

WORLD TRADE ORGANIZATION

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Committee on Technical Barriers to Trade

MINUTES OF THE MEETING HELD ON 10 NOVEMBER 2000

Chairman: Mr. John ADANK (New Zealand)

1. The Committee on Technical Barriers to Trade held its twenty-third meeting on 10 November 2000.
2. The following agenda, contained in WTO/AIR/1421, 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)**
 - II. **THE SECOND TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT UNDER ARTICLE 15.4**
 - III. **STATEMENTS ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT**
 - IV. **REPORT (2000) OF THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE**
 - V. **OTHER BUSINESS**

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

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

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

II. THE SECOND TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT UNDER ARTICLE 15.4

3. The Chairman drew attention to a draft Report of the Second Triennial Review and explained that it constituted the result of intensive consultations by delegations based on a draft document prepared by the Secretariat on 20 October 2000 (Job 6557). He proposed that the current draft be adopted by the Committee as the Report of the Second Triennial Review.

4. He recalled that the General Council at its Special Session on 18 October 2000 had referred a number of implementation related issues to relevant subsidiary bodies. The TBT Committee had been given the mandate to examine the problems faced by developing country Members concerning both international standards and conformity assessment and to explore possible solutions in the context of the Second Triennial Review. He had been requested to report on the outcome of the Review to the General Council before its Special Session in December.

5. The representative of India noted that paragraph 10 of the draft Report recognized that the issue of implementation was of an ongoing nature and was linked to a number of elements under the Second Triennial Review. He suggested to add to the paragraph that "the Committee stood ready to report to the General Council, upon request, as well as in the context of its Annual Reports."

6. The representative of Egypt supported the proposal by India. She suggested to add "as well as if further tasked", noting that the Annual Report was an obligation anyway.

7. The representative of Brazil stated that it was useful to report to the General Council on implementation-related work in the Committee, but that this needed to be requested by the General Council.

8. The representative of New Zealand consented with Brazil that even if the Committee did not stand ready, it would need to report to the General Council upon request. If an addition was made, she expressed preference for "if requested" over "or as requested".

9. The representative of Japan supported the proposal by India, being flexible regarding language.

10. The representative of India suggested the sentence to read "It was noted that the issue of implementation was of an ongoing nature, and that the Committee stood ready to report to the General Council, if requested, as well as in its Annual Report ", which expressed the Committee's readiness to report to the General Council even in advance of its Annual Report.

11. The Chairman proposed to incorporate the latest proposal in the Report.

12. The Committee agreed to adopt its Report of the Second Triennial Review of the Operation and Implementation of the Agreement under Article 15.4 (G/TBT/9).

13. The representative of India welcomed the Report highlighting the importance of having set guidelines to be used by international standardizing bodies for standards development in Annex 4. In order for international standards to make their contribution to the objective of the TBT Agreement to facilitate trade, he emphasized that it was important that all Members had the opportunity to participate in the discussions. He highlighted the importance of a consensus-based decision-making process in international standardizing bodies. This and some other elements should be taken up again in discussions for the Third Triennial Review for further elaboration. He held that provisions could be built in the process of international standards development to ensure that the prevailing level of technological and socio-economic development as well as the trade needs of developing countries were taken into account. He saw the need for harmonization of national standards with international standards in order to minimize the possible conflict between internationally and nationally acceptable standards.

14. He further suggested that concrete steps be taken to achieve an increase in mutual recognition agreements (MRAs) and equivalency agreements to enhance market access opportunities for developing countries. The Committee should invite Members to provide details of all arrangements that Members had agreed among themselves. Members should be urged to facilitate developing countries' entry into similar arrangements with other Members and their participation in existing ones.

15. The representative of Canada found the Report to be a balanced and forward looking document and expressed particular satisfaction with Annex 4.

16. The representative of the European Communities (EC) welcomed the outcome of the Second Triennial Review. While Annex 4 on international standards development was a good achievement, it remained to be seen how it worked in practice. This should be examined by the Committee in its next Triennial Review. He also noted that, in paragraph 22, it was stated that the Committee would invite standardization bodies to explain how they ensured, for example, effective participation. In response to India's suggestion, he advised that the texts of MRAs between the European Union (EU) and other countries were available on the EC's web-site and had all been notified to the Committee.

