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**Committee on Technical Barriers to Trade**

**MINUTES OF THE MEETING OF 7-9 JUNE 2006**

Chairperson: Mr. Margers Krams (Latvia)

Note by the Secretariat<sup>1</sup>

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<sup>1</sup> 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/2826.

## II. IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

### A. STATEMENTS FROM MEMBERS UNDER ARTICLE 15.2

2. The Chairman noted that, since the last meeting of the TBT Committee, Bangladesh (G/TBT/2/Add.88) and the Kingdom of Saudi Arabia (G/TBT/2/Add.89) had submitted their statements on implementation and administration of the Agreement under Article 15.2, and that Uganda had submitted a supplement to its statement (G/TBT/2/Add.23/Suppl.1). Since 1995, a total of 106 Members had submitted at least one such statement. The Chairman also drew the Committee's attention to the latest list of TBT Enquiry Points (G/TBT/ENQ/27) and noted that, since the last meeting, some delegations had sent updated information about their enquiry point contacts. This information would be included in the next version of the ENQ document and was available on the WTO website.<sup>2</sup>

3. The Committee took note of the statement made.

### B. SPECIFIC TRADE CONCERNS

#### 1. New Concerns

- (i) *China – Labelling Audit System for Imported Food and Cosmetic Products (G/TBT/N/CHN/190)*

4. The representative of the European Communities noted that the above notification, dated 3 April 2006, had informed WTO Members of the AQSIQ Notice No. 44 on: "Modifying the Labelling Audit System for Import and Export Foods and Cosmetics" (24 March 2006). With this notice, the enforcement of mandatory labelling requirements by a central pre-registration mechanism on imported foodstuffs and cosmetic products had been replaced by a decentralized system. According to this system, the control needed to be carried out *after* the arrival of the goods and during the inspection and quarantine processes. While his delegation was in favour of this measure and welcomed in particular the removal of the pre-registration requirements on labelling, some concerns existed regarding the uniform implementation of Notice No. 44 by local offices, now responsible for ensuring that the product labels were in conformity with existing Chinese regulations and standards. For instance, it was noted that there existed diverging interpretations of the requirements and different application at local level for imports of alcoholic beverages and cosmetic products. The delegation of China was requested to inform Members about the measures it intended to take to ensure uniform and coherent enforcement at local level of the existing labelling requirements. China was also asked to provide the Members with copies of the relevant guidelines, procedural rules and any other instruction which had been or would be issued regarding the implementation of Notice No. 44 by local authorities. He stressed that this request did not prejudice any future position of the European Communities regarding the substantive requirements that imported foodstuffs and cosmetic products needed to meet upon importation to China.

5. The representative of China explained that the nature of the measure taken was one of trade facilitation. In effect, the former pre-registration system had been changed to the new "check upon arrival of shipments" in order to *facilitate* trade. He noted that AQSIQ had direct control over local

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<sup>2</sup> [http://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_enquiry\\_points\\_e.htm](http://www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_points_e.htm).

authorities and that, therefore, uniform application of this measure, as well as other relevant measures, was ensured.

(ii) *Belgium and The Netherlands – Seal products (G/TBT/N/BEL/39 and G/TBT/N/NLD/68)*

6. The representative of Canada was concerned about the impending Belgian and Dutch ban on the importation of seal products. These two delegations were requested to revise or reconsider the relevant legislation, as Canada was of the view that it was inconsistent with the obligations under WTO Agreements. It was recalled that comments had been submitted to the Belgian and Dutch authorities together with a request for a meeting to discuss the matter further. The seal hunt was a sustainable activity based on scientifically proven and sound conservation principles; in fact, the seal population in Canada had grown significantly since the early 1970s. This fact had been echoed by the European Commission on 11 May 2006, which had noted that "the seal population in the Northwest Atlantic has grown significantly since the early 70's, from just under 2 million to around 5.8 million in the case of harp seals". The Canadian delegation welcomed the statement made by the European Commission on 11 May 2006, that "there is no scientific basis linked to the conservation of the harp and hooded seals for extending the scope of application of Council Directive 83/129/EEC", which oversaw the importation into EC member States of skins of certain seal pups and products derived therefrom. Canada was therefore of the view that the seal population was not endangered. It was furthermore pointed out that the matter was not regulated by the Convention on International Trade in Endangered Species (CITES).

7. The representative of Norway shared the concerns expressed by Canada. She pointed out that the information provided had not allowed Norway to fully understand and evaluate the scientific basis and the risk assessment upon which the notified measures were based, as required in Article 2.2 of the TBT Agreement. Moreover, the measures could be more trade restrictive than necessary. It was noted that Belgium had invoked reasons of public opinion, and that The Netherlands had invoked the protection of public morals as the objectives of their draft measures. Norway was of the view that these objectives did not conform with the requirements of the TBT Agreement. The delegations of Belgium and The Netherlands were requested to provide necessary documentation to justify the measures, in accordance with Article 2.5 and 10 of the TBT Agreement. Norway was of the view that the ban should not be put in place unless the scientific underpinnings demonstrated and justified the need and the appropriateness of these measures.

8. The representative of the European Communities recalled that the measures at issue had been notified on the grounds of protection of animal life, as set out in Article 2.2 of the TBT Agreement. She took note of the comments made and pointed out that the draft measures were being examined to assess their compatibility both with European Community and international law. A substantive response would be provided once this procedure was concluded.

(iii) *India - Mandatory labelling for biotechnology food products (G/TBT/N/IND/12) and India trade policy requiring approval for importing biotechnology products (G/TBT/N/IND/17)*

9. The representative of the United States was concerned that comments would not be taken into account regarding the notified measure for the approval for the importation of biotechnology products. India was to implement the regulation the day after the deadline to submit comments (8 July 2006); in fact, the notification had been made the day after the regulation had been adopted. It was noted that the United States had many questions regarding the two above-mentioned regulations and on how India would implement these rules, including their enforcement procedures to ensure non-discriminatory application to imported products. The representative of the United States hoped that further discussions could be held with India on the development of these regulations and noted that concerns had already been raised bilaterally and would also be raised in the SPS Committee. India was requested to suspend indefinitely the implementation of these measures

pending clear guidance on non-discriminatory implementation and enforcement, in order to avoid potential trade disruption.

10. The representative of India recalled that bilateral talks had been held with US representatives ten days before and that his delegation had informed the United States that the measure notified by the Ministry of Commerce and Industry was not a new regulation, but an existing one which had been in force since 1989. It was explained that the regulation, which was contained in the Environmental Protection Act, provided that any GM food would have to be approved by the Genetic Engineering Approval Committee (GEAC), as per Indian laws. However, this did not apply to importers: the new regulation was elaborated to enforce the existing regulation also for other countries, and was notified to the WTO for transparency purposes. He recalled that when concerns had been raised, the operation of this regulation had been suspended until 7 July 2006. He pointed out that his authorities were examining the matter further and that replies to the specific questions raised by the United States would be provided bilaterally.

(iv) *European Communities – Batteries (G/TBT/N/EEC/98)*

11. The representative of China noted that while his delegation agreed with efforts by the European Communities to protect the environment and consumers, it was stressed that more stringent requirements (as set out in the above-mentioned notification) could not be adopted without taking into account the current level of technology and production in the world, especially the developing world. Over-stringent requirements and standards could be regarded as trade restrictions which were not in compliance with the core principle of the TBT Agreement of choosing the least trade restrictive measure. The representative of China was of the view that the requirements on hazardous substances in batteries were twelve times more restrictive than the previous criteria. Therefore, in his delegation's view, the measure was restricting trade more than protecting the environment and consumers. Moreover, China found the definition of the scope of products subject to exemptions from the directive unclear, and requested the European Communities to provide detailed information on the matter, so that the Chinese industry could operate accordingly. Finally, China was of the view that the minimum criteria for battery recycling were not based on science and requested the European Communities to provide scientific evidence. The European Communities was invited to respond to the written comments which had been provided, and to provide an additional transitional period for developing country Members.

