

RESTRICTED

# WORLD TRADE

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# ORGANIZATION

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## Committee on Technical Barriers to Trade

### MINUTES OF THE MEETING HELD ON 1 MARCH 1996

Chairperson: Ambassador C. L. Guarda (Chile)

1. The WTO Committee on Technical Barriers to Trade held its fourth meeting on 1 March 1996.
2. The following agenda, contained in WTO/AIR/260, was adopted:

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C. First Annual Review of the Implementation and Operation of the WTO TBT Agreement under Article 15.3	2
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#### A.ELECTION OF OFFICER

3. The Committee elected Ambassador C. L. Guarda (Chile) Chairperson for 1996.

#### B.REQUEST FOR OBSERVER STATUS BY THE ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

4. The Committee agreed to grant observer status to the Organization for Economic Co-operation and Development (OECD) on an ad hoc basis, pending final agreement on guidelines for observer status for international intergovernmental organizations in the WTO.
5. The Chairperson informed the Committee that a letter had been received from the United Nations Economic Commission for Europe requesting observer status in the Committee and that the issue would be taken up at the next Committee meeting.

#### C.FIRST ANNUAL REVIEW OF THE IMPLEMENTATION AND OPERATION OF THE WTO TBT AGREEMENT UNDER ARTICLE 15.3

6. The representative of Japan asked for clarification on the definition of the objectives and rationales listed in table 3 of the annual review (G/TBT/3) since five categories of objectives and rationales contained in the table were not indicated in the TBT Agreement. Referring to table 4 "Observation of the recommended comment period by each Member", he expressed concern about the large number of notifications made without specifying a comment period. He suggested that relevant data on urgent notifications should be reflected in table 4.
7. The representative of the United States thought it difficult for the Secretariat to define each category of objectives and rationales stated in Table 3. This table had been drawn up on the basis of the notifications submitted by Members and only Members were able to indicate their own reasons for proposing a change in their national regulations. She supported the Japanese suggestion regarding table 4.
8. The representative of Canada said that the present format of the Annual Review was concise and easy to consult.
9. The Chairperson explained that the information concerning objectives and rationales listed in table 3 could be found in document G/TBT/W/18. She said that the Japanese proposal regarding table 4 would be taken into account for the preparation of subsequent reviews.
10. The Committee agreed to conclude its First Annual Review on the basis of the background documentation contained in G/TBT/3.

#### D.FIRST ANNUAL REVIEW OF THE CODE OF GOOD PRACTICE FOR THE PREPARATION, ADOPTION AND APPLICATION OF STANDARDS IN ANNEX 3 OF THE AGREEMENT UNDER THE MINISTERIAL DECISION

ON REVIEW OF THE ISO/IEC INFORMATION CENTRE PUBLICATION

11. The Chairperson drew attention to the WTO TBT Standards Code Directory prepared by ISO/IEC which contained information received pursuant to paragraphs C and J of the Code of Good Practice for the Preparation, Adoption and Application of Standards. She informed the Committee that a free copy of the Directory would be distributed to each Member and additional copies of the publication could be purchased from the ISO and the WTO bookshop.
12. The observer from the ISO informed the Committee that the ISO/IEC Information Centre had received 6 additional notifications of acceptance of the Code of Good Practice by standardizing bodies and that the WTO TBT Standards Code Directory would soon be available in French and Spanish.
13. The Chairperson drew attention to document G/TBT/CS/1 containing a list (by Member) of all standardizing bodies that had accepted the Code of Good Practice before 31 December 1995 and informed the Committee that Standards Australia had notified its acceptance of the Code of Good Practice to the ISO/IEC Information Centre in November 1995 but the notification of acceptance had only recently been received by the WTO Secretariat. She said that the Secretariat would revise documents G/TBT/CS/1 and G/TBT/3 to include Standards Australia as one of the standardizing bodies which had accepted the Code in 1995. Taking that into account, she noted that at the end of 1995, 28 standardizing bodies from 26 Members had accepted the Code of Good Practice. She drew Members' attention to their obligations under Article 4.1 of the Agreement.
14. The representative of Argentina explained that the small number of standardizing bodies adhering to the Code might be due to lack of awareness of its advantages. Governments should bear those advantages in mind, particularly the possibility of providing comments on the standards of other Members.
15. The representative of Norway pointed out that the Norwegian standardizing bodies had not yet adhered to the TBT Code of Good Practice, but that such adherence would be given positive consideration, as Norway attached great importance to the Code of Good Practice.
16. The representative of the European Communities informed the Committee that the European Telecommunications Standardization Institute (ETSI) had adhered to the Code of Good Practice.
17. The representative of Turkey said that the Turkish Standards Institution would accept the Code of Good Practice soon. The notification of the existence of work programme would be sent to the ISO/IEC Information Centre in June/July because the work programme of Turkish Standards Institution would start only in May.
18. The representative of Australia asked whether any of the standardizing bodies which had accepted the Code of Good Practice were involved in eco-labelling programmes.
19. The representative of the United States suggested that a review of standardizing bodies involved in eco-labelling programmes be undertaken when more national standardizing bodies had accepted the Code of Good Practice.
20. The representative of Mexico recalled that in the informal meeting of the Committees on Trade and Environment and Technical Barriers to Trade, the need for further disciplines on eco-labelling and for a review of compliance of eco-labelling programmes with existing disciplines had been stressed. She suggested that in the future it might be useful to examine notifications under the Code of Good Practice of standardizing bodies of both general and specific work programmes in particular relating to eco-labelling.

21. The Chairperson said that the ISO Bulletin, the WTO TBT Standards Code Directory and the notifications of acceptance of the Code of Good Practice contained in document series G/TBT/CS/N/ provided information on the activities of standardizing bodies.

22. The Committee took note of the statements made.

#### E. STATEMENTS ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

23. The Chairperson reminded Members that under Article 15.2 of the TBT Agreement, each Member should promptly inform the Committee in writing of measures in existence or taken to ensure the implementation and administration of the Agreement. She drew attention to document G/TBT/1/Rev.1 containing decisions adopted by the Committee concerning the contents of written statements. She said that up to the present only four Members had submitted their statements (G/TBT/2 and addenda). She urged Members to submit their statements promptly, since this was one of the main indicators of implementation of the Agreement by Members and also one of the main elements to be reported to the Singapore Ministerial Conference in December 1996.

24. The representative of United States stressed the importance of submitting the statements under Article 15.2 of the Agreement.

25. The representatives of Canada and Switzerland said that their delegations would submit the statements shortly.

26. The representative of Slovenia said that his delegation would submit the statement and notify acceptance of the Code of Good Practice soon.

27. The representative of Indonesia said that the Indonesian statement made under the Tokyo Round TBT Agreement contained in document TBT/1/Add.38 remained valid.

28. The Chairperson invited the representative of Indonesia to submit this information in writing to enable the Secretariat to issue the Indonesian statement formally under the WTO TBT Agreement.

29. The Committee took note of the statements made and agreed that the Chairperson would send reminders at the beginning of May 1996 to delegations whose statements had not yet been received.