17. The representative of Switzerland noted the balanced outcome of the Review, which was a good basis for future discussions. Deficiencies in implementing the Agreement as well as adequate action to overcome them had been identified. He highlighted that technical assistance had been identified as a priority issue for the Committee. He expressed his hope that the Committee would develop a demand-driven technical cooperation programme related to the Agreement. Effective technical assistance activities were also, but not exclusively, linked to the allocation of financial means. He called upon Members to give positive consideration to proposals to integrate adequate financing of technical assistance activities into the WTO's regular budget, as a complement to extra-budgetary contributions in order for a coherent technical assistance strategy to be pursued.

18. He expressed his delegations's regret that the Committee had not been able to agree on a work programme regarding labelling requirements, which would give some guidance on how to further proceed with this issue. He contended that the arguments put forward by some delegations against such a work programme would have been also strong arguments in favour. He predicted that, since labelling was a real and also not a new issue included in the definition in Annex 1 of the TBT Agreement, discussions would continue in this regard.

19. The representative of Egypt welcomed the Report in that it incorporated most of developing and developed countries' interests in a balanced manner. The interests of developing countries were touched upon in various elements of notification procedures, international standards, conformity assessment, technical assistance and special and differential treatment. The latter section ensured that the Committee would build on the results of the July Workshop on Technical Assistance and Special and Differential Treatment. She expressed her hope for practical action in the near future and assured

her delegation's will to participate actively in that endeavour and provide the necessary information needed to develop a demand-driven technical assistance/cooperation programme.

20. The representative of Australia said that the issues covered in the Review were complex and of concern to all Members. In particular, issues of concern to developing countries had been handled well. Work undertaken on conformity assessment had progressed the understanding of this issue and opened the way for greater cooperation, as well as improved means to ensure that conformity assessment operated in the interest of expanding trade.

21. The representative of Mexico said that the conclusions of the Review were beneficial to all Members. The Second Triennial Review contained a set of ideas shared by Members to guide the Committee's future work. He pointed out that it was most important that international standards were used as a basis for the preparation of national standards, particularly when human safety, security and health were involved. International standardizing bodies should comprise the majority of countries interested in achieving an international consensus. To avoid conflicts of interests in the area of standardization, international standardizing bodies should not set standards in the same area. It should be possible for countries to adopt standards in different areas from different organizations. In the case of two international standardizing bodies working in the same area, a coordination mechanism should be in place so as to avoid duplication. He also emphasized that notifications should be made in time to enable Members to make comments on draft regulations by other Members during the period of public consultations and to have these comments taken into consideration.

22. The representative of Hong Kong, China welcomed the Report as a balanced text that took into account the interests of all Members and that would form a good basis for the Committee's future work. She introduced document G/TBT/W/148 on Hong Kong, China's experience with the concept of equivalency for standards, which was an area for further work in the Committee. The paper described how the concept of equivalency was put in practice in the area of toys and children's products.

23. The representative of South Africa welcomed the Report and noted that one of the major tenets of the Agreement was the issue of the technical regulations. His delegation recognized the sovereign right of Members to implement technical regulations in order to prevent their citizens from market failures, with respect to health and environmental issues. Recent experience in South Africa had highlighted difficulties in implementing technical regulations, in particular effective and efficient administrative procedures and conformity assessment frameworks. This might be the case for all of the Southern African region. Developing an understanding of basic building blocs of good regulatory practice would be of great value. His delegation looked forward to the information exchange envisaged in the Report. This would be of great benefit to his country in revisiting its own arrangements and would positively inform the harmonization process in the SADC region as well as technical assistance activities as described in the Report. He was ready to contribute his country's experience in this regard.

24. The representative of New Zealand noted that substantive decisions, for example in the area of international standards in Annex 4, had been reached in the Report, and the direction for future work of the Committee had been set. Her delegation looked forward to participating in that work, including in the area of equivalency of standards, as pointed out by Hong Kong, China, and in the development of the technical assistance work programme.

25. The representative of the United States (US) welcomed the fact that key elements of international standards development had been agreed upon. These principles could be used in the future to evaluate adverse trade implications if and when they arose. She agreed with South Africa that the topic of technical regulations was important, and looked forward to exchanging information on good regulatory practice and also on labelling. She noted that the Committee had reached a good basis for furthering the understanding of the needs of developing countries and opportunities for

technical cooperation. She would come back to the paper presented by Hong Kong, China, on the equivalence of standards at a future meeting.