12. The representative of the European Communities confirmed that comments had been received by the EC Enquiry Point, and that a response was being prepared. With regards to the limits on cadmium, it was stressed that this target had been selected according to several impact assessment studies, and that a partial ban was the most efficient way to protect the environment. The ban would only apply to portable batteries and to batteries where substitutes of cadmium were available. Regarding the exemptions from this prohibition, the representative of the European Communities noted that these were defined in Article 4.3 of the directive, which listed three types of products for which substitutes were not available: emergency and alarm systems, medical equipment and cordless power tools. It was also pointed out that recycling targets had been agreed on the basis of impact studies carried out in 2003 and 2004; the EC delegation could provide copies of these studies to the Chinese authorities. With regards to the transitional period, it was stressed that once the directive was adopted there would be a two year transitional period for EC member States to adopt it, thus leaving enough time for other countries to adapt to the new requirements.

(v) *Japan - Amendment to Enforcement Order of Industrial Safety and Health Law (G/TBT/N/JPN/166)*

13. The representative of China was concerned that the requirements on bicycles contained in the above-mentioned measure were over-restrictive and therefore not in compliance with the TBT

principle of choosing the least trade restrictive alternative. It was pointed out that there was no scientific evidence that showed the risks of asbestos when used as a friction material for brakes on bicycles. He believed that technology was not sufficiently advanced to produce a substitute for asbestos, and that its use should not be completely restricted in production. China requested Japan to: take the current situation into account; abide by the provisions of the TBT Agreement; provide technical assistance to developing Members upon request; and, provide developing Members with at least a two year transitional period so that industry could adapt its production and accelerate their research on substitute materials.

14. The representative of Japan took note of the comments made by China.

(vi) *Greece – Ban on wheat*

15. The representative of Canada expressed concern about the fact that Greece continued to maintain inspection and testing requirements for imported, non-EU grain, and that these requirements were unnecessary, discriminatory, unjustifiable and contravened international trade obligations. While the Greek measure had significant SPS-related elements, her delegation was of the view that there were also technical elements which were inconsistent with the provisions of the TBT Agreement. In particular, the Canadian delegation stressed that: (i) the regulations were discriminatory as they applied only to grain imported from third countries (and not Greece or the EC members States); (ii) the conformity assessment requirements were more trade restrictive than necessary, therefore creating unnecessary obstacles to trade; (iii) the regulations required the inspection of all shipments for the presence of genetically modified organisms, including GM varieties of wheat, even though no such variety was approved in Canada or was commercially grown anywhere in the world, and no validation methodologies for GM wheat existed. This would result in a significant proportion, possibly even 100 per cent of Canadian shipments being inspected without any justification. It was the Canadian understanding that also the European Commission was concerned about the Greek measures and had provided written comments; her delegation appreciated the efforts of the European Communities on this matter and urged Greece to remove these WTO inconsistent regulations. It was pointed out that other avenues to address this issue might be sought if the concerns were not satisfactorily addressed.

16. The representative of the European Communities recalled that the issue had been discussed in the SPS Committee for some time. Her delegation hoped to provide a detailed response to the TBT Committee at its next meeting.

(vii) *Israel – Connection Boxes for Electrical Installations*

17. The representative of the European Communities raised concerns on certain requirements imposed by the Israeli standard SI 145, regarding connection boxes for electrical installations. He noted that the standard SI 145, when it was originally adopted in 1994, was identical to the relevant IEC international standard. In 2000, however, requirements had been introduced that did not correspond to the requirements or recommendations of IEC 60670-1 and IEC 60670-2 on boxes and enclosures for electrical accessories for household and similar fixed electrical installations. One of the additional requirements was the obligation to use a mechanical partition inside the connection box in order to keep each device separated from each other. The introduction of the partition had been justified by the Israeli authorities with the possible danger arising from the presence of different devices in the same box. He pointed out that, according to the opinion of the experts in this field, the presence of partitions inside the boxes did not bring about any additional protection. Therefore, it had not been foreseen by the relevant international standard. Another requirement which deviated from IEC 60760 was that the "glow wire test value" was set for all parts of connection boxes at the value of 850° Celsius. However, the IEC standard required this high test value only for certain parts of the box. According to the IEC standard, a test value of 650° Celsius, which was significantly lower than

the value required by the Israeli standard, was sufficient for parts of the insulating material, not necessary to retain current-carrying parts in the partition boxes.

18. The European Communities had been informed that at the forthcoming meeting of the relevant technical committee of the Israeli standardization body, the standard SI 145 would be discussed. He expressed his delegation's encouragement to the Israeli authorities to align the legal requirements of this standard with the requirements of the relevant international standard, and to apply national regulations in accordance with the TBT Agreement – i.e., in a non discriminatory way and in a way which was not more trade-restrictive than necessary.

(viii) *China – Leather and leather products (G/TBT/N/CHN/174)*

19. The representative of Argentina enquired whether if the measure to which the notification referred had already entered into force or not.

20. The representative of China noted that his delegation would provide the information required bilaterally.

(ix) *China – Duplicative testing and certification requirements for medical devices*

21. The representative of the United States recalled that her delegation had raised bilaterally with China the issue of duplicative testing and certification requirements on medical devices. She welcomed the recent commitment made by China to eliminate these duplicative requirements, which were applicable to eight categories of imported medical devices. To this end, a notice (Notice N° 70) containing an announcement of a single unified testing laboratory process had been published on 30 April 2003. The United States sought further information from China on its plans to eliminate the remaining redundancies, in particular the two application processes to the State Food and Drug Administration (SFDA) and to China National Accreditation Administration (CNCA), the two application fees and the two on-site factory inspections and audits.

22. The representative of China noted that a relevant reply would be provided either through bilateral channels or at the next meeting of the TBT Committee.

## **2. Concerns Previously Raised**

(i) *Norway - Restrictions on the Use of Deca-bromo diphenylether (deca-BDE) (G/TBT/N/NOR/6)*

23. The representative of Japan recalled that, at the previous meeting of the Committee, her delegation had asked Norway to explain, in accordance with Article 2.5 of the TBT Agreement, the justification for the proposed prohibition of deca-BDE. She noted that Norway's explanation was that the draft regulation was based on scientific evidence and public hearings, and requested Norway to provide information about the risks based on scientific data. Her delegation was also interested in knowing more about the discussions held during public hearings.

24. The representative of Norway informed the Committee that the proposed regulation would not enter into force, as originally planned, on 1 July 2006. She explained that the Norwegian Ministry of Environment was considering several inputs from different groups and that these would be taken into account before finalizing the position regarding the regulation. She took note of the comments made by Japan.

25. The representative of Jordan thanked Norway for the update, and hoped that the revised decision on the ban on deca-BDE would also take into account the comments made by WTO Members. He shared the comments made by Japan.

26. The representative of the United States recalled that her delegation had also raised concerns and thanked Norway for the update.

(ii) *Korea - Import of Fish Heads*

27. The representative of New Zealand recalled her delegation's concern with respect to the issue of edible fish head imports by the Republic of Korea, a matter that her delegation had been raising since 2001 in the TBT Committee. She noted that edible hake heads were caught in New Zealand waters and processed by New Zealand boats, but were prohibited from entering the Republic of Korea. By contrast, hake heads caught in New Zealand waters but processed by Korean boats were allowed entry into the Korean market. She also recalled that, in August 2005, Korea had proposed new requirements that would continue to prevent the import of hake heads from New Zealand, and stressed that her delegation had demonstrated through correspondence with Korea how these proposed requirements would continue to prevent trade. The representative of New Zealand urged Korea to grant hake heads caught in New Zealand waters and processed by New Zealand boats a treatment no less favourable to that accorded to hake heads caught by Korean boats. She stressed that, despite the bilateral talks with Korea and the many times the issue had been raised in the TBT Committee, Korea had not been able to provide on any occasion, a WTO justification for its discrimination against products caught by New Zealand boats. Her delegation was in the hope that rapid progress towards the resolution of the issue could be made.

28. The representative of Norway shared the concerns expressed by New Zealand and recalled that her delegation had also been engaged in bilateral talks with Korea, in addition to raising the issue in the TBT Committee. Her delegation hoped that Korea and all concerned Members could come together to discuss all aspects of the issue in order to find a mutually satisfactory solution as soon as possible.

29. The representative of the European Communities reported that good progress had been made with Korea under the on-going bilateral discussion. She hoped that the two parties would be able to finalize an arrangement in the next few months.

