. The procedures on information exchange had been clearly articulated in a number of documents and the job could be just to put them together in one handbook without further interpretation.

60. The representative of Malaysia found the meeting useful and noted the active participation of Members. She believed the proposals made contained useful elements which could further improve information exchange. She recalled that an issue had been raised relating to the adequacy of 60 days comment period on notifications. She was particularly concerned about cases where the dates given for comments were after the entering into force of the legislations. She was not sure of the retrospective nature and the validity of comments made because the legislations had already been put in force. She welcomed Canada's offer to further clarify its "export alert" system, and looked forward to receiving further information.

61. The representative of Mexico appreciated the meeting and thanked the Members who had contributed fundings to assist participation of experts in charge of transparency provisions from capitals. Concerning the proposal to establish a central depository for notifications, his delegation regarded it constructive and would explore it. However, he pointed out that in many cases, the

coordination between capitals and Geneva representations could serve as a filter to avoid bringing in issues which were not within the scope of the Agreement.

62. The representative of Egypt joined the others in congratulating the Chairman on a successful meeting and a report which reflected the various sessions. He stressed the importance of developing countries being engaged in technical cooperation with developed countries in information technology. Egypt was interested in seeking cooperation with Canada, in particular with respect to the export alert system. He shared the concern expressed by Malaysia on comment periods.

63. The representative of New Zealand found the meeting and the Chairman's summary report useful, and believed the Committee should further explore the proposals made. With respect to the possible preparation of a booklet on transparency provisions and the ongoing work in APEC (as suggested by Canada), New Zealand was ready to provide assistance, should the Committee decide to go ahead with such an exercise, and encouraged other Members to do the same.

64. The representative of Mongolia (from Mongolian national standards body and enquiry point) appreciated her first chance to participate in TBT meetings, and believed the experience was useful for her future work. She looked forward to future opportunities to share experience and learn from other enquiry points, such as the one in Canada.

65. The representative of Mexico congratulated Canada on its presentation. Mexico had a similar programme with information on standardization programmes placed on an Internet database opened to the public. He believed that in order to make the programme successful, a joint effort with the private sector was necessary. In most developing countries, it was important to change the culture and involve the private sector in this information exchange exercise.

66. The representative of the European Communities found the meeting and the presentations useful. He was interested in the Canadian presentation, which had stimulated ideas on what could be done with information technology. He reiterated the importance of Members implementing the provisions on enquiry points and linked it to the demand-driven technical assistance programme to be developed by the Committee. He believed that was one of the key areas to be addressed. His delegation had been contacted by a number of Members requesting information on the EC system. The EC operated a regional system for 15 Member States in 11 languages. He believed regional arrangements could be an approach to technical assistance. He was ready to provide information on the EC facilities and on plans with developing countries.

67. The representative of Korea appreciated the meeting and associated himself with the idea of creating a central depository of notifications.

68. The representative of the ISO welcomed the interest expressed on the ISO presentation, in particular the part concerning the Mediterranean project. The project was conducted under the auspices and financial support of UNCTAD. It was part of a broader project to stimulate growth and competitiveness of small and medium enterprises. ISO would report to UNCTAD and explore possible resources to extend the programme to other regions.

69. The Chairman proposed to retain this agenda item for the upcoming meeting to facilitate further consultations.

70. The Committee took note of the statements made.

#### **IV. UPDATING BY OBSERVER (WHO/FAO CODEX ALIMENTARIUS)**

71. The representative of WHO/FAO Codex Alimentarius provided updated information on activities of the Codex Alimentarius commission and FAO technical assistance. He highlighted new FAO and WHO initiatives related to the improvement of food safety and quality which would result in recommendations for the reinforcement of Codex work in areas dealing with food-borne illnesses. He anticipated that these activities would continue to be under the Codex Committee on food hygiene and task force on animal feeding dealing with risk management and under various Codex Committees. The Commission had instructed several Committees (i.e. on inspections, certification and traceability) to deal with these issues. A proposal had been made to establish a food safety and quality facility in LDCs and the relevant information could be found on the FAO web site. These initiatives aimed not only to assist LDCs in participating in Codex work but also help them to improve the quality and safety of their food for both domestic consumers and for export markets.

72. He anticipated that the 24th Session of the Codex Alimentarius Commission would be participated by 100 Codex Member Governments and 40 international governmental and non-governmental organizations. The Commission's strategic framework and the Chairperson's proposed action plan would be presented. The objectives, in addition to technical assistance, would include the promotion of the following: sound regulatory frameworks; the application of scientific principles of risk analysis; linkages and collaboration with other multilateral regulatory instruments; capacity to respond effectively and expeditiously to new issues in the food sector; membership and participation in Codex activities and the application of Codex standards. Other issues which could be of interest to the Committee included the relation between the Commission with NGOs and IGOs, risk analysis, precaution as well as Codex decision-making process.

#### **V. FOLLOW-UP OF THE SECOND TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE TBT AGREEMENT**

73. The representative of Switzerland recalled that at the Second Triennial Review, labelling issues had been identified as an area of concern in the Committee. Labelling and marking requirements had been regularly subject to discussions in the Committee, and at the present meeting, a number of labelling issues had been brought to the attention of the Committee. Switzerland believed that there was a need to discuss the matter in detail, and had prepared a paper (G/TBT/W/162) which had also been presented in the meeting of the Committee on Trade and Environment (CTE).

