# WORLD TRADE ORGANIZATION

RESTRICTED

**G/TBT/M/12**
9 September 1998

(98-3424)


**Committee on Technical Barriers to Trade**

## MINUTES OF THE MEETING HELD ON 1 JULY 1998

Chairman: Mr. Otto Th. Genee (Netherlands)

1. The Committee on Technical Barriers to Trade held its thirteenth meeting on 1 July 1998.

2. The following agenda, contained in WTO/AIR/863, was adopted:

## I. REQUEST FOR OBSERVER STATUS IN THE COMMITTEE BY THE OFFICE INTERNATIONAL DE LA VIGNE ET DU VIN (OIV) AND THE INTERNATIONAL LABORATORY ACCREDITATION COOPERATION (ILAC)

3. The Chairman informed the Committee that more time would be needed for informal consultations on the request for observer status by the OIV. The Committee agreed to come back to this request at its next meeting.

4. He drew attention to document G/TBT/W/68, containing a communication from ILAC which requests observer status in the Committee.

5. The delegations of Switzerland, the European Communities, Korea and Canada supported ILAC's request for observer status. The representative of Switzerland stated that the work of an accreditation body like ILAC was important in attempting to remove technical barriers to trade. The representative of the European Communities added that ILAC, an organization with more than 50 members, and whose membership was open to all WTO Members, was truly an international organization. He indicated that it allowed for participation even when countries had not established a fully functioning accreditation system, which increased developing country participation. The work of ILAC was to promote confidence in testing laboratory reports, through ensuring the use of common accreditation practices world-wide based on International Organization for Standardization and International Electrotechnical Commission (ISO/IEC) Guides, which were supported by his delegation. The representative of Korea said that ILAC cooperated closely with other regional and international organizations such as the ISO Council Committee on Conformity Assessment (ISO/CASCO), the Asia Pacific Laboratory Accreditation Cooperation (APLAC), and European Accreditation (EA), and played an active role in promoting mutual recognition agreements. The participation of ILAC as an observer would facilitate and contribute to the work of the Committee. The representative of Canada shared the views expressed by the previous speakers, in particular due to the fact that conformity assessment issues were expected to form an important part of the Committee's future work.

6. Further information was sought by the representative of the United States on the membership of ILAC, and by the representative of India on the work of the organization relating to developing countries.

7. The Secretariat will circulate more information on ILAC to Members. The Committee agreed to come back to this request at its next meeting.

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

8. The representative of the United States stated that with respect to the acceptance of the Code of Good Practice for the Preparation, Adoption and Application of Standards by the American National Standards Institute, Inc. (ANSI) on behalf of approximately 200 standardizing bodies in the United States (G/TBT/CS/N/83), information could be found electronically on the ANSI internet website at "http://web.ansi.org/public/db_list.html.". The information was regularly updated. Members unable to access the information electronically, and which had specific questions, could request information from the United States Enquiry Point (G/TBT/ENQ/11).

9. She drew attention to European Council Regulation No.1139/98 on the Compulsory Indication of the Labelling of Certain Foodstuffs Produced from Genetically Modified Organisms (GMOs). She recalled that the labelling requirement had been the subject of previous interventions in the Committee. The proposal was notified to the Committee (G/TBT/Notif.97.766) on 12 December 1997 and her authorities had commented on it. However, she was concerned that in adopting its final Council Regulation, the European Communities failed to take into account the comments that were

made on its objectives and the practical aspects associated with its implementation. She feared that it would create unnecessary obstacles to international trade in corn and soybeans, and would set an unfortunate example for the future regulation of other food and agricultural products. She believed that other Members shared similar concerns, and requested an explanation from the Commission on how the concerns raised by her delegation were addressed, and on the steps that would be taken to ensure compliance with the obligations under the Agreement.

10. She noted that the European Commission first adopted the Regulation on 31 December 1997 as a proposal for the labelling of foods containing detectable levels of DNA or protein from "genetically-modified" maize and soybeans. The Commission notified its proposal to the WTO, and her authorities had submitted comments in its regard on 20 January 1998. On 26 February 1998, the Commission submitted its proposal to the European Union Council of Ministers, which had a period of three months (until 26 May 1998) to come to a decision. The Council discussed an amended version (sn 2534/98) of the original Commission proposal. The final Council Regulation (1139/98) passed on 3 June 1998, was based on the amended version, and entered into force 90 days after its publication.

11. The Council Regulation required that a food or food ingredient containing DNA or protein from genetic modification, bear the words "produced from genetically modified soya" or "produced from genetically modified maize" on the food label or ingredients' list. The European Union stated that, amongst other objectives, the labelling requirements were: "… necessary to ensure that the final consumer is informed of any characteristic or food property, such as composition, nutritional value or nutritional effects or the intended use of the food, which renders a food or food ingredient no longer equivalent to an existing food or food ingredient …"

12. While she approved of providing useful information to consumers, her concern was that the Council Regulation would not achieve the objectives set forth in its preamble. The Regulation was based on the assumption that foods and food ingredients produced from "genetically modified" soybeans or corn, and which contained protein or DNA from genetic modification, were not "equivalent" to their conventional counterparts. If the DNA had been destroyed during processing, the food would be considered "equivalent" as there would be no protein present from genetic modification. However, neither the preamble nor other sections of the Regulation provided an empirical basis or indication of why the presence of protein or DNA resulting from genetic modification would render the food different in any material respect, such as "composition, nutritional value or nutritional effect …", from like products that were not genetically modified, nor did the European Union in any way claim that the Regulation was promulgated to address any particular risk to human or animal health. Her delegation was not aware of any evidence that demonstrated that genetically modified varieties, as a class, differed from "conventional" varieties in composition, nutritional value or nutritional effects. She therefore questioned the European Union's legitimate objective of providing "proper information to the final consumer", and was concerned that the labelling requirement imposed by the Regulation could lead to consumer deception.