26. The representative of Japan stated the Report took into account the interests of all Members in a balanced manner. He highlighted the importance of paragraph 20 and Annex 4, which would further strengthen the role of international standards under the Agreement. The Report provided a good basis for future Committee work.

27. The representative of Malaysia, speaking on behalf of the ASEAN countries, welcomed the Report. It highlighted the importance of implementing the Agreement and gave recommendations for its improvement, particularly with regard to notification procedures, conformity assessment and international standards. She welcomed, in particular, the decision of the Committee regarding principles for the development of international standards, as her delegation attached great importance to an open and transparent process, including full and effective participation of developing countries. She agreed with the EC that the Committee should continue to evaluate the effectiveness of these principles at a later stage. She welcomed the Committee's move towards the development of a technical assistance programme to meet the needs of developing country Members. She hoped for early and concrete proposals and actions in the Committee's future work.

28. The representative of Venezuela found the Second Triennial Review to be well balanced and reflective of the concerns of the majority of delegations. He commended the Report's section on technical assistance which he considered crucial to overcome the difficulties developing country Members still faced in implementing the Agreement.

29. The representative of Chile welcomed the results of the Review. He drew attention to the section on conformity assessment as well as Annex 5 in the Report and stated that conformity assessment was the most serious problem for developing countries requiring further concrete steps to be taken by the Committee.

30. The representative of ISO said that his organization would study the Report of the Second Triennial Review and inform ISO's 137 members of its content. He offered to provide information to the Committee on how the principles specified in Annex 4 were applied in ISO and IEC. Addressing concerns expressed by Mexico and others, he assured to report to the Committee on action taken to avoid duplication and ensure consistency between international standards. In relation to remarks by India and the EC, he referred to ISO/IEC Guide 2, which contained the definition of consensus for the purpose of standardization. He promised to report on ISO activities to address the needs of developing countries, as well as on the latest initiative of the ISO Technical Management Board to help representatives of developing countries play a more active role in standards development at the Technical Committee level. Concerning ISO/IEC Guide 60 "Code of Good Practice for Conformity Assessment" he cited ISO/CASCO's resolution taken in September 2000 that: "CASCO endorses the Chairman's proposal to revise ISO/IEC Guide 60 and directs CASCO's secretary to further invite CASCO members to nominate experts to new working groups to be established for this project and to inform the WTO TBT Committee on this initiative as an expression of continuing support by CASCO to WTO TBT activities."

31. The Chairman announced that the Report of the Second Triennial Review would be submitted together with the Annual Report 2000 of the Committee to the Council for Trade in Goods. As Chairman he would report on the outcome of the Review to the General Council in the context of its Special Session scheduled for in December. The relevant decisions made during the Review would be set out in document G/TBT/1/Rev.7.

III. STATEMENTS ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

32. The representative of Egypt reiterated concerns regarding the European Directives on waste from electrical and electronic equipment (WEEE) and on the use of hazardous substances in electrical and electronic equipment (HSEEE) and their negative effects on small and medium enterprises (SMEs) in developing countries. She recalled the need to further explore prospects of implementing these Directives through a technical debate as announced by the EC at the previous meeting.

33. The representative of Canada said that while supporting the underlying objectives of the WEEE Directive, he was concerned about its potential impact on SMEs outside the EC when implemented. On 25 September 2000, following notification of the Directive by the EC (G/TBT/Notif.00/310 on 26 July 2000), his delegation had put forward questions to the EC making reference to specific articles of the draft Directive.

34. On the issue of HSEEE, he recalled his delegation's request at previous meetings and through direct representations to the European Commission that scientific studies be provided by the EC for justification. He warned that the phase-out and ban of the materials foreseen in the Directive might result in negative environmental impacts by forcing adoption of substitutes that could have more detrimental effects on the environment than the substances they replaced. The implementation of the Directive would also create unnecessary barriers to trade. He invited a response by the EC to the comments made on both Directives.

35. On nickel-cadmium batteries, his delegation remained concerned by the EC's intent to ban the use of cadmium in batteries and accumulators in the absence of a formal risk assessment. If adopted, this ban might create unnecessary barriers to trade for manufacturers of electrical and electronic products relying on nickel-cadmium batteries as their power source. He recalled that OECD Member States had endorsed recycling as the preferred method to deal with environmental and health concerns associated with nickel-cadmium batteries and accumulators.

