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Committee on Technical Barriers to Trade

MINUTES OF THE MEETING OF 9 NOVEMBER 2007

Chairperson: Mr. R.S. SIDHU (India)

Note by the Secretariat[1]

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

I. ADOPTION OF THE AGENDA

1. The Committee adopted the agenda contained in WTO/AIR/3086.

II. IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

A. STATEMENTS FROM MEMBERS UNDER ARTICLE 5.2

(i) Statements Received

2. The Chairman recalled that the latest list of Statements made under Article 15.2 of the TBT Agreement was contained in document G/TBT/GEN/1/Rev.6. Since 1995, a total of 115 Members had submitted at least one such Statement. Six Members had submitted their Statements of Implementation since the last meeting, held in July 2007. These recent statements were from Malawi (G/TBT/2/Add.93), Niger (G/TBT/2/Add.95), Tanzania (G/TBT/2/Add.94), the United Arab Emirates (G/TBT/2/Add.96), Botswana (G/TBT/2/Add.97), and Vietnam (G/TBT/2/Add.98). In addition, Peru and Singapore had submitted revisions to previous statements (G/TBT/2/Add.29/Rev.1 and G/TBT/2/Add.25/Rev.1, respectively). It was also noted that the latest list of Enquiry Point contacts was contained in document G/TBT/ENQ/31.[2]

(ii) WTO Secretariat Workshop on the Statement on Implementation and Administration of the TBT Agreement under Article 15.2 (8 November 2007)

3. The Secretariat reported on the Workshop on the Statement on Implementation and Administration of the TBT Agreement under Article 15.2, held on 8 November 2007. It was recalled that the Third Triennial Review stated that, in order to fulfil the obligation contained in Article 15.2, Members should seek assistance from other Members that have done so to share their knowledge and experience. This message was reiterated at the Fourth Triennial Review. The Workshop, organized by the Secretariat, was an experience-sharing event; an opportunity for delegations to present and discuss different approaches to implementing the obligation contained in Article 15.2.[3]

4. The Secretariat noted that one of the key messages in the presentations and the ensuing discussion was that the development of the 15.2 notification necessitates collaboration between many different bodies and agencies within a country as well as consultations with other stakeholders. For this purpose, Members established various consultative mechanisms such as inter-ministerial bodies and national "TBT Committees" to advance their work. This process of coordination had in and of itself led to increased involvement and awareness of governments about the TBT Agreement. A further aspect was the importance of maintaining and building on this awareness *after* the notification was submitted and the appropriate legislation was in place. Discussions ranged over other aspects as well, such as: resource constraints and difficulties related to participation in TBT Committee meetings, challenges of identifying information needed for the 15.2 Statement, and challenges of identifying possible assistance that could be made available to help Members fulfil their 15.2 obligation. The Secretariat noted that it would continue to offer assistance in this area and encouraged Members who had valuable experiences to do likewise.

5. The Committee took note of the information provided.

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[2] Regularly updated information on Members' enquiry points is also available on the following TBT webpage: http://www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_points_e.htm

[3] The programme of the workshop, as well as the presentations can be obtained at the following TBT webpage: http://www.wto.org/english/tratop_e/tbt_e/wkshop_nov07_e/tbt_article152_8march07_e.htm.

B. SPECIFIC TRADE CONCERNS

1. New Concerns

(i) Argentina – Measures affecting market access for pharmaceutical products (G/TBT/W/280)

6. The representative of Colombia introduced his delegation's concerns relating to the system applied by Argentina for the entry of pharmaceuticals into its market, specifically with regard to the classification of countries and the resulting application of conformity assessment procedures. He was also concerned about the classification and application of tariffs or fees for undertaking verification visits to plants located in the countries of origin of the pharmaceuticals. Colombia was of the view that some of the measures could be considered contrary to the rights and obligations under the TBT Agreement, particularly those regarding the principle of national treatment and transparency.[4]

7. The representative of Chile noted that her delegation had had similar difficulties with respect to market access for pharmaceuticals in Argentina and this despite the fact that Chile was included in Annex 1 contained in the Decree 177 (listing those countries whose sanitary system and pharmaceuticals are reliable).[5] For three years Chile had been asking for a review of its request with respect to the regulation at issue, yet nothing appeared to have been done. Although she hoped that the issue could be dealt with within the relevant MERCOSUR bilateral group, to date there had been a lack of response there as well. Argentina was encouraged to review the situation and provide a response.

8. The representative of Argentina took note of the statements made.

(ii) Moldova – quality and control measures for bottled, non-alcoholic beverages including mineral, natural water and soft drinks

9. The representative of the European Communities was concerned about a measure adopted by Moldova on 15 August 2007 (Government Decision 934) which introduced new quality and control requirements for bottled, non-alcoholic beverages including mineral, natural water and soft drinks. This decision introduced a state registry for bottled non-alcoholic beverages, which required that, as of January 2008, all such products had to be labelled with a special state commercial stamp or mark. She pointed out that the European Communities was a major exporter of these products to the Moldovan market and would be adversely affected by this measure, if adopted. The European Communities considered that the entry into force of this measure needed to be delayed until third countries had had opportunity to get acquainted with it and submit formal comments.

10. The European Communities requested Moldova to notify the decision to the TBT Committee and to fulfil the transparency obligations set out in Article 2.9.2 of the TBT Agreement. In addition, there were a number of implementing measures, including how the stamp had to be affixed and the size of the bottle, which had not yet been adopted. The European Communities hoped that these measures would be notified at a draft stage to the TBT Committee and that they would not be more trade-restrictive than necessary. Any further information that Moldova could provide would be welcome.

11. The Chairman noted that the concerns expressed by the European Communities would be conveyed to the appropriate Moldovan authorities.

[4] The full statement detailing Colombia's concerns is contained in G/TBT/W/280.

[5] See G/TBT/W/280, para 2(a).

(iii) Norway – Proposed regulation concerning specific hazardous substances in consumer products (G/TBT/N/NOR/17)

12. The representative of the United States noted that the above-mentioned regulation would prohibit the use of 18 substances in a wide range of consumer products. Several WTO Members and industry stakeholders had submitted comments to Norway's Enquiry Point. These comments questioned the technical justification, raised concerns that compliance would be overly burdensome and costly and noted the lack of viable alternative substances in many instances. In certain respects the proposed regulation appeared to be premature; the United States understood that risk assessments were underway and close to completion on at least two of the substances contained in the proposal (*tetrabromobisphenol A* (TBBPA), when used as an additive and *hexabromocyclododecane* (HBCDD)). The United States hoped that Norway would reconsider any further action until the science-based assessments were complete. She noted that Norway's notification indicated a proposed date of adoption of 15 December 2007 and that the measure would enter into force on 1 January 2008. The United States was of the view that such a short implementation period would not give industry sufficient time to comply either with existing drafts or any future revision.

13. The representative of Israel echoed the concerns of the United States. Israel was particularly concerned about two flame retardants affected by the proposed measure, known as TBBPA, when used as an additive, and HBCD – both of which were produced in Israel. Although Israel was aware of Norway's legitimate concerns regarding the protection of human health and the environment, his delegation was of the view that the proposed restrictions could not be justified based on available scientific information. Detailed comments concerning this matter had been sent to Oslo and, in brief, the following points had been made.

14. Israel considered that the proposed measure was an unnecessary obstacle to international trade in the sense of Article 2.2 of the TBT Agreement. Available scientific information within the context of an EU risk assessment process had established that there was no risk to human health and that the environmental risk was limited and controllable. Moreover, the risk assessment process had not yet been concluded and risk reduction actions would be incorporated within the REACH regulation. Therefore the proposed restriction could not be justified with reference to the available scientific and technical information as required by Article 2.2 of the TBT Agreement. As the proposed measure was more trade-restrictive than necessary, Norway had to consider the adoption of less restrictive measures concerning the use of the two substances. In addition, the prohibition could not be justified under Article 2.10 because the nature of the proposed ban did not concern any urgent problem.

15. Finally, Israel was of the view that Norway's decision to implement measures differing from those established in the European Union derogated from the principle of harmonisation of technical regulations referred to in Articles 2.6 and 2.7 of the TBT Agreement. As a member of the EEA, Norway participated in the risk assessment processes in accordance with EU rules and had therefore to afford mutual recognition to the conclusions reached by those assessments. In light of this, Israel objected to the implementation of the proposed restriction by Norway and urged Norway's authorities to consider its comments and proposed to further discuss the issue on a bilateral basis.

16. The representative of Japan, like other delegations, recognized the importance of the protection of human health and environment in considering regulations. However, Japan was concerned about the potential negative effects on international trade of the above-mentioned measure. Japan had also submitted its comments to Norway (on 6 and 10 August 2007) outlining their concerns. In essence, Japan was of the view that a risk assessment of the European Communities had concluded that *tetrabromobisphenol A* (TBBPA), *hexabromocyclododecane* (HBCDD) (*diethylhexylphtalate* (DEHP) and BPA (*Bisphenol A*) did not pose serious risk. Furthermore, the Japanese Government had also undertaken studies regarding the hazards of DEHA and BPA which

had concluded that the endocrine-disrupter effect was not present. Norway was therefore requested to take into account pre-existing research and explain why its interpretation of the risk differed substantially from those arrived at by other WTO Members.

17. The representative of Jordan noted that his country was one of the major producers in the world of *tetrabromobisphenol A* (TBBPA) and elemental bromine which was an input material for *hexabromocyclododecane* (HBCDD). Hence, Jordan – as well as other producers – would suffer direct negative consequences through the reduction in TBBPA sales and indirectly through reductions in elemental bromine sales to other TBBPA and HBCDD producers worldwide. Jordan had also sent official comments to the Norwegian authorities requesting Norway to exempt TBBPA and HBCDD from the above-mentioned ban and to further examine the health and environmental risk of these products. In Jordan's view, available risk assessments did not offer sufficient basis to impose a ban. Therefore, Jordan considered that the proposed restriction was an unnecessary obstacle to international trade.

18. The representative of Norway noted that in May 2007, Norway had sent the proposed regulation for a public hearing and the deadline for comments had been 1 September 2007. The comments received in the public hearing were being evaluated by the Norwegian Pollution Control Authority. The Ministry of the Environment would subsequently assess the recommendation from the Pollution Control Authority as well as the comments received in the international hearing before a final decision on the prohibition was made. She informed the Committee that Norway had a goal to reduce emissions of several hazardous substances substantially by 2010 and to eliminate use and emissions before 2020. These targets were stated in a White Paper from 2006 and in this document on Norway's Chemical Policy, Norway had devoted special attention to consumer affairs and, *inter alia*, the need to reduce the use of hazardous chemicals in consumer products. In respect of the process, Norway had received 80 comments. Due to the substantial amount of work involved in scrutinizing these, the Norwegian Pollution Control Authority would not finish this work as early as had been anticipated. Hence, the regulation would not be implemented on 1 January 2008. A decision would take place at a later stage. Naturally, the proposed regulation would be evaluated in light of the WTO rules as well as the EEA.

(iv) United States – Proposed Rule on Labelling and Advertising of Wines, Distilled Spirits and Malt Beverages (G/TBT/N/USA/290 and Add.1)

19. The representative of Argentina raised a concern regarding the above-mentioned measure affecting alcohol products. In his view, the inclusion of mandatory information on labels stating alcohol content as percentage of alcohol by volume, as well as statements on calories, carbohydrates, fat and protein and other nutritional information was contrary to Article 2.2 of the TBT Agreement in that it could restrict trade more than what was necessary to achieve the legitimate objective sought. There were other ways to minimize risk that had not been considered and that could be efficient and appropriate to achieve the legitimate objective. The United States had mentioned chronic diseases that were common to the population and excessive consumption of alcohol; however, there were no new aggravating circumstances that could justify the new measure or that could show that the information currently provided to the consumer was insufficient. To provide the additional information to the consumer would imply higher costs for the adaptation of the printing equipment of the labels, re-design of labels and the costs for equipping laboratories to enable them to undertake necessary tests. All this would have negative consequences on market access. The United States needed also to consider relevant international organisations, especially in the wine sector. None of these organisations contemplated this type of nutritional labelling for wines. In fact, no other Member of the WTO had a similar requirement in place.

20. The representative of the United States took note of Argentina's statement and indicated that his delegation would review it and provide a response.

(v) Chinese Taipei – Amended Hygiene Standards for Alcohol Products (G/SPS/N/TPKM/64 and Add.1)

21. The representative of the European Communities drew the Committee's attention to a measure notified by Chinese Taipei to the SPS Committee in G/SPS/N/TPKM/64. In the view of the European Communities, the measure needed also to be notified to the TBT Committee as important elements of the standard fell under the scope of the TBT Agreement, in particular those relating to labelling and additives. The European Communities was concerned that the proposed standard would cause serious problems for exporters of alcohol and spirits due to the fact that certain additives which were allowed in the European Communities – as well as under the relevant Codex standards – had not been included in the proposal. The European Communities was not aware of any scientific justification that would support the exclusion of such food additives from the proposed authorised list. She urged the delegation of Chinese Taipei to notify the measure to the TBT Committee and to provide an exhaustive list of the approved additives together with an explanation, where relevant, for exclusions.

22. The representative of Chinese Taipei took note of the statement made.

2. Previously raised concerns

(i) European Communities - Regulation on the Registration, Evaluation and Authorisation of Chemicals (REACH) (G/TBT/N/EEC/52, Add. 1-4 and Add.3/Rev.1)

23. The representative of Argentina reviewed the process of the development of the REACH regulation and noted that, despite all the notifications made by the European Communities (addenda and revisions) the information was not complete: in particular some annexes and guidelines were incomplete and the determination of certain deadlines had not been done. Hence, although the REACH regulation had entered into force in June 2007, there was significant uncertainty about how it would work in practice. In particular, it was stressed that REACH constituted a *restriction* on trade in chemicals; it was not only about registration and authorization. This could be seen as an unnecessary barrier to trade.

24. The representative of Argentina was concerned that although the regulation originally notified to the Committee had been subject to many successive changes to clarify and to define certain aspects, expressions such as "adequate justification" or "equivalent concern" remained and these were open to subjective interpretation. The intrinsic complexity of the regulation with its 17 annexes made it very difficult for those concerned to understand it. Ambiguous concepts could lead to arbitrary decisions when applying the regulation in practice; this situation was aggravated by the number of bureaucratic requirements and the need to meet various deadlines that – in some cases – had yet to be set.

25. For the Argentinean industry this caused many serious problems. In particular, REACH established a mandatory registration system the cost of which was very high and would have to be borne by all the producers and users of these products, whether or not from the European Communities. This meant that products which were not registered could not be produced within or imported into the European Communities. Argentina was of the view that the costs would disproportionably affect producers in developing countries exporting to the European Union, putting them at a disadvantage over their competitors, especially in developed countries. REACH required that a product be registered after various tests that had to be carried out exclusively in EC laboratories and thus the costs were listed in Euros; this was clearly disadvantageous for third country producers. Moreover, the producer or importer into the European Union had to go through an Agency that had been created in the European Union. Thus, the exporter was subordinated to a EC client unless he decided to designate his own representative for that purpose, which, in turn, would add to the costs of registration. The representative noted that the exports from Argentina to the European Communities were relatively limited in terms of size and value and absorbing the cost of the registration made

Argentina's presence on the European market unviable. Other countries with a greater level of production and investment would continue to export to the European Union leading to a distortion of conditions for competition.

26. Argentina was of the view that the situation was even more difficult for Small and Medium Sized Enterprises (SMEs), which in Argentina generally produced a large variety of chemical products at low volumes. Since REACH required individual registrations per product and on a case-by-case basis, the cost would be outside the possibilities of SMEs in Argentina which had very low profit margins and difficulties in accessing new technologies. There was little capacity to carry out the sophisticated studies that were necessary in this regard. It was difficult to estimate the actual value that had to be added to the product to absorb the additional costs and this introduced more uncertainty which affected competitiveness. The investment and development of products in Argentina for export solely to the European Communities would therefore be seriously affected by this drastic change in the conditions of market access.

27. The representative of Argentina concluded by stressing that the regulation not only lead to uncertainties with respect to procedure but also with respect to costs. These costs would have severe consequences both for EC producers and for exporters, particularly exporters from developing countries. The structure of REACH was so complex and difficult to understand that it worried not only the chemical industry but also users of chemicals and preparations containing such chemicals. While Argentina was not of the view that registration needed to eliminated, it needed to be done in a way that did not create unnecessary obstacles to trade: REACH needed to become much less trade restrictive. The European Communities was requested to clarify the regulation and provide technical assistance to developing countries as current clarifications and guidance provided on the webpage was not sufficient.

28. The representative of the United States noted that while his delegation supported the EC objective to protect human health and the environment, concerns remained that the REACH regulation appeared to be overly expansive, potentially discriminatory and trade restrictive. The United States as well as other WTO Members and a large number of other stakeholders continued to raise questions and concerns with regard to the REACH regulation and its implementation, including about: the potential for differential enforcement across the member States; continued uncertainty regarding the scope and applicability of the provisions relating to articles; potential differential treatment with respect to phase-in substances; the issue of monomers and polymers; the chilling effect of having a substance placed on the authorisation candidate list; transparency issues in the development of the REACH implementation projects; the protection of business proprietary information; the new registration fee schedule and the potential trade ramifications caused by the shortage in existing capacity of laboratory facilities and "only representatives".

29. The representative of the United States noted that many of these issues had been discussed at a recent meeting between members of the APEC Chemical Dialogue and EC officials in Brussels, an event which had been attended by representatives from business and governments from nine WTO Members and held at the Embassy of Malaysia. At that meeting, the APEC delegation had noted the substantial trade effects that REACH was having on global supply chains and that there were several areas where additional information on the REACH implementation would need to be provided. Regrettably, the EC response was that the REACH process had been transparent and that current efforts to explain the implementation process had been largely sufficient. The United States hoped that the European Communities would reconsider its position and give sincere consideration to the broad expressions of concern which had been registered by its trading partners and other interested parties and ensure a meaningful opportunity to reflect views of non-EU governments and stakeholders in the process. The United States would continue to study the REACH regulation and to closely monitor the implementation process.

30. The representative of Korea emphasized two points in respect of REACH. First, SMEs continued to express that there was a lack of information regarding REACH and a need for clarification. Second, on the guidelines, it was noted that the Korean Government was willing to join the process of establishing new guidelines; participation in this process was seen as an important and useful way for industry to become more familiarised with REACH.

31. The representative of Japan reiterated his delegation's hope that there would be adequate opportunities for firms from outside the European Communities to have their views taken into account in a transparent manner – with respect to the development of guidance documents on the actual implementation of REACH. Also, although Japan hoped that the "only representatives" provided for in Article 8 of the Regulation would become a useful mechanism for firms established outside the European Communities, on behalf of the Japanese industry, Japan asked the European Communities to ensure that there would be sufficient number of adequately qualified "only representatives" to meet the needs of these foreign firms. Japan also asked the European Communities to explain its understanding of Article 33, Clause 2 of the Regulation, and, in particular, the meaning of "available to the supplier" – a point which had led to some confusion and where clarification could help better prepare the Japanese industry for compliance.

32. The representative of Canada concurred with the points already raised and wished to stress one in particular. Canada was interested in hearing from the European Communities whether more technical guidance documents were being developed and whether or not these would be notified. In the spirit of transparency and considering the unprecedented level of interest among WTO Members on REACH, the representative of Canada reiterated her delegation's earlier request that all technical guidance documents in support of REACH implementation be notified while at the draft stage with an opportunity for Members to provide comments as they were being developed.

33. The representative of Chinese Taipei joined other speakers in their concerns about REACH, particularly with respect to implications for SMEs. He asked if the European Communities had developed any plan or mechanism to assist SME's in resolving problems resulting from implementation of REACH and how such assistance could be accessed. The representative also noted that the definition of "only representative" in the REACH regulation was now limited to legal entities or natural persons located *within* the European Union and asked that this be changed to allow for such legal entities or natural persons in other Members to become the "only representative". This would be particularly important to SME's outside the European Union and especially in the chemicals industry. In addition, it was noted that the European Communities had set up several Help Desks within member States. From a technical assistance point of view, and based on the principle of national treatment, Chinese Taipei requested that the Commission provide similar arrangements to other WTO Members so as to enable these Members to respond to problems in a timely and efficient manner.

34. The representative of Chile reiterated her delegation's concern about the impact the Regulation would have on exports from Chile and developing countries in general. Chile's export sector had voiced increasing concerns and confusion regarding the REACH regulation and Chile therefore underlined the need for clarification. Moreover, regarding the actual application of REACH, Chile still considered it difficult to follow the discussion on the Internet regarding the REACH guidance documents. Also, Chile remained concerned about possible differences in the application of REACH in different member States of the European Union. In addition, Chile did not have a complete list of substances that needed authorisation as set forth in the Annex 14. Similarly to the point raised by others, Chile wished to benefit from technical assistance so as to better understand the application of REACH. It would be particularly useful if an expert from the European Commission could travel to Chile and provide some training in this area.

35. The representative of China noted that his delegation had raised concerns both at the WTO and in bilateral consultations. He urged the European Commission to pay attention to the impact of

REACH on international trade, especially the impact on chemicals trade of developing countries. Developing countries' level of technological development in the chemicals industry was low and the data needed for registration of chemicals was held mostly by companies in the developed world. Therefore, firms in developing countries would have to pay high fees for such data for registration leading to increases in costs in chemical production and trade. Moreover, the cost of importing chemicals from the European Communities would also rise. REACH also impacted on exports from SME's differently compared to bigger companies; SMEs had a severe lack of technical capacity to deal with REACH. The representative of China reiterated the need for the European Communities to take these concerns into account in the process of the Regulation's implementation.

36. The representative of Mexico reiterated the importance of expert advice and information on the details about REACH. She informed the Committee that the European Union had sent an expert who had clarified and addressed concerns voiced by the Mexican industry. Hence, the chemical industry was, to a certain extent, better informed regarding the way in which the system was to be applied. Mexico welcomed this technical cooperation as extended by the European Union.