13. She argued that the mere presence of protein or DNA from genetic modification was not sufficient to establish that a food was no longer equivalent to "its conventional counterpart" in terms of its "composition, nutritional value or nutritional effects or the intended use of the food". She recalled that in the comments provided to the Commission, the United States had explained that current United States policy did not require genetically engineered (modified) foods and food ingredients or additives to be labelled for their means of production, i.e. to state that they were genetically modified. The United States did not require the labelling of foods produced from plant varieties developed using other methods of plant breeding, such as chemical or radiation-induced mutagenesis, somaclonal variation, or cell culture. The United States did not know of any evidence that genetically engineered or modified foods or food ingredients differed in composition, quality or safety from products produced using other forms of breeding.

14. She stated that products were generally labelled based on their attributes or characteristics. Products whose attributes or characteristics did not differ in their essential characteristics from their conventional counterparts were not required to bear special labelling. For example, the "Flavr Savr" tomato, that was produced using genetic engineering was not required to bear special labelling because it did not differ significantly from other commercial tomatoes. She stated that her authorities did not believe that the mere presence of DNA or protein from genetic modification was sufficient to establish that a food was no longer equivalent to an existing food in terms of its composition, nutritional value or intended use. In addition, the European Union approach did not make sense in view of the alterations in DNA and protein content that occurred through other numerous methods of breeding.

15. She argued that the logical extension to the European Union approach would be to state that any changes in protein or DNA due to genetic manipulation, using any of the techniques normally employed in plant breeding (such as chemical mutagenesis, somaclonal variation and wide crosses), resulted in foods that were not "equivalent". However, the European Union Regulation did not call for the labelling of such products as well. Products having the same traits and attributes, but produced using different processes, were not subject to such monitoring.

16. She indicated that her country required the labelling of foods produced through modern biotechnology, if necessary, to denote significant changes in food with respect to composition (e.g., nutritional content), storage, preparation or usage, or safety, such as to denote the presence of a new allergen. In addition, her authorities encouraged industry to disseminate information concerning genetically engineered foods, but did not believe that labelling was the most practical way to provide such information, particularly for commingled commodities and processed foods containing material from different sources. She said that the costs of such labelling would ultimately be borne by consumers without providing any greater assurance of safety, and that excessive labelling could confuse rather than inform them.

17. The final Council Regulation did not indicate when to use the label. It constituted a *de facto* requirement to segregate GMO from non-GMO products. Segregation would require nothing less than establishing two or more parallel storage, transportation and processing systems, and would be extremely burdensome for suppliers and difficult to justify, given the questions previously raised with respect to the objectives of the Regulation. She suggested that if consumers needed to be assured for some reason (as yet unidentified by the European Union), that the food they ate was not genetically modified, the European Communities could have adopted the "may contain" option which appeared in the original Commission proposal. This would have drawn the attention of consumers to the possibility of the products being genetically modified, without requiring that all products be tested.

18. She noted that the Regulation did not specify how it would be enforced, and did not establish procedures to ensure compliance on a non-discriminatory basis. Although the regulation recognized the need for a standard test, it did not indicate what that test would be, nor when and how often tests would be required to determine if protein or DNA from genetic modification was present. She indicated that there were no tests that could prove that protein and DNA from genetic modification were contained in products. While there was a growing number of tests for protein and DNA, they were used primarily for research purposes and were both time-consuming and expensive.

19. She noted that the Regulation provided no guidance on choosing the specific proteins or segments of nucleic acids to be monitored. In order for a supplier or regulator to test for the presence of DNA or protein from genetic modification, it would be necessary to know which protein, or specific DNA, was being monitored. If this Regulation were to become the model for future labelling and testing requirements, the rapid increase in variety and traits introduced into crops through modern biotechnology, would increase the complexity and difficulty of testing and make it burdensome.

20. The Regulation recognized that there would be a need to set limits for detection in these tests, but did not define them. For instance, under the Regulation, a food would not have to be labelled if protein or DNA from genetic modification had been destroyed during processing. The lack of set detection limits could inevitably lead to a shifting and unpredictable standard for testing, and to the potential need for retesting previously tested materials as methodologies changed. She questioned how the Community would be able to ensure that the application of the Regulation was non-discriminatory.

21. She believed that the Regulation would create problems for her country's exports and raise serious concerns with respect the Agreement. Her delegation continued to have concerns about the information which the Community claimed was "proper" and needed on an "urgent" basis to inform consumers, as well as concerns about the precedent this could set for future regulation. She noted that a number of practical issues had been identified with respect to the implementation of the Regulation which had to be addressed in order to ensure non-discrimination and the avoidance of unnecessary obstacles to international trade. She sought a response from the Commission, pursuant to Article 2.9.4 of the Agreement, on how the comments of the United States were taken into account in the final drafting of the Regulation. She welcomed statements from other Members that shared similar concerns.

22. The representative of New Zealand shared many of the concerns expressed by the United States regarding the European Council Regulation. He argued that the same principles which underlay the Regulation had to be applied to conventional foods, and that risk assessments based on scientific data should form the basis of any distinction between genetically modified foods and conventional varieties. The implications of the Regulation in terms of compliance testing and the need for segregation, could impose unnecessary burdens and costs on producers as well as consumers, and raised questions about trade restrictiveness under the TBT Agreement. His view was that the labelling of substantially equivalent foods was unlikely to provide consumers with meaningful information, and there were other ways of providing valuable information about genetically modified foods to the public.

23. The representative of Canada recalled that his delegation had provided comments to the Committee on the European notification (G/TBT/Notif.97.766) on 28 January 1998, and indicated that the comments made had not been taken into account in the adoption of the Regulation. He shared the concerns expressed by the previous speakers, particularly with respect to: (i) the rationale for identifying protein and DNA resulting from genetic modification through mandatory labelling; (ii) the ability of the labelling scheme to provide consumers with meaningful information on genetically modified foods and food ingredients; (iii) the difficulties involved in securing compliance; and (iv) the possibility for trade disruption.

