
Committee on Technical Barriers to Trade

MINUTES OF THE MEETING OF 2 NOVEMBER 2005

Chairperson: Mr. Margers Krams (Latvia)

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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/2690.

II. IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

A. STATEMENT FROM MEMBERS UNDER ARTICLE 15.2

2. The Chairman drew the Committee's attention to a revised Statement on Implementation and Administration of the Agreement, submitted by the European Communities (G/TBT/2/Add.12/Rev.3).² He reminded the Committee that the latest information on Members' enquiry points was available on the TBT web page.³

B. SPECIFIC TRADE CONCERNS⁴

1. New Concerns

- (i) *The People's Republic of China – Administration on the Control of Pollution Caused by Electronic Information Products (G/TBT/N/CHN/140)*

3. The representatives of Japan and the European Communities raised concerns about relevant regulations and standards for the implementation of the above mentioned measure. They noted that comments would be submitted and requested China to give them full consideration.

4. The representative of the People's Republic of China took note of the comments made.

- (ii) *United States - DTV Tuner Requirements (G/TBT/N/USA/128)*

5. The representative of the People's Republic of China raised concerns on the above mentioned notified regulation, circulated on 8 July 2005. He noted that the notification provided Members with a comment period of 19 days, which was too short. It did not allow enough time for the Chinese regulatory authorities and interested industries to translate, distribute, study and make comments on the notified regulation. China's TBT Enquiry Point had requested the United States to extend the comment period, but the request had been refused. He believed that the proposed regulation was not an emergency measure and asked the US to explain the reason why the Committee's decision to provide Members with at least 60 days for comments had not been followed.

6. The representative of China requested the United States to take into account his delegation's comments. In particular, he requested the United States not to advance the original time schedule for the inclusion of digital tuners to new TV receivers from 1 July 2007 to 31 December 2006. He believed that the revision of the rule would bring about additional costs, and noted that, while the international price level of colour TV market was rather low, the price of spare parts had not decreased rapidly as the US had expected. The inclusion of a tuner in TV receivers would inevitably increase its cost, especially those of 13 inches or under in size, and in certain cases the cost of the tuner might exceed the cost of the TV receiver itself. He recalled that China was the biggest producer and exporter of TV receivers, especially those of 13 inches or under. If the date on which all new television receiving equipment had to include a tuner to receive over-the-air DTV

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.

³ http://www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_points_e.htm

⁴ At this meeting, in view of time constraints, priority was given to the discussion of new trade concerns. Previously raised specific trade concerns were discussed at the end of the meeting.

broadcast signals was advanced by half a year, the trade of TV receivers with the US would be significantly affected.

7. It was pointed out that the United States had envisioned that only when ground DTV users had reached 85 per cent of total TV users, would the analog television service be ended. However, the users of DTV products in America only claimed a minor part of total TV users, and more than 80 per cent of American TV users watched DTV programs through cable or satellite television services. That had prevented the US government from specifying the date of termination of the analog TV broadcast. Under such circumstances, the representative of China believed that it was not necessary to advance the date to require all new television receivers to include a DTV tuner. At present, the US ATSC⁵ standards did not apply to DTV service, and the TV suppliers did not adopt the ATSC ground wireless standards in their mobile DTV experiments.

8. The notified US draft regulation would increase the cost for the manufacturers, and, as a consequence, the price of the relevant products. These costs would ultimately be transferred to consumers. The United States was requested to refrain from advancing its original time schedule for the inclusion of a digital tuner in new TV receivers, and that this requirement should not apply to TV receivers of a size of less than 13 inches.

9. The representative of the United States wondered whether China had been able to submit comments in response to the notification and, if so, whether it was possible to receive a copy.

10. The representative of China confirmed that comments had been sent to the US Federal Communication Committee.

(iii) *European Communities – Directive 2005/32 of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council*

11. The representative of China noted that the above Directive on energy using products ("EuP Directive") had been published on 22 July 2005 and had entered into force 20 days later. According to the Directive, EU Member States should bring into force the laws, regulations and administrative provisions necessary to comply with it by 11 August 2007. He noted that the Directive covered a large range of products and required that the CE marking be affixed to energy-using products. While he recognized the right of the European Communities to introduce the Directive, as well as the right of the Member States to implement it so as to promote energy saving and to protect the environment, he believed that the measure would create a significant impact on exports from third countries, including China, of energy-using products. China was concerned that difficulties for trading partners might arise because the 25 Member States of the European Communities might not interpret the Directive consistently. He pointed out that the Directive had not been notified and encouraged the European Communities to do so, even if the Directive was of a framework nature. He also encouraged the European Communities to submit a communication paper containing a summary of the Directive to WTO Members, allowing them an opportunity to provide comments. His delegation hoped that comments from Members could be summarized by the European Communities and transmitted to the Member States before they changed their laws, regulations or administrative provisions on the basis of the Directive.

12. The representative of China further suggested that the European Communities should conduct an impact assessment of the EuP Directive and its related implementation legislation on developing countries and, moreover, should take into account the results of such assessment *before* implementing the measure. In addition, he stressed the EC commitment to notify the proposed detailed technical

⁵ Advanced Television Systems Committee.

requirements following the Directive. Finally, it was also suggested that the European Communities could provide technical assistance to developing Members, for instance by means of seminars, or training of specialists and that a longer period for adaptation should be provided, in accordance with the Decision of the Ministers at the Fourth Ministerial Conference.⁶

13. The representative of the European Communities explained that the Directive 2005/32/EC was a framework directive, which did not contain detailed technical regulations. Thus, it had not met the requirements necessary to be notified in accordance with Article 2.9.2 or 5.6.2 of the TBT Agreement. While comments from China were welcome, the already adopted Directive could not be notified. Nevertheless, he assured the Committee that any implementing measure based on the EuP Directive would be notified, and Members would be given 60 days to provide comments. He further explained that the European Commission would assess all transposition measures, to ensure that the Directive was consistently implemented in all 25 Member States. He pointed out that an impact assessment had been conducted, and would be further conducted for the implementing measures. Finally, on the possibility to provide technical assistance, he would report back China's comments to the experts responsible for this issue.

(iv) Japan – Handling of comments on notifications

14. The representative of China was concerned with the way Japan handled the comments received on notifications. He recalled that, in 2005, China had submitted comments on six notifications made by Japan, but had received feedback on only one. For the other five notifications (G/TBT/N/JPN/143, 144, 148, 150 and 151) Japan had indicated that the comments would be transmitted to the competent authorities. However, no feedback had been received. Had the comments been taken into account? And if not, why not? Had the notified regulations been adopted? He further recalled that Japan had notified, under the SPS Agreement, their Positive List System (G/SPS/N/JPN/145) and in that case also China had submitted comments. However, he was disappointed that Japan had later stated that the comments had not been received, and that this might be due to some technical problems. China requested Japan to reply to comments in a timely manner, through the Enquiry Points or the competent authorities, and to take the comments into account.

15. The representative of Japan was not in a position to reply on the concern regarding the SPS notification. On the TBT notifications, he was willing to further discuss the matter bilaterally.

(v) Colombia – Labelling of footwear (G/TBT/N/COL/45)

16. The representative of the European Communities was concerned that several Members, when drafting regulations on the labelling of footwear, included the manufacturer's or the importer's fiscal or registration number among the particulars to be indicated on the good. The above notification had been submitted in 2003 and the notified text provided that, in addition to information on the materials used for the parts of the shoe, the label should also contain the manufacturer's and/or importer's registration number issued by the Colombian Supervising Authority. He recalled that the European Communities had submitted comments, and that in June 2005 Colombia had notified an amendment to its original regulation, as a third addendum to the original notification (G/TBT/N/COL/45/Add.3). Also in this case, comments had been sent in writing to Colombia.

17. The representative of the European Communities was of the view that this was a case, and not the only one, where manufacturers were confronted with excessive labelling requirements. The requirement to indicate the manufacturer's and/or the importer's fiscal or registration number was irrelevant for consumers; there was no need to include such information on the good itself. If Colombia considered this necessary, then the legitimate objective could be achieved in a less trade restrictive manner, for instance by applying stickers on the *packaging* of the goods.