30. The representative of Korea stressed that his country was ready to allow the import of edible fish heads; however, for safety issues, his authorities were trying to establish sanitary standards for the product. He noted that while bilateral discussions with New Zealand were still on-going, New Zealand had not agreed on the proposed standards. It was stressed that Korea would treat the issue in a non-discriminatory manner.

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

31. The representative of New Zealand remained concerned with the overall EC approach to wine labelling, as reflected in Regulation 753/2002 and in the amending Regulation 316/2004. These appeared to remain in conflict with the core principle of the TBT Agreement, in particular with Article 2. She recalled that her delegation had raised its concerns, both substantial and procedural, bilaterally with the European Communities as well as at almost every TBT Committee meeting since 2002; yet the issue remained unresolved.

32. The representative of Mexico associated his delegation with the comments made.

33. The representative of the European Communities took note of the concerns expressed and reminded the representative of New Zealand that several informal discussions had been held on the issue of wine labelling. Her delegation looked forward to engaging in additional fruitful discussions on the matter.

(iv) *Sweden – Restrictions on the use of Deca-bromo diphenylether (deca-BDE) (G/TBT/N/SWE/59)*

34. The representative of Japan recalled that, at the previous meeting, her delegation had requested Sweden to provide a justification to its proposed prohibition of deca-BDE, in accordance with Article 2.5 of the TBT Agreement. She also recalled that the European Communities had explained that the regulation was being examined, and requested them to provide details of this evaluation.

35. The representative of the United States referred to the previous meeting of the Committee, where it had been noted that the European Communities had conducted a risk assessment of deca-BDE which had not identified any risk posed by the substance. On the basis of that result, the European Communities had decided to exempt deca-BDE from the scope of the RoHS Directive. She hoped that Sweden would take into account the concerns raised by Members and the potential impact on trade of its proposed prohibition.

36. The representative of Jordan recalled that his delegation too had expressed concerns, and sought an update of the situation.

37. The representative of the European Communities informed the Committee that the internal consultation process had not been concluded yet and that her delegation would revert to the issue at the next meeting.

(v) *United States - Energy Conservation Standards for Certain Consumer Products and Commercial and Industrial Equipment (G/TBT/N/USA/154)*

38. The representative of the United States provided an update on the concern raised by China at the previous meeting of the Committee. She recalled that on 23 November 2005 the US Enquiry Point had notified a Federal Register publication by the U.S. Department of Energy, which was a technical amendment and clarified that the notification had been made by mistake. The purpose of the technical amendment was to incorporate the energy conservation standards and related definitions that the Congress had prescribed into the Code of Federal Regulations which, it was explained, was the compilation of all regulations. It was not a proposal for comments as foreseen in WTO rules. She noted that written comments by China had been received and that the Enquiry Point had transmitted them to the Department of Energy, which had provided a written response to China.

(vi) *India – Regulation on Medical Devices (G/TBT/N/IND/19)*

39. The representative of the European Communities recalled that on 6 October 2005, India's Ministry of Health and Family Welfare had declared that a list of ten sterile medical devices had to be considered as drugs under the relevant acts. Guidelines for import and manufacture of medical devices described both the import licensing and the manufacture procedures to be respected in India for these ten medical devices. It was noted that these guidelines appeared to set mandatory requirements and that they therefore had to be considered as technical regulations or conformity assessment procedures in terms of the TBT Agreement. Thus, his delegation regretted that these had not been notified pursuant to Article 2.9.2 and 5.6.2 of the Agreement and that interested parties from Members had not been given an opportunity to provide comments before the guidelines had entered into force. Therefore, the attention of the Indian authorities could not be drawn at an early stage to the



fact that the submission of medical devices to the legal regime applicable to drugs was contrary to the global regime. The many unanswered questions rendered the task of compliance more difficult for the European industry. India was requested to allow for a reasonable transition period for industry to comply with the guidelines. In addition, India was requested to involve stakeholders in the development of clear and detailed guidance on the implementation of the guidelines, as well as with respect to the ensuing comprehensive regulations for medical devices which were under preparation, and which needed also to be notified to the TBT Committee.

40. Concerning conformity assessment, the representative of the European Communities requested India to ensure that adequate and appropriately qualified resources were made available within the government and private bodies to ensure efficient, impartial, transparent and predictable conformity assessment procedures. He sought confirmation from India on the following points: (i) that India would accept CE marking as evidence of substantial compliance with India's requirements; (ii) that international standards and Global Harmonization Task Force (GHTF) guidance would be recognized without national deviations as a primary basis for demonstrating compliance with India's regulatory requirements; and, (iii) that for all medical devices, the guidelines would be applied in a non-discriminatory fashion and without regard to the country of origin. Finally, the representative of the European Communities stressed the potential value of India's participation in regional and international regulatory harmonization initiatives, such as the Asian Harmonization Working Party and the Global Harmonization Task Force. Additional detailed technical comments would be provided directly to the delegation of India.

41. The representative of the United States associated herself with the request to India to make a notification of these proposals to the TBT Committee and sought an update of the situation from India.

42. The representative of India noted that the standards at issue were country specific, and that the United States and the European Communities had their own standards as well, as no international standard was available. If there was a need to harmonize them at international level, India would certainly associate itself with this process, as this would improve trade. He stressed that his country understood and was committed to the WTO principles, and that these measures would be notified.<sup>3</sup>

(vii) *European Communities - Disposable lighters (G/TBT/N/EEC/89)*

43. The representative of China remained concerned about the above-mentioned measure, and recalled that his delegation had had many discussions on the issue with the European Communities. His delegation's concerns related mainly to the following points: (i) the discriminatory treatment of lighters: refuelable lighters with over five years lifetime were exempted from having to be child-resistant whereas other lighters were obliged to comply with this requirement; (ii) the TBT Agreement provided that technical regulations should be based on performance rather than descriptive characteristics or design, and normal lighters with child-resistant or equivalent device could fully meet these requirements; (iii) the transitional period: while the European Communities were providing a ten month transitional period, the time needed by industry and enterprises to adapt their production to the new requirements was longer, and a period of at least twenty months needed to be provided; and, (iv) equivalent measures needed be taken into account as the TBT Agreement recognized that different measures with the same objective might be considered as equivalent: child-resistant devices were not the only option and other measures such as increasing weights over 8.5 pounds could prevent children from igniting lighters.

44. The representative of the European Communities informed the Committee that the EC decision had been adopted on 11 May 2006, and that the new requirements would enter into force

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<sup>3</sup> Subsequently notified as G/TBT/N/IND/19 on 16 June 2006.

in March 2007. She explained that the Commission was drafting a practical implementation guide which would indicate how the requirements would have to be met and thanked the Chinese authorities for providing inputs in this respect. On the Chinese request for an extension of the transitional period, she pointed out that Chinese companies were already complying with the requirements in standards from other countries, such as the United States and Canada, so they had already adapted their production. The European Communities hoped that China could meet the ten month transitional period provided.

(viii) *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)*

45. The representative of the United States recalled that on many occasions her delegation had stated its support for the objectives of the protection of human health and the environment sought by the REACH proposal, but that the regulatory approach to meet these objectives had to be workable. In her delegation's view, the REACH proposal remained, in overall terms: expensive, burdensome and difficult to implement effectively. She encouraged the European Communities to adopt a more streamlined and transparent regulation, based on science and on cost-effectiveness. The US delegation had identified some areas for priority attention. On the implementation, it was noted that many important workability decisions would be made during the REACH implementation project, and expressed her delegation's interest in working with the European Communities to develop useful and workable documents.

