

Committee on Technical Barriers to Trade

MINUTES OF THE MEETING HELD ON 6 OCTOBER 2000

Chairman: Mr. John ADANK (New Zealand)

1. The Committee on Technical Barriers to Trade held its twenty-second meeting on 6 October 2000.
2. The following agenda, contained in WTO/AIR/1390, was adopted:
 - I. **REQUESTS FOR OBSERVER STATUS IN THE COMMITTEE BY THE OFFICE INTERNATIONAL DE LA VIGNE ET DU VIN (OIV), THE BUREAU INTERNATIONAL DES POIDS ET MESURES (BIPM) AND THE GULF ORGANIZATION FOR INDUSTRIAL CONSULTING (GOIC)..... 2**
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I. REQUESTS FOR OBSERVER STATUS IN THE COMMITTEE BY THE OFFICE INTERNATIONAL DE LA VIGNE ET DU VIN (OIV), THE BUREAU INTERNATIONAL DES POIDS ET MESURES (BIPM) AND THE GULF ORGANIZATION FOR INDUSTRIAL CONSULTING (GOIC)

3. The Chairman indicated that more time was needed for informal consultations on these requests (G/TBT/W/62, 135 and 141).

4. The Committee agreed to return to these requests at its next meeting.

II. STATEMENTS ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

5. The representative of Bulgaria said that his authorities had revised the Bulgarian statement on the implementation and administration of the Agreement under Article 15.2 (G/TBT/2/Add.32/Rev.1).

6. The representative of Malaysia, speaking on behalf of the ASEAN countries, reiterated concerns over two proposed EC Directives on waste from electrical and electronic equipment (WEEE) and on the use of hazardous substances in electrical and electronic equipment (HSEEE). She thanked the European Communities (EC) for their reply to ASEAN on 14 September 2000. However, concerns over the impact of the Directives, particularly on small and medium enterprises (SMEs), had not been alleviated. A main concern related to the high costs involved. According to EC estimates, total net costs of meeting collection and recycling requirements were in the range of EURO 500-900 million a year. Additional costs, such as consultancy and overhead costs, amounted to around EURO 100 million. It was unclear to her how a fair burden-sharing would be achieved and who would bear the brunt of the costs, in particular start-up costs? She wondered whether producers were responsible for waste pick-up from designated collection points and how the system would work given the large number of producers? She held that local authorities should continue to organize and finance waste recovery and recycling. These authorities had the expertise to manage large-scale collection and recycling efforts. Overseas suppliers and producers should be exempted from what was mainly an internal affair. She also wondered how to deal with producer responsibilities if companies changed ownership or closed down.

7. Regarding the proposed HSEEE Directive, she cited the EC's reply stating that replacement technologies would be available only before the entry into force of the Directive. However, it needed to be known much earlier whether substitutes would be available at a reasonable cost. Cost increases for SMEs would be substantial, and five to ten years beyond the EC's deadline in 2008 would be needed for transition. Her delegation had asked the EC to take into account concerns of developing countries in drafting these Directives. In particular, procedures for the assessment of conformity with the EC Directives ought to be as simple as possible. It should be possible to perform conformity assessment in the country of export so as not to incur additional costs. Replacement technology should be transferred at reasonable costs in accordance with TRIPS principles. In addition, the EC Directives should not result in unfair advantages to European producers.

8. The representative of Canada indicated that he shared many of Malaysia's concerns with respect to the EC Directive on WEEE. His delegation supported the underlying objectives of the proposed Directive, i.e. the prevention of waste from electrical and electronic equipment, increased reuse, recycling and recovery of such waste and the reduction of the environmental risks associated with its treatment and disposal. He expressed concerns about the implementation of the Directive and especially its impact on SMEs. He also recalled that, in response to the EC's notification on 25 September 2000, Canada had provided comments and questions on specific articles of the draft Directive to the EC.

9. His delegation requested the EC to provide scientific studies on HSEEE demonstrating that the intended measure was warranted. He warned that the phase-out and ban of such materials in electrical and electronic equipment might result in negative environmental impacts by forcing the adoption of substitutes that could have more detrimental environmental impacts than the substances they replaced. He expressed his concern that the approach considered by the Commission was pursued in the absence of a comprehensive and scientifically sound risk assessment. Such an approach, if implemented, would create unnecessary barriers to trade. He questioned whether such product bans were proportionate to any expected risks and whether such measures were not more trade restrictive than necessary to achieve the objectives indicated in the proposal.

10. He also reiterated concerns over the EC's intent to ban the use of cadmium in batteries and accumulators in the absence of a formal risk assessment. This ban, if adopted, might create unnecessary barriers to trade for manufacturers of electronic and electrical products relying on nickel-cadmium batteries as a power source. He recalled that OECD member states had endorsed recycling as the preferred method for dealing with associated environmental and health concerns.

11. The representative of Japan, while expressing sympathy for the EC's objectives to prevent disposals of electrical and electronic equipment and to restrict the use of hazardous substances, associated himself with the questions raised by Canada. He said that the necessity and technical feasibility of bans on substances as well as technical recycling rates had to be verified for every type of electrical and electronic equipment if restrictions were targeted at all electrical and electronic equipment. Japanese manufacturers, one of the main suppliers of electrical and electronic equipment in Europe, should be consulted. The above concerns also applied to the proposed Directive on nickel-cadmium batteries and accumulators.

12. The representative of the United States (US) associated herself with the statements made by ASEAN, Japan and Canada. She requested that the reply received by ASEAN from the EC be made available to other Members. Her delegation wished to better understand the rationale for the proposed measures and its relationship to the EC's environmental and health objectives, in order to assess their consistency with international obligations. She recalled that the US was still waiting for information from the EC on its risk assessments relating to the proposed substance bans and the safety of possible substitutes. She urged the EC, in the interest of transparency to respond to Members' inquiries, and to ensure an environmentally beneficial and economically efficient approach.