24. He noted that the preamble of the Regulation stated that food produced from genetically modified soybeans or maize was not equivalent to its conventional counterparts based on composition, nutritional value or effects, or intended use, despite the finding that they were considered to be equivalent with respect to safety. He said that it was unclear how the European authorities had arrived at the conclusion that genetically modified soybeans or maize were not equivalent to conventional varieties, and how consumers would be informed of the differences through the Council Regulation. The labelling statements "contains genetically modified soya" or "contains genetically modified maize" did not inform consumers about specific characteristics to do with composition, nutritional value, nutritional effects or the intended use of a food, as the labels did not contain such information.

25. He supported the objective of providing consumers with accurate, understandable information about biotechnology and genetically modified foods. However, he indicated that consumers were already confused and misinformed. He recalled the results of a 1997 study on international consumer understanding of biotechnology, which showed that two-thirds of European consumers did not know

that non-genetically modified foods contained genes, and 50 per cent of them were unaware of the fact that eating genetically modified food would not modify the genetic composition of humans. He argued that treating genetically modified foods as a class of products, as required by the European labelling regulation, would further encourage incorrect consumer perceptions about biotechnology. He sought information from the European Communities which would demonstrate that the wording of the label, as required by the Council Regulation, would inform consumers about the composition, nutritional value or effects, or intended use of a food.

26. He noted that for enforcement purposes, the Regulation proposed the development of a test to detect genetically modified DNA or protein, for the possible establishment of labelling criteria based on minimal threshold levels of modified DNA or protein, and the formulation of a list of products not subject to labelling requirements. He said that under current trade rules, countries were encouraged to use internationally accepted testing methods. Prior to applying new tests to products, countries could, for instance, hold international meetings to study the methods in question, verify and validate laboratories, and publish test methods in peer-reviewed journals. He questioned if the European Union would follow the above practices and attempt to obtain international acceptance of the testing methods it developed, which would be particularly difficult in light of the fact that DNA and protein detection methods (as applied to genetically modified foods) were still at an early stage of development, and the number of genetically modified foods on the market would increase in the next few years.

27. He argued that Regulation 1139/98, in only covering genetically modified soybeans and maize, created uncertainty for other genetically modified foods being assessed for approval in the European Union. Compared to Regulation 1139/98, Regulation 258/97 (the Novel Food Regulations) which contained labelling provisions that applied to all other genetically modified food products (such as genetically modified canola or any new applications of genetically modified soybeans or maize), was vague with respect to the labelling of GMOs. He questioned if newly approved genetically modified foods or food ingredients would be subjected to criteria similar to those of Regulation 1139/98, or if more detailed criteria would be developed for them under the Novel Food Regulations. He sought information on whether labelling requirements would apply to other genetically modified foods and food ingredients, and if so, when this would occur.

28. He argued that the concerns expressed on the European Union labelling regulations were to be viewed in the broader context of how new technology and public concern resulted in the creation labelling requirements for processes and production methods. He recalled Canada's views on environmental labelling, and the need for Members to address such issues in a manner that reflected current and anticipated business practices, while minimizing trade concerns. He welcomed further discussions on labelling in the Committee with respect to GMOs and environmental labelling, as well as on the horizontal issue of labels on processes of production.

29. The representative of Brazil noted that although the commercial production of GMO varieties had not been authorized in Brazil, this area of trade was of interest to her country. She expressed concerns about compulsory labelling schemes and how they could disadvantage GMO exporting countries. Labelling requirements could easily act as disguised barriers to trade and favour of non-GMO products. She argued that the concerns raised by the United States deserved closer scrutiny, in particular those relating to the scientific grounds for distinguishing GMOs, the need to keep consumers informed, and possible discrimination against GMO products. Discrimination could include raising the costs of production through the testing and processing of products. She requested more information on the Regulation from the European Communities.

30. The representative of the European Communities informed the Committee that his authorities were in the process of finalizing written replies to the comments received from Members, and that these could be distributed to all interested Members. He explained that for reasons relating to the Communities' decision-making process, the Commission awaited the outcome of an internal debate

and the adoption of the Council Regulation, before responding to the comments made by the United States.

31. With respect to the labelling of genetically modified foods and food ingredients, and for the purposes of informing consumers, the European Communities had chosen "equivalence" as the trigger criterion for labelling. He noted the fact that the United States did not share the European Union's views on the choice of its labelling criterion, which was that of "equivalence" between traditional and GMO-products. He argued that consumer labelling did not only have to be solely based on safety issues, but could also be based on other legitimate goals. He explained that the Regulation's concept of "equivalence" for labelling purposes (Article 8 (1a)) was different from that of "substantial equivalence". "Substantial equivalence" was a concept developed by the Organisation for Economic Co-operation and Development as a tool for safety evaluation, and had been incorporated into Article 3 (4) of the Regulation to serve as a trigger criterion for simpler "notification procedures". The Communities' notion of "equivalence" for the purposes of labelling was based on the identification of "demonstrable differences" between novel food or food ingredients and their conventional counterparts. In this context, the presence of protein or DNA resulting from genetic modification was a demonstrable difference, that went beyond natural variations. He could not agree with the arguments made that there was no objective difference between such products.

32. He disagreed that by not using the "may contain" formula, the Regulation segregated genetically modified products from equivalent counterparts. He explained that the "may contain" formula was not allowed for products made available to final consumers, but could be used for bulk consignments of commodities, as indicated in Regulation 258/97 and the annex of Directive 90/220. His delegation would respond to other issues raised (on testing methods and thresholds) at a later stage.

33. He recalled that at the last meeting, his delegation had drawn attention to two cases involving Korea and Mexico. He informed the Committee that follow-up work was being undertaken between capitals, and his authorities were examining these cases in more detail. He informed the Committee that his delegation would contact Egypt and Israel with respect to two other cases.

