

WORLD TRADE ORGANIZATION

RESTRICTED

G/TBT/M/19

27 June 2000

(00-2613)

Committee on Technical Barriers to Trade

MINUTES OF THE MEETING HELD ON 17-19 MAY 2000

Chairman: Mr. John ADANK (New Zealand)

1. The Committee on Technical Barriers to Trade held its Twentieth meeting on 17-19 May 2000.

2. The following agenda, contained in WTO/AIR/1297 was adopted:

	<u>Page</u>
I. Election of Officer	2
II. Requests for Observer Status in the Committee by the Office International de la Vigne et du Vin (OIV) and the International Laboratory Accreditation Cooperation (ILAC)	2
III. Statements on Implementation and Administration of the Agreement	2
IV. Workshop on Technical Assistance and Special and Differential Treatment in the Context of the TBT Agreement	5
V. Preparation for the Second Triennial Review of the Operation and Implementation of the Agreement under Article 15.4	8
VI. Other Business	16

I. ELECTION OF OFFICER

3. The Committee elected Mr. John Adank (New Zealand) chairman for 2000.

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

4. The Chairman indicated that more time was needed for informal consultations on these requests (G/TBT/W/62, 68, 68/Add. 1 and 2).

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

III. STATEMENTS ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

6. The representative of the United States (US) responded to an earlier statement by Thailand (G/TBT/W/128), which had been supported by Korea, with respect to proposed US origin marking requirements for costume jewellery. She informed the Committee that this had been a provision within a draft legislation under consideration. This Bill (the Africa Growth and Opportunity Law) had just been signed into law. However, the provision concerning origin marking for costume jewellery was no longer part of that Bill. She explained that these requirements had not been notified because they had never become a proposed technical regulation.

7. She responded to concerns raised by Brazil regarding a US notification (G/TBT/Notif.00/5) on dolphin-safe tuna labelling. She conceded that the notification should not have been made under Article 2.9, as the requirements were not mandatory. She said that the US had legislation, the International Dolphin Conservation Program Act and the Dolphin Protection Consumer Information Act, requiring the Secretary of Commerce to develop an official mark to be used to label tuna products on a voluntary basis, but other marks were also permissible.

8. The representative of Thailand welcomed the US response.

9. The representative of Mexico underscored the importance to his country of the information on tuna labelling. He was under the impression that, within the US, there were differing positions, only some of which were compatible with the US obligations under the WTO, and he was unsure which views would prevail. He reserved his delegation's right to come back to this issue when it was clarified.

10. The representative of Egypt endorsed the original concerns of Thailand and Brazil and welcomed the clarifications by the US. She supported Brazil's request at the last meeting directed to the European Communities (EC) to undertake risk assessments before deciding on a policy of a total ban of plastic toys.

11. She responded to the concern raised by the EC at the previous meeting in regard to Egyptian Standard no. 2525/1993 for leather footwear issued by the Egyptian authority for standardization. She explained that these standards were voluntary. The Minister of Economy and Foreign Trade had issued the decree no. 343/1999 on 15 July 1999, which had been officially published in the Egyptian Gazette on 17 July 1999, regarding the Egyptian general authority for imports and exports control to examine leather footwear and its requirements. Upon the issuance of this Decree, and the Decree of the Minister of Industry no. 180/1996, imported leather footwear was subject to examination by the said competent authority, either in accordance with the Egyptian voluntary standards, any international standard referred to in this Decree or, to make it easier for importers, the examination of the imported product could be performed through a verification of its quality as compared to its

factory specifications, a copy of which was usually attached to the cargo. She highlighted that the problems raised resulted from non-compliance of the exported product with the necessary specifications.

12. The representative of the European Communities welcomed the statement by Egypt. He said that, regarding plastic toys, he had nothing to add to what had been said at the last meeting, but might come back to it in the future.

13. The representative of Canada referred to earlier comments made by his delegation with regard to the EC draft Directives on waste from electrical and electronic equipment and nickel-cadmium batteries. He reiterated concerns that these Directives might be developed in ways contrary to the Agreement.

14. He referred to a legislation being developed in New Zealand concerning the conservation and protection of trout as a non-commercial species and concerning certain aspects of sport-fishing. He informed the Committee that Canada had made several representations to New Zealand objecting to the ban on the importation of trout and raising questions related to the objective of the ban. He had the understanding that the import ban was deemed necessary by New Zealand to ensure the conservation of trout stocks. However, no information had been provided to support the ban on conservation or any other grounds. His delegation considered the ban to be inconsistent with New Zealand's WTO obligations and in particular, the TBT Agreement. He requested New Zealand for clarification and to comply with its international trade obligations by rescinding the ban and by taking no further steps to make the ban permanent.

15. He recalled that at the last meeting, his delegation had made statements on the labelling of genetically modified foods. He provided the Committee with a communication on Canadian efforts to develop a voluntary standard for the labelling of foods derived from biotechnology which he believed could assist other Members in their work (G/TBT/W/134).

16. The representative of New Zealand noted Canada's queries regarding New Zealand's temporary import prohibition on trout. He said that a temporary prohibition had been put in place to allow sufficient time for full consideration of the conservation of New Zealand's trout fishery. There was currently no commercial sale and hence no domestic market for trout in New Zealand. A particular fear had been expressed that the commercial sale might lead to serious conservation difficulties threatening the sustainability of the wild trout fishery. He explained that New Zealand's recently elected Government had made an undertaking to work through the range of complex issues associated with the conservation of the trout fishery. He hoped that the issue could be resolved in the coming months, and his delegation would come back to the issue in due course.

17. The representative of the European Communities said that the EC was aware of Canada's concerns regarding waste from electronic and electrical equipment and the batteries initiative. However, the draft legislation was still under development and both initiatives were at a relatively early stage without any formal proposals having been made.

