WORLD TRADE ORGANIZATION

RESTRICTED

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Committee on Technical Barriers to Trade

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MINUTES OF THE MEETING HELD ON 31 MARCH 1999

Chairman: Mr. Otto Th. Genee (Netherlands)

1. The Committee on Technical Barriers to Trade held its Sixteenth meeting on 31 March 1999.

2. The following agenda, contained in WTO/AIR/1045/Rev.1, was adopted:

I. REQUEST FOR OBSERVER STATUS IN THE COMMITTEE BY THE OFFICE INTERNATIONAL DE LA VIGNE ET DU VIN (OIV), THE INTERNATIONAL LABORATORY ACCREDITATION COOPERATION (ILAC) AND THE UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION (UNIDO)

3. The Chairman indicated that more time was needed for informal consultations on the requests for observer status by the OIV and ILAC.

4. The representative of Thailand supported the request by ILAC. She said that ILAC was an international body with global Membership, including Thailand. Its work which related to laboratory accreditation scheme, supported the conformity assessment provisions of the TBT Agreement and could pave way to mutual recognition agreements (MRAs) under Article 6. Its activities contributed to the development and strengthening of the technical infrastructure of its Members who were also Members of the WTO.

5. The Committee agreed to return to the two requests at its next meeting.

6. The Committee agreed to grant observer status to UNIDO on an ad hoc basis, pending final agreement on the application of the guidelines for observer status for international intergovernmental organizations in the WTO.

II. STATEMENTS ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

7. The representative of the United States welcomed the decision made on 29 March 1999 by the European Union Transport Council, to delay the adoption of the "non-addition" rule for hushkitted and re-engined aircraft. Although her authorities had agreed to continue working bilaterally with the EU to address their concerns, the US opposed the draft regulation for the following reasons: it is a design and not a performance standard; it appears to discriminate, without a scientific basis, against non-European Union air carriers and foreign-sourced used aircraft, engines and noise abatement equipment (hushkits); and it deviates from the international noise standards set by the International Civil Aviation Organization (ICAO) under the Chicago Convention to which EU Member States have agreed[1]. She noted that the EU proposal would restrict non-EU aircraft which met the ICAO standards.

8. She recalled that at the Committee meeting of November 1998, she had brought the issue to the attention of the Committee (G/TBT/W/101), seeking information from the EC on its intentions to notify as required under the Agreement and an explanation for having departed from the ICAO standards. She had asked also for the scientific studies on which the proposed standard was based upon. She noted that on 23 February 1999, the Commission notified (G/TBT/Notif.99.75) the Committee of the position adopted by the Council on 16 November 1998 (published in its Official Journal of 23 December 1998). The notification indicated the proposed date of adoption was on 29 March and called for comments by 20 April 1999, but was later amended to read 20 March. She raised concern about the length of the comment period provided.

9. Once again, she asked for answers to the questions that she had raised at the last meeting: What are the scientific studies and cost-benefit analysis to demonstrate that the EU proposed design standard would be effective to reduce airport noise? If these studies exist, would the EU make them available promptly to the Committee, so that they can be examined by her authorities and other

[1]ICAO Council President Kotaite had noted the deviation from ICAO standards in a recent letter to the President of the EU Council.

Members who are likely to be adversely affected by the EU's proposed regulation? She noted that aircraft were both internationally traded and operated goods involving hundreds of billions of dollars, and thought that it was essential to have international standards for their operations, and not to have one country/region adopting a regulation with minimal notice. She said that while her country supported environmental protection and noise-reduction measures, and believed that countries may establish environmental standards higher than international ones, countries should abide by their obligations under international agreements. She reiterated that the restrictions on aircraft operations under the hushkits regulations appeared to be inconsistent with the EU's obligations under the TBT Agreement and the bilateral aviation agreements between the EU Member states and the US.

10. The representative of the European Communities confirmed that a decision had been taken to delay the adoption of the regulation to allow more time for bilateral consultations between his authorities and the US.

11. He drew attention to document G/TBT/W/104 (Response from the EC to Comments by the US (G/TBT/W/94) and Canada concerning Notification 97.766) relating to Council Regulation (EC) No. 1139/98 concerning the labelling of certain foodstuffs produced from genetically modified organisms (GMOs). Concerning the choice of criterion defining the concept of equivalence for labelling, he pointed out that the approach under Regulation (EC) No. 1139/98 was based on the concept of "equivalence" established in Article 8 of the Regulation concerning novel foods and Article 2 of Regulation (EC) 1813/97. Based on a scientific assessment, the EU was convinced that the presence in foods and food ingredients of DNA or protein resulting from genetic modification was the best criterion for distinguishing between a GMO-derived product and a "conventional" product. Consequently, such foods or food ingredients were no longer considered equivalent, for labelling purposes, to conventional foods or food ingredients.

12. He said that the EU had decided to draw up a "negative" list of foods or food ingredients for which the absence of traces was not in any doubt, and which were considered equivalent within the meaning of the Regulation, and therefore not subject to the labelling requirement. The list was to be drawn up on the basis of a scientific assessment, and for that purpose, his authorities had initiated a consultation procedure with the Scientific Committee on Food, in accordance with Article 2(2) of Regulation (EC) No. 1139/98. As soon as the Committee had given its opinion, his authorities would take the necessary steps to draw up the list.

13. Concerning the analytical methods, he noted that the setting of a detection threshold called for the prior validation of analytical methods of detection. His authorities and the Member States of the EU had taken several initiatives to this end. He recognized that methods existed for detecting the presence of DNA or protein, and expected rapid results with respect to the harmonization of such methods. However, their validation would take time. His authorities were taking an active part in international work in this field, and the results obtained at the international level would be taken into account.

14. He said that his authorities were looking into the possibility of setting a *de minimis* threshold for DNA or protein traces, below which labelling would not be required (where adventitious contamination of foodstuffs by DNA or proteins could not be excluded). However, it would appear difficult to establish a maximum value at this stage. His authorities were continuing to study the subject but were not currently in a position to provide more detailed information.

15. He informed the Committee that the Regulation had been in force since 1 September 1998, imposing, on a non-discriminatory basis, labelling whenever a food or food ingredient exhibited traces of DNA or protein. The label was intended for the final consumer. He pointed out that the Regulation applied without prejudice to the right of operators to include voluntary claims on their

product labels, provided that they were in conformity with the provisions of Directive 79/112/EEC, which stipulated that such indications must not be liable to mislead consumers.

16. The European Union established a standard labelling format in order to facilitate consumer choice and information, and also, to avoid divergent interpretations and legal uncertainties for operators. The indication must be worded as follows: "produced from genetically modified soya" or "produced from genetically modified maize" or "contains ingredients produced from genetically modified soya/maize", whichever was appropriate. This wording must appear in the list of ingredients, in parentheses, immediately after the name of the ingredient concerned. This provision, which was adopted on the basis of Article 2 of Regulation (EC) No. 1813/97 (second subparagraph of paragraph a), stipulated that the labelling must indicate the characteristics or properties modified (composition, nutritional value or nutritional effects or intended use of the food), together with the method by which that characteristic or property was obtained. The indication (a food or food ingredient is produced from e.g., "genetically modified soya or maize") reflected the modified characteristics (composition) of the food and the method by which it had been obtained genetically.

17. The representative of the United States welcomed the response from the EC, and requested that the Commission's list of GMO products approved for import and the EU methodologies for identifying and certifying products be made available soon. However, her delegation remained concerned about the practical implementation problems with the regulation, and also the fact that the EU considered food and food products containing DNA or protein resulting from genetic modification to be no longer "equivalent". She believed that, as a scientific matter, the mere presence of protein or DNA resulting 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.

18. She recalled that the EC had assured the Committee that it would establish a list of GMO products that do not require labelling. However, six months had passed since the regulation came into effect, and yet no list had been provided. She said that without the list, US exports had to be certified for whether or not they contained genetically modified food, and had to be either tested or certifiably segregated from the farm to the foreign port. She noted that without the analytical methods and a *de minimus* threshold to test for the presence of DNA or protein resulting from genetic modification, certification of US exports of GMO-free products to the EU had been impossible. The lack of guidance in this area made it impossible to implement the EU labelling Directive, and was causing confusion and unnecessarily disrupting trade.