46. The United States was of the view that it was critical that the European Communities review the REACH proposal in order for it to be made consistent with other international chemical regulatory efforts. On the issue of the coverage of articles, in order to increase the workability and flexibility of the regulation, her delegation supported the European Council's version which required only intentional release substances in articles to be registered, if above one tonne. The United States also supported the retention of Council language in Article 6.5 of the regulation, which excluded substances in articles already registered for a particular use from the registration and notification requirements. Additionally, if any substances released unintentionally from imported articles required a notification, she recommended a limited inclusion of such unintentionally released substances to those on the list contained in Annex 13. The representative of the United States further stressed that, in her delegation's view, it was difficult to justify the REACH provision that required registration of non registered monomers in polymers, as these monomers were reactive, and not chemical substances being imported. On authorization, the US continued to believe that an approach which allowed for risk-based decisions in determining the list in Annex 13 would ensure that registration data would be better used and allow a more cost-effective regulation. On substitutes, it was stressed that decisions needed to be made on the basis of the risk and performance attributes, for example energy or product efficiency associated with substitutes. The United States supported the European Council's inclusion of the consideration in Articles 61.4 of the risks that might arise from the use of substitutes, although the need for the qualification was still questioned. Finally, the representative of the United States questioned the practicality of the five years maximum time limit on authorization, which was added in the European Parliament version. Depending on how this was interpreted and implemented, it could result in a forced phase-out period without regard to the risks of the alternatives. She urged the European Communities to take into account the concerns of its trading partners at this crucial stage in the decision making process.

47. The representative of Mexico thanked the European Communities for its transparency and openness on the issue of REACH, but stressed that his delegation remained concerned about the proposed regulation and agreed with the points made by the United States. In light of the broad impact that the regulation would have, Mexico stressed the need for technical assistance (Article 11), and special and differential treatment (Article 12). In particular, Article 12 of the TBT Agreement provided for various situations in which special and differential treatment could be provided to

developing countries. For example, a tiered entering into force of the regulation could be a way to enable countries to implement the regulation more effectively and smoothly.

48. The representative of Chile appreciated the efforts made by the European Communities to improve the draft regulation in light of the comments received. She recalled that during bilateral meetings her delegation had made various proposals on the proposed regulation. One of these was that greater relevance needed to be given to risk assessment and to scientific evidence with respect to the authorization process. Another was that minerals and metals should be completely excluded from the scope of application of REACH, with the exception of those which were dangerous. Also, the regulation should not be extended beyond the borders of the European Communities, as was the case with respect to quality labels for articles and the so called "duty of care". Finally, Chile was of the view that the registration of substances contained in articles should be limited only to those which were considered dangerous. Chile concurred with Mexico's comments in respect of the need for technical assistance to third countries to facilitate the implementation of the regulation.

49. The representative of Australia thanked the European Communities for its willingness to consider Members' concerns in the development of the proposed regulation. Nevertheless, her delegation remained concerned that some aspects of REACH, in particular its authorization requirements, were more trade restrictive than necessary to meet its objectives. For instance, the authorization requirements on ores and ore concentrates containing substitutes that presented minimum dangers to public health were unnecessary to achieve the objective of protecting human health and the environment. In her delegation's view, subjecting such a broad range of materials to authorization was unnecessary for two reasons. First, materials would be captured which, while containing the requisite amount of a substance, presented little danger to human health. Second, the safety aspects of minerals and metals were adequately regulated by other legislation in the European Communities, for example Council Directive 96/61/EC. A clear exclusion of ores and ore concentrates posing a minimal risk to public health and the environment from the scope of REACH would be a less trade restrictive alternative, which would not compromise the ability of REACH to meet its objectives, as those substances that posed significant risks to health and safety would remain within its scope.

50. The representative of China recalled that recently the United States had raised concerns on some specific items, such as the list of hazardous substances, information release and substitution. China shared all these concerns and supported the points made by the US delegate. He expressed his delegation's request to the European Communities to take into account the comments received from Members, including China, and to bring the regulation into compliance with the TBT Agreement, thus reducing the negative impact on international trade. He also urged the European Communities to take into account the special interest and concerns of developing members in the drafting process of REACH. Finally, he thanked the European Communities for providing detailed information and hoped that this would continue.

51. The representative of the European Communities welcomed the positive feedback received concerning the transparent and cooperative manner in which his delegation had dealt with the issue and thanked the United States for their positive comments on the European Council's version of the proposed regulation. He explained that the European services were waiting for the formal adoption of the common position by the Council, which was expected to take place in the near future. After that, the Parliament and the Council could complete a second reading and REACH could possibly be adopted by the end of 2006, to enter into force in the spring of 2007. It was stressed that, at all stages of the procedure, the institutions involved had ensured that WTO rules were respected.

52. The Council text, which was fully supported by the European Commission, did not show any discrimination between European producers and exporters sending substances to the European Union. The current text was more effective and more workable, and addressed some specific concerns voiced

by Members. For example, it exempted minerals, ores and ore concentrates from the registration obligation, if these substances were not chemicals, not modified and not dangerous. On technical assistance, the representative of the European Communities agreed that guidance was needed for the stakeholders, to ensure consistent, cost effective and smooth implementation of REACH. He informed the Committee that the European Commission was in the process of preparing such guidance, and that the agency which was going to be set up would also be asked to provide technical assistance and scientific support, as well as training and information seminars to interested parties. He noted that, once the common position was adopted, an amendment to the original notification would be submitted to the TBT Committee, outlining the main changes that had been introduced, and explaining in details some provisions, for instance Article 5.3 on monomers.

(ix) *China - Revision of list of toxic chemicals severely restricted in the People's Republic of China in the regulation for environmental management on the first import of chemicals and the import and export of toxic chemicals*

53. The representative of the European Communities once again raised concerns about the new requirements on toxic chemicals in China, which had entered into force on 1 January 2006. It was recalled that at the previous meeting of the Committee, China had been requested to provide clarification with regard to the absence of a TBT notification – as well as clarification on how the risks had been assessed. An answer was still pending. The EC delegation requested an extension of the transition period which would allow for the application for the registration certificate and the release notice at the same time. Clarification was sought on progress made on the rules for mixtures. In addition, the European Communities requested China to lower the registration fees so that they reflected the real administrative cost of the service rendered.

54. The representative of the United States shared the comments made by the European Communities and sought an update on China's plans to notify the regulation. While the representative of the United States appreciated the fact that two grace periods had been granted, she was of the opinion that a six month extension should be given in order to address all the questions and concerns raised.

55. The representative of Japan echoed the comments made.

56. The representative of China recalled that in order to protect human health and the environment, the chemical regulations had been modified in 2005 and that POPs and PICs conventions had been integrated into the Chinese control list. Taking into consideration the concerns by Members, China had provided a three month transitional period, and this period had been extended for an additional three months. Concerns raised by Members were under consideration by the environmental protection authorities and information would be provided in due time. With regards to the notification concerns, the Committee was informed that the relevant notification was under preparation and would be submitted shortly.

(x) *China – Administration on the Control of Pollution Caused by Electronic Information Products (G/TBT/N/CHN/140)*

57. The representative of the European Communities thanked China for the response provided to comments made and noted that further comments were being prepared as some issues remained unclear. The European Communities asked if China could provide a specific timetable for issuing a catalogue of products which would be covered by the measure. Also, in relation to the mandatory certification under the CCC certification scheme, which was required for products listed in the catalogue, the EC representative enquired whether another procedure, such as the self declaration of conformity (SDoC) had been considered. Finally, the European Communities was seeking

clarification on certain definitions: for instance, the "designer", the "manufacturer" and the "producer", so that responsibilities as regards product conformity could be clarified.

58. The representative of Japan recalled that his delegation too had raised concerns on the issue and requested China to provide a response.

59. The representative of the United States recalled that China had pointed out that the regulation was of a framework nature and that specific catalogues of products subject to it would be developed in the future. She wondered if these catalogues would be notified, with an additional opportunity for comments provided. It was also flagged that the US industry had particular concerns about the anticipated entry into force of the measure, on 1 March 2007. In particular, the industry was concerned about its ability to comply with the new labelling requirements, and had estimated that they needed 12-18 months to adjust to the new requirements once the details were known.

60. The representative of China highlighted that the catalogue of products was under preparation, and pointed out that his country would fulfil its transparency obligations, including to provide a comment period. He noted that a reply to Japan's comments was being prepared.

(xi) *Saudi Arabia – International Conformity Certification Programme (ICCP)*

61. The representative of Japan stressed that Japanese companies found the Saudi Arabia programme too complicated and strict, and that too many procedures were in place in order to get the certification. Another problem was the unclear product coverage of ICCP. His delegation hoped that Saudi Arabia could simplify the programme and make it more transparent.