13. The representative of Australia associated herself with the statements made by ASEAN, Japan, Canada and the US, in particular regarding the absence of a detailed scientific and technical justification for the measures, including the ban on substances used in batteries. She also questioned whether the measures proposed by the EC were the least trade restrictive type to achieve their objectives. Australia had submitted comments to the EC, waiting for response. She was also interested in receiving any explanations provided to other Members.

14. The representative of Egypt associated herself with statements made by previous speakers regarding the European Directives. Information received by other Members should be circulated, as requested by the US.

15. The representative of Venezuela associated himself with statements made by previous speakers, in particular ASEAN. The type of measure might affect the exports from developing country Members and any information should be distributed to all Members.

16. The representative of the European Communities recalled that the EC had notified these draft Directives early in the adoption process. Notification had been made in July, the normal consultation period of 60 days would end by the end of the month. A number of requests for extending this period had been made. Given the importance of these projects he declared the EC's readiness to accept further comments until the end of November. He proposed to have more in-depth discussions and a

reply to technical comments at the next meeting after a consolidation of the questions. He added that discussions would continue in the European Parliament and the Council for the next two years, thus, more time was still available for discussions in the TBT Committee.

17. He responded to some of the issues raised: (i) he advised Members that a scientific evaluation was contained in the memorandum attached to Annex IV of the proposed WEEE Directive and invited comments from Members on whether or not they found this assessment to be sufficient; (ii) he explained that components of electrical and electronic equipment could be exempted from the substitution requirements if negative environment or health impacts caused by substitution were likely to outweigh environmental benefits; and (iii) he invited more detailed explanations of alleged discrimination as the EC's assessment indicated that this would not be the case. While costs were implied by the draft legislation, these were not discriminatory.

18. Responding to Canada's concern about batteries, he explained that it referred to a document which was not yet a draft Directive. This document was still under discussion within the European Commission. It was too early to notify as there was not yet a common position within the Commission itself. For reasons of transparency, however, the text had been circulated outside the Commission. Comments received at this stage would be considered in the Commission's discussions, although this was not yet the comment period following notification. He said more time was needed to finalize the EC's own position and proposed to have more scientific and technical discussions at the next Committee meeting.

19. The representative of Malaysia welcomed the EC's proposal for more in-depth discussions at the next meeting. She referred to notification G/TBT/Notif.00/356 dated 18 August 2000 by France concerning the draft Decree on the collection, exploitation and elimination of used tyres. She held that this notification did not contain technical, but only financial requirements and wondered whether it could be considered a technical regulation under the Agreement. She also raised concerns about the trend towards the "producer pays principle" and the notion that the costs of treating non-reusable tyres were higher than earnings from exploitation. It was also stated in the notification that the exploitation branch could not achieve a financial balance so it was necessary to provide financing to make good this deficit and compensate those collecting used tyres, owners of exploitation or elimination firms, etc., and that producers would contribute towards the exploitation and elimination of used tyres. Her delegation was concerned about the overall impact of the draft Decree on SMEs and would provide additional comments to the relevant French authority.

20. The representative of the European Communities promised to consider the issue raised by Malaysia.

21. The representative of Mexico recalled his delegation's statement regarding US notification G/TBT/Notif.00/5 on tuna labelling. The US representative had clarified that the measure was a voluntary standard and should not have been notified under Article 2.9 of the Agreement. He wondered whether a corrigendum of the notification would be submitted, as this was a matter of particular interest to Mexico and still under investigation by Mexican authorities.

22. The representative of the United States declared her readiness to issue a corrigendum for clarification.

23. The representative of Canada voiced concerns about compulsory labelling with respect to non-product related process and production methods (PPMs) in the European Union. He questioned the consistency of such labelling schemes under the WTO Agreements, including the TBT Agreement. He drew the Committee's attention to the EC's notification G/TBT/Notif.00/428 dated 15 September 2000 concerning certain marketing standards for eggs. In accordance with Article 2.5 of the Agreement, his delegation wished to receive an explanation of its justification, including information about the determination of the conditions that would govern the indications of

farming methods. His delegation would monitor this proposal to ensure that it was not discriminatory or creating unnecessary obstacles to trade. Written comments would be provided to the EC before the end of the comment period.

24. The representative of the United States expressed her interest in the issue. She wondered about the change from a voluntary to a mandatory scheme and its justification. She looked forward to receiving further information.

25. The representative of the European Communities took note of the statements for further consideration and would come back to it at the next meeting.

26. He recalled their concern about the Japanese legislation related to engines of fishing vessels. He held that the Regulation was not in line with relevant international standards, as it was based on engine displacement and not on engine output. As a result, imports of engines were unnecessarily restricted, because the Regulation encouraged domestic manufacturers to produce engines tailored to unique requirements out of line with international standards. He welcomed the fact that Japan had set up a study group to advise the government on a revision of the Regulation. He understood that the study group had reached the view that engine output was the best method of regulation. However, it had recommended a different approach as an interim solution. This did not resolve the EC's problem, as the interim solution was still incompatible with international standards in this field. He invited a response from Japan on this specific point. He expressed his wish to see a revision in line with the relevant international standards so that the power of engines to be installed in a fishing boat was regulated in terms of actual engine output expressed in horsepower.

27. The representative of Japan said that expert discussions had just finished and recommendations were still under consideration within his government. He would keep Members informed, including the EC.

28. The representative of the United States recalled her statement at the last meeting concerning the EC's Electromagnetic Capability (EMC) Directive and certain International Electrotechnical Commission (IEC) standards referenced in relation to that Directive. Her delegation had recently received a response from the EC. She might come back to this issue at a future meeting.