⁶ WT/MIN(01)/17, paragraph 5.2.

18. The representative of Colombia informed the Committee that a response to the EC questions had recently been provided through the Colombian Enquiry Point. She added that the prerequisite of the fiscal or registration number on the label was required in Colombia for monitoring reasons, but that her authorities were considering eliminating it. Once this was defined more clearly, she would be in a better position to provide a final answer to the European Communities. She took note of the concerns expressed and would forward them to the competent authorities in capital.

(vi) *South Africa - Labelling requirements for textiles, clothing, shoes and leather goods (G/TBT/N/ZAF/49)*

19. The representative of the European Communities raised similar concerns on the above mentioned notification. It was noted that the draft regulation required that the importer registration code issued by South African authorities be "permanently applied to the good". As in the case of Colombia, he considered that this requirement was irrelevant for consumers.

20. The representative of South Africa informed the Committee that, following the comments received from the European Communities, the South African authorities had decided not to implement the regulation on 1 September 2005, as was stated in the notification. She explained that further technical and legal inputs were being sought, with a view to addressing the concerns raised.

21. The representative of the United States recalled that her delegation had also sent comments to the South African authorities and had similar concerns to those expressed by the European Communities. Her delegation had also suggested that South Africa should find less trade restrictive alternatives, such as stickers to place after the product had been imported. She welcomed the fact that South Africa had not implemented the regulation, and understood that it was also considering withdrawing it.

(vii) *Peru - Infant food (G/TBT/N/PER/11)*

22. The representative of the United States noted that, on 16 January 2005, Peru had issued a Supreme Decree regarding infant food, due to come into effect six months later. She recalled that her delegation had invited Peru to notify the Decree, and appreciated that they had subsequently done so. Comments had been provided, but no feedback had been received from Peru. She hoped that these comments would be taken into account, and that sufficient time would be allowed for industries to comply with the regulation.

(viii) *China - Health Food Regulation (G/TBT/N/CHN/160)*

23. The representative of the United States recalled that her delegation had brought to the attention of the Chinese Enquiry Point that the above mentioned regulation should have been notified. In fact, the United States had provided comments on it before the notification was made. She thanked China for subsequently making the notification, and hoped that the comments made by her delegation would be taken into consideration.

24. The representative of the China welcomed the US comments.

2. Concerns Previously Raised

(i) *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)*

25. The representative of the United States reiterated her concerns on the proposed EC regulation on chemicals. She understood that discussions of the proposal were at a critical juncture in the European legislation process, with a vote by the European Parliament expected after its first reading

in mid-November 2005 and a vote by the European Council expected by the end of November 2005. She pointed out that the regulation, as originally proposed, was overly expensive and burdensome, and would be difficult to implement effectively. She hoped that changes to the proposal would result in a more streamlined, science-based and cost effective approach.

26. She recalled that at a previous meeting of the Committee, the European Communities had noted that it had provided written statements and made a presentation to the Committee, in order to explain the proposed regulation. This had been in response to the potential trade concerns that had been raised by a broad range of WTO Members. She believed, given the on-going debate, that it was premature to assert, as the European Communities had done in their response, that there would be no trade problems, and that the proposed regulation would not be inconsistent with WTO rules. She welcomed the intention of the European Communities to update its notification to the TBT Committee in view of the changes to the proposed regulation, and the opportunity to further engage in substantive and constructive dialogue on those changes.

27. The representative of Canada remained concerned about the workability of the proposal in certain sectors, and with its impact on trade. He urged the European Communities to consider the recommendations outlined in Canada's position paper which had been distributed at the TBT Committee meeting in June 2005. He sought confirmation of the status of requested exemptions, including on minerals, ores, concentrates, pulp, paper, lumber and recyclables. He also sought further clarification about the treatment of alloys, and a possible extension of the three-year timeline for registration of metals. He believed that the cost of conducting assessments on concentrates would be disproportionate to the risk, and was of the view that concentrates should be a low priority. He urged the European Communities not to overlook the aspect of regulatory co-operation, including data sharing and mutual recognition, through bilateral or multilateral routes. The EC representative was asked to provide an update on the REACH legislative process.

28. The representative of Chile recalled that her delegation had raised concerns both bilaterally and at TBT Committee meetings. In particular, concerns remained regarding minerals and metals, considering that polymers could be their substitutes, and they might not be within the scope of REACH. She believed that the REACH system could be very bureaucratic and costly, and informed the Committee that Chile was engaging in an analysis of its impact on exporters of chemicals to the European Union. Small and Medium sized Enterprises (SMEs) exporting products of big volume, but of a low value, could be specially affected. Her delegation was also concerned about possible substitutions, involving importers who did not register substances coming from third countries and might start substituting them. She requested the European Communities to simplify the regulation and to consider the effects of REACH on third countries. She hoped that the exception applied to polymers could be applied to minerals and metals as well.

29. The representative of China shared the views expressed by the United States and Chile, and recalled that China had also submitted comments.

30. The representative of Mexico echoed the concerns expressed. In particular, his delegation was concerned about the creation of an agency which would deal with REACH. His understanding was that there could still be other options in REACH where it would be the Member States, and not the agency, implementing the system.

31. The representative of Japan and Korea shared the concerns expressed by previous speakers and hoped that the European Communities would continue to have a dialogue with its trade partners on this issue.

32. The representative of the European Communities explained that it was too early to know what the specific modifications to the text of REACH would be. He informed Members that all Committees in the European Parliament had discussed the proposal and proposed various

amendments, and that the Environment Committee had been the last one to vote on possible amendments. He pointed out that the first reading of the European Parliament was scheduled for 14 November 2005, and the agreement of the European Council was expected on 29 November 2005. He confirmed that the European Communities would update the notification to the TBT Committee once a new text containing the amendments was ready. He was not in a position to reply to the specific questions posed by Canada, and assured Members that all the institutions involved in the legislative process took the concerns expressed into account. The reiterated concerns would again be transmitted to the experts.

C. OTHER MATTERS

33. The representative of the United States informed the Committee that, upon the entering into force of the Mutual Recognition Agreements signed with Norway, Iceland and Lichtenstein, a notification under Article 10.7 would be made. She explained that these Agreements paralleled the existing MRA's that the United States had with the European Communities. Norway, Iceland and Lichtenstein, as Members of the European Economic Area, were fully integrated into the European market and applied the same regulations as the European Communities. These Agreements covered the sectors of telecommunication equipment, electromagnetic compatibility, recreational craft and marine equipment, and permitted approved US laboratories to conduct required conformity assessment product tests for designated products according to EEA EFTA requirements.

III. ANNUAL TRANSITIONAL REVIEW (TRM) MANDATED IN PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

34. The Chairman recalled that, in accordance with Paragraph 18 of the Protocol of Accession of the People's Republic of China (WT/L/432), the TBT Committee was to undertake an annual review for eight years of the implementation by China of the TBT Agreement. He opened the floor for comments or questions from Members.

35. The representative of Japan welcomed the fact that four years after accession, the implementation by China of the TBT Agreement had progressed. However, Japan still had concerns in a number of areas, such as with respect to: the CCC marking system, the automobile sector, digital cameras, and chemicals. It was noted that more detail was set out in Japan's submission (G/TBT/W/255).

36. The representative of the European Communities introduced his delegation's submission (G/TBT/W/256). Like Japan, the European Communities appreciated the efforts made by China, particularly in the area of transparency. Nevertheless, the European Communities was of the view that the consultation procedure could be further improved; there were a number of outstanding concerns raised by EC manufacturers with regard to the lack of participation of foreign stakeholders in the drafting of new technical regulations. In particular, the representative of the European Communities urged China to refrain from developing national standards in areas where international standards existed.

37. In terms of the *CCC System* (China Compulsory Certification) the European Communities was of the view that, despite improvements, the system remained burdensome, expensive and time-consuming; it also left too much room for interpretation. The system could be further streamlined and simplified. The European Communities welcomed the initiative of China to launch, in 2005, a comprehensive review of the CCC System. On the specifics, the European Communities was concerned with the uncertain application of national treatment. Moreover, exemption procedures were far from being transparent. On the list of products subject to CCC, the representative of the European Communities suggested that low-risk products should not need to be subject to the CCC System and that simplified procedures could be explored. In the area of certification requirements for spare parts, components and sub-assemblies, the European Communities was of the view that there

was considerable room for simplification. Also, on confidentiality, the required information under the CCC System could be simplified. Moreover, there appeared at times to be double certification requirements; this occurred where different parts of the Chinese administration required checks for different product aspects (a common occurrence in the case of radio and telecom equipment, cosmetics and car components). In the area of factory inspections, the European Communities was of the view that an exemption could exist for factories which had been certified to ISO 90001.

