WORLD TRADE ORGANIZATION

RESTRICTED

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Committee on Technical Barriers to Trade

MINUTES OF THE MEETING OF 16-17 JUNE 2005

Chairperson: Mr. Margers Krams (Latvia)

Note by the Secretariat[1]

[1] This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members and to their rights and obligations under the WTO.

I. ADOPTION OF THE AGENDA

1. The Committee adopted the agenda contained in WTO/AIR/2579.

II. IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

A. STATEMENT FROM MEMBERS UNDER ARTICLE 15.2

2. The Chairman drew the Committee's attention to the Statement on Implementation and Administration of the Agreement submitted by Kenya (G/TBT/2/Add.86, and Suppl.1).[2]

B. SPECIFIC TRADE CONCERNS

3. The Chairman drew the Committee's attention to the recommendation of the Third Triennial Review, that encouraged Members to share with the Committee, on a voluntary basis, any follow-up information on previously raised specific trade concerns.

1. New Concerns

(i) European Communities – Disposable lighters

4. The representative of China raised an issue regarding a draft decision by the European Commission on disposable lighters. She informed the Committee that the European Commission was considering a decision to require disposable lighters with an ex-factory unit price, or customs evaluation price, lower than two Euros to be equipped with a child resistance mechanism. In the absence of such a mechanism, these lighters would not be able to be marketed in the European Communities. While China appreciated the legitimate objective of protecting the safety of children, the draft decision raised concerns.

5. First, in the view of the representative of China, to assume a relationship between the price of a lighter and its safety was against the principles contained in the TBT Agreement: could the European Commission provide scientific evidence that a lighter of 2.01 Euros was safer than one that cost 1.99 Euros? Second, in terms of Article 2.2 of the TBT Agreement, it was noted that the draft decision aimed at protecting children under five from being injured by the misuse of lighters. The intended end-use of lighters (according to the draft decision itself) was that of "deliberately igniting cigarettes, cigars and pipes". Certain statistics showed that more than 90 per cent of families in Europe did not have children under five years of age. China doubted that all parents of the less than 10 per cent of the families (with children of less than five years of age) smoked in the presence of their children, and, even if they did, it was doubtful that they would leave lighters within the reach of children under five. With this analysis, it was obvious that the mandatory requirement for child resistant mechanisms on lighters increased the cost for consumers, and, therefore, was against the interest of a very large proportion of consumers. Such a decision did not comply with Article 2.2 of the TBT Agreement and went beyond the proportionality principle, which the European Communities themselves upheld. Third, a child resistant mechanism was not necessarily the best way to protect children. There were other alternatives which were less trade restrictive, for example, to consolidate the parents' or guardians' sense of responsibility, to advise parents with children under five to only purchase and use lighters with child resistant mechanisms (or buy the more expensive ones), or to put the lighters out of reach of children. Fourth, the data that the draft decision referred to was out of date and lacked scientific rationale. This was not in compliance with Article 2.3 of the TBT Agreement. An official decision on lighters needed to be based on reports in respect of the risk that disposable lighters posed for children less than five years of age. The representative of China had not seen such data. She urged the European Communities to observe its obligations under the TBT Agreement and to lay down safety regulations regarding lighters in a scientific and less trade restrictive manner.

[2] The latest list of statements under Article 15.2 is contained in document G/TBT/GEN/1/Rev.2. The latest list of enquiry point contacts is contained in G/TBT/ENQ/26. The latest information on Members' enquiry points is available on the TBT web page (http://www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_points_e.htm).

6. The representative of the European Communities informed the Committee that the draft decision at issue would be notified shortly to the TBT Committee.[3] A reasonable period of time would be given to Members to submit their comments and China was invited to submit comments in that context.

(ii) Korea – Residual Limits and Test methods for Pesticide Residues/Heavy Metals in Herbal Medicines (G/TBT/N/KOR/84)

7. The representative of China expressed concern about the above-mentioned notified regulation and disappointment that although comments had been sent to Korea on 14 and 15 March 2005, no written response had been received. She urged the representative of Korea to fulfil its obligations under the TBT Agreement by explaining the justification for the technical regulation and by providing relevant scientific evidence for it.

8. The representative of Korea noted that he would transmit the concerns to capital.

2. Concerns Previously Raised

(i) United States – Country of Origin Labelling (G/TBT/N/USA/25 and USA/83 and Corr.1)

9. The representative of the United States wished to follow up on a concern raised by Canada and China at the last meeting of the TBT Committee.[4] It was recalled that the United States had notified its proposal on a number of occasions, most recently as G/TBT/N/USA/83. She recalled that the comment period – which had been extended – had closed on 2 February 2005 and, on 4 April 2005, the regulation had become effective. During the comment process, the United States had received substantial comments from a number of parties, including Canada. As a result, the US Department of Agriculture's marketing service had made certain changes to the Interim Final Rule. The changes included more flexible labelling requirements with respect to blended products from multi-origins. Moreover, the Agricultural marketing service had broadened the definition of processed food items to include additional products such as canned fish. This was beneficial because processed food items were not subject to mandatory requirements. During the first six months of implementation, the United States would focus its efforts on facilitating compliance, through education, rather than taking any punitive action to address lack of compliance.

(ii) European Communities – Regulation on the Registration, Evaluation and Authorisation of Chemicals (REACH) (G/TBT/W/208 and G/TBT/N/EEC/52 and Add.1)

10. The representative of Cuba recalled that several delegations had expressed concern about the draft REACH regulation. The European Communities was requested to provide more information on the progress that had been made on the draft. He also asked whether the agency responsible for administering the implementation of the system had drafted or implemented any measures aimed at assisting affected developing countries.

11. The representative of Australia remained concerned that the EC draft legislation on REACH was more trade restrictive and cumbersome than necessary to fulfil its objectives and that it did not focus on the substances that presented the greatest risk. She wished to draw the Committee's attention to some points which were additional to previously raised concerns. First, regarding Article 2.1 of the TBT Agreement (national treatment), Members had to provide, for technical regulations, treatment no less favourable than that accorded to like products of national origin. Although the REACH legislation required registration of chemical products regardless of origin, the fact that substances already registered in the European Communities were not required to be re-registered when bought by a downstream producer in the European Communities was likely to put imported products at a

[3] The measure was subsequently notified as G/TBT/N/EEC/89, dated 5 July 2005.
[4] G/TBT/M/35, paras. 31 and 32.

competitive disadvantage. EC producers that used chemical substances were more likely to source substances that had already been registered from within the European Communities, rather than to source the substance from outside the European Communities and have to assume the registration obligation themselves. This raised concerns as to whether the European Communities was acting consistently with its national treatment obligation under the TBT Agreement.

12. Second, the representative of Australia recalled that Article 2.2 (on trade restrictiveness) provided that technical regulations should not be more trade restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Australia was concerned that, by including them within its scope, REACH created unnecessary restrictions on trade in minerals, ores, concentrates and metals. These elements posed minimal risk to public health. Requiring registration and/or authorization of ores and ore concentrates that presented minimal danger to public health was not necessary to fulfil the objectives of REACH. A less trade restrictive alternative would be to exclude from the scope of REACH ores and ore concentrates that posed minimal risk to public health and the environment. Australia had similar concerns with regard to metals in massive forms.

13. The representative of Japan noted that her delegation had yet to receive any adequate response from the European Communities to concerns expressed at previous meetings, as well as on other occasions – such as in bilateral dialogues. Many of these concerns remained valid. Moreover, she drew the Committee's attention to the many comments on the proposal that had been made by stakeholders *within* the European Communities.

14. The representative of Canada noted that her Government had recently submitted recommendations on the REACH legislation to the Industry, Research and Energy Committee of the European Parliament. Canada urged the European Communities to consider these recommendations.[5] While Canada supported the general goals of REACH, it was concerned with the workability of the EC proposals and the impact that REACH could have on trade. In Canada's case, the adverse consequences resulting from the draft legislation included effects on exports to the EC market of metal and minerals, as well as pulp and paper and recyclables. Among the recommendations made, Canada had recommended a risk-based alternative to the proposed use of volume thresholds for the registration of substances under REACH. She asked the European Communities to provide an update on the current REACH legislative process and confirm whether an additional WTO notification would be provided before implementation.