36. The representative of Malaysia, speaking on behalf of the ASEAN countries, remained concerned over the two proposed Directives and associated herself with the comments made by Egypt and Canada. On the WEEE Directive, she stated that setting up waste management plants entailed resources and expertise that were prohibitive for SMEs from developing countries, who did not have the economies of scale nor the benefit of a large distribution network in Europe to oversee waste collection. The Directive would be damaging to the competitiveness of SMEs and discriminate against SMEs located outside the EU. It would give a competitive advantage to European producers, disposing of *in situ* waste disposal capabilities and a distribution network to facilitate waste recovery efforts.

37. She noted that current waste management practices in several EU countries (such as Austria, Belgium, Denmark and Sweden) relied on end-of-life fees on electrical and electronic equipment products. Local authorities were responsible for the collection of WEEE by charging end-users through local taxes or collection fees. Targeting producers as the party responsible for improving the situation was discriminatory, especially when other parties were involved, including consumers and the government. She hinted that, seemingly, the premise underlying the proposal was not that the polluter, but that the producer would pay.

38. On the use of HSEEE, she invited the EC to make the list of hazardous substances to be banned, as well as the list of available substitutes available and to inform whether substitutes were commonly available. The types of technology were not present in developing countries, and manufacturers would face a competitive disadvantage not only in terms of access to technology but also in comparison to big companies that had already developed alternative technologies. She urged

the EC to ensure that these measures were not more trade restrictive than necessary to achieve its objectives.

39. The representative of Japan recalled that his delegation shared the EC's objectives to prevent lax disposal of electrical and electronic equipment and to restrict the use of hazardous substances therein. He expressed his belief, however, that the technical feasibility of the restriction and the recycling rate had to be verified on every kind of equipments subject to these regulations, since these regulations currently targeted all electrical and electronic equipments. The elimination and substitution of certain substances might not be possible, considering the current level of technology. Thus, the regulations could result in disguised trade restrictions. He held that the scope of electrical and electronic equipment targeted should be further clarified, bearing in mind technological feasibility. Further discussion with the EC was necessary, including hearings from manufacturers. Concerning the Directive on batteries and accumulators under discussion in the European Commission, his delegation's concerns were the same as for WEEE/HSEEE.

40. The representative of the United States recalled that over the past year concerns had been raised by many delegations with regard to these EC draft Directives. Given that the provisions would affect trade in a wide range of products, the US registered concern about a lack of transparency in the development of the proposals. She noted that the European Commission's proposal had been finalized and was passed on to the European Parliament and the European Council for consideration and approval. She questioned how the European Commission would still be able to address Members' concerns in consistence with its TBT obligations. At this stage, the Commission was not in a position to introduce amendments. If this was the case, she requested clarification on the process to take comments into account.

41. She requested clarification on the rationale for these measures and their relationship with the EC's environmental and health objectives so that the consistency with international obligations could be assessed. Concerning the proposed HSEEE Directive, she noted that the substance ban provisions would be reviewed in January 2004 to take new scientific evidence into account. She requested more information on the process and procedures for that review. She asked whether and how the Commission intended to conduct a risk assessment on new scientific evidence before implementing bans and what the specific process would be to determine exemptions. She recalled that at the last meeting, the EC had invited comments on the scientific evaluation attached to the proposal. She asked whether the Commission contended that this evaluation constituted the risk assessment for the substances it proposed to ban. She urged the Commission to work with all stakeholders to ensure that an environmentally beneficial and economically efficient approach was developed.

42. The representative of Australia recalled concerns expressed to the EC on the trade impact of the proposed measures, as well as on the lack of technical information regarding their background and the procedures for their implementation. She urged the EC to respond.

43. The representative of Venezuela associated himself with the concerns expressed by previous delegations.

44. The representative of the European Communities informed the Committee that the Directives had been adopted in June 2000. It was subject to the co-decision procedure that involved participation of the European Council and Parliament. The first reading in the Parliament would take place in March 2001 and a common Council position should be reached around June 2001. It was a long process in the course of which both proposals would be subject to alterations. The comments made in the Committee would certainly be conveyed to capital. She contended that the Directives were not entirely within the scope of the WTO, but her delegation was nevertheless ready to reply to questions raised by Members.