74. She drew attention to an editorial modification in paragraph 21, that reference should be made to paragraph 16, rather than paragraph 13. In Switzerland's view, there was no doubt that marking and labelling requirements were covered by the TBT Agreement. There were two sets of provisions referring to marking and labelling. Firstly, the definition of technical regulations and standards in Annex I contained a clear reference to these kinds of requirements. Secondly, they were also covered by the provisions on conformity assessment. The concerns raised by some Members on the existing marking or labelling schemes implied that it was not clear to what extent the TBT obligations applied to the various schemes. There was a need to identify and discuss the questions so as to improve the current unsatisfying situation. Such a discussion should take into account concerns raised by developing country Members on the proliferation of labelling schemes that had the potential to become disguised barriers to trade. However, labelling requirements responding to certain consumers' demands could be used as an instrument to promote market access. A possible harmonization of these requirements could further improve market access. Another concern that needed to be addressed was the possible misuse of marking and labelling requirements for protectionist purposes and deceptive practices.

75. She had identified the following issues bearing uncertainties in the application of the Agreement, and believed that they could serve as a starting point for future discussions: (i) the Agreement referred to mandatory requirements as technical regulations and voluntary ones as standards. She found the distinction between the two was not always clear, since a voluntary label might become de facto a mandatory requirement if the producer wished to gain access to a specific segment of the market. It seemed inconsistent that with regard to national treatment, the level of obligation under the Agreement differed for those two categories; (ii) with respect to marking and labelling related to PPMs, she believed the terminology of the Agreement was not precise. It was not clear whether PPMs labelling, in particular labelling of PPMs not related to the product, was covered by the Agreement. Furthermore, the distinction between labels based on the characteristics of the product, on product related PPMs and on non-product related PPMs was not clear; (iii) the legitimate objective of "consumer information" for many labelling requirements was not explicitly mentioned in the Agreement under Article 2.2. However, it could be argued that consumer information is a central element for the prevention of deceptive practices. The Swiss paper was not intended to provide answers to the above questions. In order to bring an end to the uncertainties, it suggested a profound discussion on these issues. This could contribute to a better common understanding on the issues and could assist preventing marking and labelling requirements being used for protectionist purposes. Market access could be further facilitated, in particular for products from developing countries.

76. The representative of Canada reiterated his delegation's support for a broader-based dialogue on the labelling issue in the Committee, without prejudice to its outcome. Canada was concerned about the proliferation of labelling requirements based on non-product related PPMs, such as the proposals by the EC on genetically modified food and on eco-labelling, by the Netherlands on forest products and by Belgium to indicate social responsible production. He believed that a comprehensive dialogue on labelling could assist in addressing specific concerns, such as those related to the notification process. However, Canada did not support the idea of considering labelling as an issue for negotiations, nor its need for clarifying documents (i.e. guidelines), but rather to have a better understanding of the current TBT disciplines. His delegation would submit a paper before the October meeting, and would approach the issue not only from the context of the Agreement, but also in terms of when, how, and why Members adopted mandatory labelling requirements. It would also cover issues such as good regulatory practice and implementation implication regarding labelling requirements, particularly if they related to non-product related PPMs.

77. He supported further studies on the effects of mandatory labelling requirements in the marketplace to ensure that these requirements, when needed, were effective, meeting their legitimate objectives and designed in a non-discriminatory manner. Mandatory labels should not be misused for protectionist purposes or deceptive practices. He agreed that developing countries' concerns should be addressed. He noted the relevant work of the ISO and believed that international standards could be an instrument to harmonize labelling requirements. While the Swiss paper provided a reference for a dialogue, he believed that it raised many questions. He would provide written comments on the paper, and proposed to hold a half-day informal consultation on this subject matter.

78. The representative of Hong Kong, China provided preliminary comments on the Swiss paper, and could not agree on the following points: (i) he believed the distinction between mandatory and voluntary labelling requirements under the Agreement was clear. He accepted the fact that the bearing of a label on a product under a voluntary scheme might affect the perception and choices of consumers. However, this did not alter the nature of the labelling requirement; (ii) he noted that the Swiss paper had categorized labels into three types (i.e. based on the characteristics of a product, on product related PPMs and on non-product related PPMs). He believed while it was important to maintain the distinction, such division might upset the balance of rights and obligations under the Agreement and have implications on the like product concept of the GATT; and (iii) regarding whether consumer information was a legitimate objective under Article 2.2, he believed that it could only be dealt with on a case-by-case basis, since the provision had provided an indicative list.

79. The representative of Chile believed that labelling was an element under the Agreement, and if there was any doubt in its interpretation or the extension of its application, the Committee was the forum to deal with it. He welcomed a frank discussion, but would not like to prejudge its outcome. He supported the proposal to hold a special session in October to discuss this topic.