15. The representatives of Chile, China, Korea, Mexico, United States, and Uruguay associated themselves with the comments and concerns expressed by previous delegations. While their own concerns remained on the table, they chose not to repeat them at the current meeting. The US delegation hoped that there would still be opportunities for the REACH proposals to be made more streamlined and effective. The representatives of Mexico, Chile and Uruguay emphasized the need for technical assistance to facilitate the implementation of the REACH proposal. In particular, there was a need to clearly identify the ways in which the specific situation of developing countries was being considered, and what programmes or alternatives were being envisioned in terms of technical assistance.

16. The representative of the European Communities noted that there appeared to be no new concerns or issues raised at the current meeting. He stressed that the European Communities had answered the written comments submitted in the framework of the TBT notification procedure with a written reply on 28 October 2004. This reply had, at that time, been accompanied by a process description of more than 100 pages. Moreover, the European Communities had made a very detailed presentation of the REACH proposal at the November 2004 meeting of the TBT Committee. It had also informed the Committee, in March 2005, that the proposal was being examined by the

[5] These were made available as a Room Document at the meeting.

European Parliament as well as the Council of Ministers under the Co-Decision Procedure. The first reading in the European Parliament was still ongoing. The European Communities would update its notification to the TBT Committee if there was any major change to the proposal. However, if that was the case, it would probably not happen before the end of 2005 when the Common Position by the Council was expected. Meanwhile, the European Communities would continue its efforts to explain REACH to Members, to develop good quality guidance and to pursue bilateral and multi-lateral dialogues.[6]

17. The representative of Mexico asked the European Communities, with respect to the possible future notification, and with a view to maintaining the principle of transparency, to make a notification even if the amendments were not substantial, or even if these changes merely entailed, for instance, making the registration process simpler. It was worthwhile keeping all Members up to date with any change made.

(iii) Switzerland – Ordinance on the Emission Level of Passenger Cars with Compression Ignition Engines (G/TBT/N/CHE/39)

18. The representative of Switzerland referred to the previously raised issue regarding a draft Swiss regulation on particle filters for diesel engines about which some Members had expressed their concerns. She confirmed to WTO Members that the Parliamentary Committee at the origin of this draft had now withdrawn the proposal.

(iv) Brazil – Decree on Beverages and Spirits (G/TBT/N/BRA/135 and G/TBT/N/BRA/160)

19. The representative of Barbados wished to register her delegation's appreciation for Brazil's bilateral response to her country's concerns, as well as that of others in the region. Nevertheless, her authorities were still not fully satisfied that the responses covered Barbados' concerns which had been expressed since the November 2003 meeting of the TBT Committee. Specifically, Barbados was concerned that the amendments to the definitions of rum, *cachaza, aguardiente* and other spirit strengths found in Decree 4851 could have significant adverse effects on the trade of Barbados and other Caribbean rum producers. The representative of Barbados emphasized the need to set up technical consultations quickly on the issue.

20. The representative of Brazil reaffirmed his delegation's willingness to continue bilateral talks. He also stressed that the objective of the Brazilian legislation was neither to establish barriers to trade, nor to create obstacles to the imports of products from the region concerned.

(v) Indonesia - Mandatory Standard for Tyre (G/TBT/N/IDN/13)

21. The representative of the European Communities thanked the delegation of Indonesia for postponing the entry into force of the Mandatory Indonesia National Standard for Tyres until 23 March 2006. However, some substantial questions relating to the possible trade-restrictive effects of the Indonesian measure remained open. The European Communities asked the Indonesian authorities to clarify, in particular, whether tyres which complied with UN-ECE regulations would be accepted on the Indonesian market. The European Communities was also interested in knowing to what extent the Indonesian authorities would simplify the applicable technical guidelines in order to facilitate the implementation of the Decree.

22. The representative of Indonesia stated that she would pass on the EC questions to her capital.

[6] Members' attention was drawn to the following Internet site where more detail was available: http://europa.eu.int/comm/enterprise/reach/overview_en.htm.

(vi) European Communities – Directive 2002/95/EC on the Restriction of the Use of certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) and Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE)

23. The representative of the United States stressed that with some limited exceptions, in July 2006, companies would have to comply with the above-cited Directive. Despite this, companies were facing significant commercial uncertainties: lack of sufficient, clear and legally binding guidance. For instance, companies that had sought clarification on the exact product scope of RoHS, or how parts or service units that entered the European Union prior to July 2006 would be treated, had not got definitive guidance. In fact, the European Commission had often been unable to clarify. It had provided a document called *Frequently Asked Questions* in May 2005 but this document was intended to provide guidance to its member States and contained a disclaimer which meant that it could not be considered definitive. Moreover, there was a general lack of guidance about what conformity assessment procedures and test methods would be used to demonstrate conformity with RoHS. In general, it appeared that EU member States were ill-equipped to answer specific questions about how they would enforce RoHS.

24. More specifically, in cases where technically viable alternatives did not exist, businesses faced a lengthy, onerous, uncertain and non-transparent exemption process. This exemption process was overseen by the European Council's Technological Adaptation Committee (TAC). In March 2005, the European Parliament challenged the procedures employed by the TAC, calling into question the entire process that companies had been told to follow and creating more delays, uncertainty, and confusion regarding the status of the exemptions currently pending before the TAC. It was possible that companies would not receive a final ruling on whether RoHS applied to them until January 2006 or later, which could be too late for production design and manufacturing decisions.

25. Given the substantial impacts of RoHS on international trade, the United States urged the European Commission to provide sufficiently detailed and legally binding guidance to give companies seeking to comply with RoHS greater commercial certainty. The United States also called on the European Commission to make the TAC exemption process more efficient and transparent so that companies could have definitive answers more promptly on whether and how the Directive would apply to their products.

26. The representatives of Canada, China, Japan and Mexico shared the US concerns, especially those regarding the lack of sufficiently detailed guidance, the non-transparent exemption clauses and the functioning of the conformity assessment procedures. The representative of China was particularly concerned about the fact that the European Communities had not set up relevant testing methods. She suggested that the European Commission postpone the enforcement of the Directive and provide legally binding technical guidance and testing methods so as not to stop trade in electrical and electronic equipment with third countries. The representative of Canada emphasized the need for EC member States to handle enforcement in a consistent manner across the European Communities.

27. The representative of the European Communities noted that there had been extensive publicity and consultations regarding the Directive at issue. Aside from consultations with stakeholders and third countries, which had been taking place since 1997, third countries had had the opportunity to express concerns both bilaterally and in the TBT Committee. Efforts had been made to take these comments into account. In this respect, the Committee's attention was drawn to a paper on Frequently Asked Questions on the RoHS and WEEE Directives.[7] It was pointed out that this guidance document, which contained detailed explanations on definitions, scope and coverage of the Directive, would be regularly updated.

[7] This paper was made available as a Room Document at the meeting.

28. The Committee was informed that the European Commission would soon adopt a decision fixing the maximum concentration values regarding the RoHS Directive. In the first draft of the proposal the European Commission had proposed a maximum concentration value of 0.1 per cent by weight, for lead, mercury, hexavalent chromium, and 0.01 per cent by weight for cadmium.

29. With respect to conformity assessment and testing methods, the representative of the European Communities noted that the Directive itself did not foresee any compliance procedures or testing methods; it was up to the member States to develop these testing methods and procedures. In a workshop which had been organized recently by the European Information & Communications Technology Industry Association (EICTA), preliminary discussions had been held on the approach that member States and industry would take for RoHS compliance. The starting point had been the assumption that products placed on the market after 1 July 2006 would be RoHS compliant. The producer would thus demonstrate this compliance through a self-declaration (SDoC). Nevertheless, should serious concerns arise about a specific product, the Market Surveillance Authorities would test it. Further details about the self-declaration procedure, as well as testing methods to be used, would have to be worked out by member States and would be notified to the TBT Committee if appropriate.

(vii) Malaysia – Hologram Stickers on Pharmaceutical Products (G/TBT/N/MYS/5)

30. The representative of the European Communities welcomed the Malaysian notification concerning the use of a hologram security device on medicinal products sold in Malaysia. Nevertheless, he recalled that according to Article 2.9.2 of the TBT Agreement, notifications had to be made at an appropriately early stage, when amendments could still be introduced and comments taken into account. As the European Communities would be submitting written comments, Malaysia was urged to take these comments into account and, if necessary, to modify the text which had already been adopted at the time of notification.

31. The representative of the United States was, like the European Communities, concerned that procedures and opportunities foreseen by the TBT Agreement on transparency could have been undermined. While the stated opportunity for comment was 60 days, the regulation, notified on 29 April 2005, had entered into force on 1 May 2005. This called into question Malaysia's willingness to consider the comments as required by the TBT Agreement. Nevertheless, the United States remained hopeful that Malaysia would give due consideration to the comments it received.