29. She recalled Brazil's concerns at the last meeting regarding EC notification G/TBT/Notif.00/289 on an identification system of bovine animals and the labelling of beef and beef products. She noted that the US had an interest in these products and would further examine the issue. The stated objective was to establish a labelling system; in her opinion, the text made clear the importance of these issues in view of the BSE crisis to prevent consumer deception. She agreed that an appropriate identification of animals and beef products would assist in tracking animal health and tracing food born illnesses. This rose the question whether it might not be more appropriately notified under the SPS Agreement.

30. She recalled concerns expressed at the last meeting about the Indonesian proposed food labelling requirements that had not been notified. She welcomed that, as she understood, Indonesia would notify this issue and thanked Indonesia for productive bilateral discussions.

31. She referred to document G/TBT/W/155, submitted by the US to highlight the growing importance of biotechnology and the various notifications made. She announced to submit an addendum that would include an updated table providing a summary of both SPS and TBT notifications for the information of the Committee.

32. The representative of Canada welcomed the US intent to update document G/TBT/W/155. With regard to activities in the Codex Alimentarius Committee on Food Labelling, he informed the Committee that in May 2000 a drafting group had been established to elaborate a guideline for the

labelling of foods derived through biotechnology. At its May meeting, the Codex Alimentarius Committee on Food Labelling had considered the options of either mandatory labelling based on health and safety considerations or mandatory labelling based on health and safety considerations as well as on the method of production. He pointed out that Codex as an international intergovernmental standards body for food safety undertook to develop a standard on what appeared to be a TBT issue. He expressed his concern about the potential trade implications of this work. Both Article 2.1 of the TBT Agreement and Article III of the GATT stated that Members had to ensure that imported products be accorded treatment no less favorable than that accorded to like products of national origin. He believed that the issue of non-product related PPM labelling was generally held to be a like product issue. The use of non-product related PPM labelling schemes with respect to GMOs could have much broader trade implications. Labelling on production methods could be applied to mining, forestry, fisheries products, other agricultural products and manufactured goods. This type of labelling could be used to mark items for environmental, social and even ethical considerations. He encouraged Members to review with appropriate regulatory authorities the implications of the proposals being considered in the Codex Alimentarius Committee on Food Labelling with regard to GMO labelling in its own right and beyond.

33. The Committee took note of the statements made.

III. PREPARATION FOR THE SECOND TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT UNDER ARTICLE 15.4

34. The Chairman drew attention to document Job 5633 (17 September 2000) containing a non-exhaustive list of issues proposed for discussion under the Review, and to documents G/TBT/SPEC/11, Add.1 and Add.2, compiling submissions made by Members since 1 January 1998 following the First Triennial Review. He also drew attention to documents G/TBT/W/143 (submission by Canada concerning implementation, international standardization, conformity assessment and technical assistance), G/TBT/W/144 (submission by Japan concerning international standards), G/TBT/W/145 (submission by New Zealand on equivalency of standards), G/TBT/W/146 (submission by Cameroon on technical assistance) and G/TBT/W/147 (communication by Japan on issues concerning conformity assessment). He reminded Members that the report of the Second Triennial Review was to be submitted to the Council for Trade in Goods and thereafter to the General Council before their last meetings of the year.

35. He summarized that, to date, issues suggested for a possible coverage in the Review included the following: implementation of the Agreement, notifications and procedures for information exchange, international standards and international standardizing bodies, conformity assessment procedures, technical regulations, technical assistance and special and differential treatment, equivalency of standards and labelling. He felt there was an understanding among Members to request the Secretariat to prepare a draft framework document of the Second Triennial Review as a basis for more detailed discussions at the next meeting (to be held on 6-10 November 2000), when the final document would be adopted.

36. The representative of Egypt drew the attention of the Committee to the fact that small delegations might be involved in a number of meetings at the same time.

37. The representative of India shared the views expressed by Egypt.

38. The Chairman recalled that meeting dates of the TBT Committee had had to be rescheduled in view of the last meeting in the current year of the Council on Trade in Goods and said that time clashes with formal meetings of different bodies should be avoided wherever possible.

39. The representative of Venezuela welcomed the documents submitted by different delegations and, in particular, proposals not intended to amend the Agreement. He recalled that, simultaneously,

a Special Session of the General Council dealt with implementation issues in developing countries, among other things, in relation to the TBT Agreement. A number of Members, including Venezuela, had expressed the view that treatment of these problems had to remain in the hands of the General Council. Nevertheless, he wished to draw the attention of the Committee to the difficulties arising for a number of developing country Members from implementation commitments. He expressed concern that further commitments might arise from the Second Triennial Review at a time when it was still difficult for many Members to implement existing ones. He deemed a further strengthening of technical cooperation indispensable and proposed to focus more on specific means of action under the Review. The Committee should assess the possibility of hiring experts to advise Members at their requests on their implementation problems, which was the route followed by the Committee on Customs Valuation. Concerning special and differential treatment, he proposed that flexibility for developing country Members with respect to time periods be included in the Report of the Second Triennial Review in case any further deadline schedules might result from the Review.

40. The representative of Malaysia, speaking on behalf of the ASEAN countries, expressed her hope that the outcome of the Triennial review would lead to improved operation and implementation of the Agreement, including transparency. She welcomed the issues identified for review, such as improvements of notification procedures, setting of guidelines for international standards development, principles relating to conformity assessment and equivalency of standards. Particular attention needed to be paid to technical assistance, especially with regard to enhancing participation of developing countries in international standards-setting. She invited concrete ideas on how to address the issues of technical assistance and technical cooperation. ASEAN also welcomed the draft guidelines for international standards development to assist international standardizing bodies in strengthening and clarifying their rules and procedures, particularly on transparency, openness and impartiality. She expressed her hope that the Review would also put pressure on Members to act in accordance with the spirit of the TBT Agreement, particularly Article 2.2, in the preparation, adoption and application of technical regulations, so that these would not create unnecessary obstacles to trade. She noted that, unfortunately, to date, there had been a tendency to adopt rather trade restrictive regulations. Concerning issues for review, she also highlighted that there was no need to deal with labelling. It was not sure as to whether labelling could be a subject for discussion under the Triennial Review, for which the mandate was to review the operation and implementation of the Agreement. Labelling, like packaging and marking, fell under the issue of technical regulations and standards. It was the intention of the Agreement that these themselves did not cause unnecessary barriers to trade.