(xii) *European Communities – Directive 2002/95/EC on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS)*

62. The representative of the United States noted that the RoHS Directive would enter into force in July 2006. It was her delegation's understanding that the technical adaptation committee, which could decide on the coverage exemptions, would meet before the entry into force of the measure. However, that meeting had been postponed and this was creating a difficult situation for companies seeking exemptions and which could be found in violation of using banned substances, even if an exemption was subsequently granted by the technical adaptation committee.

63. The representative of the European Communities pointed out that several exemptions had already been granted for different products and that this was an on-going process. She would provide more information about exemptions given at a later stage at the next meeting of the Committee. It was also pointed out that a guidance document on the implementation of the RoHS Directive had been developed and, although it was not legally binding, it would provide clarity to industry on how producers might demonstrate compliance with RoHS requirements. The guidance document would be reviewed whenever more specifications were agreed. The representative of the European Communities further noted that the practical responsibility of assuring compliance with the RoHS directive remained with the EC member States, which had already reached a common understanding on the approach to take on RoHS compliance. From 1 July 2006, products placed on the market would be considered as RoHS-compliant if the producer could demonstrate this with a supplier's declaration of conformity (SDoC). In case serious concerns about a product arose, the market surveillance authorities would carry out the necessary tests. It was also noted that the European Commission was carrying out a conformity check of national measures transposing the directive so as to address any possible conformity issues in a systemic manner.

(xiii) *China - Wireless Local Area Network Products with WAPI functions (G/TBT/N/CHN/189)*

64. The representative of the European Communities expressed his delegation's continued interest in the Chinese encrypted standard on Wireless Authentication and Privacy Infrastructure, known as WAPI, and thanked the Chinese authorities for their willingness to engage in a dialogue. He sought clarification on the scope of application of WAPI: in particular, he wondered whether WAPI was mandatory only for public procurement of wireless local area network or if it went beyond this sphere, for instance covering not only government procurement but also procurement for other state owned entities. The representative of the European Communities referred to the on-going international standardization work aimed at integrating encryption requirements into the existing international standards on wireless local area network equipment (ISO IEC 8802-11). He expressed his delegation's encouragement to China to continue working with the ISO and IEC, with a view to developing a satisfactory globally standardized solution, which was able to ensure the interoperability of wireless local area network equipment worldwide. He stressed that a unilateral decision by China to adopt mandatory specific encryption requirements in an area where an international standard was being prepared would be inconsistent with Article 2.4 of the TBT Agreement, which stated that, where international standards existed or their completion was imminent, Members should use them as a basis for their technical regulation. Finally, he pointed out that the European Communities and most other economies left the setting of encryption mechanisms to the market, and this raised the question of whether there was a need to regulate at all in this field.

65. The representative of Japan recalled that, at the previous meeting of the Committee, her delegation had asked specific questions<sup>4</sup> on the issue, and invited China to provide a reply.

66. The representative of China recalled that WAPI standards were developed to protect national information safety, and stressed that this was in line with the TBT Agreement. The process of development of these standards had started in 2003; a notification had been made and comments from Members had been taken into account. He further stressed that attention had been paid to the work of the ISO and IEC and that his authorities would continue to do so. He took note of the concerns expressed, which would be transmitted to the competent authorities in capital.

(xiv) *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*

67. The representative of Japan recalled that the European Communities had explained that the above measure was of a framework nature, and that product categories and detailed regulations would be described in the subsequent implementing measures. It was her delegation's understanding that some studies had suggested that there would be implementing measures for 14 product categories, such as copiers and computers, and she believed that implementing measures stipulating concrete numerical criteria might be more trade restrictive than necessary. She expressed her delegation's request to the European Communities to clarify when the implementing measures would be drafted.

68. The representative of China shared the concerns expressed by Japan, and sought further information from the European Communities on the drafting of the catalogue for energy using products ("EuP"). He stressed the importance of transparency in the process.

69. The representative of the United States associated herself with the comments made, and welcomed the statement made at the previous meeting by the European Commission that a notification of the implementing measures would be made.<sup>5</sup>

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<sup>4</sup> G/TBT/M/38, para. 34.

70. The representative of the European Communities confirmed that, at this stage, no notification had been made since studies were being conducted; moreover, no implementing measures had been drafted to date. The candidate products for the implementing measures were taken from the catalogue which was provided in the EuP Directive. Concrete proposals for the implementing measures would be subject to the European consultation mechanism, which included public consultation; these were expected at the earliest for the summer of 2007. This date would coincide with the expiration of the transition deadline for EuP Directive in EC member States. She stressed that third countries, as well as their manufacturers or other economic operators, would have the possibility to submit comments at the first stage of the preparation of the proposals, by means of an open on-line consultation. Governments would then have the possibility to submit comments in the context of the TBT notification.

(xv) *Korea - Recycling of Electrical and Electronic Products and Automobiles*

71. The representative of Japan welcomed the answer provided by Korea to the comments submitted by the Japanese delegation to the effect that the Korea would observe WTO rules. She noted that further comments had been sent through the national Enquiry Point in May 2006, and invited Korea to provide an answer to those as well.

72. The representative of Korea recalled that several comments on the proposed regulation had been received from Members and that replies had been provided. He noted that consultations were still ongoing and that his authorities were in the process of finalizing the draft, the final version of which would be communicated to WTO Members.

(xvi) *European Communities - Draft Commission Decision regarding the Classification of the Reaction to Fire Performance of Construction Products (G/TBT/N/EEC/92)*

73. The representative of Japan noted that at the European Communities' 62<sup>nd</sup> meeting of the Standing Committee on Construction Products, a positive opinion had been expressed on the draft Commission decision regarding the classification of reactions to the fire performance of electric cables. Her delegation wondered if the comments made by WTO Members and the discussions in the previous meeting of the TBT Committee had been taken into account by the Standing Committee.

74. The representative of the European Communities confirmed that the Standing Committee on Construction Products had supported the European Commission draft decision, and noted that a comprehensive answer to all comments received was under preparation. He stressed that the acidity criteria which had raised concerns among Members was an optional classification criteria, which allowed EC member States to require the use of certain cables in certain construction works, for instance in tunnels. The reply would be sent to all Members who had submitted comments, and also posted on the EC TBT website, where all comments and replies were made available.<sup>6</sup>

C. OTHER MATTERS

**1. Presentation by the European Communities: Exporters' Helpdesk**

75. The representative of the European Communities made a detailed presentation on the EC Exporters' Helpdesk, an online facility aimed at assisting developing countries to access the

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<sup>5</sup> G/TBT/M/38, para. 92.

<sup>6</sup> <http://ec.europa.eu/enterprise/tbt/>

European market. The presentation was done on-line<sup>7</sup> and an explanatory brochure was provided at the meeting.

76. The representative of Mexico appreciated the presentation made and noted that the facility was a very useful tool which was much utilized by exporters in Mexico. He wondered how long it had taken to develop the facility, what the budget was and how many people were involved in the daily running of the system. He also asked whether the system included standards and regulations for services, conformity assessment procedures and a reference to draft technical regulations and standards.

77. The representative of the European Communities explained that the database used mostly internal data, except for import requirements and taxes, which were provided by external consultants. She further informed the Committee that it had taken nearly three years to develop the database, and that this had been done in three stages. On the budget, she pointed out that the external consultants' budget was 1,400,000 Euros for a three year service contract, and that the European Communities were in the process of launching a new tender to cover the period 2007-2009. In terms of manpower, she noted that all European Communities services, including EC delegations abroad, provided data. The daily management of the facility required five people, with a further two IT experts and a network of approximately fifty additional experts. She noted that the database included information only on goods, not on services. Finally, she clarified that the information provided on technical regulations and conformity assessment procedures was related only to those measures which were in force, not to draft texts. Further information, including all communications, could be found through the link to Eurolex.<sup>8</sup>

## **2. Codex Committee for Food Labelling**

78. The representative of Canada raised an issue concerning country of origin labelling in relation to the work in the Codex Committee for Food Labelling. She pointed out that the Codex Committee on Milk and Milk Products had adopted sixteen revised standards for cheese, which included revised provisions for mandatory country of origin labelling. The revised standards had then been referred to the Codex Committee on Food Labelling for endorsement. While there was general consensus at Codex that there was value on updating the standards, as many of them had not been reviewed since 1960, many delegations could not come to an agreement with respect to the Codex Committee of Milk and Milk Products proposed mandatory code provision for Article 7.2. However, she noted that the Codex Committee Food Labelling had decided to move the standard to the Codex Alimentarius Commission, at Step 8, without the endorsement of the Codex Committee on Food Labelling. The representative of Canada called on TBT Committee Members to consult with the corresponding Codex representatives, prior to the July meetings of the Codex Alimentarius Commission, to make them aware of this development on country of origin labelling. She hoped that a constructive and fruitful discussion on this important issue could be held to ensure that it was given due consideration in light of past discussions in TBT Committee on mandatory country of origin labelling.