37. The representatives of Australia, Brazil and Thailand shared concerns expressed by other delegations on REACH.

38. The representative of the European Communities stressed the efforts made by the Commission to ensure the utmost transparency in the development of the REACH regulation. Part of the legislative process had led to changes in the proposed regulation – the one notified in 2003 was, naturally, not the final one. In this process comments of trading partners had been taken into account. He stressed that there had been, throughout the process, bilateral and multilateral meetings between the experts, the most recent one for APEC countries as had been mentioned by the US delegation.

39. Regarding guidance documents and the point raised by Canada, the European Communities was of the view that these documents were *technical guidance* documents and, as such, were neither technical regulations nor conformity assessment procedures. Therefore, they had not been notified. Nevertheless, they were available for public consultation and to interested stakeholders on the Internet.[6] In addition, third parties were involved in the REACH implementation project which notably included the drafting of these guidance documents. There was, moreover, a possibility for third countries to be involved in the "stakeholder expert groups" for the REACH implementation projects if they had specific expertise.

40. Regarding testing and costs for manufacturers, especially SME's, the representative of the European Communities pointed out that their importers located in the European Union or their "only representatives" which they had appointed within the European Communities would become part of the so-called "substance information exchange fora" after the pre-registration of all chemicals. This meant that the toxicological and eco-toxicological tests need not be carried out by each and every company; instead they could participate in the information-sharing procedure which would reduce the over-all costs of the required testing. The "substance information exchange fora" would take stock of all existing data, identify gaps and propose a testing strategy to the European Chemicals Agency. This entailed that the costs for the required testing would be shared and this would be of particular benefit to SMEs, including SMEs outside the European Communities. On laboratories, it was noted that REACH required that toxicological and eco-toxicological tests be carried out in compliance with the Good Laboratory Practices as set out in Directive 2004/10/EC which was based on OECD guidelines. Therefore, any such tests had to come from laboratories – also outside the EU – that had obtained a certificate indicating that they applied Good Laboratory Practices.

[6] http://ecb.jrc.it/reach/ and http://echa.europa.eu/home_en.html.

41. Regarding Japan's questions on third party participation in the implementation of REACH, it was – as had been mentioned – possible for third parties to take part in the stakeholders expert groups. On the issue of the choice of "only representatives", this was a contractual relationship between the manufacturer from outside the European Communities and the company it chose within the European Communities. Under the current chemicals legislation, the "only representative" was called "sole representative" so this was not a new concept; it was the continuation of the current system as applied under REACH. The Commission could not interfere – or ensure – the number of "only representatives" because this was left to the market forces. Regarding the uncertainties Japan had mentioned on Clause 33, Paragraph 2 ("... on request by consumer, any supplier of an article containing a substance meeting the criteria of Article 57 [registration] shall provide the consumer with sufficient information available to the consumer to allow safe use of the article, including *as a minimum the name of the substance*..."), the last part of the sentence (in italics) made it sufficiently clear what ultimately would be required from the supplier.

42. Regarding equal enforcement throughout the European Union, the representative of the European Communities pointed out that REACH was adopted in the form of a regulation which was directly applicable in the whole Union. The European Commission as "guardian of the EC Treaty" was responsible to ensure coherent application of EU law by the Member States.

43. The representative of the European Communities reiterated that, according to its own assessment, REACH was not discriminatory since it treated both EC manufacturers and importers and third country manufacturers in the same way. Also, the European Communities was of the view that REACH was not overly restrictive, especially as it took into account the objectives which were pursued by REACH: a high protection of the consumer, of human health and life, and of the environment. He encouraged stakeholders to make use of the REACH Help Desks which were operational at the European Chemicals Agency in Helsinki and in member States. Questions could be forwarded by e-mail to these Help Desks and they would be responded to.

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

44. The representative of Norway reiterated her delegation's concerns about restrictions implemented in Belgium and the Netherlands to ban imports on seal products. As had been previously stated in the Committee, Norway regarded these measures, as well as possible plans to impose measures by other EU member States, to be inconsistent with obligations under the WTO TBT Agreement and the GATT 1994. Norway noted with interest that Canada on 25 September 2007 had requested consultations under Dispute Settlement Understanding (DSU) and stated her delegation's intention to follow the development of those discussions closely.

45. Norway was deeply concerned by declarations made by the European Parliament calling on legislation to ban trade in seal products across the board in the European Communities. Any such legislation would be reviewed with regard to WTO consistency. The representative reiterated that her delegation could not see how, and to what extent, the appropriate assessments regarding available scientific and technical evidence had been made by Belgium and the Netherlands in the case at issue. Norway had provided factual information on seal hunting to Belgian and Dutch authorities as well as to the European Commission pointing out that the Norwegian seal hunt was strictly regulated and was both sustainable and humane.

46. It was noted that the European Commission had given the European Food Safety Authority (the EFSA) the task of reviewing the methods used in seal hunts. Norway was confidant that EFSA would have the best information available before submitting the report to the Commission; the deadline had been set to 15 December 2007. The Norwegian Scientific Committee for Food Safety had been asked to contribute to EFSA's work and the best qualified experts in this field had been selected.

47. Norway considered that the measures implemented by Belgium and the Netherlands as being premature and regretted that the European Commission had not taken action to discourage EC member States from proceeding with the ban. The representative of Norway reiterated that seal quotas were set on the basis of scientific advice and the state of seal populations was well within the boundaries of sustainable management. Moreover, the seal populations in question were currently not endangered and were therefore not listed on the Convention on International Trade in Endangered Species (CITES). In addition, Norway had demonstrated that humane harvesting methods used in Norwegian seal hunting compared favourably to those used on domestic livestock.

48. In conclusion, the ban on seal products was not an animal welfare issue, it was not a conservation issue and it was not a management issue. It was a public opinion issue and from the Norwegian point of view, this was unsubstantiated and unjustified and set a dangerous precedent for trade in animal products that were harvested in a sustainable and humane manner. Norway continued to reserve its right to take any appropriate action to defend its interest under the TBT Agreement and other relevant WTO Agreements.

49. The representative of the European Communities took note of the comments raised. Given the fact that the Belgian and Dutch measures would be examined under the context of the Dispute Settlement Understanding, her delegation did not consider it appropriate to discuss the issue any further in the TBT Committee. The European Communities was nevertheless open to continue bilateral discussions with Norway and provide any information that it considered appropriate.

(iii) Korea – Fish Heads

50. The representative of New Zealand, supported by Norway and the European Communities, noted that edible hake heads which were caught in New Zealand waters and processed by New Zealand boats were prohibited from entering the Republic of Korea while hake heads caught in New Zealand waters and processed by Korean boats were allowed entry. Thus New Zealand was again raising the matter in the TBT Committee. The representative was pleased that some progress on this issue had been signalled by Korea with the announcement of their intention to add hake heads to their national Food Code and that this had been notified to the SPS Committee and that this issue had been considered by the Korea Food and Drug Administration Food Sanitation Council. However, further unexpected delays meant that changes to the Korean Food Code were unlikely to happen in 2007 as had been previously stated. Therefore, New Zealand asked Korea to ensure that the required changes to the Korean Food Code were made swiftly so that the matter could finally be resolved.

51. In addition, the representative of the European Communities expressed her delegation's disappointment that, since the last meeting of the Committee, no progress had been made on the signature of a Memorandum of Understanding.

52. The representative of Korea was of the view that considerable progress had been made on a bilateral basis. He noted that specific legislation had been notified to the SPS Committee and that Korea was now in the process of establishing the specific regulation. Because this was a sensitive issue, dealing with human health, Korea needed to consult with experts. After the domestic processes had been completed, Korea would take due and appropriate action to conclude consultations with New Zealand. Regarding the signing of the MoU with the European Communities, probably both parties were ready to conclude on this matter. Nevertheless, Korea would convey the concern expressed by the European Communities to the relevant ministry to expedite to process. Also, regarding the concern which was raised by Norway, the representative urged Norway to make bilateral contacts with relevant persons and contact points within the Korean government.

(iv) United States – Country of Origin Labelling (COOL) (G/TBT/N/USA/25, G/TBT/N/USA/83 and Corr.1, G/TBT/N/USA/281)

53. The representative of New Zealand recalled that her delegation had outlined New Zealand's concerns at the last meeting of the Committee, in July 2007 and a formal submission on the issue had been made in August. She hoped that the US domestic process would take its submissions into account in the final outcome. New Zealand continued to oppose the imposition of mandatory COOL on the basis of its likely trade-restrictive effect, its irrelevance to food safety requirements and the high implementation costs involved. She stressed that a policy allowing for voluntary COOL would be far less trade restrictive and would not impose the same potential barrier to international trade. In New Zealand's view it was preferable to leave country of origin labelling to be implemented on a voluntary basis by industry and not to impose it by way of prescriptive regulation.

54. The representative of Canada also expressed concern with the US mandatory country of origin labelling, as prescribed in the 2002 Farm Security and Rural Investment Act. As had been stated at the last meeting of the Committee (July 2007), Canada remained of the view that current requirements for fish and shellfish needed to be repealed and that plans for mandatory country of origin labelling for remaining commodities should be abandoned.

55. The representative of the United States noted that there was currently legislation in the US Congress that would amend the COOL Law which had been in place since 2002, including adding a new provision that would address the labelling of products with multiple countries of origin. As the timing and outcome of the legislative process was uncertain, the United States was unable to provide additional information at the current time. An update would be provided at the next meeting of the Committee if there was a change in status.

(v) Canada – Compositional requirements for cheese (G/TBT/N/CAN/203)

56. The representative of New Zealand reiterated her delegation's concerns about Canada's draft regulations governing compositional standards for cheese. In August 2007, New Zealand had provided a formal submission to the Canadian Food Inspection Agency outlining its concerns with the proposed new standards. New Zealand was interested to know more about the results of Canada's domestic process.

57. The representative of the United States underscored her delegation's concerns also raised at the last meeting of the Committee regarding the prescriptive nature of Canada's proposed amendment to its compositional standards for cheese, as well as the potential adverse market access impact on milk protein concentrates. In response to Canada's notification, the United States, along with numerous other Members and interested parties, had provided comments. The representative of the United States asked Canada when it intended to provide responses.

58. The representative of Australia joined in the concerns expressed by New Zealand and the United States noting that its delegation too had made comments on the proposed regulation and was looking forwards to a response.

59. The representative of the European Communities reiterated his delegation's concerns. It was noted that detailed comments had also been submitted to the Canadian enquiry point in the end of August 2007. In particular, the European Communities was concerned that the proposal, if adopted, would effectively reduce EC exports to Canada of both cheeses and basic products such as milk protein concentrate. The European Communities failed to understand the nature of the legitimate objective that was being pursued in the amendment and why Canada considered it necessary to deviate from the relevant international standard set out by the Codex Alimentarius Commission. The European Communities was also concerned that there would be a breach of the national treatment

principle by allowing domestic producers to produce light cheese using skimmed milk powder but that this exception would not be extended to imported products. The European Communities also remained concerned about the proposed licensing scheme which appeared to be more restrictive than necessary and thus potentially inconsistent with Article 5.1.2 of the TBT Agreement. Finally, the representative asked Canada about the current state of play of the proposal and whether its implementation would be delayed to take into account the numerous and serious concerns which had been voiced by third countries and industry.

60. The representative of Canada noted that the Canadian Food and Inspection Agency was currently reviewing the numerous comments received and would take them into account. At the current meeting, she did not have any new information – if such information was available by the next meeting this would be shared with the Committee.

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

61. The representative of Israel reiterated his delegation's concerns about the above-mentioned measure. The measure, which had entered into force on 1 January 2007, had already affected negatively Israeli exports to Sweden. Israel was of the view that the Swedish prohibition was an unnecessary obstacle to trade in breach of Article 2.2 of the TBT Agreement. Although Sweden invoked the protection of human health and the protection of the environment, the existence of a risk had not been demonstrated. Moreover, since, under the TBT Agreement, there was no recourse to the precautionary principle, it was Israel's view that Sweden could not claim that the substance posed a potential risk to the environment and human health. In accordance with Article 2.2 of the TBT Agreement, available scientific information and technical information needed to be considered in order to take account of the risks. However, in this case there was no scientific basis for the imposition of such a measure. In fact the European Union had itself undertaken a comprehensive risk assessment and concluded that there was no need for risk reduction measures to be imposed on the substance decaBDE or products containing that substance, beyond those that were already in place. Israel urged Sweden to consider the adoption of less trade restrictive measures concerning the use of decaBDE, similar to those adopted in the European Union, for example: an emissions reduction programme and bio- and environmental monitoring. Sweden, being a member State of the European Union, participated in risk assessments in accordance with EU rules and had to afford mutual recognition to the conclusion reached by such assessments. The representative urged the European Commission and Sweden to provide an update.

62. The representatives of Jordan and Japan echoed the concerns raised by Israel and recalled that, at the last meeting, the EC representative had informed the Committee that consultations between Swedish authorities and the European Communities were ongoing. They asked for an update on the results of these discussions.

63. The representative of the United States noted that her delegation had also submitted comments on Sweden's draft regulation regarding decaBDE and continued to have serious concerns with the measure. She stressed the importance accorded to the use of available scientific and technical information in assessing risk under the TBT Agreement and was concerned that Sweden's partial ban ignored the results of a comprehensive EU risk assessment of decaBDE which did not identify any risk to health or the environment. In fact, Sweden's draft regulation could encourage the use of alternatives on which there was *less* scientific information on the potential health and environmental risks. Also the United States placed great importance on the protection of human health and the environment and continued to believe that the good regulatory practices embedded in the WTO TBT obligations were the best way to achieve those objectives. The US Environmental Protection Agency had conducted its own risk assessment on decaBDE and remained willing to discuss its findings with appropriate officials of the Government of Sweden.

64. The representative of the European Communities noted that the Commission had initiated formal discussions with Sweden in respect of the adopted measure. As the bilateral discussions were ongoing, she was not in a position to disclose any further information. Nevertheless, it was pointed out that the European Communities was giving serious consideration to the comments that had been made by third countries and she hoped that a solution would be found in the near future.

(vii) Norway - Restrictions on the use of Deca-bromo diphenylether (deca-BDE) (G/TBT/N/NOR/6, Corr.1 and Add.1)

65. The representative of Japan, supported by Israel, Jordan and the United States, reiterated his delegation's view regarding the proposed prohibition on decaBDE by Norway. Although Japan was grateful for having received a written response to comments on a bilateral basis from Norway, his delegation was of a view that there remained a wide discrepancy on both sides' interpretations of the available scientific evidence. The Japanese industry remained, therefore, deeply concerned about the draft regulation.

66. The representative of Norway informed the Committee that the proposed regulation had not yet entered into force and the Norwegian Ministry of the Environment was considering comments from Members as well as from other stakeholders with regard to the possible ban on decaBDE. Developments in the European Union would also be taken into account. She noted that Norway had set a target to substantially reduce emissions from a number of environmentally hazardous chemicals, including with respect to brominated flame retardants.

(viii) Turkey - Product-tracking system for tobacco products and alcoholic beverages

67. The representative of the United States recalled that at the last meeting, his delegation had raised the issue of Turkey's strip stamp regime. Follow-up discussions had been held with Turkish authorities in September 2007. The United States understood, from discussions with the Government of Turkey, the purpose of the strip stamp regime and welcomed the commitment made by Turkey to clarify the strip stamp system so as to ensure no less favourable treatment for imported products. Specifically, Turkey had indicated that importers were now able to apply the strip stamps at their tax warehouses inside Turkey and that the price for those stamps was the same for like domestic products. These changes could potentially benefit other WTO Members seeking to export distilled spirits and other covered products to Turkey. The United States understood that a circular describing those changes had been published in Turkey's official gazette and indicted its intent to review it. Nevertheless, the United States remained concerned about certain aspects of the strip stamp system, including potential changes to the strip stamps that Turkey appeared to be considering. The representative of the United States noted that his authorities would continue to monitor the situation closely and urged Turkey to notify any further revisions to its strip stamp system to the WTO.

68. The representative of Turkey stressed that the purpose of the system was to stop tax evasion by ensuring that the products were produced and/or imported legally in to Turkey. Following some postponements requested by the industry, the system had become operational on 24 July 2007. Since then, Turkey had neither received any complaints on the implementation of the system nor requests for further consultation from interested parties. As of 5 November 2007, the system had become fully operational with the beginning of the mandatory application of the strip stamps for products produced or imported before 24 July 2007.

69. In respect of the notification, Turkey recalled that the general communiqué for the product tracking system did not lay down any product characteristics or their related processes and production methods. Moreover, the strip stamps did not provide information to consumers on particular aspects of the product. Accordingly, Turkey neither considered the communiqué as a technical regulation nor the strip stamps as a label within the meaning of the TBT Agreement. Therefore, although Turkey was

willing to continue working with interested parties in order to ensure the smooth functioning of the system and eliminate any possible concerns they might have, Turkey reiterated its position that its product tracking system for tobacco products and alcoholic beverages did not fall under the scope of either the TBT Agreement, nor the work of the TBT Committee. If this system were to evolve to include additional quotes with the strip stamps that would contain specific features of the products, depending on the characteristics of the new system, Turkey would consider its notification obligation under the TBT Agreement.

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

70. The representative of Canada recalled that her delegation had raised concerns over New Zealand's ban on the commercial importation of trout on numerous occasions at the TBT Committee. The ban had been put in place in December 1998 as an interim conservation measure under an order entitled "Customs and Import Prohibition Trout Order 1998". In June 2005, New Zealand had informed the TBT Committee that its officials had been tasked with finding alternative measures to extending the ban prior to its expiry – which was, in fact, a repetition of the statement New Zealand had made during the TBT Committee meeting of November the year before. Despite this, and a number of years later, New Zealand had informed Canada on 6 November 2007 that the ban would be extended for a sixth time, until 8 November 2010. Canada expressed its disappointment with this decision. As had been stated in the past, Canada did not believe that the ban was scientifically justified, nor had Canada received any evidence from New Zealand demonstrating otherwise. Additionally, Canada was of the view that the ban might not be consistent with New Zealand's obligations under the TBT Agreement. The representative of Canada asked New Zealand for information about the measures that its officials had identified and that could be considered as alternatives to the ban, and that it inform the Committee why an extension of the ban had been chosen over these alternative measures.

71. The representative of New Zealand confirmed that on 8 November 2007, New Zealand's Customs Import Prohibition Order had been extended for a further three years, until November 2010. In reconsidering the issue, including the various options available, the New Zealand Cabinet had decided that extending the custom order for a further three years would be the most effective mechanism to achieve the legitimate policy objective behind the order. The order did not prohibit the importation of trout into New Zealand as imports of trout in non-commercial quantities for personal consumption were allowed and this ensured that both domestic and imported trout were subject to the same treatment. It was emphasized that there was no commercial production of trout allowed in New Zealand. Hence, the Customs Import Prohibition Order was neither discriminatory nor protectionist, it addressed legitimate objectives consistent with New Zealand's international obligations.

72. The representative of Canada noted that her delegation did not consider allowing commercial imports for personal use as adequate; Canada was seeking full commercial access.

(x) Israel – Infant Formula

73. The representative of the United States noted that since the July 2007 meeting of the TBT Committee, when the United States had first raised the issue, the United States had held two meetings with Israeli officials to discuss Israel's infant formula requirements and its failure to provide copies of its regulations. The United States understood the sensitivity of the issue in Israel and welcomed Israel's recent effort to provide the written guidance document used by the Israeli Ministry of Health to regulate imported infant formula and to clarify that there were no regulations currently in place. Regrettably, the information provided by Israel had served to confirm the problems the US industry was facing in the Israeli market.

74. Principally, this was about a lack of transparency and differential treatment. There was no published information on nutrient composition standards or Ministry of Health requirements for issuing import approvals or licences for infant formula. Moreover, the United States was of the understanding that these requirements often changed. In addition, Israel maintained discriminatory testing requirements, fees, and labelling rules for infant formula in favour of domestic producers. For instance, it was the US understanding that each batch of imported infant formula had to undergo 12 different laboratory tests in an Israeli government laboratory whereas domestic producers could perform their own tests, only needed to do so once each quarter, and could self declare the test results to the Ministry of Health. Furthermore, while Israeli authorities had to approve all labels with nutritional claims on imported products, no pre-marketing approval was required for domestic products and there was no real post-market surveillance in place. US infant formula manufacturers were willing to comply with regulations that were published, treated all producers in the same way, were clear and consistent and based on sound science. The representative of the United States urged Israel to continue and expand its dialogue with interested parties as it developed its regulations on infant formula, and to notify any proposal to the WTO.

75. The representative of Israel informed WTO Members that up until two years ago there had been no particular treatment of imported infant food and the authorities relied on quality certificates issued by the exporting countries. Due to specific and grave health problems caused by deficient imported infant formula, the Israeli Ministry of Health had been forced to rethink the import system in order to ensure the health and safety of infant food. The regulation which the US delegation was referring to was being finalized by Israeli health authorities. Following the concern expressed by the United States, Israel had provided the United States on 16 October 2007 with a document containing guidelines for importers so as to make the import process predictable and transparent.

(xi) Thailand – Labelling Requirement for Snack Foods (G/TBT/N/THA/215 and Add.1)

76. The representative of the United States recalled that his delegation had expressed concerns regarding Thailand's proposed labelling requirements for selected food categories. The United States welcomed the actions from Thai authorities in response to these concerns since the last meeting of the Committee, including the postponement of the implementation and the issuance of a revised regulation which had been notified in an addendum. Although the United States appreciated Thailand's efforts, the key US concern had still not been addressed. While Thailand had withdrawn the "traffic light" scheme, the regulation required suppliers to affix a special label on the same items covered by the initial proposal. The label would urge consumers to consume less of those items and to exercise.

