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Committee on Technical Barriers to Trade

MINUTES OF THE MEETING HELD ON 28 JUNE 1996

Chairperson: Ambassador C. L. Guarda (Chile)

1. The WTO Committee on Technical Barriers to Trade held its fifth meeting on 28 June 1996.
2. The following agenda, contained in WTO/AIR/359, was adopted:

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A. REQUEST FOR OBSERVER STATUS BY THE UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

3. The representative of the United States expressed interest in the work of the United Nations Economic Commission for Europe. She requested the UN/ECE for additional information at the next Committee meeting to clarify the rules of regional Commissions, the rules of participation and the relationship and potential overlapping between UN/ECE and other relevant fora in the work of standard making. She drew attention to a number of standard activities undertaken by the UN/ECE regional Commissions and thought that some of them might be at present, out of reality. She recalled that the TBT Agreement encouraged Members to use international standards and to participate in their preparation. The United States had been active as an observer in the UN/ECE Working Party 29. However, due to budget considerations and other reasons, the US was seeking an effort to expand the work there to become truly international in nature. She drew attention to a 1958 agreement under the UN/ECE on mutual recognition of motor vehicle safety regulations and said that the US was interested in expanding the terms of participation of that agreement to allow it to develop into a global regulation rather than a European based one.

4. The Chairperson said that the United States' comments would be conveyed to the UN/ECE. The Committee agreed to grant observer status to the United Nations Economic Commission for Europe on an ad hoc basis, pending final agreement on guidelines for observer status for international intergovernmental organizations in the WTO.

B. IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT UNDER ARTICLE 15.2 BY MEMBERS

5. The Chairperson reminded that under Article 15.2 of the WTO TBT Agreement, each Member should promptly inform the Committee of measures in existence or taken to ensure the implementation and administration of the Agreement in the form of written statements. She drew attention to document G/TBT/1/Rev.3 which contained decisions on the contents of these statements adopted by the Committee. She noted that as had been agreed at the last Committee meeting, she had sent reminders at the beginning of May to Members from whom statements had still not been received. She informed the Committee that 29 Members had submitted their statements (G/TBT/2 and addenda). She found the situation disappointing and preoccupying due to the fact that the statements were one of the main indicators of implementation of the Agreement by Members and one of the main elements to be reported on at the Singapore Ministerial Meeting in December. She urged once again Members, especially those who had been signatories to the Tokyo Round TBT Agreement, to submit their statements under Article 15.2 as promptly as possible.

6. The representative of Cuba informed the Committee that Cuba had submitted its statement on implementation and administration of the Agreement on 19 June (G/TBT/2/Add.13) and that the National Bureau of Standards of Cuba had accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the Agreement).

7. The representative of Mexico informed the Committee that her delegation had submitted its statement and hoped that it would be circulated to Members shortly.

8. The representative of the European Communities shared the preoccupation of the Chairperson. He drew attention to the EC statement (G/TBT/2/Add.12) and explained that it included three parts. The first part contained the basic information as required, with a brief explanation on how the system of the European Communities worked as regard to the respective

activities of Member states and those of the European Commission. He said that WTO Members might receive notifications directly from Member states on their national regulations which had no EC level requirements and from the Commission on regulations at the EC level. However, in both cases, any follow up activities should be done with and through the Commission. The second part provided information on enquiry points and responsibilities in Member states. He said that there would be a corrigendum to provide more detailed information, in particular concerning Austria. The third part contained an annex providing information on the European system, such as the distinction between mandatory technical regulations and voluntary standards and between areas where there were EC rules and areas where there were none. There had been a mechanism for transparency and coordination since 1983 to prevent barriers to trade among Member states. The annex also described the overall concept of conformity assessment in Europe - the global approach and the CE marking for products, and provided explanation on how standards were developed under the European Standardizing Bodies: CEN, CENELEC and ETSI. He informed the Committee that all three of the European Standardizing Bodies had accepted the Code of Good Practice (Annex 3 of the Agreement).

9. The representative of Norway said that Norway had prepared its statement under Article 15.2 and that it would be submitted to the Secretariat (G/TBT/2/Add.15).

10. The Committee took note of the statements made.

C. NOTIFICATION FORMAT UNDER ARTICLE 10.7 OF THE AGREEMENT

11. The Chairperson drew attention to Article 10.7 of the Agreement that "Whenever a Member has reached an agreement with any other country or countries on issues related to technical regulations, standards or conformity assessment procedures which may have a significant effect on trade, at least one Member party to the agreement shall notify other Members through the Secretariat of the products to be covered by the agreement and include a brief description of the agreement." She recalled that at the last meeting, the Committee had requested the Secretariat to prepare a draft notification format under Article 10.7 for consideration. She drew attention to the draft format contained in document G/TBT/W/25 and proposed for its adoption.

12. The representatives of the United States, the European Communities and Japan supported the adoption of the draft format.

13. The representative of the United States recalled that during the Uruguay Round negotiations, it had been one of the US interests to obtain information from Members on mutual recognition agreements (MRAs) reached at a governmental level. She thought that it would be useful to receive notifications under Article 10.7 because currently there was no compendium containing such information. She informed the Committee that the United States had been engaged in mutual recognition negotiations with the European Union and was prepared to notify at the appropriate moment.

14. The representative of the European Communities thought that Article 10.7 should be interpreted as limited to agreements in the area of product related matters and not include those with broader intentions, such as technical assistance or regulatory cooperation. He said that his delegation was undergoing mutual recognition negotiations with Australia, Canada, Japan, New Zealand, Switzerland and the United States and would notify when the MRAs were concluded.