19. She noted the argument of the EC that (EC) No. 1139/98 was based on science, and that there existed a different scientific standard to evaluate equivalence for labelling purposes. However, she could not agree on this approach. She welcomed scientific evidence that would indicate that the presence of protein or DNA resulting from genetic modification was sufficient to establish that a food was no longer equivalent to its conventional counterpart (i.e., in terms of its composition, nutritional value or nutritional effects or the intended use of the food), although she did not agree with this view. She informed the Committee that her delegation's concerns remained, and requested the EU to provide further information.

20. The representative of Canada raised concerns about possible trade disruption as a result of the EC GMO labelling requirement (EC) Regulation No. 1139/98. He recalled that his delegation had provided detailed comments on this issue at the last three Committee meetings. The concerns expressed were related to: the unclear rationale for the identification of protein and DNA resulting from genetic modification through a mandatory labelling approach; the ability of the EC labelling scheme to provide consumers with meaningful information on genetically modified food ingredients; difficulties in ensuring and enforcing compliance. He welcomed the response provided by the

EC (G/TBT/W/104). However, it did not fully address his delegation's concerns, and he requested further clarification.

21. He noted that in its response, the EC had indicated that the label would provide consumers with information about the composition of a food by indicating that the food had modified characteristics. He sought explanation on how the statement "produced from genetically modified soya" could provide information about composition or characteristics of a food. In the case of soya, the new characteristic of the approved product was the glyphosate tolerance. However, this information would not appear on the label. He asked about the kind of information consumers would receive, through the five word label, on the qualitative and quantitative make up (i.e. the composition) of foods which had already gone through safety reviews. He said that Canada supported the objective of providing consumers with accurate, understandable information about biotechnology and genetically modified foods. However, he questioned how a complicated and technical production tool, such as biotechnology, could be explained in a five word label.

22. He recalled that at the Committee meeting of September 1998, his delegation had acknowledged the EC's comment that "ascertaining whether or not a food or food ingredient is of GMO origin may not always mean carrying out tests". He reiterated his request for the specific "scientific and technical knowledge of the food characteristics" or "documentary information" that would be sufficient to meet the needs of the EC as to whether or not a food or food ingredient was of GMO origin. He noted that the Commission had planned to establish detection methodologies that would be internationally validated, and that the EC had acknowledged that such validation would take time. He believed that a validation process was important prior to the application of such tests, and asked for updating information on the EC initiatives in this regard.

23. He said that the question of detection methodologies was beginning to affect Canadian companies, and there were press reports of EC companies testing and rejecting Canadian processed products based on a determination that they contained GMOs. He recognized that although such market-place activities were not necessarily a direct consequence of the EC's labelling regulation, it highlighted the problem that could occur in the absence of internationally validated testing methods.

24. The representative of the European Communities took note of the points made by the US and Canada, and would report them to his authorities in capital.

25. The representative of the United States supported the objectives of the EC (DG XI - Environment) draft Directive to reduce waste and the environmental impact of discarded electrical and electronic equipment. However, she raised concerns that the take-back requirements for end-of-life equipment of the proposed scheme contained provisions that would adversely affect trade and act as an unnecessary barrier. She expressed concerns about: the ban on certain materials for which there might be no viable substitutes by 2004; the minimum recycled content mandates; and burdensome take-back requirements for end-of-life equipment. She sought clarification on the rationale of the proposed regulation and its relationship to the EC's environmental and health objectives, so that its consistency with international trade obligations could be assessed.

26. She commented that the proposed scheme would be burdensome, in particular for foreign producers who lack a physical presence in Europe. The retroactive application of these obligations, making manufacturers financially responsible for historical wastes, could impose financial and bureaucratic burdens on manufacturers. She noted that the draft Directive needed additional review, and urged the EC to work with all stakeholders for an economically efficient approach to meet its environmental goals. She said that the EC would not notify its proposals until it had reached consensus among its Member States, and that by then the period to comment on the draft would be diminished. She drew the attention of other Members to the proposal because they might share similar concerns.

27. The representative of the European Communities noted the concerns raised by the US, and would report back to his authorities in capital.

28. He drew attention to document (G/TBT/W/107) "Response from the European Commission to comments by Indonesia on proposal for a European Parliament and Council Directive amending Council Directive 92/23/EEC relating to tyres for motor vehicles and their trailers and to their fitting (G/TBT/Notif.98.343). He said that the requirements relating to the test site, the test track and the surface of the test track specified in item 2.1 of Appendix 1 of the above-mentioned proposal were in line with the requirements for sound emission testing according to Directive 70/157/EEC (amended), as well as according to UN/ECE Regulation No. 51. For the purpose of EC type-approval, sound emission testing as well as tyre rolling noise testing fell within the competence of the technical service bodies designated by the EC Member States and were performed on test sites made available by the Member States.

29. The application for EC type-approval of a tyre had to be submitted by the tyre manufacturer, in line with the requirements of Article 3 of the framework directive 70/156/EEC, as amended by Directive 92/53/EEC (which stated that "Applications for vehicle type-approval shall be submitted by the manufacturer to the approval authority of a Member State"). The framework Directive 70/156/EEC, as amended, defined the "manufacturer" as: "the person or body who is responsible to the approval authority for all aspects of the type-approval process and for ensuring conformity of production. It is not essential that the person or body is directly involved in all stages of the construction of the vehicle, system, component or separate technical unit which is the subject of the approval process". He did not believe that the proposal contained in document COM(97) 680 final 97/0348 (COD) would create technical barriers to trade.

30. The representative of Indonesia welcomed and took note of the European comments, and would convey them to his capital.

31. The representative of the European Communities recalled the comments made by Egypt on meat and textile labelling requirements (G/TBT/M/14) at the last meeting. He reiterated his concern on the unnecessarily disproportionate measure under Egyptian Decree No 1/1998 on textile labelling, and sought further explanation. Concerning the issue of meat labelling, he said that he would come back to it in the future.

32. He raised concerns on the labelling requirements related to Egyptian Circular No.12 which brought back and re-enforced some dormant requirements dating back to 1991. The problem was that the Circular imposed requirements for labelling on each individual unit or packet, which was in some cases not practical.

33. The representative of the United States noted that the labelling requirements in Egypt had increased, and as a result raised the production cost for US suppliers. With respect to meat labelling requirements, this decreased the opportunities for trade in beef livers, meat and poultry, in particular for small producers. She sought further information from Egypt.

34. The representative of Egypt recalled that her authorities had responded to the EC's questions on new Egyptian labelling and textile requirements, and requested the EC representative to provide by fax other specific questions or comments. She noted the concern expressed, and would seek clarification from capital.

35. The representative of Switzerland informed the Committee that a MRA on Conformity Assessment Procedures had been signed between his government and the government of Canada in December 1998, and that it would enter in force as of 1 May 1999. His delegation was in the process of preparing a relevant notification under Article 10.7.

36. The representative of the United States welcomed the information provided by Switzerland. She recalled that her delegation had notified the MRA reached by the US and the EC (G/TBT/Notif 10.7/Add. 20). She noted that no such notification had been made in 1998, and invited other Members to fulfil the obligations of Article 10.7.

37. The Committee took note of the statements made.

III. FOURTH ANNUAL REVIEW OF THE IMPLEMENTATION AND OPERATION OF THE AGREEMENT UNDER ARTICLE 15.3

38. The Committee concluded its Fourth Annual Review on the basis of the background documentation contained in G/TBT/7.

IV. FOURTH ANNUAL REVIEW OF THE CODE OF GOOD PRACTICE FOR THE PREPARATION, ADOPTION AND APPLICATION OF STANDARDS IN ANNEX 3 OF THE AGREEMENT UNDER THE MINISTERIAL DECISION ON REVIEW OF THE ISO/IEC INFORMATION CENTRE PUBLICATION (WTO TBT STANDARDS CODE DIRECTORY – FOURTH EDITION 1999)

39. The Chairman drew attention to documents G/TBT/CS/1/Add.3, G/TBT/CS/2/Rev.5 and the Fourth Edition of the WTO TBT Standards Code Directory prepared by the ISO/IEC Information Centre, containing information received according to paragraphs C and J of the Code of Good Practice for the Preparation, Adoption and Application of Standards. He informed the Committee that up until 19 February 1999, 106 standardizing bodies from 76 Members had accepted the Code (including the Czech Standards Institute).

40. The Committee concluded its Fourth Annual Review of the Code of Good Practice for the Preparation, Adoption and Application of Standards.