77. Assuming that the objective of the revised regulation was to promote a healthy lifestyle, it did not appear that this labelling scheme would be an effective means to do so and in fact it could create additional consumer confusion. As with the initial regulation, no explanation was provided as to why the labelling requirement was only limited to certain product categories. The United States would appreciate if Thailand could explain the scientific and/or technical criteria it used for determining which products required warning labels and which did not, as well as the criteria the Public Health Minister would use in adding other food categories to the list. The labelling requirement also appeared to apply equally to all items in these categories irrespective of their nutritional profiles. For example, in the case of popcorn, in the revised proposal no-sodium, butter-free popcorn had to bear the same warning label as buttered-salted popcorn. The proposed label also provided no information on portion size. In sum, the revised regulation did not appear to provide consumers with information that would help them make informed decisions for developing a healthy and balanced diet. Instead, it appeared to demonise certain products that might have a more healthy nutritional profile than other products that were not subject to labelling requirements.

78. The United States was of the view that there were more effective and less trade restrictive ways to promote a healthy lifestyle than singling out certain food categories to bear warning labels. For example, Thailand could focus its regulations on guideline daily amounts which provided tools for consumers to determine their consumption of food products in the context of their daily needs. The United States urged Thailand to discuss the labelling issue with the many stakeholders that had expressed concerns with both the initial and revised regulations.

79. The representative of Australia was concerned that the warning message to be included on all packages to consume less and exercise for health might be misunderstood by consumers. Australia was of the view that there could be alternative, non-mandatory schemes that informed consumers about nutritional choices, such as contribution to daily intakes.

80. The representative of Canada noted that her country, like Thailand, was also concerned about the growing problem of obesity and shared Thailand's goal of promoting healthy eating habits among its citizens. Nevertheless, the Canadian industry had expressed concern over the labelling requirements proposed for the five snack foods identified. In a letter dated 1 November 2007, the Canadian industry had questioned the scientific merit of the proposed regulation and argued that it discriminated against snack foods. The representative of Canada asked Thailand to provide information on alternative regulatory and non-regulatory instruments it had considered when designing the proposed labelling requirements, as well as on the analysis that had led Thailand to focus only on five snack foods.

81. The representative of the European Communities joined the concerns expressed by the previous delegations regarding the Thai measure. While her delegation also shared the objectives of the measure (improving consumer information on nutritional facts so as to promote a healthy and balanced diet) the European Communities failed to understand on what basis the five product categories which were subject to mandatory labelling requirements had been chosen and how limiting the scope of this measure to certain products would be sufficient to fulfil the objective that was being sought. The European Commission encouraged Thailand to review the proposal to take into account the comments made and in particular to ensure that the measure was scientifically based, proportional and not arbitrary.

82. The representative of Thailand took note of the comments made.

(xii) European Communities - Dangerous Chemical Substances - Draft Commission Directive amending Council Directive 67/548/EEC (G/TBT/N/EEC/151)

83. The representative of Turkey expressed his delegation's concern with the above-mentioned EC measure affecting borates. His authorities had studied the draft and provided the European Communities with detailed comments in July 2007. Unfortunately, the recent reply was not to Turkey's satisfaction. In particular, the representative of Turkey was concerned about the proposed amendment's classification of borates as toxic to human health. In the view of Turkey, all decisions on classifications needed to based on normal handling and use criteria which had not, in this case, been applied properly. The classification was not based on available scientific and technical data; it did not consider intended end-users of borates and had the effect of creating unnecessary obstacles to trade and a disguised restriction on international trade. The results had been obtained from high-dose feeding of laboratory animals although normal human exposure to these substances was through inhalation or dermal exposure. The eating of borates by humans could only be considered abnormal. Moreover, oral intake would induce vomiting via an auto-reflex action long before the toxic effect arose. Therefore, the use of data obtained from oral administration was neither relevant for humans nor related to normal handling and use of borates. Turkey considered the argument used by the European Communities as a misinterpretation of the science criteria in Article 2.2 of the TBT Agreement. Moreover, his delegation failed to see how the European Communities had taken his

delegation's comments into account as required by article 2.9.4 of the TBT Agreement. It was noted that the European Communities had stated their intention to delay the implementation of the 30th Adaptation to Technical Progress (ATP) and to respond to the concerns raised.

84. The representative of the United States noted that his delegation had just received the European Communities' replies to comments submitted. Since his delegation had not yet had the opportunity to thoroughly review them, the present remarks were of a preliminary nature; written reactions would be provided after the meeting. He asked the European Communities to confirm that issuance of the 30th and the 31st ATP would be delayed until at least late December 2007. The US representative associated his delegation with many of the concerns that had been raised by other Members at the last meeting of the TBT Committee and at the current one regarding the proposed classification of nickel carbonates as a Category 2 substance under the dangerous substances directive.

85. In September 2007, US and EU officials had met in Brussels to discuss the proposed EC classification of borates as a Category 2 reprotoxin under the Dangerous Substances Directive (DSD). Despite that meeting and the document recently submitted by the European Communities, the United States continued to have serious concerns with both the rationale for the classification itself as well as the downstream effects of such a classification. To support its findings about exposure under normal handling and use, the European Communities, in its explanatory memorandum (lines 201 through 202), asserted that a study regarding occupational exposure in borate mines provided sufficient evidence that borates had severe health effects under normal handling and use. However, neither the explanatory memorandum nor the EC reply explained how exposure in a mine related to normal handling and use of borates or borate-containing products. Furthermore, it was the US understanding that the mine study cited by the European Communities had not found any reprotoxic effect from inhalation.

86. In addition, the representative of the United States pointed out that the explanatory memorandum had referred to studies of rats that were force-fed large quantities of borates. However, human end-users would not and in fact could not consume such large amounts of borates. Moreover, the European Communities maintained that the objective of the measure was to provide information to borate users enabling them to use the substances safely. But the European Communities failed to consider alternative less burdensome ways to provide such information; the United States had offered to discuss possible alternatives.

87. The European Communities appeared to dismiss the commercial impact of the labelling itself. The skull and crossbones label would deter the production and use of products containing borates and encourage substitution. No producer would want a product it manufactured or used in its manufacturing process to bear that label or carry the stigma of a Category 2 classification. Instead, producers would seek out alternatives if such existed. In fact, some companies had policies against using products that were classified as Category 2. The European Communities had not done a full cost benefit analysis that balanced the risks with the burden on trade the regulation would impose.

88. The representative of the United States noted that the European Communities mischaracterized the downstream consequences of the classification. For instance, under the Cosmetics Directive, there would be a total ban on the use of borates in cosmetics irrespective of concentration level. The European Communities response had been that there was some room for manoeuvre but the Directive appeared clear on this point. Under the Marketing and Use Directive, the use of Category 2 substances was restricted. The EC response that such restrictions were not automatic was misleading since such restrictions were standard practice. The United States had asked the European Communities to provide examples where such restrictions were not triggered by the Marketing and Use Directive.

89. Finally, a Category 2 classification also carried implications under REACH as Category 2 substances were put on a candidate list for authorization. The European Communities had noted that authorisation was not automatic but in effect it was a blacklist for all substances contained therein. Moreover, the European Communities had acknowledged that it could take decades to evaluate all of the substances on the candidate list. Producers would have a strong incentive to stop using substances contained in the candidate list, including borates. Research and development activities on new borates applications would also be deterred.

90. The representative of the United States noted that several WTO Members had raised concerns with the proposed Category 2 classifications for both borates and nickel, as had representatives of producers and users. He urged the European Communities to consider carefully the comments and questions that had been raised by its trading partners and other stakeholders and consider less trade-restrictive alternatives than a Category 2 classification under the Dangerous Substances Directive.

91. The representative of Malaysia, having carefully considered the EC response of 7 November 2007, strongly urged the European Communities to confirm its postponement of the 30th Draft Commission Directive amending, for the purpose of its Adaptation to Technical Progress (ATP) for the following reasons. First, Malaysia – like the United States – was not convinced that the European Communities' late response had afforded sufficient opportunity to be informed of the justifications and grounds for the Category 2 classification of borates in particular. In addition, in the response and the contents therein, the European Communities appeared to contradict itself. The EC response did not afford sufficiently robust scientific evidence to justify the grounds for pursuing a Category 2 listing of borates. In Malaysia's view this was contrary to Article 2.2 of the TBT Agreement. Moreover, Malaysia was also concerned that the classification of borates under Category 2 appeared to be based on the precautionary principle; this would mean that the measure was more trade-restrictive than necessary.

92. The representative of Malaysia urged the European Communities to further consider the inter-relation between the Category 2 classification of borates under Directive 67/548/EEC and other EC legislation, specifically REACH and in particular EC Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the member States relating to restrictions on marketing and use of certain dangerous substances and preparations. Malaysia, again, was not convinced that downstream effects of these measures was as limited as contended by the European Communities. She also reminded the Committee that the European Communities had acknowledged its deviation from the original grounds it cited to justify the Category 2 listing of borates.

93. In light of the above, the representative of Malaysia contended that the European Communities had not succeeded in providing sufficient clarity to address the concerns raised by several delegations. Due to unresolved legal issues and uncertainties, Malaysia supported all other delegations who had spoken in urging the European Communities to postpone its adoption of the 30th ATP and to reconsider its approach.

94. The representative of Canada concurred with the concerns raised by other Members regarding the proposed classification of borates under the above-mentioned measure. Canada had a systemic interest in ensuring that the assessment of substances was scientifically based and conducted in an appropriate manner. Canada's prime concern regarding the 30th ATP Directive, was with the classification of nickel carbonates. Canada had raised this matter at the previous meeting of the Committee and had submitted comments and detailed questions to the European Communities on 11 July 2007. Canada would need more time to determine whether her delegation's questions had been fully addressed.

95. Regarding nickel, Canada remained concerned that the European Communities' proposed classification was not based on sound scientific analysis and might set an inappropriate precedent.

Canada was also concerned by reports from industry stakeholders that their offer to provide detailed data to assist in a scientific assessment of these substances had not yet been accepted by the European Communities. Canada was not taking a position on the toxicity or carcinogenicity of particular nickel-based substances, rather, it was the process by which the European Commission had reached its conclusion that was of concern. Her delegation was concerned that inappropriate approaches could set a dangerous precedent for the large number of assessments to be performed under REACH. As the world's second largest producer and exporter of nickel and related substances, Canada had a major trade interest in ensuring that this measure did not represent an unnecessary barrier to trade. Canada also insisted that such assessments had to be scientifically based and conducted in an appropriate manner.

96. Thus, Canada strongly encouraged the European Commission to accept any industry offer to provide scientific data that would permit a more solid scientific basis for the assessment and classification of nickel carbonates and joined other delegations in requesting a delay of the implementation of the 30th ATP until such time as it became clear that the numerous questions and concerns of WTO Members had been resolved. In addition, it was Canada's understanding that the 31st ATP directive would contain further nickel classifications proposals based in part on the nickel carbonates classification. Canada hoped that the European Communities would notify the draft 31st ATP directive to the TBT Committee and allow sufficient time for Members to review and comment.

97. The representative of Australia shared the concerns expressed, in particular with relation to nickel carbonates as Australia was a major producer thereof. She questioned the non-testing methodology that had been used in the EC process and the scientific validity of the classification of nickel carbonates. Australia too was concerned that the classification in the draft 30th ATP Directive would be used as a reference for classifying additional nickel substances and that the "red cross" approach could be used as a model for further assessments under REACH. Like Canada, the Australian delegation had received advice from its industry stakeholders concerning the science involved in the process. Although Australia was not taking a position on the toxicity of the particular nickel-based substances, her delegation was concerned with the need for opportunity to ensuring a sound science-based approach. The European Communities was requested to defer consideration of the 30th ATP until such time as Member's concerns had been addressed.

98. The representative of China shared the concerns of previous speakers. While her delegation appreciated the efforts made by the European Communities for protection of the human safety and the environment, it was necessary to ensure that the consequent regulations did not create unnecessary obstacles to trade. Bearing this in mind, China had submitted comments on the EC notification G/TBT/N/EEC/151 on 19 September 2007 where her delegation had emphasized, in particular, the issue of the classification and labelling of chemicals with nickel and borates. China acknowledged receipt of the EC response on 7 November 2007 and would now proceed to analyze these. Her delegation expected that the 31st ATP would be notified to the WTO as soon as possible so as to allow Members a reasonable period of time for comments.

99. The representative of Chile also shared the concerns raised by other Members. She recalled that during the last meeting of the Committee, her delegation had raised the issue of trade impact. Despite the fact that the European Communities did have the right to protect health and the environment, this could not be done in a way that was more restrictive than necessary – as was the case with the classification provided for in the regulation at issue. Like other delegations, Chile had not yet had the time to consider the written response received from the Commission and would follow-up within the framework of bilateral agreements.

100. The representative of Brazil reiterated the points made by others and stressed the need for a scientific basis for the classification of nickel compounds. Like other delegations, Brazil was

concerned that the classification could be extended to other nickel compounds with possible impacts on the REACH system. He sought confirmation that the 30th ATP would be suspended.

101. The representatives of Argentina and Japan supported the points made by previous delegations.

102. The representative of the European Communities noted that an expert (DG Environment) from her delegation had intended to make a presentation on borates at the current meeting but due to circumstances beyond control the European Communities was not in a position to do so. She assured Members of the importance the European Communities attributed to the Committee process and noted that the adoption, which had been scheduled to take place in September, had been delayed because of the numerous concerns received. She invited delegations to consider the response that had been provided and to submit any further comments in writing if that was considered necessary. It was noted that the opening statement of the DG Environment official was available on the Internet.[7]

(xiii) European Communities - Fire Performance of Construction Products (G/TBT/N/EEC/92 and Add.1)

103. The representative of Japan raised his delegation's concern about the European Commission's decision regarding fire performance of construction products. He acknowledged receipt of a written response on 27 October 2007 regarding his authority's comments on Commission Decision 2006/751/EC. The response was being reviewed in detail and Japan expected to provide comments regarding the interpretation of scientific data.

104. The representative of the European Communities noted the very technical nature of the matter (regarding security criteria) and stressed that further comments from the Japanese authorities would need to be discussed among experts.

(xiv) Brazil – Registration requirements for medical devices

105. The representative of the United States wished to revert to an issue raised at the last meeting of the Committee in respect of medical device registration requirements in Brazil. The United States regretted that Brazil had failed to notify the WTO of Resolution 185 on medical device registration which would have afforded Members the opportunity to provide comments and have those comments taken into account. The United States disagreed with Brazil's position that Resolution 185 did not need to be notified to the TBT Committee; it was a registration system for medical devices and it appeared to contain aspects of both a technical regulation and a conformity assessment procedure. As had been noted in July 2007, the United States was concerned that the resolution did not seem to be related to an analysis of safety or efficacy of medical devices; it appeared to be burdensome and unnecessary and could potentially disrupt trade in medical devices.

106. The United States industry, in concert with Brazilian counterparts, had raised concerns with *Agência Nacional de Vigilância Sanitária* (Anvisa)[8] on these issues for the past 18 months. For example Brazil required suppliers wishing to register or re-register medical devices in Brazil to provide manufacturers pricing data from the country of origin as well as from ten other enumerated countries. It was the US understanding that there existed no independent objective publication of product comparisons and no independent reliable source of comparative product prices in the medical device industry. The national anti-trust laws prohibited companies from contacting each other to acquire this information. It was therefore unclear how it was possible for a medical device manufacturer to supply the pricing information required by Brazil. However, even if the data were

[7] http://ec.europa.eu/enterprise/tbt/ (under the TBT Notification G/TBT/N/EEC/151).

[8] www.anvisa.gov.br

available, it was not necessarily clear how a potential registrant was to determine which products would provide an appropriate price comparison. The medical device industry included over 10,000 different types of medical devices and new ones were introduced every month. For each type of product there could be many different feature combinations and other variations. These factors could make developing an appropriate price comparison extremely difficult.

107. The United States appreciated the efforts of Brazil to meet with the United States recently and urged Brazil to meet with relevant stakeholders to discuss their concerns as well, and to discuss their ideas for achieving a successful resolution of this matter. Brazil had noted that its regulators had already adopted flexible interpretations of many of the provisions of Resolution 185 on an *ad hoc* basis. The United States welcomed this development and hoped that a stakeholder meeting would take place in the near future to clarify and document these points of flexibility and resolve other outstanding concerns.

108. The representative of the European Communities shared the concerns expressed by the US delegation regarding Regulation 185 of 13 October 2006 adopted by the Brazilian regulator Anvisa, the Brazilian health agency. The European Communities also considered that the measure had, at the very least, to be considered a conformity assessment procedure as defined in the Annex to the TBT Agreement that stated, *inter alia*, that registration procedures were conformity assessment procedures. The new requirements regarding the provision of highly sensitive information was of great concern to the European industry which continued to seek dialogue with the Brazilian regulator, so far without success. It was regrettable that the measure had not been notified to the Committee and the EC delegation therefore requested more information about the measure.

109. The representative of Switzerland stated that reactions from the Swiss industry indicated that it was difficult to fulfil the data submission requirements of Resolution 185, especially because of the obligation to disclose confidential information. She asked Brazil to clarify the legitimate objective of the measure and requested that it be notified to the TBT Committee in order to give all Members the possibility to submit comments.

110. The representative of Brazil stated that his authorities had not notified the regulation because they considered it neither a technical regulation nor a conformity assessment procedure. It was not an issue that needed to be discussed in the TBT Committee. The regulation in question required that companies provide some information regarding prices in the process of registering medical products but this process of registration did not stop even if the company did not provide the information. Nevertheless, Brazil wanted to ensure maximum transparency and would remain open to discuss the matter bilaterally with interested Members.

(xv) India - Pneumatic tyres and tubes for automotive vehicles (G/TBT/N/IND/20)

111. The representative of the European Communities recalled an issue regarding pneumatic tyres that it had raised on several occasions in the TBT Committee. The European Communities remained concerned that the mandatory application of the standard would result in an unnecessary barrier to trade for manufacturers from outside India. The European Communities was also concerned that the calculation of license fees discriminated against foreign producers. The European Communities encouraged Indian authorities to engage in further bilateral consultations to provide clarification.

112. The representative of the United States echoed the concerns raised by the European Communities and reiterated his delegation's previous intervention encouraging continued participation by India in the UNECE WP29 discussions on a global standard for tyres. With respect to the new Bureau of Indian Standards (BIS) protocol for tyres, the United States asked for clarification on several issues, including the objective of the new protocol, the issue of whether the protocol was voluntary or mandatory, whether compliance testing at the central institute for road transport applied

to both imported and domestic tyres, whether foreign and domestic tyres were subject to the same performance criteria for tyre specifications, and, lastly, why licensing fees were calculated differently for foreign and domestic companies. It was the US understanding that the fees for foreign companies were based on sales invoiced to dealers in India, whereas fees for domestic companies were based on units per tyres sold in India. The US industry was raising this issue because the different fee calculation methodologies were resulting in much higher licensing fees for foreign tyre companies.

113. The Chairman noted that the EC and US concerns would be conveyed to authorities in India and that a more comprehensive response would be forthcoming at the latest by the next meeting of the Committee.

(xvi) India – Drugs and Cosmetic Rules 2007

114. The representative of the United States, supported by the European Communities reiterated his delegation's concern that India had not notified the above-mentioned amendment to the Drug and Cosmetic Rule 2007 to the WTO. The United States had serious concerns over the amendment's potential negative impact on trade as the procedures it appeared to introduce were unnecessarily burdensome and included a costly registration system that appeared to discriminate against imported products. The United States had been unable to ascertain how these procedures would increase product safety for consumers and wanted to have a better understanding of the objectives and rationale of the new rules. Therefore, the United States requested India to consider delaying enforcement of the amendment to allow a reasonable time for interested parties to provide comments and to afford suppliers a reasonable interval to comply with the new requirements.

115. The Chairman noted that the US concern would be conveyed to authorities in India and that a more comprehensive response would be forthcoming at the latest by the next meeting of the Committee.

(xvii) Brazil – Mandatory certification of batteries

116. The representative of Brazil wished to follow-up on a concern raised by the European Communities at the previous meeting of the Committee regarding batteries. He informed the Committee that this regulation, after the consultation process, had been approved by the national agency of telecommunications. The measure was expected to enter into force in February 2008. He recalled that the European Communities had asked if it would be possible to obtain certification by means of a self declaration (Supplier's Declaration of Conformity - SDoC). Although SDoC was not possible in this case there were some types of required tests that could be performed in a foreign country and these types of tests generally were those that required more time. This meant that if a company had adequately done those tests in a foreign country, or in Brazil, it would also be necessary to do the more rapid tests which would facilitate the trade of the batteries.

117. The representative of the European Communities noted that this information appeared to be a positive step forwards – but she would need to discuss it with experts before responding. Nevertheless, one concern that remained was the requirement for third party certification.

(xviii) United States - Volatile Organic Compound (VOC) Emissions (G/TBT/N/USA/249)

118. The representative of the United States reverted to an issue raised by China at the last meeting of the Committee regarding a proposed regulation from the Massachusetts Department of Environmental Protection. The measure set out requirements for the control of volatile organic compound emissions from the use of consumer and commercial products. The Regulation had gone into effect on 19 October 2007 in the State of Massachusetts and China's comments had been considered in the Department's decision making process.

119. It was the US delegation's understanding from the comments submitted by China, and China's intervention at the last meeting, that China's primary concern was that the Massachusetts measure should be eliminated since it was more restrictive than current regulations of the US Environmental Protection Agency. In this regard, it was pointed out that the TBT Agreement made provision for Members' ability to take into account fundamental climatic or geographical factors in the development of technical regulations. In this case, the US Clean Air Act required state-specific plans which were stringent enough to reduce the severity of air pollution in each US State. Areas with more severe ozone pollution such as in the North Eastern United States where Massachusetts was located would probably adopt stricter requirements than states where the ground level ozone problem was not as severe. Many states, such as California, had done so already. The United States also noted that the city of Beijing had recently adopted compositional standards for fuel that were stricter than those used in the rest of China.