38. In terms of *ICT products*, certification remained a concern. Again, this related to the fact that most ICT products were low-risk and the existing three-step certification procedure incurred significant delays and costs. The European Communities was also concerned with the use and development of national standards where international standards existed, for instance in the WAPI case. The European Communities was also concerned about the participation of European companies in the Chinese standardization work; here the issue was to allow equal rights in Chinese standardization forums to external participants in order to allow a full contribution to the development of standards by European companies. Finally, in the ICT sector, the intellectual property rights (IPRs) was also a concern. The European Communities stressed that this was a separate issue from that addressed in the statement made by China contained in document G/TBT/W/251. Instead, the key issue here was the need to encourage direct, unencumbered negotiations between Chinese and foreign ICT companies regarding patent licences.

39. In terms of *automobiles*, the European Communities was of the view that many of the regulations used by China were very similar to the UN regulations under the 1958 Agreement; to avoid small variations, it would therefore be beneficial if the Chinese regulations could be based directly on the UN ECE 1958 regulations.

40. Regarding *active pharmaceutical ingredients*, the issue was that there were different quality standards used depending on whether the product was domestic or imported. Moreover, the EC representative pointed out that there was a higher fee structure for imported products. Hence, the European Communities requested that a way be found to apply the same standards to imported and domestic products in this area.

41. On *cosmetics*, the European Communities welcomed the fact that China was taking note and account of the scientific findings of the European Scientific Committee for Cosmetic Products. However, again, market access for European countries was difficult due to requirements related to the registration of new products and to the labelling of products. The European Communities urged China to give an equal application of the same requirements for domestic and imported products.

42. The representative of the United States stressed that the TRM mechanism was useful and important, serving both the interests of China as well as those of WTO Members. It provided Members with the opportunity to seek clarifications regarding China's policies and practices. China, in turn, was given an opportunity to clarify its approaches and actions with the goal of preventing misunderstandings that could lead to trade frictions; it was, in essence, a useful exercise in transparency. The representative of the United States highlighted some of the issues set out in more detail in its submission (G/TBT/W/257).

43. One question that the United States had raised with China was the fact that most of the *notifications* from China tended to come from the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) or its subordinate organizations, the Standardization Administration of China (SAC) and the Certification and Accreditation Administration of the People's Republic of China (CNCA). It was the US understanding that MOFCOM was responsible for the overall coordination of notifications to the WTO, and that it relied largely on AQSIQ, but also on other agencies, to provide it with the notifications. The United States had brought, and would continue to bring to China's attention, proposals that they believed needed to be notified. The United States appreciated China's willingness to accept such information.

44. It was the US understanding that China had engaged in a review of all *standards* it had in place with a view to ensuring compliance with TBT obligations. It was understood that this review had recently been concluded with the result that some standards would be withdrawn, and that this information would be publicly available on the web site.

45. The United States had, similar to Japan and the European Communities, raised concerns about *conformity assessment*. The issue here was whether China would provide national treatment for conformity assessment bodies. It was, for instance, not clear whether China would actually accredit foreign conformity assessment bodies. Recently, a shipment had been held up by a customs authority in China with the concern that it was not properly CCC marked. It later turned out that, in fact, the product was not subject to CCC marking and the shipment was released. This illustrated the concerns (also noted by the European Communities) that there continued to be a certain lack of transparency in the operation of the programme. The United States welcomed a continued review of this programme and the consideration of removing low-risk products that might no longer justify mandatory certification.

46. The representative of Korea noted that many of his delegation's concerns had been covered by previous statements. Nevertheless he wished to emphasize concerns with the CCC System. First, in terms of time periods, Korean companies had faced similar problems as those raised by Japan: sometimes more than six months was taken for the certification procedures. This entailed considerable costs for the companies. Second, the issue of confidentiality had already been raised in the EC submission. Since during the certification process, technical specification information was released, it was important that confidentiality be maintained. Third, Korea was concerned about the issue of certification requirements for spare parts, components and sub-assemblies (also set out in the EC submission).

47. The representative of China noted that her delegation had stepped up efforts to improve inter-governmental coordination and cooperation through further defining the responsibilities of authorities concerned, upgrading working mechanisms and holding workshops and seminars, etc. Since its WTO accession in the end of 2001, China had notified, to the TBT Committee, a total of 160 proposed technical regulations and conformity assessment procedures, among which 84 had been notified from January to October in 2005, with comment periods provided strictly according to WTO Agreements. Stakeholders, both in China and abroad, were provided with full access to consultations on the formulation of proposed regulations and conformity assessment procedures; they could either submit comments or were invited to public hearings or symposia. Comments and opinions were taken into serious consideration by the Chinese Government. Furthermore, in full compliance with China's accession commitments, the technical regulations and conformity assessment procedures were published on the competent authorities' gazettes and web sites, as well as on the Foreign Trade and Economic Cooperation Gazette of the Ministry of Commerce.

48. The representative of China stressed that China encouraged the use of international standards as the basis for the development or amendment of its national technical regulations. Since April 2004, the SAC had undertaken an overhaul of all existing national standards, as well as those under drafting, to ensure their consistency with relevant WTO commitments. This task was facilitated by the rapid development of the Chinese economy and progress in its standardization administration. As a result, AQSIQ and SAC had issued a joint notice on 14 October 2005, proclaiming that a total of 1,416 national standards had been nullified, among which 114 were mandatory. These were some examples of China's faithful endeavour to fulfil its WTO obligations, and this endeavour had been well acknowledged by Members.

49. In respect of *transparency*, China's technical regulations, mostly in the form of mandatory standards, were uniformly examined by the SAC and published jointly by SAC and AQSIQ. China's relevant competent authorities, including AQSIQ, the CNCA, the Ministry of Information Industry (MII), the Ministry of Health (MOH) and the State Environmental Protection Administration (SEPA),

etc., carried out the conformity assessment procedures, such as supervision, certification, accreditation and inspection, on both domestic and imported products, according to their respective functions and responsibilities. The proposed draft of these technical regulations, notified with the SAC as the "agency responsible", in fact, included the regulations within the scope of these different other relevant authorities mentioned. Therefore the latter did not need to notify the regulations again under their own name.

50. In respect of *CCC Certification*, China had acceded to the IECEE/CB system under IEC, and consistent with its scope of participation, China's CCC system recognized the CB testing reports by foreign certification bodies who had also acceded to the IECEE/CB system. According to paragraph 36 of the Regulations of the People's Republic of China on Certification and Accreditation, as well as according to the international practices, foreign bodies had to undertake compulsory certification work within the framework of mutual recognition agreements (MRAs) signed between China's certification and accreditation authorities or authorized bodies under the State Council and the foreign counterparts. So as to avoid duplicative testing and certification, and to remove technical barriers to trade, the Chinese authorities were willing to enhance the mutual recognition of certification and accreditation pursuant to the TBT Agreement. Currently, China had signed cooperation agreements with more than 20 countries or regions, and, meanwhile, a number of foreign organizations had undertaken CCC certification tasks concerning routine factory tracking.

51. The representative of China pointed out that the problem of the mismatch between the First Catalogue of Products Subject to the Compulsory CCC Certification with the HS codes used by the customs had already been solved. China was now working on the detailed description of the listed products, the completion of which would facilitate the judgment whether or not a product was subject to the CCC certification. When deemed necessary, China would make adjustments to the Catalogue of Industrial Products Subject to Compulsory CCC Certification. Members' concerns on specific products were noted and would be taken into serious consideration when China reviewed the existing system. While ensuring that the goal of safety protection was met, China was exploring the possibility of adopting different conformity assessment procedures, including SDoCs. China was willing to take into account Members' successful experiences in this regard.