V. PROPOSALS RELATED TO THE MEETING ON PROCEDURES FOR INFORMATION EXCHANGE

41. The Chairman drew attention to documents G/TBT/W/89-90 and 100 containing proposals made by the US and Canada related to the Meeting on Procedures for Information Exchange held on 14 September 1998. He recalled that at its last meeting on 20 November 1998, the Committee had held discussions on the proposals (G/TBT/M/14). At its informal meeting on 22 January this year, the Committee had requested the Secretariat to compile and redraft the non-controversial proposals taking into account the discussions held at the 20 November meeting (G/TBT/SPEC/10 - Annex 1). These proposals related to the list of enquiry points, the Committee's decisions and recommendations on notification procedures and the booklets on enquiry points.

42. The representatives of Brazil and Ecuador accepted the proposals as contained in G/TBT/SPEC/10.

43. The representative of Chile proposed to add the following recommendation to ensure the expeditious circulation of notifications: "It is recommended that notifications may be transmitted by electronic mail to the WTO Central Registry of Notification (CRN): crn@wto.org."

44. The Chairman informed the Committee that "Word 1997" was the format used in the WTO CRN.

45. The Committee agreed to the proposals (made by Canada, Chile and the US), and to their inclusion in document G/TBT/1/Rev.6.

46. The representative of Canada noted that the G/TBT/SPEC/10 proposals were a sub-set of the proposals made by his delegation and the US. He recalled that favourable comments had been received on the Canadian proposal which stated that: "Members might wish to give consideration to developing mutually agreeable, voluntary service standards, which would establish acceptable time-frames for acknowledging and providing responses to technical enquiries" (paragraph 7 of G/TBT/W/100). He indicated his delegation's intention to circulate the service standards adopted by the Canadian enquiry point, and would come back to the proposal at an appropriate time.

47. The representative of the United States noted that there were three other outstanding US proposals. The one dealing with the derestriction of documents had been discussed in the General Council at a horizontal level, and would have to be resolved at that level. With respect to the proposals stating that: "*Members may voluntarily make unofficial translations of proposed rules available - whether translations are of their own proposals or those of another Member - and could inform the Secretariat of the availability, language, and location of the translation on the Internet. The WTO could provide this information (notification, availability, language and location) to WTO Members generally through existing electronic systems on the WTO Home Page."*; and "*In order to facilitate a broader understanding of the implications of regulatory proposals, Members may wish to post their comments on the proposals on the Internet and make their Internet address known to other Members on the National Enquiry Point List"* (paragraphs 5 and 7 of G/TBT/W/90), she planned to have informal discussions with interested delegations before the next meeting, and would come back to them.

48. The representative of Mexico said that more time would be needed to study the outstanding proposals.

49. The Chairman suggested that the Committee could come back to the remaining proposals by Canada and the US to allow delegations more time for reflection.

50. He recalled that at its last meeting, the Committee had requested the Secretariat to carry out a Survey on the electronic facilities available to national enquiry points. It was considered that the Survey could be useful in determining the steps that needed to be taken to facilitate the electronic transmission of documents between Members, and could, among other things, facilitate efforts to better target technical assistance and training. He informed the Committee that in January 1999, questionnaires had been sent to the National Enquiry Points of 89 Members (as listed in document G/TBT/ENQ/13), and replies had been received from 51 enquiry points of 47 Members. He drew attention to document G/TBT/W/105 containing the results of the Survey, and said that since then, the Secretariat had received additional information, and would prepare an addendum to the document.

51. The representative of the United States said that the Survey demonstrated that there was a broad range of Members that had the facilities for electronic exchange of information, and that the use of electronic medium could enhance the operation of enquiry points and their ability to cooperate. She noted that the result also helped to identify the specific needs for technical assistance in this area, and encouraged those enquiry points which had not responded to provide information.

52. The Committee took note of the statements made.

VI. PREPARATION FOR THE INFORMATION SESSION ON CONFORMITY ASSESSMENT PROCEDURES

53. The Chairman recalled that at its Informal Meeting on 22 January this year, the Committee had agreed to organize an Information Session on Conformity Assessment. He drew attention to a draft programme prepared by the Secretariat (G/TBT/SPEC/12). Taking into account the informal consultations and suggestions made by interested delegations, he proposed that the event be a

WTO Symposium on Conformity Assessment Procedures to provide the opportunity for discussions among different bodies. The discussion would remain relevant to the work of the Committee and on how conformity assessment procedures could facilitate or impede international trade, but it would be for the Committee to decide if and how to take account of the discussions. Relevant government experts would serve as rapporteurs and moderators, and under his own responsibility, the Chairman would produce a factual, non-binding summary report of the Symposium, based on the reports of the rapporteurs.

54. The representative of Thailand suggested that under Session IV, the panelists be selected from different regions for the purpose of equitable representations.

55. The representatives of Malaysia and Panama endorsed the view expressed by Thailand, and welcomed the Chairman's proposals which had taken into account the concerns expressed.

56. The representative of Australia informed the Committee that his delegation intended to circulate a discussion paper addressing principles of good conformity assessment in time for the Symposium.

57. The Committee agreed to organize a WTO Symposium on Conformity Assessment Procedures on 8-9 June 1999 with the programme proposed by the Chairman. The Chairman and the Secretary would select the speakers, taking into account that there would be balanced representation.

58. The Chairman appealed to Members for funding to assist the participation of speakers from developing countries.

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

59. The Chairman recalled that at its Informal Meeting of 22 January this year, the Committee had agreed to continue its Work Programme of the First Triennial Review with a "cluster approach" to facilitate focused discussions at Committee Meetings (G/TBT/SPEC/9).

60. The Committee agreed its work-programme for the year of 1999 as followed: at its March meeting, the Committee would focus discussions on (i) item B (Operation and Implementation of Notification Procedures under Articles 2, 3, 5 and 7), (ii) item C (Acceptance, Implementation and Operation of the Code of Good Practice for the Preparation, Adoption and Application of Standards by Standardizing Bodies) and item D (International Standards, Guides and Recommendations); at its June meeting, item F (Conformity Assessment Procedures); and at its last meeting, item A (Implementation and Administration of the Agreement by Members under Article 15.2) and item E (Preparation, Adoption and Application of Technical Regulations) would be addressed. It was decided that at each meeting, item G (Technical Assistance under Article 11) and item H (Special and Differential Treatment under Article 12) would be addressed, and that time would be allotted for Members, if they so wish, to return to any element under the Work Programme, including item I (Other Elements).

61. The Chairman recalled that at the last informal meeting, the Committee had requested the Secretariat to prepare a stock-taking paper of the submissions by delegations on the Work Programme to facilitate discussions. He drew attention to document G/TBT/SPEC/11 which compiled the twenty papers and proposals submitted by delegations since the beginning of 1998, and said that it should be an open-ended document that would incorporate further contributions. He invited delegations to use that document as the basis for discussions, and believed that it would help focused discussions within the Committee's cluster approach.

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

62. The Chairman drew attention to documents G/TBT/W/76 and Add.1 containing "a list of Members whose local government bodies, directly below the central government level, are authorized to adopt technical regulations or conformity assessment procedures". He invited those relevant Members who had not yet submitted the information to do so. He said that a complete list would provide the Committee with a better idea of the implementation of notification procedures under Articles 3 and 7. He then drew attention to documents G/TBT/W/84 and 93 (contributions from Thailand and India) providing their national experience on their implementation of the notification provisions of the Agreement.

63. The representative of India, referring to document G/TBT/W/93, said that it was a factual paper prepared by the Bureau of Indian Standards (BIS). He invited reactions to paragraph 4 of the paper, which suggested that "Extension of time-period for comments may be considered from 60 days to 90 days, as the notifications take time to reach the concerned agencies who have to give comments". He also invited comments to the two questions listed in the last paragraph of the paper: "Does the National notification system of developed countries include all organizations in the country engaged in enforcement of technical regulations and conformity assessment procedures?" and "Have all the standards formulating bodies of developed countries accepted the Code of Good Practice and are they meeting the notification obligations?" He said that the questions reflected concern over the proliferation of standard setting bodies in developed countries.

64. The representative of Thailand drew attention to the principle of transparency under Article 2.9 that "Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Members, Members shall notify other Members …". She emphasized the importance of notifying draft technical regulations that had trade impact on other Members, so that opportunities could be provided for comments. However, she said that 60 days for comments was short for draft technical regulations as they needed to be circulated to many authorities for comments.