120. The representative of China looked forward to receiving a copy of the Massachusetts regulation.

C. EXCHANGE OF EXPERIENCES

1. Good Regulatory Practice

121. The Chairman recalled that the Fourth Triennial Review Report contained recommendations for future work on good regulatory practice which focused on further sharing of experiences.[9] The purpose of the Committee's work ahead was to deepen Members' understanding of the contribution good regulatory practice can make to the implementation of the TBT Agreement. The Workshop on Good Regulatory Practice, to be held on 18-19 March 2008, was an opportunity for this. The latest revision of the programme is contained in document JOB(07)/107/Rev.2.

2. Conformity Assessment Procedures

122. The Chairman recalled that the Fourth Triennial Review Report set out three areas for continued sharing of experiences with a view to furthering the understanding of the implementation of Articles 5-9 of the TBT Agreement.[10] These three areas were (i) approaches to conformity assessment; (ii) the use of international standards, guides or recommendations in Members' domestic conformity assessment procedures; and (iii) recognition of conformity assessment results. The Chairman encouraged Members to come forward with contributions or statements regarding their experiences on conformity assessment procedures.

3. Transparency

(i) The Committee's Fifth Special Meeting on Procedures for Information Exchange

123. The Chairman reported on the Committee's Fifth Special Meeting on Procedures for Information Exchange (Annex 2, below). [11]

124. The representative of El Salvador stressed the importance of capital-based participation at meetings such as the Special Meeting, as well as the back-to-back regular Committee meeting itself.

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[9] G/TBT/19, paras. 19 and 20.

[10] G/TBT/19, para. 46.

[11] A detailed summary report of the event is contained in Annex 2 of this document. More information, including the programme and presentations made, is available on the WTO TBT Website at the following address:

www.wto.org/english/tratop_e/tbt_e/meeting_nov07_e/tbt_fifth_meeting7_8nov_07_e.htm.

She asked the Secretariat to clarify whether funding would also be made available for capital-based officials for the March 2008 Workshop on Good Regulatory Practice. [12]

125. The representative of New Zealand noted that the obligations of Members under Article 2.9 and those under Article 10 of the TBT Agreement had different objectives. In New Zealand's view, these needed to be approached separately. Article 2.9 aimed to give all Members an opportunity to comment on the trade impact that a new proposal for a technical regulation of another Member would have on them. In this instance, stakeholders, regulators, trade facilitators and businesses were only interested in a small number of regulatory proposals. However, the objectives of Article 10 were wider: they included assisting end-users, particularly exporters, to find out what they needed to do to comply with other Members' regulatory requirements. As had been pointed out in the presentation by the representative of the International Trade Centre (ITC) (Annex 1, para. 89, below), exporters needed to know about all the regulations that applied, the standards that could be used to meet them, the conformity assessment procedures that had to be carried out, the conformity assessment bodies that could perform them, whether SDoC was needed or approvals had to be obtained, etc. Moreover, an exporter could not assume that because a requirement was based on an international standard it was the same as the international standard itself. In New Zealand's view, almost invariably, national regulations contained some deviations from international standards. The importance of access to this kind of information had been referred to by a number of presenters and delegates at the Special Meeting; in fact, the worst barrier to trade for small and medium enterprises (SMEs) was a lack of information.

126. In light of the above, the representative of New Zealand suggested the WTO Secretariat consider developing a portal with hyperlinks to the sites of Members that would help Enquiry Point officials find databases relevant to technical regulations and their ancillary documents. In addition, the representative of New Zealand also proposed that the Secretariat consider setting up a means for Enquiry Points to communicate with each other on ideas they had gathered during the Special Meeting and to further develop the ideas put forward.

(ii) Fourth Triennial Review Follow-up

127. The Chairman noted that, in 2007, the Committee had had useful discussions on how to move forward on the implementation of some specific recommendations relating to transparency, particularly in two areas: the feasibility of attaching full texts to WTO TBT notifications[13] and the issue of the sharing of translations.[14]

(a) Attachments

128. The Chairman recalled that in the Fourth Triennial Review, the Committee had agreed, with respect to full texts of notified technical regulations and conformity assessment procedures, to explore ways to attach to the notification form a copy of the text of the notified measure. At the Fifth Special Meeting on Information Exchange, held on 7-8 November 2007, Members had emphasized the importance of access to full texts of notified documents and noted that hyperlinks in the notification format that linked directly to the notified text could greatly facilitate Members' work and reduced the number of enquiries to the Enquiry Point (Para 5 of Annex 2, below).

[12] After the TBT Committee meeting, the WTO Biennial Technical Assistance and Training Plan 2008-2009 was adopted by the Committee on Trade and Development (WT/COMTD/W/160). The Workshop on Good Regulatory Practice is referred to on p.53 under Geneva-based Topic-specific Symposia.

[13] G/TBT/19, para 68(c)(ii).

[14] G/TBT/19, para 68(c)(iv).

129. In light of the above and with a view to facilitating the implementation of transparency procedures under the Agreement, the Committee agreed to establish a facility whereby Members may, on a voluntary basis, provide the WTO Secretariat with an electronic version of the notified draft technical regulations and conformity assessment procedures (attachments) together with the notification form. Guidelines for the use of the facility were contained document G/TBT/GEN/65.

(b) Translations

130. The Chairman recalled that at the Fourth Triennial Review, the TBT Committee had agreed to explore ways to enhance the sharing of translations of documents referred to in notifications, including with respect to the development of a format to inform other Members of the existence of translations of notified measures.

131. In this regard, the TBT Committee agreed to set up a mechanism that aimed at facilitating information-sharing by Members on the availability of unofficial translations on the Internet. This would be done through the circulation, by the Secretariat, of a supplement to the original notification submitted by a Member. Under the mechanism, Members would be invited, on a voluntary basis, to provide information about the availability of unofficial translations of notified measures. Such information should be provided to the Central Registry for Notifications (crn@wto.org). The format of the supplement was contained in document G/TBT/GEN/66.

132. The representative of the European Communities drew the Committee's attention to the fact that, in the course of 2007, the European Communities had made more than 80 translations of notified draft technical regulations from *other* Members. He suggested that the Secretariat could also explore whether the tools which it had made available for the storage of full draft texts (attachments, above) could also be used to make available unofficial translations forwarded to the Secretariat.

4. Technical Assistance

133. The Chairman recalled that there were three recommendations in the Fourth Triennial Review on technical assistance. In these recommendations, the Committee had agreed to (i) encourage Members to make use of the Format for the Voluntary Notification of Specific Technical Assistance Needs and Responses contained in G/TBT/16; (ii) to review, in 2007, the use of the Format for the Voluntary Notification of Specific Technical Assistance Needs and Responses, including the possible further development of the demand-driven technical cooperation mechanism; and (iii) to exchange experiences in respect of the delivery and receipt of technical assistance with a view to identifying good practices in this regard.[15] He proposed that the Committee begin by discussing the exchange of experiences on the delivery and receipt of technical assistance.

(i) Exchange of Experiences on the delivery and receipt of Technical Assistance

134. The Chairman emphasized the importance that the Committee had put on technical assistance in the Fourth Triennial Review and noted that, in his view, the exchange of experiences and the identification of good practices in the delivery and receipt of technical assistance could help delegations in their efforts to increase transparency on the need for and availability of technical assistance. In this regard, he drew the Committee's attention to a joint submission from Canada and Costa Rica on national quality systems in Costa Rica (G/TBT/W/283).

135. The representative of Canada noted that this joint paper had been prepared in order to contribute to a practical and positive discussion on technical assistance in the TBT Committee. The submission focused on Canada's project with Costa Rica and lessons learned during development and

[15] G/TBT/19, para 78(a)-(c).

implementation. Its genesis had been a request from Costa Rica's Technical Regulations Unit of the Ministry of Economy, Industry and Trade (MEIC) in 2004 to the Canadian International Development Agency (CIDA), for technical assistance to improve its regulatory review system. The Standards Council of Canada (SCC) had agreed that CIDA would implement the project.

136. Three TBT-related capacity building projects had been identified and designed; they were currently being implemented. More detail on development, implementation and lessons learnt were set out in full in the submission. The goal of the projects was to contribute to the elimination of technical barriers to trade and competitiveness by ensuring significantly improved regulations supported by a strong quality system, including stronger standards and conformity assessment bodies. The first project focused on Good Regulatory Practice (GRP) and the second was focused on standards information and development, and the third targeted conformity assessment, in particular accreditation.

137. The representative of Canada noted that if there were two elements of success that needed to be highlighted, these were communication and documentation. Communication had to be frequent, clear and repeated. Effective and clear communication would avoid erroneous assumptions and expectations. Documentation helped mitigate the effect of personnel changes, and helped ensure the sustainability of improvements over the long term, which, ultimately, was the true measure of success.

138. The representative of Costa Rica expressed his delegation's appreciation to the government of Canada for the above-described interchange of experience and expertise. This work had contributed to developing a quality system in Costa Rica. He noted that support in the area of good regulatory practice had made it possible for Costa Rica to overcome a number of challenges in an area of competitiveness and in this way better protect its consumers. Good regulatory practices had enabled Costa Rica to focus its activities on complying with WTO obligations in the area of technical barriers to trade, and, at the same time, develop simplified procedures in the government and thereby increase commercial efficiency. In the area of standards, the interchange had been particularly enriching. This had made it possible for Costa Rica to strengthen its national standardization body INTECO.[16] Given the importance of demonstrating compliance with technical standards for market access, the improvement of the laboratory accreditation programs and certification bodies had been crucial. In respect of lessons learnt, the representative of Costa Rica hoped to continue working with Canada so as to tackle other challenges in the near future.

139. The representative of El Salvador noted, in respect of experiences with the receipt of technical assistance, that a national workshop organized by the Secretariat in September 2007 had helped inform a wide range of government officials, as well as the private sector, about both the TBT and SPS Agreements as well as the work of the respective Committees. In particular, the relationship with international organizations, such as the Codex and the ISO, had been useful as well as information abut the agreements' provisions on transparency.

140. The representative of the European Communities noted that the presentations from Canada and Costa Rica had illustrated that technical assistance in the TBT field was indeed ongoing and that there were many initiatives in this field. Regarding EC activities, his delegation would endeavour to update the list of technical assistance activities in the TBT field which had been prepared for the November 2006 meeting.[17] The European Communities would also look into making a joint presentation with countries that had benefited from EC technical assistance.

141. The representative of Norway drew the Committee's attention to her delegation's submission on Norway's technical cooperation projects (G/TBT/GEN/62). It was noted that projects funded by

[16] http://www.inteco.or.cr/esp/index.html.

[17] G/TBT/W/273.

the Norwegian Agency for Development Cooperation (Norad)[18], as well as projects funded through the European Union and Norway Fund, were ongoing in South East Asia, Southern Asia, East Africa and Southern Africa.

142. The Chairman noted that the Canada-Costa Rica experience was useful for the Committee's work in identifying good practices in the delivery and receipt of technical assistance. He encouraged other delegations to share their experiences.

(ii) Review of the Notification Format (G/TBT/16)

143. The Chairman recalled that, to date, the Committee had received four notifications of technical assistance needs, the most recent from Uganda (G/TBT/TA-4/UGA).[19] He noted that although this was a voluntary mechanism (there was no obligation to use it), only four notifications in over two years could appear to be a low number given the importance attributed to technical assistance in the areas of standards, technical regulations and conformity assessment procedures. One point that had arisen in the Committee's discussions of the format was needs assessment: both recipients and donors seemed to agree that identifying needs could be a constraint; in fact, this had even been discussed during the development of the format itself.

144. The representative of UNIDO introduced a submission on technical assistance in the TBT area which included a section on needs assessment methodologies.[20] He noted that, normally, requests for assistance in the TBT field did not relate to a particular article of the TBT Agreement (as in G/TBT/16); a typical request came directly from a government as had been illustrated by Canada and Costa Rica. Usually, they covered issues such as legal and institutional framework, human capacity and physical infrastructure – such as testing laboratories, calibration facilities, etc. Requests could also come from the private sector.

145. The representative of Egypt asked for some clarification about what actions had been taken regarding the notifications made by Armenia and Jamaica.

146. The representative of Canada thanked the representative of UNIDO for presenting the paper and also for the work that they undertook in helping developing countries to identify their specific needs and capacities.

147. The representative of Japan welcomed a debate that was focused on specific examples of technical assistance, concrete problems and lessons that could be leaned. He appreciated the interventions provided by Canada and Costa Rica, as well as Norway and UNIDO and informed the Committee that Japan would also contribute to the discussion.

148. The Chairman recalled that another idea that had been raised during discussion on technical assistance was that the Committee could hold an event that could, on the one hand, focus on developing countries' needs in the TBT field and, on the other hand, shed light on the various technical assistance activities that existed and that were being undertaken by donors. This could also be an opportunity to invite various standardizing bodies to further explain what they did to assist developing countries.

149. The representative of the United States thanked Canada, Costa Rica, UNIDO and supported Japan in the sense that a practical, focused discussion was the most appropriate for the TBT

[18] http://www.norad.no/.

[19] The other three were submitted by: Costa Rica (G/TBT/TA-3/CRI), Armenia (G/TBT/TA-2/ARM) and Jamaica (G/TBT/TA-1/JAM).

[20] G/TBT/GEN/63, p.14 in particular.

Committee. The larger issue of developing trade strategies within the overall development program was the focus of the Aid-For-Trade discussions in other parts of the WTO. TBT-related issues would be part of the overall trade strategy and this was where the TBT Committee could contribute most usefully. In terms of the form contained in G/TBT/16, this could be used to enhance transparency and it could lead to follow-up on a voluntary bilateral basis, as the United States had done with Uganda.

150. Regarding the suggestion for a workshop, the representative of the United States noted that there were many activities being undertaken by international standards-development organizations that probably not all Members were aware of. For instance, several standards-development organizations (SDOs) were signing memoranda of understanding (MoUs) with developing countries to provide their entire catalogue of standards free of charge and provided technical assistance as well. There were also SDOs that followed the TBT Committee's decision on the development of principles for international standards where one of the principles was the development aspect. [21] Those SDOs were eager to involve technical experts from developing country Members in their standards-development process to make sure that they were fulfilling those principles. Hence a workshop could be an occasion for technical experts from developing countries to learn about other opportunities that were available.

151. In summing up, the Chairman noted that the form contained in G/TBT/16 had not been much used – either by countries who might need technical assistance or by donors in response. As there did not seem to be any problem with the form itself, there did not appear to be any specific need to revisit it. From the Committee's discussions, it appeared that technical assistance was taking place bilaterally although this did not necessarily become evident in the TBT Committee. It was useful to further this discussion in a concrete, practical way that focused on experiences on receipt and delivery of technical assistance – as had been illustrated by Canada and Costa Rica. One challenge remained the identification of needs and UNIDO's contribution was useful in this regard. The Committee had also discussed the possibility of holding an event on technical assistance, focusing on technical assistance activities of standards development organizations. The Chairman stressed that the form contained in G/TBT/16 remained one instrument that Members could avail themselves of to enhance transparency on the need for – and availability of – technical assistance. He invited delegations to continue to use the form. He further noted that the Secretariat had upgraded the TBT webpage on technical assistance making it easier to identify, by country, information provided in submissions relevant to technical assistance. [22]

5. Special and Differential Treatment

152. The Chairman noted that the Fourth Triennial Review encouraged Members to inform the Committee of special and differential treatment provided to developing country Members, and also encouraged developing country Members to undertake their own assessments of the utility and benefits of such special and differential treatment.[23] The Chairman stressed that for a more focussed exchange of information on special and differential treatment on TBT issues, there was a need for specific contributions from Members.

[21] Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the Agreement (G/TBT/9, Annex 4). Paragraph E is about the "Development Dimension".

[22] http://www.wto.org/english/tratop_e/tbt_e/tbt_tech_member_activ_e.htm.

[23] G/TBT/19, para. 82.

D. OTHER MATTERS

1. Egypt – Harmonization of Egyptian National Standards

153. The representative of Egypt informed the Committee about the Egyptian experience with the harmonization of national standards. The Egyptian Organization for Standardization and Quality (EOS) [24] had been established in 1957 as the national body responsible for standardization and related activities. It had recently celebrated its 50th anniversary. Its activities included, in addition to the elaboration of standards, product certification for conformity and quality and testing, metrology, consumer service, training and consultation as well as the operation of the national TBT Enquiry Point. EOS was a member of international organizations such as ISO, IEC, CODEX, OIML, as well as regional organizations such as CEN (partner member) and ARSO. EOS also had bilateral cooperation and relations with other national organizations.

154. The harmonization of national standards was a component of a larger project aimed at upgrading the Egyptian infrastructure of quality and conformity assessment. It also served the objective of satisfying the harmonization provisions contained in the TBT Agreement's Code of Good Practices. Implementation began in 2004 and was executed over two phases; the objective was to harmonize all previously issued Egyptian standards by the end of 2007. The harmonization work was implemented in five parallel directions. First, revision of all issued Egyptian standards to be harmonized with international, or, if not, with European or selected foreign standards. Second, the adoption of international or European standards in English. Third, the translation of the adopted standards into Arabic. Fourth, the translation of Egyptian technical regulations based on mandatory standards into English. Fifth, the elaboration of new standards – which was a continuous process – and harmonization with international standards. The representative of Egypt noted that Phase One of the project had lasted for two years, and had ended in May 2006 with more than 3,400 harmonized Egyptian standards. Phase Two of the project had ended in October 2007 with more than 5,300 harmonized standards, including all the previously issued standards.

155. The main deliverables of the harmonization project were: more than 8,500 Egyptian standards had been issued or adopted; all Egyptian standards had been harmonized; Egypt's standards catalogue had been made available on a website and the standards were electronically available to users; 25 industrial and service sectors were covered by Egyptian standards including engineering, chemical, textile, measurements, information, documentation and transport. There were also other important deliverables of the harmonization project, including a strategy for standards harmonization which had been developed in cooperation with a team of an EU expert, the ex-chairman of AFNOR and the ex-vice president of ISO. This strategy aimed at ensuring the continuation of the harmonization practice in EOS. Another activity was the separation of health and safety requirements in standards so as to be the only mandatory items in the Egyptian standard and this function was currently being carried out by the EOS technical committee. Moreover, at the beginning of the project all relevant ISO guides, including Guide 21 on the harmonization of standards had been translated and EOS staff and their technical committee members had been trained.

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

156. The Chairman recalled that, in accordance with Paragraph 18 of the Protocol of Accession of the People's Republic of China (WT/L/432), the TBT Committee would undertake an annual review for eight years of the implementation by China of the TBT Agreement.

[24] http://www.eos.org.eg/Public/en-us/Default

157. The representative of Japan highlighted some issues contained in his delegation's submission (G/TBT/W/278). He referred to the China Compulsory Certification system (the "CCC System"); under this system, no foreign conformity assessment bodies ("CABs") had yet been accredited by China according to Article 13 of the Regulations of the People's Republic of China on Certification and Accreditation, which permitted only Chinese CABs to engage in CCC certification activities. Japan considered this provision inconsistent with the objective of Article 6.4 of the TBT Agreement and with China's commitment in Paragraph 195 of the Report of the Working Party. Japan requested China to permit foreign CABs to participate in CCC certification activities under conditions no less favourable than those accorded to Chinese CABs in light of the TBT Agreement. It was also recalled that cross-border designation of conformity assessment bodies was a useful mechanism for promoting mutual recognition of conformity assessment results.

158. The representative of Japan noted that problems remained with respect to China's domestic standardization system, particularly with the distinction between compulsory and recommended standards. Japanese industry had reported instances when administrative action had been taken when recommended standards had not been met, leading to the conclusion that recommended standards were in fact compulsory. The experience of Japanese industry was that any Chinese standard was regarded as sufficient criteria for spot checking and subsequent administrative action and that compulsory standards appeared to be applied in China to areas well beyond the scope of health, safety, property and environment. Japan referred to the commitment in Paragraph 182 of the Report of the Working Party on the Accession of China[25] and urged China to make a clear differentiation between "technical regulations" and "standards", not just in the notification process, but also in actual implementation and enforcement.

159. The representative addressed China's regulation on the Administration of the Control of Pollution Caused by Electronic Information Products, which listed electronic and IT products that were subject to mandatory conformity assessment with national or industrial standards under the CCC system. Japan requested China to be more specific about the required standards and to provide a sufficient comment period, in accordance with the TBT Agreement, for the development of the list of affected products and applicable standards.

160. The representative said Japan had continuing concerns with respect to China's Registration System for Environmental Management on the Initial Imports of Chemical Products and the Import and Export of Toxic Chemicals. The Chinese State Environment Protection Agency ("SEPA") had released a revision of "Highly Restricted Imported and Exported Toxic Chemicals" on 28 December 2005 which entered into force on 1 January 2006 and added a further 158 chemicals to the list. Furthermore, importers into China were required to pay an amount of USD10,000 to obtain a Registration Certificate valid for two years, in respect of the listed chemicals. Japan queried the basis for the cost and duration of the Registration Certificate and the process upon expiration of the two year period. Japan enquired about the progress on the implementation of the new draft regulation titled "Import and Export Registration Regulation of Dangerous Chemicals" released by SEPA in September 2002, which repeals the existing legislation.

161. The representative commented with regard to China's draft standard on mobile phone batteries, Japan shared concerns raised by the United States and European Communities in their respective submissions before the TBT Committee on the lack of clarity and information regarding the development of applicable standards. Japan indicated its willingness to provide input towards improving the draft standard on mobile phone batteries.

[25] WT/ACC/CHN/49.

162. The representative of the United States highlighted some issues contained in his delegation's submission (G/TBT/W/279). He noted that the Sixth Transitional Review showed there were areas of progress and areas where concerns remained.