#### F. SUGGESTIONS MADE AT THE SPECIAL JOINT MEETING ON PROCEDURES FOR INFORMATION EXCHANGE OF THE COMMITTEES ON TECHNICAL BARRIERS TO TRADE AND SANITARY AND PHYTOSANITARY MEASURES

30. The Chairperson drew attention to the report on the Special Joint Meeting on Procedures for Information Exchange of the Committees on Technical Barriers to Trade and Sanitary and Phytosanitary Measures (G/TBT/W/16) which contained suggestions and proposals made at that meeting.

31. She noted that for notifications of regulations which might contain elements relevant to both the TBT and SPS Agreements, it had been suggested that Members could either submit a single notification, clearly indicating which elements of the proposed regulation were sanitary or phytosanitary measures and which were subject to the TBT Agreement, and it would be circulated as both an SPS notification and a TBT notification by the Secretariat. Alternatively, Members could

submit two separate notifications, one under the SPS Agreement and the other under the TBT Agreement, each of which would contain only those elements of the proposed regulation covered by the respective Agreements.

32. She reminded Members that they had been encouraged to: (i) fill out completely and correctly notification formats to make more efficient the processing of notifications; (ii) use fax facilities to the extent possible and acknowledge receipt of requested documents to facilitate the processing of requests for basic documents mentioned in notifications; (iii) submit notifications in different WTO working languages, if they were prepared in those languages; and (iv) give favourable consideration to requests for extension of comment periods in view of delays often experienced in receiving and translating relevant documents. She noted that it was a decision of the Committee to hold meetings for information exchange on a biennial basis (G/TBT/1/Rev.2) and it had been suggested that such meetings should coincide more closely with regular meetings of the Committee.

33. She drew attention to the proposals made with respect to the notification format under Articles 2, 3, 5 and 7 of the TBT Agreement that: (i) under point 2, the authority or agency designated to handle comments regarding the specific notification should be indicated; (ii) under point 5, the language(s) in which notified documents were available should be indicated; and (iii) under point 9, the title should be "Proposed dates of adoption and entry into force" so that information regarding the date of adoption and the date of entry into force could be provided separately.

34. The representative of the United States suggested that under point 9, the title should be "Proposed date of adoption" and "Proposed date of entry into force", and that under point 2, it should be indicated if the agency responsible for drafting proposed regulations differed from the agency responsible for handling comments.

35. Referring to point 2, the representative of the European Communities suggested replacing the wording "should be indicated" by "can be indicated".

36. The Committee agreed to modify the titles in the notification format as follows: (i) under point 2, "Agency responsible" and "Agency or authority designated to handle comments regarding the notification can be indicated if different from above"; (ii) under point 5, "Title, number of pages and language(s) of the notified document"; and (iii) under point 9, "Proposed date of adoption" and "Proposed date of entry into force".

37. The Chairperson recalled that at that meeting it had also been suggested that the possibility of developing a single format for SPS and TBT notifications should be considered.

38. The representative of the United States clarified that her delegation had suggested in conjunction with Canada that it might be useful to minimize any unnecessary differences between the contents in wording of SPS and TBT notification formats to avoid confusion. However, the proposal was not to have a single notification format for the two Agreements. She nevertheless hoped that any change in the TBT notification format could be adopted also by the SPS Committee.

39. The representative of Canada said that the aim of the suggestion was to reduce any unnecessary administrative burden and facilitate the use of the formats by enquiry points.

40. The representative of the European Communities noted that the SPS notification format was initially prepared on the basis of the TBT format, but gradually small changes had been introduced to accommodate the SPS notification system. He considered the proposal unnecessary.

41. The representative of Australia noted that the two Agreements had similarities. Although a single format was an option for Members to use, it was not a mandatory procedure.
42. The representative of the Secretariat said that Members could design formats for their own use, and the Secretariat would continue to issue SPS and TBT notifications separately.
43. The Chairperson concluded that the existing practice and notification formats should be maintained. The Committee took note of the statements made.
44. The Chairperson drew attention to the proposal of developing a format for notifications under Article 10.7 of the Agreement. She noted that no notification had been received from Members under Article 10.7.
45. The representative of the United States suggested inviting the Secretariat to prepare a draft notification format for consideration at the next Committee meeting.
46. The Committee agreed to the suggestion of the United States.
47. The Chairperson drew attention to the proposals made concerning enquiry points.
48. With respect to the List of Enquiry Points (G/TBT/ENQ/), the Committee agreed to adopt the recommendation to include E-mail addresses, where available, in the document.
49. The representative of Canada proposed that the List of Enquiry Points should be issued as derestricted document. She also proposed derestricting TBT notifications under Articles 2, 3, 5 and 7 of the Agreement.
50. The representatives of the European Communities and Australia endorsed the proposals made by Canada.
51. The Committee agreed to derestrict documents containing the List of Enquiry Points and the TBT notifications under Articles 2, 3, 5 and 7 of the Agreement.
52. The Chairperson drew attention to the suggestion that the Secretariat prepare a brochure with a description of the functions of Enquiry Points, highlighting the basic requirements and recommendations and identifying good practices in this regard.
53. The representative of the European Communities said that there was no immediate need to prepare such a brochure. However, he thought that statements on the implementation and administration of the Agreement under article 15.2 would be important in giving new Members a clear picture of how the TBT Agreement should be implemented. The need for a brochure could be re-examined later.
54. The representative of the United States recalled that during the transitional period of entry into force of the WTO TBT Agreement, there had been a suggestion from several delegations of using a private consultant to prepare a brochure describing the Agreement and its benefits for Members. Although recognizing the difficulties the Secretariat might face in preparing such a document, including financial difficulties, nevertheless she considered it a valuable exercise.
55. The representative of Canada noted the publication "Business Guide to the Uruguay Round" prepared by the International Trade Centre (ITC) and the Commonwealth Secretariat explaining the WTO and the Uruguay Round in general. He thought that some of the information it contained was

useful and suggested that the Secretariat could circulate the parts relevant to the TBT Agreement to Members for information. This proposal was supported by the representative of the United States.

56. The Committee took note of the statements made and agreed to invite the Secretariat to circulate to Members the parts relevant to the TBT Agreement of the publication "Business Guide to the Uruguay Round" prepared by ITC and the Commonwealth Secretariat.

#### G.DECISIONS AND RECOMMENDATIONS REGARDING THE ISO/IEC CODE OF GOOD PRACTICE ON STANDARDIZATION

57. The Chairperson recalled that at its previous meeting the Committee had held discussions on decisions and recommendations taken by the Tokyo Round TBT Committee (TBT/16/Rev.7 and G/TBT/W/14) and agreed to include decisions and recommendations relating to the "ISO/IEC Code of Good Practice for Standardization", "Testing, Inspection and Type Approval" and "Avoidance of Duplication" in the agenda of its next meeting.

58. The representative of the United States recalled that at the last Committee meeting, her delegation had been invited to prepare a proposal updating the decision taken by the Tokyo Round TBT Committee on the ISO/IEC Code of Good Practice for Standardization. She said that at present her delegation was not in a position to put forward a proposal, but it had been undertaking consultations with other delegations to ascertain if there were possible difficulties in implementing the WTO TBT Code of Good Practice. She requested this agenda item be kept open.