15. The Committee agreed to adopt the format contained in G/TBT/W/25 for notifications under Article 10.7 of the Agreement.

16. The Chairperson informed the Committee that on 19 March she had received a letter from the Chairman of the Working Group on Notification Obligations and Procedures regarding the question of the scope for simplification of data requirements and the standardization of formats. The item would be the subject of further discussions in the Working Group. However, it had been suggested that it might also be usefully discussed in the concerned Committees where there might be a greater concentration of specialized knowledge on these matters. She said that in her view, the formats which had been developed to meet the various notification requirements under the TBT Agreement had been reviewed regularly at the Committee meetings and at meetings on Procedures for Information Exchange. Members had throughout been conscious of the need not to overburden national administrations with notification requirements and to avoid at all costs seeking information going beyond what was absolutely necessary for the functioning of the TBT Agreement. However, Members were welcome to communicate to the Secretariat their views, if any, on (i) the identification of any formats currently in use which seek information going beyond the specific requirements of the relevant agreement and (ii) suggestions as to any additional areas where formats could be developed. She said that if necessary, the subject matter would be included in the agenda of the next meeting.

D. TECHNICAL ASSISTANCE

17. The Chairperson recalled that the Committee had adopted a Decision on "Technical Assistance" so that the provisions of Article 11 of the Agreement could be given operational significance (G/TBT/1/Rev.3). She drew attention to document G/TBT/W/26 prepared by the Secretariat containing information on technical assistance. She informed the Committee that the Secretariat was organizing specialized technical assistance seminars jointly with the ISO and ITC who had complementary technical assistance objectives in standards-related work. In 1996, two sub-regional seminars of this kind were being planned: in November, for the southern African countries and in December, for central American countries. Invitations and further information of the seminars would be sent to Members concerned. She said that the Secretariat was also looking into the possibilities of coordinating its technical assistance activities with Members and other international and regional intergovernmental bodies which were planning to provide technical assistance to other Members and that Members were welcome to contact the Secretariat for any possible joint efforts in technical assistance.

18. The representative of Canada informed the Committee that a regional seminar on the implementation of the TBT Agreement would be held in Montevideo in September 1996. He said that information would be available to interested Members.

19. The representative of the United States thanked the WTO Secretariat, Australia, Canada, Hong Kong, Japan, Malaysia, New Zealand and the Philippines for their presentations at the Seminar on Implementation of the Uruguay Round TBT Agreement held in Manila in May 1996. She said that 115 participants from 17 APEC economies attended the seminar and encouraged future activities of this nature.

20. The representative of Egypt welcomed the Secretariat's effort and coordination of technical assistance activities with other organizations. Referring to paragraph 3 of G/TBT/W/26, he thought that some of the goals and objectives listed, e.g., assisting Members to set up enquiry points, fulfil notification obligations and establish standardizing bodies and conformity assessment systems might be better achieved by other means and modes than by regional or sub-regional seminars. He suggested that the Secretariat look into other possibilities.

21. The representative of Venezuela welcomed the document and seminars being prepared by the Secretariat in cooperation with ISO and ITC. However, he thought that the Secretariat's

technical assistance activities coordinating with Members or regional intergovernmental bodies should not dictate its in-house efforts and possibilities. He supported the Egyptian proposal on considering other modes of technical assistance. Referring to the Committee's Decision on "Technical Assistance", he said that while technical assistance provided on a bilateral basis was always welcomed, multilateralization should be the goal. He noted that in the English version of the Decision: "... Whilst information would be multilateralized in this manner, technical assistance would continue to be provided on a bilateral basis.", the word "would" was used. It would mean that technical assistance provided on a bilateral basis was not a "must" condition. He requested that the same wording be used in the Spanish version of the Decision.

22. The Chairperson explained that the Secretariat was flexible in extending technical assistance in forms other than seminars, subject to available financial and human resources. She said that the Secretariat was ready to help delegations solving related problems, routine or specific, which could be dealt with in Geneva. In order to avoid duplication and due to the limited resources available, there had been a coordination effort in the technical cooperation activities. She said that the seminar mentioned by Canada would be participated by a representative of the Secretariat.

23. The representative of Djibouti raised concerns that the Committee's Decision on "Technical Assistance" did not mention technical assistance activities provided to least-developed country Members.

24. The Chairperson explained that when providing technical assistance to developing countries was mentioned, the least-developed countries were included. She noted that in the Secretariat, there was a specific programme providing technical assistance to the least-developed countries. She drew attention to Article 11 of the Agreement "Technical Assistance to Other Members". Article 11.8 said that: "In providing advice and technical assistance to other Members in terms of paragraphs 1 to 7, Members shall give priority to the needs of the least-developed country Members." She thought that the concern raised was well covered by the text of those provisions. She proposed that the wording of Article 11.8 be added to the Committee's Decision on "Technical Assistance".

25. The representative of Australia supported the Chairperson's view that when providing technical assistance to developing countries was mentioned, the least-developed countries were included.

26. The representative of Cuba supported the Chairperson's proposal.

27. The representative of Morocco supported the Chairperson's proposal. However, he drew attention to Article 12.7 of the Agreement: "... In determining the terms and conditions of the technical assistance, account shall be taken of the stage of development of the requesting Members and in particular of the least-developed country Members." and asked for clarification.