18. The representative of Australia endorsed the comments made by Canada on the EC draft directives and welcomed the statement by the EC. She expressed concerns about the possible trade impacts and a lack of scientific justification for bans on certain metals contained in the proposals. Australia, bilaterally, had made representations about this and would do so again in the future.

19. The representative of Japan associated his delegation with the comments made by Australia. In principle, his delegation agreed with the objective of minimizing inadequate disposal of electronic equipments. However, he was concerned about the way the EC planned to deal with the ban on certain substances. Such a ban ought to take into account detailed and product-specific analysis of the technological feasibility to abide by it. If this was not done, measures might be imposed that were

more trade restrictive than necessary to fulfill a legitimate objective, which would be inconsistent with Article 2.2 of the Agreement. He noted that the Japanese electrical and electronic industry was a major supplier of these products, and requested the EC to secure adequate opportunity for major producers, including the Japanese manufacturers, to be consulted on the technological feasibility of the ban of certain substances. His authorities would continue to monitor the developments closely.

20. The representative of Thailand shared the concerns expressed and requested that the Committee be informed by the EC on further developments on the draft Directives.

21. The representative of the United States associated her delegation with concerns expressed about the two EC Directives. These issues had received a lot of attention in the US, and she looked forward to the notifications once the draft regulations existed so that comments could be made.

22. The representative of New Zealand drew the attention of the Committee to a notification by Japan (G/TBT/Notif.99/668 of 23 December 1999 on Standards for Labelling on Quality of Processed Foods, Fresh Foods, Husked (Brown) rice and Milled Rice and Marine Products). The notification described a country of origin labelling scheme to be applied to all foods and beverages for sale. The objective and rationale for this scheme was listed as 'protection of consumers' interest'. It was apparent from the notification and relevant documentation that the focus of the scheme was to create mandatory product labelling on the basis of 'quality' factors. Under this scheme, the country of origin appeared to be considered an intrinsic determinant of product quality for fresh foods. He was concerned that the labelling requirements had been proposed and developed in the context of revisions to the Basic Agriculture Law which aimed to increase demand for domestic agricultural products.

23. He said it was not appropriate for governments to impose mandatory country and place of origin labelling as a means to determine product quality. He disputed that there was a scientific or technical link between origin and quality. He noted that a product's safety already had to be assured through established health and safety requirements. Country of origin labelling added nothing to this assurance except unnecessary costs to producers, distributors, and in the end, consumers. New Zealand opposed, in principle, mandatory country of origin labelling. Such labelling should remain voluntary, allowing distributors and producers the right of use when considered justified, including in response to consumer wishes for information.

24. He informed the Committee that prior to the submission of G/TBT/Notif.99/668, his authorities had raised this issue with the Office of the Trade and Investment Ombudsman in Japan in September 1999, and subsequently with Japan's Ministry of Agriculture, Forestry and Fisheries. A response had been received in December 1999. He welcomed the commitment contained in this response that "Japan would not intend to give any advantages to domestic products only and not to provide discriminatory treatment against imported products". However, in his view, other aspects of the response did not address New Zealand's concerns.

25. He put further questions to Japan, with reference to the provisions of the Agreement: (i) The mandatory country of origin labelling requirements would impose costs on exporters, importers and those handling imported product in the distribution chain in Japan. These would include the costs of the label itself, the need for segregation of products originating in different countries, additional record-keeping, and a verification regime. The scheme aimed to provide consumers with information concerning quality. However, there was no scientific or proven link between origin and quality. How could the additional costs arising from the scheme be justified, when the scheme did not meet its stated objective? Given that the scheme could not meet its stated objective, how would the additional costs not create an unnecessary obstacle to international trade with reference to Article 2.2? What alternative measures of a less trade restrictive nature (for example voluntary labelling schemes) had been considered, and why had they not been adopted? (ii) The necessity of the imposition of country of origin labelling to meet the stated objective of 'consumer interest' was questionable and the measure a disproportionate response to the risks which would arise if the objective were not attained.

Given that quality assurance was already provided by the health and safety tests that products had to meet in order to be placed on the Japanese market, what were the risks of non-fulfilment of the objective of providing consumers with information through the country of origin labelling scheme? What available scientific and technical information had been used by Japan to determine these risks of non-fulfilment? He requested Japan to provide an update on the implementation of the scheme.

26. The representative of Japan explained that the origin labelling requirement was imposed upon all processed foods, both imported or domestically produced, and was therefore not designed to provide for any advantage to domestic produce nor for discriminatory treatment against imported produce. It was designed to protect consumers' interests so that consumers' wishes for information in selecting commodities were fulfilled. He explained that consumers chose agricultural produce depending on the various efforts undertaken to improve price and quality of produce from various origins. In this sense, consumers had requested that the place of origin be labelled as an indication to rely on in their purchasing decisions. He explained that the Japanese custom regulation had required exporters or importers to declare the origin of commodities in their customs clearance and that not much further cost was added by the new labelling system. He reconfirmed that his government had given explanations to New Zealand in response to its appeal to the office of the trade and investment ombudsman in Japan and in response to its comments on the Japanese notification of the measure to the TBT Committee and that it was ready to continue to explain the objective of and lessen the concerns about the additional costs for complying with the labelling requirement.

27. The representative of Australia associated her delegation with the comments made by New Zealand.

28. The Committee took note of the statements made.

IV. WORKSHOP ON TECHNICAL ASSISTANCE AND SPECIAL AND DIFFERENTIAL TREATMENT IN THE CONTEXT OF THE TBT AGREEMENT

29. The Chairman recalled that at the last meeting (G/TBT/M/18), the Committee had agreed to hold a Workshop on Technical Assistance and Special and Differential Treatment with a primary focus on technical assistance in July 2000 back to back with the Committee meeting (G/TBT/SPEC/14). The purpose of the Workshop was to provide the opportunity for Members that require technical assistance to inform the Committee and relevant organizations of any difficulties they encountered in the implementation and operation of the Agreement, and of the kind of technical assistance they might need. At the same time, Members and international organizations providing technical assistance in the TBT area could make use of this occasion to communicate to the Committee any information concerning their technical assistance programmes. The goal was to help better target technical assistance, avoid duplication and promote further cooperation and coordination among donor Members and organizations, aiming at developing efficient and effective technical assistance programmes in the various areas related to the TBT Agreement.