32. The representative of Malaysia stressed that in the Malaysian notification G/TBTN/MYS/5 of 29 April 2005, a period of 60 days had been given to all Members for comments. Malaysian authorities would take into consideration all comments received during this period for ongoing reviews of this regulation. Moreover, the date of implementation of the regulation had been postponed twice to take into account such comments.

(viii) Korea – Import of Fish Heads

33. The representative of New Zealand reiterated her delegation's concern with regard to fish head exports to Korea. She noted that the Government of the Republic of Korea had informed her authorities that it would continue to prohibit imports of fish heads from New Zealand while, at the same time, allowing imports of edible fish heads from certain other Member countries. In bilateral discussions with the Republic of Korea, New Zealand had provided information which supported the request that Korea should allow the import of all edible fish heads on the same basis that it allowed other sea food imports. New Zealand did not regard the concerns raised by Korea in relation to the import of this product as being legitimate or justifiable in terms of either GATT Article XI, or the relevant provisions of the TBT Agreement.

34. The representative of Norway shared the concerns expressed by New Zealand and noted that the solution needed to be based on the principles of national treatment and most favoured nation; i.e., according the same treatment to like products irrespective of the source.

35. The representative of the European Communities expressed some satisfaction with regard to progress made in bilateral discussions. Both sides had agreed that trade in edible cod heads needed to commence at the earliest opportunity. She hoped that Korea would soon overcome the remaining obstacles so that the arrangement could be concluded without further delay.

36. The representative of Korea stressed that while bilateral discussions were still ongoing, differences in views remained and it could take some time to reach consensus.

(ix) European Communities – Restrictions on the Use of Certain Phthalates in Toys (G/TBT/N/EEC/82)

37. The representative of the United States referred concerns voiced by her delegation at the last meeting of the Committee[8] and drew Members' attention to G/TBT/N/EEC/82, dated 11 May 2005, concerning the proposed amendment to the existing Council Directive (76/769/EEC). She drew Members' attention to the fact that there now existed an opportunity for comment.

38. The representatives of Japan and China expressed similar concerns to those previously raised by the United States. In their view, the measure had the potential to upset international trade. The representative of Japan asked the European Communities to give a rational explanation for the new proposal. The representative of China, while appreciating the stated legitimate objective of the measure to protect children under three years of age, was particularly concerned with the trade restrictiveness of the measure.

39. The representative of the European Communities stressed that Members had been given 60 days (from the date of notification) to submit comments – i.e., until 11 July. These comments would be given due consideration. Currently the proposal was under discussion at the European Parliament. In respect of China's concerns on the trade-restrictiveness of the measure, it was noted that new scientific data had become available, and, as a result of risk assessments carried out, one group of phthalates had to be classified as a carcinogen, mutagen and reprotoxic. Due to the risk this presented to the health of children it was necessary to ban this group of phthalates in all toys and childcare articles. Moreover, based on the principle of precaution, a second group of phthalates needed also to be banned but only in toys and child care articles that could be placed in the mouth by children under three years of age, since these children belonged to weakest and most vulnerable group of consumers.

(x) New Zealand – Ban on the Importation of Trout

40. The representative of Canada reiterated her Government's concerns with New Zealand's ban on trout imports. In particular, her government did not consider the ban to be scientifically justified; no evidence had been received to this effect. In light of this, she expressed disappointment that New Zealand had extended the ban for another three years, i.e., until November 2007. While New Zealand allowed some access for "personal use", this was not considered adequate: Canada was seeking commercial access. She informed the Committee that in a recent meeting held with New Zealand, officials had been tasked with finding alternative measures well before the 2007 expiry date of the ban. Canada wished to be informed about any progress in identifying such alternative measures and New Zealand was again requested to immediately restore trade in trout.

[8] G/TBT/M/35, para. 6.

41. The representative of Norway expressed his delegation's interest in receiving any answers provided by New Zealand to Canada.

42. The representative of New Zealand noted that her delegation had provided detailed background at the November 2004 meeting of the TBT Committee regarding the measure at issue.[9] At that point, it had been explained how the measure had arisen from particular concerns over the conservation of trout in New Zealand. She confirmed that the order in Council, which prohibited importation of trout in commercial quantities into New Zealand, had been extended in October 2004 to ensure the integrity of the domestic sales prohibition. At the time of extending the prohibition order, the New Zealand Government had tasked officials to report back on alternative measures before the expiry of the temporary measure in 2007. While New Zealand was not in a position at the current meeting to provide information on this work, she assured the delegations of Canada and Norway that they would be kept up to date on progress.

(xi) European Communities – Regulation on Certain Wine Sector Products (G/TBT/N/EEC/15, Corr.1-2 and G/TBT/N/EEC/57)

43. The representatives of Australia, New Zealand, Mexico, United States and Uruguay reiterated previously raised concerns with respect to EC regulations on wine labelling. Although these concerns had been expressed over the last three years in the TBT Committee, these delegations continued to seek written responses to the issues raised. The representative of the United States noted that while there were ongoing bilateral negotiations with the European Commission on a wine agreement and a labelling protocol, she wished to stress that the outcome of that negotiation would not resolve the issues raised in respect of the wine labelling regulations.

44. The representative of the European Communities recalled that during the March 2004 meeting of the TBT Committee, her delegation had responded exhaustively to the questions raised by delegations.[10]

C. OTHER MATTERS

1. Mexico - Publication of the national standardization programme (G/TBT/GEN/7/Add.2)

45. The representative of Mexico drew the Committee's attention to its national standardization programme for 2005. This information was circulated in the TBT Committee on a regular basis in line with Article 2.9.1 of the TBT Agreement. It set out all information on Mexican official standards, i.e., technical regulations, which the public federal administration in Mexico had prepared during a given calendar year. Once drafted, these technical regulations would be notified to the TBT Committee.

2. Procedures established at the Codex Alimentarius Commission

46. The representative of the United States drew the Committee's attention to efforts made by Chile, over a period of eight years within Codex, to have the common Chilean species of sardines (*Clupea Bentincki*) added to the Codex Standard for Canned Sardines and Sardine Type Products.[11] On two occasions (in 1998 and 2000), the Codex Committee on Fish and Fishery Products had found that Chile had met the longstanding criteria for the inclusion of a new species into a Codex Fish Standard and had forwarded the amendment to the Codex Commission for final adoption. However, the proposed amendment had been rejected by the Commission and returned to the Fish Committee because of procedural concerns expressed by Morocco and the European Communities that the criteria for the procedures themselves needed to be upgraded. Subsequently, the Fish Committee had

[9] G/TBT/M/34, paras. 104-105.
[10] See the EC statement contained in G/TBT/M/32, paras. 25-28.
[11] The issue was raised by Chile at the last meeting of the TBT Committee (G/TBT/M/35, paras. 36-38).

begun a review of the criteria while, at the same time, forwarding the amendment to the Commission based on consistency with the existing criteria. The United States delegation to the Codex Fish Committee had supported that approach. However, since then, no consensus had developed on how to revise the criteria for inclusion. Meanwhile, Morocco, supported primarily by the European Communities, continued to work against the amendment. Regrettably, there appeared to be various economic and political interests at work. Morocco was seeking to limit competition and the European Communities was using this to argue that Latin scientific species names should be made mandatory on consumer labelling for a range of products. The representative of the United States shared Chile's interest in ensuring that Codex operated according to its own agreed procedures. The United States was a strong advocate for adopting the proposed amendment to include the new species in the Codex standard and agreed with Chile that it had met with all current Codex Committee procedures.

47. The representative of the United States pointed out that all WTO Members had an interest in ensuring that Codex operated in accordance with its own standards and procedures; this was reflected in the TBT Committee's Decision on International Standards. The United States was concerned that it appeared that trade, rather than failure to meet an existing technical requirement, was contributing to the delay in approving the amendments. The US delegation to Codex was willing to continue to work with Chile and other like-minded countries and would encourage other WTO Members to do the same. She urged Codex to expeditiously resolve the issue in a fair and equitable manner.