80. The representative of Mexico noted that labelling was a subject matter causing concerns among developing countries. He could not support some points contained in the Swiss paper (on which his delegation had made comments at the CTE meeting). He could not understand why Switzerland considered that there was a lack of clarity in the provisions of the TBT Agreement. He was not convinced by the argument put forward, and believed that the provisions were clear, and reflected a delicate balance between rights and obligations of Members. Annex 1 of the Agreement provided definitions covering labelling, and the relevant provisions stated the rights and obligations of Members as applied to labelling. He supported the view that labelling schemes could be useful at times, but could often create barriers to trade, in particular for developing countries. Harmonization of these schemes by following the principles of the Agreement to use international standards could improve the situation. He agreed that sometimes these schemes were applied in a protectionist way, but could not agree that this was due to a lack of clarity of the Agreement. Instead, he believed it was due to the improper implementation of WTO principles. These principles had been reflected in paragraph 15 of the Swiss paper, although he disagreed with the concept of proportionality indicated there. He asked if proportionality was under the concept of necessity as stipulated in Article 2 of the Agreement.

81. He agreed that in some cases, voluntary schemes could be dubious in their voluntary or mandatory nature. He understood that mandatory laws were requirements which had to be conformed with, although certain voluntary schemes might contain obligations. It depended on how the schemes were implemented, and whether they linked to specific regulations. He believed this should be examined in the light of the provisions of WTO Agreements. Referring to marking and labelling requirements based on PPMs, he was clear that the definition of technical regulation under the TBT Agreement did cover PPMs directly related to the product, and in a logical sequence of interpretation, it meant that those PPMs not related to the product were not the subject of the definition. He insisted that the provision was clear. He welcomed the Swiss suggestion that any work in the Committee on labelling should aim at facilitating access to markets for developing countries and avoiding protectionism. The Committee should discuss matters which were of concern to Members and within its terms of reference. The discussions on labelling should be a learning exercise to exchange ideas. He supported the Swiss view (paragraph 28 of G/TBT/W/162) that such a discussion could contribute to facilitating market access for products originating in developing countries; ensuring that marking or labelling requirements are not misused for protectionist purposes or deceptive practices; and identifying major marking and labelling schemes with a view to providing a basis for a possible international harmonization to further facilitating trade. However, to clarify certain provisions of the Agreement would be a different exercise and would cause concerns and reservations.

82. The representative of Korea welcomed the Swiss contribution, and agreed that labelling was an important issue which needed further discussion. Bearing in mind the ambiguous provisions in the TBT Agreement, the Committee should address the matter. He believed the Swiss paper was a good starting point. The consumers' right to know was the basis for labelling requirements and many consumers' protection groups were making their voice heard. As technology evolved, consumers requested more information about products and their production methods. Their interests should be taken into account in the discussion of the Committee. He noted the work being done in relevant organizations such as the Codex and ISO. The question on the legitimate objectives underlying labelling requirements was an important one. "Prevention of deceptive practices" provided for under Article 2.2 could give the contextual support to this. He noted that the discussions on labelling had been going on for a while. In order to facilitate progress in the discussion, he supported the view to

limit the scope of the discussion for the time being to exclude non-product related PPMs issues. The Committee should pursue a policy-oriented approach rather than a legalistic one in the discussion.

83. The representative of Thailand, while agreeing that labelling requirements had been increasingly raised in the Committee as impediments to trade, believed that problems could be avoided if the principles of the Agreement were fully respected. He agreed with Switzerland that the Agreement provided for the instrument to guard against protectionism. The discussion on the labelling issue in the Committee could contribute to market access facilitation for products from developing countries. Regarding the mandatory or voluntary nature of labelling requirements, he thought it was a matter of choice of the authorities and producers involved. If the requirement was a voluntary standard, it was up to the producers to decide whether to enter into a market, and once the decision was made, they had to follow the rules. If it was a mandatory technical regulation, the producers did not have any choice but to follow the requirements. He agreed with Hong Kong, China that voluntary labels could affect consumers' preference.

84. He could not agree with Switzerland on the question concerning the distinction between technical regulations and standards (paragraph 19 of the Swiss paper), and emphasized that one should not mix up the nature of a measure with its result. Article 4.1 of the Agreement stipulated that Members' obligations "with respect to the compliance of standardizing bodies with the provisions of the Code of Good Practice shall apply irrespective of whether or not a standardizing body has accepted the Code". Both the Code and Article 2 provided the principle of non-discrimination, thus, whether a labelling requirement was a mandatory technical regulation or a voluntary standard, the importing Member would have the obligation to ensure national treatment to imported products. Article III of GATT also provided Members' obligations to treat imported products not less favourable than that accorded to like-products of national origin in respect of laws, regulations and requirements. He considered the TBT Agreement (including the legitimate objectives as stipulated in Article 2.2) was sufficient to deal with labelling issues, and opposed to any negotiation or amendment to its text, in particular if it linked with issues such as social clause and non-product related PPMs.

85. The representative of the United States could not agree with certain points of the Swiss paper. She questioned in particular the fundamental assertion that further clarification of the Agreement was needed. She drew attention to a US paper on labelling (G/TBT/W/165) which recalled the discussions in the Committee and categorised the types of labelling-related trade issues as well as concerns expressed by Members. The concerns related to transparency, choice of approaches for achieving regulatory objectives and practical compliance issues. Based on the issues raised, the US experience and the Swiss paper, she could not come to the conclusion that there was problem with the Agreement and the need for its clarification. She did not object to a discussion on labelling, and supported the proposal to hold informal consultations in October.