65. The Committee took note of the comments made.

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

66. The Chairman drew attention to a list of standardizing bodies within the territories of Members (G/TBT/W/92) that had been prepared based on information submitted by Members for the purpose of improving the transparency, acceptance of, and compliance with the Code of Good Practice (Annex 3 of the Agreement). He invited delegations to provide the relevant information to the Secretariat. He drew attention to documents G/TBT/W/74 and Add.1 containing proposals by the EC on paragraph J of the Code. He recalled that the Committee had held discussions on the proposal at the last two meetings.

67. The representative of the European Communities introduced the following re-draft of their proposal: "The communication of the work programmes of standardizing bodies via the Internet would be another possibility to fulfil the paragraph J obligations on transparency. Hard copies of such work programmes would, nevertheless, always be made available on request."

68. The representative of Egypt suggested adding the following wording to the end of the last sentence of the EC proposal: "in accordance with paragraph P of the Code of Good Practice (Annex 3 of the Agreement)."

69. The Committee agreed to the EC proposal as amended by Egypt, and to its inclusion in document G/TBT/1/Rev.6.

70. The Chairman drew attention to documents G/TBT/W/60 and 82 (contributions from Colombia and Thailand, containing national experience and proposals with regards to the Code) and documents G/TBT/W/71, 83, 88 and 99 (contributions from Canada, Thailand, New Zealand and Australia, concerning equivalency of standards).

71. The representative of Chile drew attention to document G/TBTW/60, a case study of the Colombian flower-growing industry with relation to private environmental labelling. He noted the problems of certification schemes by various non-governmental bodies, and considered it to be an important issue that could affect trade flows. It was suggested in the Colombian paper G/TBT/W/60 that one solution might be the application of the Code of Good Practice to voluntary eco-labels. He noted that the Code of Good Practice was open for acceptance by non-governmental standardizing bodies on a voluntary basis. He proposed to improve the acceptance and implementation of the Code, and invited the Committee to further consider the Colombian proposal.

72. The representative of Canada recalled that his delegation had taken a lead in supporting the notification of all eco-labelling programmes, whether they be private, governmental, voluntary or non-voluntary. He believed that if the transparency provision of the Agreement were improved, in particular the notification provisions of the Code of Good Practice, disguised protectionism could be reduced.

73. The representative of New Zealand drew attention to the New Zealand submission on equivalency (G/TBT/W/88), and said that the basic thrust of the paper was to outline the benefits that could accrue through the recognition of equivalency of national voluntary standards. She recalled that the Committee had held discussions on the paper. She drew attention to the following recommendation in the paper which provided for an additional provision in the Code of Good Practice: "The standardizing body shall give positive consideration to accepting as equivalent, standards originating from other Members of the WTO, even if these standards differ from their own, provided they are satisfied that these standards adequately fulfill the objectives of their own standards". She invited further comments on the New Zealand proposal, and said that the recommendation, if agreed by the Committee, could be included in document G/TBT/1/Rev.5.

74. The representative of Australia supported the New Zealand recommendation on equivalency of standards. With respect to the Code of Good Practice, he reiterated its importance, and urged other Members to encourage standardizing bodies in their territories to adhere to it. He informed the Committee that in 1998, two additional Australian standardizing bodies had notified their acceptance of the Code.

75. The representative of Canada recalled that his delegation had commented on the New Zealand paper on equivalency, and reiterated his support for the concept of equivalency of voluntary standards which was a new idea that had been put forward since the Triennial Review. He indicated that his delegation might present at the next Committee meeting, additional views on how the concept of equivalency could be implemented for voluntary standards. Canada welcomed an end-product from this exercise, which would provide in the Code of Good Practice the same sort of concept of equivalency as stated under Article 2.7 for technical regulations. He encouraged other Members to give consideration to the idea and concept.

76. The representative of European Communities found the concept of equivalency interesting, but its practical application rather limited. He said that equivalence was a viable concept in relation to performance rather than design based standards. He reiterated that equivalence should not be allowed to undermine the development of international standards. However, he believed that it was a

reasonable approach towards minimizing non-tariff trade barriers, if a product was to be approved to a single standard, certified once and accepted everywhere. He welcomed future discussions and papers on this subject-matter, and indicated that his delegation would give consideration to producing a paper.

77. The representative of Chile believed that the application of international standards should be the main way towards equivalency. He reiterated the importance of Members' participation in the work of international standardization and adoption of international standards as stated under Articles 2.4 and 2.6 of the Agreement.

78. The representative of the United States shared the view expressed by Chile. She was interested in the EC's comments on equivalency, and noted that "recognition as equivalent of existing standards" had been highlighted in the EC's paper on trade facilitation (G/C/W/136). She found the concept difficult in terms of the practical aspects to its implementation, and welcomed further papers and factual information from delegations on their experience.

79. The representative of Thailand reiterated the importance of recognizing the equivalence of technical regulations as stated under Article 2.7 of the Agreement. With respect to the concept of the equivalency of voluntary standards, she suggested that there might be a need for a paper containing Members' experience on how this concept could be achieved in practice.

80. She drew attention to Paragraph L of the Code of Good Practice which stated that standardizing bodies "shall allow a period of at least 60 days for the submission of comments on the draft standards by interested parties within the territory of a Member of the WTO". She said that while the Code aimed at providing transparency, from the Thai experience, there might not be a need for a comment period of 60 days, as a period of 60 days could slow down the standard development. She suggested that the Committee consider shortening the comment period under paragraph L of the Code to "at least 30 days". She recalled that in the past, the Thai standardizing body had provided 60 days for comments on draft Thai national standards. It had found out from experience that it took only two or three weeks to consider comments on draft Thai standards, and that had been the reason why Thailand had decided to reduce the comment period from 60 days to 30 days to speed up standard development. However, when the Thai Standardizing body accepted the Code of Good Practice, it had to provide once again 60 days for comments as required under the Code. She believed that for the national standards development, the comment period of 30 days would be enough.

81. The representative of the United States believed that in the real world, voluntary standardization needed to be prepared faster to respond to market needs, and 60 days for comments might not be practical in all cases. She noted that standards were different from technical regulations, and were less likely to require exception for urgent problems of safety, health and environment. She noted also the distinction between the provisions of the Agreement regarding mandatory technical regulations and the Code of Good Practice. She recalled that the standardizing bodies in her country had raised concerns about the 60 days comment period when signing the Code. She had informed those bodies of the Committee's recommendation to have a 60 day comment period for draft technical regulations and conformity assessment procedures under Articles 2 and 5, and the flexibility provided in this regard. She said that it was important to establish procedures to provide opportunities for comments on standards, but there could be market consideration that drive standards be developed at a faster pace. She found the Thai proposal interesting and wished to come back to it.

82. The representative of India reiterated the objectives and disciplines of the Code of Good Practice. He said that standards, though voluntary, could act as trade barriers. The obligations of transparency and time for comments were important elements in the Code, and should be adhered to by standardizing bodies. His delegation would study the Thai proposal. However, he believed that based on the reasons provided by Thailand, it did not justify a drastic reduction of comment period to

30 days. He noted the flexibility provided under the Code that the comment period "may, however, be shortened in cases where urgent problems of safety, health or environment arise or threaten to arise".

83. The representative of Japan said that his delegation would study the Thai proposal. However, he raised concern about the shortening of the comment period, particularly in relation to the work of some regional standardizing bodies which had accepted the Code of Good Practice and had strong impact on international standards making.

84. The representative of the European Communities said his delegation would come back to the Thai proposal. However, he drew attention to the complicated situation of the European Union, and the number of countries and standardization bodies involved in standards development process.

85. The Committee took note of the statements made.

C. INTERNATIONAL STANDARDS, GUIDES AND RECOMMENDATIONS

86. The Chairman recalled that on 19 November 1998, an Information Session of Bodies involved in the Preparation of International Standards was organized to improve understanding of the role of international standards under the Agreement. It aimed at having these bodies take account of the ongoing discussions on international standards in the Committee, and increasing the awareness of Members of the activities of those organizations. At its last meeting, the Committee had requested the Secretariat to prepare a synthesis paper based on the information provided by those organizations at the Session (document G/TBT/W/106). He drew attention to the two proposals made by the US (G/TBT/W/75) and the EC (G/TBT/W/87) on international standards and their transparency. Other submissions were made by Colombia (G/TBT/W/60), Canada (G/TBT/W/61), Thailand (G/TBT/W/81) and Australia (G/TBT/W/99) on their countries' national experience in the use of international standards, guides and recommendations.