48. The representative of the Codex stressed that while there was a procedure for the inclusion of species, which was followed in the Committee on Fish and Fishery Products, Codex procedures also foresaw that when an amendment was proposed by a Committee it had also to be adopted by the Codex Alimentarius Commission. At the Codex Commission meeting of 1999, and at the following sessions of the Commission, it had become clear that there was no consensus in the Commission on the specific proposal at issue. While the United States had referred to some Members (Morocco and the European Communities) there were a large number of other countries which had not agreed on the proposal; the split was, in fact, even between countries supporting and those against. As the Codex made every effort to work by consensus, the case had been returned to the Committee on Fish and Fishery Products. Hence, there were two parallel issues involved: the revision of the procedure for inclusion of species (which was ongoing work) and the adoption of the amendment to the Standard for Canned Sardines and Sardine Type Products at the Commission level. There was also a third issue that had been raised more recently, which was the revision of the labelling provisions in the current Standard. In terms of the issue raised by Chile, the latest development was that at the last session of the Committee on Fish and Fishery Products, the item had not been discussed due to lack of time. It would be raised again at the next session of the Committee on Fish and Fishery Products, to be held in October 2006. The issue would not be raised at the July 2005 meeting of the Codex Alimentarius Commission.

III. TRIENNIAL REVIEW

A. ISSUES ARISING FROM THE THIRD TRIENNIAL REVIEW

1. Good Regulatory Practice

49. The representative of Canada considered that, as a follow-up to the Third Triennial Review, the Committee still needed to initiate a process of sharing experiences on equivalency, particularly with regard to how the concept was implemented in practice.

2. Conformity Assessment

50. The Chairman recalled that in Paragraph 40 of the Third Triennial Review (G/TBT/13), the Committee had agreed on a Work Programme intended to improve Members' implementation of Articles 5-9 of the Agreement and promote a better understanding of Members' conformity assessment systems. The Committee had made substantial progress in following-up on this Work Programme.

51. One substantive item left on this Work Programme was the organization of a workshop to be held on *different approaches to conformity assessment results*. The intention was to hold this workshop back-to-back with the first meeting of the TBT Committee in 2006 (probably in March) in order to allow for any outcome to feed into the Fourth Triennial Review. The Chairman reported on the informal discussions held on a draft programme from the Secretariat (JOB(05)/108) during which several delegations had made comments and proposals on the draft programme. These had been duly noted by the Secretariat. He invited Members and Observers of the TBT Committee to provide further comments and to suggest possible speakers, topics and case studies by Friday 8 July 2005. Ahead of the next meeting of the TBT Committee, the Secretariat would issue a revision of the draft programme taking into account such comments and suggestions made.

3. Technical Assistance

52. The Chairman recalled that at the last meeting of the Committee (22-23 March 2005) the Committee had agreed on a course of action to increase transparency in the identification and prioritization of technical assistance needs. On the basis of an *issues and options paper*[12] by the Chairman, the Committee had agreed on one approach – while keeping other options open – that entailed the increasing of transparency through the development of a mechanism for the voluntary notification of specific technical assistance needs and responses. A draft notification format (JOB(05)/93), had been circulated and considered in informal mode. Many valuable and useful suggestions had been made, all of which had been noted by the Secretariat and would be taken into account in the next revision. The Chairman urged delegations who wished to make any further comments on the draft to communicate these to the Secretariat before 8 July 2005.

53. Considering the importance given by Members to this issue as well as the mandate from the Third Triennial Review on the subject of transparency in technical assistance, the Chairman stressed that he regarded the issue as one of priority. After the revision of the notification format had been circulated, he intended to hold consultations with all interested Members so as to be in a position to have a draft which reflected a wide degree of support for the next meeting of the Committee.

54. The representative of Canada recalled that under the recommendation contained in paragraph 55, the Committed had agreed to "Explore how the results of the Committee's discussions (e.g., on needs identified, lessons learned, gaps in technical assistance activities) could be reflected in the WTO's Technical Assistance and Training Plan". Also, in paragraph 56, the final two bullets could be considered: that the Committee should provide a forum for feedback and assessment of the outcomes and effectiveness of technical assistance as well as consider, based on Members' experience of technical assistance received and provided, developing further elements of good practice and technical assistance in the TBT field.

55. The representative of Egypt stressed the importance of considering the fourth bullet of paragraph 56 (G/TBT/13).

[12] JOB(05)/20, 21 February 2005.

4. Other issues arising from the Third Triennial Review

56. The representative of Canada pointed out that if there were some items that could not be dealt with in the context of the follow-up of the Third Triennial Review, the Committee could consider rolling them into the discussions leading up to the Fourth Triennial Review, perhaps as items "not addressed" under the previous review.

57. The representatives of Egypt, European Communities and Mexico supported the statement made by Canada (in paragraphs 49, 54 and 56, above). The representative of Mexico suggested that, at its next meeting, the Committee could look at the various elements of the Third Triennial Review that had not been given due attention to date.

58. Considering the comments made, the Chairman suggested that at the next meeting of the Committee, Members would discuss issues resulting from the follow-up to the Triennial Review that Members felt had *not yet* been adequately addressed. He pointed out that some of these issues could be addressed in preparation of the Fourth Triennial Review.

B. PREPARATION OF THE FOURTH TRIENNIAL REVIEW

59. The Chairman recalled that at its meeting of 4 November 2004, the Committee had endorsed a Work Programme for the preparation of the Fourth Triennial Review of the Implementation and Operation of the TBT Agreement pursuant to Article 15.4 (Annex 1 to this report). The Committee had initiated the review work in March 2005 by beginning the preliminary identification of topics for review. The following eight topics had been identified to date by the United States, China and the European Union. The current meeting would focus on the first three.

(a) Implementation and administration of the Agreement (US);

(b) Good regulatory practice (EC, US);

(c) Transparency (China, EC);

(d) Conformity assessment procedures (EC, US);

(e) Technical assistance (China, EC);

(f) Special and Differential Treatment (China);

(g) Intellectual property rights issues in standardization (China); and,

(h) Labelling (EC).

1. Implementation and Administration of the Agreement[13]

60. The representative of the United States stressed that Article 15.2 Statements could be seen as a "barometer" of Members' compliance with the TBT Agreement. The submission of such a Statement was required by the Agreement; it was an initial basic step that indicated that the Member was aware of its obligations and had taken some action to give them effect domestically. A recommendation had been made in the Third Triennial Review inviting Members to seek assistance from other Members in drafting such a Statement.[14] Some Members had yet to submit this Statement. In fact, the existence of – or lack of – such Statements could be an indicator of the effectiveness of technical assistance efforts. While the topic perhaps did not need any further discussion in the Committee, Members needed to remain conscious of this obligation. In terms of information exchange, she suggested that the Committee could also consider, when concluding the Fourth

[13] Document G/TBT/GEN/1/Rev.2 contains the latest list of Statements of Implementation. The latest list of Enquiry Points is contained in G/TBT/ENQ/26.

[14] G/TBT/13, para. 7.

Triennial Review, adding information on notifications of acceptance of the Code of Good Practice – which was another basic transparency aspect of the Agreement.

61. The Chairman reiterated the importance for those Members who had *not* done so, to submit their 15.2 Statements on Implementation.

2. Good Regulatory Practice[15]

62. The representative of the European Communities introduced his delegation's submission on the subject of Good Regulatory Practice (G/TBT/W/254). This submission addressed in particular the issue of the choice of policy instruments (mandatory versus voluntary measures), "better regulation" and regulatory cooperation. In the view of the European Communities, good regulatory practice could help prevent unnecessary obstacles to international trade, as well as make sure that legislation was not more trade restrictive than necessary. It was suggested that the Committee further explore the meaning of these terms and what they implied in practice with a view to, perhaps, limiting the scope for their interpretation. He stressed that while seeking to avoid unnecessary barriers to trade, the right to set public policy objectives in relation to legitimate objectives such as the protection of human animal, animal and plant life or health or the environment, had to be maintained.

63. In respect of *policy instruments* for technical regulations, the European Communities noted that several Members had made submissions in the NAMA negotiations which contained proposals to strengthen the disciplines of TBT Agreement. These proposals related to measures to increase the proportion of technical regulations that were performance-based rather than based on detailed product specifications. This was indeed in line with the provision contained in Article 2.8 of the TBT Agreement. Performance-based regulation was more easily adaptable and encouraged innovation. It also reduced the number of legal texts required. The European Communities was in favour of a discussion on performance-based regulations, and felt this was one way to help avoid unnecessary obstacles to trade. For such regulations the objectives could be more easily understood and this could help in the consultation phase prior to their adoption, when the drafts were notified. In light of this, the European Communities suggested that it would be useful for the TBT Committee to explore, within the general framework of good regulatory practice, how the use of performance-based regulations, where appropriate, could contribute to ensuring that unnecessary obstacles to trade were avoided. It could also be appropriate, in this context, for the Committee to pursue the question of different approaches to technical regulations, which could ultimately lead to recognition of preferred regulatory options.