86. The representative of Japan appreciated the labelling papers submitted by Switzerland and the United States, and supported further discussions on the issue.

87. The representative of Guatemala considered that the discussion on labelling should take place exclusively in the Committee, and agreed with Mexico that it should be based on the Agreement. It should be a learning process without prejudging the outcome, and should take into account the work being done in other international bodies.

88. The representative of Malaysia noted that both the Swiss and United States' papers pointed out that labelling requirements were becoming increasingly disguised restrictions to trade. The Swiss paper indicated that certain provisions of the Agreement should be clarified in order to address these concerns. It pointed out a number of problems, such as the divergent national and regional labelling requirements and the misuse of these requirements for protectionist purposes. It also pointed out that these requirements could offer market access opportunities for developing countries. She found these points contradictory. If labelling requirements were of no great concern and could be seen as

opportunities for market access (also stated in the EU paper - G/TBT/W/150), what was the urgency of discussing TBT provisions in relation to labelling?

89. The Swiss paper had identified the following provisions related to labelling requirements: Article 2.1 on non-discrimination; Article 2.2 on necessity and proportionality; Article 2.4 on the use of international standards; Article 2.9 on notification requirements; Article 10 on the provision of information; Article 11 on technical assistance; and Article 12 on special and differential treatment. Given the clear indication on how the provisions were adequately addressing labelling requirements, she was not convinced of the need to further clarify the Agreement. Instead, she believed that the increasing trade-restrictiveness of some labelling requirements could be seen as a problem that certain TBT provisions had not been implemented. What was needed would be the proper application of TBT provisions to labelling requirements to help resolving the problems. She agreed with Thailand that existing TBT provisions were sufficient and that further clarification and changing of rules was unnecessary. She shared the Canadian concerns on the proliferation of non-product related PPMs labelling requirements. She would not be opposed to further informal discussion on the issue, and agreed that it should be a process for education without prejudging the outcome.

90. The representative of the Czech Republic supported further dialogue to clarify the TBT rules related to mandatory and voluntary labelling requirements, and supposed that certain sectors could be used as examples during the discussions.

91. The representative of Egypt believed that widening the scope of the Agreement could not solve the problems of developing countries and SMEs on labelling. On the contrary, this might create unnecessary obstacles to trade since labelling requirements could be used as a disguised restriction. He pointed out that the Agreement contained provisions to address labelling, and agreed with Canada, Thailand and Malaysia that the provisions were enough to provide disciplines for these requirements and there was no need to amend the Agreement. The Swiss paper suggested that marking and labelling schemes could serve as market access tools. However, the paper did not demonstrate how they could increase market access opportunities. In particular, developing countries had to face the increasing costs imposed on them due to these requirements. He recalled that at the Second Triennial Review, it had been recognized that developing countries' interests and concerns should be taken into account in the application of labelling schemes. Egypt was prepared to participate in further discussions on the issue.

92. The representative of the European Communities believed although there was no immediate consensus on a possible outcome of the discussion on labelling, there was a common view that the issue deserved an exchange of views in the Committee. The Swiss paper reflected the need to clarify the TBT rules. He noted the increased number of notifications and specific cases discussed in the Committee related to labelling, and believed that in the interest of all Members, it was necessary to address the issue without delay. At the same time, it would not be helpful, if such discussions would not result in some sort of guidelines in labelling requirements. Further clarification of the Agreement could reduce the risk of labelling being abused for protectionist purposes. It would promote a predictable and trade-friendly regulation as well as reduce trade frictions. The aim of the exercise should not be to expand or weaken the existing TBT rules, but to define clearly what they were, how they functioned and what was not allowed.

93. The EC, like Switzerland wished to clarify the following points: (i) the scope of the Agreement with respect to its coverage on non-product related PPMs. He noted the US paper was silent on this point; (ii) what were the legitimate objectives and how best to avoid unnecessary barriers to trade, whether through international standards or other means; (iii) how to share experience with developing countries as well as to enhance technical assistance and capacity building in this area. He noted that the Swiss paper had provided some elements for a debate, and recalled that the EC paper had proposed, as a first step, that Members exchange information on labelling as well as



examining the work in relevant international bodies. He supported the idea of holding discussions on the issue at the upcoming meeting and that it should be held in a more structured manner.

94. The representative of the Philippines affirmed that labelling was an important subject to his delegation. He could not agree with the Swiss paper stating that it was unclear on how TBT provisions applied to marking and labelling schemes. He had reservations on the conclusion that this situation had led to legal uncertainty and would weaken the operation of the Agreement. He sought an answer on what the legal uncertainty would be. He shared the developing country view that labelling requirements were often inclined to be used as trade protectionist measures rather than market access enhancing measures. He also expressed reservation on the assumption made in the Swiss paper that consumers were willing to pay higher prices for certain labelled products and this could lead to higher profits for producers and exporters. He argued that even if consumers were willing to pay, it did not necessarily lead to higher benefits for producers and exporters, as that margin would be consumed by the cost to comply with the labelling requirements. He echoed the view of Hong Kong, China that the distinction laid down in the Agreement between technical regulations and standards was clear, and there was no need for further elaboration. He would not be opposed to a discussion on the issue which could serve as an educational process for Members, but it should not lead to a negotiation to widen the scope of the Agreement.