59. The representative of the European Communities stressed the need to avoid a rivalry between the ISO/IEC Code of Good Practice on Standardization and the TBT Code of Good Practice. He thought that the idea of presenting the two codes as alternative would undermine the benefits of either one of them. He stressed that the WTO TBT Code was part of the whole WTO TBT Agreement. He suggested that it would be more fruitful to look into how the two codes could be mutually complementary or how to avoid duplication of work and any inconsistency.

60. The Committee took note of the statements made. The Chairperson said that the Committee would come back to the item if any proposal was brought forward by delegations.

#### H.DECISIONS AND RECOMMENDATIONS REGARDING TESTING, INSPECTION AND TYPE-APPROVAL

61. The Chairperson said at the previous Committee meeting it had been considered useful to invite representatives of international standardizing bodies and conformity assessment systems to brief Members on the latest developments in their work. She invited the representative from the ISO/CASCO (Committee on Conformity Assessment) to outline to Members the latest developments in ISO's work relating to rules and guides in conformity assessment activities before the Committee started discussions on its own recommendations. She said that a representative from the International Laboratory Accreditation Conference (ILAC) would be invited at the next meeting to inform the Committee on ILAC's work relating to the Agreement.

62. The representative from the ISO/CASCO explained that CASCO (the ISO's policy development Committee on Conformity Assessment), the successor of CERTICO (the ISO Committee on Certification), was created in 1985 to extend from the field of certification to cover all conformity assessment activities, in particular quality systems. CASCO membership was open to all interested ISO member bodies, IEC national members and to international organizations in liaison as observer members.

63. CASCO meetings were held annually and their terms of reference included (i) the study of means of assessing the conformity of products, processes, services and quality systems to appropriate standards or technical specifications; (ii) the preparation of international guides, published as ISO/IEC Guides on testing, inspection and certification of products, processes and services; (iii) the assessment of quality systems, testing laboratories, inspection bodies, certification and accreditation bodies; (iv) the promotion of mutual recognition and acceptance of national and regional conformity assessment systems; and (v) the promotion of the use of international standards for testing, inspection, certification, assessment and related purposes.

64. The work of CASCO was carried out in working groups consisting of a small number of experts designated by the ISO member bodies and the IEC national committees, bearing in mind the need to ensure a balanced representation of interested parties. The current work programme included: (i) the review of existing guides on product certification, assessment of quality systems, acceptance of certification bodies, inspection bodies and testing laboratories; (ii) the preparation of new guides in response to requests arising from the ILAC; and (iii) studies to promote the recognition and acceptance of certification systems established on the basis of ISO/IEC guidelines.

65. In order to clarify the terminological usage of terms, ISO/IEC Guide 2 was published in 1976 and was regularly updated. However, she noted that conformity assessment activities continued to face terminology problems, such as the definitions of "certification", "accreditation" and "conformity assessment" because procedures for conformity assessment varied significantly among countries.

66. In the early 1980s, CERTICO guides dealt mainly with product certification and the related supplier's declaration. These included:

- ISO/IEC Guide 23:1982 Methods of indicating conformity with standards for a third-party certification systems;
- ISO/IEC Guide 27:1983 Guidelines for corrective action to be taken by a certification body in the event of misuse of its mark of conformity;
- ISO/IEC Guide 28:1982 General rules for a model third-party certification system for products;
- ISO/IEC Guide 22:1982 Information on manufacturer's declaration (revision due for publication mid 1996).

67. In order to meet the need for international harmonization of other conformity assessment approaches besides product certification CERTICO was replaced by CASCO. Subsequently, ISO and ILAC accelerated the trend towards international harmonization of other conformity assessment approaches besides product certification. The Guides published by CASCO since 1985 reflected CASCO's attention to quality systems and requirements for bodies other than certifiers. These Guides included:

- ISO/IEC Guide 48:1986 Guidelines for a third-party assessment and registration of a supplier's quality system;
- ISO/IEC Guide 53: 1988 An approach to the utilization of a supplier's quality system in third-party product certification;
- ISO/IEC Guide 56:1989 An approach to the review by a certification body of its own internal quality system;



-ISO/IEC Guide 57:1991 Guidelines for the presentation of inspection result;

-ISO/IEC Guide 58:1993 Calibration and testing laboratory accreditation systems - General requirements for operation and recognition.

68. In the early 1990's, major developments in quality system certification/registration, based on the ISO 9000 series of standards, had given rise to the need for developing Guides on such certification and related accreditation activities. She said that the current trend was to prepare guides of a more "horizontal/generic" nature, because "horizontal" guides were flexible to address essential requirements in a wide range of activities. ISO/IEC Guide 60:1994 Code of good practice for conformity assessment was developed intending to ensure openness and transparency with an optimum degree of order, coherence and effectiveness in world-wide conformity assessment processes.

69. She mentioned that the three reference ISO/IEC guides on testing on inspection activities were:

-ISO/IEC Guide 25-1990 General requirements for the competence of calibration and testing laboratories;

-ISO/IEC Guide 39-1988 General requirements for the acceptance of inspection bodies; and

-Guide 43 on Laboratory Proficiency Testing developed in close cooperation with ILAC.

She said that the Guides 25 and 39 were under revision and would be published during 1996. Guide 43 was ready for final approval. She recalled that the GATT TBT Committee had recognized ISO/IEC Guides 25, 39 and 43 and recommended their use. She hoped that the updated versions of the guides would receive the same recognition by the WTO.

70. CASCO's most recent work was extended to incorporate new concepts in quality system management and its accreditation. New guides were being developed including:

-ISO/IEC Guide 61: General requirements for assessment and accreditation of certification/registration bodies (scheduled for publication in April 1996);

- ISO/IEC Guide 62: General requirements for bodies operating assessment and certification/registration of quality systems (would supersede ISO/IEC Guide 48); and

-ISO/CASCO/228 (Rev.2) (future ISO/IEC Guide 65): General requirements for bodies operating product certification systems (expected to be published by the end of 1996 and would supersede ISO/IEC Guide 40).

71. She said that ISO/IEC Guide 61 set out guidelines for a body to follow if it was to be recognized at a national or international level as competent and reliable in assessing and accrediting certification/registration bodies. Conformance to the requirements of this document will promote equivalence of national systems and facilitate agreements on mutual recognition of accreditation between such bodies. ISO/IEC Guides 61 and 62 would provide international guidelines for the operation and accreditation of quality system registration/certification bodies and would serve as references for the setting up of QSAR system (Quality System Assessment Recognition) established by the ISO and IEC. ISO/IEC Guides 61 and 65 were intended to provide the basic requirements for the operation and accreditation of product certification systems. These would be published during 1996. She hoped that they could be considered reference documents in the TBT Agreement.

72. The Committee took note of the statement made.

#### I. DECISIONS AND RECOMMENDATIONS REGARDING AVOIDANCE OF DUPLICATION

73. The Chairperson noted that the "Decision and Recommendation regarding Avoidance of Duplication" referred to an ad hoc arrangements with the FAO/WHO Codex Alimentarius Commission (TBT/16/Rev.7).