64. The European Communities also wished to address the issue of "*better regulation*". This comprised measures taken to simplify existing legislation and to enhance the preparatory stages of new legislation, as well as to make efforts to reduce regulatory burdens. He stressed that the right regulatory framework strengthened consumer confidence and helped contribute to growth. On the other hand, over-regulation or bad regulation could have a particularly negative effect on small and medium sized (SMEs) enterprises who had limited resources to deal with red tape. In fact, regulatory bodies needed to question, on a case-by-case basis, whether there was a need to regulate at all. In a number of cases – and this was brought out by the Secretariat's paper – there was no need to legislate, and reliance on market-based or voluntary instruments was adequate. Improving the quality of legislation, through better regulation, could have a significant positive impact on conditions for economic growth, employment and productivity.

65. The representative of the European Communities informed the Committee of "integrated impact assessments", which were used on all major legislative proposals from the European Communities. He noted, furthermore, that the European Communities would, in the near future, review their impact assessment methodology and seek advice on whether this could be

[15] Document JOB(05)/107 contains a Secretariat background note on Good Regulatory Practice.

improved. The European Communities was trying to build into the impact assessment a measure of administrative burden, which could be a considerable cost. The representative of the European Communities encouraged Members to share their experiences on better regulation. He suggested that it could be useful for the Committee to have information on what other Members were doing in this regard. The European Communities would be pleased to share its own experiences with other Members on the New and Global Approaches, which it considered to be a good application of the concept "better regulation".[16]

66. The European Communities considered that *regulatory cooperation* could be viewed as a part of the process of good regulatory practice. It was usually a voluntary or informal activity where regulators from different countries met on a bilateral basis to exchange information on regulations and procedures. While long-term in nature, in the experience of the European Communities, the process contributed to avoiding unnecessary obstacles to trade. It made sure that measures were not more trade-restrictive than necessary and was particularly useful when applied at an early stage in the discussion of regulatory proposals.

67. In concluding, the representative of the European Communities stressed that these three elements of good regulatory practice were not the only ones; there were other elements of good regulatory practice. Taken together with others, these could contribute to addressing the fundamental issue of avoiding unnecessary barriers to trade.

68. The representative of Egypt asked the representative of the European Communities if he had any concrete examples of the use of performance-based regulation compared to ones based on product requirements, and whether there existed any statistics or other data that showed the difference in effect in terms of trade restrictiveness. Regarding impact assessment, Egypt considered this as one of the most important elements of good regulatory practice. He asked whether the European Communities – as well as other Members – could share with the Committee the methodology that they used for conducting such assessments.

69. The representative of Mexico noted that the Mexican system for good regulatory practice appeared to have many elements in common with the system described in the EC paper. Regarding impact assessments he noted that, in Mexico, these were required for technical regulations (as well as other legislation) by administrative procedural laws. In this context it was important to keep in mind the link between the rationale of measure and its regulatory impact, and to be able to demonstrate that the measure that was being adopted was the least trade-restrictive measure at that time. In order to do this, it was necessary, *inter alia*, to compare various alternatives to justify the measure. It was also necessary to examine the technical feasibility of implementing the measure.

70. Regarding some specific points in the EC paper, Mexico was also, in general terms, in favour of using performance-based regulations. There was a need, however, to consider this on a case-by-case basis. For instance, there were regulations which entailed the banning of dangerous substances and, in such a case, there might not be an available alternative to adopting a restrictive measure. The representative of Mexico asked what the European Communities was referring to in terms of "different approaches to technical regulations" (last sentence in paragraph 63 above and paragraph 9 of G/TBT/W/254). Also, Mexico agreed that it was always important to consider whether it was at all necessary to regulate before elaborating a draft regulation. He asked, in this regard, what specific measures related to "better regulation" had been introduced to achieve this at the level of member States.

71. The representative of Malaysia stressed that in order to implement good regulatory practice it was necessary to have sufficiently developed institutions. For example, the development and implementation of a regulatory impact assessment required skills and knowledge both at the policy

[16] Members were referred to a previous submission by the European Communities: G/TBT/W/219, dated 30 June 2003.

level and at the regulatory agency level. Implementation of a "new" regulatory system such as the use of SDoC required expertise in market surveillance and an appropriate legal framework. While Malaysia accepted that the adoption of good regulatory practice would have positive effects on trade facilitation and liberalization, its realization, in practice, would require the development of knowledge, skills, and institutions. The Committee needed to note this aspect of the debate. It was suggested that developed country Members should give favourable consideration to providing technical assistance in this regard.

72. The representative of Chile informed the Committee that her authorities had been working on this subject at the level of their national TBT committee. This work had brought together all the regulatory officials in the country and one of the key issues that had come out of discussions had been the drafting of a Decree that had come into force in 2004. This Decree dealt with requirements for the elaboration, development and application of technical regulations and conformity assessment procedures and comprised such aspects as the impact (from a qualitative point of view) on the economy and on SMEs.

73. The representative of the European Communities noted, regarding Egypt's question, that those regulations referred to as the "new approach regulations" were performance-based because they did not contain technical details in the regulations themselves. The objectives of the regulations were contained in what was called "essential requirements", and these were simply written statements to say, for instance with respect to electrical products, that people should not be harmed by high-voltage current. That was an example of performance-based regulation. An example of descriptive-based regulation could be found in the automobile sector as these regulations contained a substantial amount of technical information that needed to be updated often (because technology changed over time). The advantage with performance-based regulations, which did not contain any technical detail, was that they remained up to date; it was only the standards that were referred to in the performance-based regulations that changed. Regarding methodology for impact assessments, the European Communities would provide further information at a subsequent meeting.

74. Regarding Mexico's question on paragraph 9, this was a suggestion by the European Communities that the Committee go into more detail on the basic approaches to technical regulations. While this would entail a large amount of discussion and information from Members, the end result could perhaps be a recognition of "preferred options". One example of this was the regulatory model adopted by the UNECE where common regulatory objectives were used. Regarding how member States were implementing the policy on better regulation, it was noted that there was an ongoing discussion in the European Communities on this subject. A key part of what was referred to as the "Lisbon Strategy", which was about trying to make the European Communities more competitive, involved not only legislation at the Community level, but also legislation at member State level. Here the recommendation was that all member States set up national "better regulation strategies", impact assessment systems, simplification programmes and supporting structures adapted to the national circumstances. Another point was the need for increased collaboration between member States and the EC services. For example, in Europe there were harmonized areas (regulations at the European level) and non-harmonized areas. Hence, first in harmonized areas, the Commission was trying to develop a preventative dialogue between EC services and member States aimed at improving timely and correct transposition of directives. In non-harmonized areas, efforts were being increased to improve infringement procedures, and also to improve the notification of technical regulations at national level through one of the directives.

75. The representative of the United States said that her delegation intended to table two submissions on the topic. One submission would deal with domestic procedures in the United States;

another possible contribution would deal with reactions to the EC paper, as well as the discussion in the Committee.[17]

76. The representative of the OECD updated the Committee on its ongoing work on good regulatory practice. This information is contained, in full, in document G/TBT/GEN/19.

77. The Chairman concluded that the Committee would revert to the issue of good regulatory practice at its next meeting.

3. Transparency[18]

(i) Submission by Canada on Enhancing Transparency for New or Changed Regulations/CA Procedures which Arise as a Result of Implementation of a Recommendation of the DSB (G/TBT/W/234, 21 October 2003)

78. The representative of Canada recalled that her delegation's submission, originally from October 2003, came about as the result of a TBT dispute settlement case and the experience that Canada had gained as a third party to that case. In the case at issue, the DSU had recommended that the losing party bring its regulation into conformity with its obligations under the TBT Agreement. The parties had then negotiated a reasonable period of time (RPT) for implementation. Around the mid-way point in the implementation period, the losing party had notified its revised technical regulation under the Article 2.9 of the TBT Agreement and provided a ten-day comment period. A sixty-day comment period had been requested. The Party responded that it was unable to consider a sixty-day comment period as it was limited by the deadlines imposed by the RPT for implementation. The comment period had subsequently been extended by seven days. The Party stated that it did not consider itself obligated to notify the revised regulation, but was notifying on a voluntary basis for transparency purposes.