52. In the practice of various product certification bodies, the requirements for factory inspection were different from those for the certification system (ISO9001). The ISO9001 inspection could not replace the factory inspection. Therefore, China would not exempt equipment manufacturers who had obtained an ISO9001 certificate from the obligation of factory inspection. When an enterprise decided that it would no longer manufacture a product subject to CCC certification, it had to notify the certification body responsible to withdraw or suspend the certification, and the periodical factory inspection would be automatically halted upon completion of such a procedure. China would make necessary adjustments as to the manner of conformity assessment, according to the results of risk assessment, and decide whether to reduce the number of factory inspections for low risk product manufacturers. China was willing to exchange, with relevant Members, their experiences and information on CCC certification concerning risk assessment.

53. The representative of China stressed that her country strictly fulfilled its commitment of not exceeding 90 days with regard to the CCC certification period. In the meantime, China hoped that enterprises and trading parties concerned would contact and cooperate with the relevant certification bodies so as to shorten the period of certification. Generally speaking, the implementation of the CCC System was satisfactory and certifications could be accomplished within the specified time-limit. In terms of spare parts and components intended for incorporation in a finished product and then exported to China, these were not subject to individual certification.

54. With respect to the transitional period of standards, comments from all stakeholders on newly developed or amended standards were invited before they were published, and allowed a transitional

period after their publication. In addition, another transitional period was envisioned for products meeting the present national standard.

55. With respect to the certification fee and exemptions, in 2005, China had lowered the certification fee, and in March 2005, CNCA had published a new notice concerning exemptions. This was a transparent and equitable regulation to simplify and facilitate exemption procedures. The inspection and quarantine bodies directly under AQSIQ were entrusted to accept exemption applications. To date, most of the relevant trading parties were positive about this new system. The whole exemption process was brought under CNCA's direct supervision to ensure that it was properly and compatibly conducted. According to the new exemption system, re-exported spare parts (as components of a finished product) were exempted from certification at the time of import.

56. Regarding the English versions of technical measures, the TBT Agreement imposed no obligations for Members whose official language was not one of the three WTO working languages to translate parts or the full text of their technical measures into English. However, to facilitate foreign manufacturers to better understand China's technical regulations, AQSIQ and CNCA provided on their web sites some official English versions of the CCC-related implementation regulations, which were updated when the amendments and improvements were made to the original documents.

57. With regard to the CCC marks, according to the Regulations on the Marking of Products Subject to the Compulsory Certification System, CNCA alone was to design and publish the unified CCC marks. Certified enterprises applied the certified marks to their specific products in accordance with the relevant implementation regulations applicable.

58. In terms of confidentiality, and taking account of the safety of the product and responsibility for the consumers, the certification procedure required necessary information which was treated in a confidential manner, for the accurate description of the product only.

59. The representative of China stressed that there was no duplication in certification of medical equipment, nor in any other sector. It was necessary to clarify the relationship between CCC certification and the registration as required by the State Foods and Drugs Administration (SFDA). According to the Regulations on Certification and Accreditation and the Regulations on Monitoring Medical Equipment, medical equipment was subject to the compulsory certification system. CCC certification and the SFDA registration did not overlap: SFDA registration recognized the CCC inspection results on the basis of which SFDA added some clinical verification items.

60. With regard to specific products, and, more specifically *cosmetics*, it was stressed that the MOH Import Licensing was a safety assessment procedure meant for safety and hygienic items of cosmetics, while AQSIQ carried out the checking of the Chinese labelling of the cosmetics which was meant to ascertain the authenticity of the labelled content. Hence, there was no duplicative certification. With regard to MOH's administration and supervision on cosmetics, both the imported and domestic "special use cosmetics" products were subject to review and approval. Whereas on the "ordinary cosmetics products", in order to further perfect the regulating and supervision system on cosmetics, China had engaged in the simplification of the approval procedures. In July 2004, MOH had issued a public notice to simplify the approval procedures on imported non-special use cosmetics which provided that, since 1 August 2004, the approval requirement were reduced from review and approval to just keeping records within 20 working days. This policy had greatly enhanced the import of cosmetics. In fact, as a result, imports of cosmetics from January to July 2005 had reached a 67 per cent increase over that of the same period last year. On the other hand, according to the Implementation Regulations of the Law of the People's Republic of China on Import and Export Commodities, AQSIQ carried out the examination on the Chinese labelling of imported cosmetics pursuant to the national mandatory standard GB5296.3-1995. All cosmetics products put on the market within the territory of China, including both the domestic and imported products, were subject to this standard. The examination of labelling, including the examination of the content and

compliance inspection of the label, had to be completed within 48 working days. The time limit could not be extended to 4-6 months.

61. On *distilled spirits*, the representative of China pointed out that studies by Chinese experts had shown that fusel oils posed a potential risk to human health. Currently, a study was being carried out to assess the potential harm to human health of fusel oils, and the results of this assessment would serve as the basis for the amendment of relevant standards. Both the General Standard for the Labelling of Pre-packed Foods and the General Standard for the Labelling of Pre-packed Alcoholic Beverage provided that Pre-packed foods had to mark the date of production with the exception of wines and spirits, which, for their special characteristics concerning the nature of the products and their specific process of production, were allowed to mark their "date of filling". Considering that spirits were a mixture of products produced at different times, China required only the "date of filling" label instead of "date of production/manufacture". Chinese customers had the right to know when the spirits were filled. To facilitate the identification by consumers, especially by those with weak eye sights, China had developed mandatory requirements in respect of the safety items on foods labelling, such as the size of characters, symbols and numbers. Enterprises were free to decide the size of other non-mandatory marking items.

62. In terms of *automobiles*, the Auto Industry Policy was a guideline addressing the development of China's auto industry given the many problems, such as the weakness in technical innovation and the low degree of industrial concentration in this sector. Limits of Fuel Consumption for Passenger Cars was the first mandatory national standard controlling the fuel consumption of automobiles and was notified to the WTO. The representative of China stressed that there were currently no specific plans to develop other technical requirements. In terms of China's accession to the UN 1958 Agreement, China had been actively supporting the harmonization of the international technical regulations and China's Government had always attached great importance to the facilitation of international trade of auto products and would carry out positive studies on these matters; China would consider its membership of this agreement at an appropriate future time. With a view to follow and trace certified products and so as to prevent fake products – as well as to protect the interests of both manufacturers and consumers – the CCC system required the application of a mark on the certified product. This was also a universal international practice, and it was in line with the US DOT certification, the UL and the EU CE mark certification. There would be no replacing of the CCC mark with another. In addition, if these spare parts and components were certified separately, time and cost for the certification of the whole automobile could be spared.

63. With respect to *digital cameras*, the representative of China stated that all the digital camera standards that China was developing were voluntary national standards instead of technical regulations. China based the development of such standards on five relevant international standards, i.e. ISO12231:1997, 12232:1998, 14524:1999, 12233:2000 and ISO/CD 12232:2003. Since standards under development were voluntary, China had no obligation to notify them to the WTO. Nevertheless, at the initial stage of the formulation of the standards, the China Technical Committee on Camera had conducted a thorough exchange of views with the interested companies and the Association of the members.

64. In terms of *ICT Products*, China agreed with Members that the scope of regulatory requirements should be confined only to essential requirements and that verification of compliance with other requirements could be left as a matter between buyers and vendors. CNCA was currently discussing these issues with other authorities. However the representative of China wished to draw the Committee's attention to a number of facts. There were many critical security defects in the existing international standards, which had raised serious concerns in China. China's WAPI was an enhancement to the existing international standard and was therefore not in any sense in conflict with WTO or ISO/IEC principles. China's WAPI was an advanced technology. The fact that WAPI had been allowed to the ISO/IEC fast track balloting procedure to become an alternative security solution had already proved this point. Therefore, China did not see any ground to withdraw the WAPI

standard. When international standards could not fulfil a legitimate objective, Members had the right to adopt their own standards. This was both a WTO-TBT and ISO/IEC principle. Therefore, China did not see any inappropriateness for the sake of better performance or special need to develop standards based on more advanced technology to enhance, modify or even replace existing international standards.

65. In terms of *radio frequency* identification, at present, there was no updated information on the draft standard of the RFID.