74. The representative of Japan said that avoidance of duplication with other standardizing bodies was very important, not only with the FAO/WHO Codex Alimentarius Commission but also with other standardizing bodies. He proposed to amend the term "Codex Alimentarius Commission" contained in the decision and recommendation taken by the Tokyo Round TBT Committee to read "Codex Alimentarius Commission and other technical bodies".

75. The representative of the United States asked for clarification from Japan on the term "technical bodies" and whether they referred to international standardizing bodies.

76. The representative of Japan said his authorities had several standardizing bodies in mind. However, his delegation needed more time to reflect on the issue and to consult with the Chairperson.

77. The Committee took note of the statements made and the item was left pending.

#### J. ECO-LABELLING

78. The Chairperson recalled that at its last meeting, the WTO TBT Committee agreed to pursue discussions on eco-labelling in joint informal meetings with the Committee on Trade and Environment. A joint informal meeting had been held with the CTE on 27 February. At that meeting, representatives from the United States, European Communities, the Czech Republic, the Nordic countries, Chile, Japan and Canada presented their national and regional eco-labelling programmes. A paper (G/TBT/W/21) had been prepared by Canada to promote discussions on the issue.

79. The representative of Canada, introduced his delegation's proposal in WT/CTE/W/21. Eco-labelling could be an important tool for encouraging resource and manufacturing industries to adopt higher standards of environmental protection. Granting eco-labels to environmentally preferable products and services was designed to influence consumer purchasing behaviour and provide opportunities for increased market share. Eco-labelling programmes were valid environmental policy instruments which must be developed and implemented in a manner consistent with fundamental WTO disciplines of non-discrimination and national treatment.

80. He said that many delegations were concerned about the possible introduction of unincorporated (i.e., non-product related) PPMs into the WTO. The best way to handle this concern was to limit the possible cover of unincorporated PPMs to voluntary eco-labelling programmes, i.e., standards. His delegation was not proposing to interpret the definition of technical regulation. Some had argued that unincorporated PPMs-based measures were not consistent with non-discrimination and national treatment obligations of the GATT 1994 and the TBT Agreement. However, while there was no scope for technical regulations based upon unincorporated PPMs, the situation was less clear with respect to standards. He thought that voluntary eco-labelling programmes should not be excluded from TBT coverage only on the basis that the life-cycle approach (LCA) might result in a standard that might or might not fall within the scope of the TBT.

81. From an environmental perspective, LCA was an integral part of eco-labelling programmes. LCA considered the environmental impact at each stage of the product's life, and eco-labelling programme criteria were developed accordingly. Where the greatest impact was at the consumption (i.e., energy or water consumption of home appliances) or final disposal (e.g., batteries, lubricating oil) stage the resulting eco-labelling criteria would be largely product-related and characteristic or performance-based. These criteria were no different from other voluntary standards and should be subject to existing TBT disciplines. Where, however, the LCA indicated that significant environmental impact was at the production stage (e.g., paper products), the resulting eco-labelling criteria could have a strong component of unincorporated PPMs. From a trade perspective, it was important that eco-labelling programmes be subject to disciplines to reduce the potential for protectionist abuse.

82. Referring to principle (d) of the paper, he proposed that the TBT Agreement be interpreted to cover the use of certain standards based on unincorporated PPMs in voluntary eco-labelling programmes, provided these programmes were developed according to multilaterally-agreed guidelines consistent with the basic obligations of the GATT 1994 and of the TBT Agreement. Guidelines such as those under development in the ISO and the Global Eco-labelling Network (GEN) and complementary work carried out by UNEP would reduce the possibility of protectionist abuse and trade discrimination. These guidelines were expected to be more on the level of procedures and methodologies rather than specific bench marks. This approach thus acknowledged that specific environmental standards might vary as a function of local environmental absorptive capacities.

83. With respect to the implementation of the guidelines, he said his delegation's analysis was still incomplete. However, he suggested that the basic transparency disciplines of the TBT Agreement and the Code of Good Practice should apply. The use of LCA made it more important for foreign and domestic producers to participate in the development of such standards from the earliest stage and the requirement under the Code of Good Practice for semi-annual publication of the work programme would provide this opportunity. This could reduce the risk that standards reflected unique national production factors or technologies. Furthermore, the requirement to allow 60 days for comments would reinforce the opportunity to provide a final "check" on the draft standard. While respecting the integrity of LCA and thus the possibility for standards based on unincorporated PPMs, the preference should be for performance-based standards as stated in Article 2.8 of the TBT Agreement and Paragraph I of the Code of Good Practice. He believed the work carried out in GEN and ISO was in line with these disciplines. According to the current draft of ISO Guiding Principles and Procedures on Environmental Labelling, such environmental guidelines "shall be capable of demonstrating that products meeting the criteria fulfil the labelling objective of reducing environmental impact; the development and selection of criteria for environmental labels shall be based on scientific methodology; and the establishment of criteria, as well as their review and revisions, should be the result of impartial decisions".

84. He reiterated his proposal that the joint CTE/CTBT should consider interpreting the scope of the TBT Agreement to cover the use of certain standards based on unincorporated PPMs for voluntary eco-labelling programmes and looked forward to continuing discussions of the issue. The comments, concerns and queries of other delegations would assist in the further refinement of his proposal.

85. The representative of Brazil stated that eco-labelling schemes fell under the scope and the disciplines of the TBT agreement. His delegation had traditionally held the position that unincorporated PPMs were not under the scope of the TBT Agreement. However, it recognized that LCA in eco-labelling programmes was based also on unincorporated PPMs, and it had not yet decided whether this was a sufficient reason to interpret the TBT Agreement to accommodate unincorporated PPMs. He supported the conclusions contained in sections (a), (b), and (c) of the Canadian proposal. However, he reserved his position on the ambiguity of the definition of "standard" in the TBT

Agreement, as stated in Canada's proposal, since, in his view, it did not leave any room for accommodating unincorporated PPMs. He said that results in this area should not be taken in isolation but were conditioned on an overall understanding of other Items of the work programme.

86. The representative of Argentina said there were risks implied in Canada's proposal to interpret the scope of the TBT Agreement to cover the use of certain standards based on unincorporated PPMs by eco-labelling programmes, provided these standards were developed according to multilaterally agreed guidelines. At present, Members could not agree on whether unincorporated PPMs were covered by the TBT Agreement. Canada's proposal implied that Members would lose the benefit of the doubt and, as other delegations indicated, probably lose the right to challenge under the dispute settlement mechanism.

87. However, the Canadian proposal also had some benefits. It relied on the "equivalency" aspect, the possibility to question unincorporated PPMs when not consistent with internationally agreed guidelines, and the possibility to limit unincorporated PPMs expanding into the rest of the system, particularly into technical regulations. The Canadian proposal would not imply that unincorporated PPMs should not comply with other TBT principles such non-discrimination, national treatment, avoidance of unnecessary obstacles to trade and transparency. Therefore, he looked at it with sympathy.

