

WORLD TRADE ORGANIZATION

RESTRICTED

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Committee on Technical Barriers to Trade

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MINUTES OF THE MEETING HELD ON 25 FEBRUARY 2000

Chairman: Mr. Mohan KUMAR (India)

1. The Committee on Technical Barriers to Trade held its Nineteenth meeting on 25 February 2000.

2. The following agenda, contained in WTO/AIR/1240 was adopted:

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

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

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

II. STATEMENTS ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

5. The representative of Thailand expressed concern regarding the proposed legislation by the United States (US) to have the English name of the Country of Origin indelibly marked on imitation jewellery (G/TBT/W/128). He noted that the US Harmonized Tariff Schedule (HTS 7117) covered imports of "imitation jewellery, of base metal, whether or not plated with precious metal", including continuous length rope, curb, cable, chain and similar articles ... whether or not set with imitation pearls or imitation gemstone, suitable for use in the manufacture of imitation jewellery. The heading also covered toy jewellery, religious articles, and plastic necklaces.

6. He recalled that in November 1999, the US Senate had passed a legislation with its primary purpose to liberalize US trade with Africa. The US House of Representatives had already passed its own version of this legislation. During the Senate debate on the bill, a new provision had been added to require all costume jewellery (described above) entering the customs territory of the US to "have the English name of the country of origin indelibly marked in a conspicuous place on such jewellery by cutting, dye-sinking, engraving, stamping or some other permanent method to the same extent as such marking is required for Native American-style jewellery under Section 13 4.4 3 of Title 19, Code of Federal Regulations, as in effect 1 October 1998".

7. He noted that the proposed legislation had been amended at the request of the Senator from Rhode Island in which the city of Providence was a center for the manufacturing of costume jewellery. He believed that this had been the request of the US industry in an effort to harass importers and make them more expensive by requiring indelible marking on the products rather than on the packaging.

8. He said that the American Retail Federation and individual US retailers had objected to this proposed legislation, and as a result, the Senate Finance Committee had negotiated the compromise language to require marking "to the same extent as such marking is required for Native American-style jewellery under US Customs regulations". US Customs Regulations - 19 Code of Federal Regulations section 134.43 (c)(2), required that native American-style jewellery be "indelibly marked with the country of origin by cutting, dye-sinking, engraving, stamping or some other permanent method. The indelible marking must appear legibly on the clasp or in some other conspicuous location, or alternatively, on a metal or plastic tag indelibly marked with the country of origin and permanently attached to the article".

9. However, this regulation allowed for two exceptions. First, under the US Code Section 1304(a)(3), the US Secretary of the Treasury (acting through the Customs Service) could prescribe regulations that authorize the exception of any article from the requirements of marking if such article: (i) is incapable of being marked; (ii) cannot be marked prior to shipment to the United States without injury; (iii) cannot be marked prior to shipment to the United States, except at an expense economically prohibitive of its importation; or (iv) the marking of a container of such article will reasonably indicate the origin of such article.

10. Second, under the Customs regulations governing native American-style jewellery, a subsequent provision - 19 Code of Federal Regulations Section 134.43(c)(3), the following exception was allowed: if it was technically or commercially infeasible to mark in the manner specified in paragraph (c)(2) of this section, or in the case of a product from a NAFTA country (Canada or Mexico), the article could be marked by means of a string tag or adhesive label securely affixed, or some other similar method. He understood that the Customs Service would grant such exceptions (to allow alternate ways of showing country of origin) only if importers could show that it was physically impossible or excessively expensive to mark the country of origin on the jewellery.

11. He raised concerns that if the provision became law, the US jewellery manufacturers concerned would give pressure on the Customs Service to write implementing regulations burdensome for importers, e.g. to require importers to show substantial evidence that indelible marking on the jewellery was physically impossible or excessively expensive in order to take advantage of the exceptions.

12. It was likely that foreign jewellery manufacturers would have no basis upon which to ask for the exceptions, and this would add cost to imported-jewellery. Even manufacturers who could ask for the exceptions would have to bear the expenses of petitioning the Customs Service to prove that they qualified. He believed that this unjustifiably imposed additional burden on foreign jewellery manufacturers, despite the fact that there was no sign that the current marking practices were insufficient or causing harm to the US industry. He suspected that the proposed legislation was designed to undermine foreign competition and raising prices to the US consumers.

13. He referred to Article 2.1 of the Agreement that "Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country", and believed that the proposed legislation and its exceptions were inconsistent with the provision regarding MFN treatment.

14. He drew attention to Article 2.2 that "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade ...". In his view, the proposed legislation was inconsistent with the provision by creating unnecessary obstacles to international trade.

15. He noted that under Article 2.9.2, Members would have the opportunity to comment on a draft technical regulation before it entered into force. He requested the US delegation to convey, as soon as possible, Thailand's opposition to the authority concerned (including the House Ways and Means Committee), and sought explanation and justification on the proposed legislation in writing.

16. The representative of Korea said that Korea was one of the major exporters of imitation jewellery to the US. He shared the concern raised by Thailand and sought information from the US.

17. The representative of Brazil drew attention to notification G/TBT/Notif.00/5 regarding a US dolphin safe tuna labelling requirement, and raised concerns about the nature of the US Decision. She noted that the proposal made a distinction between dolphin safe tuna and no-dolphin safe tuna. However, it was unclear whether the label requirement would be mandatory. She sought details of the draft, and recalled Brazil's position that eco-labelling should be applied on a voluntary basis, otherwise it could result in trade barriers. She proposed to discuss and analyse the issue of eco-labelling in the Committee, since it could represent a precedent to similar initiatives which could be prejudicial to developing countries.