66. On the re-cycling of end-of-life household appliances, the so-called *Chinese WEEE*, on the basis of in-depth study and public consultation, the draft of the Rules for Recycling of End-of-Life Household Appliances, had been submitted to the State Council for approval. As this was still under review, China was not in the position to provide any more details at the moment.

67. In terms of *chemical products*, and, more specifically, the registration of initial imports of Chemical products, China was working hard to improve the capacity of testing institutes in order to join the GLP system of the OECD. The Registration Centre for Chemicals of the State Environmental Protection Administration, SEPA, was carrying out a survey on testing institutes in order to include more qualified testing institutes for applicants to choose from. Yet, in fact, the seven existing testing institutes were far from operating at full capacity. There had been no cases of slowing down the application process. The website of Registration Centre for Chemicals provided contact information on the testing institute on ecological toxicity testing institutes (www.cre-sepa.org.cn). In terms of the sixth enlargement submission, the relevant authority was currently examining the enlargement cases. As the new regulation system for chemicals in China had just been established, the authorities were working out the detailed management rules, including that on low-volume chemicals and chemicals with special uses, etc. The regulation system on new chemicals of different countries could vary from one another in details. China's system took polymers as one kind of chemical for regulation; at present, Chinese authorities were not planning to cancel the regulation on polymers.

68. Finally, in terms of *pharmaceuticals*, at present there was no unified regulation on the production of API in China, the only requirements for enterprises were the basic standards provided in Chinese Pharmacopoeia. Therefore, China's inspection authority would test products, both domestic and imported, in accordance to the enterprises' standards filed by the enterprises. The filed standards of the domestic products would be reviewed comprehensively after a required trial period by the competent authority. In terms of the standards for imported products – these were also subject to examination and once the filed standards of the imported pharmaceuticals were approved there was no need to transform the standards. As for the charges relating to the tests, these were set jointly by the competent authorities of the finance and pricing departments under the state council based on the cost of the tests. The price of charges were published in the announcement of MOF and MDRC in 2003; the same prices applied on imports and domestic products. The representative noted that this issue had been extensively discussed and resolved by China's competent authority in Beijing and the Embassy of the concerned Member. This was, in China's view, a much more open and efficient channel to communicate and address the issue at question.

69. The representatives of the United States, the European Communities and Japan thanked the Chinese delegation for the detailed information provided in response to the questions posed.

70. The representative of China pointed out that most of the points raised by Members were about requesting China to improve its implementation of the TBT Agreement. From China's point of view, the Review offered an opportunity to clarify its positions and for further exchanges on points that were of concern to Members. Nevertheless, China was of the belief that other channels were more efficient to exchange concerns relating to the TBT Agreement. Therefore, China encouraged Members, in raising specific concerns with China, to shift away from this Transitional Review

Mechanism as this could facilitate a better and more efficient communication with regard to the issues of concern to Members under the TBT Agreement.

71. The Chairman thanked all delegations for their statements and the Committee adopted its report to the Council for Trade in Goods (G/TBT/17).

IV. TRIENNIAL REVIEW

A. ISSUES ARISING FROM THE THIRD TRIENNIAL REVIEW

1. Workshop on Different Approaches to Conformity Assessment

72. The Chairman recalled that during the informal meeting of the Committee, the draft programme⁷ for the Workshop on Different Approaches to Conformity Assessment, which will be held on 16 March and in the morning of 17 March 2006, had been discussed. Members were invited to provide any further input, as well as the names of speakers, no later than 16 January 2006.

2. Technical Assistance

73. The Chairman recalled that, at its March 2005 meeting, the Committee had agreed to increase transparency in the identification and prioritization of technical assistance needs through the development of a mechanism for the voluntary notification of specific technical assistance needs and responses. A number of drafts had been discussed in informal mode.

74. In putting forward the latest draft⁸ for adoption on a trial basis for two years, he stressed, *inter alia* that: (i) the notification format was intended to assist coordination with respect to *current and future technical assistance activities*. It was aimed at facilitating the voluntary identification of specific needs and offered Members an opportunity to provide information on their response to such needs; (ii) Members could continue to provide general information on their technical cooperation activities as separate submissions to the TBT Committee; and (iii) the submission of voluntary notifications of specific technical assistance needs and responses would follow WTO established procedures, i.e. notifications were for Members to submit.

75. The representative of Canada supported the adoption of the format and hoped that Members would actively use this tool in order to enhance transparency relating to the identification of technical assistance needs and the delivery of technical assistance.

76. The representative of China supported the TA format as a whole, but believed that the specific examples within the brackets in item 4 "policy area covered" were not necessary and should be deleted.

77. The representative of New Zealand stressed that the notification format represented the culmination of much work and discussion arising from the Third Triennial Review, in which her delegation had been actively involved. She believed that this format achieved the objective of providing a mechanism to enable better coordination of supply and demand of technical assistance in a straight forward and practical way, and hoped that the notification would be used. On the point raised by China, she saw the examples in item 4 as an illustrative list, not an exhaustive one.

78. The representative of the European Communities agreed that the Committee should adopt the format, with the changes proposed by China. He suggested that, once Members had gained some experience in using the format, a separate explanatory note on how to fill it out could be developed.

⁷ JOB(05)/108/Rev.1.

⁸ JOB(05)/265.

79. The representative of Chinese Taipei was of the view that the explanation under each policy area was useful. She supported the suggestion made by the European Communities, and stressed that an explanatory note would help Members identify more specifically what they needed.

80. The representative of the United States stressed that the notification on technical assistance, as was the case with the regular TBT notifications relating to proposed regulations, had to be seen as a summary that provided a brief indication of a request. This did not preclude the possibility of providing additional information or supporting documentation. She agreed that the Committee should adopt the format, and could go along with suggestion made by China to delete the specific examples in item 4, which she believed might already have been reflected in item 2.

81. The Chairman suggested that, as a way forward, the specific examples mentioned in item 4 could be deleted, as proposed by China. After the trial period of two years, the Committee could explore whether it would be useful to provide some more information in the format itself. He noted that, in item 4, under the line "other", Members could still provide more specific information.

82. The Committee adopted the notification format with the changes proposed by China (G/TBT/16).

3. Other Outstanding Issues

83. The Chairman recalled that, at the previous meeting of the Committee, some Members had suggested that the Committee should maintain an opportunity to revert to any issues resulting from the follow-up to the Third Triennial Review that Members felt had not been adequately addressed.

84. The representative of Canada was of the view that a number of recommendations from the Third Triennial Review in the area of technical assistance remained outstanding. In particular, he recalled that the Committee 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".⁹ He noted that the WTO 2006 Technical Assistance and Training Plan¹⁰ had been circulated on 16 September 2005, and believed that the Committee had not yet had a full discussion linked to that Plan at any time during the Triennial Review work programme. He urged the Committee to schedule a discussion of the 2006 Technical Assistance and Training Plan at its March or June 2006 meeting.

85. The Committee's attention was also drawn to another recommendation whereby the Committee had agreed to "provide a forum for feedback and assessment of the outcomes and effectiveness of technical assistance".¹¹ He noted that on the few occasions when feedback had been provided, the comments were general in nature. His delegation would appreciate hearing from developing countries and donors alike regarding more specific feedback and assessment of the outcomes and the effectiveness of technical assistance. He wondered to what extent in the future the voluntary notification of specific technical assistance needs and responses could serve as a basis for the Committee to call upon Members to speak on specific experiences. The representative of the United States supported the proposal made by Canada to have a more comprehensive discussion on the Technical Assistance and Training Plan.

86. The representative of the United States drew the Committee's attention to a recommendation related to transparency, which encouraged Members "to disseminate their comments and responses by means of national websites and to draw the Committee's attention to these".¹² She noted that there had been little discussion in the Committee, and hoped that some progress could be made on this issue

⁹ G/TBT/13, paragraph 55.

¹⁰ WT/COMTD/W/142.

¹¹ G/TBT/13, paragraph 56.

¹² G/TBT/13, paragraph 26.

in the context of the Fourth Triennial Review. She pointed out that the United States did not have a centralized website where comments could be found, but that the issue was under consideration. She recalled that the European Communities had drawn the attention of the Committee to their website, and asked whether the Secretariat could prepare a document on the existence of these websites where information on notification and comments was available.