45. Regarding the proposal on restriction of certain hazardous substances, the representative of the European Communities stated that restrictions had been based on scientific evaluation which, however, did not itself constitute a full risk assessment. The evaluation showed that targeted heavy metals and brominated flame retardants contained in electrical and electronic equipment should not go to waste incinerators and landfills nor to metal smelters and shredders. Input of these substances into the waste stream from electrical and electronic equipment was significant and needed to be avoided. Two options had been considered: separate collection and recycling, or substitution of the substances where possible.

46. Regarding the first option, he explained that the EC had concluded from its evaluation and pilot projects within and outside the EU that, at best, 25 per cent of these equipments could be collected separately under the assumption that good waste management infrastructure was in place. The result implied that 75 per cent would still go untreated to either landfills, incineration facilities or metal smelters. It was clear that by choosing this option, the EC's objective could not be achieved in a similar way as through the substitution of the substances in new electrical and electronic equipment.

47. He assured, however, that the substitution, as proposed by the European Commission, contained various safeguards to avoid unnecessary burden for economic operators and for trade. The current HSEEE proposal contained a list of exemptions of substances used in electrical and electronic equipment. A mechanism was provided for amending the list of exemptions in the future. Cases where the substitution was not possible would qualify for exemption as well as cases where the environmental burden from substitution was more significant than the use of these substances themselves. Certain categories of electrical and electronic equipment were completely excluded from the ban, such as laboratory or medical equipment. In view of the wide range of products involved, it was difficult to establish specific exemptions for each product.

48. He explained that the current state of risk assessment had been taken into account in the draft proposal. The review on 1 January 2004 was to take account of the results of the ongoing and any further full risk assessments about to begin. He also referred to respective risk assessments on cadmium and on certain brominated flame retardants.

49. On the management of the proposed WEEE Directive he said that, in the future, producers would be held responsible for financing waste management given that they were in a position to change the design such that it facilitated waste management and, in particular, the recycling of the equipment. According to the concept of shared responsibility, producers were not responsible for all waste management activities, but for part of it, including treatment, recovery and disposal. They would not be responsible for the separate collection from private households which, he claimed, would currently account for 50 per cent of overall costs, and even more in the future. SMEs, in particular those located outside the EU, would not be directly and individually responsible to take back and recycle the equipment. Pools of companies were set up in the EU's member states, and SMEs, unable to provide for the recycling themselves, could contribute financially to these pools operating under economies of scale.

50. Regarding batteries, he affirmed that discussions within the Commission continued and its final position should be awaited for. Information available were internal papers released to stakeholders in the interest of transparency.

51. The representative of Canada associated himself with the concern by the US on how Members' comments would be accommodated by the Commission and other European institutions involved. He said that one purpose of notifications under the Agreement was to allow Members to have direct impact on the activities of other Members in situations where regulations were applied to traded goods. Electrical and electronic equipment counted among the most heavily traded goods world-wide. He showed continuing interest in a scientific risk evaluation. Evaluations undertaken by the EC were a preliminary step, but not sufficient to justify the regulation on a scientific basis. He

advised that in trying to minimize the impact on SMEs, the EC should consider that any additional charges, even if indirect and on a pool basis, could put these companies out of business. Different economics applied to SMEs in general and in the highly competitive area of electrical and electronic equipment in particular. He wondered why the representative of the EC had stated these Directives would not entirely fall under the scope of the WTO, when one of the most highly traded industrial areas was concerned.

52. The representative of Egypt invited the EC to provide the information presented in writing for analysis in capitals. She professed particular interest for the list of exempted substances and for the type of exemptions granted. She associated herself with Canada's remarks on negative cost effects on SMEs, even if those were only indirectly involved in recycling. She doubted that SMEs in developing country Members would be able to afford costs for recycling operations undertaken by European companies.

53. The representative of Malaysia associated herself with Canada's remarks on SMEs. There was a large number of SMEs in ASEAN countries involved in the production of electrical and electronic equipment. She requested the EC to provide its definition of SMEs, i.e to lay out what kind of companies would fall under this category, and what the financial contributions by SMEs to waste recovery and disposal would be as a proportion of costs or price of the product. She further inquired whether there would be penalties for non-compliance or how the EC would deal with defaulters. She supported Egypt's request to receive the EC's explanations in writing.