41. The representative of New Zealand drew Members' attention to document G/TBT/W/145 on the equivalency of standards, which built on an earlier submission contained in document G/TBT/W/88. She noted that Article 2.7 of the Agreement included a requirement that positive consideration be given to acceptance of equivalency of technical regulations. She believed that this concept could usefully be applied in the development of voluntary standards as well. Standards equivalency had the potential to reduce unnecessary obstacles to trade and provide a useful interim solution for the facilitation of trade until an international standard was available.

42. She expressed her conviction that there was no conflict in the relationship between equivalency of standards and the development of international standards. Equivalency could even be an important stepping stone towards international standards. She emphasized that equivalency should only be applied where international standards did not exist and the development of international standards needed to remain the focus of work in the Committee. However, in reality, relevant international standards were not always available. Their development could take a long time and there would always be a time-lag between the identification of a need for a new international standard and one actually being finalized. These were the circumstances when equivalency of standards could be considered a useful tool.

43. She highlighted that the major change to their previous contribution related to the form of the proposal. In earlier discussions, her delegation had suggested an amendment to the Code of Good

Practice. However, her delegation had come to the view that the concept of standards equivalency could be promoted through the Report on the Second Triennial Review. Some specific language was suggested in paragraph 6 of document G/TBT/W/145, which she would like to see included. She added that the proposal was not meant to impose further binding commitments on Members, but to encourage positive consideration of equivalency of standards as an interim measure, in case no relevant international standard existed. She welcomed comments received by other Members for further consideration.

44. The representative of Japan introduced document G/TBT/W/144 on international standards. He highlighted two points of the paper: first, standards were not to be automatically given the status of international standards in the context of Articles 2.4, 2.5 and Annex 3, simply on the grounds that they had been developed in accordance with guidelines for the international standards development process; and second, there were cases where certain standards should be denied the status of international standards in the context of Articles 2.4, 2.5 and Annex 3. He understood that there was support by a large number of Members regarding the first point, but divergent views and uncertainties about the second one. He welcomed comments received by Members on the proposal which would be taken in consideration. He considered the issue of international standards to be of prime importance for inclusion in the Triennial Review.

45. He also introduced document G/TBT/W/147 on conformity assessment. Under Article 5.4, international guides and recommendations were to be used as a basis for conformity assessment procedures. He noted that the definition of guides and recommendations issued by international standardizing bodies was not clearly set out. His delegation believed that there should be a clear understanding among Members regarding these guides and recommendations. It was also important to have a decision regarding reference documents developed by international or regional systems for conformity assessment, which might have effects on the results of conformity assessment. The development process of such reference documents by international or regional systems should also be transparent, open and impartial. His delegation, therefore, proposed the following points for inclusion in the report of the Second Triennial Review: first, that guides and recommendations referred to in Article 5.4 of the Agreement be exclusively developed by international standardizing bodies through transparent, open and impartial processes; and second, that Members take reasonable and available measures to ensure that international and regional systems for conformity assessment, in which relevant bodies within their territories were members or participants, develop their documents through transparent, open and impartial processes.

46. The representative of Switzerland recalled that the mandate of the Committee was also to recommend adjustments to the rights and obligations under the Agreement where necessary, including to propose amendments to the text of the Agreement to the Council on Trade in Goods. However, in his opinion, the rules themselves were not so much of a problem as their application. Members sharing their experience in implementing the Agreement had identified certain deficiencies and the need for clarification and support in order to fulfill their obligations and make use of their rights. There was room for the Committee to agree on a number of recommendations to improve the application of certain provisions of the Agreement. But he also realized that Members ought to be aware that there were certain limits to what could be achieved by the WTO in the context of TBT. The WTO was neither a regulator nor a conformity assessment/standardizing body. It was the role of the Committee to clarify certain provisions, strengthen the dialogue with relevant bodies and be a catalyst in order to meet developing countries' needs while avoiding duplication of work.

47. The representative of Canada introduced document G/TBT/W/143 on his delegation's positions for the Second Triennial Review. The paper was a product of extensive consultation in Canada, involving trade and other regulatory officials, standardizing bodies and interested members of the public. Canada was of the view that the Review could lead to concrete outcomes in a number of areas. One of these areas was technical assistance, whereby the Chairman's report of the July Workshop could be drawn upon in formulating recommendations. Another important area for

concrete results was international standardization. His delegation felt that document Job 3937 offered a good basis with regard to guidelines for the development of international standards that the Committee might agree upon. He expressed support for the proposal by New Zealand with respect to equivalency of standards. Other areas with possible concrete outcomes were conformity assessment and the importance of sub-national notifications. He added that the common theme of all elements covered in his country's proposal was the importance of coordination and cooperation amongst domestic and international officials dealing with trade regulations and standards to achieve the full benefits of the Agreement.

48. The representative of the European Communities highlighted some of the key points of the EC proposal (G/TBT/W/133). Although an overall approach to implementation was discussed in the General Council, his delegation was interested to find practical solutions to TBT issues, for instance concerning developing countries' participation in international standardization work and the need for capacity building to help developing country Members implement the Agreement. An improvement of notification procedures was possible on the basis of the document prepared by the Secretariat (G/TBT/SPEC/16). His delegation wished to encourage the wider use of available technology without making it an obligation on Members. The application of existing rules, decisions and recommendations by the Committee needed to be encouraged.