95. The representative of Australia was aware of the concerns of a number of Members about the potential of labelling (including food labelling) requirements being applied in a manner that could result in unjustifiable trade restrictions. However, she did not consider that any case had been made for reviewing or amending the Agreement. There was no evidence to suggest that the Agreement could not address any dispute that might arise in this area. None of the issues raised in the US and Swiss papers were incapable of being addressed under the current provisions. Australia could join the consensus to discuss the issues on the basis that there would be no prejudgement of or commitment to specific outcomes, including to clarify the rules of the Agreement or to develop guidelines.

96. The representative of Canada sought clarification on whether the EC was prepared to include non-product related PPMs issues in the labelling discussions.

97. The representative of the European Communities clarified that although in the EC submission (G/TBT/W/150), in November 2000, it had indicated that there was no intention to include issues such as eco-labelling, his delegation was open to deal with issues related to non-product related PPMs in future discussions.

98. The representative of Switzerland welcomed the discussion and comments made. He noted the complexity of the issue and the need for structured discussions in order not to lose sight of what was aimed at to be achieved. He reaffirmed that the TBT Agreement was the WTO Agreement which laid down provisions related to marking and labelling requirements. The reason as to why the Swiss paper had also been presented to the CTE was due to the fact that eco-labelling was part of the CTE mandate. He supported holding a half-day informal discussion on the labelling issue in October 2001.

99. The Chairman noted the need for further discussions on the issue of labelling and agreed to hold a half-day informal session on it.

100. The representative of Canada introduced a Canadian paper (G/TBT/W/167) on "A Policy Framework for Mutual Recognition Activity". He recalled the Committee's request at the Second Triennial Review for Members to supply information on their mechanisms for the acceptance of conformity assessment results. The paper provided Canadian experience on mutual recognition activities in an effort to decrease non-tariff barriers to trade associated with standards, technical regulations and conformity assessment procedures. Canada had entered into mutual recognition agreements (MRAs) and arrangements covering a variety of industrial sectors, and had come to the conclusion that the negotiation and implementation of MRAs was a labour intensive process. Neither

the federal government nor other key players of MRAs process (such as regulatory agencies and subnational jurisdictions) could respond positively to all MRA related requests. As a result, it had been decided that a clear domestic criterion for MRA activities was important to ensure that these activities reflected Canadian economic interests as well as those of the Canadian stakeholders.

101. The following considerations had been identified to establish the priorities for future MRA related activities in Canada: tangible economic benefits; determination of the most appropriate regulatory tool; support from key players and stakeholders underlying compatibility in the regulatory systems of the potential MRAs partners; and sufficient resources for MRAs negotiation and implementation. The framework also outlined Canadian priorities for future MRA activities. At present, Canada would focus on the implementation of existing MRAs. He invited other Members to consider the policy issues outlined in the paper and to discuss the substantive concerns, constraints and benefits related to MRAs which was one of the approaches identified to facilitate the acceptance of results for conformity assessment (Annex 5 of G/TBT/9).

102. The representative of Guatemala informed the Committee of the establishment of its national enquiry point.

103. The Secretariat would update the list of enquiry points.

104. The Committee took note of the statements made.

## **VI. TECHNICAL ASSISTANCE**

105. The representative of Brazil informed the Committee that further to the Brazilian paper on technical assistance and technical cooperation programme (G/TBT/W/156), and in response to the invitation at the Second Triennial Review, additional information was provided on technical assistance projects provided and received by Brazil during 1995-2001 in the areas of metrology, standardization and conformity assessment.

106. The representative of Colombia expressed gratitude to the Secretariat for the organization of a regional TBT workshop to be held in Bogota on 1-3 August 2001. The workshop was elaborated and financed by the IDB for the participation of officials responsible for notifications, standards and enquiry points from the Andean countries, Central American countries, Cuba and the Dominican Republic. Experts from Chile and Mexico would provide presentations in the areas of regulation and conformity assessment agreements. One of the aims of the Workshop was to stimulate competent bodies to use international standards in the elaboration of technical regulations, conformity assessment procedures and standards. The WTO/TBT Agreement would be explained to facilitate understanding among authorities who would then be able to assist private sectors, in particular exporters, to better benefit from the TBT Agreement, including its transparency provisions. Participants would have the opportunity to share experience in the development of international standards, voluntary agreements and technical regulations, as well as the management of enquiry points. They could study the possibility of establishing mechanisms to disseminate information to exporters on technical requirements in targeted markets to facilitate adjustment to the requirements and to increase the competitiveness of exports. He sought the possibility of including a presentation (by an expert or through video conference) on the Canadian export alert programme at the workshop.