54. The representative of the European Communities, in response to Canada, clarified that Members had the right to pose questions and expect an answer. In his view, Article 2.9.4 stipulated that comments were to be taken into account, but were not necessarily to be followed. Members had to consider comments received when taking their decision domestically, and this, he guaranteed, would be the case. He clarified that EC notifications of technical regulations were undertaken very early in the adoption process, but could not be done before adoption by the Commission. The word adoption in this case simply referred to issuing the proposal which, in most cases, still had to be examined by the Council and the Parliament. In the case of the said draft Directives, the adoption process was at a very early stage and the Directives were still to be discussed in the Council and Parliament for months to come. He assured that the Commission was in a position to fully take into account all comments made by Members. He encouraged Members to use the normal channel for providing comments in the form of a reply to the notification. The time-period for comments had been extended and replies would be made in writing where necessary and appropriate. Concerning the detailed technical explanations just given in the meeting, he said it was not previewed to provide these in writing, since the expert from capital had instructions to answer questions by the Committee.

55. In response to Canada's request for additional information on the scientific basis of the assessment carried out by the Commission, he stated that the proposal already contained an evaluation of scientific data gathered by the Commission with respect to the substances covered by the Directive. This assessment was complemented by reports prepared by universities or other member states. These documents were available to Members upon request.

56. He further answered that there was no definition of SMEs in these draft legislations. He said a general exclusion of SMEs from these provisions would undermine the principle of producers' responsibility. In practical terms, such an exclusion would be very difficult if not impossible to administer and implement. Regarding the possible share of costs in the overall price, the Commission had assessed that for most of the products the price increase would be around 1 per cent initially. This would drop to less than 1 per cent in the near future due to economies of scale and the development of technology for both recycling operations and improved design for recycling.

57. The representative of Mexico reiterated his concern about the scope of labelling on tuna as notified by the US in document G/TBT/Notif.00/5. He recalled the US's intent to issue a

corrigendum. His delegation continued the analysis of the compatibility of this standard with WTO Agreements.

58. The representative of United States said a corrigendum to the notification had been issued.

59. The representative of Egypt raised concerns regarding EC notification G/TBT/Notif.00/289 related to a system of identification and registration of bovine animals as well as the labelling of beef and beef products. This could represent a serious impediment to trade from developing countries. She requested further clarification about the implementation of such a system.

60. The representative of the European Communities responded that the text and several tables clarifying the labelling requirements could be made available to Egypt. He was open for bilateral or general discussions on labelling requirements of beef products at the next meeting if the Committee so wished. He said Egypt's request demonstrated again that the Committee would increasingly be confronted with the issue of labelling.

61. The representatives of the United States, New Zealand, South Africa and Canada voiced interest in the matter requesting that information be shared with their delegations.

62. The representative of Egypt raised concerns about the EC's reference standard EN61000-3-2 under the Electromagnetic Capability (EMC) Directive imposing mandatory limits on low frequency emissions from information technology products and all other electronic equipment, thus entailing higher costs on information technology products, especially for developing country producers. The EC had clarified that requirements were the same for European industry as for others, but her delegation did not challenge discrimination. Instead, she questioned the ability of some developing country Members to fulfil what the EC called essential requirements, and she requested further clarification.

63. The representative of the United States recalled that she had raised the issue in previous meetings and that the US had received a response from the European Commission which she could share with Members. In its response, the Commission stated that it was committed to international standardization but did not participate in technical standardization activities. She highlighted, in this context, the obligations in Article 2 of the Agreement calling upon governments to participate in the development of international standards for products for which they either have adopted or expect to adopt technical regulations (Article 2.6). Such participation was critical if the resulting documents were to be relevant as a basis for technical regulations.

64. She added that the issue had not been raised by her delegation if the standards had remained voluntary. The link to Community regulation – the EMC Directive – placed the standards within the meaning of “technical regulations” in the Agreement. The Commission, however, claimed that these were voluntary and provided as one option of meeting the “essential requirements” of the EMC Directive. She held this would be an encouraging response if the EMC Directive contained clear, objective performance criteria that provided a basis for suppliers to pursue alternatives. There were, however, no such criteria in the Directive.

65. In response to concerns about transparency, the Commission noted the original standards had been developed in an open and transparent process in the IEC. Her delegation did not consider this to be a satisfactory response. While the Agreement envisioned that government regulators would use international standards as a basis for their technical regulations, it did not absolve Members of their responsibility to provide meaningful opportunity for comments. Nor did it absolve regulatory authorities of their responsibilities to consider whether a particular international standard was “relevant,” and an “effective” and “appropriate” means of meeting their “legitimate” regulatory objectives. It was her belief that this was an issue of concern to all Members who had been denied

their rights under the Agreement to comment on the use of the standard in relation to the Community's EMC Directive.