34. The representative of Korea recalled that at the last meeting, the European Communities had requested information on how the most-favoured nation principle (MFN) was being applied by the 1995 Korea-United States Automobile Memorandum of Understanding (MoU). He said that his government had confirmed the conditions under which European automobile exports could obtain exemption, through a letter to the European Commission Director General for External Relations. His authorities had also provided translations of the relevant legislation and administrative measures (e.g., the Vehicle Safety Standard Regulation, the Regulation for the Approval Method and Procedure of Production of Motor Vehicles, as well as information relating to the implementation of the MoU). Concerning the notification of the 1995 MoU pursuant to Article 10.7 of the TBT Agreement which stipulated that "at least one Member party to the agreement shall notify … ", he stated that his authorities were currently consulting with the United States to revise the MoU. Appropriate action would be taken after the revision was finalized.

35. The representative of Canada drew attention to measures taken by the European Communities (Directive 98/12/EC) regarding the use of asbestos in brick lining. He noted that the measures had not been notified to the Secretariat, and hoped that this would be done soon. He questioned the justification for the measures and requested an answer within 30 days, in accordance with the criteria laid down in Articles 2.2 and 2.4. He welcomed the notification made by Belgium on measures taken to restrict the "marketing, manufacture and use of certain dangerous substances and preparations (asbestos)". He requested Belgium to provide justification for the measures under Articles 2.2 and 2.4.

36. The representative of Brazil shared the concerns expressed by Canada.

37. The representative of the European Communities said that his delegation would reply to the questions made by Canada on Directive 98/12/EC and the Belgian measures after consulting with his authorities.

38. The Committee took note of the statements made.

## III. PROGRAMME OF WORK ARISING FROM THE FIRST TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE TBT AGREEMENT UNDER ARTICLE 15.4

39. The Chairman recalled that at its last meeting, the Committee had initiated discussions on the programme of work arising from the First Triennial Review of the Operation and Implementation of the Agreement, under Article 15.4. There had been a general view that in the initial phase of the work programme, it would be useful to encourage information and experience exchange among Members.

### A. IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT BY MEMBERS UNDER ARTICLE 15.2

40. He drew attention to the obligation under Article 15.2 of the Agreement that "each Member shall, promptly after the date on which the WTO Agreement enters into force for it, inform the Committee of measures in existence or taken to ensure the implementation and administration of the Agreement" in the form of written statements. He noted that 63 Members had submitted their statements, and urged the Members who had not done so to submit their statements as promptly as possible. He invited them to indicate any difficulties and needs in this respect, so that technical assistance could be provided as appropriate.

41. The representative of the European Communities drew attention to document G/TBT/2/Add.12/Rev.1, containing a revision of the statement made by his delegation under Article 15.2. The information was updated with respect to: (i) the standardizing bodies which have accepted the Code of Good Practice (Annex 3 of the Agreement); (ii) local regulatory authorities below the central government; and (iii) the email addresses of enquiry points.

42. The Committee took note of the statements made.

### B. OPERATION AND IMPLEMENTATION OF NOTIFICATION PROCEDURES UNDER ARTICLES 2, 3, 5 AND 7

43. The Chairman informed the Committee that in order to give Members the opportunity to discuss the activities of enquiry points and problems experienced with respect to notifications, a Meeting and Workshop on Procedures for Information Exchange had been scheduled for 14 September 1998, back to back with the meeting of the Committee. The objective of the Workshop was to ensure the efficient implementation of the relevant provisions of the Agreement and of Committee recommendations and decisions on notification procedures and procedures for information exchange (G/TBT/1/Rev.5). Opportunities would be provided for experience sharing with respect to good practices, difficulties and technical assistance needs in the area of the establishment and operation of enquiry points, as well as notifications.

44. In order to facilitate the participation of developing countries in the above meeting, his Government had agreed to provide financial assistance (through the Netherlands Trust Fund for Technical Assistance of the WTO) in the form of economy-class round-trip air-tickets for participants from developing countries. He reminded developing country Members to provide information on their nominees (capital-based officials responsible for information exchange, including persons responsible for TBT notifications and/or enquiry points) to the Secretariat. He recalled that the Committee had agreed to examine problems faced by developing country Members in the implementation of

notification obligations so that technical assistance could be provided as appropriate. He encouraged Members, especially developing country Members, to fully participate in the Meeting and to make good use of the opportunity for experience and information sharing.

45. He reminded delegations that, based on information provided by Members, the Secretariat would prepare a list of those "Members whose local government bodies, directly below the central government level, are authorized to adopt technical regulations or conformity assessment procedures". He invited Members to provide the information as appropriate.

46. The representative of the European Communities said that his delegation made an assessment of how notification obligations were being implemented in practice, based on the Annual Review and on the 794 notifications made in 1997. In 1997, in at least 112 instances, his delegation received notifications' related texts from other Members which were not in one of the WTO languages. He noted that in no less than two out of three notifications, the comment periods provided were less than 60 days, which was the period recommended by the Committee. These two factors combined showed how difficult it was for Members to operate under the transparency provisions of the Agreement. Therefore, there was a need to reflect on how notification procedures could be improved. The September Meeting on Procedures for Information Exchange would be an opportunity for discussions.

47. The representative of Switzerland informed the Committee that there were local government bodies in Switzerland authorized to adopt technical regulations and conformity assessment procedures. However, 90 per cent of all the technical regulations and conformity assessment procedures were adopted at the Federal level.

48. The Committee took note of the statements made.

## C. ACCEPTANCE, IMPLEMENTATION AND OPERATION OF THE CODE OF GOOD PRACTICE FOR THE PREPARATION, ADOPTION AND APPLICATION OF STANDARDS BY STANDARDIZING BODIES

49. The Chairman recalled that the Committee had agreed that the Secretariat prepare a list of standardizing bodies on the basis of information provided by Members for this purpose. He invited Members to provide the relevant information.

50. The representative of Canada informed the Committee that on 8 June 1998, the Standards Council of Canada approved a document which required standard development organizations to comply with ISO Guide 59 and the Code of Good Practice of the TBT Agreement, in order to be accredited by the Council. One of the four standard development organizations of Canada had already indicated its compliance with the Code, and the remaining three should be in a position to do so by September. This would allow the Standards Council of Canada to accept the Code.