49. On international standardization, he reiterated the need for guidelines, as the Agreement was not clear enough. He highlighted three main points: first, a proliferation of competing international standards should be avoided; second, effective participation in the standardization process should be ensured and take place through national delegations; and third, there should be a coherent set of international standards when used in the context of technical regulations. Coherency was related to the constitution and status of an international standardizing body. A clarification of international standards was not possible without focussing on the criteria for international standardizing bodies.

50. On conformity assessment, a recommendation by the Committee could be developed based on the Australian proposal (G/TBT/W/138), enhanced by the latest submission from Japan (G/TBT/W/147). It should also be recognized that further work in this field was needed. For example, the use of the least trade-restrictive conformity assessment procedure should be encouraged and preference be given to supplier's declaration of conformity where feasible. This, he said, was not always possible taking into account the risks of the product, obligations for market surveillance, liability legislation and so on. Also, regional cooperation on accreditation should be promoted. The Committee should leave open the option to develop a code in this area to strengthen the Agreement in the longer term. The Committee should also take into consideration the revision of ISO/IEC Guide 60 undertaken by ISO/CASCO. The Committee should commit itself to technical assistance in this field, which might be more crucial for developing country Members than international standardization.

51. On technical regulations he said best regulatory practice needed to be encouraged. Although this issue had not been addressed as an ongoing exercise, a first step should be an exchange of information on existing practices.

52. Technical assistance was widely believed to be a key element to the Triennial Review. He suggested that the Review should offer a "road map" with practical suggestions for assistance and not merely recognition of its importance. Elements could include: a work programme, not necessarily managed by the Secretariat, but at least monitored by the TBT Committee; regular reviews and discussions on corrective measures if assistance did not achieve its goal; and liaison planning in relation to relevant organizations and agencies working in this field. He also recognized that many developing countries faced difficulties in identifying their needs in specific terms, and outside assistance and technical cooperation might be needed to that end. While the July Workshop had offered a variety of general observations, a precise indication and prioritization of needs would be required. His delegation also held the belief that awareness of the TBT domain needed to be raised within administrations and private industries in developing country Members as well as donor

countries. It was also necessary that developing country Members mobilize their own resources or pool resources in regional cooperation arrangements. He supported the proposal put forward by Brazil (G/TBT/W/140) on a triennial technical cooperation programme. This should include, as much as possible, the use of modern technology. He reiterated that donors should be as transparent as possible and be prepared to employ a variety of technical assistance tools in order to match priorities of developing country Members. He stressed that the TBT Committee ought to play a catalyst role and help coordinate technical assistance activities. On standardization, this meant that the Committee ought to encourage international standardizing bodies to do their utmost to change practices and allow for more participation of developing countries. A fundamental goal was to obtain practical measures on technical assistance from the Second Triennial Review.

53. On the equivalency of standards, he said that in light of explanations given by New Zealand on how it related to international standardization, his delegation could give its guarded support.

54. He reiterated his belief that the issue of labelling was within the scope of the Agreement. Clearer guidance on labelling would reduce the risk of disputes in the future. His delegation proposed that a work programme be indicated in the Triennial Review. A start could be made with an exchange of information and examination of work done in other fora, e.g. international standardizing bodies, such as FAO/Codex. Then, the Committee could consider how relevant TBT provisions could be clarified. This could not be achieved for the Second Triennial Review, but it could be taken note of as an ongoing exercise that might lead to the development of multilateral guidelines. These, he felt, would assist in the application of the Agreement.

55. The representative of India noted that the Agreement recognized the role of international standards in removing technical barriers to trade and in facilitating international trade. International standardizing bodies, therefore, had to take into consideration the interests of all parties concerned in a demonstrable way. International standards developed without soliciting inputs from a wide range of interests could result in the creation of trade barriers and adversely affect international trade. In order for international standards to make a maximum contribution to facilitate trade it was important that all Members had the opportunity to participate in the discussion, elaboration and adoption of international standards. International standardizing bodies should be strictly guided by the principles of transparency, openness, impartiality and adequate reflection of the concerns of developing countries.

56. He identified certain common elements in the papers by the EC and Brazil (G/TBT/W/133 and 140), such as the issue of avoiding the duplication of work by different standardizing bodies, which could lead to different standards for the same subject. His delegation endorsed the principle of singularity of international standardizing bodies and international standards and supported the papers by the EC and Brazil in this regard. He added that provisions be built in the process of international standardization stipulating that international standards take account of the prevailing level of technology, technical and socio-economic development and trade needs of developing countries. The capacity of developing countries to prepare and adopt international standards should also be considered. He concluded that this would facilitate the harmonization of international standards with national standards and thereby minimize the possible conflict between internationally and nationally accepted standards.

57. He suggested that the discussion on international standards ought to focus on (i) the definition of international standards and international standardizing bodies; (ii) the practice followed by international standardizing bodies and the development of a code of practice to be followed by these bodies similar to Annex 3 of the Agreement; and (iii) the encouragement to use international standards. He emphasized the need for instituting a consensus-based decision making process in these bodies in addition to the above-mentioned elements.

58. He also noted that while India as well as many other Members had referred to the need for formulating appropriate guidelines for use by international standardizing bodies, no concrete proposal to operationalize these guidelines had come forward. He proposed that the Committee based on the submissions received prepare draft guidelines for use by international standardizing bodies. He invited other Members to make further suggestions as to their formulation. He also mentioned that concrete steps were required to achieve and increase the number of mutual recognition and equivalence agreements in order to enhance market access opportunities for developing countries.