87. The representative of Japan welcomed the EC and US papers. With respect to the EC paper (G/TBT/W/87), he enquired about the way in which regional bodies could contribute to international standardization, as stated in section (I/6/iii). He asked for concrete examples of the legislative framework that would promote incentives for the use of international standards, as referred to in section (II/7/i), and for more information on how the emergence of competing international bodies could be prevented.

88. The representative of the European Communities explained that while representation in international standardizing bodies was national (as called for by the Agreement), regional cooperation could contribute to technical work at the international level. He gave the example of ETSI, which was a regional European body in which economic stakeholders were members, and which directly contributed to the work of the ITU. He indicated that regional bodies in the EU had an interest in the internationalization of their work, and that was why the mechanism for coordinating the contributions of national and regional delegations had to be worked out. The EU had its mechanism for so doing, where some form of coordination was required, sometimes on an ad hoc basis and other times on a more systematic one. The system was largely based on the goodwill of those involved.

89. With respect to the legislative framework that would promote the use of international standards, he explained that instead of detailed technical regulations, more generally framed rules could be devised and be backed up by standards – those would retain their voluntary stature. In other words, standards themselves would give the presumption of conformity with technical regulations without being made compulsory. He referred to another arrangement in Europe, where the work that was undertaken at the regional level was offered to international bodies, to be used by them if they so desired. Such arrangements were made in response to requests from Europe's trading partners and in

line with Europe's continued commitment to international work. At the same time, international standards were made use of at the regional level (e.g. ISO and IEC standards were adopted by CEN and CENELEC without change).

90. He gathered, from the last information session, that both the OECD and UN/ECE were devoting attention to the avoidance of competing international standards. He reiterated that the prevention of the emergence of conflicting standards by international bodies, as well as the duplication of work, was necessary. The onus to do so was on the members of the bodies themselves, as the Secretariats of these international organizations could not be left with this task. Turf battles between those Secretariats were sometimes difficult to avoid. In Europe, for instance, occasional disagreements between CEN and CENELEC took place.

91. As to how to determine which bodies fulfilled the requirements of being international ones, he indicated that this was a difficult question to answer. Different views were expressed in the EC paper on what constituted an international standard, and, by default, what constituted an international standardizing body.

92. The representative of Chile welcomed the EC paper, but enquired about the purpose of the discussion. He acknowledged the duplication of work by different national standardizing bodies, but did not know how it could be prevented. He requested clarification from the EC of the link between the use of international standards and the establishment of a legislative framework that allow compulsory regulations to be backed by voluntary standards. In addition, he could not see how regional and international standards could compete. He believed that regional bodies facilitated the participation of national ones at the international level, which entailed both costs as well as benefits.

93. The Chairman explained that the issue of international standards was being explored as part of the work programme of the Triennial Review. Different proposals had been made on the issue. The EU proposal went farther than that of the US in recommending the establishment of some kind of formal code of procedures for observance by international bodies. He noted that there were certain common elements in both papers, particularly in the areas of transparency and procedures for information exchange. However, it was up to the Committee to decide how to address these issues.

94. The representative of the United States said that the discussion which evolved around various aspects of international standardization, aimed at arriving at a common understanding within the Committee. She explained that from the US perspective, the objective of the discussion was to reach a Committee viewpoint (i.e., Committee recommendation or decision) on how international bodies developing standards could establish procedures to ensure that all interested parties had adequate time and opportunity to provide input in their development. The basic idea was the concept of transparency. The US and EC proposals had much in common in this regard.

95. The US proposal emanated from the fact that, while the Agreement placed strong emphasis on the need to use international standards, it did not contain obligations for how international bodies were to conduct their work. She recognized the limitations on the extent to which the WTO could bind those bodies. The objective, therefore, was not to regulate those bodies, but to establish performance standards, or some expression of what a good standards development process would be, for bodies claiming international status. The US proposal had focussed on the obligations of the Agreement that were binding on Members. In that respect, it noted that while the Agreement (Article 9.3) called upon Members to rely on international conformity assessment systems only to the extent that these systems complied with the provisions of Articles 5 and 6, there was no corresponding provision regarding international standardizing bodies.

96. She supported the principles for effectiveness, transparency, and balance of interests, accountability, international impartiality and consensus, laid out in the EC paper. However, she

recognized that the EC paper identified a number of considerations, which appeared to go beyond the issues of procedures of fairness and transparency (the subject of the US proposal), and she would be prepared to make detailed comments on them. The EC aimed at developing a code that would bind international bodies, and she enquired about the extent to which this proposal was flexible, so that common ground could be reached. She invited comments from other delegations on the US proposal and suggestions on how the US and EU proposals could be tackled.

97. Referring to the synthesis paper, of the Information Session (G/TBT/W/106), she noted the diversity of bodies which developed international standards, and the different approaches they used. She was struck by differences in how work in those bodies was initiated – in certain instances, by their Secretariats, and in others by industry or government. She noted that in the EC paper there was a notion to distinguish between national and international standards. However, the paper had not distinguished between different types of international standardizing bodies, whether intergovernmental or private. It was true that the Agreement did not distinguish between them and only distinguished between different types of technical requirements, mandatory and voluntary ones. However, she believed that a distinction between different types of bodies was also logical. Intergovernmental bodies tended to be more likely to coordinate on regulatory issues, while voluntary ones responded to market needs. The obligation under the Agreement for Members to use and participate in the development of international standards was the same, irrespective of the types of bodies developing them.

98. The representative of Canada commented on the first part of the EC paper "The Distinction between National and International Standards", and reiterated his delegation's commitment to the use of international standards, although there were many legitimate reasons for not using them (which were allowed for by the Agreement). He was reluctant to embark on definitional questions, particularly on any attempt to define the term "international standard". He recalled that, during the Triennial Review, this had been a contentious issue which could not be resolved. There were differences in the way that both ISO and the TBT Agreement defined international standards, and a discussion of the issue would be unproductive.

99. However, it was true that the development of new types of standards had created uncertainty regarding their international status. These included consortia type standards which were developed outside international standardizing bodies, and yet became de facto international standards, as well as management standards (such as ISO 14,000 and 9,000). He requested the Secretariat to prepare a paper listing the kinds of standards currently in use internationally, so that the Committee could study it and develop an understanding about what in fact constituted an international standard. He noted that there were certain regional bodies developing international standards (e.g., the OECD and UN/ECE). For this reason, the Committee needed a better sense of the bodies involved in developing international standards, and what could be deemed to be international standards under the Agreement. In addition, the participation in those bodies should be characterized. For example, whether or not participation in international standardizing bodies should be limited solely to national delegations.

100. The second part of the EC paper "International Standardization and Trade" called for more incentives for the use of international standards, including commitment at the political level, better transparency with respect to the implementation of the Code of Good Practice, and efficient coordination between regional and national standardizing bodies. Canada supported these objectives, and wished to encourage WTO Members to explain their reasons for either their use or non-use of international standards, as well as for deviating from existing ones.

101. With respect to the third part of the EC paper, which suggested that the disciplines for international standardizing bodies be codified (perhaps even appended to the Code of Good Practice), he commented that it needed consideration on how this could be done. The growing impact of international standardizing bodies on public policy issues necessitated adherence to the principles of

inclusiveness, transparency and accountability. To ensure that these issues addressed in the Committee reflected the views of interested parties, he invited Members to initiate dialogue on those issues with domestic standardizing and regulatory bodies.

102. The Chairman stated that it would be impossible for the Secretariat to do the type of paper which the Canadian delegation requested, as there was no agreed view within the Committee on what constituted an international standard.

103. The representative of India suggested focusing the discussion on international standards on the following points: (i) the definition of an international standard and international standardizing body; (ii) the practices of international standardizing bodies; and (iii) the encouragement to use international standards. He shared the view of the Canadian delegation on the proliferation of international standards, but he believed that it would be necessary for the Committee to come up with some idea of what constituted an international standard. He had no objections to the first part of the EC paper, in which it was stated that standards should be non-discriminatory and that membership in international bodies should be offered on equal terms. However, he believed that the role of developing countries needed to be appreciated, particularly since he could not envisage international standards only being devised by developed countries, except where trade was confined to them. He indicated that the EC paper had not made any reference to the role of developing countries in the development of international standards.