51. He drew attention to document G/TBT/W/71, which provided examples of technical regulations where Canada had referenced or considered the technical regulations of other Members as equivalent. He said that the paper should be viewed as a contribution to future Committee discussions on the preparation, adoption and application of technical regulations, and equivalency, pursuant to paragraphs 24(c) and 14 of the Triennial Review (G/TBT/5). Like the previous Canadian paper, it was designed to encourage additional contributions from Members on their national experiences in these areas.

52. He said that in the development of technical regulations, Canadian regulatory authorities routinely examined the technical regulations of other jurisdictions. When they were judged adequate in terms of meeting Canadian regulatory objectives, they were referenced in Canadian technical regulations. He said that this approach was more akin to harmonization than equivalency. It reduced regulatory burdens by eliminating the need for parallel Canadian technical regulations.

53. He drew attention to various examples in which different approaches to equivalency had been used by the Canadian Departments of Health and Transport. The first group of examples pertained to the consideration of foreign data and testing methods as equivalent. The examples cited included the fortification of flour and enriched pasta with folic acid, minimum crush resistance requirements for the side doors of passenger mini-vans and light trucks below a gross vehicle weight of 4536 kg, and the reduction of maximum sound pressure levels permissible for new motor vehicles sold in Canada. The second group of examples pertained to domestic technical regulations considered obsolescent in relation to United States performance standards and/or international standards. The examples cited included diagnostic X-ray equipment and requirements governing the reflectivity of the rear-view mirrors of school buses. The third series of examples pertained to the use of technical regulations from other countries. The examples cited included requirements for low-cost lighters and child resistant packages, where United States and European Council regulations had been referenced. He argued that the above cases illustrated how the Canadian approach could satisfy public policy objectives, while minimizing trade barriers and costs to consumers. He indicated that his delegation would develop its thinking further on the equivalency of voluntary standards.

54. The representative of Korea informed the Committee that the Korean National Institute of Technical Quality, one of the enquiry points in his country, would accept the Code of Good Practice this year.

55. The representative of the European Communities drew attention to document G/TBT/W/74, presented by his delegation on paragraph J of the Code of Good Practice. He noted that problems could arise for standardizing bodies that accepted the Code of Good Practice with respect to the requirement to publish their work programmes every six months. It was due to such requirements that the British Standards Institution had accepted the Code relatively late compared to other standardizing bodies. He recalled that the issue had come up under the Triennial Review, and that the Committee would examine such problems. He argued that there were better ways of informing interested parties of the work programmes of standardizing bodies, which should be recognized and accepted. Internet websites could, in particular, provide information in a more targeted and up-to-date way. Information could also be better provided by way of information centres. He invited the Committee to consider turning the proposals contained in G/TBT/W/74 into a Committee recommendation or viewpoint, in order to establish such information exchange mechanisms.

56. The representative of Uruguay asked whether the proposal would specify the use of WTO languages.

57. The representative of the European Communities stated that the general requirement under the Agreement of working in one of the WTO languages needed to be maintained.

58. The representative of Mexico indicated that her delegation would examine all the suggestions that had been made within the context of the work programme. The proposal of the European Communities could improve transparency. However, it could not replace existing obligations, such as the requirement to physically publish work programmes every six months. Members of the WTO did not have equal access to technology, and this had to be taken into account. She said that the proposal would be examined in greater detail at a later stage.

59. The representative of India asked for the proposal of the European Communities to be discussed under the general issue of transparency, which was a horizontal issue also being addressed in the superior body to the Committee. Guidelines to be formulated on the use of internet websites for access to information should be endorsed by the Committee. He supported the Mexican view on unequal access to technology, stating that small and medium-size enterprises in India had limited access to the electronic medium.

60. The representative of Cuba supported the views expressed by the two previous speakers.

61. The representative of Canada stated that, in a few years, internet access would be widespread, and would expand to include developing countries, that such a discussion would no longer be needed. He recalled that in the context of government procurement, a presentation had been made which demonstrated that information technology, particularly in the Canadian experience, provided better access to information in terms of lower cost and more rapid diffusion than the paper based system. The new medium would improve transparency by enabling a wider range of people to access information in a more timely fashion.

62. The representative of Japan stated that as his country uses a non-WTO language, it would examine how information provided through the internet would meet the needs of Japanese users.

63. The representative of Korea shared the views of Mexico and India. He recalled that this issue had also been raised in the Committee on Government Procurement, and no consensus had been reached on using the internet.

64. The representative of the European Communities clarified that their proposal did not intend to replace the publication of work programmes at this stage, but to provide flexibility in the transition from a paper based information system to an electronic one.

65. The observer of the ISO informed the Committee that the use of the electronic medium was a general trend and that many standardizing bodies were contemplating the creation of websites. ISO was developing a programme to help its member bodies access the electronic medium, and the system would be widely available to national standardizing bodies and to WTO enquiry points.

66. He also drew attention to document G/TBT/W/67, and stated that the Committee for information in ISO (INFOCO) considered it important to promote adherence to the Code of Good Practice. The questionnaire contained in Annex 1 of the document was circulated, and its results were contained in Annex 2. The circulation of the questionnaire resulted in increasing the number of ISO Members which accepted the Code from 49 to 72, and the Members that could not yet adhere to Code, indicated that they intended to accept it at a later stage.

67. The Committee took note of the statements made.

## D. INTERNATIONAL STANDARDS, GUIDES AND RECOMMENDATIONS

68. The representative of Australia welcomed all means of enhancing the participation of Members in the work of international standardizing bodies, particularly developing country Members. The participation of the latters was generally limited by the availability of experts from developing countries and by funding constraints. While participation could take place through correspondence, developing countries often did not have the staff within their infrastructure to participate effectively. She informed the Committee that the Australian government provided funding support for a training programme on participation in international standardization. Training courses had been run by Standards Australia and had recently targeted Asia-Pacific Economic Cooperation developing countries. In order to increase the assistance provided for WTO Members' participation, Australia believed that it was important for Members to provide specific examples of when trade has been inhibited because of the absence of international standards, or where international standards were perceived to be inappropriate or to contain outdated data.