59. The representative of Norway recommended that tangible results be achieved on technical assistance going further than the recommendations of the last Review. It could be possible to achieve an overall programme identifying main priorities for technical assistance and possible partners. The workshop on technical assistance might serve as a basis. He generally agreed with the EC's position on this subject. Concerning international standards, he indicated that competing standards had to be avoided, a principle that ought to be reflected in the guidelines.

60. The representative of Egypt noted that comments made by her delegation at previous meetings had been reflected in document Job 3937 on international standards. Regarding the Japanese proposal, she stated that the concept of market relevancy could not be defined through a number of rigid criteria, but had to deal with the enhancement of participation of developing countries in the standards-setting process. A standard could not be internationally relevant unless developed and developing countries' market needs were reflected. According to Article 2.4 and 2.5, Members are obliged to use international standards when deemed appropriate and effective. She warned if there were certain rigid criteria to define an international standard, this could lead to a situation where countries were discouraged to use international standards. With market relevancy being an element to be considered on whether a standard was an international standard under Articles 2.4 and 2.5, problems regarding the burden of proof could unfold in case of disputes. Referring to the Japanese proposal concerning technological content of international standards, she said it did not reflect her delegation's concerns about criteria for outdated standards and how this could affect products of importance to developing countries.

61. Concerning technical assistance, she welcomed the proposal by Canada. She also noted that the July Workshop had highlighted many developing country Members' needs and a number of concrete proposals. Donor countries and relevant international organizations had shown their willingness to act. She recommended that the Committee associated itself with the Chairman's Report of the Workshop and should not lose its practical and concrete results. The Review should give indications how technical assistance efforts could be conducted. She suggested that the Secretariat could act as a focal point or liaison office in this regard. She recalled that Brazil had mentioned the creation of a working party or sub-committee. The EC had spoken of a "road map" defining developing countries' needs and priorities as well as activities by donor countries, international standardizing bodies or other relevant international organizations.

62. She reiterated that labelling was a sensitive subject for developing and least developed country Members. Any issue under the Second Triennial Review needed to remain within the framework of the Agreement. There should not be an attempt to widen the scope of the Agreement to encompass additional aspects and concepts. Discussing labelling issues was one thing, setting multilateral guidelines another. She thanked Japan, New Zealand, Canada and Cameroon for their respective submissions on various issues. These papers were currently examined by her authorities, and she would make comments at a future date.

63. The representative of the United States stated, with regard to international standards, that her delegation attached great importance to reaching conclusions on openness, transparency, impartiality, effectiveness and relevancy of international standards, as well as on the particular concerns of developing countries. She recalled the US proposal for a Committee decision in this respect. All interested parties of all Members needed to have a meaningful opportunity to participate in the

discussion, elaboration and adoption of international standards. Opportunities for participation should not be conditional on factors such as nationality or technical qualifications. The important notion of consensus implied that standardizing bodies should have an established process seeking to take into account the views of all parties concerned and to reconcile any conflicting arguments. There should be the right of appeal if a party believed it was denied consideration of its views.

64. She welcomed the Secretariat's compilation of proposals in document Job 3937. Nevertheless, there might be a better way to organize the material in its final form. The document currently combined the responsibilities of Members with the Committee's expectations concerning the conduct of international standardization bodies. Another approach was to begin with a statement of the Committee's objectives, such as transparency, openness and impartiality and to then continue with a list of concrete actions and expectations for international standardizing bodies. In deciding on the final form, the Committee had to respect the independent nature of international standardizing bodies. She recalled the US original proposal to create an obligation on Members and their bodies participating in international standardizing bodies.

65. She cast doubts whether there was a need to clarify the status and constitution of an international body. The Agreement encouraged Members to use international standards, when appropriate, as a basis for technical regulations. It did not intend to dictate which international standards developed by which international standardizing bodies should be used. The Agreement implicitly recognized that a standardizing body could not meet or anticipate all needs of Members. Rather than status or constitution, it was important that the process was transparent, open, impartial and based on consensus. The quality of a standard was not guaranteed by the nationality of participants. Technical competence was an important factor: if participation by specialists did not occur, it was unlikely that the standards would meet all the elements demanded by the end user. The involvement of all stakeholders would minimize the possibility that the resulting standard created unnecessary barriers to trade. She welcomed the contributions by Canada highlighting the need for domestic cooperation and coordination; by Australia highlighting the need for demand-driven standards that were responsive to market needs; and by Japan highlighting the difficulties that might arise if a standard was not market relevant or obsolete.

66. She noted that the Chairman's report on the Workshop briefly summarized some technical assistance needs and requirements. There was no one single model bureaucratic or administrative structure that all countries should follow. Presentations had highlighted the importance of ensuring that solutions were targeted to needs identified by individual or groups of developing countries. Another theme was the need for effective coordination at the national level between agencies/authorities and other interested parties for implementation purposes and identification of infrastructural requirements in priority areas. While Workshop discussions had been useful, further reflections were necessary for the Second Triennial Review. Concerning the problem of effective participation in the development of international standards, unlike the SPS Agreement, which had identified three specific international standardizing bodies for purposes of implementation, in the field of TBT there was a broad range of intergovernmental and non-governmental standardizing bodies, which might develop international standards as a basis for technical regulations. It was critical for developing countries as part of their national consultation to assess which products or sectors would be of priority interest to them for international standardization and to identify the relevant body for that purpose. This way the specific challenges to effective participation could be identified and resources appropriately targeted.

67. The Workshop had been useful in listing options for national bodies to address general obstacles to effective participation of developing countries, such as the use of the internet and video conferencing, locations of secretariats and venues for meetings. She said Brazil's idea for a triennial technical cooperation review merited further consideration as well as Chile's proposal for specific assistance to define mechanisms for cooperation. The Committee's ability to have an ongoing information exchange should also be further examined. She welcomed the submission by Cameroon

and announced to come back to these issues at the next meeting with a view towards clarifying the appropriate role of the Committee in maintaining demand-driven technical assistance and cooperation.