30. A questionnaire had been sent out on 13 March (G/TBT/W/127), inviting Members, in particular developing country Members, to identify any difficulties they encountered in the implementation and operation of the Agreement, as well as the kind of technical assistance they might need. Replies had been received from a number of delegations. Taking into account the replies received, discussions held at previous meetings, workshops and symposia, a draft programme of the Workshop had been prepared by the Secretariat (G/TBT/SPEC/15) and had been circulated to Members on 20 April, inviting comments before 5 May. Based on the comments made by a number of delegations, the Secretariat had made minor structural changes to the programme. He explained that the first day would focus on fact finding to gather information from developing country Members on problems and needs in the following four areas: (i) Implementation and Administration of the Agreement; (ii) International Standards; (iii) Conformity Assessment Procedures; and (iv) Capacity Building. On the second day, during round table discussions, the focus would be on solution seeking

to deal with the problems and needs expressed on the first day. The idea would be to have the results of the Workshop reported back to the Committee for its information. Members would be invited to propose and consider further actions which might be included in the Second Triennial Review of the Agreement at the end of 2000.

31. He recalled that at the last meeting, the Chairman had appealed for assistance from delegations in order to have better participation of developing country Members and to finance speakers from these Members. He expressed gratitude to the European Communities, the Netherlands, the United Kingdom and Japan for their generous contributions to finance speakers from developing country Members. He invited delegations to actively participate at the Workshop.

32. The representative of Egypt thanked the donor countries. She felt that developing countries should be able to benefit from technical assistance within the framework of the Agreement, especially in the fields of making use of electronic means for information exchange, participating in international standards preparation, establishing conformity assessment systems according to international requirements, setting up mechanisms of technical regulation development and sound relating infrastructure as well as activating enquiry points, etc. She appreciated the fact that most speakers in the Workshop would be from developing countries. She expressed her hope for a successful Workshop and assured Egypt's full contribution. She also expressed interest to further explore with the World Bank the means of future cooperation as regards their project for the year 1999-2002.

33. The representative of India associated his delegation with the gratitude expressed by Egypt. He informed the Committee that India was working actively on the following aspects to ensure the usefulness of the Workshop: (i) Identifying problems faced by India in full implementation of the Agreement; (ii) examining problems faced by India in participating and formulating international standards with regard to the Agreement. He pointed to the difference between having the opportunity to participate, which, he suspected, India had, and having the capacity, *i.e.* the possibility to contribute meaningfully to the development of these standards; and (iii) identifying in the light of those findings the kind of assistance India wanted. He said a series of meetings had been held, *e.g.* between the APEC chambers of commerce and related ministries and agencies of his government, and he expected a country paper to result from these endeavours. This and also the nomination of a speaker from India demonstrated that his country took the Workshop serious and tried to contribute actively to its success.

34. The representative of South Africa confirmed his delegation's support for the Workshop. He believed in the value of sharing experiences and learning from each other, thereby gravitating towards better practices. South Africa would share recent experiences in the harmonization of technical regulations within its region as well as the concomitant capacity building exercises.

35. The representative of Canada expressed his hope for a productive outcome of the Workshop. He highlighted the importance of the following two factors: (i) Candour and focus on practical problems and solutions; and (ii) the participation of as many capital-based experts as possible. He suggested to allocate more time for presentations and discussions in view of the complexity of the individual subjects.

36. The representative of the United States welcomed the programme and highlighted the opportunity for Members to bring their needs to the table and for her delegation to take stock of its assistance provided to help further the implementation of the Agreement. She suggested that the organizations participating in the Integrated Framework for LDCs be invited, and that the Secretariat be asked to give a presentation on the operation of that Framework.

37. The representative of Mauritius associated himself with the previous speakers and hoped for a wide participation at the Workshop. He thanked donors for their contributions providing the possibility of enlarging the number of participants.

38. The representative of the European Communities welcomed the programme of the Workshop and stressed, as did Canada, the importance to address practical problems and solutions. He felt that emphasis should also be placed on enhancing cooperation between the donors, and therefore, their participation in the programme ought to be ensured. The mere provision of resources by donors was not enough, it was necessary for them to get continuous feed-back to modify assistance programmes as appropriate. He encouraged the Committee to envisage establishing an overall framework for technical assistance as suggested in the EC paper (G/TBT/W/133).

39. The representative of Panama thanked for the preparation of the Workshop and highlighted its importance for the implementation of the Agreement. She announced that, with the support of the World Bank, a WTO-related regional seminar would be held on 27-29 June 2000 in Panama with the participation of Central American countries. It was organized to prepare these countries to present a joint position on their needs as regards the implementation of the Agreement. This showed the importance given by Central America to the problem of standards and conformity assessment, and their interest to participate actively in the Workshop.

40. The representative of Japan welcomed the draft programme of the Workshop, and reassured his delegation's effort to make it a success.

41. The representative of Malaysia, speaking on behalf of ASEAN member countries of the WTO, welcomed the organization of the Workshop. He agreed that more time was needed for discussions and suggested to decrease the number of speakers. He thanked the donors for their contributions and asked whether any balance could be used to finance participants from developing countries to ensure meaningful discussions with capital based experts.

42. The representative of Mauritius endorsed the statement made by Malaysia.

43. The representative of Pakistan welcomed the Workshop and the contributions by donor countries. His delegation was looking forward to a meaningful participation in the Workshop which would provide the opportunity to share experiences in the implementation of the Agreement. He hoped that the outcome of the Workshop would find its way into the Second Triennial Review. He supported the view of Malaysia, highlighting the importance of effective participation from the floor for those countries who might not be able to present comprehensive country papers.