28. The Chairperson explained that Article 12.7 contained provisions for "Special and Differential Treatment of Developing Country Members". The current discussions concerned an adopted Decision of the Committee, referring to Article 11 "Technical Assistance to Other Members".

29. The Committee agreed to add the following sentence to its Decision on Technical Assistance: "Members will take into account the provisions of Article 11.8 of the TBT Agreement when considering requests for technical assistance from the least-developed country Members."

30. The representative from the International Trade Centre informed the Committee of the projects provided by the ITC assisting developing countries for the following up of the Uruguay Round. He said that the projects had started in 1996 and would last for three years. The 1996 programme included African countries and least-developed countries. The programme was prepared in response to the need for information on the Uruguay Round Agreements in business communities of developing countries and economies in transition. The programme included three main elements: (i) Dissemination of information through two types of seminars: business guide seminars which covered all WTO Agreements and technical workshop focusing on a specific Agreement such as the TBT Agreement, SPS Agreement and Agreement on Textile and Clothing, or aspects on environment and trade, in particularly eco-labelling and eco-packaging. A handbook "Business Guide to the Uruguay Round" summarizing the WTO Agreements had been prepared jointly by ITC with the Commonwealth secretariat; (ii) Identification of priority and main needs for follow-up actions in countries where seminars and workshops were taking place; and (iii) Capacity building through training of local resources and expansion of data-base with background material, such as technical notes, leaflets and guides. He said that an ITC paper providing more information on ITC's work was available at the back of the conference room.

31. The representative from the Codex Alimentarius Commission informed the Committee that his organization located in Rome at the Food and Agriculture Organization of the United Nations headquarters (FAO) had 154 member countries. It was an inter-governmental body established in 1962 to prepare recommended international food standards and related codes of practice. Each Codex member country had a Codex Contact Point which received and disseminated all Codex documentations and standards and coordinated country inputs into Codex negotiations and standards development. Codex standards covered basic food identity and composition, food labelling, appropriate packaging and other food quality and safety factors. He said that given the international nature of Codex standards, the quality aspects of Codex work was extremely important to the implementation of the TBT Agreement. FAO had for the past 40 years given technical advice and assistance to its member countries on how to strengthen food quality and safety control systems by governments, food producers, processors and marketers. This advice and assistance helped countries to assure that domestic and export food supplies met basic quality and safety requirements of Codex standards and reduced international trade problems. He drew attention to a paper on Codex and FAO technical assistance programmes which had been made available at the meeting. Among other things, the paper gave details on a series of 14 seminars and workshops held jointly with the WTO or as a preliminary to Codex meetings to explain the relationships between Codex work and the SPS and TBT Agreements. He said that in this regard, FAO was pleased to offer its full cooperation with the WTO, either through participation in technical seminars or through more in-depth technical assistance projects on country and regional levels.

32. The representative from the ISO said that ISO/DEVCO (ISO programmes for developing countries) was pleased to cooperate with the WTO and ITC in technical cooperation activities.

33. The Committee took note of the statements made.

E. INITIAL EXCHANGE OF VIEWS TO PREPARE FOR SUBSTANTIVE DISCUSSION ON ARTICLE 12.10 AT THE COMMITTEE'S AUTUMN MEETING

34. The Chairperson drew attention to a letter she had received on 10 May 1996 from the Chairman of the Council for Trade in Goods regarding a request from the Chairman of the Committee on Trade and Development for information on work undertaken to implement the special provisions in the TBT Agreement for developing countries. She said that she had placed on the agenda of this meeting an item regarding Article 12.10 of the Agreement that:

"The Committee shall examine periodically the special and differential treatment, as laid down in this Agreement, granted to developing country Members on national and international levels." She proposed that the Committee agree to conduct such an examination at its next meeting in October.

35. The Committee agreed to conduct at its next meeting, a periodic examination under Article 12.10 of the Agreement on the special and differential treatment granted to developing country Members. The Chairperson would respond to the Chairman of the Council for Trade in Goods on the development of this issue.

F. REPORTING PROCEDURES FOR THE SINGAPORE MINISTERIAL CONFERENCE

36. The Chairperson recalled that on 16 April 1996, the Chairman of the General Council had made a statement concerning reporting procedures for Subsidiary Bodies of the General Council to the Ministerial Conference (WT/L/145). It had been recognized that each Standing Body of the WTO should decide on the format of the report which it deemed most appropriate for consideration of relevant issues by the superior Body. It had been suggested that the report should include at least the following elements: (i) implementation of the Agreement; (ii) progress concerning work under the Built-in Agenda; and (iii) an indication as appropriate of issues and problems which had been identified and recommendations if any. She said that in order to facilitate discussions and based on the recommendations contained in document WT/L/145, the Secretariat had identified in document G/TBT/W/27 possible items to be included in the Report of the TBT Committee. She noted that in order to enable the General Council to adopt its report to the Ministerial Conference on 7 November, the TBT Committee would need to adopt its own report at its meeting on 16 October in time to submit it for consideration to the Council for Trade in Goods at its meeting on 1 November. In view of the tight schedule and the time needed to prepare the Report, Members had been requested to provide suggestions, if any, concerning the format and content of the Report of the TBT Committee at this meeting. Any further suggestions should be submitted before the end of August so that enough time would be provided for discussions, if needed, and that a draft Report could be prepared and circulated to Members at the beginning of October for consideration and adoption at the Committee meeting on 16 October.