88. The representative of the European Communities said the first issue to be addressed before any view could be reached on the adequacy of existing rules or the need for further ones was the extent to which existing rules in fact applied to eco-labelling schemes. With respect to the application of the TBT Agreement to voluntary eco-labelling schemes based on a LCA, such as the EC eco-labelling scheme, he recalled that his delegation at the meeting of the CTE in October, had expressed the view that there were legal uncertainties concerning the full coverage of voluntary eco-labelling schemes based on a LCA under the TBT Agreement. Other delegations at that meeting, in contrast, had argued that the TBT Agreement applied fully to schemes of this type. He thought the Canadian proposal, whilst concluding that the application of the TBT Agreement was not absolutely clear, supported the view that the TBT Agreement applied fully to schemes of this type. The main issue to be considered was whether or not voluntary eco-labelling schemes based on LCA fell within the definition of "standard" in Annex 1 to the TBT Agreement. The inclusion of the word "related" before "processes and production methods" could, in fact, be interpreted as having the effect of excluding from the scope of the Agreement those rules, guidelines and characteristics which concerned unincorporated PPMs. Document WT/CTE/W/10 confirmed that the intention of negotiators of the TBT Agreement was to exclude from its coverage PPM-based specifications which did not affect the product as such.

89. However, others argued that the labelling requirements concerning unincorporated PPMs were still covered by the TBT Agreement in view of the fact that the second sentence of the definition of "standard" did not specify, as regards terminology, symbols, packaging, marking or labelling requirements, that the process or production methods to which such requirement applied must be "related" to the products. Some delegations had also declared that pursuant to the decision adopted by the TBT Committee that mandatory labelling requirements were subject to TBT provisions regardless of the kind of information provided on the label, by implication voluntary eco-labelling standards should also be subject to all relevant TBT provisions.

90. However, the EC considered that this position resulted from a misconception about the true nature of eco-labelling schemes. Eco-labelling schemes were not merely labelling regulations for standards but a mark of conformity to a series of substantive criteria, each of which had the potential of being a standard or a technical regulation on its own. The Mexican regulation which had prompted the decision of the TBT Committee was a pure labelling requirement and not a mark of conformity to a substantive standard or technical regulation. Accordingly, its only implication was that any

requirements concerning the eco-label itself were subject to the TBT Agreement, regardless of their content.

91. It could thus be argued that eco-labelling schemes based on LCA, which by definition included both product-related and unincorporated PPM criteria, were not entirely covered by the TBT Agreement. A partial coverage of eco-labelling schemes based on LCA excluding unincorporated PPMs criteria was possible in theory, if each of the criteria established for a category of products was considered as a separate rule, guideline or characteristic. According to this approach, those criteria which concerned product characteristics or product-related PPMs would be considered as falling outside the scope of the Agreement. However, a partial coverage would not make sense as an outcome to the discussions on the issue. In the operation of many eco-labelling schemes, including the EC eco-labelling scheme, all the criteria established for a specific category of products - whether related to the product itself or to the PPM used - had to be taken jointly into account when awarding the labels. Furthermore, it would not meet the concerns expressed in the CTE's deliberations on the application of PPM-related criteria to imported products.

92. The EC therefore remained of the view that there was legal uncertainty about the extent to which the TBT Agreement applied to eco-labelling schemes based on LCA. He repeated his delegation's proposals at the October meeting to (i) ensure transparency in the operation of eco-labelling schemes as the first priority; (ii) avoid trade distortions; (iii) allow the continued use of LCA, and (iv) take into account the specific needs of developing countries.

93. The representative of the United States said it was generally accepted that eco-labels not involving unincorporated PPMs were covered by the TBT Agreement. Since most eco-labels were of a voluntary nature, they would be considered to be standards. Delegations who had suggested that eco-labels involving unincorporated PPMs fell outside the scope of the Agreement relied on the first sentence of the definition of standard. However, his delegation believed that, following the second sentence of the definition, eco-labels based on unincorporated PPMs fell under the TBT Agreement. He recalled the Tokyo Round TBT Committee decision on the coverage of the Agreement with respect to labelling that labelling was covered regardless of the content of the label. The WTO TBT Committee had subsequently reaffirmed that Decision. The TBT Agreement provided sufficient flexibility to cover unincorporated PPMs and WTO rules could permit the application of innovative environmental policy tools. It was important to find a common understanding of the relevant applicable rules since it was difficult to discuss the adequacy of disciplines from a trade and environment perspective without an agreed baseline. With respect to the EC statement that eco-labels were not merely labelling regulations for standards but a mark of conformity, he pointed out that the second sentence of the definition of standard in the TBT Agreement covered marking requirements.

94. The discussions in the CTE had so far focused on eco-seals granted by a third party on the basis of life-cycle considerations. However, there were other types of programmes such as manufacturers' claims, report card type labels, and "single issue" eco-labels such as "recyclable". It would be useful for Members to reflect and share views on the implications of various types of eco-labelling programmes and on the considerations that designers and implementers of eco-labelling schemes might take into account; for example, to adequately recognize differing environmental conditions in the home country and other parts of the world, and to accommodate different approaches that produce an equivalent, environmentally beneficial result. He believed that eco-labelling schemes should be designed to ensure they provided sufficient, accurate information to consumers on the relative environmental impacts of competing products. In this respect, the principles of truthfulness, scientific basis and substantiability were particularly relevant; labels should not mislead consumers by making claims that could not be "substantiated".

95. Transparency of eco-labelling programmes was essential in avoiding potential trade difficulties and had important benefits from the environmental perspective since it increased

participation by interested parties in such programmes. Therefore, it would be useful for the CTE and TBT Committee to develop a common understanding of how eco-labelling programmes were covered under current WTO disciplines, to identify areas associated with the development of eco-labelling programmes with gaps in existing transparency provisions, and, as appropriate, amplify current WTO transparency requirements. He proposed transparency, with an opportunity for public input, at each critical stage of the programme's development: (i) the establishment or existence of a programme; (ii) the selection of products considered for criteria development; (iii) the development of any life cycle and scientific considerations used to underpin criteria development; (iv) the draft criteria for product groups, whether new or substantially revised; (v) the development of any interpretive or explanatory documentation, including scientific documentation, necessary to understand how the criteria were to be implemented; and (vi) the means by which non-domestic environmental protection practices would be taken into account in determining product eligibility.

96. The TBT Agreement contained specific transparency obligations for both mandatory and voluntary measures (publication, notification and comment period). However, a key question was at what stage an eco-labelling programme was considered by Members to be "draft" and whether that incorporated the six elements identified for eco-labelling programmes. He recalled that according to the Decision taken by the TBT Committee on the timing of notifications, "a notification should be made when a draft with the complete text of a proposed technical regulation or procedures for assessment of conformity is available and when amendments can still be introduced and taken into account". For instance, in developing eco-labelling programmes based on life-cycle considerations, it would be necessary to define the product subject to an eco-label, perform a life-cycle inventory of the environmental impacts of the product and prepare a draft standard based on that inventory. In fact, once the draft standard had been developed, the opportunity for meaningful input could be significantly narrowed by decisions taken at each of the previous stages. If the first opportunity for comment came only after a draft standard has been prepared it could be impossible to influence the decision on product definition because the standards body would have already made a significant investment in time and resources in the preparation of the life-cycle information. There was no standard methodology for performing life-cycle inventories and thus considerable room existed for honest disagreement on the results. It would be useful for the CTE and CTBT, meeting jointly or separately, to provide an early opportunity for delegations to exchange views as to at what point in the process of development of an eco-label the transparency obligations of the TBT Agreement required that an opportunity be provided for input from all interested parties. If a view arose that critical points in the development of eco-labels might not be covered by such obligations, it might be useful for the Committees to consider whether it would be desirable to clarify or add to existing transparency obligations.