18. The representation of the United States said that she had not received any advance warning about the issues raised by Thailand and Brazil concerning the marking of imitation jewellery and

labelling of dolphin safe tuna. She noted that both measures had been notified, and believed that the comments made were in response to the notifications. The notification on imitation jewellery marking was still open for comments. Therefore, she believed it would be inappropriate for her to provide a substantive reaction at the present meeting. She took note of the concerns expressed, and requested that the comments be made in writing, so that she could convey them back to her capital.

19. The representative of Brazil drew attention to notification G/TBT/Notif.99/578, and expressed concern on the draft regulation of the European Communities (EC) that prohibited the sale of certain toys made of soft PVC containing substances identified as phthalates. She noted that the decision was based on the technical report from the Scientific Committee on Toxicity, Eco-toxicity and the Environment (SCTEE), setting revised margins of safety values for phthalates, such as di-"isononyl" phthalate (DINP) and bis (2-ethylhexyl) phthalate (DEHP). However, the same report recommended at its conclusion that additional studies be carried out in order to gain more insight. She believed that in light of the uncertainty demonstrated by the latest available data, further research should be carried out in order to evaluate the associated risk. She concluded that the EC lacked substantial scientific evidence to justify such an extreme measure as a total prohibition of articles containing phthalates. If the objective of the measure was to ensure high level protection of child health as a matter of urgency, there should be stronger scientific evidence of the harm that could cause to children.

20. She noted that according to the SCTEE report, not all phthalates had the same effect on human health. There were differences e.g., in respect to the degree of exposure between DINP and DEHP phthalates, and the latter was also banned in Brazil. Furthermore, it appeared from another SCTEE report dated September 1999, that there was no certainty as to the risks associated with certain material used as a substitute for phthalates. She believed that the EC Decision to ban phthalates could have been made in a hasty manner, and questioned if the requirement under Article 2.2 that "Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade" had been taken into account.

21. The representative of Hong Kong, China said that Hong Kong, China was a major exporter of toys, and associated his delegation with the concern raised by Brazil. While he respected the right of Members to adopt technical regulations for legitimate objectives (i.e. the protection of human health and safety), he was also mindful of the obligations under Article 2.2 that regulations should not create unnecessary obstacles to trade and that relevant scientific and technical information be considered in assessing risk. He sought further information from the EC, including on the points stated in G/TBT/Notif.99/578 that "the Decision has a validity of three months and is renewable" and "the Decision is meant to provide immediate protection ... for as long as the decision-making process concerning the broader harmonized measures is complete".

22. The representative of Canada recalled that at the last two meetings, his delegation had raised questions with respect to draft European Communities Directives related to waste from electric and electronic equipments, and nickel cadmium batteries and accumulators. He informed the Committee that since then, his Government had consulted directly with the EC, requesting the EC Director General of Environment to furnish evidence on a scientific basis to justify the prescriptive measures provided for in the Directives. He regretted that no information had yet been provided.

23. He echoed the concern raised by Brazil related to the way in which the EC had used their own scientific recommendations to justify bans on phthalates. He believed that these bans could not be justified in terms of the advice from the EC's own scientific community.

24. The representative of Japan shared Canada's concern regarding the EC draft Directive on waste electric and electronic equipments, and waste batteries. While he agreed to the objective of preserving the environment, he was of the view that the draft regulation was unnecessarily

burdensome and could create trade barriers. He raised doubt as to its consistency with the TBT Agreement. He noted that the draft regulation retroactively obliged firms to recollect waste electric and electronic products sold in the past, and would impose uncertainty to the industry. His government would monitor the situation closely, and urged the EC to handle the issue adequately.

25. The representative of Mexico expressed interest in the issues raised by Brazil and Canada, and sought further information from the EC.

26. The representative of Egypt raised objection to the EC prohibition on imported heavy metals, especially non-ferrous metals. She noted that there was no risk assessment done regarding this issue.

27. The representative of the United States associated her delegation with the comments made by Canada and Japan regarding the EC draft Directive on waste and the proposed ban on the use of cadmium in batteries. She recalled that she had expressed relevant concerns at previous meetings. She urged the EC to take into consideration the comments made, and that any eventual draft would be notified and in consistence with the obligations under the Agreement.

28. The representative of the European Communities recalled that the issue of phthalates (substances to soften PVC used in toy products) had been in existence for some time. In 1998, the EC had gathered scientific evidence that there was a high health risk from toys and child care articles containing certain phthalates intended to be placed in the mouth of young children under the age of three. The scientific evidence had expressed some concerns on the most commonly used phthalates DINP and serious concerns on DEHP. On the basis of this evidence, the EC had examined two approaches to reduce the risks to children from phthalates. One was to establish limits for migration of phthalates from toys, and the second was to ban the use of phthalates in toys. The first approach required testing methods to ensure compliance. The testing methods developed had not been found sufficiently good for regulatory purposes. That was why the present draft EC regulation adopted the approach of a ban and stipulated that certain phthalates would not be used in toys and certain child care articles.

29. He explained that concerning the procedural developments, the EC was going ahead with an amendment to EC Directive 76769 which would introduce a ban on a long-term basis unless new scientific evidence was gathered. As the EC procedures took long time to come into effect, simultaneously short-term measures were taken to introduce a ban. Under the product safety Directive 9259, Member States were required to take temporary measures to implement the prohibition. He said that he would transmit the comments made to his authorities.

30. Referring to the draft Directive on waste collection requirements for electrical and electronic equipment, he said that it was in the process of becoming a proposal. The issue of how to deal with waste batteries concerned industries, and his authorities were still elaborating on a proposal on how to deal with this issue. He would report back to his capital on the concerns expressed.

31. He drew attention to document G/TBT/W/116 concerning a Japanese legislation on fishing vessels and its implications to trade on commercial marine engines. He said that bilateral discussions had been taken place. However, he requested the Japanese delegation for an update on the matter, as it was still an issue which concerned his government. He believed that the legislation, as it stood, discriminated against foreign fishery engines and constituted trade barriers.