37. The representative of the European Communities welcomed including in the Report elements regarding the Code of Good Practice for the Preparation, Adoption and Application of Standards. He indicated that his delegation might put forward proposals on a possible work programme for 1997, focusing on the implementation of the Code of Good Practice and its effects on international standards or mutual recognition agreements.

38. The representative of Canada suggested that discussions of eco-labelling being carried out in meetings of the TBT Committee and Committee on Trade and Environment, whether jointly or separately, be included in the Report under paragraph 3(c) "Main issues being discussed at the Committee meetings", given the fact that there had been a positive dynamic created in the discussions of both fora. He said that his delegation might come back with some specific suggestions regarding the triennial review of the Agreement, listing out some themes such as equivalence and conformity assessment.

39. The representative of the United States thought the outline in document G/TBT/W/27 was comprehensive. She proposed to include the status of implementation of Article 10.7 in the Report, since the related notification format had been adopted by the Committee. She indicated that her delegation would submit further suggestions.

40. The representative of Japan supported the items under paragraph 3 of G/TBT/W/27. However, he said that the Report should be on a factual basis. He suggested that a list should be presented, indicating the number of notifications made under Articles 2.9.2, 2.10.1, 3.2, 5.6.2, 5.7.1 and 7.2 by Members and by Articles.

41. The representative of Australia welcomed document G/TBT/W/27 and thought that it was comprehensive. He indicated that his delegation would submit further suggestions.

42. The representative of Argentina asked if the item on "Decisions and Recommendations adopted by the Committee" included recommendations at the Ministerial level. He questioned its relationship with point (iii) in document WT/L/145 "an indication as appropriate of issues and problems which have been identified and recommendations if any", in particular with respect to deadlines for notifications.

43. The Chairperson explained that if there were any special recommendations adopted at the ministerial level, proposals would have to be made. For example, if the factual part of the Report showed that a certain number of delegations had not fulfilled their notification obligations, a recommendation might be taken to urge Members to comply with all notification obligations under the Agreement. However, before it could be done, proposals would be needed. She thought that the existing structure of the document would allow the incorporation of any further suggestions by Members, including recommendations adopted at the ministerial level.

44. The Committee took note of the statements made and agreed to request the Secretariat to draw up a draft Committee Report to the Singapore Ministerial Conference for consideration and adoption at its next meeting. Any further suggestions by Members would be submitted before the end of August.

G. STATEMENTS ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

45. The representative of Canada raised concern about the potential adverse trade effect of a EC Regulation (EC) No. 1107/96 dated 12 June 1996 relating to the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of the Council Regulation (EEC) No. 2081/92. His delegation understood that the Regulation had been recently adopted by the Commission. The formal registration process of some 318 product names had been completed with the publication of the EU's Official Journal of 12 June 1996. The products in question represented only an initial list and more than 1400 product names were currently under consideration for protection under the relevant EU measure. He said that this could prevent the export of products from Canada using these names, even if the products clearly indicate their geographical origin so as to avoid misleading the public. He said that the scope of the impact was difficult to determine in the absence of a complete list of products to be covered by the Regulation.

46. He recalled that Canada had written to the EC in early May expressing concern on the issue and seeking confirmation of the Commission's intention to notify the measure under Article 2.9 of the Agreement. He regretted that no response had been received and no opportunity had been provided for advance knowledge of the proposed regulation "at an early appropriate stage when amendments can still be introduced and comments taken into account". He questioned about the status of the regulation and the process by which Canada's concerns could be registered.

47. The representative of New Zealand shared the concern expressed by Canada. He said that his authorities had been following the issue with interest as New Zealand had for several years been negotiating with the EC an agreement on trade in wine. He said that considerable progress had been made since New Zealand was prepared to offer comprehensive protection for EC geographical indications which went beyond any other countries and those provided under the TRIPs Agreement.

48. The representative of Australia informed the Committee that on-going bilateral discussions had been taking place between his authorities and the EC. He shared the concerns expressed by Canada and New Zealand and requested information on the list of products covered by the EC Regulation.

49. The representative of the European Communities said that the question of "Appellation d'origin" was a grey area matter because it looked like labelling requirements under the TBT Agreement, but at the same time might fall into the coverage of the TRIPs Agreement. Legal clarification on the issue was under way and necessary steps would be taken if the result indicated that the issue related to the TBT Agreement. He explained that because the requests for information by other Members had been sent to other EC agencies rather than the EC enquiry point, it had caused some delay in replying. However, information would be provided shortly, in particular on the list of products covered by the Regulation.

50. The representative of Canada welcomed the information provided by the EC representative. He looked forward to the result of the EC's review and hoped that it would take into account the Canadian comments.

51. The representative of the European Communities drew attention to a TBT notification G/TBT/Notif.95.336 concerning Canadian side door strength test for motor vehicles. His delegation had made comments on the Canadian regulation suggesting that the proposed test did not represent the technical characteristics of the actual accident for which it would serve. He questioned whether Canada was to continue using the proposed test or to follow other tests, such as those available in Europe.

52. The representative of Canada said that he noticed from the work of UN/ECE Working Party 29 that crash impact tests between North America and Europe were contentious. He said that he would come back with further information.