97. The representative of Mexico agreed with points (a), (b) and (c) of Canada's proposal but expressed concern on point (d). She shared the views expressed by Brazil and Australia regarding the issue of unincorporated PPMs, and sought clarifications from Canada on the definition of multilaterally-agreed guidelines on eco-labelling. Canada's proposal to create a kind of derogation for legitimizing the use of unincorporated PPMs in eco-labelling based on multilaterally-agreed criteria, was parallel to the proposals made under item 1 of the CTE's agenda. One of the criteria proposed in the context of MEAs was that trade measures be contained in agreements representing multilateral consensus. Chile had pointed out that it had a label based on standards based on MEA-agreed objectives. She asked for clarifications as to whether Canada was considering something similar or, if not, what type of standardizing body representing multilateral consensus would be the one referred to in the Canadian proposal.

98. ISO was basically a non-governmental forum, where decisions were not taken by consensus and doubts remained regarding the multilateral representation of this organization due to limited representation of developing countries' interests. While ISO standards were recognized in the TBT Agreement as international standards, technical standards were different from environmental

standards, particularly when based on unincorporated PPMs. Technical standards could be more easily multilaterally-agreed since they were based on quality, durability or performance of products. On the contrary, environmental standards, particularly those based on unincorporated PPMs, were founded on values and judgements which could vary even within a country. Therefore, she considered it difficult to agree on multilateral environmental standards on unincorporated PPMs. Rather than harmonization or multilateralization of standards, she suggested that the Committees focus on the question of equivalence of standards and the possible development of guidelines to ensure mutual recognition for countries having eco-labelling systems, and equivalence of standards for countries not having eco-labelling programmes.

99. The representative of Hong Kong, noted that, according to Canada's analysis, eco-labelling schemes, whether mandatory or voluntary, fell within the scope of the TBT Agreement to the extent they were based on requirements related to product characteristics or related PPMs. However, he recognized that the trend of eco-labelling schemes was to use LCA with the result that eco-labelling schemes would not be fully covered by the TBT Agreement due to the inclusion of non-product related PPM requirements. According to WT/CTE/W/10, the intent of the negotiators of the TBT Agreement was clearly to exclude unincorporated PPMs from the coverage of the Agreement. From the WTO perspective, the proposal to extend the coverage of the TBT Agreement to unincorporated PPMs could lead to a differential treatment for imports of like products based on non-product related criteria. The subject needed careful examination. He recalled that pursuant to principle 12 of the Rio Declaration "unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided" and stated that unilateralism and extra-territoriality were incompatible with the multilateral system.

100. The representative of Switzerland recalled his delegation's preference to use the term voluntary labels rather than eco-labelling, since voluntary labels were not only limited to environmental issues but could be used as a means to achieve other common interests. In his delegation's view, the TBT Agreement and the Code of Good Practice covered voluntary labels based on product characteristics or product-related PPMs through the definition of "standard" and "conformity assessment procedures" in Annex 1. Standards were documents with which compliance was voluntary and dealt particularly with labelling requirements. Conformity assessment procedures included all types of conformity assessment procedures required by voluntary labelling measures. Therefore, voluntary labels based on product characteristics or product-related PPMs were subject to the transparency disciplines of the TBT Agreement and the Code of Good Practice. Voluntary labels should be notified according to the rules of the Code of Good Practice and should also respect the basic TBT principles of national treatment, avoidance of unnecessary obstacles to trade and promotion of the use of existing international standards. The principles of Articles 5, 7 and 8 of the TBT Agreement should apply to conformity assessment procedures.

101. With respect to voluntary labels based on unincorporated PPMs, he noted that most voluntary labelling integrated unincorporated PPMs through LCA. However, the question of the coverage of PPMs by the TBT Agreement still represented a very sensitive issue and he was concerned that an extensive interpretation of the notion of standard to include, for voluntary labels, unincorporated PPMs could create precedents that could have an impact on the trading system. Furthermore, since the second sentence of the definitions of "standard" and of "technical regulation" was identical, any interpretation of the definition of standards could affect the interpretation of the definition of a regulation. The issue needed to be further discussed.

102. The representative of Korea said that voluntary eco-labelling programmes often included criteria based on unincorporated PPMs. As a result, these programmes could have discriminatory trade effects by limiting the market access of foreign suppliers, in particular small and medium enterprises. His delegation had carefully studied ways to address them. He believed that the TBT Agreement as well as other WTO Agreements accommodated only product and product-related

PPMs. As indicated by the negotiating history of the TBT Agreement, the definitions in Annex 3 did not cover technical regulations and standards based on unincorporated PPMs.

103. He believed that even if voluntary eco-labelling programmes based on unincorporated PPMs were developed according to multilaterally agreed guidelines, such programmes could hardly be covered by the Code of Good Practice of the TBT Agreement for three reasons. First, if eco-labelling schemes were covered by WTO rules the effects of extra-territoriality needed be addressed. In particular, Korea had difficulties with the argument stated in Canada's paper that it was excessive to suggest that eco-labelling programmes should not be viewed as compatible with the WTO simply because one of their essential tools, the LCA, used some components that might or might not fall within the scope of the TBT Agreement. It was hardly reasonable to attempt to conclude that TBT disciplines were applicable to eco-labelling programmes simply because unincorporated PPMs were only one component of LCA without giving due regard to extraterritoriality. In his view, unincorporated PPMs were a critical component in reviewing the compatibility of eco-labelling programmes with the TBT Agreement.

104. Second, eco-labelling programmes were considered to be unilateral measures for domestic environmental policy. Mandatory unilateral measures based on unincorporated PPMs were apparently outside WTO rules. The voluntary nature of eco-labelling was precisely the reason why efforts were made to explore the possibility of accommodating the criteria of unincorporated PPMs in WTO rules. However, Canada's proposal was not clear on this aspect and seemed to suggest that the mandatory eco-labelling based on unincorporated PPMs also fell within the scope of WTO rules. Third, Canada's proposal to consider ISO 14000 standards as appropriate multilaterally-agreed guidelines raised questions about the ISO as a "recognizable body", transparency of ISO meetings, representation of the interests of small and medium enterprises in developing countries and the trade impact of eco-labelling schemes.

105. He said that the WTO rules accommodated eco-labelling programmes inadequately, despite their potential trade effects. The discriminatory effects of eco-labelling programmes arose when programmes adopted criteria which were more favourable to domestic producers and inappropriate to foreign producers. Such forms of discrimination could be countered by strengthening the prior consultation mechanism and introducing a sophisticated safeguard mechanism to eliminate any extra-territorial criteria. Another way to prevent discriminatory eco-labelling programmes was to further develop the concepts of equivalence and mutual recognition. As existing WTO disciplines lacked those concepts, he suggested guidelines be developed to grant equivalence of each criterion and mutual recognition of eco-labelling programmes, taking into account the experience of other relevant organizations.