163. The United States was of the view that in the area of technical regulations and conformity assessment procedures, a significant number of measures continued to be introduced or amended without the advance notification required under the TBT Agreement. The United States requested China to update the Committee on steps taken or planned to increase the frequency of notifications and the use of notice and comment procedures in its regulatory process. Similar to other delegations, the United States was concerned about the use of "recommended standards" which China did not notify; in many instances, the United States had found that demonstrating compliance with such standards was effectively mandatory.

164. The United States joined Japan and the European Communities in encouraging China to accept certification and tests performed by accredited foreign conformity assessment bodies for the CCC mark and for other regulatory programmes. The representative welcomed China's acceptance of the IEC CB testing scheme for some electrical and electronic components, equipment and components for the CCC programme.

165. Concerning medical devices, the representative noted that proposed Decree 95 appeared to impose duplicative and burdensome requirements on imported medical devices and had not been notified to the WTO. The United States urged China to notify the proposed measure and suspend the 1 December 2007 implementation date until it had considered comments submitted by WTO Members and interested persons and had made appropriate modifications to the measure.

166. In respect of battery standards for mobile phones, the representative expressed concern that the development process for the applicable standards had not been open and transparent. He requested clarification from China as to whether demonstrating compliance with the battery standard would be a requirement for mobile phone manufacturers or battery manufacturers in order to obtain type approval, CCC mark registration or other approval before selling their products in China.

167. The representative had a number of outstanding questions relating to China's administration on the control of pollution caused by electronic information products. The United States requested that China inform the Committee when the product catalogue for products requiring certification would be issued.

168. The representative of the European Communities highlighted some issues contained in his delegation's submission (G/TBT/W/281). He noted an increase in cooperation between China and the European Communities on TBT issues; formal cooperation mechanisms had been established which worked well. Nevertheless, a number of concerns remained.

169. Like previous delegations, the European Communities had a general concern with respect to China's Compulsory Certification system (CCC). Despite several changes over the years, it remained a burdensome, expensive and time consuming conformity assessment procedure, particularly for small and medium-sized enterprises (SMEs). Current requirements of the CCC system were not always relevant to the level of risk the products posed, which implied that the CCC system was more trade restrictive than necessary. The European Communities was of the view that the system needed to be streamlined and simplified. The European Communities noted work being carried out by the Chinese authorities to introduce a conformity assessment procedure linked to the level of risk posed by the products listed in the CCC Product Catalogue. The European Communities encouraged China to accelerate the process and indicated its willingness to share its experiences of managing conformity assessment procedures based on the supplier declaration of conformity for some products. Some specific proposals for the simplification of the CCC system were offered in the EC submission.

170. On standardization, the European Communities emphasized the importance of ensuring effective participation of foreign-owned enterprises established in China on the same conditions as Chinese-owned enterprises, in the domestic standards development process. The European Communities shared the concern of Japan and the United States on the lack of distinction between voluntary and compulsory standards and requested China to clarify the effective differences. Another area of concern related to the development of domestic standards, especially in areas where internationally recognised standards already existed and in particular in the ICT field. The European Communities preferred to see China's standardization efforts integrated more into the established international standardization organizations. The European Communities remained committed to support all respective activities of Chinese standardizing bodies.

171. On the subject of Chinese standards for mobile phones, the European Communities noted the growing trend to regulate detailed aspects of design and quality and urged China to limit the scope of compulsory standards to aspects related to the protection of public interest such as human health and safety, property, or the environment.

172. Regarding cosmetics, the representative expressed concern that there was a difference between the approval procedures in place for domestic products and for imported products. The European Communities urged Chinese authorities to unify multiple cosmetic labelling and to facilitate manufacturers' compliance.

173. On medical devices, the European Communities was concerned about double certification requirements. Moreover, the European Communities was of the view that new or fully refurbished medical devices needed to be treated in the same way; the ban on refurbished products was not justified. As a general principle, the European Communities urged the Chinese authorities to follow the guidelines developed by the Global Harmonisation Task Force for medical devices. Furthermore, unless the purpose of Order 95 was confirmed to be no more than to clarify the practical application of the existing rules, the European Communities requested that China notify the text under the relevant provisions of the TBT Agreement.

174. On textiles, the representative urged China to allow market forces to operate in its trade in raw materials in general and in particular to abolish the compulsory nature of raw silk testing and terminate discriminatory treatment of foreign buyers.

175. On the regulation of toxic chemicals, the European Communities joined Japan in their questions regarding China's new regulations governing environmental management of the import and export of chemicals and the consistency of the legislation with the TBT Agreement.

176. The representative of China introduced her delegation's submission (G/TBT/W/282). In respect of transparency, it was stressed that China had made more than 300 TBT notifications within the last six years, providing in each case a sixty day comment period and copies of full texts of notified measures upon request. The Chinese representative said China was an active participant in the Committee's work on transparency and information exchange and would continue this engagement and would welcome support from other Members in order for it to meet transparency objectives.

177. Regarding conformity assessment procedures, the representative said China's basis for adopting a conformity assessment procedure had to do with whether it achieved the goal of ensuring effective protection of consumer interests and product safety. China was of the view that the CCC system was legally based on the objectives established by the TBT Agreement and addressed China's needs in the areas of management. On the other hand, the system of Supplier's Declaration of Conformity (SDoC) proposed by the European Communities necessitated additional management in the areas of market surveillance, product liability law, and administrative control. China had therefore not as yet made a decision to change its conformity assessment procedures. Furthermore, the

representative pointed out that certification bodies established in China could be accredited as CCC certification bodies officially authorised by CNCA. Foreign certification bodies, however, could only be certified through government-to-government agreements.

178. On the subject of standardization, the Chinese representative said the Chinese authorities had made clear that mandatory standards were compulsory and recommended standards were not compulsory. She informed the Committee that China's harmonisation of its standards with international standards would be a priority in its standardization work.

179. In respect of the border examination of medical devices by the body for the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ), under Decree 95, the representative stated that the Decree was aimed at streamlining the inspection scheme and achieving uniformity of enforcement practices and procedures. China was of the view that AQSIQ's inspection and supervision at the port of entry was in accordance with international practice and pointed out that Chinese-made products had to meet the same inspection and certification requirements upon export to other countries and regions. Nevertheless, in the light of the confusion amongst China's trading partners in respect of the Decree, Members' comments would be conveyed to the competent Chinese authorities for consideration and in order to address the issues.

180. In respect of battery standards for mobile phones, the representative said the purpose of the standard was to achieve consumer convenience and address environmental concerns. She pointed out that the development process of the standard had been open and transparent and the standard itself was voluntary and sectoral rather than national. China took note of Members' concerns and would ensure the standard was in compliance with the WTO Agreement.

181. On the issue of toxic chemicals, the representative said China was of the view that toxic chemicals comprised a high pollution risk and potential harm to human, animal and plant life and health and as such, the Chinese government was entitled to exercise caution in the administration of the import and export of these products. Furthermore, compared with management of toxic chemicals in other Member countries which entailed superfund, risk deposit and liability insurance, China considered the two-year cycle and the USD 10,000 registration fee to be reasonable and an effective measure for environment protection purposes. China had made considerable effort since accession to improve the scheme and was considering revising the regulation of import and export registration of dangerous chemicals. During the revision process, comment and opinions would be solicited from all domestic and foreign government agencies, enterprises and/or individuals.

182. Regarding the Administration Measures on the Control of Pollution caused by Electronic Information Products, the representative of China informed the Committee that the compilation of the catalogue of products requiring certification was still being researched. China would notify the WTO once the catalogue was available and would allow sufficient time for comments before enforcement. It was noted that the list of laboratories that were currently accredited to perform hazardous substance testing in China could be accessed on the website (www.cnca.gov.cn). The list could be extended and was not closed. In the event that bilateral recognition agreements were signed between China and other Members, foreign laboratories accredited in their countries could become accredited in China. China would review IEC standards as and when required and in accordance with future development of the IEC standards.

183. Regarding automobiles, the CCC certification served the same purpose as the UN/ECE certification, which was to guarantee consumers' safety. However, compared to UN/ECE certification, the Chinese CCC system was more simple and cost effective. Chinese auto makers at present could not adapt themselves well to the ECE system mainly due to the fact that the cost of application was too high and far beyond the capacity of those auto manufacturers. China understood

the positive effect of the 1958 Agreement and was considering joining as a contracting party to the Agreement at an appropriate time in the future.

184. The Chairman thanked all delegations for their statements and the Committee adopted its Sixth Annual Transitional Review Report to the Council for Trade in Goods (G/TBT/22).

IV. TECHNICAL CO-OPERATION ACTIVITIES AND UPDATING BY OBSERVERS

185. The representatives of the Codex (G/TBT/GEN/60) and the IEC (G/TBT/GEN/64) updated the Committee on relevant activities they were undertaking. In addition to the information provided in the submission, the representative of the Codex recalled that several specific trade concerns raised earlier in the meeting had related to issues of nutrition, labelling and consumer information. In this regard, she emphasized the work carried out by the Codex Committee on Nutrition and Foods for Special Dietary Uses which discussed, among other issues, the scientific basis of health claims. This discussion was also relevant to WHO's application of its Global Strategy on Diet, Physical Activity and Health. Moreover, there were a number of Codex guidelines and standards that were relevant to these types of issues, one of which was the updated Codex Standard for Infant Formula. [26]

186. The WTO Secretariat reported on its technical assistance activities in 2007. It was noted that, as in past years, the overall objective of these activities was to assist Members to effectively implement as well as benefit from the TBT Agreement. An important new development in 2007 had been the successful launch of eTraining courses on the TBT Agreement. Four online courses were completed in 2007. These courses, which covered all aspects of the TBT Agreement, were available to government officials from developing country Members and Observers who were not able to attend workshops organized by the WTO. This year, 306 participants from 78 countries had participated. The Secretariat also noted that the process of submitting 15.2 Statements had been given particular attention in all regional and national workshops conducted in 2007 and the Secretariat had followed up in Geneva, including through the Workshop on 15.2 Statements held on 8 November 2007. More information on the Secretariat's technical activities was made available in document G/TBT/GEN/61.[27]

V. REPORT (2007) OF THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE

187. The Committee adopted its 2007 Report to the Council for Trade in Goods (G/L/843).

VI. DATE OF NEXT MEETING

188. The next regular meeting of the Committee will take place on 20 March 2008. It will be preceded by the Workshop on Good Regulatory Practice, to be held on 18 and 19 March.

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[26] The submissions from Norway (G/TBT/GEN/62) and UNIDO (G/TBT/GEN/63) are also relevant to technical co-operation activities.

[27] Information on the Secretariat's technical assistance activities is also available on the TBT Webpage at: http://www.wto.org/english/tratop_e/tbt_e/tbt_act_list_activ_e.htm.

ANNEX 1

SUMMARY REPORT OF THE FIFTH SPECIAL MEETING ON PROCEDURES FOR INFORMATION EXCHANGE

7-8 November 2007
Chairperson: Mr. R.S. SIDHU (India)

1. Pursuant to its decision to hold, on a biennial basis, "regular meetings of persons responsible for information exchange, including persons responsible for enquiry points and notifications", the TBT Committee held its Fifth Special Meeting on Procedures for Information Exchange on 7-8 November 2007.[1] The objective of the Special Meeting was to provide Members an opportunity to discuss, at a technical level, issues relating to information exchange and to review the functioning of notification procedures and the operation of enquiry points.[2]

2. The Special Meeting was organized in four panel sessions addressing the following topics: (i) publication practices; (ii) notification practices; (iii) the use of electronic tools; and (iv) technical cooperation and the work of enquiry points. The following is a summary of the experiences presented.[3]

A. SESSION 1 - PUBLICATION PRACTICES

1. An instrument of good regulatory practices for publication of proposed regulations in Chile[4]

3. The representative of Chile explained that the Chilean TBT National Commission, grouping all different agencies having responsibility for technical barriers to trade, was established in 1997 under the Ministry of Economy to address the lack of a framework to assess regulatory conformity in Chile. Through the participation of various ministerial agencies who made up the Commission, a Decree covering good regulatory practices (Number 77) was enacted to address, *inter alia*, Chile's TBT notification obligations in an effort to standardise and to ensure good regulatory practices in the country. A website was being constructed containing technical regulations and guidelines to be followed when drafting regulations in Chile – this would be operational from 2008.[5]

4. It was highlighted that the objective of Decree 77 was to ensure that regulatory bodies complied with obligations under the TBT Agreement and other bilateral agreements. The Decree contained criteria for the preparation, adoption and application of regulations to guarantee that such regulations did not constitute an unnecessary barrier to trade and facilitated trade and transparency. Article 6 of the Decree ensured transparency by making it obligatory for draft regulatory texts to be published either on a website or in another national media and be available for a sixty-day comment period.

5. The representative of Chile explained that during the adoption and application of regulations, national and international comments would be taken into account. Technical regulations were expected to meet the minimum requirements of identifying the product, stating specifications and

[1] The programme for the Special Meeting is contained in G/TBT/GEN/59/Rev.1.
[2] The participation of ninety-four representatives from developing country Members was supported through the WTO DDA Global Trust Fund.
[3] All slideshows, including audio clips, presented during the Special Meeting are available at http://www.wto.org/english/tratop_e/tbt_e/meeting_nov07_e/tbt_fifth_meeting7_8nov_07_e.htm
[4] Presentation made by Ms. Carolina Ramirez, Ministry of Economy, Chile.
[5] www.reglamentostecnicos.cl

features, method for assessing conformity, degree of concordance with international standards as well as identifying the party responsible for the technical regulation and other necessary requirements. In addition, the justification for the technical regulation would need to be available in response to any requests for information. Such information could include a description of the analyzed options, processing of the observations on the perceived impact on the national market, on small and medium enterprises and the responses that were received.

6. Decree 77 did not establish that laws be notified through the Commission; rather it applied to the technical regulations generated as a result of such laws. Regulations that were considered to be in line with international standards were not notified, as the purpose of the system was to deal with regulations which were not based on international standards and which could have a trade impact on Members. In the majority of cases the notified regulations were categorized within the tariff rate classification of the Harmonised System.

7. An example of technical regulations with regard to electrical products was provided. Using the Commission's website, the representative of Chile showed all the regulations referring to electrical products as well as related disaggregated information such as a description of the applicable regulation, date of its entry into force, date of application, applicable regulatory body, and technical aspects of the regulation. The website was kept up to date through bilateral agreements with the institutions generating the technical regulations and a national library. This ensured that when a technical regulation was published it was also placed on the Commission's website.

8. It was noted that all draft technical regulations notified to the WTO could be accessed through this website, thus providing an opportunity for public consultation and ensuring transparency. A set of guidelines on good practices for dealing with comments received on notifications was also being developed and was expected to be operational in 2008. The guidelines included the requirement for each proposed regulation to show a table of comments received, particularly from WTO Members, and reactions to the comments, all of which would also be available to the public. Decree 77 also aimed at standardizing the manner in which technical regulations and the comments received on them were processed.

9. In response to questions from participants, the representative of Chile clarified that Decree 77 applied to all bodies and institutions elaborating technical regulations and conformity assessment procedures within the scope of the TBT Agreement. Furthermore, while Chile currently did not notify technical regulations that were based on international standards, the matter was under discussion.

2. Publication of proposed regulations in the United States[6]

10. The representative of the United States said that transparency applied to all regulatory processes in the United States, from the development of a proposed technical regulation to its adoption, including subsequent amendments and possible repeal. In the publication process, transparency meant an unrestricted opportunity for wide public participation.

11. In the regulatory process, there was full cooperation among all levels of agencies and departments in the United States: at Federal level, state level, municipality/city level as well as with industry and citizens, even at an early stage. Departments and ministries were subject to careful review by the judicial, legislative and executive branches of government to hold them accountable for procedural fairness, reasonable decision-making and for working within any applicable limitations. The transparency of the process for the publication of regulations ensured a better standard of regulations and cost-effectiveness and also limited their intrusiveness while keeping the public

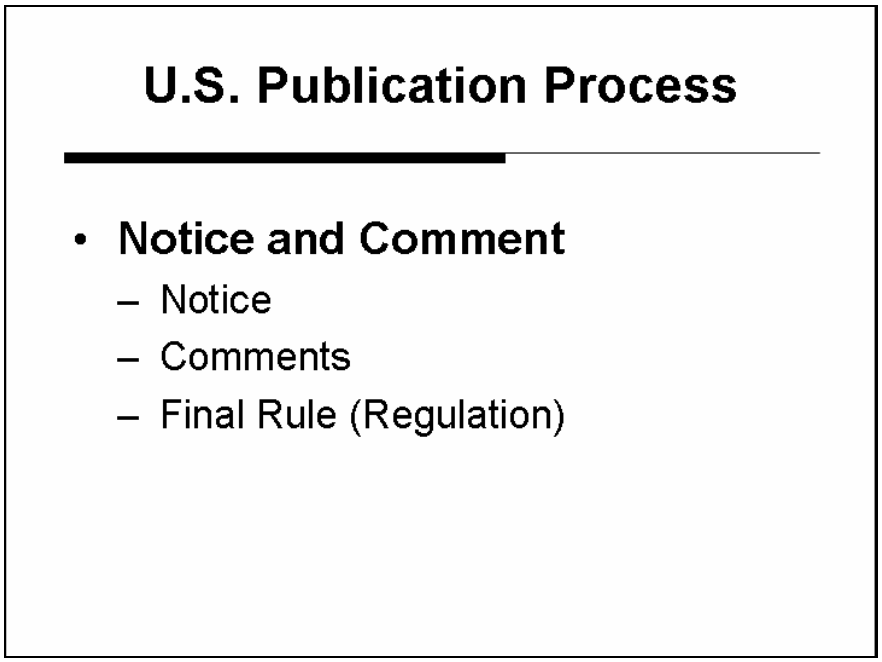
[6] Presentation made by Ms. Anne Meininger, U.S. Enquiry Point, National Institute for Standards and Technology (NIST).

informed, ensuring a climate of fairness. This resulted in a higher public acceptance of adopted regulations.

12. The representative of the United States explained that after laws were enacted by the Congress in the United States, the Federal regulatory bodies were responsible for creating the technical regulations that enforced the laws. The most important law that formed the foundation of the regulatory process were the Executive Order No. 12866 (1993)[7] which described the Federal process and set out twelve mandatory procedural steps that had to be followed to draft a regulation. Another US law that promoted regulatory transparency before and during publication of the draft stage was the National Technology Transfer and Advancement Act[8] which originated in 1995 and codified many of the policies in the Executive Order. The law established reporting requirements for Federal agencies and authorised the National Institute of Standards and Technology to coordinate all conformity assessment activities in the federal government. It further instructed Federal departments to use non-governmental, voluntary standards wherever possible, both domestically and internationally, and to encourage the use of already-existing standards rather than the government developing its own regulations. Under this Act, departments were cautioned not to use measures that created unnecessary obstacles to trade.

13. Additionally, the Administrative Procedure Act[9] defined the system under which a department created and published draft regulations. This law enforced the use of open and transparent methods for Federal authorities to establish new regulations. Members of the public and foreign trading partners enjoyed a right to participate with the department in the drafting process and departments had to meet the same basic minimum obligations for all regulations stated in the Executive Order's steps. At its most basic level, the US process for developing regulations involved only three steps known as the "informal notice and comments procedure", which was the basis of the publication process in the United States' Federal Register.

Figure 1



[7] http://www.access.gpo.gov/uscode/title5/parti_chapter5_.html
[8] http://www.access.gpo.gov/nara/publaw/104publ.html
[9] http://www.archives.gov/federal-register/laws/administrative-procedure/

14. The representative of the United States explained that the Federal Register publication was the government's main tool for communicating draft regulations to the public.[10] Draft regulations published in the Federal Register were referred to as a notice of proposed rulemaking "NPRM" and signalled to all interested parties that a new draft regulation was at hand. In case of complex issues or issues of urgent public concern, an advance notice of proposed rulemaking could be issued and there could also be several advance notices before a draft was finally released. Every notice of proposed rulemaking needed to identify the problem being addressed and its significance and it had to assess any existing regulations and identify any alternative solutions to the problem, including the decision not to regulate. A cost and benefit analysis was required for every draft published in the Federal Register and a risk assessment was required to analyze alternative solutions. Each published draft regulation had clearly to state the technical details and performance objectives and contain impact statements on the economy, private markets, public health and safety and the environment. Consideration was also given to harmonization and to consistency and compatibility with state or local regulatory functions. Draft regulations also had to provide information on when, where and how comments could be submitted by domestic and international parties and include contact details in order to obtain more information.

15. The representative highlighted that after publication of a draft regulation in the Federal Register, there was opportunity for interested parties to comment. This opportunity was unrestricted and afforded the chance for foreign trading partners to submit data, views or arguments in response to a proposed regulation directly to the agencies concerned. The comment period was usually open for between thirty to ninety days, the average period being sixty days. Comments received on a draft regulation could have the effect of modifying the regulation. In such case, a supplemental notice of proposed rulemaking was published.

16. When a final regulation was published, the relevant department was required to include a statement of the regulation's basis and purpose and information on any changes that the department had made to the draft regulation in response to comments received. The length of the publication process could vary from a few months to several years depending on the novelty, degree of controversy and nature of the regulatory action and also its complexity. On average, a draft regulation would take from six months to one year between the notice of its first draft in the Federal Register and its enactment as a final rule. Generally, rules could not be enforced if they had not been published in the Federal Register and would not become effective until thirty days following their publication.

17. In concluding, the representative of the United States remarked that the US Federal regulatory department authorities, with the input of interested parties including foreign trading partners, developed the proposed technical regulations and published them. Technical regulations were issued as final regulations only after much collaboration and discussion and careful review of the technical details. The goal of the process was to enact the most consistent, compatible and easy-to-understand regulations and to ensure no unnecessary barriers to trade were created.