104. He explained that while numerous bodies were involved in international standardization, it might be a good idea to assess who had better expertise in a particular sector. In addition, it would be necessary also to look at who comprised those bodies – who its members were. He believed that there should be ways to verify claims made by certain bodies about being international ones. Many bodies simply self-proclaimed themselves to be so. There should be corresponding obligations to have international standardizing bodies follow the procedures of the Code of Good Practice.

105. The representative of the United States welcomed the comments made by India and in particular, the comment regarding the self proclamation of certain international standardizing bodies, and the need to have them follow the principles of the Code of Good Practice.

106. She stated that paragraph 5 of the EC paper had noted that standardization in some sectors had proceeded faster than in others, and enquired whether it was the result of a procedural flaw in the body developing the standards, which did not allow views of all stakeholders to be taken into account, or if it was a reflection of market forces. She noted that in the EC paper, the principle of international impartiality was regarded as important, and said that it would be difficult to challenge those, who used documents prepared in such a way of creating trade barriers.

107. Paragraph 6 (ii) of the EC paper suggested that the WTO should monitor the claims made by standardizing bodies on their status, whether national, regional or international. From the perspective of her delegation, what made a standard truly international was its development under transparent and impartial procedures, and its de-facto acceptance by the global marketplace. She said that the market-place also included the regulatory authorities. When regulators found that certain organizations adhered to the principle of impartiality, or worked in a coherent fashion within the context of the technical regulatory infrastructure of their jurisdiction, they could make reference to their work accordingly. Regulators could agree to jointly reference a particular standard or set of standards so as to promote regulatory harmonization on a regional and global basis. Absent such harmonization, product and technological innovation, as well as economic growth could be harmed. She stated that the question of whether an international organization would develop the best standard based on the system of one nation, one vote, was best left to the marketplace.

108. She indicated that the EC paper (paragraph 6 (iii)) had stated that Clause G of the Code of Good Practice favoured participation in international standardization on a national basis. However, her delegation saw the emphasis of this provision somewhat differently, with its objective being that national representation be the outcome of a domestic process, involving all relevant stakeholders, and resulting in a common position being taken to the international table. She acknowledged that this could be achieved through a process of domestic coordination and representation via national delegations, but did not believe that the WTO should foreclose other mechanisms to achieve this objective (provided they were both transparent and impartial). In this regard, she stressed the importance of domestic procedures for consultation with stake holders. She challenged the EC's interpretation of Clause G which stated that "In general, it would be expected that the participants in international standards work would be national delegations, that is, delegations of national standards bodies or their representatives". She questioned, at a time of drafting this clause, if the idea had been that authority or regulatory agencies lead national delegations to international standardizing bodies; and that the international standards be adopted by regulatory authorities.

109. She recalled a similar question raised by Japan concerning what was mentioned in the EC paper on regional standardizing bodies contributing directly to the work of international standardization, and asked if this could lead to the duplication of voice between national and regional bodies. She noticed that Australia in page 13 of document SPEC 11 had expressed a fear of block voting and emphasized the need for inclusiveness in the process. In paragraphs 4 and 5 of the same document, Thailand had highlighted the importance of procedural fairness in making standards suitable for adoption by developing countries. She wished the Committee to understand that those considerations went beyond the points raised in the EC paper, and beyond the basic element of procedural fairness. They moved the Committee into a different level of discussion, which could become more difficult to tackle if not kept linked to the provisions of the Agreement.

110. The representative of Japan stressed the importance of impartiality in the development of international standards, and argued that contributions from regional standardizing bodies did not hinder such impartiality.

111. The representative of Thailand explained that under the TBT Agreement, Members were under the obligation to use international standards, guides or recommendations, and it was therefore important to discuss how those could be developed transparently. She believed that the development of international standards should be transparent from the establishment of work programmes, down to the very end of the process. Of major importance, was that the comments of Members be taken into account with a view to settling conflicting viewpoints and achieving consensus. While she gave a positive response to the US proposal, she felt that a mechanism was needed to ensure implementation by Members. With respect to how to define "international standards", she provided the example of the SPS Agreement, in which the names of only three international bodies had been explicitly mentioned. A similar approach could be followed in the TBT Agreement.

112. The Chairman explained that this had been possible under the SPS Agreement because of its more limited scope.

113. The representative of Australia referring to the US proposal, indicated that item 1 stated that Members should ensure that their central government bodies only used international standards to the extent that they complied with the provisions of Article 2. However, this wording could encourage the use of national standards instead of international ones, and did not accord with the discussions held during the Triennial Review. The emphasis, he indicated, should be on how to bring international standardizing bodies up to speed with the imperatives of the global marketplace. To that end, he suggested that, along the lines of Article 2, a redrafting of the proposal take place to indicate that Members should apply international standards to the greatest extent possible.

114. The representative of New Zealand indicated that, like Thailand, she believed that transparency in the development of international standards was a fundamental issue for the Committee. Her delegation was supportive of the principles behind both the US and EC proposals, however, it had a number of concerns. The first, also addressed by Australia, concerned the ambiguity of paragraph 1 of the US paper, which could be interpreted to restrict the use of international standards by central government bodies, except in those circumstances where Article 2 applied. That certainly, could not have been the intention of the US. She expressed a desire to identify common grounds in the Committee, such as on the issue of transparency, and to focus on it so that progress could be made.

115. The representative of Korea shared the concerns expressed by New Zealand on the first paragraph of the US proposal, but was sympathetic to the rest. It was very important for the Committee to discuss principles, procedures or guidelines for international standardizing bodies, even if it was not in a position to regulate their activities.

116. He indicated that the EC proposal was intended to increase the accountability of international standardizing bodies. But even though it had mentioned the need for international impartiality, it was clear, from looking at the ISO presentation (contained in the Secretariat synthesis paper), that developing countries could not adequately participate. This was the case as numerous kinds of memberships existed, and the structures of international standardizing bodies were complex. ISO, for instance, had 2,700 subsidiary bodies. Thus, even though transparency could be secured in terms of procedures, in the real world it was difficult for small countries to actively participate in all the different stages of decision-making and in all of the different organizations.

117. The representative of the European Communities clarified that while the participation of developing countries had not been explicitly mentioned in the EC proposal, it was not deliberately excluded. It was an important issue which deserved further consideration. On the issue of the de facto recognition of standards raised by the US and Canada, and in reference to the consortia that were emerging in certain fast moving areas, he cautioned against adding the weight of the TBT Agreement behind players that achieved economic dominance. Consequently, the emphasis on the involvement of a broad spectrum of stakeholders was necessary, and had been supported by the Korean, Japanese, New Zealand, and Thai delegations.

118. He explained that the objective of the EC proposal was not to "water-down" the TBT Agreement, but rather to ensure that the commitment to use international standards was matched by the observance of rules for accountability. The EC proposal took a different approach than the US one. The US proposal started with a very strong preamble, already commented upon by Australia and New Zealand. It contained prescriptive wording, which appeared to propose a set of regulations to be carried out by the Committee. On the other hand, the EC proposal was more along the lines of a set of principles which international bodies could attempt to abide by.

119. He explained that government representatives could not control standardizing bodies which were private, even if they had voluntarily accepted a Code of Good Practice. He pointed out that the procedures under the Code might be appropriate for the application by international bodies developing standards (or standard like documents). With the existing provisions of the Agreement, national standardizing bodies which had accepted the Code had to abide by a set of rules, but international ones did not, and were thus unduly privileged. While perhaps initially, not addressing the problem of what constitute an international standard, the Committee could prepare a set of principles by which a body that characterized itself as international could abide.

120. The Chairman requested clarification of the EC's remarks on the setting of principles rather than rules. He explained that according to his reading of the EC proposal, it went further than just the setting of principles. In page 12 of document SPEC 11 (paragraph 5), it was stated that effective

implementation would require monitoring and collaborative action with the relevant bodies of the WTO. In addition, at the end of paragraph 7, the proposal seemed to imply that there would be some form of compliance monitoring by the WTO. He enquired if those were mere principles.