106. The representative of Singapore, speaking on behalf of the ASEAN countries, wished to reflect on the principles contained in paragraphs (a), (b) and (c) of the Canadian proposal and expressed strong reservation on paragraph (d). He shared Hong Kong's concern related to the concept of unincorporated PPMs in eco-labelling schemes and the views expressed by Mexico and Korea on the ISO's appropriateness as a negotiating forum for standards related to these schemes.

107. ASEAN opposed any attempt to include any reference to unincorporated PPMs in the discussion of this issue. Thus, it did not favour any interpretation or extension of the scope of the TBT Agreement to cover the use of criteria based on unincorporated PPMs for three reasons. The acceptance of the concepts of PPMs and PPM-based criteria would have the effect of endorsing the extrajurisdictional application of domestic environmental laws, thus encouraging the imposition of one Member's domestic environmental norms and standards on other Members. In addition, the use of criteria based on unincorporated PPMs would have discriminatory effects on market access leading to protectionist abuses of these criteria. Finally, ASEAN believed that unincorporated PPMs concept violated Articles I and III of the GATT.



108. ASEAN recognized the potential role for mutual recognition and equivalence in increasing transparency and alleviating discriminatory trade effects of eco-labelling schemes and encouraged the CTE to continue to elaborate ways to complement the TBT Agreement with these principles. ASEAN also pointed out that eco-labelling schemes imposed a burden on developing countries and that this should be taken into account in their elaboration.

109. The representative of Japan noted that eco-labelling schemes, if applied in a non-transparent and arbitrary manner, could cause discriminatory effects on imports. Even if transparent and not implemented arbitrarily, these schemes could still have trade impacts if they reflected environmental conditions or ecological preferences peculiar to an importing country and included PPMs standards that might discriminate between imports. Therefore, it was imperative that bodies implementing eco-labelling schemes set the scientifically-based standards and considered ways to promote mutual recognition of eco-labelling. Furthermore, for transparency purposes it was important that the implementation or the modification of eco-labelling schemes be notified *ex ante* by governments or that access to the relevant information be provided to interested countries or organizations.

110. Referring to the Canadian proposal, he said that even if the TBT Agreement was extended to cover eco-labelling schemes, some issues remained to be addressed. First, the problem of justifying eco-labelling schemes based on unincorporated PPMs under WTO rules. Second, the question of eco-labelling programmes developed by unrecognized non-governmental organizations. Third, simple labelling requirements prescribing the re-collection of products fell outside the coverage of the TBT Agreement. Finally, with respect to eco-labelling programmes implemented by local or non-governmental bodies, it was necessary to consider whether notification on conformity assessment procedures would be appropriate.

111. The representative of Norway said that eco-labelling was a high-priority area for her Government. Eco-labelling based on LCA would play an important role in future efforts to combat environmental problems. She was aware that a high degree of transparency was required in eco-labelling schemes to avoid them becoming an unwarranted trade restriction. However, she noted that the very nature of eco-labelling was to change production and consumption patterns, and, implicitly, trading patterns towards a more sustainable direction.

112. With respect to the issue of coverage of eco-labelling by the TBT Agreement, she stated that the Agreement covered both mandatory and voluntary measures, whether governmental or non-governmental, and that eco-labelling criteria of non-governmental schemes based on unincorporated PPMs did not fall under the TBT Agreement nor under GATT 1994. She suggested that the preparation of a code of conduct on voluntary eco-labelling schemes, on the model of the TBT Code of Good Practice, would be more practical than interpreting the scope of the TBT Agreement to cover the use of standards based on unincorporated PPMs. The code could include notification procedures, the right for interested Members to comment, with a special mention of the accommodation of foreign suppliers, and should take into account the specific needs of developing countries. However, even if transparency of eco-labelling schemes was ensured, foreign producers or suppliers would have to take into account the risk of not getting the eco-label.

113. Referring to the Canadian proposal, she said that it was premature to decide whether the ISO 14000 standard series could be used as a reference for the development of multilaterally-agreed guidelines since the contents of these guidelines was not yet known. However, the concerns of many Members on eco-labelling could be met by following the TBT transparency provisions. Finally, she suggested that some delegations or the WTO Secretariat draw up the main elements of a draft code of good conduct on eco-labelling to assist further discussions on the issue.

114. The representative of Australia said the basic principles of the TBT Agreement of non-discrimination, avoidance of unnecessary obstacles to trade, promotion of the use of international

standards where appropriate, equivalence, mutual recognition, and transparency deserved consideration in examining eco-labelling schemes. In particular, the transparency and procedural requirements of the TBT Code of Good Practice - publication and notification of work programmes by standardizing bodies, sixty days comment period on draft standards, and prompt publication of adopted standards - could provide a good basis to address some of the concerns raised about eco-labelling schemes and contribute to their effectiveness. These requirements could play a useful role in maintaining public confidence in the integrity of schemes complying with them.

115. He believed it was useful to develop a set of multilateral guidelines or disciplines on means to ensure that the legitimate interests of exporters in other countries be taken into account and provide them with the opportunity to influence the development of eco-labelling schemes. In fact, the criteria used in one country's eco-labelling scheme could be inappropriate for the environmental and developmental needs of other countries. The transparency and procedural requirements and other aspects of the TBT Agreement could assist in addressing this issue. In this respect, he asked for clarification of the meaning of the principles of non-discrimination and avoidance of unnecessary obstacles to trade for eco-labelling schemes involving LCA.

116. He recalled that the TBT Agreement, already in its preamble, recognized that developing countries might encounter special difficulties in the formulation of technical regulations, standards and conformity assessment and emphasized the need to assist them in their endeavours in this regard. If eco-labelling schemes were to genuinely make a contribution to global sustainable development, the particular concerns of developing countries needed to be fully taken into account. Moreover, the TBT Agreement's encouragement to develop and adopt international standards was an important pointer to the need for international cooperation to ensure that eco-labelling schemes realized their potential to contribute to the promotion of sustainable development. The active participation of relevant bodies in all countries was thus necessary.

117. The representative of Egypt, referring to Canada's paper, said her delegation did not agree with any proposal on the standardization of eco-labelling or introduction of PPMs into WTO rules. The question of whether the TBT Agreement already included unincorporated PPMs was still open and the Canadian paper itself cast doubts on this issue.

118. With regard to the proposal on multilaterally-agreed guidelines and the reference to ISO guidelines, she questioned ISO's representation of international consensus and decision making. It was not the appropriate body to deal with environmental standards. Unlike technical regulations, environmental standards were not based on criteria such as performance, durability and quality. Environmental standards included PPMs and were exposed to pressure groups. Therefore, it would be difficult to attempt to internationalize environmental standards based on PPMs since PPMs were based on values which differed from one society to another. On the other hand, she did not oppose product-related environmental standards, such as disposal and handling. She favoured disciplines on eco-labelling schemes based on equivalence and mutual recognition, where each country could set its own standards according to its own values as stipulated by Agenda 21. Aiming at the harmonization or internationalization of PPMs on the basis of any set of multilateral guidelines practically contradicted rules unanimously agreed by the international community.