18. In response to questions raised during the discussion, the US delegation noted that the impact assessment of draft regulations included a cost/benefit analysis of the proposed regulations on US business and consideration of the trade impact on third countries, mainly based on the comments received to the notification. It was also stressed that the TBT Agreement called for a reasonable interval between the publication of a regulation and its entering into force. The length of this interval depended on the regulation, but in the US case this period was often longer than thirty days.

19. Additionally, it was explained that the US Enquiry Point did not track the draft regulations and the comments thereon all the way to final enactment. However, requests could be made by trading partners to the Enquiry Point staff to follow up with the regulatory authorities on specific

[10] http://www.archives.gov/federal-register/

issues and to notify the interested party when the final ruling was released. As far as local governments were concerned, the US Enquiry Point monitored their regulatory initiatives on a regular basis.

20. In summarizing the session, the Moderator said that while the obligation to publish notices was clearly set out in Article 2.9.1 of the TBT Agreement, Members used different approaches to fulfil this obligation. The use of websites seemed to be one common element Members utilized to fulfil this obligation.

B. SESSION 2 - NOTIFICATION PRACTICES

1. The Experience of Canada: Determining the necessity to notify and completing the notification format[11]

21. The representative of Canada said the Department of Foreign Affairs and International Trade retained overall responsibility for coordination and implementation of all WTO Agreements in Canada. Since January 1980, the Department contracted the operation of the national notification authority and the national Enquiry Point to the Standards Council of Canada (SCC).[12] SCC was responsible for fulfilling the transparency obligations of the TBT, SPS and NAFTA Agreements, distributing WTO notifications, answering enquiries and providing information to foreign enquiry points on Canadian standards, technical regulations and conformity assessment procedures.

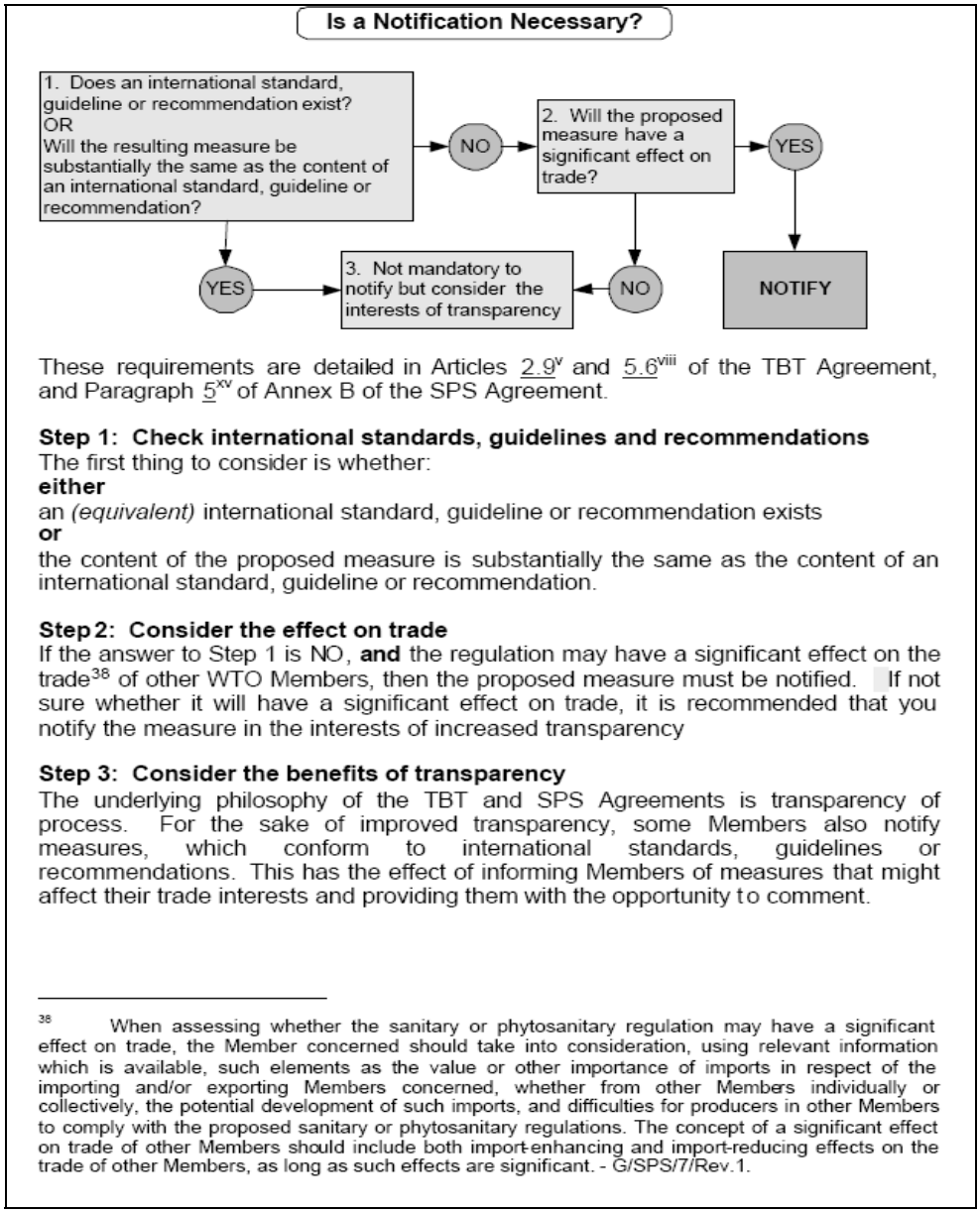
22. In determining the *necessity* to notify, SCC considered proposed technical regulations, conformity assessment procedures (CAPs) and mandatory labelling requirements in the light of whether an international standard existed or the content of the proposed measure was substantially the same as the content of an international standard, and the effect on trade of the proposed measure (Figure 2, below).

23. Four basic transparency obligations had to be fulfilled: (i) publish a notice in a publication at an early appropriate stage; (ii) notify the measure; (iii) provide copies of the regulation, and (iv) allow a reasonable time for comments. It was pointed out that it was beneficial for the notification authority staff or the Enquiry Point staff to subscribe to the country's central and local government registry of proposed legislation in order to monitor when new measures or changes to existing measures were proposed and needed to be notified.

24. In determining *when* to notify, the representative of Canada explained that SCC would notify when a draft with the complete text of a proposed technical regulation and conformity assessment procedure was available and when amendments could still be introduced and taken into account. In the case of technical regulations and conformity assessment procedures adopted for urgent reasons, the notification would be made immediately upon adoption. The agency responsible for determining whether a measure should be notified was the Canadian Enquiry Point. Regulators were legally obliged to publish regulations in the Canada Gazette. The Enquiry Point would then review the Canada Gazette to determine which measures should be notified. The Enquiry Point staff also determined whether there would be an impact on trade and when necessary staff would consult with the regulatory body to obtain additional information to determine the impact on trade.

[11] Presentation made by Ms. Andrea Spencer, head of the TBT/SPS Enquiry Point, SCC, Canada.
[12] See http://www.scc.ca

Figure 2



These requirements are detailed in Articles 2.9[v] and 5.6[viii] of the TBT Agreement, and Paragraph 5[xv] of Annex B of the SPS Agreement.

Step 1: Check international standards, guidelines and recommendations
The first thing to consider is whether:
either
an *(equivalent)* international standard, guideline or recommendation exists
or
the content of the proposed measure is substantially the same as the content of an international standard, guideline or recommendation.

Step 2: Consider the effect on trade
If the answer to Step 1 is NO, **and** the regulation may have a significant effect on the trade[38] of other WTO Members, then the proposed measure must be notified. If not sure whether it will have a significant effect on trade, it is recommended that you notify the measure in the interests of increased transparency

Step 3: Consider the benefits of transparency
The underlying philosophy of the TBT and SPS Agreements is transparency of process. For the sake of improved transparency, some Members also notify measures, which conform to international standards, guidelines or recommendations. This has the effect of informing Members of measures that might affect their trade interests and providing them with the opportunity to comment.

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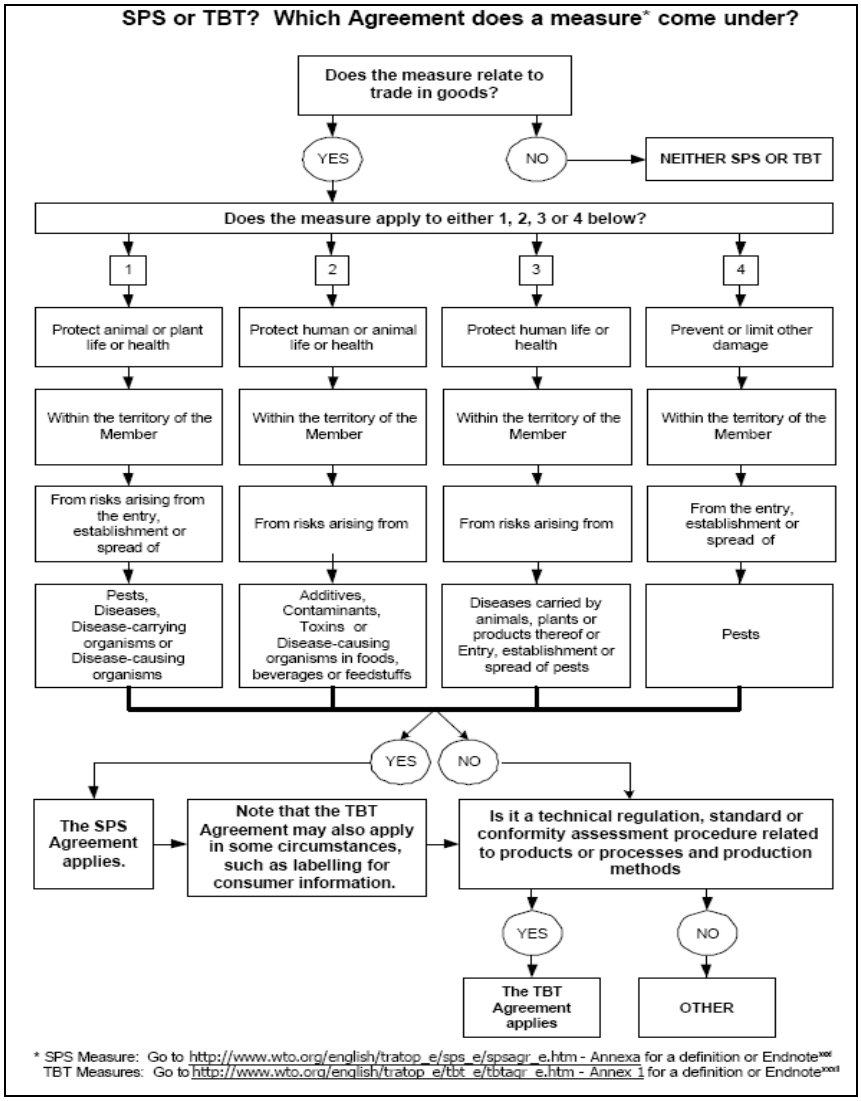
[38] When assessing whether the sanitary or phytosanitary regulation may have a significant effect on trade, the Member concerned should take into consideration, using relevant information which is available, such elements as the value or other importance of imports in respect of the importing and/or exporting Members concerned, whether from other Members individually or collectively, the potential development of such imports, and difficulties for producers in other Members to comply with the proposed sanitary or phytosanitary regulations. The concept of a significant effect on trade of other Members should include both import-enhancing and import-reducing effects on the trade of other Members, as long as such effects are significant. - G/SPS/7/Rev.1.

Figure 3



25. The SCC also analysed whether a measure fell under the TBT Agreement, the SPS Agreement or both (Figure 3, above). If it was found that the SPS Agreement applied, the SCC would notify under the SPS. If the SPS Agreement did not apply, the SCC would check whether the measure was a technical regulation, standard or conformity assessment procedure – in which case it would be notified under the TBT Agreement.

26. Preparation of the notification format was required to be completed following the recommended procedures contained in G/TBT/1/Rev.8. Additionally, Members were encouraged to consider the recent recommendations of the TBT Committee.[13] It was stressed that the information contained in the notification form needed to be as complete as possible and for sections that did not have information, statements of "not known" or "not stated" had to be made.

27. Drawing from Canada's experience with respect to notification forma, both in terms or preparation and receipt of such forms, it was pointed out that the work of the Enquiry Point could be frustrated at times when email addresses or contact details of the agency were either not monitored

[13] An updated overview of transparency obligations and recommendations by the TBT Committee was made available in Job(07)/139.

regularly or information was incorrect or inadequate. The representative encouraged Members to provide accurate contact information on notification forms. In addition, listing the exact number of pages of the regulation under section five of the notification form could assist other enquiry points to confirm that they had received the entire regulation, particularly if they had requested a translated version.

28. The representative stressed that the description of content contained in section 6 of the notification form was key. It was noted that a clear and comprehensible description stating the main features of the proposed technical regulation or conformity assessment procedure was important for delegations and translators to understand the notification and would reduce requests for full texts. In section 7 of the notification format (objective and rationale of the proposed regulation), reference could be made to the nature of urgent problems which were applicable to the proposed regulation. In the section indicating where Members could obtain the full text of the proposed regulation, it was emphasized that the agency responsible should provide a direct link to the text and not just to the general site of the relevant organisation and that, if possible, a central mailbox could be established which could be monitored in the absence of the main officers responsible for the handling of enquiries. Including the URL links to the full text in the notification format had significantly reduced the number of requests for full texts.

29. Canada prepared its notifications in English and French and sent them by email to the WTO Central Registry of Notifications (CRN)[14], copying the Canadian authorities, their NAFTA counterparts and other key trading members, thereby encouraging cooperation and coordination in a transparent manner with relevant stakeholders. The representative of Canada also clarified that the decision to notify was determined by the Enquiry Point in consultation with the relevant regulatory agencies and that the Enquiry Point also undertook an analysis of the potential impact of the regulation on trade of other countries.

2. Experiences in making TBT notifications in China[15]

30. The representative of China explained that China's WTO Notification and Enquiry Centre, organized under the Ministry of Commerce (MOFCOM), had overall responsibility for notifications and enquiry issues in China. The Centre also housed the TBT Enquiry Point, which was administered by the General Administration for Quality Supervision Inspection and Quarantine (AQSIQ). At the national level, coordination among government departments was achieved through a bi-annual inter ministerial coordination conference on technical measures to trade, consisting of 18 ministries that had developed guidelines for the notification and enquiry point work related to the TBT Agreement.

31. The regulatory agencies in China determined when a draft technical regulation needed to be notified and were responsible for completing the notification forms both in Chinese and English. The Enquiry Point checked the translation of the notification forms and referred any problems back to the regulatory agency, until the notification was correct. Thereafter, the Enquiry Point would submit the notification form to the notification authority under MOFCOM for further review. MOFCOM conveyed the notification form to the Chinese Permanent Mission to the WTO in Geneva which then submitted the final English version to the WTO Secretariat.

32. The representative of China explained that the regulatory agencies identified whether the notifications needed to be notified to the SPS or TBT Committee, or both. In the event of an urgent notification, particularly when safety, health, environmental protection or national security problems needed to be addressed, a measure might be adopted but was immediately notified to the WTO

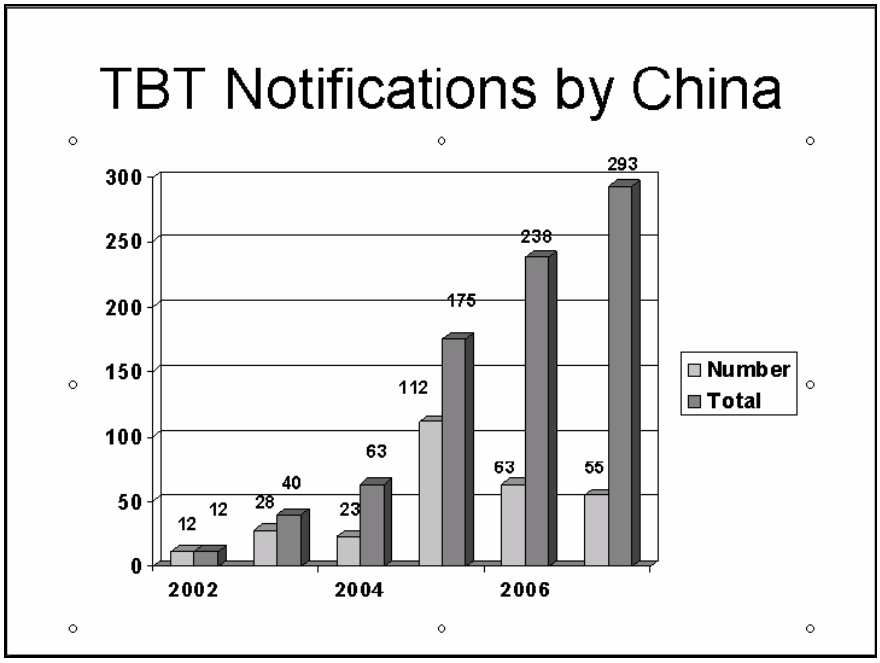
[14] crn@wto.org

[15] Presentation made by Mrs. Lisheng GUO, Deputy Director General, China WTO/TBT Notification and Enquiry Centre.

Secretariat, granting an opportunity for Members to provide comments. The representative pointed out that China followed the notification format as recommended by the TBT Committee, giving particular attention to the final date for the receipt of comments which was no less than sixty days from the date of circulation of the notification by the WTO Secretariat. As for the proposed date of adoption of the measure, this was normally 90 days after distribution by the WTO Secretariat. The proposed date of entry into force of the measure was normally six months after the adoption of the measure.

33. The representative said that the notification information was uploaded on a website which was open to the public.[16] Upon request, the full text of the notified measure was provided in pdf format. Comments received were translated into Chinese and addressed in consultation with the regulating body. Replies to comments were prepared in Chinese and English and submitted to the Enquiry Point which conveyed the response in English to the WTO Member who had made the comments. Since its accession to the WTO, China had submitted approximately 300 TBT notifications.

Figure 4



34. In response to questions raised during the discussion, it was clarified that notifications from other WTO Members were also posted on the Chinese website, while the texts of the notified measures were provided only to those Members who requested them. Both the representatives of Canada and China highlighted that very few measures had been notified as urgent measures under Article 2.10 or 5.7 of the TBT Agreement.

35. In summing, the Moderator noted the importance of correctly filling in the notification format and providing all the necessary information. Some points stressed during the discussion included that the notification format should include the possibility to identify Members affected by the notifications and that, a clear and detailed description of the content of the measure in Box 6 of the notification format, especially when the notified text was not in one of the WTO official languages, was crucial. The importance of ensuring full access to texts of notified measures was also stressed. Furthermore,

[16] www.tbt-sps.gov.cn

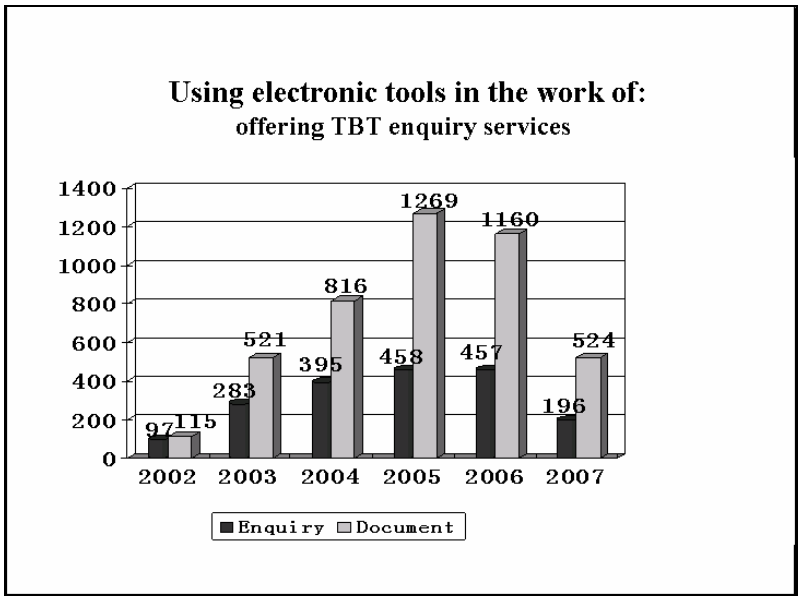
the importance of coordination between the Enquiry Point and the regulatory authorities was emphasized.

C. SESSION 3 - THE USE OF ELECTRONIC TOOLS

1. China: The use of electronic tools in WTO/TBT enquiry point work[17]

36. The representative of China explained that a marked increase in the use of electronic tools had been experienced since China's accession to the WTO. In particular, China's National Notification and Enquiry Centre, headed by the General Administration of Quality Supervision Inspection and Quarantine (AQSIQ), used electronic tools in the publication of technical regulations, processing of TBT notifications, provision of TBT enquiry services (Figure 5, below) and as a vehicle for commenting on TBT notifications of other WTO Members. Electronic tools were also used to deal with comments received on draft Chinese regulations and to provide comments to other WTO Members' measures.

Figure 5



37. Electronic tools were used extensively in the work of technical cooperation with other partners in order to improve the TBT work. Technical study tours to the enquiry points of other Members had been conducted and electronic tools played an important role in the exchange of experiences with other Members. Moreover, in order to disseminate information on TBT, the Chinese notification and Enquiry Point liaised with the major media sectors in China such as the central TV station and national and international newspapers.

38. China's TBT/SPS website[18] was a tool to inform and educate about TBT matters; it contained a complete set of TBT notifications (in bilingual forms) and provided timely information to exporters and importers on domestic and other Members' measures.

[17] Presentation made by Mrs. Lisheng GUO, Deputy Director General, China WTO/TBT Notification and Enquiry Centre.