79. The representative of New Zealand supported the comments made by Canada and believed that coordination between the Codex and the WTO was essential.

80. The representative of the Codex explained that the meeting of the Codex Alimentarius Commission would take place in July. She noted that there had been an agreement in the Committee on Milk and Milk Products to revise the standards, which included some sections on labelling. Some delegations had not agreed with the provisions on country of origin labelling, which already existed in some adopted standards for milk and milk products or other products, for instance fruit and

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<sup>7</sup> <http://exporthelp.europa.eu/>. The presentation was made by Ms. Marta Moya Diaz.

<sup>8</sup> <http://eur-lex.europa.eu>



vegetables. These revised standards had therefore not been endorsed, because of lack of consensus, and, in accordance with established practice, had been sent to the Codex Alimentarius Commission for consideration. She pointed out that the Commission could have a general debate and possibly send the standards back to the relevant Committee, or adopt them without the labelling provisions. The outcome would depend on the discussion in the Commission.

### **3. List of Members' Publications in relation to Technical Regulations, Conformity Assessment Procedures and Standards**

81. The representative of the United States thanked the Secretariat for the document containing the list of Members' publications in relation to technical regulations, standards and conformity assessment procedures, contained in Job(06)/50, and noted that her delegation would provide additional detailed website information. She sought clarification on whether the document included information on publications related to voluntary standards.

82. The Secretariat highlighted that the information contained in the document had been extracted from the statements on implementation and administration of the Agreement, submitted by Members under Article 15.2. It included, when available, information on the publications related to standards.

83. The representative of the European Communities noted that his delegation would also provide additional details on electronic sources of information.

## **III. TRIENNIAL REVIEW**

### **A. NEW SUBMISSIONS**

#### **1. Canada on Counterfeiting of Certification Marks Affixed to Goods where there Exists a Health and/or Safety Concern**

84. The representative of Canada introduced her delegation's submission contained in G/TBT/W/265/Rev.1. She proposed that the issue could be discussed in the context of the Fourth Triennial Review in the section dedicated to conformity assessment.

85. The representative of Japan noted that this was a new topic which might need further consideration by the Committee. He asked Canada to provide more concrete examples that would illustrate the extent of the problem in the Canadian market. On the basis of these examples the Committee could then consider whether this was a general problem or whether it was limited to some specific areas.

86. The representative of the United States noted that her delegation was interested in hearing more about the specific problems that Canada was experiencing in its market. She was not sure whether the issue was appropriate for the TBT Committee. She also wondered how the discussion could then be distinguished from discussions taking place in other fora on intellectual property rights and counterfeit certification marks. In addition, the United States sought information on actions that the Canadian authorities had taken to address their problem, and asked if the issue was limited to counterfeit of certification marks or if it was due to the lack of enforcement of compliance with technical regulations and standards.

87. The representative of Mexico indicated that his country also experienced problems of falsification and counterfeit. However, Mexico was of the view that the issue went beyond the scope of the TBT Agreement as it had many different aspects linked to intellectual property, customs control, verification at sales and retail points and conformity assessment. His country regarded the problem as a crime, which was subject to other rules of international law. His delegation's approach

would be one of enhancing the exchange of information on how countries ensured that their conformity assessment procedures and certification marks were legally used. For instance, in his country, a computerized system linked the various fabrication and customs authorities, allowing them to constantly exchange information with respect to the characteristics of certificates and certification marks.

88. The representative of the European Communities agreed that there were increased incidents of counterfeit products circulating in the markets. For instance, in the European Communities in 2004, the customs authorities had seized 100 million counterfeit articles, representing an increase of nearly one thousand per cent over the last four or five years. However, his delegation was not sure about the linkage to the work of the TBT Committee, and believed that the issue affected mainly customs. For instance, in the European Communities, the authorities were taking measures to strengthen customs control and to establish cooperative relationship with other countries. He agreed with Mexico that it might be useful to share information on the issue, but that the nature of the information which could be useful to exchange would need to be clarified. He pointed out that, as Canada had suggested in its paper, a workshop could be a possibility: but that it should not be limited to the TBT Committee. It would need to involve other Committees of the WTO and different experts, as the problem went across a wide spectrum of responsibilities. He sought clarification from Canada about what they considered the linkage with the TBT Agreement was.

89. The representative of China noted that similar problems of counterfeit existed in his country. He stressed that this was a new topic and that more time was needed to enhance the understanding of the problem. He sought clarification from Canada as to what problems were encountered and what type of actions were taken. He agreed with the European Communities about the need to clarify the linkage to the TBT Committee, and also shared the view that there was not enough time left for discussion in order to include the issue as a sub-item in the Fourth Triennial Review.

90. The representative of Korea was also of the view that more concrete information was needed.

91. The representative of Canada understood that this was a complex topic dealt with in a variety of *fora*. Her delegation saw the linkage to the TBT Committee in particular with respect to deceptive practices, and one of the aims of the proposal was to focus on the specificity of the issue by exchanging information as to the problems in each country, and on how each country dealt with deceptive practices. Some more concrete examples and evidence of the problem in the Canadian market could be illustrated at the next meeting of the Committee, together with an explanation of the Canadian experience in terms of enforcement. Her delegation was open to ways to analyse the issue, for instance the suggestion by Mexico to exchange information on how to ensure that conformity assessment processes and certification marks were used legally.

92. The representative of the UNECE informed the Committee that in the framework of the UNECE Working Party on Regulatory Cooperation and Standardization Policies under the Committee on Trade of the UNECE, there were initiatives in the field of counterfeit goods. For instance, there was a proposal by the European Communities on the use of market surveillance as a complementary means to protect consumers against counterfeit, which would be discussed at the 16<sup>th</sup> session of the Working Party. As a member of the UNECE, Canada could consider raising their proposal also at the working party.

## **2. Chile on Good Regulatory Practice and Transparency**

93. The representative of Chile introduced her delegation's submission on good regulatory practice and transparency, contained in G/TBT/W/268.

94. The representative of the European Communities sought clarification on how domestic coordination was ensured in Chile: was this done on a regular basis? on the basis of all the draft measures in the programme in a particular year? did it involve physical meetings or was it done through electronic means? The European Communities agreed with the principle of maximizing the opportunities for cooperation, as well as with the proposals on transparency.

95. The representative of New Zealand noted that her country was undertaking a review of its standards and conformity assessment infrastructure. One of the issues that was being considered in this review was how to establish some regulatory forum. She had the same questions as those raised by the European Communities.

96. The representative of China noted that four recommendations were contained in the submission by Chile and that the first two were related to the national commission for the coordination of TBT issues. He pointed out that in China there were different coordination mechanisms, but that there was no national committee – as this would be difficult to set up. On transparency, he supported the suggestion to attach the text of a draft technical regulation to the notification.

97. The representative of Chile explained that the national commission was made of representatives of all the agencies that published technical regulations, standards or conformity assessment procedures. The contact points of the various agencies were updated about what each agency was doing, and this was particularly useful when other WTO Members sought information about technical regulations. The national commission did not review technical regulations, but the agencies which were in the process of elaborating a technical regulation had to send it to the Ministry of Economy, which was overseeing the process. The meetings of the national committee discussed issues such as the implementation of WTO rules and the implementation of such rules in the context of free trade agreements (FTAs). She further noted that there was no set agenda and that issues were taken up as they came. This system had worked very well in her country; all the various agencies were contributing voluntarily to discussion.