79. In considering this issue, Canada noted that transparency was an area where the TBT Committee had dedicated significant time for discussion and generated significant guidance, especially with respect to the articles of the TBT Agreement which focused on obligations related to technical regulations, and how they could be effectively implemented. In fact, Members continued to highlight ongoing problems with certain aspects of notifications as well as make useful suggestions. It was also clear that Members generally wished to be notified as early as possible of the intentions of other Members in the area of new or revised technical regulations and conformity assessment procedures. Current guidance from the Committee provided for a minimum sixty-day period during which comments could be prepared by other Members and forwarded for the consideration of the notifying Member.

80. The representative of Canada stressed that in the area of the TBT Agreement, and in the case of a technical regulation, a Member was required to notify when a relevant international standard did *not* exist, or the content of the proposed technical regulation was *not* in accordance with the technical content of relevant international standards, and the proposed technical regulation could have a significant effect on trade of other Members. In this case, a key issue was the existence of a Codex standard, whether the standard was a relevant international standard and whether this standard was used by the defending party as a basis for its measure. Both the Panel and the Appellate Body concluded that the Codex standard was a relevant international standard and it was clear from the evidence presented that the existing technical regulation had a significant effect on the trade of other Members. Thus the only remaining condition to be met, in order to determine if the proposed technical regulation had to be notified, was whether the proposed technical regulation was in accordance with the content of the relevant international standard. The Member concluded that its

[17] Members were referred to a previous submission by the United States: G/TBT/W/220, dated 30 June 2003.
[18] Document G/TBT/W/250 contains a background note from the Secretariat on the subject of transparency.

proposed technical regulation was in accordance with the relevant international standard, and that it was therefore not required to notify. It is worth noting that while the Party did notify on what it deemed to be a *voluntary* basis, the comment period was so short that it was difficult for other Members to provide comprehensive comments. The brevity of the comment period could also have prevented some Members from providing their comments.

81. In the interest of enhanced transparency, Canada proposed that the TBT Committee agree to explore the incorporation into its transparency guidelines of a provision that: (i) encouraged the notification by a Member of a technical regulation or conformity assessment measure which was introduced or revised due to a recommendation in a report of a panel or Appellate Body and subsequent adoption of the report by the DSB; and, (ii) encouraged a Member to take into consideration an adequate comment period under such a notification in the development of an RPT for implementation (unless the notifications were legitimately exempted due to reasons of an urgent nature per Articles 2.10 and 5.7).

82. The representative of the European Communities noted that since Canada had referred to a dispute settlement case where the European Communities had been a Party, he simply wished to confirm that there had been no obligation under Article 2.9.2 of the TBT Agreement to submit a notification as the envisaged measure was fully in line with an international standard. It was recalled that there was also the issue of the RPT and that within the DSU there were procedural rules which related to transparency. It was not an easy issue to determine the relationship between the DSU on the one hand and the TBT Agreement on the other. Nevertheless, this was an issue that could be further explored.

83. The representative of Egypt recalled that there was already some obligation under the DSU about informing other Members about action taken to bring a measure into conformity with WTO. Hence, extending this obligation to also take the form of a TBT notification might not be desirable; the question could arise as to how to take into consideration the comments on such a measure where the changes made had already been accepted by the parties.

84. The representative of Brazil had some concerns regarding Canada's proposal as it seemed to introduce new obligations concerning the implementation of recommendations of the DSB and subjected Members to demands which were neither set out in the TBT Agreement nor in the provisions of the DSU. Although Brazil was favourable to measures that promoted transparency in the procedures of the DSB, as well as in other Committees of the WTO, the Canadian proposal could create a precedent which would not be appropriate, in that it entailed the possibility of additional or different obligations under other Agreements being linked to the implementation of the recommendations of the DSB. It was not a good idea to create linkages between the DSB and other WTO Agreements for there could be considerable systemic implications. In the view of Brazil, the DSU already had mechanisms that ensured transparency in the process of implementation of the decisions of the DSB.

85. The representative of Argentina noted that there was a need to look at the issue from a general, systemic view point without referring to any particular circumstance or case, because each case was specific. It needed to be kept in mind that the issue concerned a technical regulation, irrespective of whether it was motivated through a recommendation by the DSB or stemmed from the will of the Member that had adopted the regulation. Moreover, the obligation to notify a technical regulation under Article 2.9 of the TBT Agreement remained. In fact, when there was a recommendation from the DSB, there was an accumulation of obligations: one was to bring the inconsistent measure into line with the provision to which it ran counter, and the other was the obligation to notify (under the TBT Agreement). There was no other link between the two sets of rules (TBT Agreement and DSU) – it was simply a natural accumulation of obligations. The Committee needed to be cautious in considering the establishment of any guidelines or recommendation in this respect.

86. The representative of Canada stressed that her authorities had considered carefully the issue raised by delegations, i.e., the impact on the DSB process, the possibility of creating a precedent, the issue of possible systemic implications and the recognition that there was a natural accumulation of obligations. Canada's conclusion had been that its proposal would not carry systemic implications.

(ii) Submission by China on Transparency (Section II of G/TBT/W/252, 8 June 2005)

87. The representative of China introduced the following specific proposals on transparency: (a) that the interval for taking into account comments made on notifications be no less than 15 days; (b) that notifying Members make sure that the full text of the notified documents was always available at the national enquiry point, and/or as an alternative, provide the URL in the notification form as appropriate so that Members could download the full text; (c) that the adopted final text be notified as an addendum to the original notification, indicating the deviations from the original notification if there were any, and providing the URL or link for downloading the full text as appropriate; (d) that the TBT Committee use the date of notification as the date of circulation by the Secretariat, and notifying Members allow no less than 60 days for inviting comments; (e) that Members share their translation of notified documents through their websites or the WTO website; (f) that developed Members be encouraged to provide an adaptation period of more than six months; and (g) that the Committee continue its discussion on the transparency issues for the Fourth Triennial Review and make recommendations as necessary.

88. The representative of the European Communities noted, in respect of the recommendation regarding the availability of notified documents at the national enquiry points (the recommendation in paragraph 12(b) of G/TBT/W/252), that the European Communities also had an interest in notified documents being made available as quickly and as easily as possible for member States who wanted to make comments, or to consider making such comments. This could be done by referring (linking) to a website in the notification form. Regarding the recommendation (c), while the European Communities was very much in favour of access to final texts, how this could be done needed to be further discussed – an addendum normally signified an addendum to a draft-notified text. The representative of China had also suggested that deviations from the original notified text could be highlighted. While it was true that this would facilitate the task for Members who had made comments, in many cases, it could be difficult for the notifying Member to point out every modification that had been made to take comments into account. The European Communities also supported the recommendation contained in (e) on sharing of translated notified documents. Regarding the manner in which the "sixty days" were counted, there appeared to be different approaches. For instance, the European Communities counted sixty days from the day of the notification while China counted from the date of circulation of the notification; a common approach could indeed be helpful.

89. The representative of Korea supported, in general, China's practical proposals on transparency. He had a minor reservation regarding the provision of the full text of the notified documents. In his view this could cause too much of an administrative burden.

90. The representative of Japan asked China about the "15 days" referred to in paragraph 12(a) of their submission: what was the rational for choosing this period of time? Also, Japan wished to have a clarification whether the proposal in (c) was meant on a voluntary basis. He also asked what was meant by "notified document" – the notification itself or the full text of the notified draft regulation? Translations of full texts would be too burdensome for Japan. Moreover, the recommendation in (f) appeared to run counter to the obligation contained in Article 2:12 of the TBT Agreement.

91. The representative of Egypt supported China's proposal in full. He noted, with respect to the recommendation contained in paragraph 12(f) that there had already been a decision taken in Doha on

this matter.[19] Moreover, Article 2:12 made specific reference to developing countries and their specific needs.

92. The representative of China explained in relation to the "15 days" that the objective had been to suggest a minimum period of time for Members to take comments into account. With respect to paragraph (c), the idea had been to use the same notification code so as to facilitate identification. Regarding (e), the suggestion had been that Members would be *encouraged* to share their translations of notified documents through their websites, or the WTO website. By "notified documents" was meant the full text of the notified technical regulations or conformity assessment procedures. Regarding the question on (f), this had been adequately responded to by the representative of Egypt.

(iii) Submission by the European Communities on Transparency (G/TBT/W/253, 13 June 2005)

93. The representative of the European Communities stressed that transparency was a key issue within the TBT Agreement, and there was a need to continue enhancing its implementation within the Agreement's existing framework. The European Communities was willing to explore with the Secretariat and other Members the feasibility of having a more widespread dissemination of all comments made on notified texts, as well as replies to those comments. He noted that, to date this exchange of views had mainly been done on a bilateral basis. However, it could be interesting also for Members who at first glance might not have identified points of concern – or who might not have had the possibility to proceed to an in-depth assessment of the notified text – to be made aware of the concerns of *other* Members. Therefore, it could be interesting to explore ways to circulate comments so as to enable all Members to have access.