44. The representative of Australia endorsed the statement made by Malaysia.

45. The Chairman reassured delegations that all comments would be taken into account, and highlighted the delicate balancing act involved in ensuring coverage from different regions while keeping the number of speakers at manageable numbers. He suggested to extend the timeframe for discussions by starting the Workshop earlier and finishing later.

46. The representative of Egypt shared the Malaysian view, but supported the Chairman's proposal to extend the hours of the Workshop in order to have as many speakers as possible.

47. The representative of India endorsed the Chairman's proposal to extend the time for the Workshop. He stressed that it was key for the success of the Workshop to have as many experts knowing about the practical problems from developing country capitals as possible, whether as speakers or participants. These would not be diplomats and civil servants from the ministry of commerce, but experts from, *e.g.* standards organizations, who participated in international standard-setting activities. This did not exclude the former group who could attend the Workshop as a learning experience if funds were available to them. However, unlike last year's Symposium on Conformity Assessment which had been held to educate Members, this Workshop was to find out about the actual problems. He concluded that the number of speakers and participants was perhaps less significant than the need to ensure the participation of the right kind of people.

48. The representative of Brazil welcomed the Workshop and suggested to have a list of speakers beforehand for information and to encourage further participation of experts from capitals.

49. The Chairman summarized that there was a general recognition that the workshop would be an useful opportunity for discussions on the practical challenges that Members faced in relation to the Agreement and that it should be solutions-focused. He noted that the Secretariat, in response to the US suggestion, would give a presentation on TBT-related activities associated with the Integrated Framework, and that relevant agencies involved in the Integrated Framework should be able to attend the Workshop. With regard to financial assistance for the attendance of developing country participants, he suggested that Members made known to the Secretariat their needs for the participation of particular appropriate individuals. This would provide a basis for the Secretariat to examine possibilities in this regard with donors. He recalled that there had been informal approaches by Members (*e.g.* Norway) to the Secretariat indicating the possibility of additional funding.

50. The representative of Malaysia did not object to the participation of agencies involved in the Integrated Framework at the Workshop, but emphasized that this was without prejudice to his delegation's position on how the Integrated Framework was relevant to capacity-building and the provision of technical assistance to developing countries.

51. The Committee took note of the statements made.

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

52. The Chairman recalled that the Committee was mandated to conduct the Second Triennial Review of the Operation and Implementation of the Agreement before the end of the year. At the last meeting, the Committee had an indicative list of items that the Second Triennial Review was expected to address. It was noted that at this stage, it was necessary to be flexible in the Committee, and sufficient opportunity should be provided for consultation on any issues that delegations might like to raise in relation to the operation and implementation of the Agreement. He invited those delegations who wished to submit further papers or proposals for the Review to do so as soon as possible, so that enough time be provided for discussions. He drew attention to documents G/TBT/SPEC/11 and Add.1. which compiled relevant submissions by Members, as well as the latest proposals from the European Communities contained in G/TBT/W/133.

53. He recalled that, at the last meeting, the Committee had held discussions on the following issues: (i) Implementation of the Agreement; (ii) notifications and procedures for information exchange; (iii) international standards and international standardizing bodies; (iv) conformity assessment procedures; (v) regulatory best practice; (vi) technical assistance; (vii) special and differential treatment; (viii) equivalency of standards; (ix) labelling; and (x) any other elements that Members wanted to propose. In relation to the item on international standards and international standardizing bodies, he recalled that at the last meeting the Secretariat had been asked to prepare two notes under its own responsibility to facilitate discussions. The first note was a factual side by side note comparing the three proposals made by the US, EC and Japan, concerning the principles for international standardizing bodies and international standards (document Job 2321). The second note aimed at identifying common elements of the three proposals which could also serve as a basis for further agreement in the future (document Job 2322). This had been prepared on the basis both of submissions made by delegations as well as discussions in the Committee. He drew attention to a third paper reissued by the Secretariat, entitled "A Factual Comparison between the Annex 3 of the WTO/TBT Agreement and the ISO/IEC Guide 59, a Code of Good Practice for Standardization" (G/TBT/W/132).

54. The representative of Mauritius believed that the items identified for the Second Triennial Review fell into three categories. The first category, which included items (i) and (ii), dealt with

implementation and notifications, where developing countries faced particular difficulties. Notifications could constitute an "Achilles heel" for developing countries, not only from the view point of implementation but also assimilation of the Agreement. He proposed an approach similar to the SPS monthly summary of notifications for the TBT Committee. He believed that these summaries, by recapitulating the notifications of the month, would provide useful information on the originating countries, countries affected, the products concerned and other details.

55. The second category, containing elements (iii), (iv), (v), (viii) and (ix), comprised highly technical issues. He recalled a suggestion by South Africa during the informal meeting that the regional dimension deserved attention in these regards. The third category, which included items (vi) and (vii), was of particular importance to countries such as Mauritius. His delegation was looking forward to the Workshop as being a building bloc to give more concrete shape to what could be done in terms of technical assistance and special and differential treatment.

56. The representative of Malaysia stated that the elements identified by the Chairman for the Second Triennial Review seemed acceptable to his delegation, without prejudice to other elements that could be introduced. However, he raised concerns about item (ix), labelling, and invited the EC to further elaborate on their proposal regarding the development of multilateral guidelines for labelling and to explain why there was a need for this (paragraph 27, G/TBT/W/133). He wondered whether he was correct in that the EC placed too much focus on consumer information. He recalled that at the First Triennial Review, Canada had had concerns on labelling, and invited Canada to elaborate on this topic. At present, his delegation's position was that the existing provisions of the TBT Agreement were sufficient to take care of labelling requirements, and it remained unconvinced that there was a need to amend or expand the scope of the Agreement.