32. He drew attention to an Egyptian Regulation No. 252593 on leather footwear and an additional Ministerial Decree No. 34399 (issued in July 1999 and entered into force in August). He noted that the Decree imposed national standards on the certification of the hide of footwear. He said that these requirements were not based on international standards, and were not possible for producers to meet.

33. The representative of Japan said that his Government was of the view that the change of calculation methods of engine size allowed for fishing vessels did not have significant effects on trade, and was not an issue that required notification under the Agreement. He informed the Committee that his authorities had provided explanations to the EC during bilateral consultations. A study group was established to review the regulation as of March 2000 with participation from the fishing industry, domestic and foreign engine manufacturing industries. He noted that the regulation should be evaluated from the viewpoint of reforming the fishing industry regulations.

34. The representative of Egypt stated that it was the first time that she heard any problems related to the Decree on leather footwear. In Egypt, as a general principle, any decree issued tended to protect Egyptian consumers, prevent smuggling, protect suppliers from counterfeiting or commercial fraud. She noted the concerns made, would transmit them back to her capital, and they would be addressed either bilaterally or at the next meeting.

35. She raised concern about the EC Regulation 881/98 on Traditional Terms, and believed that it could pose barriers to trade. She suggested that instead of the utilisation of traditional terms, it could be easily substituted with registered trademarks to protect consumers.

36. Referring to biologically treated products, she stated that her government believed that labelling could be a good solution to provide information defining that a product was biologically treated, so as to ensure consumers' interests.

37. The Committee took note of the statements made.

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

38. The Committee concluded its Fifth Annual Review on the basis of the background documentation contained in G/TBT/8.

IV. FIFTH 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 – FIFTH EDITION 2000)

39. The Chairman drew attention to documents G/TBT/CS/1/Add.4, G/TBT/CS/2/Rev.6 and the Fifth 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 in 1999, 9 standardising bodies from 5 Members had accepted the Code of Good Practice, and up until the end of 1999, 115 standardizing bodies from 79 Members had accepted the Code.

40. He stated that in relation to the Code of Good Practice, the Secretariat had been informed by the ISO that in addition to the WTO TBT Standards Code Directory, information concerning notifications made by standardizing bodies under paragraph J would be published and updated regularly on a new section of the ISO Online web-site called Standards and World Trade ("<http://www.iso.ch/wtotbt/wtotbt.htm>").

41. The Committee concluded its Fifth Annual Review of the Code of Good Practice for the Preparation, Adoption and Application of Standards, and took note of the statements made.

V. TECHNICAL ASSISTANCE

42. The Chairman recalled that at the First Triennial Review of the Agreement (G/TBT/5), the Committee had held discussions on technical assistance and special and differential treatment. The Committee had noted that certain Members, especially developing country Members, encountered difficulties in the implementation and operation of the Agreement. Technical assistance should be provided to requesting Members, particularly least developed country Members, on the preparation of technical regulations, the establishment of national standardizing bodies, regulatory bodies, or bodies for assessment of conformity, the methods by which technical regulations of other Members could best be met, the participation of such Members in the international standardizing bodies, and the access to systems for conformity assessment, with a view to increase the overall effectiveness of the TBT Agreement.

43. The Committee had noted that technical assistance activities of the WTO should be coordinated with other international and intergovernmental organizations. In this respect, special attention should be given to the development of human and institutional resources, in particular, with respect to conformity assessment procedures.

44. Regarding special and differential treatment, the Committee had agreed to consider including in its work programme, which would be reviewed during the Second Triennial Review of the Agreement, the matter of the use of measures to engender capacity building in developing country Members, including the consideration of measures relevant to transfer of technology to these countries, for the purpose of preparation and adoption of technical regulations, standards or conformity assessment procedures, taking into account their special development, financial and trade needs.

45. In order to enhance the implementation of Article 11, the Committee had agreed to invite Members to exchange information regarding the implementation of the provision, including to communicate to the Committee annually any information concerning their national and regional technical assistance programmes. Members that required technical assistance had been invited to inform the Committee of any difficulties they encountered in the implementation and operation of the Agreement and the kind of technical assistance they would need. Other Members had been invited to contribute to the technical assistance process by sharing their experience in the implementation and operation of the Agreement.

46. In order to follow up what had been discussed and agreed by the Committee at the First Triennial Review, and to promote information exchange, and to facilitate discussion in the lead-up to the Second Triennial Review on technical assistance, he proposed that a WTO Workshop on Technical Assistance and Special and Differential Treatment in the context of the TBT Agreement be organized this year, just before, or if not, just after the summer break.

47. The Workshop would provide the opportunity for Members that required technical assistance to inform other Members and relevant organizations any difficulties they encountered in the implementation and operation of the Agreement, and the kind of technical assistance they would need. At the same time, Members and international organizations which provided technical assistance in the TBT area could make use of this occasion to communicate with the Committee any information concerning their technical assistance programmes. The objective was to help better targeting technical assistance, avoid duplication and promote further cooperation and coordination among donor Members and organizations aimed at developing efficient and effective technical assistance programmes on the various areas related to the Agreement.

48. In order to facilitate the organization of the Workshop and aiming at obtaining a good result, he proposed that a questionnaire would be circulated to invite Members, in particular developing

country Members, to identify difficulties they encountered in the implementation and operation of the Agreement and to specify the kind of technical assistance they would need.

49. He proposed to invite speakers from both developed and developing country Members of different regions and relevant organizations. Topics of the presentations could be focusing on problems and needs with respect to the implementation and operation of the Agreement by developing country Members, in particular the least-developed country Members, and their participation in international standardizing bodies, access to systems for conformity assessment, development of human and institutional resources and other capacity building issues.