107. The representative of the European Communities drew attention to document G/TBT/W/163, a EC paper aimed at identifying practical options for the development of a technical cooperation programme as agreed at the Triennial Review. The paper provided ideas on the identification of needs and options for addressing them. They had been derived from the EC's experience as a donor of technical assistance. His delegation intended to provide an updated list of existing and planned EC technical assistance programmes to the Committee in the near future. He believed the identification of needs (in both public and private sectors) and to define priorities were important for a successful

demand-driven technical assistance programme. Needs would vary from country to country, and technical assistance projects could only be useful if they addressed the right needs. Donors would need to continuously re-examine how well the assistance provided addressed the needs identified. He identified the following areas to address needs: (i) increase knowledge; (ii) infrastructure related measures; (iii) support for participation in international activities; and (iv) regional arrangements. The type of knowledge required would vary from country to country. The promotion of knowledge and awareness could be achieved by training activities (for a variety of players in addition to government authorities or standardization bodies) through information seminars and workshops; specify training for targeted bodies or individuals; hands-on training through participation in practical work and solving practical problems in other countries organizations; and training of trainers.

108. On infrastructure-related measures, he believed that a functioning infrastructure would enable countries to make the best use of the Agreement and maximize their potential. It would be important to develop the necessary legislation, bodies and a strategy to establish the infrastructure. The options identified were: (i) to assist countries to comply with technical regulations of export markets; (ii) to develop a general strategy for quality infrastructure; (iii) to support the development of specific bodies, e.g. enquiry points; and (iv) to assist the provision of effective means of communication and information processing (e.g. e-commerce application, hardware and networks). He believed that supporting participation in international activities (not only in standardization but also in other fora such as accreditation) was an important aspect. He recalled that regional cooperation was a point shared by Brazil, and supported the regional approach of the Colombian workshop. He looked forward to this type of activity, since most of the existing technical assistance was delivered on a bilateral or national basis rather than a regional basis. He believed regional cooperation was an advantageous way for the development of certain aspects needed for the implementation of the Agreement. It could be done through activities such as seminars, workshops and multi-country groups.

109. The representative of the Philippines drew attention to document G/TBT/W/166, a submission indicating the assistance the Philippines needed and had received, e.g. from the APLAC on conformity assessment. He believed that certain assistance activities received might have been duplicated, and agreed that it was important to clearly identify technical assistance needs so that the needs could be addressed effectively by the assistance provided.

110. The representative of Japan drew attention to document G/TBT/W/160 which explained Japan's experience in providing technical assistance. The activities were demand driven based on requests from developing countries, provided at both bilateral and regional levels. They included programmes, such as acceptance of trainees and provision of experts (both short and long term in areas of standardization, conformity assessment and metrology). In order to draw the attention of the relevant organizations to the importance of technical assistance in TBT areas, it was important that developing countries gave priority to TBT-related assistance in their national technical assistance request list, since most assistance programmes were demand driven. He agreed with the EC that more attention should be given to regional efforts. He noted APLAC's assistance effort given to the Philippines, and believed that the various APEC schemes had provided good examples on technical cooperation in the Asian-Pacific region.

111. The Chairman highlighted the outcome of the informal consultations on technical assistance held that afternoon. He would consult with the Chairmen of the General Council and the Committee on Trade and Development to ensure coordination and avoid duplication of work in this area. The Secretariat was requested to compile the submissions from Members on technical assistance and to design a draft survey on needs identification for the consideration of the Committee at its upcoming meeting in October when time would be provided to allow further discussion on the matter.

112. The Committee took note of the statements made.

## VII. OTHER BUSINESS

113. The representative of the European Communities recalled that at the last meeting, a number of delegations had made comments on the EC paper on precautionary principle (G/TBT/W/154). He appreciated the Brazilian view that the precautionary principle was covered under Article 2.2 of the TBT Agreement, although there was no common view on the need for specific discussions linking the precautionary principle with the Agreement. His delegation could go along with this position and would support a discussion at a horizontal level since the precautionary principle was enchainé in other WTO Agreements as well. He believed the conditions in which Members adopted the precautionary principle were not well defined, and the EC was preparing a paper to express its views on these questions. Although the paper might not be submitted to the TBT Committee, he believed it could be useful for the consideration of Members during discussions in other fora.

114. He noted that precaution had been widely used as a basis for risk management measures in the environment, health and safety areas. Such precautionary measures had had and would have the potential to affect trade both for developing and developed countries. A clarification by spelling out a framework for such measures and providing a more explicit backing in the WTO for such measures would reduce the risk of trade disputes. The EC paper would address the following issues: (i) the application of WTO principles (e.g. non-discrimination and not more trade restrictive than necessary) when the precautionary approach was applied; (ii) the role of science in this approach. Although by definition, the precautionary approach was applied when science was not conclusive, it was important that the adoption of such an approach should not oppose sound science; (iii) the need to review those measures in the light of development of scientific knowledge; (iv) the importance of transparency to draw the attention of other Members to such measures and to provide opportunities for consulting; and (v) effective measures and actions to address developing countries' concerns on precaution. The EC did not see the need to change the scope of the existing WTO rules, but sought greater clarity in the limits of what would and what would not be WTO compatible, as well as to ensure a consistent and complementary approach in the different WTO fora on the matter. There were different possibilities for clarifying the relationship between precaution and WTO rules. The EC had abandoned the idea of proposing a modification of the Agreement, but suggested that the clarification could be done in the form of agreed understanding, interpretation or guidance.