69. The representative of the United States recalled that her delegation had submitted a document at the last meeting on Transparency in International Standards (G/TBT/W/64), addressing the fact that there were at present no obligations under the Agreement which extended directly to the preparation of standards by international bodies. She recalled that Article 9 of Agreement encouraged Members to formulate and adopt international systems for conformity assessment, and that it explicitly acknowledged Members' responsibility to ensure that international systems for conformity assessment

complied with the relevant provisions of Articles 5 and 6 of the Agreement. There was no corresponding statement of Members' responsibility with respect to the activities of international standardizing bodies.

70. However, she recalled that there had been broad support for the preparation by the Committee of a draft decision to increase the transparency of international standardizing bodies. She drew attention to document G/TBT/W/75 which contained an initial draft by the United States. She indicated that it was developed without much input or guidance from other delegations, but was being submitted for the reaction and consideration of Members.

71. The document was prepared in the form of a Committee decision and attempted to respect the relationship between Members and domestic participants in international bodies, as well as the relationship between the TBT Committee and other international bodies. The intent of the draft was to develop binding obligations for WTO Members, and to guide parties within their countries as they participated in international bodies.

72. She explained that an attempt had been made to track existing obligations in the Agreement. For instance, the first paragraph of the decision (G/TBT/W/75) drew on the language of Article 9.3 of the Agreement that related to conformity assessment procedures. The chapeau in the second paragraph was similar, not identical, to Article 9.2. The language of "reasonable measures" was used to reflect the fact that a central government authority, which was a WTO Member, was not necessarily the member which participated in international standardizing bodies. She also pointed out that the chapeau provided a definition for consensus. It called upon Members to make reasonable efforts to ensure that international bodies had an established process in place that took into account the views of all parties concerned and reconciled conflicting arguments.

73. She indicated that paragraph 2 (a) related to Article 2.9.1, which was binding on Members for technical regulations, and that it was similar to paragraph L of the Code of Good Practice, that was binding for the development of voluntary standards. The notification obligations in paragraph 2 (b) related to the language in Article 2.9.2. They did not have a direct parallel in the Code of Good Practice, although they related to some extent to the requirement to publish a work programme. The provision of documentation in paragraph 2 (c) related to Article 2.9.3 of the Agreement and to paragraph M of the Code of Good Practice, with some deviations. Electronic transmission was to be encouraged where possible for many of the reasons that had already been cited in relation to the proposal of the European Communities. Electronic transmission could facilitate the receipt of documents and the submission of comments by smaller or less-developed economies.

74. Paragraph 2 (d) on the submission of comments, related to Article 2.9.4 as well as paragraph N of the Code of Good Practice. Paragraph 2 (e) related to Article 2.11 and paragraph O of the Code of Good Practice. The final paragraph on the obligation to publish a work programme related to paragraph J Code of Good Practice. Language had also been included on fees, drawing on Article 10.4 of the Agreement and paragraph M of the Code of Good Practice.

75. The representative of Korea stated that in the context of the Agreement, international standards were to provide direction for Members in the development of new standards or technical regulations. To achieve this aim, international standards preparation should involve a significant degree of participation at the initial stages, particularly on the part of developing countries for a balance of interests. Open procedures would ensure that Members use such international standards as a basis for their national regulations. Such procedures could also play a role in providing technical assistance to developing country Members. Korea supported the proposal by the United States and would return with more specific comments after consultations with capital.

76. The representative of the European Communities stated that the ultimate objective of the TBT Agreement was to prevent barriers to trade by way of fostering internationals standards. If the

Committee were to issue a statement on international standards, the prevention of trade barriers through their use would be an element which would have to be included at the outset. He indicated that the procedures of international standardizing bodies could be perfected, but that would not be sufficient to solve the problem of trade barriers.

77. In the introductory section of paragraph 2, two particular elements had to be distinguished. The first related to the possibility of having Members exert influence on international standardizing bodies, and the second related to how international standardizing bodies operated (i.e. the sub-paragraphs of the draft decision). With respect to the first element, he stated that a clearer view was needed with regard to the two kinds of standardizing bodies which were being considered: the bodies that were covered by the Code of Good Practice, and the bodies which were unaffected by the TBT Agreement.

78. Concerning the first sentence of paragraph 2, an established procedure that sought to take into account the views of all parties concerned was not enough. He recalled that the definition of international standards and standardizing bodies in Annex I of the TBT Agreement referred to consensus in the adoption of international standards. He said that his delegation would examine the sub-paragraphs in greater detail and see how they related to the text of the Code of Good Practice.

79. The representative of India recalled that he had supported the initiative of the United States at the last meeting. He indicated that standards developed by international standardizing bodies should not act as barriers to trade, especially to the exports of developing countries, and suggested that certain elements of paragraphs 19 and 20 of document G/TBT/5 be taken on board in future Committee decisions on this subject. It was important to ensure the active and representative participation of developing countries in international bodies, so that the standards they developed could further developing country interests.

80. The representative of Mexico recalled that her delegation had also supported the initiative made by the United States. In the Triennial Review of the Agreement, Mexico had attached great importance to reviewing the issue of international standards. She did not agree with the European Communities that there was a need to restate the contribution which international standards made to increasing the efficiency of production and facilitating trade. This had been reflected in paragraph 16 of document G/TBT/5.

81. The Triennial Review had also recognized that it was important for all Members to participate in the preparation and adoption of international standards. Several problems had been identified in relation to the participation of WTO Members, relating, *inter alia*, to transparency in the decision-making process. The process of decision-making in the majority of international standardizing bodies was not based on consensus, but on votes by participants present on the day of the meeting when the decision for adoption was taken. In addition, not all members had the right to vote. Another problem was that of working languages. In most international standardizing bodies, only one language was used

82. She indicated that the proposal made by the United States could serve as a basis for future discussions on transparency, and the suggestions arrived at by the Committee on this subject could be conveyed to international standardizing bodies, as provided for in paragraphs 22 (a) and (b) of document G/TBT/5.