121. The representative of the European Communities explained that in the EC paper, the "monitoring and collaborative action by the relevant bodies within the WTO" referred to the creation of incentives for the use of international standards in WTO Members, as stated at the end of section II of page 3. However, with respect to the activities and disciplines of international standardizing bodies, referred to in section III of page 3, he was expecting that those would be rules that the standardizing bodies would apply to themselves. Therefore, it was a set of principles that was being proposed and not a rigid system, unless there was consensus for the latter.

122. The representative of Canada responded to the EC comments by clarifying that it was not the objective of the Canadian delegation to privilege de facto consortia-standards. However, the Committee had to recognize the reality of the market-place, that those standards did exist and were in use. Due to the process of globalization, there were certain dominant players in the market-place, and nothing that the Committee could do or say could change that. Moreover, it was important to realize that there were numerous standards in the market-place that were international, or which were used internationally, although not blessed by the major international standardizing bodies. He indicated, that there was no clarity at present as to whether management or consortia-standards were covered by the Agreement. To ignore their existence however, would be to deny the fact that the Committee was having a positive impact on trade facilitation.

123. The representative of Brazil indicated that the problems which developing countries encountered in participating in international standardizing bodies could not always be blamed on the process through which standards were developed. It was also attributable to the dynamics of technological development, lack of funds, etc. Her delegation welcomed the US proposal, particularly because its objective was not the regulation of international standardizing bodies, but their disciplining. Among its most important characteristics, was that it contained elements which had already been multilaterally agreed to by WTO Members. She indicated that the worse scenario for developing countries would be the lack of international standards. Whereas the standardization process could today be characterized as unfair, the situation could be far worse if, in the absence of international standards, unilateral ones were imposed.

124. The representative of Chile reiterated that the focus of the debate was on how to find a mechanism that could improve the quality of international standards. He indicated that the comments made by Brazil, India, and Korea suggested that greater transparency and broader participation were good for developing countries, and both the EC and US proposals attempted to do this. Chile agreed that transparency was important and could lead to broader participation. However, transparency did not automatically lead to broader participation. This was not a north-south issue that divided developed and developing countries, but, rather, one which distinguished between standards which were widely adhered to and those which were not, and therefore could not be considered international.

125. The representative of Malaysia welcomed the US paper, which attempted to enhance transparency. However, he requested clarification of the sentence in the EC paper (concerning the incentives to use international standards) which read: "In order to provide transparency and certainty, further progress is required on designing a mechanism under which bodies are accepted by the generality of signatories to the WTO Agreement as international standards bodies" (item (v) on page 3).

126. The representative of the European Communities explained that that section of the EC paper was intended to identify what constituted an international standard, and that this was the subject of

present discussions. It was a contentious issue, but one which was important to resolve in light of the Agreement's call for the use of those standards.

127. The representative of Malaysia welcomed the response provided. However, he did not think it answered his enquiry, and indicated that he would come back to it at a later point.

128. The representative of the ITC believed that the attitude of developing countries towards international standards was a passive and indifferent one, and that the benefits of using international standards, such as trade facilitation and technology transfer, had not been reaped by developing countries. In his view, the indifference of developing countries was the result of their lack of information on standards, of limited transparency in international standardization, and their limited resources for participation. Thus, he indicated that EU and US proposals were important steps forward which could increase the benefits which developing countries derived from international standards.

129. The representative of the United States noted the concerns expressed by Australia and New Zealand on paragraph 1 of the US proposal, and explained that it did not intend for it to be misread that way. However, she had not felt that the discussions had developed to a point where the proposal could be revised. She indicated that the US would consider removing the provision that had created concern and making other drafting changes, and that it would take onboard the suggestions made by Australia. She noted that detailed suggestions had only been made in regard to the paragraph 1 of the proposal, while the rest of the text had received general endorsement. She asked the Chairman whether it would already be useful for the US to submit a revised proposal.

130. The Chairman stated that it might be too soon for a revised text, although the final decision on this rested with the US. Many issues had been raised at this meeting, which he believed delegations needed time to digest. The EC and US proposals had been discussed, but other ideas had also been put forward, such as on the participation of developing countries. He urged delegations to clarify what the final objective of the discussions were, bearing in mind that the use of international standards was what needed to be promoted. The development of a common understanding on what constituted an international standard was needed. He felt that there was a general agreement in the Committee to address the issue of transparency, as well as of decision-making in international standardizing bodies. The Secretariat's synthesis document of the information session with international standardizing bodies, G/TBT/W/106, illustrated the mechanisms for transparency that existed in those bodies. Delegations had to bring to the Committee the reasons for their non-use of international standards as indicated in the Triennial Review. Such information was a pre-requisite for further progress. He suggested that the Committee come back to the issue at its next meeting.

131. The representative of the United States indicated that discussions for the preparation of the Seattle Ministerial were currently taking place in the General Council. A number of delegations in those discussions had highlighted issues relating to the work of the TBT Committee. The US delegation had done so too, and had indicated its hope that an agreement in the Committee would be reached on the transparency of international standards. She expressed her concerns about having protracted discussions on this issue in the Committee and about undermining one of the fundamental obligations of the Agreement, one to which her delegation attached tremendous importance. Whereas transparency could be debated for long time, as well as other issues pertaining to international standards, it was important to signal to the outside world that the Committee had furthered its understanding of the issue. She indicated that she would continue to work with other delegations to seek common grounds, and would prepare written comments for the next meeting.

132. The Committee took note of the statements made.

D. TECHNICAL ASSISTANCE UNDER ARTICLE 11

133. The Chairman drew attention to document G/TBT/W/93, a contribution from India which contained suggestions on technical assistance concerning notifications and procedures for information exchange.

134. The observer of the FAO informed the Committee of its technical assistance activities with respect to the Uruguay Round (Annex 2) so that delegations could inform their relevant authorities to participate in these events.

135. The Committee took note of the statements made.

E. SPECIAL AND DIFFERENTIAL TREATMENT UNDER ARTICLE 12

136. The Chairman drew attention to document G/TBT/W/103 prepared by the Secretariat in response to a request by the Committee to establish the state of knowledge concerning the technical barriers to market access of developing country suppliers, especially small and medium-sized enterprises, as a result of standards, technical regulations and conformity assessment procedures (G/TBT/5).

137. The Committee took note of the statement made.

VIII. TRADE FACILITATION RELATED TO THE TBT AGREEMENT (AS REQUESTED BY THE COUNCIL FOR TRADE IN GOODS)

138. The Chairman recalled that at the last meeting, as requested by the Council for Trade in Goods, the Committee had held discussions on Trade Facilitation related to the TBT Agreement. As agreed by the Committee, he had submitted a note on trade facilitation and the TBT Agreement to the Chairman of the CTG.

139. The representative of the European Communities drew attention to document G/C/W/136 submitted by his delegation to the Council for Trade in Goods. Pages 4-6 of the document provided the EC's view on trade facilitation with respect to the TBT Agreement. He said that although an objective of the Agreement was to facilitate trade flows, its traditional focus had been on ensuring that standards, technical regulations and conformity assessment procedures did not become unnecessary or disguised trade barriers. He recalled that in the course of reviewing the Agreement, his delegation and other Members had indicated interest in developing further its trade facilitation dimension in a more pro-active way. His delegation considered that the Committee should increase its role in stipulating recourse to international standardization and to recognition as equivalent of existing standards when international harmonization of standards did not proceed rapidly enough. It should actively support de-regulation and good regulatory practice, e.g. by resort to suppliers' declaration of conformity when a third party assessment was not absolutely necessary. He suggested that further development of the Agreement in these directions would simplify matters for traders, by increasing predictability and transparency of procedures and by reducing costs and delays in accessing markets.

140. His delegation proposed to simplify trade procedures by electronic means. He said that in order to maximise benefits of automation, it should be introduced across all aspects of the trade/government interface, including the regulatory interface and customs. As far as TBT-related issues are concerned, the ultimate aim should be for Members to enable traders to access electronically information on standards and regulatory requirements, and to use electronic data interchange (EDI) means in the regulatory/conformity assessment process. Information transmitted to customs and other agencies electronically in advance of goods arriving should include necessary data

on product compliance. This would speed up the regulatory process, increase transparency, and enable faster release upon import of goods subject to regulatory requirements.

141. He noted that the lack of coordination of different agencies concerned with import and export, and the resulting requirement to subject cargoes to multiple checks at different times and places, had been cited by traders as a major concern. He suggested that some rationalization of the procedural aspects of such controls was essential to improve trade flows, and IT-based means of information exchange between traders and government and between government agencies would make it more feasible.