57. Concerning the Japanese proposal on international standardizing bodies he welcomed the Japanese non-paper on market relevancy, but stated that he still had some conceptual problems, that were shared by other Members. He wondered how certain international standards, as opposed to others, were to be given preference in the context of the TBT Agreement, and requested clarification from Japan.

58. The representative of Egypt agreed on the necessity of having a clear and specific definition of international standards and international standardizing bodies, and that basic rules should be defined on how international standards were to be prepared. She noted that not all WTO Members were members in all international standardizing bodies, thus they might not be allowed to participate fully in the development of all standards.

59. She drew attention to the US proposal contained in document G/TBT/W/75 and Rev.1, and suggested that the following comments be taken into consideration: (i) The US proposal was not to take the form of a decision where an obligatory language was used; and (ii) paragraph 1(c) of the proposal concerning electronic means ought to be replaced by the following: "upon request, copies of the proposed reference document should be promptly provided to its members", as most developing countries lacked and could not afford the use of electronic means.

60. Regarding the Japanese proposal contained in Document G/TBT/W/121, she believed that the proposal related to members of international standardizing bodies rather than WTO Members. In referring to page 3 of the document, she suggested the deletion of paragraph 1(e), it being irrelevant due to the wide technological gap between developing and developed countries. She also proposed to delete paragraph 2, as it was difficult to define a specific figure of the market share of like products, especially in the case where a developing country had a substantial market presence for a product being standardized. She further suggested that a paragraph on the importance of publishing work programmes of international standardizing bodies be included in the Japanese proposal.

61. The representative of Chile welcomed the two papers on international standards (Job 2321 and 2322), which would help advance discussions. He suggested that document Job 2322 should be revised by the Secretariat in light of the comments made at the formal and informal meetings. He thanked Japan for its efforts to develop an objective approach to determine market relevance. However, he highlighted the importance of the principles of transparency, openness and impartiality, which should lead to market relevancy. The latter ought not to be something imposed from above.

62. The representative of India, in referring to paper Job 2321, stated that developing countries appeared to be standard-takers rather than standard-setters. Moreover, none of the three proposals dealt with the role of developing countries in the development of international standards. One way of remedying this would be to see whether concrete ideas emerged from the Workshop which could be useful for amending the proposals.

63. Turning to Job 2322, he made the following comments: (i) In paragraph 4, the OECD was mentioned, although he felt it was not an international standardizing body in the sense of Codex, ISO and IEC; (ii) he expressed concerns with regard to a trend towards international standards that, albeit voluntary, were based on non product related PPMs; (iii) in paragraph 5, relating to the opportunity to participate in international standardizing bodies, he pointed out that countries, such as India, did not necessarily have the capacity, even if they had the opportunity; (iv) he believed that a number of international standardizing bodies did not take decisions based on consensus, but by vote, which appeared to be incompatible with WTO procedures and the spirit of the TBT Agreement; (v) concerning guidelines for international standards development and the related principles, such as transparency, openness and impartiality, he invited the Committee to consider the possibility of including the development dimension as another aspect; (vi) he raised concerns about the development of consortia standards which might be more attuned to multi-national corporations and not suitable for countries such as India, whose large number of small and medium scale enterprises might find it difficult to cope with such standards; and (vii) he invited the Committee to consider whether the level of technological and scientific capacity of Members, including developing country Members, could be an aspect of market relevancy other than just trade volume.

64. The representative of Australia announced to provide written comments on papers Job 2321 and 2322.

65. The Chairman declared it was the Secretariat's intention to have a revision by the middle or end of June so that sufficient time was provided to Members for consideration in capitals before the July meeting. Comments should therefore be made as quickly as possible.

66. The representative of the European Communities also announced the provision of written comments on the two papers. He reiterated the EC's concern about the status of standardizing bodies. He felt it was important to make a distinction between the national, regional and international levels of standardization. Responding to the comments made by India, he noted that in both Job 2321 and 2322 there was a reference to take the constraints faced by developing countries into consideration in the standards development process. He agreed to further address this issue at the Workshop.

67. The representative of Japan clarified that his delegation did not advocate that the Committee set "an X per cent" criterion to examine all "international standards" in order to decide on the ones that were market relevant. It was not Japan's intention to neglect "international standards" for products with a relatively small consumption in general. For certain products various market realities were relevant. He added that Japan did not intend to impose new obligations on Members, nor to build an additional organizational system to make arbitrations among conflicting standards.

68. He reiterated the importance of transparency, openness and impartiality in the process of international standards development, and explained that these principles were indispensable for a certain "standard" to be considered "international" under the Agreement and to be bestowed with the

privilege, *i.e.* the specific legal status under the respective provisions of the Agreement (Articles 2.4, 2.5, 4.1, 4.2 and 14.4, and paragraph F of the Code of Good Practice - Annex 3 of the Agreement). The procedural criteria set out (*i.e.* transparency, openness and impartiality) should, however, not lead to the conclusion that certain standards developed in accordance with such principles or certain international standardizing bodies could enjoy an unquestionable status, although in most cases those "international standards" were appropriate to be used in the TBT context. A "safeguard" was needed which ought to be based on the objective of the Agreement to reduce technical trade barriers. Such an evaluation would look at the global market of certain products. That was the basis of the Japanese concept of market relevancy which was to be applied to "developed" or "established" international standards.

69. He further explained that a decision on whether a certain international standard was market relevant might be taken in the process of dispute settlements. It would be conducted on a case-by-case basis through detailed debates. However, he believed that the Committee could discuss generic elements to be considered in the process, so that the predictability of dispute settlement could be increased. This could also serve as a message to international standardizing bodies, indicating what WTO Members considered to be important characteristics for international standards to be used in the TBT context.

70. The representative of the United States reiterated the importance of the element of consensus as contained in document G/TBT/W/75/Rev.1. It stipulated the need for international standardizing bodies to have an established process that sought to take into account the views of all parties concerned and to reconcile any conflicting arguments. She did not believe that there was disagreement among Members on that aspect.