87. The representative of Mexico supported the proposal made by the United States on dissemination of comments. He recalled that, at the Third Triennial Review, his delegation had stressed the importance for Members to fulfil the transparency obligations and to implement the relevant recommendations. He informed the Committee that Mexico had a centralized website where all the regulations and the comments received were made available, in Spanish. He believed that it would be useful for Members to have a picture of what progress had been made in the various areas of the Third Triennial Review.

88. The representative of Mexico suggested that the Secretariat could produce a document explaining what had been done in terms of follow-up for the Third Triennial Review. The representative of United States asked whether the follow-up and discussions that had taken place since the Third Triennial Review would not be appropriately reflected in the factual note that the Secretariat was expected to prepare for next meeting of the Committee. She believed it was sometimes difficult to draw the line between the Third and the Fourth Triennial Reviews.

89. The representative of the European Communities supported the comments made by Canada with respect to the technical assistance recommendations contained in the Third Triennial Review and recalled that a lot of work had gone into drafting those recommendations. He believed that they were quite extensive and, as the Committee worked towards the conclusion of the Fourth Triennial Review, much could be drawn from the Third. He agreed with Canada that the discussions of the Committee on technical assistance should be reflected in the WTO Technical Assistance and Training Plan.

90. The representative of the European Communities also shared the view expressed by the United States that it was difficult to draw a line between the Third and the Fourth Triennial Reviews. He drew the Committee's attention to the EC submission on transparency¹³, where a follow-up on the Third Triennial Review was also included. For instance, he noted that the submission took up the point of the promotion of a more widespread dissemination of all comments made and all the replies received on notified draft technical regulations and conformity assessment procedures. The European Communities were of the view that this could also be dealt with in the context of the Fourth Triennial Review. He shared the views of the United States and Mexico that Members could give an update of the developments of their websites and that this could be included in the Secretariat's factual note.

91. The representative of China agreed with the United States and the European Communities, and wondered whether there should be more time between the Triennial Reviews, so that the various issues arising from them could be considered in an appropriate way.

92. The Chairman believed that there was a continuity between the Triennial Reviews and that the Committee should discuss how to monitor the progress from one Review to another.

B. PREPARATION OF THE FOURTH TRIENNIAL REVIEW

93. 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, page 26). The Committee initiated the review work foreseen in the Programme at its meeting in March 2005, by starting with the preliminary identification of possible topics for review by delegations. At the following meeting,

¹³ G/TBT/W/253.

in June 2005, the Committee continued this exploration of topics with a discussion of several of them. The Chairman stressed that, as the Committee moved into the drafting phase, it would have to agree on which topics to further pursue. He asked delegations, during the discussions at the current meeting to reflect, on: (i) what *issues* the Committee had been or should be focussing on, under each individual topic, and (ii) whether the particular topic being discussed should be considered as an *element* in the Committee's Fourth Triennial Review Report.

94. Members needed also to bear in mind that at its following meeting, in March 2006, the Committee would undertake a stocktaking of its work in terms of preparation for the Fourth Triennial Review. Specifically, the work programme stated that: "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."¹⁴

95. The representative of the United States noted that, according to the Work Programme, delegations were expected to submit proposals for recommendations by the end of January 2006. This would be followed by the circulation from the Secretariat of the draft factual elements of the Review. She wondered whether it would not be more useful to have the Secretariat's note before the submission of the proposals, as this would help Members focus on proposals. Furthermore, on conformity assessment, she noted that the Workshop on Different Approaches to Conformity Assessment was to take place in March 2006 and that the Secretariat's note might need to be amended in light of the discussions at that event. She hoped that the Committee would keep an open mind about the progression of the work throughout the Review.

1. Conformity Assessment Procedures

96. The Chairman noted that both the United States and the European Communities had put this topic forward, but that no specific submissions had been received from Members to date. He drew the attention of the Committee to the background note on Conformity Assessment prepared by the Secretariat (JOB(05)/261), and recalled that earlier in the year the Secretariat had circulated a Background Note specifically on Supplier's Declaration of Conformity (SDoC), ahead of the March 2005 Workshop on that subject (JOB(05)/30).

97. The representative of the European Communities pointed out that a contribution by the European Communities on conformity assessment procedures would be made for the March 2006 meeting, and that it would focus on the EC experience with formal mutual recognition agreements (MRAs).

98. The Chairman concluded that there was a general agreement that conformity assessment should figure as an element for the Fourth Triennial Review. He encouraged Members to submit, by February 2006, any proposals on possible actions the Committee could take in this area.

2. Technical Assistance

99. The Chairman recalled that at the June 2005 meeting, China had introduced a proposal on technical assistance (G/TBT/W/252, Section III). He noted that the European Communities had also identified this topic as one for discussion.

100. The representative of the European Communities emphasized that his delegation was keen to discuss the issue of technical assistance, in particular with a view to ensure that the results from the Second and Third Triennial Reviews would be properly implemented. While he did not anticipate a written contribution by the European Communities on this topic under the Fourth Triennial Review,

¹⁴ Annex 1, paragraph 6.

he stressed that a few elements, such as the TA adopted notification format (G/TBT/16), were already on the table and that technical assistance should be a standing item for Triennial Reviews.

101. The representative of China welcomed the fact that the adopted TA notification format took into account the outcome of the discussion at the previous meeting,¹⁵ as well as the suggestions made by China at the current one (in paragraph 76, above). In his delegation's view, technical assistance should be a topic for discussion in the Fourth Triennial Review and he pointed out that China might provide further information on this item in the future.

102. The representatives of El Salvador and Cuba stressed that technical assistance should be considered as an element for the Fourth Triennial Review.

103. The Chairman concluded that there was a general agreement to keep technical assistance as an element for the Fourth Triennial Review. Members were encouraged to submit proposals by the end of February 2006.

3. Special and Differential Treatment

104. The Chairman recalled that, at the last meeting of the Committee, China had introduced a proposal on this subject (G/TBT/W/252, Section IV). He also drew the attention of the Committee to a Background Note on Special and Differential Treatment prepared by the Secretariat (JOB(05)/269).

105. The representative of Brazil stressed that there was a need to exchange information in the Committee on the implementation of Article 12 of the TBT Agreement in the context of the Fourth Triennial Review. He emphasized that discussions on this issue involved the ability of the TBT Committee to develop an appropriate mechanism to supply technical assistance.

106. The representative of Cuba welcomed the paper by China, and considered it an important and substantive contribution for analysing this topic.

107. The representative of China thanked Members for their comments. His delegation had noticed that some Members had difficulties in providing information on the whole range of technical assistance activities, considering that often the bodies responsible for technical assistance, for standards and conformity assessment issues were different. He hoped that developed Members could provide information on technical assistance delivered to developing Members in the sectors of primary importance to them. Information on technical assistance supplied in other fields could be provided on a voluntary basis.

108. The Chairman concluded that there was a general agreement for this topic to be considered as an element for the Fourth Triennial Review. He encouraged Members to further discuss the topic, with a view to identifying what actions could be taken by the Committee in this area, and to submit proposals to the Secretariat by the end of February 2006.

4. Intellectual Property Right Issues in Standardization

109. The Chairman recalled that China had made a submission on this topic (G/TBT/W/251) and informed the Committee that he had received a request, from China, to ask relevant Observer organizations to brief the Committee on relevant work in this area.

110. The representative of the ISO, speaking on behalf of both ISO and IEC, pointed out that international standards facilitated the dissemination of technology and good practices, in particular to developing countries. As their content was often technical in nature, the technical aspects might be

¹⁵ G/TBT/M/36, paragraphs 107-111.

covered by patent rights, especially in new technologies. While he recognized that it was acceptable, in principle, that standards contained patented elements, he explained that ISO and IEC were of the view that, as far as their standards were concerned, adequate information should be made available and their use should be guaranteed on reasonable and non-discriminatory terms. Therefore, they had developed a joint patent policy, which was described in Section 2.14 of Part 1 of the ISO/IEC Directives, *Procedures for the technical work*. Annex F of Part 2 of the Directives, *Rules for the drafting and structure of International Standards*, provided texts to be included in international standards when referring to patent rights. (More information relevant to this statement is contained in document G/TBT/GEN/24).