94. The European Communities reiterated its proposal to find ways to facilitate systematic access to final texts of notified proposed technical regulations or conformity assessment procedures. Knowledge of a final, adopted text was key for enterprises: it informed them about the rules applicable to products they intended to place on a given market. It also allowed Members to verify whether eventual comments made had been taken into account. Regarding the notification format itself, it was suggested that the Committee explore how to improve the information contained in section six of the notification form ("Description of content"). This description needed to allow other Members to make a first analysis of the proposed text. Moreover, in order to facilitate and speed up the notification procedure, it could be useful if copies of the notified text were immediately attached to the notification format where such texts were not publicly available through the Internet.

95. The representative of Colombia considered the EC proposal on access to comments to be a good way of improving both the application and the implementation of the Agreement. This would enable far better interaction between enquiry points, exporters and national producers. Also, like China and the European Communities, Colombia stressed the importance of access to the final texts. She agreed with the importance of maintaining a nomenclature of the texts that would facilitate follow-up from the first notification to the final version of the text. In terms of the timeframe for taking comments into account, it was important that this not become a "straightjacket"; the number of days – such as the fifteen suggested by China – needed to be discussed further. The suggestion that translations should be shared was extremely important, particularly when original texts were not in one of the three official WTO languages.

96. The representative of Japan noted, in respect of paragraph 2 of the EC paper (on facilitating access to comments) and the suggestion that all comments on notifications and subsequent replies be communicated to the Secretariat and posted on the WTO TBT website, that it needed to be taken into account that some bilateral communications could be of a confidential nature.

[19] WT/MIN(01)/17, 20 November 2001, paragraph 5.2.

97. The representative of Mexico considered transparency to be one of the most fundamental aspects of the implementation of the TBT Agreement. On a preliminary basis, Mexico considered several points set out in the paper to be important. He noted that, for example in terms of exchanging final texts of technical regulations, this was already done in Mexico within the framework of certain Free Trade Agreements that Mexico had concluded. Extending such an exchange to other Members of the WTO did not, hence, constitute a problem for Mexico – and other trading partners could be encouraged to do the same thing. Regarding translations of the regulations, also Mexico considered it essential that there was a mechanism that would enable Members to be made aware of their existence, and take part of them. He drew the Committee's attention to the fact that the SPS Committee had already developed a format for the notification of translations of SPS regulations and asked whether the Secretariat could look into the progress made in this area. Regarding notifications at the local or sub-state level of governments (paragraph 5), Mexico too had dawn the attention of delegations to the very low number of notifications. A lot remained to be done in this area and he encouraged Members to comply with their obligation to communicate to the WTO TBT Committee measures which were taken also at sub-federal or sub-state levels.

98. Another issue to which Mexico attributed significant importance to, and which was not reflected in the EC paper, related to Article 2.9.1 of the TBT Agreement. This provision obliged Members to announce, in the form of publication, and at an early stage, the adoption of any type of technical regulation. Mexico complied with this regulation.[20] However there appeared to be no uniformity between Members as to how this notice was to be published: there was neither a mechanism in the Committee to make such a notification available to Members, nor was there any mechanism to make it known to other Members that such a publication had been made. Hence this provision (Article 2.9.1) had not been implemented in an effective or appropriate way. Mexico was interested in having a discussion on this subject in the Committee.

99. The representative of the European Communities was pleased that Members who had commented on their paper seemed, to a large extent, to share their views – particularly with respect to access to final texts. He acknowledged the reservation expressed by Japan in this regard which did need to be taken into account. On translations, he agreed with Mexico on the need for the TBT Committee to consider and further explore what had been done in the SPS Committee. Regarding Mexico's last point, on Article 2.9.1, it would be useful for the Committee to exchange experiences on how Members implemented this provision. For instance, in the European Communities, there was in general, at a very early stage, a public consultation process on envisaged measures where all stakeholders could comment.

4. Intellectual Property Rights and Standardization

(i) Submission by China (G/TBT/W/251, 25 May 2005)

100. The representative of China recalled that the TBT Agreement highlighted the importance of international standards in furthering the objective of GATT 1994 and encouraged Members to adopt international standards to facilitate international trade. Considering this, it was necessary to ensure the quality and efficiency of such standards. More precisely – there was a need, in standards preparation, to treat appropriately the relationship between standards and technologies covered by IPRs. To do this, international standard-setting bodies had established policies concerning IPRs in standardization which encouraged IPR holders to declare their acceptance of the RAND principle.[21] However, many issues could not be solved efficiently by their policies. For example, standardization bodies had declared that they would be responsible for concerned information about essential IPRs to be integrated into standards. Also, there needed to be more concrete measures to encourage concerned parties to disclose related information. Interpretations of the RAND principles were

[20] Reference was made to Mexico's yearly communication to the TBT Committee of its National Standardization Programme, the latest of which is contained in G/TBT/GEN/7/Add.2 (24 May 2005).

[21] This is explained in G/TBT/W/251, para. 3.

inconsistent and therefore it was often difficult to achieve consensus among IPR holders and applicants, which increased uncertainty of international standard adoption.

101. The representative of China stressed that this issue had, already, not only sabotaged the efficiency and quality of international standards, but also hampered Members' adoption of such standards. China was hence of the view that it was necessary to ensure that IPR issues in the preparation and adoption of international standards did not become an obstacle for Members in adopting such standards. The WTO needed to consider the negative impacts of IPR issues in standardization; there was a need to explore appropriate trade policies to resolve difficulties arising from this issue. As the TBT Agreement encouraged Members to adopt international standards, the TBT Agreement was relevant. China proposed that the TBT Committee take advantage of the Triennial Review discussion to fully address this issue.

102. The representative of Brazil noted that the Chinese proposal could benefit from further clarification regarding its scope and some of the concepts it addressed. For instance, what were the existing provisions that were relevant to patent rights in international standardization organizations? What constituted the reasonable and non-discriminatory principle "RAND" whose adoption was recommended by such organizations? Also, was the Chinese Government proposing modalities for the negotiation of provisions that would prevent intellectual property rights from becoming barriers to access of international technical standards? The representative of Brazil stressed that her delegation supported the idea that patent rights should not constitute an obstacle to development objectives – and, in the case of the TBT Committee, should not become an impediment to Member countries gaining access to international technical standards in line with the stated objectives of the TBT Agreement. In this regard, she welcomed further elaboration by China on its proposal that would support a more in-depth debate in the TBT Committee.

103. The representative of Mexico asked the representative of China to explain in greater detail the nature of the problem that their proposal sought to address, and what was expected from the TBT Committee. It was not clear to his delegation to what extent the TBT Committee could provide a solution, or even the WTO. He also asked whether the international standard-setting bodies would be in a position to provide the Committee with more information on this particular subject.

104. The representative of Canada associated herself with the comments made by Brazil and Mexico with respect to seeking further elaboration of the proposal by China. One question was whether China had considered – or was planning to – raise this issue in the relevant standardization bodies or, for example, in other fora, such as the TRIPS Council? It would be important for the Chinese delegation in any further elaboration, to specifically elaborate and give examples in respect of its comment to the effect that IPR issues in the preparation and adoption of international standards had become "an obstacle for Members to adopt international standards and facilitate international trade."[22]

105. The representative of the IEC drew the Committee's attention to the 2004 ISO/IEC Directives, Part 1, Section 2.14 which had a clear reference to patented items. The relevant clause set out the way in which patents were dealt with in the international standards-setting process as set out by ISO and the IEC.

106. The representative of China noted the comments and would revert to these at a later stage.

5. Technical Assistance

(i) Submission by China (Section III of G/TBT/W/252, 8 June 2005)

107. The representative of China introduced his delegation's proposal (G/TBT/W/252).

[22] G/TBT/W/251, para. 6.

108. The representative of the European Communities recalled that transparency in technical assistance was an important objective. In fact, his delegation had every year for the past four years been providing the TBT Committee with information on technical assistance projects. This was not an easy task as technical assistance was provided in a decentralized fashion in the European Communities. Regarding China's suggestion in paragraph 19(a), it was noted that this was relevant to the Committee's discussion in the context of the development of the draft voluntary notification format; it was important not to duplicate these efforts and, in developing the form, China's concerns could be taken into account (paragraph 52, above).