83. She questioned the need for paragraph 1 of the decision as contained in G/TBT/W/75, and argued that it interpreted Article 2.4 of the Agreement. If the intent was not to interpret Article 2.4 but to reaffirm it, other provisions would have to be reaffirmed as well, such as Articles 5.4 and paragraph F of the Code of Good Practice, since international standards were necessary for the preparation of technical regulations as well as conformity assessment procedures.

84. The representative of New Zealand stated that the US paper had been helpful in initiating a debate on an important subject. The issues identified and elements taken from Article 2 and the Code of Good Practice were useful. He indicated that it was important to extend the transparency provisions of the Agreement and the Code of Good Practice to international standardizing bodies. This would not prejudge whether or not these principles were already in place, but would send a signal that transparency at all levels was important.

85. He suggested that it would be useful for Members to provide practical examples of difficulties experienced in instances where the development of international standards had failed to take into account the interests of all relevant parties, or where certain relevant parties could not participate. Practical examples could enrich discussions in the Committee.

86. The representative of Japan agreed with the concepts included in the United States' paper. For the purposes of transparency, it was important for international standardizing bodies to publish their work programmes periodically.

87. The representative of Cuba stated that consideration should at this stage be given to international standards, rather than national ones in order to facilitate production and trade. Greater transparency had to be ensured in decision-making in international bodies, particularly in light of the fact that developing country participation in these bodies was inadequate. This resulted in the approval of standards which did not reflect reality and which were impossible to comply with by the developing countries. For greater transparency, the Committee should agree to improving the participation of developing countries in international standardizing bodies.

88. The representative of Canada indicated that domestic consultations on the issues raised by the United States were taking place both within his government and within Canadian standardizing bodies. It was important to maintain a cooperative approach between the work of the TBT Committee and that of the international standardizing community. Paragraphs 2 (a) to (e) were helpful in identifying the elements for transparency, and he suggested focussing future discussions on these elements. Practical and concrete examples in terms of the problems Members experienced, as indicated in paragraph 22 (b) of document G/TBT/5, would be useful.

89. He proposed the organization of an information session with a cross-section of international standardizing bodies in order to have them outline the procedures they followed. The elements identified by the United States provided a check-list of issues which standardizing bodies could be invited to comment on, in light of their own procedures. This would serve to bring concrete reality into the Committee.

90. The representative of Thailand expressed his support for the paper presented by the United States, and expressed his wish that international standards be adopted only by consensus.

91. The representative of the United States indicated that with respect to the concerns raised on paragraph 1, whereas an analogy had been drawn between that paragraph and the provisions of Article 9.3, the real intent of the paragraph was to address how international bodies conducted their activities. The paragraph was not meant to reinterpret the obligation to use international standards or to open up a discussion on that subject. The concern at present was that any international body could claim to be developing international standards simply by meeting the criterion of open participation.

92. She could not share the European Communities' interpretation of the language contained in the Explanatory Note of the Agreement on the definition of a standard; that is, the notion that standards considered 'international' by the Agreement had to be based on consensus. Such an interpretation raised the issue of what consensus itself meant. The WTO operated by consensus as defined by unanimity. However, very few international standards would exist if such a definition of

consensus was to apply. Therefore, such a discussion would open up a debate on a wide range of issues.

93. She supported the Canadian suggestion of organizing an information session with outside bodies, and said that Members needed time to react to this proposal so as build consensus on the elements that would be addressed. With respect to providing examples relevant to participation and transparency in international bodies, her delegation had been reluctant to come forward with such examples in order to avoid naming specific bodies. The intention of the United States' proposal was to send signals to international bodies on the way in which they should conduct their activities. These signals could also be sent at the domestic level, through communication with national participants in international bodies.

94. The Committee took note of the statements made.

## E. PREPARATION, ADOPTION AND APPLICATION OF TECHNICAL REGULATIONS

95. The representative of New Zealand recalled that his delegation had put forward a paper on this subject in the context of the Triennial Review, and a number of elements from this paper had been included in paragraphs 23 and 24 of document G/TBT/5. His delegation would reflect on further contributions which would need to be made in order to enrich discussions.

96. The Committee took note of the statements made.

## F. CONFORMITY ASSESSMENT PROCEDURES

97. The representative of the European Communities introduced the Communities' paper on ISO/IEC Guides on Conformity Assessment (G/TBT/W/70). He indicated that a statement by the Committee on the positive relationship between the ISO/IEC guides on conformity assessment and Articles 5 and 6 of the Agreement was needed so that further progress in the field of conformity assessment could be made.

98. The representative of the United States recalled past Committee discussions on the utility of international guides for conformity assessment. Certain guides had been previously identified as being relevant for the purposes of the Agreement. However, the aim of any recommendation in this area should be to identify guides that were relevant to the Agreement and to give visibility to them, without making them mandatory or imposing additional obligations on Members. ISO/IEC guides emerged from a voluntary process, and they were to be applied on a voluntary basis. Certain provisions of the Agreement referred to the usage of international standards as a basis for mandatory measures. However, as stated in the New Zealand submission on Good Regulatory Practice, if a party could use the guides on a voluntary basis that would be more in keeping with their original intent.

99. She noted the usefulness of information sharing in this area in the form of national experiences and submissions, such as document G/TBT/W/43. She recalled the list of specific guides included in document G/TBT/M/8, for which there had been general support. She questioned how the European Communities wished to proceed with discussions in this area in order to obtain a Committee consensus, in light of work previously conducted.

100. The representative of Canada supported the general outline of the paper submitted by the European Communities, and requested them to consider derestricting their paper. He welcomed the paper by the United States on Supplier's Declaration of Conformity (G/TBT/W/63), particularly its call for an exchange of information on different national experiences with respect to self-certification. Canada was considering providing information on the Canadian experience in this area. He welcomed the information provided by ISO on mutual recognition agreements (G/TBT/W/73).