142. His delegation suggested the following measures to streamline official controls by different agencies: (i) the submission of data or other information requirements either at export or import be a one time only action and to a single agency (normally customs or a trade department), which will then ensure onward transmission of data to other relevant agencies, and interagency coordination thereafter; (ii) goods entering a country are subject only to a single (if at all) intervention, normally by customs on behalf of other agencies. Administrations would ensure a level of coordination and delegation of controls to customs to enable all verifications to be done once only and in one place, and agencies operating health, safety and environmental checks on goods entering the ports would be part of such coordinated procedures.

143. He said that the benefits of a one stop procedure included the reduction of delay and cost, efficient compliance and cooperation, easier alignment of traders' computer networks with the receiving agency, optimal use of administrations' resources and personnel, and improvement in the control levels and results. He concluded that the EC proposals would take into account developing country needs. He invited views from delegations, and said that discussions on these proposals would take place mainly in the CTG.

144. The representative of Japan shared the EC idea to reduce the cost of industries as a result of regulatory procedures. However, he said that the number of procedures was not the point, and a better way of approaching the issue should be to promote the use of electronic means.

145. The representative of Canada agreed that trade facilitation could offer benefits to governments, in terms of efficiency and revenues, to SMEs and other traders, in terms of reduced costs and smoother trade. His delegation's approach on trade facilitation was to examine how the WTO could add value and fill gaps in this area with its exiting rules. In this regard, the TBT Agreement was one of the instruments to facilitate trade. He noted that the decisions which had been taken in the Committee at the present meeting would support trade facilitation. He welcomed the EC paper, and in particular the point related to the recognition of equivalence of exiting standards.

146. The representative of the United States welcomed the Canadian remarks. However, she raised concerns about how the discussions on trade facilitation in the CTG could be coordinated with and transmitted to the work of the TBT Committee, in particular those points related to the exiting discussions of the Committee, i.e., international standards and equivalency. She invited the EC to discuss those issues in the Committee, and appealed to delegations to inform the Committee on any discussions of TBT related issues in other Committees.

147. The representative of Chile said that trade facilitation was an important issue, and welcomed the information provided by the EC. However, he sought that all TBT related matters should be discussed in the TBT Committee, or relevant information should be provided so that the Committee could take note of the discussions held in other Committees, and ensure a consistent approach.

148. The Chairman said that trade facilitation would be kept in the Agenda of the Committee.

149. The Committee took note of the statements made.

IX. OTHER BUSINESS

150. The representative of Chile informed the Committee that the enquiry point of Chile had been changed to the Foreign Trade Department, Ministry of Economy, and that the Directorate-General of International Economic Relations, Ministry of Foreign Affairs, was responsible for coordinating international trade negotiations with regard to TBT (G/TBT/2/Add.16/Supp.1).

151. The Committee took note of the statement made.

X. ELECTION OF OFFICER

152. The Committee elected Mr. Mohan Kumar (India) Chairman for 1999.

153. The Chairman suggested that the next meeting of the Committee be held in the week of 7 June 1999, back to back with the Symposium on Conformity Assessment Procedures.

ANNEX 1

PROPOSALS RELATING TO THE MEETING ON PROCEDURES FOR INFORMATION EXCHANGE HELD ON 14 SEPTMEBER 1998

A. Proposal concerning the list of Enquiry Points (document G/TBT/ENQ/)

1. *The email addresses of enquiry points should be provided where available, in order to be included in document G/TBT/ENQ/ .*

B. Proposals concerning Point III on Notification Procedures in Document G/TBT/1/Rev.5

2. Item 1 on Format and Guidelines, Decisions Item (iii), on page 11

- To replace "Article 2.10.1: adopted technical regulations …" with *"Article 2.10.1: technical regulations adopted for urgent problems…".*

- To replace "Article 3.2: proposed or adopted technical regulations ..." with *"Article 3.2: proposed technical regulations or technical regulations adopted for urgent problems…".*

- To replace "Article 5.7.1: adopted procedures for assessment of conformity …" with *"Article 5.7.1: conformity assessment procedures adopted for urgent problems…".*

- To replace "Article 7.2: proposed or adopted procedures for assessment of conformity …" with *"Article 7.2: proposed procedures for assessment of conformity or conformity assessment procedures adopted for urgent problems …".*

3. Item 4 on Translation of Documents Relating to Notifications and Address of Body Supplying the Documents, Decision (c), on page 16

"Members shall indicate under point 11 of the WTO TBT notification form the exact address, *where available, email address*, telephone and fax numbers of the body responsible for supplying the relevant documents if that body is not the enquiry point."

4. Point (v) of the table on page 12:

Currently reads: "Title of the proposed or adopted of the notified document technical regulation or procedures for assessment of conformity. Number of pages in the notified document. The language(s) in which notified documents are available."

To read: "*Title of the proposed or adopted technical regulation or procedure for the assessment of conformity that is notified*. Number of pages in the notified document. The language(s) in which notified documents are available. *If a translation of the document is planned, this should be indicated. If a translated summary is available, this too should be indicated*."

5. Item 5 on Processing Requests for Documentation on page 16

Recommendation (b):

"Any requests for documentation should be processed if possible within five working days. If a delay in supplying the documentation requested is foreseen, this should be acknowledged to the requester, *along with an estimate of when the documents can be provided*."

6. New Recommendations (c) and (d) under Item 5 on page 16

"(c) Email requests for documentation should include name, organization, address, telephone and fax numbers, and email address in the request; and

(d) Electronic delivery of documentation is encouraged and requests should indicate whether an electronic version or hard copy is desired".

C. Proposals concerning Point IV on Procedures for Information Exchange in Document G/TBT/1/Rev.5

7. Item 2 on Booklets on Enquiry Points, Recommendation (b)(i)on page 19

Replacing "Objective, name, and address of WTO TBT enquiry point(s)", with *"Objective, name, address, telephone number, fax number, and email and internet addresses, if available, of WTO TBT enquiry point(s)".*

ANNEX 2

FAO TECHNICAL ASSISTANCE ACTIVITIES

FAO is currently developing a Uruguay Round Umbrella Training Programme for completion in 1999. The training programme will aim at enhancing national capacities on WTO matters so that countries will be in a stronger position to meet their obligations and accrue the benefits under the existing WTO Agreement and are better prepared to participate in the next round of Multilateral Trade Negotiations.

The content of the training programme will address current Uruguay Round Agreements and their implications for agriculture and trade; emerging issues and topics relevant to future negotiations; special issues of regional and sub-regional concern, as well as sources of information on the Uruguay Round Agreements.

The implementation of the entire Umbrella Programme will entail the organization and execution of 15 sub-regional training courses involving Africa, Asia and the Near East, Europe and Latin America. The training programme will be designed taking into account other training in this field conducted by other international institutions as well as the more sector-specific technical and training assistance provided by FAO to individual member countries. Each course will address general topics on agricultural trade and the WTO as well as three parallel sessions, each of three days duration, covering the Agreement on Agriculture, TRIPs and the SPS and TBT Agreements.

FAO is also continuing, through its regular programme and technical cooperation programme to provide technical advice and assistance in strengthening participation in the work of Codex, training of food hygiene and the Hazard Analysis Critical Control Point (HACCP) System, risk analysis and other food control capacity building requirements.

FAO is organizing, in cooperation with WHO and WTO, an intergovernmental conference on International Food Trade Beyond 2000 which will take place 11-15 October 1999 in Melbourne, Australia. The aim is to achieve the full involvement of Member Governments in existing and proposed activities related to the Codex Alimentarius and WTO. One objective of the Conference will be to enhance the capacity of developing countries both to enjoy the benefits they accrued on signing the Uruguay Round Agreements and to fulfil their commitments. The Conference will address how food quality and safety issues affect trade, health and development at both domestic and international levels. The Conference will review the response to the earlier 1991 FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade and the action taken by these two organizations, with WTO, to assist Member Governments in meeting their SPS and TBT obligations. These will necessarily entail a full analysis of current Codex, SPS and TBT obligations. These will necessarily entail a full analysis of current Codex, SPS and TBT procedures and of the prospects for further change. Carried out within the context of an international conference, such a review should generate coherent recommendations on satisfactorily based approaches to promoting better quality and safer foods in domestic and international trade. The brochure on the Conference was provided for the members of the Committee.