109. The representative of Canada agreed with the point made by the European Communities in respect of paragraph 19(a). Moreover, paragraph 19(b) of China's submission could also be relevant to the work on the information coordination mechanism (transparency in technical assistance). This was about the TBT webpage and the possibility of including information on finished or ongoing technical assistance projects. It was perhaps possible to make information that was notified, through the format being developed (on specific technical assistance needs), available on the webpage so as to flag it to Members in a more timely manner than was done on the WTO/OECD Database.

110. The representative of the United States asked what was meant by the suggestion that the Committee and the Secretariat annually prioritize common or urgent needs in its training programmes or seminars. She recalled that in the last Review, Members had recognized the limitations of both the Committee and the Secretariat in terms of the type of assistance that could be provided.[23] She questioned what else needed to be done so as to prioritize training, considering that much of the technical assistance was Member-driven and the seminars that had been given were guided by the discussions in the Committee. Regarding provision of information to the Committee by Members, the representative of the United States noted that they themselves had considerable difficulties in providing information on US technical assistance. This was not because such assistance was not provided, but because it was not available in a centralized format.

111. The representative of China agreed that detailed information mentioned under paragraph 19(a) could be taken into account in the draft voluntary notification format previously discussed. Regarding paragraph 19(d), on the suggestion that the Secretariat and the Committee annually prioritize addressing certain common or urgent needs by providing training courses or holding seminars, China was of the view that sometimes there was a need to provide technical assistance on an urgent basis and therefore it was important to prioritize.

6. Special and Differential Treatment

(i) Submission by China (Section IV of G/TBT/W/252, 8 June 2005)

112. The representative of China introduced his delegation's proposal (G/TBT/W/252).

113. The representative of the United States noted that, similarly to the case of technical assistance, there was likely to be difficulties in ascertaining and providing information on special and differential treatment. In this respect, she asked China to provide more information on the type and content of information it expected from developed Members.

114. The representative of China believed that it was necessary to further discuss the implementation of Article 12 of the TBT Agreement; China's proposal was primarily aimed at "starting the ball rolling".

115. In concluding, and in line with the agreed Work Programme for the Fourth Triennial Review (Annex 1 to this report), the Chairman suggested that the Committee take up the following topics at

[23] G/TBT/13, para. 57.

its next meeting: (i) conformity assessment procedures, (ii) technical assistance, (iii) special and differential treatment, (iv) intellectual property rights and standardization, and (v) labelling. The Committee would also revert to good regulatory practice, as well as any other topic delegations wished to address. He invited the Members to submit papers on the above-mentioned subjects by 14 October 2005. The Secretariat would circulate background notes on conformity assessment procedures and special and differential treatment. It was so agreed.

IV. TECHNICAL CO-OPERATION

116. The representative of the European Communities drew the Committee's attention to a study report which was entitled: "Development of trade in Africa: promoting exports through quality and product safety." He noted that this report had been commissioned by the Norwegian Agency for Development Cooperation (Norad), and the Swedish International Development Cooperation Agency (Sida). The report addressed a number of issues relevant to both the SPS and TBT Agreements and could be of interest to Members (copies were available from the Swedish delegation).

117. The representative of the IEC updated the Committee on technical assistance activities and efforts by the IEC to increase the participation of developing countries in international electro-technical standardization. The full report is available separately in G/TBT/GEN/20.

118. The Chairman drew the Committee's attention to the Secretariat's technical assistance activities in 2005 contained in document G/TBT/GEN/21.

V. OBSERVERS

A. REQUESTS FOR OBSERVER STATUS

119. The Chairman drew the Committee's attention to document G/TBT/GEN/2, circulated on 4 March 2004, which set out the situation with respect to observership by inter-governmental organizations in the TBT Committee. There were still four organizations whose requests for observer status were pending: the *Office International de la Vigne et du Vin* (OIV), the *Bureau International des Poids et Mesures* (BIPM), the Gulf Organization for Industrial Consulting (GOIC) and the Convention on Biological Diversity (CBD). It was his understanding that differences remained among Members at a horizontal level and therefore suggested postponing consideration of these requests pending further consultations on the issue of Observership at the General Council level.

B. UPDATING BY OBSERVERS

120. The representative of the Codex updated the Committee on relevant ongoing work. This report is contained in G/TBT/GEN/22. The Chairman drew the Committee's attention to G/TBT/GEN/23 which sets out issues of interest arising from the work of the OIML.

VI. DATE OF NEXT MEETING

121. The Chairman announced that the next regular meeting of the Committee would take place on 2-3 November 2005.

ANNEX 1: WORK PROGRAMME FOR THE FOURTH TRIENNIAL REVIEW

122. Article 15.4 of the Agreement on Technical Barriers to Trade (TBT Agreement) provides 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 the 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".

123. The Committee concluded the First, Second and Third Triennial Reviews of the Operation and Implementation of the TBT Agreement on 13 November 1997 (G/TBT/5), 10 November 2000 (G/TBT/9) and 7 November 2003 (G/TBT/13), respectively. In light of the mandate quoted above, the aim is to conclude the Fourth Triennial Review at the Committee's last meeting in 2006.

124. Article 15.4 states that the Committee shall *at the end of* each three-year period undertake the review work. In order to prepare for this review work and to ensure efficiency, the work programme (overleaf) sets out three stages: identification, discussion and drafting. In essence, this approach means that, by mid-cycle (June 2005), the Committee would shift its focus from the follow-up of the Third Triennial Review to the preparation of the Fourth.

125. Three formal meetings of the TBT Committee have been scheduled for 2005 and another three are foreseen to be held in 2006.

126. It is proposed that the review work be initiated at the First meeting in 2005 with a preliminary identification of topics for review. It is stressed that this list will be preliminary and that Members would be able to add to or modify it during the discussion phase of the review work. At its Second and Third meetings in 2005, it is proposed that the Committee hold focused discussions on topics that have been identified. Members will be encouraged to submit papers on the issues identified for consideration. To facilitate the discussion, the Secretariat will prepare factual background notes on specific topics under discussion.

127. At its First meeting in 2006, the Committee should be in a position to take stock of the discussions. To assist the Committee in this stocktaking exercise, the Secretariat will prepare a summary of the key issues discussed, under each topic identified. This draft will be factual in nature and will not contain any recommendations.

128. The Second meeting in 2006 will mark the start of the drafting phase. For that meeting, the Committee will have before it a first draft of the Fourth Triennial Review, including both the factual elements *and* any recommendations on which there is general agreement.

129. In respect of the conduct of the review work itself, it is proposed that substantive discussions pertaining to the review will normally be held in formal mode under an agenda item dedicated to the review process (currently Agenda Item 3 "Triennial Review"). After circulation and discussion of the first draft of the Fourth Triennial Review, including both the factual part and any recommendations on which there is general agreement, necessary drafting will take place in open-ended informal meetings. These meetings will, to the extent possible, be held back-to-back with the regular meetings of the Committee. The Chairman will subsequently report on the results in the formal meeting.

130. The Committee to adopt the final text of the Fourth Triennial Review at its Third meeting in 2006.

131. The work programme should be seen as flexible and may be modified in light of any new developments.

Work Programme for the Fourth Triennial Review

Dates / Time Frame	Proposed Action
Identification phase	
mid-February 2005	Preliminary identification of topics for review by delegations
First meeting in 2005	Listing of topics and organization of discussion
Discussion phase	
end-April 2005	Circulation of Secretariat note on topics to be discussed at the next meeting
mid-May 2005	Submissions by delegations on topics to be discussed at the next meeting
Second meeting in 2005	Discussion on topics identified
mid-September 2005	Circulation of Secretariat note on topics to be discussed at the next meeting
mid-October 2005	Submissions by delegations on topics to be discussed at the next meeting
Third meeting in 2005	Discussion on topics identified
end-January 2006	Submission by delegations of proposals for recommendations
end-February 2006	Circulation by the Secretariat of draft of factual elements of the review
First meeting in 2006	Stocktaking: Discussion of draft of factual elements of the review as well as any proposed recommendations.
Drafting phase	
mid-June 2006	Circulation of first draft text of the Fourth Triennial Review, including both the factual part and any recommendations on which there is general agreement
Second meeting in 2006	Discussion of draft text of the Fourth Triennial Review
mid-September 2006	Circulation of the draft final text of the Fourth Triennial Review
Third meeting in 2006	Adoption of the final text of the Fourth Triennial Review