53. The representative of the United States drew attention to two issues concerning standards in the European Communities which she thought were used as technical barriers to trade to keep out competition of importing products. The first one related to gas connection valves which a US company had been selling successfully to the EC until 1988 when EC member states progressively introduced national standards based on requirements in terms of design rather than on performance or safety. As a result, the products had to obtain approval for each EC market and could not meet those design based standards. She noted that at one time, gas connection valves had been thought to be covered by the EC Gas Suppliance Directive and relevant CE marks had been issued by the British Standards Institution (BSI). However, later a suggestion had been made by one of the Member state producers that the EC Directive did not cover such products and the suggestion had been subsequently agreed by the European Commission. As a result, BSI had to withdraw the CE marks from the products not for safety reasons since the products had passed all the safety tests, but for the reason that the products did not meet the design based requirements.

54. She recalled that numerous contacts had been approached by her authorities with the Commission and its member states on government and standardizing body levels. She noted that

the US products were at present approved in Belgium and progress had been made in the negotiations with BSI to modify and remove design requirements from the UK standard so that the US products would be allowed on the UK market. However, after years of work on the subject, she understood that CEN had now formed a technical committee to look into the possibility of developing a relevant standard at the European level. She said that this CEN standard would be based on the Member state's standard which contained design requirements. She noted that the US and other WTO Members were restricted to participate in the development of CEN standards and that it was difficult to obtain timely information. She questioned the development of EC regional standards with relation to EC member states' national standards and if Member states would have to revise their national standards accordingly after the adoption of relevant EC regional standards. She understood that once a regional standard had started to be developed at EC level, there would be a standstill for Member states not to introduce any new requirements or make any changes to related national standards.

55. She noted the obligations under the Agreement that Members should, wherever appropriate, specify their mandatory technical regulations or voluntary standards based on product requirements in terms of performance rather than design characteristics and that relevant international standards should be taken into consideration. She said that in this case, the relevant international standard was based on safety considerations. She sought cooperation from the EC and its Member states to consider revising the standards in such a way that they comply with the obligations of the Agreement. Her authorities would continue their efforts so that the design based requirements would be removed from those standards. She said that further information regarding the issue could be provided by her delegation to interested Members.

56. The second issue concerned a draft European CEN Standard PREN 544 dated June 1994 for asphalt shingles. She said that according to US industries, the draft standard was moving to the final draft stage with voting anticipated within a month. The standard was not based on performance and durability requirements and its key criteria which was the amount of asphalt per square meter would be revised in such a way that US shingles would not be able to meet. She sought information from the EC bilaterally or through the Committee.

57. The representative of the European Communities said that it was a positive approach that CEN was starting to develop the common European standard for all Member states. If there was a CEN standard in existence, by law all relevant national standards had to be withdrawn. The work of CEN involved national standardizing bodies of Members states and once work commenced in CEN whether mandated by the Commission or initiated by CEN, no national standardizing body would continue to work on the related standards. He said that CEN had accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards and thereby CEN would comply with the obligations of the Code. Transparency would be increased and CEN would, when appropriate, specify standards based on product requirements in terms of performance rather than design or descriptive characteristics.

58. The representative of the United States thought the standstill situation of standards development within the EC not acceptable and said that she would come back to this issue.

59. The representative of the European Communities drew attention to two notifications made by the United States: G/TBT/Notif.96.20 on Care Labelling of Textiles and G/TBT/Notif.96.46 on Tea Standards. He noted that there were related ISO standards in existence: ISO 37.20 for tea and ISO37.58 for textile labelling. He questioned why those ISO standards were not used in the US draft regulations.

60. The representative of the United States explained that her authorities had considered using the relevant ISO standard for care labelling of textile. However, the ISO standard posed some difficulties because of its copyright provisions. She informed that there had been on-going discussions on the issue and she would provide further clarification.

61. The Committee took note of the statements made.

H. PRESENTATION BY THE REPRESENTATIVE FROM THE INTERNATIONAL LABORATORY ACCREDITATION CONFERENCE (ILAC)

62. The Chairperson recalled that at the last meeting, she had proposed that a representative from the ILAC (International Laboratory Accreditation Conference) be invited to give a presentation at this meeting informing the Committee of the latest developments in the work of ILAC regarding conformity assessment systems before the Committee started discussions on its recommendations relating to conformity assessment procedures.

63. The representative from the ILAC explained the necessity of accreditation in the field of conformity assessment. In the market place, firstly: consumers and regulatory authorities put requirements and expectations on products and producers, secondly: independent checks were performed to ensure consumers and authorities that products and producers fulfil the requirements and thirdly: accreditation bodies supervised the work of conformity assessment operators (laboratories, certification bodies and inspections bodies). Accreditation bodies ensured that conformity assessment operators were competent, that they performed their work in a similar, if not identical way, and that the integrity and quality of their work were not jeopardized by the economic competition to which they were subject to. In order to do their tasks well, accreditation bodies should not work in competition. For that reason, most countries had appointed one national accreditation body. In order to facilitate international trade by one stop testing, inspection or certification, it was necessary that all national accreditation bodies operated in the same way, following the same standards and procedures.

64. He said that this was where ILAC came into the picture. ILAC had been existing since 1977 acting as a cooperation on a multilateral level among accreditation bodies for laboratories and to a certain extent, inspection bodies. Currently, ILAC had over 40 members and was undergoing a restructuring phase. In September 1996, it would change its title into International Laboratory Accreditation Cooperation and would become a more formal international organization with national accreditation bodies as members. ILAC would have strong liaisons with its stakeholder such as the WTO, international consumer organizations, laboratory organizations and standardizing bodies. One of the main aims of ILAC was to harmonize accreditation procedures and to assist developing countries to set up national accreditation schemes, if required. For doing so, ILAC would make use of regional accreditation cooperations such as the European Cooperation for Accreditation of Laboratories (EAL) and Asian Pacific Laboratory Accreditation Cooperation (APLAC).