98. The representative of Mexico noted that his country had set up, in 1992, the National Standards Commission, which included fifteen representatives of ministries, standards-setting agencies and members of government agencies dealing with technical barriers to trade, such as the Ministry of Finance, the Consumer Protection Department and the Mexican Water Technology Institute. The Commission also included representative from the private sector, mainly Chambers of Commerce and trade confederations, and representatives from the universities. The main goal of this Commission was to coordinate national standards policy, which included the mechanism for the implementation of the national standards legislation, which had been in force since 1992. The representative of Mexico explained that the 1992 Law oversaw the various channels and institutions through which Mexico complied with the TBT Agreement, including the transparency requirements. It also included provisions for impact assessments and the review of regulations, and for conformity assessment procedures as well as the accreditation of conformity assessment bodies. The 1992 Law also stipulated that, when elaborating regulations, government agencies should comply not only with the WTO TBT disciplines, but also with other trade agreements, such as the North America Free Trade Agreement (NAFTA). He emphasized that the National Commission had made it possible for Mexico to comply effectively with the obligations under the TBT Agreement. He also said that his delegation would provide an update to the statement under Article 15.2, reflecting all these developments.

99. The representative of Korea was of the view that Members had different ways and means that provided mechanisms to ensure coordination among various agencies and that this flexibility should be maintained.

### 3. Costa Rica on the Fourth Triennial Review

100. The representative of Costa Rica introduced her delegation's proposal on the Fourth Triennial Review, contained in document G/TBT/W/266, dated 7 June 2006.

101. The representative of Mexico noted that the three parts (II.A-C) of Costa Rica's proposal were related to the discussion the Committee had had so far on the Fourth Triennial Review. Regarding Section A (*ad hoc* consultations by the Chairman), while Mexico was of the view that this was a good idea which merited further consideration, some more discussion was needed in terms of implications. Members' attention was drawn to the fact that in the SPS Committee this procedure existed and was provided for in the Agreement itself. It was also noted that this would be a process that would take place prior to formal dispute settlement procedures under the DSU.

102. The representative of the United States noted the usefulness of exploring the experience in the SPS Committee of using the procedure for *ad hoc* consultations, i.e. had the consultations been effective in resolving problems? how were such consultations set up? was there any form of communication that was provided to other Members about such discussions? what was the link to the SPS Agreement, and, was there any link to the formal dispute settlement process? The US was of the view that answers to questions such as these would be helpful to the Committee in further discussing Costa Rica's proposal (on *ad hoc* consultations by the Chairman).

103. The representative of the European Communities was also of the view that much of what was contained in Costa Rica's proposal fit well into the Committee's ongoing discussion under the Fourth Triennial Review. Regarding the *ad hoc* consultation mechanism, Members' attention was drawn to a proposal from the European Communities that had been tabled in the context of discussions in the Negotiating Group on Market Access (hereafter "NAMA"): this was a horizontal mechanism aimed at reducing the risk of future non-tariff barriers. This proposal went in a similar direction as what had been proposed by Costa Rica except that instead of putting the Chair of the Committee in charge of the task to resolve possible differences of opinion on specific trade concerns, the EC proposal referred to a facilitator.<sup>9</sup>

104. The representative of Brazil drew the Committee's attention to another submission made by a group of developing countries in the NAMA discussions ("NAMA 11")<sup>10</sup> which proposed the creation of an NTB resolution mechanism which also endeavoured to solve the kinds of concerns that were addressed by Costa Rica's proposal, and was similar to the proposal made by the European Communities. The difference to Costa Rica's proposed *ad hoc* consultation mechanism, as well as the EC NAMA proposal, was that it would be based on a roster of experts and facilitators to be maintained for this purpose of solving specific trade concerns.<sup>11</sup>

105. The representative of Mexico noted that the Committee needed to be careful not to mix or confuse the work of the TBT Committee with the on-going negotiations. There was a fair amount of discussion outstanding about NTBs in the context of NAMA negotiations; much knowledge was brought forward in this group which was particularly relevant to the work of the TBT Committee.

106. The representative of Brazil noted that it would be interesting for the TBT Committee to hold an information exchange with the Chair of the NAMA Group on this issue so that the TBT Committee was informed about relevant ongoing work. He was of the view that it was important for the TBT

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<sup>9</sup> The EC proposal is contained in document TN/MA/W/11/Add.8, dated 1 May 2006.

<sup>10</sup> Argentina, Bolivarian Republic of Venezuela, Brazil, Egypt, India, Indonesia, Namibia, Philippines, South Africa and Tunisia.

<sup>11</sup> The proposal is contained in TN/MA/W/68/Add.1, dated 8 May 2006. Argentina, Bolivarian Republic of Venezuela, Brazil, Egypt, India, Indonesia, Namibia, Philippines, South Africa and Tunisia.

Committee to be aware of the broader context in which TBT issues were raised and discussed so as to avoid duplication of work.

107. The representative of Malaysia noted in respect of the two above-mentioned NAMA proposals (European Communities and NAMA 11) that these were broad in coverage and did not restrict themselves to TBT *per se*; they related to non-tariff barriers. This needed to be kept in mind with respect to any interaction with the NAMA Group.

108. The representative of Costa Rica wished to clarify with respect to the *ad hoc* consultation mechanism that Costa Rica did not see their proposed mechanism as a substitute to the DSU; it was an alternative route for Members that could be less cumbersome and resource intensive as well as more expeditious. With regard to the SPS Agreement, paragraph 2 of Article 12 of the SPS Agreement states: "The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues."<sup>12</sup> In fact, the SPS Agreement did not define any particular procedure and it did not define a role for the Chairman. Costa Rica was proposing that, in the TBT context, this role be defined with greater precision. In respect of NAMA, Costa Rica concurred that the TBT Committee needed to know the developments in the NAMA context.

109. In concluding the discussion on the three new proposals<sup>13</sup>, the Chairman thanked the delegations of Canada, Chile and Costa Rica for their contributions.

#### B. PREPARATION OF THE FOURTH TRIENNIAL REVIEW REPORT

110. The Chairman recalled that at the last meeting of the TBT Committee, the discussion of the factual elements of the Fourth Triennial Review had been initiated on the basis of a summary document prepared by the Secretariat and contained in JOB(06)/24. He noted that, according to the Work Programme for the Preparation of the Fourth Triennial Review<sup>14</sup>, the Committee would start the drafting of the report itself at the current meeting. To facilitate this work, in line with his proposal at the last meeting of the Committee, he had prepared a first draft which was contained in document JOB(06)/142 (issued on 19 May 2006).<sup>15</sup> The Committee had held informal discussions on the drafting of the Fourth Triennial Review Report on 8 and 9 June; he summarized the informal discussions as follows.

111. The Chairman stated that his sense was that delegations had considered the draft a good basis for the Committee's Fourth Triennial Review report. Several constructive general comments were made. For instance, it was noted that it could be useful to extract – or bring out more clearly – the recommendations under each element so as to enable the reader to quickly identify areas of future work. The view was expressed that the Review was a stand-alone document which would be read by a larger public; it would benefit, for instance, from the inclusion of references to some basic Committee documents such as the status of Statements on Implementation (G/TBT/GEN/1 series), Enquiry Points contacts (ENQ – series) and Publications (JOB(06)50).

112. The Chairman further reported that the area of Good Regulatory Practice had received considerable attention in terms of submissions and debate. In fact, most of the submissions received in preparation of the Fourth Triennial Review covered this subject. Several useful suggestions were

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<sup>12</sup> On the use, to date, of this procedure in the SPS Committee which is also referred to as the "Good Offices" of the Chair, see para. 86 of G/SPS/36.

<sup>13</sup> It is noted that during the meeting, Brazil circulated a submission on Good Regulatory Practice which is contained in document G/TBT/W/267, dated 8 June 2006.

<sup>14</sup> Annexed to the Annotated Draft Agenda (JOB(06)/156).

<sup>15</sup> G/TBT/M/38, para. 157.

made. For instance, the need to reflect more clearly in the draft the importance of openness, transparency and accountability in regulatory processes was stressed. In certain areas, it was felt that there was a need to rebalance the text (equivalency, performance-based regulation). In other areas, some delegations were of the view that the text could be further expanded (efficiency and effectiveness of regulations). The importance of different mechanisms and approaches to domestic coordination was emphasized, and the usefulness of further information exchange in the area of regulatory impact assessment was noted; these were topics that could also be addressed in the context of a workshop on the subject of Good Regulatory Practice.