111. The representative of the United States noted that her delegation had consulted bilaterally with China, with a view to better understanding the relationship, if any, with the provisions of the TBT Agreement. Her delegation could not see any such relationship. She believed that the Committee's work related to the Review needed to be kept within the framework of the TBT Agreement and that, for a topic to be considered as an element of the Triennial Review, there needed to be consensus among Members.

112. The representative of Canada welcomed the information provided on 15 July 2005 by China to Canada and other interested Members, in which China had also indicated that specific details would be provided on the issue. He wondered whether China was in a position to provide such details or any additional information and sought clarification as to the precise issues that China wished to raise.

113. The representative of Brazil believed that intellectual property rights in standardization should not constitute an obstacle to development, nor become an impediment for Members to have access to technical cooperation. She thanked China for the information provided in written form to Brazil. Her authorities were studying the proposal and might return to it at a future meeting of the Committee.

114. The representative of China thanked the ISO for the information provided and Members for the concerns and questions raised. He believed that, while the policies developed by international standardization bodies including the ISO, IEC and ITU had provided Members with a good technical base and a road map to follow for discussions in the WTO, the concerns expressed by China in its submission deserved some further discussion. He noted that ISO, IEC and ITU were working jointly to further elaborate their patent policies and considered it would be useful for the TBT Committee to be informed on the developments of this work.

115. He recalled that, at the June 2005 meeting, Members had raised some specific questions on the Chinese proposal. One question was related to the nature of the issue. He noted that a key concept of the TBT Agreement was that Members should use international standards as a basis for their technical regulations. His delegation had identified two problems that could hamper the adoption of international standards: the disclosure of patent information and the interpretation of the RAND principle. Therefore, he believed that the essence of the issue was to implement appropriate policies to ensure that patent policies be disclosed at a proper stage and that the RAND concept be interpreted consistently to facilitate the adoption of international standards.

116. With respect to why IPR issues were considered by China as an obstacle to international trade, he noted that the adoption of international standards, which was an important element in trade facilitation, was more difficult, due to the above mentioned problems. In this sense, this issue was an obstacle to international trade, especially to trade related to digital products.

117. He recalled that another question raised related to why domestic industry demanded that China put forward this proposal. He pointed out that the issue of IPRs had a wide coverage and was not only specific to some industries. The problem that all Members, including developed ones, faced was the need for coordination between IPR holders and standards users, including standards users in

developed Members. However, he believed that developing Members, as standards users, were more likely to be affected by patent issues in standards.

118. In respect of the relevance of this issue to the TBT Committee rather than to the TRIPS Council, he stressed that IPR issues were relevant to preparation and adoption of international standards. As the TBT Agreement encouraged Members to adopt international standards, the TBT Agreement was relevant. His delegation was open to discuss this issue in other WTO fora as well, such as the TRIPS Council, where parallel discussions could be held.

119. In China's view, the issue could be solved by disclosing patent information in the process of standard setting, and by providing a consistent interpretation of the RAND principle. He recognized the complexity of the issue, but believed that it was an important one for development and trade, especially in the area of digital products. He encouraged Members to work together to explore appropriate multilateral trade policies to approach the issue. He also confirmed that China was working on some detailed case studies to share with the Committee and drew the Committee's attention to MPAC standards on digital TV's, which he considered problematic for standards users, including in Europe, the United States and Japan. Another case, involving Dell, revealed that patent information disclosure was very important to the setting of standards.

120. The representative of Korea, while recognizing the important relationship between IPR issues and standard setting, believed that the core issue was related to making patent utilisation easier. He doubted whether the TBT Committee was the appropriate forum to discuss the matter.

121. The representatives of Mexico shared the US view that a number of elements were missing for this topic to be included in the Triennial Review (paragraph 114, above). He believed that by including this issue, the Committee might go beyond its mandate, as intellectual property issues depended on legislations in each country. The representatives of El Salvador and Chile associated themselves with these comments and shared the view that the work should be carried out on the basis of consensus.

122. The representative of China understood Members' concerns, and recognized that the topic was complex and needed further clarification. As the originator of the proposal, his country would do its utmost to further elaborate the issue and to address the concerns raised, as it believed it was of close relevance to the TBT Agreement. He pointed out that this topic should remain on the agenda, and that consensus could be reached at a later stage.

123. The Chairman concluded that there was no general agreement in the Committee at this point to consider the topic of intellectual property right issues in standardization as an element for the Fourth Triennial Review.

5. Labelling

124. The Chairman recalled that the European Communities had proposed that labelling be included in the Fourth Triennial Review. However, no new submission had been made to the Committee on this topic.

125. The representative of the European Communities noted that the topic should remain open.

126. The representative of Chile pointed out that labelling did not require special treatment and should not be an element for the Review.

127. The representative of the United States shared Chile's view and recalled that, at the Third Triennial Review, the Committee had concluded that labelling did not present a special category of issue, and had agreed to continue discussing the issue under the agenda item on Implementation and

Administration of the Agreement.¹⁶ She stressed that the provisions contained in the Agreement would be relevant to analysing any specific issue. In the absence of any specific proposal, she believed that no further discussion was necessary on the topic.

128. The representative of New Zealand echoed the statements made by Chile and the United States.

129. The Chairman concluded that there was no general agreement in the Committee at this point to consider this as an element for the Fourth Triennial Review.

6. Good Regulatory Practice

130. The Chairman drew the Committee's attention to a new submission by the United States (G/TBT/W/258) and to a Background Note prepared by the Secretariat (JOB(05)/107). He also recalled that, at the last meeting, the European Communities had submitted a paper on the topic (G/TBT/W/254) and that the OECD had provided information on relevant on-going work (G/TBT/GEN/19).

131. The representative of the United States introduced her delegation's submission (G/TBT/W/258). She noted that it provided some information on the key features of the regulatory process that related to the principles that had been developed by the OECD and APEC. It also analyzed some of the key mechanisms and administrative underpinnings of the regulatory process that helped ensure transparency and accountability. She pointed out that guidance for regulators had been developed by the Office of Management and Budget, which included alternatives and trade impact as elements to be taken into account when developing regulations. The paper also provided links to relevant documentation.

132. The representative of Canada thanked the United States for sharing its experience. He noted that the paper did not address enforcement and compliance issues, nor did it provide details regarding regulatory evaluation and review. He asked whether the United States intended to provide Members with information in these areas? Moreover, was equivalency addressed anywhere in the US Good Regulatory Practice framework. Finally, he also sought more information about the "smarter regulation initiative" outlined in paragraph 16.

133. The representative of the United States noted that a full treatment of enforcement issues might fall beyond the framework of the TBT Committee, but she would explore whether her delegation could provide some supplementary information relevant to the work of the Committee.

134. The representative of the European Communities recalled that his delegation had submitted a paper on this issue (G/TBT/W/254), which addressed three topics, one of which was "better regulation". He noted that it might be the same type of initiative as the "smarter regulation" outlined in the US submission. One of the elements of the better regulation initiative was the simplification of existing legislation: in this regard, he drew the attention of the Committee to a recently adopted communication on simplification, which was available on the European Commission website.¹⁷

135. The representative of Korea noted that Good Regulatory Practice was a policy guideline issue, not only relevant to TBT but to all regulatory issues at the domestic level. He was doubtful whether such principles could be drawn up in the context of multilateral trade rules. In his view, they related to more specific provisions such as transparency, conformity assessment or technical assistance.

¹⁶ G/TBT/13, paragraph 60.

¹⁷ http://europa.eu.int/comm/enterprise/regulation/better_regulation/simplification.htm

136. The Chairman noted that there were some key issues arising from the submissions and the discussions the Committee had held on Good Regulatory Practice. These included the importance of transparency; the importance of the assessment of the necessity of a proposed regulation; how to develop "better" or "smarter" regulations, including the simplification of regulatory processes; and, the need to increase cooperation among the regulatory bodies. He concluded that there was a general agreement that the topic should be an element of the Fourth Triennial Review. Members were invited to provide more inputs on this topic by February 2006.