71. She noted that footnotes of paper Job 2322 contained information which reflected divergent views. She requested that the document be developed into one containing common elements and shared perceptions, and believed that it would be useful to move discussions forward at the July meeting. She welcomed the comments made on the paper, among them the ones of India noting a lack of specific language for developing countries. She said that while this might be true, having procedures, *e.g.* for consensus and opportunity for all interested views to be reconciled, would benefit developing countries without explicitly saying so. To go beyond the principles of transparency, openness and impartiality, the Committee would need more detailed information on the problems and needs of developing countries, and could benefit from the discussions at the Workshop on Technical Assistance, in order to address the concerns of developing countries in any future document.

72. The representative of Pakistan asserted that the biggest problem for developing countries in the field of international standards was their effective participation, and hoped for solutions at the July Workshop. He noted that the proposals on international standards, except for the one by the EC, generally ignored the developmental dimension, which, as India had stated, ought to be incorporated in document Job 2322. It was an evolving document prepared by the Secretariat and would contain more elements as they would arise. He suggested to change the title of section E of the document into "Development Dimension". Hereby an opportunity would be provided for developing countries to further enlarge the scope of discussions. More specifically, he commented that the language of paragraph 15 ("in particular when the developing countries have a substantial market presence for a product being standardized") was too narrow and precluded important aspects: At a given time, developing countries might not be able to export a certain good, but might be able to do so in the future. This should be reflected through a broader formulation.

73. He referred to an earlier observation by Egypt regarding paragraph 9, dealing with electronic means, and said that this was a valid point which related to the Workshop in July. He reminded the Committee that the issue of international standards and international standardizing bodies was also part of paragraphs 21 and 22 of the Seattle Ministerial text, for which an implementation mechanism had just been put in place. For this reason, the work of the implementation mechanism was related to

the TBT Committee's work. He invited the Committee to bear this in mind in its future discussions when carrying out the Second Triennial Review.

74. The Chairman recalled with regard to paragraph 15 that during the informal meeting, there had been a general recognition that the text "in particular when the developing countries have a substantial market presence for a product being standardized" should be deleted.

75. The representative of Mexico highlighted that in paragraph 10 of Job 2322, dealing with the openness of an international standardizing body, it was stated that the membership should be open to the relevant bodies of all WTO Members, which, he explained, ought to mean "at least" all WTO Members. He was wondering about the nature of these bodies, whether this referred to governments, trade policy authorities or regional bodies. In Mexico, international bodies were recognized, but this had to be done in terms of international law.

76. The representative of India highlighted three issues: (i) The results of the workshop ought to be incorporated in the Second Triennial Review; (ii) he inquired whether a stock-taking exercise was possible on the implementation of the results of the First Triennial Review. India would be interested in such an exercise; and (iii) he requested the Committee to take into account the inputs received during the First Triennial Review. India, for instance, had submitted a paper on the implementation of Articles 11 and 12 of the Agreement (G/TBT/W/51). Some of these inputs might still be useful for this Review.

77. The representative of Egypt, referring to the Australian papers (G/TBT/W/118 and Job 956), expressed doubts about the possibility of setting a Code of Good Practice in the area of conformity assessment for the acceptance by accreditation bodies. In Egypt, the national accreditation body was in its final phases of establishment, and had not yet practiced de facto accreditation. She believed this to be also the case in some other developing countries, where concluding MRAs was not possible due to the lack of such bodies. She noted that supplier's declaration of conformity was often not feasible in developing countries due to the lack of a legal framework. It was difficult to determine liability in cases of non-conformity, in particular in view of the absence of a unified definition of suppliers. With respect to the Japanese paper (G/TBT/W/121), she was not of the opinion that the Triennial Review should necessarily entail a re-opening of and amendments to the text of the Agreement, although she believed that the Japanese proposal merited further consideration. She reserved her delegation's rights to come back with further remarks on the papers received.

78. The representative of the European Communities introduced the EC paper (G/TBT/W/133) which provided a list of issues to be addressed in the Second Triennial Review. On the first issue, "Implementation", he expressed concerns about the fact that the Agreement was still not fully implemented by some Members, and suggested that the Review should explore the reasons for this and address the findings in a practical way. He linked this issue to the work being done on technical assistance and capacity-building, and noted that there would be relevant discussions in the General Council in June.

79. Concerning notifications, he found that the notification system was not working as well as it could. He proposed that appropriate solutions be sought to increase the number of notifications as well as the number of notifying countries. Members should be encouraged to observe the rules on notification procedures. Discussions should be held on improvements in notification procedures. He invited the Committee to consider conducting periodic reviews to assess how well notification procedures worked.

80. He expressed his belief that conformity assessment should be an important element of the Review, as it was an area which featured significant technical trade barriers. He drew attention to the suggestions made in document G/TBT/W/133. He believed that a number of ISO/IEC standards and guides on conformity assessment could be useful to give guidance on how to deal with conformity

assessment issues. The Committee should look at the feasibility of promoting multilateral or regional cooperation on accreditation, an issue that had been discussed at the Symposium on Conformity Assessment held last year. He said a close look ought to be taken at the various options on conformity assessment procedures and the ones adopted should not be more onerous than necessary. Supplier's declaration of conformity, which was one of the options, had to be put in context with the framework needed, such as market surveillance and product liability, and could not be the solution for all situations nor every type of product. Technical assistance was an important aspect in this area. He noted that a code of good practice had been proposed, and it was his delegation's intention to explore and make progress on those issues within the Review.

81. Concerning "Regulatory Best Practice", he suggested renaming the item "regulatory best practice for technical regulations" to make the scope of the EC proposal more precise. He believed that there were merits in exchanging information on this in order to learn about practices in different regions and of different Members. His delegation had the intention to explain the system used in the European Union.