50. He suggested that a draft programme of the Workshop be prepared by the Secretariat, taking into account discussions held at the First Triennial Review, meetings, workshop and symposium, relevant submissions by Members since the First Review and the information obtained from the questionnaire. The draft programme would be circulated to delegations for comments and be finalized by the end of April, therefore enough time would be provided for the preparation of the Workshop. He invited Members who wished to nominate speakers at the Workshop to make presentations on the various topics to contact him or the Secretariat before mid-April. In order to have better participation of developing country Members and to finance speakers from these Members, he sought assistance from delegations that could have the possibility to provide funding.

51. The representative of Chile welcomed the initiative of the Chairman. He invited developed country Members which had a system in place for the implementation and administration of the Agreement to inform the Committee of the work they had been through. He believed that would be a useful way of technical assistance.

52. The Chairman supported the view expressed by Chile, and said that this would be one of the objectives of the Workshop - to share information.

53. The representative of Canada welcomed the Chairman's initiative. However, he believed that the questionnaire for the Workshop did not need to be complex. One or two comprehensive questions outlining the requirements for technical assistance and the problems faced in implementing the Agreement would be sufficient. In this regard, he looked forward to receiving information from Members, particularly developing country Members, that had raised concerns during the preparation of Seattle Ministerial Conference about the problems of participation in international standardization bodies. He noted that there might have been a similar survey done by the World Bank, and invited the Bank to make available the information to the Committee at the Workshop.

54. The representative of Panama welcomed the initiative of the Workshop, and said that at the regional level, the standardizing bodies in her region were engaged in a formal dialogue, and could contribute to the Workshop. They had identified difficulties regarding consistency in the preparation and acceptance of standards used at the regional level. She requested developed country Members to support developing countries by transfer of knowledge and carrying out workshops.

55. The representative of the European Communities supported the Chairman's initiative. He reiterated his delegation's desire to promote the transparency of technical assistance, and believed that it would be useful to identify gaps or duplication, and to know what was planned. The overall objective would be to have a picture on the kind of framework for technical assistance by the end of the Second Triennial Review.

56. The representative of Egypt believed that the kind of technical assistance beneficiary to developing countries should exceed the usual form of lecture, data assembling, preparation and dissemination of reports, and should take the form of positive assistance granted to help implementing the agreement. It should be tackled in an effective way so that developing countries could positively

achieved the utmost benefit from the implementation of Agreement, including in the field of making use of electronic means for information exchange and for the purpose of participating in international standards preparation, establishing conformity assessment systems according to the international requirements, building the mechanisms for technical regulations setting, and sound infrastructure as well as active enquiry points. To this end, a criterion should be set for the detection of the efficiency of technical assistance granted and the results achieved. It would be appropriate that such a criterion could take the form of practicable executive programmes.

57. The representative of the United States welcomed the Chairman's initiative, and found the Egyptian statement interesting in terms of the possible topics to be addressed. She supported Canada's view that the questionnaire should not be a detailed survey which might prejudice the outcome of the Workshop.

58. The Chairman assured that the survey would be to get a sense of the actual difficulties, problems and issues that confronted developing countries, and in particular the least developed countries. The questionnaire could provoke response, specially from the less advantageous countries which did not have missions based in Geneva.

59. The representative of Brazil associated herself with the previous speakers in support of the Workshop. She shared the view that it was important to identify the needs and avoid duplications of technical assistance carried out by different organizations, such as the World Bank or UNCTAD.

60. The representative of South Africa welcomed the initiative to organize the Workshop. He believed that in general, technical assistance should be integrated into the activities of Members in the regional context, as trading within a region was as important as trading in the global market.

61. The representative of Nigeria welcomed the Workshop and hoped that it would assist his country to implement the Agreement. He associated himself with the Egyptian statement.

62. The representative of Australia supported the proposal by the Chairman.

63. The representative of Mexico welcomed the Chairmen's proposal, but warned that the questionnaire should not be a reason for a delay of the Workshop.

64. The representative of ISO said that ISO had a substantial technical assistance programme in coordination with its Committee of Developing Countries. ISO was ready to provide the relevant information, cooperate with the WTO Secretariat, and participate in the Workshop.

65. The representative of the World Bank recalled that the World Bank, IMF and WTO had cooperative arrangements, including the coherence agreement of the 1994 Ministerial Meeting of Marrakesh. He said that the World Bank had started to identify, in the area of standards, the technical barriers to trade. He believed that the new work programme at the World Bank (as contained in G/TBT/W/130) could be of use to the Committee as it proceeded with the Second Triennial Review and the Workshop.

66. The Committee agreed to hold a "Workshop on Technical Assistance and Special and Differential Treatment in the context of the TBT Agreement". A questionnaire would be sent out for Members to provide information concerning any difficulties they encounter in the implementation and operation of the Agreement, as well as the kind of technical assistance they might need.

67. The Chairman drew attention to Article 10.6, and informed the Committee that following the discussions held at the last meeting, the Secretariat had undertaken action to further the implementation of the provision, and especially to draw the attention of developing country Members to notifications

related to products of particular interest to them. A document G/TBT/W/124 had been circulated inviting developing country Members to provide to the Secretariat with information concerning the products of particular interest to them and the electronic mail addresses of their authorities designated to receive the notifications. He reminded delegations to provide such information in order that the Secretariat could carry out its task.

68. The Committee took note of the statements made.

VI. PREPARATION FOR THE SECOND TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE TBT AGREEMENT UNDER ARTICLE 15.4

69. The Chairman drew attention to Article 15.4 which stated that "Not later than the end of the third year from the date of entry into force of the WTO Agreement and at the end of each three-year period thereafter, the Committee shall review the operation and implementation of this Agreement, including the provisions relating to transparency, with a view to recommending an adjustment of the rights and obligations of this Agreement where necessary to ensure mutual economic advantage and balance of rights and obligations, without prejudice to the provisions of Article 12. Having regard, *inter alia*, to the experience gained in the implementation of the Agreement, the Committee shall, where appropriate, submit proposals for amendments to the text of this Agreement to the Council for Trade in Goods".