65. He noted that since 1994, ILAC had a sister organization IAF (International Accreditation Forum) which was established for the cooperation between accreditation bodies in the field of certification. IAF was structured in a similar way to that of ILAC. He believed that within a few years, both organizations would become one since similar exercises had been taking place on a national level. He thought that when all national accreditation bodies under ILAC and IAF were established to work in the same way, it would be possible for products to go through conformity assessment procedures in one country with the results being accepted in other countries without any new conformity assessment. Harmonization and acceptance would reduce production costs and in this respect ISO, ILAC and IAF would provide the mechanisms. Articles 5.4 and 5.5 of

the TBT Agreement provided disciplines for harmonization of conformity assessment procedures, including accreditation procedures. Articles 6 of the Agreement encouraged mutual recognition of conformity assessment which had been the driving force of the work in ILAC. With respect to Article 9, the new ILAC would make use of existing regional systems and stimulate formation of new ones.

I. DECISIONS AND RECOMMENDATIONS ON CONFORMITY ASSESSMENT PROCEDURES

66. The Chairperson noted that under Articles 5.4 and 6.1.1 of the Agreement, Members were encouraged to use relevant guides or recommendations issued by international standardizing bodies as a basis for their conformity assessment procedures and as an indication of adequate technical competence of the relevant conformity assessment bodies when reaching mutual recognition agreements with other Members. She recalled that at the last meeting, a representative from the ISO had been invited to give a presentation on the latest developments in ISO and IEC work relating to rules and guides in conformity assessment activities (G/TBT/M/4). Some of the ISO/IEC guides mentioned might be relevant to Articles 5.4 and 6.1.1.

67. She noted that the Tokyo Round TBT Committee had recognized three ISO/IEC Guides on testing and inspection activities and recommended their use. They were: (i) ISO/IEC Guides 25 - General Requirements for the Competence of Calibration and Testing Laboratories; (ii) Guide 39 - General Requirements for the Acceptance of Inspection Bodies; and (iii) Guide 43 - Development and Operation of Laboratory Proficiency Testing. She proposed that the Committee consider if it was necessary to adopt the relevant recommendations taken by the Tokyo Round TBT Committee on "Testing, Inspection and Type Approval" as contained in document G/TBT/W/14.

68. Regarding the other ISO/IEC Guides mentioned in G/TBT/M/4, she proposed that the Committee consider setting up a small technical group to study if they might contribute to further the objectives of Articles 5 and 6 of the Agreement. She suggested that the Committee reflect on this and come to the next meeting prepared to discuss her two proposals.

69. The Committee took note of the statement made.

70. In relation to the Decisions and Recommendations taken by the Tokyo Round TBT Committee, she recalled that the Committee had held discussions on the Decision on an ad hoc arrangement with the FAO/WHO Codex Alimentarius Commission on "Avoidance of Duplication" (G/TBT/W/14) and the item had been left pending (G/TBT/M/4). She said that following her informal contacts with interested delegations, she proposed that the Committee consider the Decision no longer necessary.

71. The Committee agreed that the Decision taken by the Tokyo Round TBT Committee on "Avoidance of Duplication" was no longer necessary.

J. ECO-LABELLING

72. The Chairperson recalled that the issue of eco-labelling had been taken up at various meetings of the Committee on Trade and Environment. At the CTE meeting of 20-21 June 1996, there had been a proposal for a joint formal/informal meeting of the CTE and the TBT Committee to be held on 24-25 July 1996 to further pursue discussions on eco-labelling.

73. The representative of Canada recalled that his delegation had made a substantive intervention and proposal on eco-labelling at the 20-21 June CTE meeting. Given that the focus of discussions on eco-labelling in both the CTE and CTBT had been the TBT coverage of eco-labelling programmes, he requested that the Canadian intervention made at the last CTE meeting be incorporated into the minutes of this meeting.

74. He outlined his delegation's views on what was attainable in Singapore. He said eco-labelling programmes were valid environmental policy instruments, which must be developed and implemented in a WTO consistent manner. He recalled the proposed four principles in Canada's paper (WT/CTE/W/21). There was support for Canada's position that eco-labelling programmes were covered by the TBT Agreement and its transparency-related disciplines. However, extending the scope to include non-product-related PPMs raised legitimate concerns, particularly the precedent that explicit recognition could create. Sharing some of these concerns, Canada proposed the scope of the TBT Agreement only be extended for voluntary programmes. Recognizing eco-labelling programmes were based on life-cycle approaches (LCA), resulting standards were a mixture of criteria based upon performance, product-related and non-product-related PPMs. LCA did not prejudge the type of standard that would emerge. For example, eco-labels for home appliances generally included performance standards pertaining to energy or water use. Product-related PPMs were pesticide residues or food additives. Eco-labels on products based on either of these standards did not differ from other labels or standards in terms of the TBT Agreement. Certain Members felt eco-labels based on non-product-related PPMs were different. Paper products were an example, given sustainable forest management. The development of product criteria through LCA could not predict *ex ante* which type of standard would predominate. As these programmes became more sophisticated in their use of LCA, criteria would be based on a mixture of the three types of standards outlined above. As such, it was not practical to separate coverage of eco-labelled products based on the nature of the standard. All criteria involved in granting the eco-label should be subject to similar disciplines.