115. The representative of Canada did not support any form of negotiation on precaution in the context of the preparations for the Ministerial Conference in Doha or a New Round. He believed it unnecessary since the existing rules were clear and balanced as to what was permitted. However, he could support discussions in relevant Committees on how Members apply precaution. His delegation had proposed at the SPS Committee that Members exchange experience in managing risks and in situations of limited scientific information. The discussion should not involve the revisit nor renegotiation of existing provisions of the SPS Agreement. The objective would be to arrive at a common understanding on how precaution was addressed within the context of existing rights and obligations. He noted also the discussion on this subject in the CTE. In the environment context, many articulations on precaution were framed in a negative formulation stating that "a lack of full scientific certainty should not be used as a reason for postponing actions or decision-making". He considered that formulation to be of certain significance, since it did not amend positive obligations.

116. He believed that the application of the precautionary approach must be flexible and responsive to the needs in each particular circumstance. Canada had a domestic process in place to facilitate on-going discussion on these issues. A document was being prepared for consultations, and could be accessible on the Canadian Department of Foreign Affairs and International Trade web site when it was released. He looked forward to further discussions on the subject in various WTO fora and in other organizations such as the OECD and United Nations Environment Programme. He sought clarification from the EC as to which WTO body it intended to hold the horizontal discussion. He noted that a number of delegations did not believe the TBT Committee was appropriate. He

believed that precaution in terms of regulatory activity could touch upon issues that the TBT and SPS Committees had a mandate for.

117. The representative of Australia expressed objection to any discussion on precaution in the TBT Committee, and believed that the disciplines of the TBT Agreement provided scope for precautionary decision-making in relevant circumstances and at the same time limited the possible over-extension or abuse of the precautionary approach. This balance was important and should be maintained. She considered a science-based approach to be critical, and emphasized that in situations where science was insufficient for decision-making, non-science based factors should not be used to overrule the science existed.

118. The representative of the UN/ECE presented the UN/ECE project on a voluntary concept for regulatory convergence (G/TBT/W/161). He recalled that the UN/ECE project had been presented for the information of the TBT Committee last year. He welcomed the comments made and indicated that they had been taken into account when preparing this new draft. He recalled that at the Second Triennial Review, the TBT Committee had called for information exchange on how to reduce regulatory burdens for business. Discussions in the TBT Committee and other international fora had shown that there was a market need for regulatory convergence and there was a plea from businesses to facilitate market access. That was the reason why UN/ECE had initiated this project. He stressed that the purpose was not to supplement nor to expand the obligations under the TBT Agreement, but to provide a voluntary mechanism for those countries who might wish to harmonize technical regulations. He believed the project could contribute to the discussion on regulatory practice in the Committee.

119. The representative of the United States informed the Committee that because of the objections of her delegation to the UN/ECE project, the US had withdrawn its participation in the START team in which the proposal was developed. She reiterated her concern about the duplication of this project with the obligations within the framework of the TBT Agreement. She questioned the need for developing such a model in the first place, and with the new draft, her concern remained.

120. The representative of the ISO updated the Committee on relevant ISO activities. He said that he was regularly requested to report to ISO members and the ISO Council on relevant work of the Committee. Noting the results of the Second Triennial Review of the Agreement, the ISO President had handed to the Director-General of the WTO comments on the Review (G/TBT/W/158). He had indicated that the principles for the development of international standards (Annex 4 of the report of the Triennial Review) were implemented within the ISO to ensure transparency, openness, impartiality and consensus, effectiveness and relevance, as well as coherence without neglecting the development dimension. Document G/TBT/W/158 also described ISO programmes to address the needs of developing countries. ISO was ready to provide further information on its programme and policy.

121. The representative of Japan welcomed the ISO information on how it addressed Annex 4 of the Second Triennial Review. He believed this kind of information was useful to the Committee, and encouraged other relevant observers to provide similar information.

122. The Committee took note of the statements made.

123. The Chairman proposed to hold the next meeting on 8-9 October 2001, with the first day devoted to informal consultations.

## ANNEX 1

### **Special Meeting on Procedures for Information Exchange under the Agreement on Technical Barriers to Trade (TBT)**

**28 June 2001**

#### **Report by the Chairman**

1. In accordance with its mandate to convene biennial meetings on procedures for information exchange for persons responsible for enquiry points and notifications, the Committee held a meeting on 28 June 2001. Financial contributions from the European Community, the United Kingdom, Norway and the Netherlands enabled 15 capital-based officials from developing and least-developed countries to attend. A number of participants were also funded by APEC. The meeting was divided into five sessions on various aspects of the transparency provisions of the Agreement. In ***Session One on Transparency Obligations under the Agreement***, the Secretariat presented the relevant provisions. It highlighted the three pillars of transparency under the Agreement which consisted of: publishing, notifying, and responding to enquiries.

2. The presentation explained that various notification obligations existed under the Agreement: statements of implementation, notifications of draft technical regulations, conformity assessment procedures and standards (whether proposed by central or local government bodies), notifications on bilateral and multilateral agreements that are entered into on matters falling under the coverage of the Agreement, and notifications on the acceptance and withdrawal from the Code of Good Practice and on the existence of work programmes. It was stated that the notification obligations of the Agreement are complemented by certain publication requirements to do with publishing notices of draft TBT measures, and the work programmes of standardizing bodies. It was explained that enquiry points had to be established to respond to enquiries pertaining to technical regulations, standards and conformity assessment procedures by central, local and non-governmental bodies. The presentation stressed that the Committee decisions and recommendations (contained in document G/TBT/1/Rev.7) should guide Members in implementing their transparency obligations. It was agreed that the presentation would be posted on the WTO web site.