70. He recalled that the First Triennial Review carried out at the end of 1997 had provided the first opportunity to review the operation and implementation of the Agreement. The Committee had examined the status of implementation by Members and assessed the extent to which the operation of the Agreement facilitated trade in all Members. The Committee had adopted a number of decisions, recommendations and arrangements aimed at better operation and implementation of the Agreement (G/TBT/5). Since then, the Committee had managed to proceed with certain activities agreed and continued discussions on the elements to be included in the Review. Twenty-five papers had been submitted by delegations containing national experience, viewpoints, and specific proposals in different areas. A stocktaking paper had been prepared by the Secretariat to facilitate discussions (G/TBT/SPEC/11 and Add.1).

71. He noted that the Committee was mandated to conduct the Second Triennial Review before the end of 2000. He invited delegations who wished to submit further papers or proposals for the Review to do so as soon as possible, so that enough time would be provided for discussions.

72. He recalled that an informal meeting of the Committee was held on 25 January 2000 in order to take stock of the work programme undertaken by the Committee since the First Triennial Review and to share views with Members on the conduct of the Second Triennial Review. At that meeting, a number of Members had suggested that the Second Triennial Review should be a continuation of the First one, and indicated certain issues they thought were important to be included. These issues included: (i) implementation of the Agreement; (ii) notifications and procedures for information exchange; (iii) international standards and international standardizing bodies; (iv) conformity assessment procedures; (v) good regulatory practice; (vi) technical assistance; and (vii) special and differential treatment. He emphasized that the issues listed were only from his observations at the meeting, and sufficient opportunity would be provided for consultation on any other issues that delegations might like to raise related to the operation and implementation of the TBT Agreement.

73. The representative of Egypt said that the scope of the list was wide. She would transmit it to her capital and might come back with some ideas.

74. The representative of Chile asked if the issue on good regulatory practice related to technical regulations only. In principle, he did not find it appropriate for the Committee to discuss all the

different regulations within a country. Some regulations dealt with administrative matters, services and medical services, etc. that were not covered under the TBT Agreement. The Committee should limit itself to the discussions on matters under the Agreement.

75. The representative of Mexico associated himself with the previous speaker, and said that it was important to clarify the concept of good regulatory practice. He believed that Article 15.4 stated clearly the scope of the Triennial Review and that the Committee should confine itself within it.

76. The representative of the European Communities recalled that good regulatory practice was a proposal of his delegation. He believed that there was the possibility within the Agreement to promote regulatory best practice. The Second Triennial Review could be an opportunity to assess the feasibility to develop explicit guidelines on that. The Committee could explore the issue on a step by step basis. As a first step, he proposed that the essential elements for regulatory best practice be presented and discussed, then sectors or product categories be identified where technical regulations could be limited to certain minimum level of requirements.

77. The representative of New Zealand believed that there could be issues among the topics which could not be identified immediately. He gave the example that when discussing international standardization, other relevant issues could be taken into account. He recalled the New Zealand paper (G/TBT/W/88) on the concept of equivalency and how it could be applied to voluntary standards as an interim measure where international standards did not exist. The issue had received interest from delegations, including Thailand which had made specific comments. He said that he would come back to the subject, and wished that it could be advanced as part of the Second Triennial Review.

78. The Chairman reiterated that the points he had identified did not constitute a closed list. He did not believe that the Committee had to determine a definite list at this stage, and believed that the concept of equivalency of standards could be included as an additional point to the list.

79. The representative of the European Communities expressed the EC's wish to discuss the issue of labelling within the framework of the Review. He said that the provisions on labelling in the Agreement were limited, and recalled that at previous meetings, labelling issues had been raised frequently. His delegation recognized that there were problems concerning labelling, and believed that it would be useful to have a clearer guidance on the level of information necessary for consumers. He said that a paper would be available before the next meeting to make the EC position clearer.

80. The representative of Latvia agreed with the evolving list proposed by the Chairman, and that the discussions on good regulatory practice should be related to technical regulations under the Agreement. She supported the EC's view that labelling should be an issue to look into, because the problem of labelling was crucial for different sectors and different products, especially foodstuffs.

81. The representative of Mexico noted that the list suggested by the Chairman was an indicative list and was not something that the Committee had to agree upon. He believed that it was necessary to see how discussions on the different issues progress. Some subjects might interest some countries, and others might interest other countries. Referring to the EC's proposal on labelling, he recalled his delegation's position which was well known.

82. The representative of Canada associated his delegation with the comments made by New Zealand on the subject of equivalency. He noted that the EC's proposals on good regulatory practice and labelling contained two complex subjects. In order to have consideration domestically and productive discussions in the Committee, it was necessary to receive from the EC descriptions on the issues and what the EC wanted to see as the outcome.

83. The representative of Chile agreed that more information was needed on the EC proposals.

84. The representative of Japan supported the list presented by the Chairman, and the fact that it was left open. He invited the EC to provide information on the content, intention of its proposal on labelling and which direction the EC wished to take the discussion, so that comments could be made.

85. The Chairman invited the EC to submit papers on its proposals for the consideration of the Committee. He suggested that the papers could take into account of the comments made.

86. The representative of Hong Kong, China noted that the parameters of the Triennial Review were clear in Article 15.4, which were to review the operation and implementation of the Agreement. He agreed with the Chairman that the list of items was no more than an illustrative list to assist structuring discussions. He believed that the list should be open ended, and flexibility was required. He expected the discussions to evolve over time driven by submissions and proposals. At the present stage, his delegation had an open mind, and he found the additional items raised by New Zealand and the EC interesting.