75. He distinguished between TBT coverage (i.e. eco-labelling programmes were established by standardizing bodies which conferred labels on products that met their standards) and scope (i.e. whether non-product-related PPMs were within the scope of the TBT Agreement). Ambiguous wording of the definition of standards in the TBT Agreement left open whether non-product-related PPMs were within its scope. Rather than having panels decide, it was preferable to discuss and eventually determine under which circumstances their use could occur. This would provide greater predictability and security to both exporters and policy makers. Canada had consulted with its business community on eco-labelling. While business leaders did not like non-product-related PPMs, they acknowledged them to be a market reality. Business already dealt with systems involving PPMs, such as quality management standards (ISO 9000), and environmental management standards (ISO 14000). Business leaders were more concerned about transparency and consultation than whether a standard was based on non-product-related PPMs. If the legitimate concerns of business were not considered, recourse to dispute settlement was needed. This "transparency with teeth" was the essence of the TBT Agreement. The concern was that non-product-related PPMs reflected only particular domestic technologies and environmental absorptive capacities. Adherence by eco-labelling programmes to the TBT Code of Good Practice provided industry with the assurance they would know what was under development, could participate in the development of standards, and that these would not be based solely on domestic considerations. For this reason, Canada's business leaders felt Canada's proposal to subject non-product-related PPMs to multilaterally-developed criteria was valid if such criteria referred to guiding principles, methodologies and procedures, rather than specific values or indicators. Multilateral development of principles, methodologies and procedures was distinct from agreement on individual standards and was sound on environmental and trade grounds.

From an environmental perspective, agreement on the former recognized policy requirements differed between countries, whereas values or indicators could differ, reflecting sound environmental and scientific assessment. From a trade perspective, use of common methodologies with explicit recognition of different policy requirements was the basis for equivalency approaches, reflected in the paper by the Canadian Environmental Choice programme. Canada had tried to operate Environmental Choice in as least trade restrictive a manner as possible and had notified it under the TBT Agreement (G/TBT/Notif.96.190).

76. Informal discussions with several delegations indicated there was recognition the WTO needed to address the issue of non-product-related PPMs in voluntary eco-labelling programmes. However, for several other delegations discussion of this issue required reflection given its complex nature and possible repercussions. The Report should reflect both views and reaffirm the TBT Agreement covered all eco-labelling programmes, without prejudice to the issue of scope with respect to non-product-related PPMs. The post-Singapore agenda should include work on the latter issue jointly with the TBT Committee (CTBT). This meant voluntary eco-labelling programmes would be notified as per the Code of Good Practice and subject to TBT disciplines related to standards and voluntary labelling programmes. Canada would work to secure agreement on points (a), (b), and (c) of its proposal with consideration of point (d) post-Singapore and would circulate a draft Decision prior to the July CTE meeting. He noted that the Canadian intervention was essentially proposing to address the transparency and related issues of eco-labelling by the Singapore Ministerial Conference and to consider the difficult issue of non-product related PPMs with the post-Singapore work programme.

77. In Canada's view, discussions of eco-labelling in the WTO should occur in a coordinated and integrated manner and that the subject matter could not be addressed only in the CTE or the CTBT. He recalled that the CTE's mandate was "to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required ...". The CTBT's mandate was more focused on the question of the coverage of the TBT Agreement with respect to eco-labelling programmes. Thus the CTE could not fulfil its mandate without direct input or participation of the TBT Committee. While theoretically the CTBT could address eco-labelling independently of the CTE, in practical terms this was not viable given that the CTE has eco-labelling as part of its work programme. For both substantive and process reasons, Canada had sought and obtained agreement in the May CTE Stocktaking that eco-labelling would be discussed in future joint sessions with the CTBT. He believed that it was equally in the interest of the CTBT to respond to the CTE's request for future joint sessions and that such joint discussions were the most sufficient and effective way to proceed, if Members wished to make substantive progress on the issue of eco-labelling by the Singapore Ministerial Conference.

78. The representative of India said that India did not subscribe to any interpretation of the TBT Agreement which recognized eco-labelling based on life cycle approaches, incorporating non-product-related PPMs. Attempts to incorporate the latter in eco-labels restricted market access of developing countries, led to the freezing of technology, restriction of product choice, and inflexibility of standards. It undercut the comparative advantage of developing countries. If the TBT Committee was going to look at the issue of eco-labelling at all, it would be in the area of the impact of eco-labelling on trade, in particular on the trade of developing countries. Article 12 of the TBT Agreement was relevant. It stipulated more favourable treatment for the "special development and trade needs" of developing countries and addressed the need to build capacity to ensure effective market access, provide financial assistance and transfer know how and technology. Reference to the TBT Agreement must take into account the TBT Agreement's objective to ensure measures such as labels did not cause unnecessary barriers to trade. India supported the transparency disciplines of eco-labelling programmes which, in addition to notifications, would also allow exporters, especially those from developing countries, to

participate in the development of programmes so that their legitimate concerns could be incorporated. India was interested in examining the possibility to allow eco-labelling programmes for multilateral recognition and equivalency which was important to exporters and producers of developing countries. He said that since the purpose of a joint meeting of the CTBT and CTE at this specific time was unclear, there was no need to have the joint session of the two Bodies. His delegation would consider having joint meetings, if there were urgent issues regarding providing provisional technical information by the TBT Committee to the CTE and that such information and request for assistance from the CTE were available.