68. On conformity assessment, she commended the proposals by Australia and Japan as a basis for discussions. She hoped for a good understanding on this issue in the context of the Review and pointed to the need for more discussion on a code of good conduct. She thanked New Zealand for revising its proposal on equivalency of standards. However, her delegation continued to have doubts about the merits of the Committee interfering in what appeared to be a voluntary market-driven undertaking. Concerning labelling, she found the EC to be ambitious when it asked for inclusion of a work programme in the Review without having tabled a more concrete proposal. Instead, there was ample opportunity in the course of Committee meetings to exchange information and raise issues concerning labelling.

69. The representative of Australia said, with regard to conformity assessment procedures, there was scope for assisting Members in explaining to their domestic bodies how the provisions of the Agreement could be implemented more effectively. She welcomed that Members had found the Australian paper helpful in providing a way forward.

70. She also stressed that Members needed confidence in an international standards system, that took into account the interests of all Members. She agreed with the US that there was no need for the WTO to make distinctions about the status and constitution of international standardizing bodies. This could be done both domestically and internationally by Members themselves through their participation in those bodies. She said document Job 3937 had produced useful recommendations and possible guidelines for international standardizing bodies. The Committee needed to determine how to convey these to the relevant bodies, whoever these might be, and how Members should take these up when participating in their work. Australia had made initial suggestions in this regard, outlined in document G/TBT/W/139, and some countries had pointed out that the difficulty consisted in identifying those bodies.

71. On technical assistance, she agreed with the EC, Canada and the US that practical solutions were needed, that the Committee had a role to play and that there was scope for better coordination and cooperation with other bodies to ensure that technical assistance was provided which met the needs of developing countries.

72. The representative of Mexico noted it was impossible for his country to extend the comment period on notifications beyond 60 days. Concerning translations of notification related documents made available by one country to other Members, he was of the opinion that the official publication of an informal translation should not be acceptable. Concerning notifications at the sub-federal level, he expressed the view that it was a matter of application and not of modifying the provisions of the Agreement. It was applicable to a limited number of Members, and Article 3 contained clear provisions in this regard. He agreed that defining principles for conformity assessment was important, his country could, however, not accept a supplier's declaration of conformity. Work under the Triennial Review on technical regulations should not go beyond what was stipulated in the Agreement.

73. He found the definition of international standards to be important and expressed his support for including the concept of consensus in the principles for international standards development as well as effective participation of developing countries as a *sine qua non*. His delegation had already professed its interest in the concept of market relevance and other concepts, such as transparency, impartiality, openness and effectiveness. He was not in favour of including the concept of equivalency of standards in the results of this Triennial Review. The inclusion of labelling on the check-list for the Triennial Review did not imply that it would actually be taken up. It was his delegation's viewpoint that it should not be part of the Review. Concerning technical assistance, he found that it should derive from proposals to be made by Members of the Committee.

74. The representative of Canada, in response to comments by Mexico on sub-national notifications, clarified that there was no intention to change obligations of the Agreement. It was an implementation issue and the Committee ought to explore ways to enhance the rate of notifications from authorities at the sub-national level. On international standards, the Canadian proposal focused on the principles underlying their development, which mattered from the stand-point of trade rules, and not the institutions. By focussing on principles, such as openness, transparency and impartiality, the concerns of many delegations would be addressed. He expressed concerns about views on the importance of the status of institutions. Including this notion in a set of guidelines would make these rigid and ignore existing realities.

75. The representative of South Africa flagged his general support for the principles for international standards development, as contained in document Job 3937. He was favourable towards a clarification of the status of international standardizing bodies and towards the notion of national representation, as articulated by Brazil, the EC and others. Effective participation by Members, including developing countries, was important and the Committee should urge international standardizing bodies to do more to enhance the participation by developing countries. This could encourage relevant bodies to provide more technical and financial assistance. He also agreed that the outcomes of the Workshop should form the basis for a work programme or road map on technical assistance.

76. The representative of Panama supported Venezuela's comments on implementation issues and noted that a road map for follow-up would be useful. This would allow Members to set priorities. With regard to technical assistance, she suggested that, in the short term, the Secretariat could work together with other international agencies, who already had relevant programmes and showed interest, to set up a technical assistance programme and seek financial support by donors. This would be the kind of concrete proposal for inclusion in the Review to produce short term results. She suggested that ways also be found to improve notification procedures.

77. The representative of Brazil felt that document Job 3937 on international standards was a good basis for the report with some changes yet to be made. Clear guidelines on the development of international standards should be elaborated and special attention be given to those standards that could be a basis for technical regulations. She felt a certain coherence or singularity of international standardizing bodies should be pursued. On equivalency of standards, she found the issue not to be ripe for inclusion in the Review.

78. She confirmed that the issue of technical assistance was of importance to Brazil. The Committee should not lose the conclusions of the July Workshop. One way was to attach the Chairman's report to the Second Triennial Review. She announced that Brazil intended to submit another paper for the next meeting in order to clarify the distinction, made in their submission (G/TBT/W/140), between technical assistance and technical cooperation. She suggested that a working group or some kind of body could be created under the TBT Committee acting as a focal point on technical assistance and related works.

79. The representative of the Czech Republic informed the Committee that about ten years ago, the Czech Republic had gone through political and economic changes accompanied by structural changes in TBT-related areas. Technical assistance had been helpful for a rapid transition and he expressed his sympathy for the demands by developing country Members in this regard. His experience suggested that it was often difficult, but necessary to prove to donors that technical aid would be used in an effective and transparent way in accordance with a clear set of priorities between areas and within each area. Priorities should be defined by beneficiary countries for consideration by donors thereafter. Beneficiaries needed to be patient and focus on medium and long term projects, as administrative procedures of donors were often complex. He stated it was crucial that governments of beneficiary countries guaranteed the continuity of programmes initiated with technical aid, and considered co-financing from domestic sources.