87. The representative of Malaysia agreed broadly with the areas outlined by the Chairman, and that the list was not a closed one. He believed that after the summer break, discussions would become more matured. He said that the process of the Review should be Member driven. Submissions and proposals would be made by Members, including ASEAN country Members. He was interested to look into the proposal by the EC on labelling. However, he recalled his delegation's position on the issue. He noted that Article 15.4 did not mention the extension of the scope of the Agreement. He reiterated that his delegation did not wish to see any expansion of the scope of the Agreement into areas where the WTO did not have jurisprudence or jurisdiction.

88. The representative of the European Communities clarified that the EC proposals did not carry the intention to expand the scope of the Agreement. The aims were to ensure the effective application of the Agreement and to overcome problems in its operation, and they were in line with Article 15.4. He agreed that the Committee had to be flexible at this stage. Initially, the Committee should look at the various issues raised by delegations, and perhaps later in the year, the subject matters had to be narrowed down because of time constraints.

89. The representative of Australia supported the points on the indicative list, and stated her delegation's intention to contribute actively to the Review. She suggested that the Committee needed to look into a programme which could be achieved within this year, and be precise in its collective expectations for the Review. If complex and contentious issues were put on the agenda, the Committee should identify the key elements, rather than allowing the complicated distractions to hold up progress. It was important for the Committee to reach agreement on a realistic set of issues that could yield to resolve problems and reaffirm the effectiveness of the WTO system. She did not expect that the Review could resolve all the issues and problems faced by Members. However, she believed that the Agreement was generally working effectively, but there was scope for enhancing its operation and implementation within the framework of the Agreement as it stood.

90. The representative of the United States supported the indicative list, and that the Second Triennial Review would be a continuation of the first one. She recalled that a good report was issued at the conclusion of the First Review which had assisted Members to start off with a common understanding of the issues that had been identified at that time. A number of papers had been submitted since then, and they were still on the table for consideration. Since these paper might linked to different categories of the indicative list, she wondered how discussions would be organized so that Members could know when these papers would be discussed.

91. The Chairman understood that it was necessary to be flexible in the Committee. If a delegation wished to submit a paper on an issue that it considered relevant and if it facilitated

discussions, it should be welcomed. He suggested that document G/TBT/SPEC/11 and Add.1 which compiled all the papers submitted could help organizing discussions.

92. The Committee took note of the statements made.

A. IMPLEMENTATION OF THE AGREEMENT

93. The Chairman proposed to start discussions on the implementation of the Agreement. He drew attention to Article 15.2 which provided that "Each Member shall, promptly after the date on which the Agreement enters into force for it, inform the Committee of measures in existence or taken to ensure the implementation and administration of the Agreement" and document G/TBT/1/Rev.6 which contained the relevant decisions taken by the Committee concerning the contents of these written statements. He informed the Committee that up until present, 73 Members had submitted their statements and 62 Members had not yet submitted theirs. He recalled that at the First Triennial Review, it had been noted that certain Members might face difficulties in providing the information and needed clarification of the notification requirements. Certain Members might also encounter difficulties and problems regarding the measures and arrangements to ensure the implementation and administration of the Agreement by relevant authorities and non-governmental standardizing bodies. The Committee had agreed that an exchange of information and experience among Members would help to identify such problems and difficulties, and provide assistance to those Members seeking it.

94. In order to ensure the submission of statements, the Committee had agreed to the following: (a) Members who had not submitted such information were expected to do so without further delay; and that they were invited to indicate any difficulties and needs in this respect, so that technical assistance as appropriate could be provided; and (b) for the purpose of information exchange, Members were invited, on a voluntary basis, to make oral presentations to further elaborate on the arrangements they had in place to achieve an effective implementation and administration of the provisions of the Agreement. This exercise would be a useful means of sharing information with respect to good practices and in meeting the needs of those Members that could be seeking assistance. He regretted that so far, no submissions had been received in this respect.

95. The representative of the European Communities was concerned about the fact that only around half of the Members had informed the Committee of their measures to implement the Agreement. He believed that progress in that area was vital, and the reasons why a large number of Members had not managed to notify should be understood. This was also related to the issues that were addressed under technical assistance.

96. The Committee took note of the statements made.

B. NOTIFICATIONS AND PROCEDURES FOR INFORMATION EXCHANGE

97. Concerning notification procedures with respect to draft technical regulations and procedures for assessment of conformity, the Chairman recalled that at the First Triennial Review, the Committee had reiterated the importance of compliance with the relevant provisions of the Agreement, the agreed format and guidelines (G/TBT/1/Rev.6), and had stressed that timely notification at the drafting stage was essential to ensure transparency. The Committee had also stressed the importance that "Members shall without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account". The Committee had agreed to examine any problems faced by developing country Members in the implementation of the provisions regarding notification obligations so that technical assistance could be provided as appropriate.

98. He noted that in 1999, 669 notifications were made, and the average comment period was 46.5 days (while the recommendation of the Committee was 60 days). The periods provided were: 36 percent with less than 45 days; 25 percent with 45-59 days; 24 percent with 60 days or more; and 15 percent with no specified or lapsed period. While 5 percent of the notifications were made under Articles 2.10 and 5.7 due to urgent problems.

99. He drew attention to documents G/TBT/W/84 and 93 (submissions by Thailand and India) on notifications in which both had indicated the importance of cooperation and coordination of national enquiry points. He informed the Committee that up until present, 96 Members had provided information on the establishment of their enquiry points and 39 Members had yet to provide such information. He urged these Members to provide the said information at an early stage.

100. The representative of Egypt drew attention to document G/TBT/W/117 submitted by Canada on "Voluntary Service Standards for TBT Enquiry Points". She said that her authorities had studied the document, and considered the time-period of 24 to 48 hours as benchmarks/service standards a very short periods, specially for countries which did not use electronic means of communication. Even if Egypt was to reconsider the Canadian proposal, technical assistance would have to be provided to enquiry points in order that they could meet this target.