66. The representative of Canada voiced concerns that the European Commission had adopted the Directive based on European standards in advance of the IEC's formal adoption of a standard in this field, although the IEC process was still ongoing. With regard to the importance of international standards under the Agreement, reinforced through Annex 4 of the Second Triennial Review, he regretted the approach chosen by the EC.

67. The representative of the European Communities stated that a written response had been distributed to Members at the last meeting. It was apparent from discussions of the Second Triennial Review that the EC was committed to international standardization. However, the European Commission and other Community institutions did not participate directly in technical standardization activities. The European standards referred to were a direct transposition by CENELEC of IEC standards, adopted in 1995. These standards had been developed by the IEC following a transparent procedure. He was under the impression that the IEC followed the agreed principles in Annex 4 of the Second Triennial Review. The adoption process of harmonized standards in Europe followed national votes in a democratic process. The standard in question was adopted by CENELEC following a parallel procedure. The technical content of the standard was identical to the international one. Contrary to what had been expressed by the US, the specifications contained in the standards were not mandatory in the framework of the application of the EMC Directive. Manufacturers were free to apply other solutions to comply with the provisions of the Directive. He explained that the manufacturer had to supply a so-called technical construction file, containing a report from a competent body which confirmed the compliance of the solution taken with the legal requirements of the Directive which were essential requirements. Either procedure was available to all manufacturers, whether located within or outside the EU. He held there was no discrimination in relation to non-EU manufacturers and also contested the US's statement of the standards being *de facto* mandatory. The specifications could not be considered technical regulations within the meaning of the Agreement. Insofar as there was a problem with the technical content of the standards themselves, it was the role of the IEC to continue discussions. He concluded that the discussion focussed on the way regulations were introduced within the EU, and he looked forward to continuing such discussions under the heading of best regulatory practice.

68. The representative of Japan added this might be a case in question as referred to in paragraph 20 of the Report of the Second Triennial Review. It might demonstrate that even if the principles for standards development in Annex 4 were observed by international standardizing bodies, inappropriate, ineffective or obsolete international standards might still exist.

69. The representative of the United States announced her delegation was going to submit an informational document on protocols to the European Agreement between the EU and certain other countries. According to the press, there had been three agreements between the EU and the Czech Republic, Hungary and Latvia. Her delegation had examined a model text some features of which, she understood, would be introduced in those agreements and come into force on 1 January 2001. These features would be described in the forthcoming paper. These agreements covered the recognition of conformity assessment results. The uncertainty and the potential impact arising from provisions on origin in Article 8 of the model was of particular concern to her delegation. Third country products not originating in the EU, in order to bear a valid CE mark granted by a body recognized by the EU, might have to undergo redundant testing on importation to the partners to this agreement. Not having seen the actual texts, she was uncertain about having captured the precise content, but was hopeful that either of the parties would notify to the Committee as foreseen under Article 10.7 of the Agreement.

70. The representative of Canada voiced similar concerns, in particular on the issue of origin and problems related to its implementation. In establishing an MRA between Canada and the EU, due

heed was paid not to have rules of origin provisions in the agreement. He said the MRA allowed for products originating in third countries, which were subject to conformity assessment in either Canada or the EU, to be covered by the MRA. He believed this to be the proper approach to MRAs.

71. The representative of the European Communities said a copy of a model agreement had been provided to the US, as the same type of agreement was to be negotiated with all applicant countries to the EU. The goal was to have identical agreements in terms of general provisions and the functioning of these agreements. These agreements, which were under preparation with Hungary and the Czech Republic, were not signed yet, so no final version existed to date. There was no impact of those agreements on third parties apart from the extension of the Single Market in a series of sectors, where the legislation of the applicant countries had been aligned with European legislation. Instead of meeting the respective national requirements, third country exporters would only need to meet the common set of technical requirements for all European member states and applicant countries having signed those protocols to the Europe Agreement. Being association agreements between the EU and the applicant countries, they should not be seen as mutual recognition agreements, but as a pre-accession tool.

72. The representative of Canada drew attention to notification G/TBT/Notif.00/428 of 15 September 2000 regarding the proposal for a Council regulation amending regulation EEC 1907/90 on certain marketing standards for eggs. His delegation had requested an explanation of its justification in accordance with Article 2.5 of the Agreement, awaiting response.