101. The representative of Hong Kong, China welcomed the paper presented by the United States on Supplier's Declaration of Conformity, and stated that such a method of conformity assessment, though not always appropriate, had many advantages. It did not discriminate on the basis of the geographical location of testing or other conformity assessment bodies. Hong Kong, China shared the view of the United States that under such a system, the portability of conformity assessment results, as well as the negotiation of mutual recognition agreements, became non-issues. She recalled the problems associated with mutual recognition agreements, identified in the Triennial Review: (i) the non-MFN nature of some of these agreements, (ii) their lack of openness to third parties, and (iii) the insertion of the origin clause in some of them. She supported additional voluntary information exchange, and the exchange of national experiences in the use of suppliers' declarations as well as alternative approaches to conformity assessment.

102. The representative of India was of the view that while industrial units in India were not prepared at present for conformity assessment procedures based on suppliers' declaration of conformity, the use of suppliers' declarations could help reduce non-tariff barriers to trade. Referring to document G/TBT/W/70, he flagged his delegation's interest in the comments made in paragraphs 6 and 7, and reserved his delegation's right to return to these paragraphs at a later stage.

103. The representative of Mexico welcomed the United States' paper, and indicated that the issue of the portability of conformity assessment results was of priority for her delegation. The proposal was being considered by the relevant authorities in Mexico. With respect to paragraph 4 of document G/TBT/W/70, she recalled the Communities statement that it would be pointless to engage in substantial discussions on conformity assessment and recognition procedures prior to establishing the use of guides, such as those which the Communities' had proposed. However, the attachment of such conditions at the outset surprised her, particularly since her delegation had doubts regarding the guides at issue. Mexico would not be willing to discuss the relationship between the guides and the TBT Agreement if certain transparency issues were not taken up first, such as the participation of WTO Members in the decision-making process and the development of international standards.

104. With respect to paragraph 3 of document G/TBT/W/70 where it was mentioned that the guides, which would become international standards, were based on consensus, she requested the Communities to identify the guides that had been adopted by consensus. She reiterated her delegation's support for the application of existing international standards and guides in order to avoid technical barriers to trade, but questioned the utility of concluding an agreement to endorse specific international standards or guides, given the pace at which new standards were being developed and how quickly such an agreement would be likely to become outdated. Mexico was prepared to examine particular issues, points, or reasonings, but could not support the Communities' proposal on the use of specific guides.

105. The representative of the European Communities stated that his delegation had no objections to derestricting G/TBT/W/70.

106. The observer of ISO drew attention to document G/TBT/W/73 which addressed the preparation of new CASCO guides on mutual recognition assessment for use by the non-regulatory sector. To obtain input from potential users, CACSO had organized, on 7 May 1998 an international workshop. Many comments were received during the workshop and many more were expected. On the basis of comments received, another draft would be prepared with a view to developing a consensus document on mutual recognition agreements. The document for the non-regulatory sector would have to be consistent with that for the regulatory sector. He welcomed any observations and comments from the WTO's TBT Committee.

107. The Committee took note of the statements made.

G. TECHNICAL ASSISTANCE UNDER ARTICLE 11

108. The representative of Japan informed the Committee that Japanese standardizing bodies will be hosting a seminar in November on technical assistance on TBT issues and would provide detailed information on the seminar at a later stage.

109. The observer of the ITC informed the Committee that a brochure describing the results of a survey conducted by UNIDO on the Implications of International Standards for Quality and Environmental Management Systems (ISO 9000 and ISO 14000) was available at the meeting.

110. The Committee took note of the statements made.

H. SPECIAL AND DIFFERENTIAL TREATMENT UNDER ARTICLE 12

111. The representative of India indicated that India would provide the Committee with information on the implementation of Article 12. He questioned the status of the study referred to in paragraph 33 (b) (ii) of document G/TBT/5. He indicated his delegation's interest in having the issues addressed in paragraph 33 (b) (iii) included in the invitation that would be made to international standardizing bodies to have them make presentations before the Committee.

112. The Chairman stated that with respect to the study, the Secretariat was awaiting instructions from the Committee, as indicated in paragraph 33 (b): "the Committee will consider including the following matters in its future programme of work".

113. The representative of India stated that he would be interested in having the Secretariat prepare the study in cooperation with other relevant international organizations, using information available from enquiry points.

114. The representative of Malaysia supported the views expressed by India.

115. The Committee took note of the requests made.

## IV. OTHER BUSINESS

116. The observer of the UN/ECE provided a brief overview of the recent session of the UN/ECE Working Party held in May 1998. He informed the Committee that the following two papers were available: an information booklet on the activities of the Working Party, and an information note highlighting major decisions taken in May. The documents contained information on the revision of the ECE standardization list, which was developed and reviewed every four years. They contained information on possible forms of cooperation between ECE member states on technical harmonization issues, cooperation with regard to the development of recommendations on standardization policies, and the possibility of concluding an inter-governmental agreement based on these recommendations.

117. At the UN/ECE meeting, requests had come forward from members states, specifically from the Inter-State Council for Standardization, Metrology and Certification, for technical assistance from the Working Party. They will be considered further in the follow-up to the session. He recalled that a roundtable, was held on 15 June 1998 on the impact of standards, norms and regulations on international trade. The conclusion was contained the above-mentioned documents. A study was also underway in the ECE on standards norms and regulations in international trade, with special reference to their impact on economies in transition. The study will be finalized in the autumn.

118. The Committee took note of the statements made.

119. The Chairman invited delegations to present their national experiences. With respect to the dates of the next meeting, he stated that on 14 September 1998, in the morning, a workshop for officials from enquiry points would be held. The Secretariat was currently drafting a programme for the workshop as well as inviting speakers. In the afternoon, a meeting on procedures for information exchange would be held, where representatives from the enquiry points could share their experiences. On September 15, the formal meeting of the TBT Committee would take place in the afternoon, so that informal consultations could be held in the morning. He would hold informal bilateral consultations with delegations prior to that date on some of the ideas that had been put forward; including the proposal by the United States on transparency, and the Canadian suggestion to invite international standardizing bodies to make presentations.