101. The representative of the European Communities noticed that the total number of notifications had not increased in the last years. However, the number of Members notifying had increased, which he thought was a positive development. He noted that there had been only a small number of notifications originating from local government bodies, although notification obligations for local government bodies existed. As notification procedure was important, and that it was not working as well as it could, he suggested that the Committee should make more periodic reviews on how well the system worked, identify and address any problems.

102. He made the following proposals: (i) regarding information required to analyse notifications, he found that in many cases, it was necessary to go through different procedures in order to obtain the draft regulations. He proposed that it would be appropriate if the draft regulation be automatically sent with the notification to speed up the process. He recognized that this could create problems for the Secretariat, and the Committee should find ways to overcome the problems and not to overload the Secretariat. He suggested that the texts could be sent as far as possible in electronic form. However, if a country desired to send them in paper form, that should also be feasible.

103. (ii) Regarding the comment periods, he proposed that the period of 60 days should be run from the date on which the notification was issued by the Secretariat. (iii) He believed that it was important to provide information concerning the authorities responsible for notification procedures and those dealing with comments made, particularly in cases where the enquiry point was not empowered to exercise these responsibilities. He suggested that the names and addresses of the competent authorities should be indicated either in the statements under Article 15.2 or on the notifications. It was important to minimize the number of authorities responsible for notification procedures as stated under Articles 10.10 and 10.11.

104. The Chairman requested the representative of the EC to make his proposals available in writing for the circulation to Members.

105. The Committee took note of the statements made.

C. INTERNATIONAL STANDARDS

106. The representative of Egypt believed that as far as the application of international standards was concerned, developing countries' benefit from such standards was minor and the process of

adjusting the national standards to the international ones was usually difficult. This could be due to the following factors: (i) the participation of developing countries throughout the various phases of international standards setting was limited. Thus these standards usually corresponded to the market needs of developed countries, in particular with those which had participated actively in their setting; (ii) some international standards specified certain safety, health, environmental requirements which were applied by developed countries. Such requirements, as a result, accompanied financial and technical consequences which were difficult for developing countries to meet.

107. She concluded that it was necessary to seek a wider participation for developing countries in the field of international standards setting. However, she could not accept new elements encompassed in the Agreement which would impose obligations on developing country Members to participate in the process of international standards setting, unless it was made clear what sort of technical assistance would be provided to such countries from the standardizing bodies to ensure their effective participation, and what form of financial assistance would be granted to such countries to be able to achieve a reasonable participation.

108. The representative of Malaysia commented on the proposals by the EC, Japan and the US relating to international standards (G/TBT/W/75 and Rev.1, G/TBT/W/87 and Rev.1 and G/TBT/W/113 and 121). He noted that the Japanese proposal required amending the text of the Agreement so that the development of international standards would encompass the principles of fairness, openness, market reality and transparency. He agreed with these four principles. However, he supported the Egyptian comments that the concerns of developing countries and their effective participation in the development of international standards had to be taken into account. This issue had to be addressed and treated as important as the four principles suggested in order to strike the right balance. He recalled that during the First Triennial Review, similar comments had been made regarding technical assistance and effective participation. Despite what had been said, there was no major change in the situation. The Committee had to make the concerns of the developing countries known to international standardizing bodies. He believed that the WTO was in a position to inform international standardization bodies on how they should conduct their work.

109. The Chairman noted the points raised by Malaysia, and invited other delegations that shared the same views to contribute to the discussions at the next meeting, and to inform the Committee on how effective participation of developing countries could be ensured.

110. The representative of Japan welcomed the comments of Malaysia, and clarified that, leaving aside the chance of amending the text of the Agreement, it was his delegation's intention to first discuss the substance of the issues. He agreed that during the course of discussions, the participation of developing countries should be dealt with.

111. The representative of Canada drew attention to ISO/IEC Guide 59, and suggested that it could assist the Committee in its work with respect to international standardization and international standards. He noted that there was a document TBT/W/187 prepared in June 1994 during the GATT time comparing Guide 59 with the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the TBT Agreement). He suggested that it could be re-issued or updated for the use of the current Committee.

112. The representative of the ISO explained that ISO/IEC Guide 59 was published in 1994. The purpose was to ensure openness, transparency, effectiveness and an optimum degree of order in world-wide standardization processes. The code was voluntary and intended for use by any standardizing body, whether governmental or non-governmental, at the international, regional, national or sub-national level.

113. The main difference between ISO/IEC Guide 59 and Annex 3 of the TBT Agreement was that Guide 59 was intended for adoption by any standardization body which approved standards using procedures based on principles of consensus, whereas the Annex 3 was open to acceptance by any standardizing organization within the territories of WTO Members, including those which were not using consensus principle.

114. In general terms, the requirements under Guide 59 and Annex 3 were the same. However, the requirements of Guide 59 were more generic, providing guidance for the procedures on standard development, participation in the standard development process, as well as the coordination of standardization activities in the global standardization system, but with less administrative details. He informed the Committee that Guide 59 had been accepted by ISO, IEC and (to a certain extent ITU) members, which meant that ISO, IEC and their members had taken the commitment to follow the principles stated in the Guide, but there was no formal administrative adherence procedure.

115. The Chairman requested the Secretariat to re-issue document TBT/W/187.

116. The representative of Latvia raised concern that within the ISO 134 membership, only 90 members receive copies of draft international standards. As corresponding and subscriber members did not receive the drafts (these figures also showed that not all WTO Members, and only limited number of developing countries received these drafts), she believed that in reality, transparency and consensus did not exist in the development of international standards. She concluded that this was an important issue, and there was a need to develop a coordination system that all WTO Members would receive draft international standards and could revise them. She believed that this problem could be dealt with regionally, and that regional standardization bodies could realize a consensus regarding a standard and later seek the global consensus.