73. The representative of European Communities said it had notified its intention early in the adoption process to the Committee on 15 September 2000. In the light of several comments the decision would be postponed. The regulation dealt with information to consumers; eggs would have to be labelled according to farming conditions. The way to indicate those farming conditions still had to be discussed over the coming months. The purpose of the notification was fulfilled by calling the attention of Members to technical requirements under preparation. In the future, the draft would be available and the EC would continue to inform other Members on its intentions in terms of labelling of eggs.

74. The representative of Canada held that it was an issue of principle dealt with labelling related to non-product related processes and production methods (PPMs). His delegation had supported the EC's intent to have a broader discussion on labelling in the Committee, and would provide written comments to the EC enquiry point prior to the 14 November 2000 deadline.

75. The representative of India said compulsory labelling as well as labelling based on non-product related PPMs were matters of strong systemic concerns to his delegation. He requested the Canadian delegation to share their written comments and the EC's response with India.

76. The representative of Egypt registered concerns regarding the Japanese mandatory country of origin labelling scheme on perishable foods and beverages, in particular its consequences on developing country Members and the costs related to compliance. She hoped an assessment of such impacts would be taken into consideration by Japan.

77. The representative of Japan promised to convey the concern expressed by Egypt to capital for further reactions.

78. The representative of the United States drew attention to the Japanese Ministry maintaining safety regulations and conformity assessment procedures for boat engines and equipment, and recalled the need for good communication among domestic authorities in implementing the Agreement. Given the prominence to transparency in the Agreement, her delegation had tried to obtain published documents concerning changes in regulations affecting small craft safety regulations. Her delegation was aware of the fact that these regulations deviated from what might be considered relevant

international standards, which caused trade concerns to the US. The US had received complaints from its manufacturers who appeared to be subject to less favourable treatment than that afforded to Japanese products and manufacturers. She requested further information from Japan.

79. The representative of European Communities associated his delegation with the concerns raised by the US.

80. The representative of Japan asserted that a public comment system was in place. Related ministries had solicited comments from interested parties. He was not aware of a transparency problem, but nevertheless promised to convey the concerns expressed to capital to obtain additional information.

81. The representative of Egypt raised concerns regarding Indonesian consumer protection regulation No.8 for the year 1999. She felt certain requirements involving labelling could have future negative impacts on the flow of trade to the Indonesian market, especially from other developing country Members.

82. The representative of Indonesia took note of the concern raised by Egypt. He promised to consult with his authorities and indicated his readiness for bilateral consultations.

83. The representative of Canada highlighted that at the last meeting of the Codex Alimentarius Committee on Food Labelling in May 2000, a drafting group had been established to elaborate a guideline on labelling of goods derived from biotechnology (GMOs). The drafting group had met on 23-27 October 2000 in India, to develop a guideline based on health and safety considerations as well as non-product related PPM labelling issues. Canada would like to raise this issue with regard to the general subject of labelling within the TBT context. Codex was an international, intergovernmental standards body for food safety that undertook to develop a standard on what appeared to be a TBT issue. Canada was concerned with potential trade implications of this work and encouraged Members to review with their appropriate regulatory authorities the implications of the proposals on the subject of GMO labelling in its own right as well as the implications beyond GMOs with regard to other labelling issues.

84. The representative of the United States associated her delegation with the comments made by Canada.

85. The representative of Chile endorsed the comments made by Canada. He encouraged Members' participation in this Codex Committee.

86. The representative of Canada cited several recent notifications by Denmark which did not respect the requirement of a 60-days comment period.

87. The representative of the European Communities explained that the delay had been caused by an administrative mistake. For all of these notifications, requests for an extension of comment period would be looked upon favourably.

88. The Committee took note of the statements made.

IV. REPORT (2000) OF THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE

89. The Chairman drew attention to document G/TBT/SPEC/17 containing the draft Annual Report of the Committee for the year 2000 and proposed that the Committee adopt the draft with minor modifications to take into account the results of the Second Triennial Review. The Annual Report would be submitted together with the Report of the Second Triennial Review to the Council for Trade in Goods on 15 November 2000.

90. The Committee agreed to adopt the Annual Report (2000).

V. OTHER BUSINESS

91. The Chairman informed the Committee that the next meeting would be held in the first quarter of 2001.

92. The Committee took note of the statement made.