[18] www.tbt-sps.gov.cn

39. In the event of an important regulation being promulgated or drafted by other WTO Members, the Enquiry Point would collect relevant information, translate it into Chinese and upload it on the website. The website further provided the *Risk Alert* information related to Chinese exports, which also allowed for online enquiries and information retrieval. The *Risk Alert* mechanism collected information on any problems experienced with a particular exported Chinese product and provided feedback to Chinese producers so that applicable technical regulations, standards and conformity assessment procedures of the importing country were clarified. The *Risk Alert* mechanism also operated with respect to imported products when there was some problem with a given product. In this case, information would be collated, analyzed and the border agencies informed so as to control the import of the product. The *Risk Alert* system was therefore used both for public information-sharing purposes and for internal customs control purposes not open to the public.

40. The representative noted that in China the use of electronic tools was given full attention and support by the central government through a commensurate budget allocation. Furthermore, a solid infrastructure was required such as the local area network to share data internally and gain quick access to the internet at all times.

2. Chinese Taipei: Use of electronic tools for the dissemination of comments[19]

41. The representative of Chinese Taipei explained that the TBT Enquiry Point in Chinese Taipei had, with effect from October 2006, redesigned its website[20] to better serve domestic stakeholders' need to access technical regulations of other WTO Members and foreign stakeholders' requests for related information in Chinese Taipei. It was noted that the new design included three features: (i) notifications could be searched by country, by sector and by keyword; (ii) manufacturers could provide feedback on the technical barriers that they encountered when exporting their products to foreign countries; and (iii) manufactures could request notified documents for certain notifications. The website listed seventy-four Members with whom Chinese Taipei had significant trade volumes and for which notifications could be accessed. The same functions were also applied to the product sector. Products were classified into fourteen categories based on their HS code.

42. One of the functions of the website included the possibility for users to be automatically informed of the available comment period for each notification posted. Other functions included the submission of comments on-line and the possibility to make requests for notified documents and reports on technical barriers to trade. Translations were available for important notifications. Regarding comments received on Chinese Taipei notifications, these were transmitted to the relevant regulatory authority for response. Replies were provided by email within a period of two weeks to §two months. Thirteen comments had been received in the past two years.

43. Queries on product regulation or standards were answered (by email) in a period between two days to three weeks. Thirty-one requests had been received within the past two years and companies had confirmed the usefulness of the Enquiry Point's response to product queries. The representative stressed that enquiry points needed to provide information on product regulations and standards, in addition to information on notifications, as required under Article 10 of the TBT Agreement. The system showed potential to be a powerful tool for use by industry.

44. In concluding, the representative of Chinese Taipei stressed that industry needed to benefit from the services provided by the Enquiry Point and that awareness-raising seminars for the industry were planned for this purpose. Information resources related to technical regulations, standards and conformity assessment procedures was not coordinated. Therefore, in order to make the system a useful tool for industry, a project was planned to integrate such information into the notification

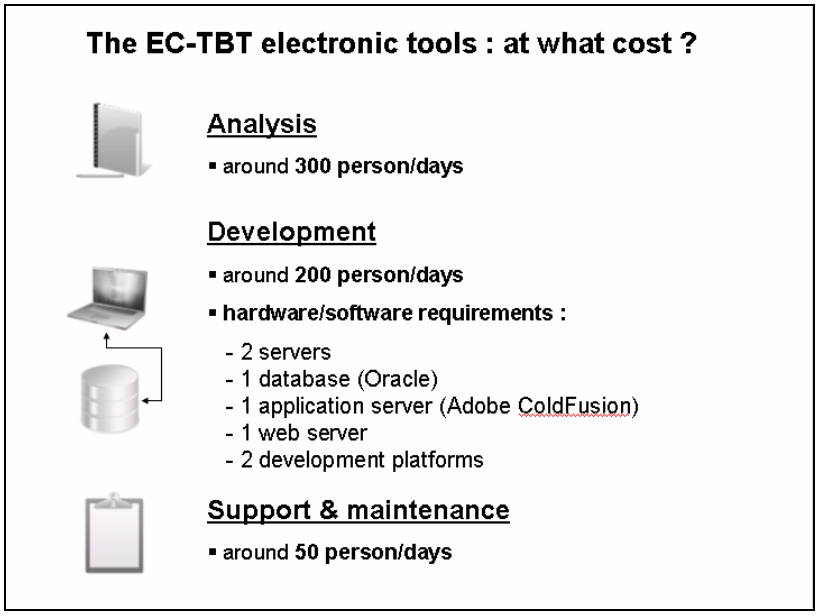
[19] Presentation given by Ms. Ying-Ching SU, TBT Enquiry Point of Chinese Taipei.
[20] www.bsmi.gov.tw

distribution system. This would help Chinese Taipei better implement Article 10.1 of the TBT Agreement.

3. European Communities: Use of electronic tools to enhance transparency and to ease the management of notification procedures[21]

45. The representative of the European Communities said that the EC TBT Enquiry Point had a number of specific functions, namely to: (i) transmit EC notifications to the WTO Secretariat; (ii) analyze, with the help of experts and stakeholders, draft measures notified by third countries; and (iii) follow up of comments made by the European Communities and its member States. The Enquiry Point also answered requests for information on notified draft measures and was the contact point for exchange of information within the Community. The EC TBT Enquiry Point had implemented its electronic system in June 2004 in response to the increasing volume of notifications and the difficulty of tracking them. The public site was launched soon after to improve transparency and the participation of economic stakeholders.

Figure 6



46. Improved document management was a priority and electronic storage meant a reduction in paper files. The system had an automated procedure which operated twice a day to find the latest notifications and enter them into the database so that they would automatically appear on the website.[22] The site provided an alert system for economic operators and other interested parties and allowed for privileged access to member States of the European Communities. The activity of TBT enquiry points in EC member States was reviewed monthly and a summary of the EC TBT Enquiry Point activities was posted on the site on a monthly basis.

47. The website also provided a library of documents related to TBT issues. The mailing list on the site made it possible for economic stakeholders to be recorded for a particular sector or particular country, so that they received an email advising them of new notifications in their sector, as well as the text of the draft measure. The accuracy of the contact information provided on the site was emphasized. The possibility of providing a direct and precise link to the location of the texts of the

[21] Presentation by Mr. Cyril Hanquez, European Commission, DG Enterprise and Industry.
[22] http://ec.europa.eu/enterprise/tbt/

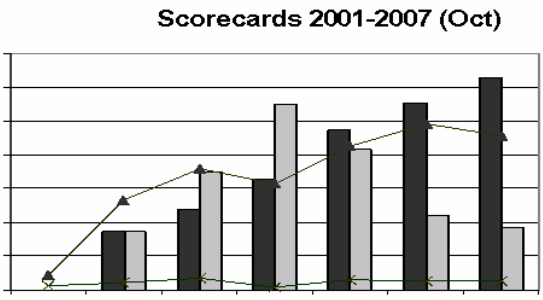
notified texts was being looked into. Wherever possible and if the Enquiry Point decided to further analyze a notified text, the EC TBT Enquiry Point made unofficial translations of notified texts and made them accessible on-line.

4. Brazil: The Brazilian Export Alert System: An electronic tool for improving SME's knowledge on WTO countries regulations[23]

48. The representative of Brazil presented the Brazilian Enquiry Point's experience of providing information to domestic companies, especially SMEs, through its Export Alert System. He noted that the Brazilian National Institute of Metrology Standardization and Industrial Quality, referred to as INMETRO, was the accreditation body responsible in Brazil for the country's legal metrology and conformity assessment policies. It also served in the role of Brazil's TBT Enquiry Point. INMETRO's objective was to instil confidence in Brazilian measurement systems and product standards and also promote harmonization, consumer relations, innovation and competitiveness through metrology and conformity assessment.

49. INMETRO provided an Export Alert System and free services on its website[24] to Brazilian exporters with the purpose of creating awareness about TBT issues; more than 5000 users had already subscribed. The services included: (i) information on technical requirements; (ii) identification of comment periods on TBT notifications; (iii) frequently asked questions; (iv) technical requirements classified per country and per product; (v) consultation on notifications; and (vi) the provision of full texts of technical regulations. The system also allowed INMETRO to assist Brazilian exporters who requested information on technical regulations or conformity assessment procedures by liaising with the enquiry points of trading partners. In some cases, an amendment or a suspension of a draft technical regulation could be requested.

Figure 7



	2001	2002	2003	2004	2005	2006	2007
Alert subscribers	0	348	476	657	949	1112	1257
Information Requested	0	347	703	1100	832	441	370
WTO notifications	85	534	720	633	854	986	909
Brazilian notifications	29	45	72	18	59	53	56

50. The representative of Brazil explained that when new notifications were received, the system sent an alert by e-mail to subscribers based on their profiles. Brazil had provided technical assistance for the establishment of export alert systems in some MERCOSUR countries.

[23] Presentation by Mr. Rogeiro de Oliveira Correa, INMETRO, Brazil.
[24] www.inmetro.gov.br

5. WTO Secretariat: Electronic tools available in the Secretariat

51. The representative of the SPS section of the WTO Secretariat provided information on the SPS Information Management System (IMS) which had been created in an effort to manage information and changes generated by increasing numbers of notifications and documentation with respect to SPS matters.[25] The SPS IMS, which was made available to the public in October 2007, was a tool that allowed Members and other interested parties to track SPS notifications and other SPS information, including specific trade concerns raised in the SPS Committee, according to their specific needs.

52. The SPS IMS contained information on all SPS notifications entered into a predefined template and enabled Members and the Secretariat to conduct electronic searches on any of the items contained in the notification. The syncronization between the SPS IMS, the Documents Online system and the CRN had facilitated inhouse harmonization and consistency of data. The system was also linked to the FAO's international portal on food safety, animal and plant health. Hence, it constituted a comprehensive source of official SPS information from not only the WTO but also other international organizations in the SPS area. The SPS IMS also permitted analysis of previously inaccessible data such as the level of implementation of transparency provisions of the SPS Agreement.[26]

53. The representative of the TBT section of the Secretariat recalled that information had been provided to the TBT Committee at an early stage of the development of the SPS IMS.[27] Work had started on exploring options to adapt the SPS application to the TBT-specific characteristics with the aim of setting up a similar system. Members would be kept advised of developments.

54. In response to a request made by the TBT Committee at the Fourth Triennial Review of the TBT Agreement,[28] the representative of the Documents Online section of the Secretariat presented a proposal for an interim solution to attach regulatory texts to TBT notifications.[29]

55. In summing up, the Moderator noted that electronic tools were used extensively in a wide range of transparency-related activities, for instance in preparing and submitting TBT notifications, handling of comments received and performing other duties in enquiry points. In particular, the use of alert systems for exporters had increased, even though it was at times difficult to engage industry in subscribing alert systems if costs involved were significant. He also stressed that developing country Members might face special difficulties in making use of electronic tools, both for lack of resources and technical expertise. Problems related to translations of regulatory texts remained and reference had been made to discussions taking place in the TBT Committee about exploring ways to enhance the sharing of unofficial translations.[30]

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[25] http://spsims.wto.org/

[26] G/SPS/GEN/804.

[27] Job(05)/33.

[28] G/TBT/19, para. 68(c)(ii).

[29] At its regular meeting on 9 November 2007, the TBT Committee agreed to establish a facility whereby Members may, on a voluntary basis, provide the WTO Secretariat with an electronic version of the notified draft text (attachment) together with the notification form. Guidelines for the use of the facility are contained document G/TBT/GEN/65. See paragraph 129, above.

[30] At its regular meeting on 9 November 2007, the TBT Committee agreed to set up a mechanism to facilitate information-sharing by Members on the availability of unofficial translations on the Internet. This would be done through the circulation, by the Secretariat, of a supplement to the original notification submitted by a Member. More information on this mechanism is contained in G/TBT/GEN/66. See paragraph 131, above.

D. SESSION 4 - TECHNICAL COOPERATION AND THE WORK OF ENQUIRY POINTS

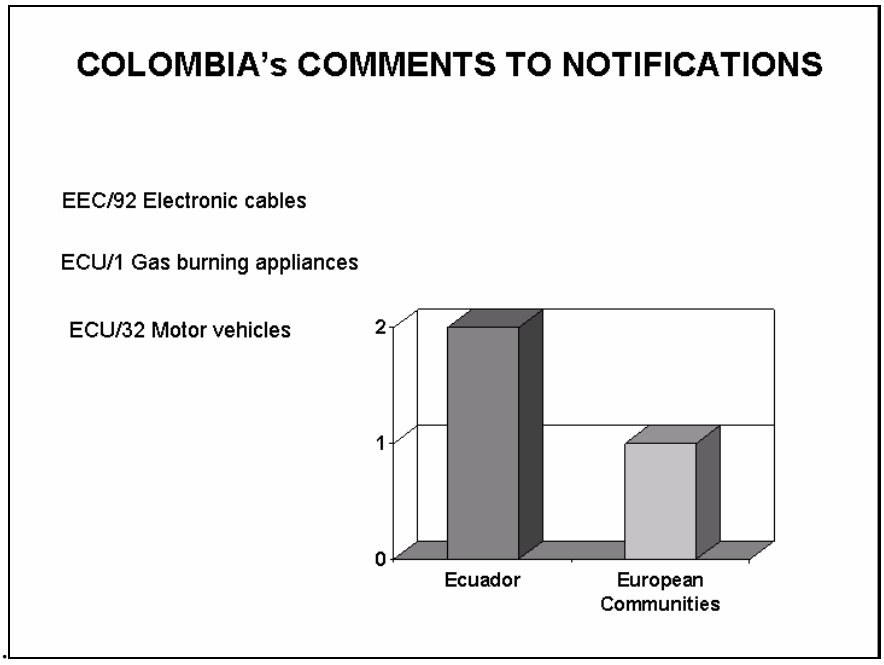
1. Colombia: The work of the Colombian Enquiry Point and technical cooperation[31]

56. The representative of Colombia presented the work of the Colombian Enquiry Point as well as its experience in receiving technical cooperation. The Colombian Enquiry Point housed the central database on conformity assessment procedures, trade agreements, technical regulations and sanitary measures that were notified. It was also liaised with the regulatory bodies in Colombia in the event that WTO Members had comments or questions on technical regulations generated in Colombia.

57. The Colombian Enquiry Point had experienced difficulties when requesting draft regulations from Members based on technical standards and requirements developed by private entities and to which the Enquiry Point was not permitted access. The standards body in Colombia was ICONTEC, which was a private, non-governmental organisation and elaborated voluntary standards. The private sector participated in drafting technical standards and rules through various committees. Both standards and technical regulations in Colombia were notified so that Members could provide comments. In Colombia, both draft and adopted technical regualtions were published in the national official gazette.

58. The Colombian Enquiry Point had benefited, along with other Andean Community countries such as Bolivia, Ecuador and Peru, from EU technical cooperation with regard to its quality programme and also on commercial practices. A technical regulatory department which facilitated document searches, commented on draft regulations and included an export alert system had been developed for the Andean Community countries and was open for use by other Members or the public. Each of the countries within the Community was responsible for updating its technical regulation and notification information. The Colombian Enquiry Point had also receiving assistance from the United States development agency, USAID.

Figure 8



[31] Presentation by Mr. Daniel Hector Rico, Head of Colombia's TBT Enquiry Point

59. Some areas where technical assistance was needed were identified. In particular, the Colombian Enquiry Point experienced difficulties in processing information and in analyzing and commenting on other Members' notifications (Figure 8, above). These were areas where technical cooperation was considered important.

2. Paraguay: The experience of the National Enquiry Point in Paraguay[32]

60. The representative of Paraguay said that the national Enquiry Point and notification authority in Paraguay, referred to as SNIN, had been established by Decree in 2005 as part of a project funded by the European Union – with the aim of promoting and strengthening the competitiveness of Paraguay's export sector. Upon completion of the project in 2008, SNIN would become a department of the Ministry of Trade.

61. The general objective of SNIN was to establish a trade information database system for Paraguay in the context of technical regulations, standards and conformity assessment procedures – so as to comply with the transparency requirements of the TBT Agreement and other international agreement obligations such as the agreements under MERCOSUR.

62. Specific activities of the Enquiry Point included: (i) to inform both rural and industrial producers, exporters and importers about regulations and requirements applied in export markets; (ii) to implement an information system based on notifications from WTO Members; and (iii) to provide assistance to the private sector in order to facilitate integration into international trade. Such assistance included the establishment of a database on national regulations generated by regulatory bodies in Paraguay and notifications submitted by WTO Members. The strategy of SNIN was to monitor and provide training in these areas. Monthly meetings held with the regulatory bodies had served to inform them of the importance of the Enquiry Point and to encourage inter-departmental cooperation to achieve good regulatory practices and transparency in the notification process.

63. The representative explained that the regulatory and notification procedures in Paraguay started with the regulatory bodies elaborating a draft technical regulation. This draft would be forwarded to the coordinating unit in the Ministry of Industry and Trade where it was analysed and disseminated. The Enquiry Point was working towards setting up a National TBT Committee to work on drafts and reach agreement on texts. During the period 2006-2007, Paraguay had submitted 14 TBT notifications to the WTO.

64. The process in Paraguay for reviewing notifications by other WTO Members started with the coordination unit of SNIN receiving from the WTO notification of draft technical regulations. The SNIN analyzed the text and disseminated the information to the regulatory entities; the private sector was also kept informed.

65. Paraguay was in the process of establishing a public website to create a link with its national notification system and the international sector. The website would contain national standards, standards of other countries as well as conformity assessment procedures, a sub-page on MERCOSUR, an export alert function as well as general information on the system. Another web-portal was under development. This website would give more detailed information to targeted users. Through this website, it would be possible to define users and institutions and their roles; define categories and sub categories for products; manage documents and handle comments made and received.

[32] Presentation by Mr. Bruno Lemont, Director General International Trade, Ministry of Industry and Trade

66. In response to questions raised with respect to the export alert system of the Andean Community, the representative of Colombia clarified that information was updated by each member country and background documents referenced in the notifications were also posted. Additional information on the work of the Colombian standardizing body and its link with the domestic industry was also provided. In particular, it was clarified that industry participated directly, through the work of technical commissions, in the elaboration of voluntary standards.

3. South Africa: South Africa's experience in assisting other members set up their Enquiry Points[33]

67. The representative of South Africa explained that the South African Bureau of Standards (SABS) was the national Enquiry Point and the body responsible in South Africa for TBT notifications. SABS provided various types of technical assistance to African countries, particularly in the SADC region. For instance, in the textiles field, SADC countries were granted sponsored access to South Africa's commercial textile testing laboratories and obtained responses to technical questions regarding testing of the textiles. Training was also provided in textile, leather and footwear standards. On metrology, training had been provided through workshops held in various African countries on non-automatic weighing instruments, mechanical counter scales and more recently on the Trade Metrology Act and regulations.

68. The South African Enquiry Point also provided free of charge specific training to enquiry points in various countries in Africa. Training courses offered by SABS were adapted to the level of experience of the requesting countries. In the case of very inexperienced countries, training would start from the point of how to write a national standard, participating in international standardizing bodies' meetings, standards editing, effective committee meetings and setting up standards information centres. Training would then be provided on how to set up a WTO enquiry point and countries' responsibilities under the WTO TBT Agreement (Figure 9, below).

69. The training courses had proved invaluable in the setting up of standards organisations in the SADC region and also included demonstrations on the electronic tools available and a step-by-step completion of the notification form. It was found that in completing the notification form the enquiry points often experienced difficulties in identifying the responsible regulatory body, listing the relevant articles and distinguishing between technical regulations and conformity assessment procedures. The training also covered dissemination of notifications from other WTO Members to national interested parties, handling of comments, compiling and analysing statistics and reporting to trade ministries.

[33] Presentation by Mrs. René Heydenrich, head of TBT Enquiry Point, SABS, South Africa.

Figure 9

70. The representative of South Africa informed the Committee that challenges identified in the last ten years for developing countries in the SADC region were mainly linked to: lack of background knowledge about the role of the notification authority and the enquiry point under the TBT Agreement; lack of awareness in the regulatory departments of the responsibilities of WTO Members in general; lack of support from the relevant ministries; non-transparent development of technical regulations; and lack of distinction between voluntary standards and compulsory technical regulations. Workshop participants were often at a level higher than the persons responsible for the day-to-day activities of the enquiry points and in many cases there was no knowledge transfer to the responsible officers. Establishing electronic notification systems was identified as an urgent area to be addressed by developing countries. However, South Africa did not have the resources to provide the technical input on developing the necessary databases to organise and manage the information. Training by peer countries, knowledge transfer, government awareness and appreciation of the importance of enquiry point work were considered crucial to the challenges faced by developing countries. In addition, it was suggested that the WTO could conduct awareness sessions with regulatory bodies.

4. Tunisia: Establishing a TBT National Enquiry Point in Tunisia[34]

71. The representative of Tunisia explained that the National Institute for Standardisation and Intellectual Property in Tunisia (INNORPI) was set up in 1982 under the Ministry for Industry, Energy and Small and Medium Enterprises. Its main activities were related to standardisation, certification, promotion of quality, training and intellectual property. Additionally, in 1996, INNORPI was designated the national TBT Enquiry Point for Tunisia.

72. INNORPI was a member of the ISO, IEC, CODEX, Arab Standardisation organisation (AIDMO), African Regional Organization for Standardization (ARSO) and European Committee for Electrotechnical Standardization (CENELEC). Since the start of INNORPI's certification and management activities in 1985, the organization had issued 293 certificates of conformity with Tunisian standards. INNORPI was also working with the European Union on a programme to modernise industry in Tunisia. The Tunisian Enquiry Point had entered into more than 20 cooperative

[34] Presentation by Mr. Amara Zayani, Head of TBT Enquiry Point, INNORPI, Tunisia.

agreements with its neighbours and French-speaking Southern Sahara countries on TBT matters and assistance in establishing and operating enquiry points.