7. Transparency

137. The Chairman drew the Committee's attention to the proposals made by Canada (G/TBT/W/234), China (Section II of G/TBT/W/252) and the European Communities (G/TBT/W/253), and to the background paper prepared by the Secretariat (G/TBT/W/250).

138. The representative of Jordan believed that transparency was an important principle in the Agreement. More specifically, on the EC proposal to ensure access for the Members who submitted comments on a notification to the final text of the regulation notified, he believed that such access should be restricted to the governments only. He explained that, in Jordan, the government published the texts of technical regulations and conformity assessment procedures and requested the private sector to pay a fee to have access to them. He supported the EC proposal regarding the posting of translations of notified texts on national websites. However, for this proposal to be implemented, technical and financial assistance might be needed. Finally, he supported the EC proposal to provide more extensive information in Section 6 of the notification format "Description of content", as it would enhance transparency.

139. The Chairman summarized some of the key issues that could be drawn from the submissions and the discussions the Committee had held to date on transparency. These included: the importance of ensuring sufficient time for comments; the importance of increasing access to comments on notifications and to final texts; and, the need to find ways to share translations. He concluded that there was a general agreement that the topic be an element of the Fourth Triennial Review and invited Members to provide indications of the type of actions that could be taken by the Committee by February 2006.

140. On a more general note, the Chairman recalled that according to the work programme for the Fourth Triennial Review, at the March 2006 meeting, the Committee would undertake a "stocktaking" of its work in terms of the preparation for the Fourth Triennial Review. Looking further ahead, he recalled that at its second meeting in 2006, the Committee would be entering the "drafting phase". At that meeting the Committee would have before it a first draft of the Fourth Triennial Review, including both factual elements and any recommendations on which there was general agreement. He urged delegations who intended to make further submissions on the topics identified to do so before the end of February 2006. This would enable the Committee, at its second meeting in 2006, to focus more on the operative language of the Review and would facilitate the adoption of the Fourth Triennial Review report at the third meeting in 2006.

V. TECHNICAL COOPERATION

141. The representative of the European Communities noted that its submission contained in G/TBT/W/259 was an update of projects or programmes funded by either the European Commission or its Member States for technical assistance in the TBT field. He noted that this information had been provided to the Committee for the past five years. Some projects were of a "framework type", and did not only cover TBT-related work.

142. The Chairman noted that Norway had provided written information on its technical cooperation activities (G/TBT/GEN/25).

143. The representative of the Secretariat reported on the TBT-related technical assistance activities that the Secretariat had been engaged in 2005, and those foreseen for 2006 (G/TBT/GEN/26). She recalled that the purpose of the Secretariat's technical assistance activities was to assist beneficiary countries in strengthening their knowledge and understanding of the main disciplines and rules of the TBT Agreement and to update capital-based officials on current issues in the TBT Committee, with a view to improving the capacity to participate in its work. She stressed that these activities also constituted a forum for participants to share experiences and views on various TBT issues. It was emphasized that a great deal of work had gone into advance preparation, so as to maximize the impact of the activities and to ensure active involvement and interaction among participants. Prior to the workshops, participants had been asked to come prepared to make presentations and interventions on specific topics.

144. The programmes of the 2005 activities had responded to recommendations made by the TBT Committee in the context of the Third Triennial Review, in particular with respect to the exchange of experience in the area of conformity assessment procedures and to the submission of the Statement on Implementation and Administration of the Agreement under Article 15.2. As an example, she highlighted that one of the main purposes of the workshop for SADC countries, which had taken place in Namibia in October, was to assist those Members which had not yet submitted their statements under Article 15.2 to better understand this obligation. Information to be included in the statement had been explained and clarified, and an opportunity had been provided for experience sharing.

145. It was recalled that the Committee on Trade and Development had adopted the 2006 Technical Assistance and Training Plan.¹⁸ Three TBT-related regional workshops were planned for 2006: for Latin America, for the Pacific Islands and for West Africa. In addition to regional workshops, TBT-related assistance had been and would be provided in other forms as well, namely national workshops, trade policy courses or through participation in activities organized by other agencies. Two national workshops were planned for the end of 2005 and the beginning of 2006: in cooperation with the recipient Members, the programmes for these events would be tailored to meet their specific needs.¹⁹

VI. REPORT (2005) OF THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE

146. The Committee adopted its 2005 Report to the Council for Trade in Goods (G/L/760).

VII. UPDATING BY OBSERVERS

147. The Chairman took note of the updates that had been provided in writing by the Codex (G/TBT/GEN/27), the OECD (G/TBT/GEN/28), the WHO and FAO jointly (G/TBT/GEN/29) and the OIML (G/TBT/GEN/30) on a number of subjects, including their technical assistance activities.

VIII. OTHER BUSINESS

148. The representative of the United States noted that the WTO 2005 World Trade Report (WTR 2005) included over 120 pages devoted to standards and related topics. In the Report, the term standards was used broadly to cover market-driven voluntary requirements as well as government regulations, and the analysis covered documents within the scope of the TBT and SPS Agreements, as well as Services. She believed that certain statements and references in the Report were subjective and confusing. In particular, she was concerned that the Report gave the impression that the standards developed by the ISO and IEC were recognized by the WTO, and given primary importance. She

¹⁸ WT/COMTD/W/142.

¹⁹ The TBT web page on technical assistance included information on the Secretariat's past and future TA activities.

stressed that while the SPS Agreement recognized three specific standards-setting bodies, there was no similar identification in the TBT Agreement.

149. She recalled that in the course of the Second Triennial Review, Members had raised various concerns with regard to international standards development. At that time, the Committee had considered various approaches, including the possibility of developing a defined list of bodies, but this idea had been rejected. It had become clear that without adequate procedural safeguards, any given international body could have a standard, even if outdated or not reflective of the views of all interested parties, that, if used by a Member as a basis for a technical regulation, could be presumed to be complying with the Agreement, and still have adverse effects on trade. She recalled that the Committee, instead of working on a list, had taken a Decision on Principles for the Development of International Standards.²⁰

150. She further noted that the WTR 2005 suggested that the WTO, through the TBT Agreement's Code of Good Practice, strictly regulated the work of the ISO. She stressed that this was only partially true, and recalled that at the Second Triennial Review the Committee had recognized that the WTO could not directly bind the work of other international bodies. Instead, the responsibility was with Members to adhere to the principles to guide their work in the international bodies. She suggested that the Secretariat could in future consult with Members before publishing such Reports. Her delegation intended to follow up on the issue with written comments to the Secretariat.

151. The Secretariat noted with respect to the World Trade Report that every effort had been made to be accurate and balanced. The objective of World Trade Reports was to enhance the understanding of Members in various areas. He noted that the WTR had been prepared by the Economic Research and Statistics Division with opportunity provided to the Trade and Environment Division, as well as other relevant Divisions, to provide comments. It was stressed that the WTR, as stated the Report itself, was published under the sole responsibility of the WTO Secretariat and did not purport to reflect the opinions or views of Members of the WTO.

IX. DATE OF NEXT MEETING

152. The next meeting of the TBT Committee will be held on Wednesday, 15 March (whole day) and in the afternoon of Friday, 17 March 2006. The Workshop on the Different Approaches to Conformity Assessment will take place on Thursday, 16 March (whole day) and in the morning of Friday, 17 March.

²⁰ G/TBT/9, Annex IV.

ANNEX 1: WORK PROGRAMME FOR THE FOURTH TRIENNIAL REVIEW

1. 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".
2. 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.
3. 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.
4. Three formal meetings of the TBT Committee have been scheduled for 2005 and another three are foreseen to be held in 2006.
5. 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.
6. 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.
7. 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.
8. 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.
9. The Committee is to adopt the final text of the Fourth Triennial Review at its Third meeting in 2006.

10. 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
<i>Identification phase</i>	
mid-February 2005	Preliminary identification of topics for review by delegations
First meeting in 2005	Listing of topics and organization of discussion
<i>Discussion phase</i>	
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	Circulation by the Secretariat of draft of factual elements of the review
end-February 2006	Submission by delegations of proposals for recommendations
First meeting in 2006	Stocktaking: Discussion of draft of factual elements of the review as well as any proposed recommendations.
<i>Drafting phase</i>	
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