3. A number of delegations intervened in Session One to stress the importance of notifying all measures with a significant impact on trade (including measures proposed by sub-national authorities), and of having well-functioning enquiry points. With respect to the latter, it was stressed that enquiry points should always acknowledge the receipt of enquiries, and that those requesting information should always identify themselves (the organizations to which they belong, and their contact details). It was also recommended that requests only be sent in through one channel so as not to create confusion and an undue duplication of efforts in responding. Problems experienced in opening e-mail attachments were also pointed out. A suggestion was made that the Secretariat prepare a booklet on the transparency provisions of the Agreement, similar to the one on SPS.

4. In ***Session Two on the Preparation and Circulation of Notifications by the Secretariat and the WTO Web site***, the Secretariat presented the internal procedure followed in processing incoming notifications, identifying the types of problems confronted. It stated that the following stages were involved: (1) the receipt of notifications by the Central Registry of Notifications; (2) their channelling to the Trade and Environment Division; (3) their review, typing/formatting by the Division (which includes checking to see whether they truly fall under the coverage of the TBT Agreement rather than the SPS Agreement; and (4) their forwarding to the Document Dissemination Facility for translation and distribution. It was explained that the processing is sometimes held up by (1) the receipt of incomplete notifications, of notifications containing contradictory information, and of notifications falling under the SPS Agreement, which are all issues

that require verification with the Geneva-based delegation of the notifying country; (2) the receipt of notifications in only one official language of WTO, requiring time to be invested in translation; and (3) the receipt of notifications through many different channels, whether different divisions in WTO, or by fax, e-mail and regular mail, which can result in the issuance of duplicate notifications, or in confusion that can take time to resolve. The presentation called upon Members to send in their notifications electronically in as much as possible to (CRN@WTO.org), and to do so in as many WTO official languages as they can (particularly when a Member itself has more than one official language). It was also stated that attention should be paid to holiday periods where the processing of notifications could slow down.

5. The WTO web site was also introduced in this session, with a demonstration made of how to navigate the site, search for and download TBT documents. It was noted that in the Survey conducted by the Secretariat on the electronic facilities available in enquiry points all except two respondents had access to electronic facilities. The WTO web site, to which most respondents had access, could therefore play an important role in enabling Members to obtain WTO documents speedily.

6. A number of delegations intervened to share problems they were experiencing. One delegation stated that the 60-day comment period on notifications was too short, particularly in view of the fact that legislation often had to be requested from enquiry points and translated prior to being commented on. However, another felt that that problem had already been addressed by the fact that the Committee decisions and recommendations entitled Members to request an extension of the comment period. Other problems raised included the fact that a number of enquiry points insisted that comments be made in the official language of the country, and it was agreed that more reflection on this point was needed. A number of delegations asked that the experiences of other Members in the functioning of enquiry points be shared with them. A delegation responded by presenting its experience and the way in which it channels notifications to professional associations, but acknowledged that its system presupposed that such structures existed to rely on.

7. In *Session Three on the Electronic Facilities Available in National Enquiry Points of Members* a representative from the ISO presented the work undertaken by ISO to assist developing countries in electronic information exchange, which has three components: (1) the development and dissemination of a CD-ROM containing pre-figured, customizable, web site templates to help national standardizing bodies establish web sites and deliver information; (2) a training programme to provide developing countries with the tools of information technology needed for standardization and the electronic voting on ISO standards; and (3) the provision of hardware (for example in the Mediterranean region). It was noted that ISO's work could significantly help developing countries make greater use of the electronic medium. A question was raised about the possibility of extending this project to other regions.

8. In *Session Four on the Electronic Transmission of Information among Members*, Members shared their experience on the use of the electronic medium. A number of delegations stressed that the use of this medium was critical to facilitating the transmission of information. One delegation explained that all its technical regulations have been posted on the Internet, and urged other Members to do the same. Another delegation stated that since it began transmitting its notifications electronically to the Secretariat, the time required for their processing was significantly reduced. A number of participants emphasized the importance of greater reliance on electronic exchange. It was suggested that Members consider placing the list of enquiry points on-line whereby Members can themselves update it.

9. In *Session Five on Benefitting from the Transparency Provisions of the Agreement*, Canada explained how its enquiry point operated. It stated that since clients were enabled to access documents online without seeking the assistance of the Canadian Enquiry Point, the requests for regulatory texts declined by over 60%. Changes made to the way in which the Point operated enabled it to better service its clients. The Canadian "Export Alert" system, which disseminated foreign

notifications to Canadian stakeholders through a web-enabled application (sending the required information via e-mail), was also presented. A number of delegations expressed interest in this system, and there was a view that this could serve as a basis for future technical cooperation. Canada proposed the creation of central depository for notifications on the WTO web site, which would enable Members to fill in their notification forms on the Internet and send them instantaneously to the Secretariat. The depository would increase the efficiency of the Agreement's transparency provisions.

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