113. The Chairman noted that on conformity assessment, Members had proposed to group all the sub-sections relating to approaches aimed at facilitating the recognition of conformity assessment results. Refinements of the scope of certain sub-sections were put forward, for instance on the identification of appropriate conformity assessment procedures; on the information to be provided by Members on the use of SDoC; on the exchange of information on MRAs; on the participation of foreign conformity assessment bodies in national conformity assessment procedures; on government designation; and on accreditation. It was also suggested to reflect in greater detail the results of the two workshops held on conformity assessment issues since the last triennial review and to refer to the need for technical assistance in the area of conformity assessment.

114. On transparency, Members further discussed several recommendations, including on the time period for the submission and consideration of comments on proposed technical regulations and conformity assessment procedures. The preliminary views from the WTO Secretariat's IT staff were heard on some issues, for instance, on the access to draft and final texts of notified measures. In regard to the sharing of translations of notified texts, it was noted that the SPS Committee had already developed a format for the notification of translations of SPS measures.

115. The Chairman further reported that on technical assistance, a number of Members had emphasized the importance they attach to this section as well as the view that it could benefit from further detail. In particular, emphasis was put on efficiency of delivery of technical assistance: in this vein it was suggested that the Committee could benefit from an exchange of information on good practices in the delivery of technical assistance. It was also pointed out that timeliness in the delivery of technical assistance was important, as well as the sustainability of such activities.

116. As was the case with technical assistance, the Chairman noted that Members wanted to see the part on special and differential treatment to be further developed. It was suggested there could be more focus on Committee actions on special and differential treatment, beyond simple reporting on what special and differential treatment had been provided and how Members had benefited from such treatment.

117. The Chairman recalled that he had stressed, during the informal meeting, that the content of his first draft was based on Members' contributions. If Members wished to have further detail, or more material in the Report, they needed to provide this in terms of specific drafting suggestions.

118. The Chairman went on to report that some "other issues" had also been discussed. For instance, the Committee would need to find a way to deal with issues that had been raised in the preparation of the Fourth Triennial Review but where there was no consensus for their inclusion as an "element" of the review. Also, the Committee had discussed the issue of the evolution of ISO/IEC Guide 2 on definitions since its 1991 edition.<sup>16</sup> In principle, delegations seemed to agree that some reference to the discussion on the matter was needed in order to find a wording that was acceptable to all. This work needed to be done in light of consultations the Chairman intended to hold before the next meeting, and on the basis of further information to be provided.

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<sup>16</sup> The information provided by the ISO was subsequently circulated in document G/TBT/GEN/38.

119. The representative of Brazil noted that, as a general principle, Brazil understood that all issues raised by delegations needed to be referred in the Fourth Triennial Review, without exclusions. In his view proceeding otherwise – or requiring consensus for references made to issues raised by Members – would, in fact, lead to a different kind of procedure that had not been followed before in the TBT Committee.

120. The representative of Kenya asked what mechanism the Committee would use to report on special and differential treatment given to developing countries.

121. The representative of the European Communities recalled in respect to the issue raised by Brazil, that in a previous triennial review, there had been some issues that the European Communities had proposed where there had been no consensus in the Committee. It had then been decided that these would be put in the minutes of the meeting. Hence, what appeared in the triennial review report was the consensus view and what could not be agreed by consensus appeared in the minutes.

122. The representative of Mexico supported the statement by the European Communities: as a matter of fact, the Chairman – or any delegation – could raise any issue for discussion in the Triennial Review. Quite independently to this, the WTO worked by consensus and if there was no consensus for a particular topic to be included in the review, then it was premature to do so.

123. The representative of China associated his delegation with the view expressed by Brazil. The report of triennial review was, essentially, a factual reflection of the discussions. Therefore, all elements needed to be included in the report.

124. The representative of Chile supported the statements made by the European Communities and Mexico to the effect that it had always been the practice that the triennial review reports reflected decisions taken by consensus. In effect, these decisions were about plans of action (or “future work”) for the Committee that all Members needed to agree on. However, such actions did not necessarily cover all issues addressed in the Review; these were in any case reflected in the minutes. Chile was of the view that the Chairman’s summary had adequately summarized what the Committee had achieved so far in the process.

125. The representative of the United States also felt that the Chairman had made a good summary on the state of play. She joined other delegations in supporting the current process which was based on consensus and which had been followed in all previous reviews.

126. The representative of Brazil was concerned with the discussion on the subject of consensus. He noted that he did not want Members to be under the impression that there was currently consensus regarding any aspect of the draft, especially if the understanding of Members was that the report contained consensually agreed terms even though these did not mean exactly the same thing. Brazil was working under the understanding that the report was not necessarily consensus based, that it was a factual reflection of issues raised by delegations during the Fourth Triennial Review of the operation and implementation of the TBT Agreement.

127. The Chairman noted, regarding the issues raised by Members that there were some outstanding matters. He intended to address these points in consultations ahead of the November meeting so as to find an acceptable solution to them. In terms of next steps, an informal meeting would be held on 3-4 October 2006 to discuss a further draft. He also recalled that the final draft would be adopted at the Committee's 8-10 November meeting.

#### IV. TECHNICAL CO-OPERATION

128. The Chairman recalled that, in November 2005, the Committee had adopted a format for the voluntary notification of technical assistance needs and responses, contained in document G/TBT/16. He welcomed a new notification which had been received from Costa Rica, issued as G/TBT/TA-3/CRI. He further recalled that two previous notifications had been submitted by Jamaica (G/TBT/TA-1/JAM) and Armenia (G/TBT/TA-2/ARM). He encouraged developing country Members to use this mechanism and the other Members who were in the capacity to respond, to do so.

129. The representative of Costa Rica stressed that his delegation attached great importance to technical assistance in the TBT area, and that new needs had arisen in the public and private sector. Hence, Costa Rica had submitted the relevant notification.

130. The representative of the ITC informed the Committee about a project that was being undertaken in the ASEAN region (G/TBT/GEN/35).

131. The Chairman drew the Committee's attention to the information on the Secretariat's technical assistance activities, as outlined in document G/TBT/GEN/34, and noted that more information on these activities, including programmes, lists of participants and presentations delivered was available on the TBT website.<sup>17</sup>

#### V. UPDATING BY OBSERVERS

132. The Chairman drew the Committee's attention to the information provided by the OIML (G/TBT/GEN/36) and the Codex (G/TBT/GEN/37).

133. The representative of the UNCTAD informed the Committee about a project to build capacity for improved policy making and negotiations on key trade and environment issues in developing countries. The key findings of this project had been highlighted in the Trade and Environment Review 2006. She pointed out that the Review provided conceptual and factual analysis of the relationship between environmental requirements and market access for developing countries. The Review also included sector specific analysis in the electrical and electronic equipment area, and in the organic agriculture sector. In particular, this sector provided an example of how new environmental-related health concerns in major markets could create market opportunities for environmentally-preferable products from developing countries. The representative of UNCTAD further explained that another sector of major interest which had been analyzed was that of horticultural exports, and that the case studies which had been conducted had shown that the capacity of producers to respond adequately to environmental and social concerns, and related market requirements, was an important element of international competitiveness. She highlighted that the results of these studies and the inputs provided by several fora, including the TBT Committee, had significantly contributed to the activities of the consultative task force (CTS) on environmental requirements and market access for developing countries. She noted that the annual session of the consultative task force would take place in Geneva in July 2006. The meeting would address the key findings of the mentioned studies and capacity building activities, together with issues related to facilitating access to existing on-line databases on environmental health and food safety requirements. She recalled that the consultative task force was a multi-stakeholder forum, open to environmental representatives, private sector, NGOs, academia and relevant international organizations.

134. The representative of the UNECE informed the Committee that a forum on common regulatory language for global trade would take place on 20-21 June 2006. The purpose of the forum

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<sup>17</sup> [http://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_act\\_list\\_activ\\_e.htm](http://www.wto.org/english/tratop_e/tbt_e/tbt_act_list_activ_e.htm)



was to exchange experiences from different regions on regulatory approaches and practices. The forum was open, and participation was free.

**VI. DATE OF NEXT MEETINGS**

135. The Chairman recalled that an informal meeting of the TBT Committee on the Fourth Triennial Review was scheduled for 3-4 October 2006 and that the next regular meeting of the Committee would take place on 8-10 November 2006.

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