117. The Chairman noted that the membership of the ISO and the WTO was not the same, which created a certain element of disparity.

118. The representative of the ISO stated that any country was welcome to become an ISO member, including all WTO Members. There were three categories of membership in the ISO: regular, correspondent and subscriber members, and countries were welcome to choose and change their categories, so that they could receive automatically all the draft international standards.

119. The Committee took note of the statements made, and agreed to request the Secretariat to prepare two notes under its own responsibility, to facilitate discussions at the next meeting. The first note would be a factual side-by-side note comparing the proposals made by the US, EC and Japan concerning the principles on international standardizing bodies and international standards. The second note would aim at identifying common elements of the three proposals, which could also serve as a basis for consensus in the future. It would be prepared based on the submissions taking into account of the discussions made.

D. CONFORMITY ASSESSMENT PROCEDURES

120. The Chairman noted that issues under discussions concerning conformity assessment procedures included: the use of ISO/IEC Guides on conformity assessment; suppliers declaration of conformity; autonomous recognition; national treatment of conformity assessment bodies; and mutual recognition agreements (G/TBT/W/63, 70, 79, 118, 121, G/TBT/SPEC/11 and Add.1). Concrete proposals had been made by Australia and Japan (G/TBT/W/118 and 121).

121. The representative of Egypt noted the following problems in the area of conformity assessment procedures: (i) the lack of sound established national accreditation bodies affected negatively the conclusion of mutual recognition agreements. Conformity assessment procedures

varied from country to country (between developing and developed countries, and also amongst developing countries), and as a result, products were subject to multiple testings, hampering international trade flow and leading to financial and technical burdens, particularly for developing countries, (ii) conformity assessment systems in developed countries were sophisticated and advanced, thus it was difficult for developing countries (with modest infrastructure, minimum technical experience and limited laboratories capacities) to apply them; and (iii) developing country economy relied mainly on small industries, and it was a financial burden or an unaffordable cost for such industries to fulfil conformity assessment requirements.

122. She believed that the Agreement should not take on board any obligations concerning the implementation of specific conformity assessment systems or procedures, except after defining the assistance to be granted to developing countries to adjust such systems or procedures. She noted the relevant papers and proposals tabled, and said that experts from her capital might come and address them at the next meeting.

123. The representative of Canada drew attention to ISO/IEC Guides 60-61. He believed that there was a need to look into the work of ISO/CASCO regarding the availability of voluntary standards, the utility of these documents and their updating taking into account international trade and the interests of the Committee.

124. The representative of the European Communities agreed that the ISO/IEC Guides were useful, and noted that they were voluntary. However, in many countries, they were used mandatorily in regulations. He believed that it was useful to link the Agreement more directly to the Guides, to make it clear what they were there for, as well as to communicate more effectively to organizations which developed them.

125. The representative of Japan supported the comments of Canada that it was useful to look at ISO/IEC Guides 59, 60, and 61. He noted that voluntary sectors were free in their business, on the other hand, the Committee had the right to see whether their work could be used as tools to implement the Agreement.

126. The representative of the United States noted that Members needed time to study the papers submitted, particularly the non-paper (available at the meeting) prepared by Australia which contained interesting concepts and different approaches that could facilitate the recognition of conformity assessment results (i.e., suppliers' declaration, mutual recognition agreements and accreditation). She recalled that at the First Triennial Review, the Committee had noted the existence of a number of the different approaches, and held discussions on ISO/IEC Guides. Different Members had submitted papers on their national experience. She recognized that the area of conformity assessment was a complex one, and believed that a number of the issues could be addressed at the Second Triennial Review. She invited substantive discussions at the next meeting.

127. The representative of Mexico said that his delegation was interested in the subject of conformity assessment. He agreed with the US comments that more time was needed to examine the proposals and substantive discussions could be held at the next meeting.

128. The representative of Chile sought clarification on how the Committee would move forward with its preparation of the Second Triennial Review.

129. The representative of Canada suggested to hold informal meetings back to back with formal meetings. He believed that the informal meeting this time had helped discussion to move forward.

130. The Chairman noted that the Committee had an indicative list of items that the Second Triennial Review was expected to address. He did not know whether the Committee would be able to

address all the items and bring all of them to a certain degree of maturity for decision-making by the end the year. In some areas there was a chance of greater progress than the others. He gave the example of the item on international standards on which the Secretariat would prepare two notes by the middle of April. He invited delegations to consider them, see how to move the process forward, and hopefully there could be some kind of a decision by the end of the year.

131. The Committee took note of the statements made.

VII. OTHER BUSINESS

132. The representative of the UN/ECE presented its project on a Global Model for Implementing Good Regulatory Practice for the Preparation, Adoption and Application of Technical Regulations via the Use of International Standards (G/TBT/W/129), and invited comments.

133. The representative of the United States believed that there was a fundamental difference between what was foreseen under the TBT Agreement and what appeared to be proposed by the UN/ECE. She noted that the UN/ECE project related to international technical regulations, and thus suggested a *supra*-national structure. She noted that the TBT Agreement respected the sovereignty of each Member, and suggested that the Committee might want to be careful with the UN/ECE project, as it involved a different kind of undertaking.

134. The representative of the UN/ECE argued that the project did not aim at any *supra*-national structure, and said that it might be necessary to change the wording so it would not be in conflict with the TBT Agreement.

135. The Committee took note of statements made.

136. The Chairman said that regarding election of officer, more time was needed for consultations among Members, and the Committee would come back to this item at its next meeting. He proposed that the next meeting be held in the third week of May 2000, and indicated that informal meeting might be held, if necessary, before that.