73. Since the establishment of the TBT Enquiry Point at INNORPI, several workshops and information sessions had been organized in Tunisia to increase awareness of the TBT Agreement and the work of enquiry points. In 2005, a project for the development of the Tunisian Enquiry Point financed by the International Bank for Reconstruction and Development (IBRD) had been launched, which involved a loan of US$1 million. Performance indicators were established in the context of the project: (i) reducing delays in WTO notifications from five-six months in 2004 to two months; (ii) reducing time for access to texts of notified measures having an impact on Tunisian exports to two months (from an average of five to twelve months in 2004); (iii) digitalizing Tunisian standards and put them on-line; and (iv) disseminating information about regulations and standards which could have an impact on exporters.

74. The Tunisian Enquiry Point provided support services to exporters, including: (i) an "Information and Documentation Centre", operational since 2006; (ii) service for the supervision of standards and technical regulations with some 35 subscribers; (iii) the development of an export alert system; and (iv) consultancy to small and medium enterprises (SMEs) on standardization issues.

75. Visits to foreign enquiry points and standardization institutes such as the enquiry points of South Africa, Canada and France and had been used to carry out studies and adopt best practices. Tunisia had decided to adopt the French model of the AFNOR for standardization activities and the Canadian model for dissemination of information.

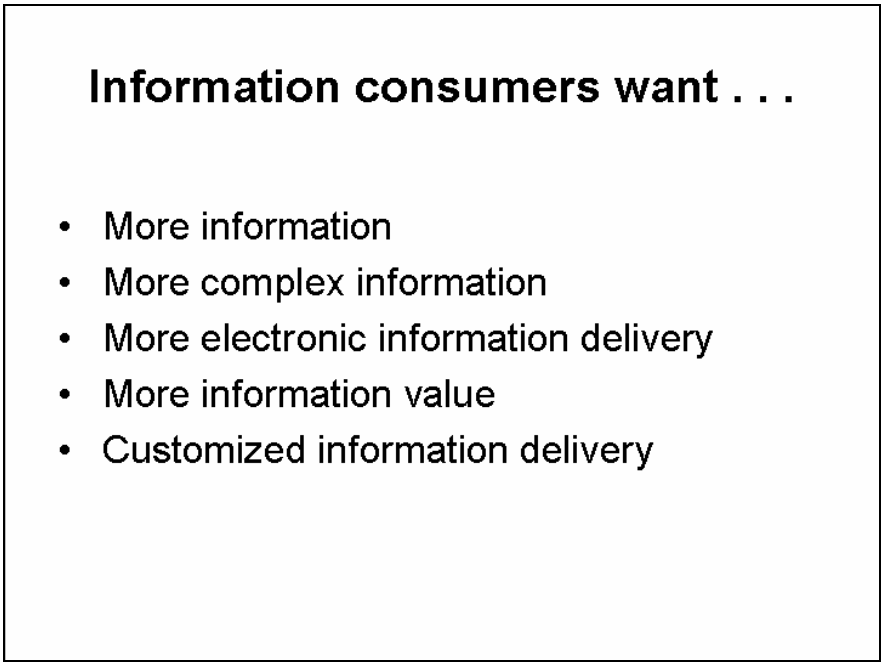
76. The export alert system was being developed with the aid of the World Bank. It would alert Tunisian exporters when new draft measures were introduced, provide access to full versions of draft regulatory measures and afford opportunity to formulate comments on other Members' measures. The export alert and supervision services were expected to assist Tunisian SMEs with the practical implementation of standards and technical regulations so as to prevent negative trade impacts as a result of technical regulations.

5. USA: National Enquiry Points - Preparing for the 21st century[35]

77. The representative of the United States stressed that the staff of the US Enquiry Point were, essentially, information professionals who used technology and electronic tools to create or manage information resources and services. Customers needs were increasingly sophisticated, comprehensive and complex in their quest to obtain a competitive edge. As most of the relevant information was freely and publicly available, the Enquiry Point was being approached to answer only the complex issues that interested parties could not research easily for themselves. The US Enquiry Point was increasingly being held accountable to its senior management for proving, assessing and analyzing the value of the information that it provided as there was a strong emphasis on assessing customer needs and requirements and continually improving the customer satisfaction rate.

[35] Presentation made by Ms. Anne Meininger, U.S. Enquiry Point, National Institute for Standards and Technology.

Figure 10



78. The trend was moving towards more electronic delivery of information at a faster rate with the ability to independently obtain customised information, without charge. To meet this need, the US Enquiry Point was in the process of converting its paper records, CD Rom and microfilm resources into electronic delivery, increasing its internet services and making available an online interactive standards specialist.

79. It had become apparent that there was an increased need for the enquiry points to actively promote their products and services, to maintain a high visibility and expand their customer base. The core competencies for information professionals to achieve the required "market presence" had been identified as having expert knowledge of the subject content, thinking critically, analyzing and evaluating information and information resources, thinking creatively in order to anticipate what information the consumer would need next and the ability then to produce a new product to meet that anticipated need.

80. Remaining abreast of emerging technology, building relationships and exchanging information were also key elements for enquiry points to achieve their objectives. The US Enquiry Point extended an invitation to WTO Members to register and use its "Notify US" service, which was a fully developed alert service.[36]

6. Brazil: Exchanging Information on WTO countries' regulations: A technical cooperation experience among Portuguese and Spanish language countries[37]

81. The representative of Brazil presented the experience of the Brazilian Enquiry Point, INMETRO. The objectives of the INMETRO were: to provide confidence to society concerning measurements and products and to promote harmonization in consumer relations as well as innovation and competitiveness through the use of its metrology and conformity assessment procedures. Brazil's Enquiry Point was particularly focussed on the needs of SME's and cooperated with Portuguese and Spanish language countries. In its effort to provide and exchange technical assistance, the Enquiry

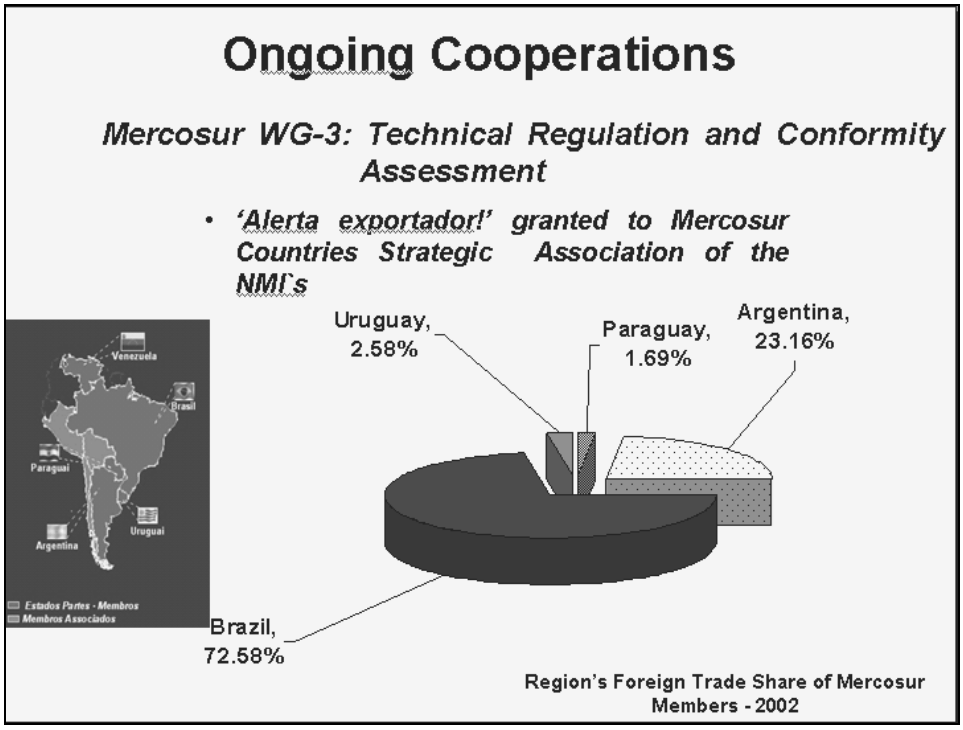
[36]http://tsapps.nist.gov/notifyus/data/index/index.cfm
[37] Presentation by Mr. Rogeiro de Oliveira Correa, INMETRO, Brazil..

Point also made use of triangular cooperation, meaning the inclusion of a third party such as UNIDO in its efforts to assist countries, for example Mozambique, in the establishment of its enquiry point.

82. The Brazilian Enquiry Point had as a result of visits to US and Canadian counterpart institutions, updated its alert bulletins to exporters into an electronic modular *Alerta Exportador!* system oriented to provide services to SME's via the internet.

83. The representative of Brazil highlighted some of the projects carried out by Brazil. For example, the MERCOSUR Agreement, signed in 2003/4 to promote trade cooperation among the signatory countries, included an undertaking to circulate domestic export alerts amongst the MERCOSUR members. Assistance was also being provided to the standardizing body in Cuba on the principles of the TBT Agreement and to Mozambique on the *Alerta Exportador!* system.

Figure 11



7. New Zealand: How do we measure effectiveness and operational improvement in National Enquiry Points?[38]

84. The representative of New Zealand pointed out that Article 10 of the TBT Agreement required that Members establish enquiry points but did not specify how they should operate; nor did it set performance levels. He noted that there were over 90 enquiry points located within national standards bodies, and there were almost 80 enquiry points located in non-standard bodies such as government ministries. The majority of Members had established only one enquiry point while some other Members had up to four enquiry points. The enquiry point in New Zealand was located within its national standards body, Standards New Zealand, which was a state-owned enterprise.

85. The New Zealand representative suggested that it would be of benefit to subject enquiry points to performance measurement in order to assess whether they fulfilled the objectives of Article 10. Areas that could be statistically monitored could be the number of enquiries, response

[38] Presentation by Mr. Craig Radford, Standards New Zealand.

times and complaints received about service. Members could monitor the performance of their own and their counterparts' enquiry points with regard to the extent and frequency of dialogue with other enquiry points, requests for advice, offers of assistance to fellow Members and comparing experiences.

86. It was noted that the Special Meetings on Procedures for Information Exchange were of particular assistance to enquiry points if relevant officials were able to attend. Additionally, the triennial reviews of the TBT Agreement and background notes on transparency provided useful information to enquiry points. The Secretariat and other parties had performed a number of surveys over the years that could form the basis of a structured information resource. The information was not, however, organised in a central database.

87. It was suggested that enquiry points implement a form of voluntary benchmarking adapted to different levels of development in countries. Comparative analysis of the benchmarking results could be used to identify which enquiry points performed better and why. It would help capacity building through more effective processes, improved use of resources, improved performance and stakeholder service.

88. It was also suggested that a working group be established, which could look at identifying areas for improvement and collating and storing information about the current situation in a standard format – so that it would be easily accessible and used to identify best practices in each activity. Open communication with a view to assisting one another would be required from participating enquiry points. The exercise could be repeated every two years to measure improvements.

8. ITC: Assistance provided to National Enquiry Points [39]

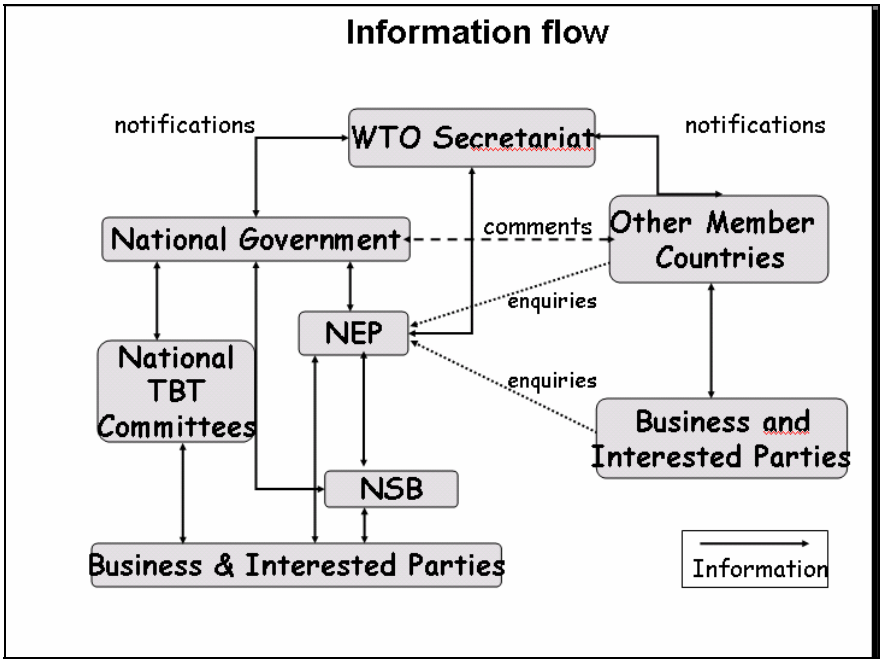
89. The representative of the International Trade Centre (ITC) explained that his organisation's strategic objectives were to strengthen international competitiveness of enterprises, develop the capacity of trade service providers such as enquiry points, support businesses, and support policy makers in integrating the business sector into the global economy. The ITC had published a book titled "Export Quality Management" in response to questions frequently asked by SMEs in various countries on standards and conformity assessment in trade. ASEAN countries and Brazil had published similar books for their enquiry points to provide information to their stakeholders. The ITC also issued several bulletins, a relevant one being the information retrieval on standards, technical regulations and conformity assessment which provided information on how exporters could obtain information on current and future technical requirements and export markets. The bulletin could be downloaded from the ITC website.[40]

90. The ITC had recently prepared a manual of model procedures and guidance notes for the implementation of the WTO TBT Agreement (due to the fact that staff turnover at enquiry points often left a gap in knowledge and experience). The manual provided five model procedures which could be used to: (i) respond to enquiries; (ii) respond to notifications made by other WTO Members; (iii) submit notifications to the WTO Secretariat; (iv) establish and operate a national consultative committee to coordinate and oversee implementation of the TBT Agreement; and (v) communicate and promote the activity of the enquiry point and notification authority.

[39] Joint presentation by Mr. Shyam Gujadhur, Senior Trade Adviser, and Mr. Bertrand Monrozier, Senior Trade Adviser, ITC.

[40] www.intracen.org

Figure 12



91. The ITC had also developed training material which could be used to disseminate information about standards and conformity assessment and which were focussed on how the WTO Agreements could benefit business. The main purpose of the project was to enhance the awareness and capacity of the private sector to cope with international quality standards and TBT and SPS issues.

92. The ITC was of the view that countries should have a national TBT committee, a national enquiry point and standards body with whom business-interested parties could interact. The ITC, in collaboration with TBT enquiry points, provided assistance to enhance the capacity of organisations in the private sector to obtain and disseminate information about current and future standards, technical regulations and conformity assessment procedures.

93. The ITC highlighted its "Coaching Programme on Information Management for Staff of National Enquiry Points". The coaching programme was intended for the staff of enquiry points in charge of delivering information services to their clients, in developing countries and in economies in transition. The emphasis was on "learning by doing" and customising the coaching approach for the relevant enquiry point. The training courses were at the initial stages and would be conducted in response to demand received from enquiry points. Examples of coaching sessions included: (i) identifying the target users of the enquiry point; (ii) preparing / submitting TBT notifications to the WTO; (iii) disseminating TBT notifications issued by other countries; (iv) finding the latest news in areas covered by the enquiry point; (v) identifying the best international sources on technical regulations and standards; (vi) developing a structured list of favourite links (bookmarks); (vii) developing simple databases; (viii) creating a web catalogue of publications; (ix) organizing and managing a website for visitors; and (x) preparing answers to Frequently Asked Questions (FAQ).

94. The ITC had found in its dealings with national enquiry points that the nature of the work needed to extend beyond monitoring of technical barriers to quality aspects, including familiarity with major information sources. A need identified was for the staff in charge of enquiry points to be able to develop and shape practical and simple services that would allow them to reach end users. The ITC was of the view that to improve efficiency and the effectiveness of national enquiry points, staff of the national enquiry points in developing countries and economies in transition, should have an

opportunity to work together to identify their main limitations, objectives and priorities and to then modify their services to become more effective and to reach end users.

95. It was noted that the ITC webpage on trade information had a manual available for performance measurement of information centres which could be used to identify and develop performance criteria benchmarks and measure progress of institutions such as enquiry points.[41]

96. In summing up the session, the Moderator stressed that "peer-to-peer" cooperation was seen as a useful way for Members to gain experience of other Members' implementation of the TBT Agreement in general, and of the work of enquiry points in particular. The point was made that technical cooperation should be targeted to the people involved in the day-to-day operation of enquiry points. It was noted that the cooperation and coordination between the national standardizing bodies, where enquiry points were often located, and the regulatory bodies was essential and it was suggested that awareness sessions could be conducted for regulators to sensitize them about the notification procedures and the importance of the work of the enquiry points.

97. Technical cooperation needed primarily to assist Members to comply with the obligations to the TBT Agreement, but it went further: Members needed also to cope with growing demands to obtain information from various economic operators. This had an impact on the functioning and the role of the enquiry points which was steadily evolving. It was clear from the presentations in several sessions that the use of electronic tools, especially export alert systems, was spreading.

98. Regarding the performance of enquiry points, it was suggested that the Committee could explore identifying performance indicators for the functioning of enquiry points as a way of improving services provided.

[41] http://www.intracen.org/tis/

ANNEX 2

REPORT BY THE CHAIRMAN ON THE FIFTH SPECIAL MEETING ON PROCEDURES FOR INFORMATION EXCHANGE UNDER THE TBT AGREEMENT

Report by the Chairman
Mr. Raiminder S. SIDHU

Regular Meeting of the TBT Committee of 9 November

1. Pursuant to its 1995 decision to convene, on a biennial basis, "regular meetings of persons responsible for information exchange, including persons responsible for enquiry points and notifications", the TBT Committee held its Fifth Special Meeting on Procedures for Information Exchange on 7 and 8 November 2007. Both Members and Observers were invited to participate.

2. Participation of capital-based officials responsible for information exchange in developing country Members was sponsored by the WTO through the Global Trust Fund; this allowed for the participation of 94 capital-based officials from developing country Members.

3. The Special Meeting provided Members with an opportunity to discuss, at a technical level, issues relating to information exchange and to review the functioning of notification procedures and the operation of enquiry points. Discussions were held in four panel sessions dealing with publication practices, notification practices, the use of electronic tools to enhance transparency, and technical assistance cooperation and the work of Enquiry Points. The final programme for the Special Meeting is contained in document G/TBT/GEN/59/Rev.1.

4. In the First Session, Members discussed publication practices under Article 2.9.1 of the TBT Agreement. While the obligation to publish is clearly set out in that Article, Members use different approaches to fulfil this obligation. The variations notwithstanding, a common element would appear to be increasing use of the internet as one means to fulfil the Article 2.9.1 obligation. For example, in Chile's case, information on regulatory work is provided through a new web-based portal on technical regulations and conformity assessment procedures. Similarly, in the United States, notices are available in the U.S. Federal Register – which is also available on the web. The Secretariat has collected information on official publications related to technical regulations, standards and conformity assessment in the form of a list, including website references, in document G/TBT/GEN/39/Rev.1.

5. In the Second Session Members discussed issues and challenges relating to notification practices. In particular, the importance of completing the notification format correctly and in a sufficiently informative manner was stressed. It was noted that when the full text of a draft measure was not available in one of the three WTO languages, it was essential that the description of the measure in the notification format be comprehensive and give a clear understanding of the nature of the measure. A clear and complete notification meant fewer requests for information to the Enquiry Points. Participants repeatedly emphasized the importance of access to full texts of notified documents: work on any notified measure – for instance in terms of providing comments – could only start when the full text was obtained. Hence a hyperlink in the notification format that linked directly to the draft text could greatly facilitate Members' work, and reduced the number of enquiries to the Enquiry Point.

6. In the Third Session, the growing importance of electronic tools to assist Members in their transparency obligations was highlighted. Delegations heard about websites used in China, Chinese Taipei, the European Communities and Brazil which showed how the internet could be an efficient

means of both providing information on regulatory activities as well as a platform for receipt and dissemination of comments – whether from other Members or national stakeholders. There is an increasing use of Export Alert mechanisms to inform exporters about proposed regulations that might affect their export and trade. These sites are often a useful means of filtering and sorting information contained in the notifications so as to better target such information for the private sector. The issue of translation of regulatory texts remains a concern for many Members, particularly developing country Members. It was pointed out that the Internet could be used to provide information about the existence of unofficial translations of regulatory texts.

7. Also during the Third Session, the Secretariat informed Members of a new facility in the SPS area for the on-line management of information relating to notifications, specific trade concerns and other SPS documents (the SPS Information Management System "IMS"). It was noted that efforts were underway in the Secretariat to adapt the facility so that it might be used also for TBT documents. Members were also informed about a mechanism that the Secretariat has developed that could allow for the on-line storage of attachments to notifications.

8. In the Fourth Session participants heard presentations about existing technical cooperation programmes, including between Members, aimed at enhancing the functions performed by Enquiry Points. The importance of technical cooperation between Members – particularly within the same region – was stressed. This type of "peer-to-peer" training was seen as a useful way for Members to gain experience of other Members' implementation of the TBT Agreement. Difficulties faced by developing Members in the implementation of Agreement were discussed. Emphasis was put the need to improve and increase know-how. In this regard, the ITC drew Members attention to a "Coaching Programme on Information Management for the Staff of National Enquiry Points on TBT". While it was pointed out that an efficient Enquiry Point might be able to function even with minimal resources, access and knowledge of electronic tools – in particular access to the Internet – remained a constraint in many developing countries.

9. Let me conclude by noting that the discussions over the last two days showed the significant advances Members have made in implementing the transparency provisions of the TBT Agreement. That said, there is room for making their functioning more efficient. It was even suggested that the Committee could seek to identify best practices for Enquiry Points so as to help them perform more effectively. I can only encourage a continued exchange of information between Enquiry Points. Also at the national level, the usefulness of cooperation among relevant national bodies was emphasized, for instance between standards bodies and regulators. In fact, the workshop showed that transparency is very much a fundamental pillar to good regulatory practice – a theme that the Committee will revert to in March next year.