80. With regard to effective participation in international standardization, he said the Czech government covered certain participation fees for national standards bodies in international and regional standardization organizations. The government provided financial support for the implementation of international and regional standards in cases where full participation by industry in the preparation had not been possible. In person participation was certainly helpful, but mostly not affordable for his country. In most cases, participation was by written correspondence, including voting. He agreed with the comments made by the EC on document Job 3937.

81. The representative of the European Communities held that the debate on whether labelling remained within the scope of the Agreement illustrated even more that a discussion on guidelines was justified. He agreed with Egypt that a certain sensitivity was involved, which was an additional reason to make improvements. He emphasized that the role of the Committee was to address all trade barriers and the Second Triennial Review would contain a number of sensitive issues. Any progress to make this issue less sensitive would benefit developing countries. The role of the Agreement was not only to serve as a reference in trade disputes, but also to prevent disputes and to facilitate trade.

82. The representative of Egypt requested the EC to answer two questions in their intended paper on labelling: first, how could labelling be prevented from being a means that hampered trade flows from developing countries to a developed country's market; and second, how could this be cost-effective for countries, such as Egypt, whose economies heavily depended on SMEs?

83. The Committee took note of the statements made.

IV. OTHER BUSINESS

84. The representative of the European Communities introduced a communication on the precautionary principle by the European Commission (G/TBT/W/137), addressed to the Council and European Parliament where it was currently debated. It was not a final word on this issue, but its objective was to contribute to the ongoing debate on the application of the precautionary principle in international fora. He expressed his hope that the communication would help to build a common understanding of how to manage risks in situations of scientific uncertainty and indications of potential adverse environmental or health effects. Its purpose was also to dispel fears that the precautionary principle might be used in an arbitrary way or as a disguised form of protectionism.

85. He explained that the most recent application of the precautionary principle at the international level was the Cartagena Protocol on Biosafety, which would further contribute to its international consolidation. He felt that there was merit in clarifying this principle in the WTO. He asserted that it could not be used to justify arbitrary measures; instead, measures taken on the basis of this principle had to comply with the general principles of proportionality, non-discrimination, cost-effectiveness and transparency. He announced to revert to this topic when the EC would have further defined its understanding.

86. The representative of Canada was interested in collaborating to advance this issue internationally, in the TBT Committee and in other fora, such as the CTE and the SPS Committee. The OECD Joint Working Party on Trade and Environment undertook work in this area, as well as UNEP to which Canada had provided written comments. He affirmed that Canada shared common grounds with the EC on a number of issues raised in the communication, but required clarification of some issues. Detailed written comments and questions had been provided to the Commission in July. He indicated his wish to work with other interested Members to develop a more comprehensive and coherent view on this issue.

87. The representative of India thanked the EC for its paper, although he did not consider the issue to be relevant to the TBT Agreement. He felt it was in an attempt to mainstream environmental issues into respective WTO Councils and Committees without addressing the basic relationship

between trade and environment as mandated by the Marrakesh decision. Trade and environment issues should be discussed and decided upon in the CTE pursuant to its mandate, terms of reference and agenda items. If at all, this issue belonged to item 2 of the CTE's agenda. It was only upon recommendation by the CTE that a trade and environment issue could be discussed in another WTO body, such as the TBT Committee.

88. He contended that several provisions illustrated that the precautionary principle had no place in the Agreement. Article 2.2 stated that technical regulations ought not to be more trade restrictive than necessary to fulfill a legitimate objective, taking account of the risks that non-fulfillment would create. Relevant elements for consideration were, *inter alia*, available scientific and technical information. Incomplete scientific evidence was not admitted. Article 2.4 obliged Members to use international standards as a basis for technical regulations. Exception was made in case such international standards proved ineffective or inappropriate for the fulfillment of a legitimate objective, for instance, due to fundamental climatic or geographical factors or technological problems. An exception was not permitted on the basis of the so-called precautionary principle. Articles 2.9 and 2.10 gave procedures for notifying technical regulations in case adequate international standards did not exist. Opportunity was provided to other Members to comment before application of the measure or immediately after, in case of urgent problems.

89. From all this, it was not clear to him how the EC intended to introduce the concept of precaution to the Committee. The EC paper itself mentioned that even the EC Treaty did not refer to this principle, except for the protection of the environment. References to human, animal and plant health in connection with the precautionary principle might better be addressed in the SPS Committee. The paper also referred to the precautionary principle as a fully fledged and general principle of international law. His delegation disagreed: while it was a principle of environmental law, referenced in the Rio Declaration and the Biosafety Protocol, it was not a principle of international law in general. This was why it ought to be discussed in the CTE under item 2 of its agenda along with other environment and trade principles, as India had advocated since 1996. There was no mandate to pick one environmental principle for discussion in a specific WTO Committee without an even-handed discussion in CTE.

90. He urged the EC not to press for discussion of this topic in the TBT Committee as it had no relevance for TBT matters. If the Committee was to discuss the issue nevertheless, India reserved its right to give a detailed response to the arguments made by the EC in due course.

91. The representative of Mexico said its position on the precautionary principle had been stated in different WTO Councils and Committees. Its very concept became a hidden barrier to trade, and its discussion ought to take place in the CTE.

92. The representative of Egypt consented with India.

93. The representative of the United States said the TBT Committee might be a difficult forum to discuss precaution, which needed to be context-specific. She agreed with India that this principle was not a customary principle of international law.

94. The Chairman announced that the next Committee meeting was to be held on Friday, 10 November 2000. He envisaged a series of informal meetings in the week of 6-10 November 2000 to make progress in the Second Triennial Review process.

95. The Committee took note of the statements made.