82. With respect to "Labelling", he referred to the discussions held at this meeting on jewellery, tuna and processed foods, etc. which all involved labelling, and noted that similar discussions involving labelling took place in every meeting. Put simplistically, it seemed to him that the Agreement was not providing enough information on labelling, although it clearly fell under its scope. He explained that the EC paper intended to highlight the necessity to discuss this subject, and further information on this proposal was under preparation.

83. The representative of Malaysia stated that his delegation was willing to listen to what would be said on the issue of labelling, but remained unconvinced. He suspected the EC proposal fell outside the scope of the Agreement. With regard to conformity assessment, he shared the EC's concerns, but expressed doubts as to whether a code of good practice was the best way forward. He noted that even the existing Code (Annex 3 of the Agreement) had not been adopted by standardizing bodies of some Members, and wondered about the fate of an additional code. He was aware of some MRAs that contravened WTO principles of MF and hinted that there might be a need for an "umbrella" or legal framework under which conformity assessment mechanisms could be established. However, such an "umbrella" could mean expanding the scope of the Agreement and he was not sure whether this could be a solution either. Concerning supplier's declaration of conformity, which was an attractive option, he conceded, however, that, at present, many developing countries were unable to adopt this approach due to a lack of infrastructure. He believed this was an important area to be dealt with in the Second Triennial Review. He supported the idea of assessing the outcomes of the First Triennial Review.

84. The Chairman held that it would be useful to look into all the documents arising from the First Triennial Review, and referred to the Secretariat's compilation document (G/TBT/SPEC/11 and Add.1) which could be a tool in this respect. At the First Review, the Committee had considered certain issues that were still being discussed in the context of this Review. He invited Members to keep in mind what the Committee had undertaken, and to identify aspects still requiring further work.

85. The representative of Australia expressed her belief that the discussions on conformity assessment would lead to a more effective implementation of the Agreement. She drew attention to the two Australian papers (G/TBT/W/118 and Job 956) and the one non-paper on conformity assessment procedures, which each built on each other, taking into account comments made by Members. The current non-paper should be seen as superseding the other two documents. The objective of the Australian proposals was to give Members guidance in implementing the various regimes in accordance with the TBT principles and were not meant to impose further obligations on Members. Australia had identified the following types of conformity assessment regimes: (i) cooperative (voluntary) arrangements between domestic and foreign conformity assessment bodies; (ii) market driven certification through voluntary inter-laboratory agreements; (iii) mutual

recognition agreements for conformity assessment to specific regulations; (iv) government designation; (v) manufacturer's/supplier's declarations; and (vi) accreditation of bodies carrying out various types of conformity assessment. The proposal envisaged that the regimes identified would be codified. However, she suggested that the reference to a code could be put aside until the Committee decided on the direction the proposal should take.

86. She invited Members to identify other conformity assessment regimes, if considered relevant. She noted that in each of the regimes identified there was potential for improper application. She reiterated that whichever regime was used it must meet the essential WTO principles of transparency, non-discrimination and take into consideration national and most favoured nation treatment. Collusive practices based on personal relationships would fall foul of the Agreement. If rules for the regimes were published and service providers were aware of them, one could argue that they would meet the requirements of the Agreement. She invited comments from other Members.

87. The representative of Japan highlighted the importance of conformity assessment for the Second Triennial Review, and noted that in this field, there were documents issued by international standardizing bodies as well as by international systems for conformity assessment. Under the Agreement, there were rules regarding the former, but it was not clear how the latter documents should be treated. Therefore, Japan had made a proposal on this issue and he invited Members to discuss the substance first and modalities of how to deal with the proposal at a later stage. Commenting on the Australian proposal, he believed that accreditation was one option for ensuring effectiveness of conformity assessment. Other options, such as peer assessment among conformity assessment bodies, should be considered on an equal footing. He welcomed the latest Australian non-paper to which he would come back for further comments.

88. The representative of the United States shared the views of Malaysia that the existing rules under the Agreement adequately dealt with issues concerning labelling. She also agreed with the EC that a number of issues involving labelling had been brought to this Committee. However, this might not necessarily mean that there was a failing of the rules. She looked forward to additional information from the EC on this proposal.

89. In response to suggestions on whether a stock-taking from the First Triennial Review should be done, she said that the Committee had been doing that as part of its ongoing discussions as well as of the Second Triennial Review. A number of proposals brought forward for this Review had been informed by discussions of the last one. She recalled that there had not been many concrete recommendations or conclusions reached at the First Review, but it had provided a basis for future thought. She hoped that in this Triennial Review, the Committee could reach conclusions on some of the issues that had been discussed for some time, such as international standards and possibly conformity assessment, where Japan, Australia, the EC and other delegations had raised interesting concepts.

90. She welcomed the progress on the Australian proposal which demonstrated that efforts had been undertaken to take into account comments made, e.g. by her delegation, on the original submission limited to accreditation. She indicated a more detailed reaction would follow at the next meeting.

91. She supported the EC suggestion for a further exchange of information on supplier's declaration of conformity, believing that building a factual basis of information was important. She referred to the her delegation's paper (G/TBT/W/63) illustrating areas where the US relied on supplier's declaration. Without prejudice to whether or not other countries adopted it, at the First Triennial Review, the US had noted that it was a trade-friendly approach to conformity assessment. She believed that all these ideas merited further discussions.

92. She suggested that in future meetings, a more detailed agenda should be prepared that enabled more focused discussions of individual topics. She requested the Secretariat to prepare a document listing, by Member, the submissions made under Article 15.2 for information of the Committee.

93. The representative of Japan joined in with the United States and Malaysia in awaiting further elaboration by the EC on the issue of labelling.