79. The representative of Egypt said that his delegation had supported joint meetings of the CTBT and CTE and had been participating actively in discussions on eco-labelling. However, such informal joint meetings could only be useful if they were adequately prepared for. Since the nature and purpose of the joint meeting were not clear and due to the heavy work load for both the CTBT and CTE preparing for the Singapore Ministerial Conference, his delegation did not support a joint meeting at this point in time. He said that there were several issues relating to eco-labelling. His delegation would like to address those issues in a balanced way without being limited to the angle addressed by the TBT Committee. He did not share Canada's interpretation on the scope of the TBT Agreement. The issue was not how, but whether to include non-product-related PPMs.

80. The representative of Korea shared the view expressed by Egypt. He said that if it was agreed all eco-labelling programmes were covered by the TBT Agreement, this would acknowledge eco-labelling based on non-product-related standards were within the TBT Agreement's scope. The issue of TBT coverage included that of its scope. As such, points (a), (b), and (c) of Canada's proposal could not be separated from point (d). Multilaterally-agreed guidelines were similar to the *ex ante* approach in Item 1. Difficulties had been demonstrated in defining an MEA reflecting a genuine multilateral consensus. Korea had difficulty understanding what multilaterally-agreed guidelines meant. Korea would study Canada's proposal further.

81. The representative of the Philippines, on behalf of ASEAN, recalled her delegation supported the first three points of Canada's proposal. However, ASEAN could not support the interpretation of the scope of the TBT Agreement to cover the use of standards based on non-product-related PPMs. This issue should not be addressed now, nor even post-Singapore. She supported the views expressed by India and Egypt and requested for clarification on the purpose of a joint meeting of the CTBT and CTE at this point in time.

82. The representative of Australia said that the problems of eco-labelling programmes and the need for their transparency were recognized. It was up to either the TBT Committee or the CTE to resolve the problems. He supported the joint meeting of the two Committees.

83. The representative of the United States shared some of the views expressed by Australia. She said that the TBT Committee would continue discussions on eco-labelling. She thought that there had been a certain amount of consensus about the coverage of eco-labelling under the TBT Agreement except one sensitive element which remained controversial. She supported the joint meeting to coordinate discussions and hoped that there would be less cross reference of statements in the future for the benefit of those who could not participate in meetings of the two bodies.

84. The representative of Switzerland said that her delegation supported points (a) (b) and (c) of the Canadian proposal. Labelling of product characteristics or incorporated PPMs and their conformity assessment procedures were covered by the TBT Agreement, whether elaborated by governmental or non-governmental bodies. Switzerland expressed concern on an extensive

interpretation of the TBT Agreement regarding labelling measures covering unincorporated PPMs. Referring to the definition of standards and regulations in the TBT Agreement, she said it was difficult to interpret the TBT Agreement's scope as extending to these labels, without having the same interpretation for terminology, symbols, packaging or marking requirements. As the CTE had not examined the consequences of such an interpretation, it was difficult at this stage to extend the scope so broadly. Given the multiplication of labelling programmes, the CTE could examine usefully how to increase transparency for voluntary labelling schemes, including unincorporated PPMs. She said that information and transparency were the important issues related to voluntary labelling and that it would be desirable to reach a solution with a view to Singapore.

85. The representative of the European Communities emphasized the importance of complementing the work of the TBT Committee and CTE. He said that the CTE might come to a conclusion for changes to rules and that there might not be consensus on the issue of non-product-related PPMs. However, a common view or solution in the Reports to Singapore under the two Committees would be desirable. The two Committees could go ahead preparing their Reports separately, making sure that they would be complementary. If there was any discrepancy, the matter might have to be resolved, for example, at the level of the Council for Trade in Goods. He did not see the need for a joint meeting at the moment due to the fact that information exchange had already taken place at the previous joint meeting.

86. The representative of Venezuela supported the joint meeting. Although Venezuela had serious reservations on non-product-related PPMs, it considered eco-labelling was covered under the Agreement. Discussions in the future should focus on the trade impacts of eco-labelling schemes, in particular on developing countries. He suggested to refocus effort towards the schemes, such as detailed analysis which might contribute to actual solutions to the PPM problems. Regarding mutual recognition and equivalency of the schemes, reference should be made to the on-going work in the UNCTAD, UNEP and ISO expert groups on eco-labelling. He invited the representative of ISO to up-date the Committee on the latest development of work under ISO/TC207 on eco-labelling.

87. The representative of Morocco said that his delegation could not accept point (d) of Canada's proposal. As India said, special and differentiated treatment in the TBT Agreement clarified the position of developing countries. TBT provisions should not be interpreted to include LCA or unincorporated PPMs. He recalled UNIDO's Resolution in December 1995 on eco-labelling. Account should be taken of activities in other international fora. Morocco had no objection to the joint meeting, providing that the points for consideration at that meeting be made known in advance.

88. The representative of Argentina supported the joint meeting.

89. The representative from the ISO said that meaningful progress had been made in the work of ISO/TC207 on environmental management standards at the Rio meeting in June. The process in drafting an international standard required numerous consultations and it had to be submitted to all ISO members before the document became a draft international standard.

90. The Chairperson requested that the Committee be informed when ISO 14000 standards were published.

91. The Committee could not reach consensus on a positive reply to the proposal made by the CTE for a joint formal/informal meeting of the CTE and CTBT to be held on 24-25 July to further pursue discussions on eco-labelling. However, the Committee agreed that the issue of

eco-labelling would be kept on the agenda of its next meeting and there would be a cross-reference to the CTE discussions in the TBT Committee minutes.

K. OTHER BUSINESS

92. The Committee agreed to hold its next meeting on 16 October 1996.