94. The representative of New Zealand expressed her satisfaction with the indicative list of issues for the Second Triennial Review which contained the key topics and maintained flexibility as work progressed. New Zealand placed particular importance on the issue of equivalency of standards. She believed that there was a good opportunity to build on the results of the First Review, taking particular action to strengthen the implementation of the Agreement in this area. Her delegation intended to submit a paper relating to technical regulations. She agreed with India about the relationship between the First and the Second Triennial Review, and stressed the importance of building on the results of the First Review, while taking into account the work that had been done in the Committee since. In this regard, she agreed with the Chairman's remarks. While she was open to a general stock-take of the implementation of the First Triennial Review, she deemed it more worthwhile to focus specifically on the proposals made during the First Review which were relevant to the issues set out in the indicative list of this Review. As pointed out by the US, the Committee had done this with regard to international standards and conformity assessment. She welcomed the EC paper which outlined the EC's priorities in the Second Triennial Review, and looked forward to further contributions from Members, including the EC's proposed paper on labelling.

95. The representative of Uruguay, in referring to conformity assessment, stated that the various papers, *e.g.* from Japan, the EC and Australia, demonstrated the importance of this issue. Circumstances varied among countries, who therefore needed to have recourse to various mechanisms for the assessment of conformity. This was essential to market access. He pointed to the types of conformity assessment regimes enumerated by Australia to which other mechanisms could be added.

96. The representative of Mexico commented that the items on the indicative list should be dealt with as long as they were covered under the Agreement. The Second Triennial Review should be conducted in accordance with Article 15.4 of the Agreement. He stated his opposition to expanding the scope of the Agreement.

97. The representative of Egypt associated herself with the comments made by Mexico in that the Second Triennial Review should be conducted within the meaning of Article 15.4 and not with the aim of widening the scope of the Agreement.

98. The representative of Pakistan welcomed the indicative list of items for the Second Triennial Review, but indicated reservations on some of the items, such as labelling, as expressed by Malaysia. He associated himself with the intervention by Mexico concerning the scope of the Second Triennial Review. He also hoped that the results of the forthcoming Workshop would be incorporated in the results of the Second Triennial Review.

99. The representative of South Africa supported the indicative list of the Second Triennial Review and welcomed the submissions by Members. He recognized that the July Workshop on Technical Assistance would shed more light on some of the issues. In particular, sharing information and experiences could help Members to focus discussions. South Africa's experiences in conformity assessment to be shared at the Workshop could help others to recognize the difficulties that most developing countries face in this area. He welcomed that the preparation of technical regulations would form part of the Second Triennial Review, though he felt this to be a sensitive area, as it dealt with the legal system of Members. He believed that it would be beneficial, especially for developing countries, to gain an understanding on the building blocks that make up an effective and efficient

technical regulatory regime. This might also help Members to consolidate data on national technical regulations and facilitate the fulfilment of notification requirements under the Agreement.

100. The representative of Australia welcomed the exchange of information on technical regulations and said that her delegation would like to present its experiences in this area. She felt the Second Triennial Review was a good opportunity to improve the operation of the Agreement and to increase the number of Members fully committed to its implementation. She stated that Australia preferred a limited albeit not restricted number of issues for consideration. She hoped for outcomes from this Review, particularly in areas where there had already been some measure of agreement, for example international standards and conformity assessment.

101. The Chairman concluded that there was no disagreement that the Committee would conduct the Second Triennial Review within the context of Article 15.4. He invited Members to reacquaint themselves with the First Triennial Review document (G/TBT/5), documents G/TBT/SPEC/11 and Add.1. He encouraged Members to become increasingly more concrete in ideas and proposals. It was important for the Committee to have an idea of what was brought forward on the table soon after the summer break so that enough time would be provided for consideration. With regard to a more structured agenda in the future, he felt that this depended very much on Members in terms of the proposals submitted. He suggested that before the next formal meeting, an informal session would be held to go through the various items that had been proposed.

102. The Committee took note of the statements made.

VI. OTHER BUSINESS

103. The representative of Canada referred to a UN/ECE document (G/TBT/W/129/Rev.1) entitled "A project for an international model for implementing good regulatory practice for the preparation, adoption and application of technical regulations via the use of international standards". He felt the project ambitious, in particular in the context of UN/ECE, an institution that had a relative restricted group of participants. He expressed concerns about the institutions that might need to be consulted, both at the national and international levels. He invited other Members to comment on the paper.

104. The representative of the United States associated herself with comments made by Canada about the work of the UN/ECE, concerns which had also been raised by the US at the previous meeting. She encouraged other delegations to consider this issue, as the proposed model might relate to the work of the TBT Committee and to obligations under the Agreement. This would pose legal questions, and even the establishment of a new bureaucratic infrastructure might be implied with questionable benefits. She announced that she would come back to this issue in due course.

105. The representatives of New Zealand and Egypt associated themselves with the concerns expressed by Canada and the US regarding the UN/ECE project.

106. The representative of the UN/ECE welcomed the comments made by WTO Members as UN/ECE was at the beginning of the project, and said that the comments made would be taken into consideration. He stressed that changes in the text (as contained in G/TBT/W/129/Rev.1) had been made due to the comments made at the last TBT Committee meeting and in other fora. The document was an informal document in a draft form, and the concept and substance were still under development. He announced that on 7 June 2000 an informal meeting was organized by UN/ECE for experts from industry and international organizations to discuss the concept of this model and the feasibility of its use in particular sectors. He reassured Members that no new structure nor obligation was suggested, but a voluntary mechanism for those countries who wished to harmonize their regulations in accordance with the provisions of the TBT Agreement.

107. The representative of Canada proposed that the Committee, at the end of each meeting, agreed on a relatively detailed agenda for the following session. Hitherto, agendas had not been particularly transparent and more details would be useful for the preparation in capitals. Also, in the last meeting of each year, the meeting dates for the following year could be scheduled, which would facilitate the participation of capital-based delegates in the meetings.

108. The Chairman announced that the next Committee meeting would be held in the third week of July 2000 back to back with the Workshop on Technical Assistance and Special and Differential Treatment. The issue of transparency of meeting agendas needed to be kept under consideration, so that delegates coming to meetings were fully aware of what was going to be discussed.

109. The Committee took note of the statements made.