119. She believed it useful to start investigating the concepts of equivalence and mutual recognition with the assistance of other organizations and perhaps consider an appropriate forum to negotiate guidelines on equivalency and mutual recognition. She said that the enhancement of transparency in the preparation and application of eco-labelling, through notification and comment requirements similar to those in the TBT Agreement, was necessary to prevent eco-labelling schemes from being unilateral and extraterritorial.

120. The representative of India said that labelling requirements placed a disproportionate burden on the trade of developing countries; thus his delegation attached great importance to the issue of eco-labelling. He said that PPMs were excluded from the coverage of the Tokyo Round TBT Agreement. The Uruguay Round TBT Agreement clearly covered product-related PPMs. However, in his view no provisions could be found which extended the scope of the Agreement to cover unincorporated PPMs. PPM standards could not be justified under Article XX of GATT 1994 as legitimate trade measures. These issues raised the subject of extra-territoriality, questioning the sovereign right of countries, as recognized by the Rio Declaration, to decide on their environmental quality in their own jurisdictions.

121. Technical standards were completely different from environmental standards. In fact, while there was no role for PPMs in technical standards, environmental standards had to respond to social pressures. Therefore, while ISO had a role to play in the field of technical standards, its role in the field of environmental standards remained to be defined. Since in the TBT Agreement there were no provisions extending coverage to unincorporated PPMs, the only presumption should be that these were not included in the Agreement. However, even if they were included, the purpose they would serve was not clear. It would have to be clearly specified how the objective of environmental protection was served as no relevant information would be forthcoming to consumers to make real environmental choices. Further, such PPMs would lock producers into choices of technology for specified periods of time hindering technological innovation and competitiveness.

122. With respect to the Canadian proposal to include in the TBT Agreement only unincorporated PPMs based on multilaterally agreed guidelines, there were no multilateral institutions developing universally-agreed environmental standards. ISO was not yet the right forum. However, even if Members agreed to any such international organization there was no role for harmonization since environmental standards were based on values which differed between countries, and if only guidelines were to be formulated they would be so general as to have little value.

123. He believed that it was not enough to seek equivalency of standards on a case-by-case approach, subject to mutual recognition. Countries having their own eco-labelling programmes would have to set standards based on their own environmental values and priorities and it would be unfair to expect other standards to conform to these. Finally, he stressed the need for greater transparency of eco-labelling schemes on the basis of existing TBT provisions of non-discrimination and avoidance of unnecessary obstacles to trade. He reiterated that while labelling regulations were mandatory, it would be difficult to impose mandatory compliance provisions on standards since compliance with labelling standards was voluntary under the TBT Agreement.

124. The representative of Canada noted that a large number of delegations had agreed with principles (a), (b) and (c) of the Canadian proposal which meant that they agreed that eco-labelling programmes fell under the basic disciplines of the TBT Agreement. However, many of them had raised concerns over proposal (d) which related to non-product related PPMs with fear of the possible introduction of unincorporated PPMs into the WTO. She said that the reactions provoked by principle (d) reflected the discussions in her own country. She said that while most had come to the conclusion that eco-labelling programmes indeed were covered under the TBT Agreement, the problem on how to address the fact that most of these programmes were based on life-cycle approaches and that some product standards would include criteria based on unincorporated PPMs still remained.

125. Canada wanted to maintain the credibility and high standards of its eco-labelling programme and at the same time protect its exports against the conflicting requirements, uncertainties and possible biases of eco-labelling programmes developed domestically with criteria answering to local conditions and local values. She said that Canada's proposal to interpret the scope of the TBT Agreement to cover the use of unincorporated PPMs in voluntary eco-labelling programmes, provided

that these standards adhered to multilaterally-agreed guidelines, seemed to answer most of the concerns expressed. It was circumscribed to voluntary programmes (or standards) and the Code of Good Practice. It provided eco-labelling programmes with the flexibility they needed to fulfil their objectives and at the same time, gave exporters some assurance and possible recourse against unilaterally developed eco-labelling PPM measures.

126. She understood the concerns expressed by many delegations regarding the concept of "multilaterally-agreed guidelines" because currently there were no such guidelines. She recalled that in the Canadian paper, the draft environmental guidelines ISO 14000 which would soon be available was referred to as an example. However, the example had raised concerns, perhaps due to the lack of information on management standards such as ISO 9000 and ISO 14000. She believed that it would be useful to have a presentation on the current developments of the ISO 14000 standard series at a future joint informal meeting of the TBT Committee and the CTE.

127. She reiterated that multilaterally-agreed guidelines, whether developed by the ISO, UNEP, UNCTAD or GEN, would not set specific standards or baseline with which every eco-labelling scheme would have to comply. However, they would provide a framework to ensure that certain basic principles like non-discrimination, national treatment, transparency, consultation, and reliance on scientific and technical information were adhered to when eco-labelling criteria or standards were developed. She said that it was not the role of WTO Members to develop such guidelines, but the task of practitioners in collaboration with trade policy experts. Work on eco-labelling was currently pursued in many fora. She hoped that the current discussions in the CTE and the TBT Committee would help focus experts' attention on the urgent need for such eco-labelling guidelines and that the basic GATT/TBT principles would be respected.

128. She said that her delegation would further its proposal at future sessions of the CTE and the TBT Committee, taking into account the comments, concerns and queries raised by other delegations. Given the consensus that had developed on the importance of transparency of eco-labelling programmes, Canada was exploring the possibility of notifying officially the work plan of Canada's Environmental Choice when it would be completed around May 1996. Finally, she requested document G/TBT/W/21-WT/CTE/W/21 containing Canada's submission to be derestricted.

129. The representative of Brazil welcomed Canada's intention to notify its environmental programme. He supported the proposal to hold further joint CTE/CTBT meetings to allow presentation of other eco-labelling programmes and further discuss the Canadian proposal.

130. The representative of India reiterated that technical standards under the TBT Agreement were different from environmental standards. He questioned about the role of ISO in developing international environmental standards.

131. The representative of the United States reiterated that it was her delegation's view that eco-labelling was clearly covered under the provisions of the TBT Agreement as defined in the second sentence of the definition of standard contained in Annex 1 to the Agreement and that disciplines under the TBT Agreement could be applied to eco-labelling programmes, such as the principles of non-discrimination and transparency. However, she recognized that no consensus on the interpretation had been reached during the debate. She said that the original proposals regarding the inclusion of PPMs in the Agreement and the reports of the meetings of the Tokyo Round TBT Committee during the Uruguay Round negotiation showed that the intention of negotiators had been to include unincorporated PPMs in the Agreement.

132. With respect to some delegations's opinions on ISO standards, she said that her government was very supportive of ISO activities. The American National Standards Institute (ANSI), a private body, was the United States' national body participating in ISO activities. ANSI's membership

comprised 1,300 national and international companies, 40 federal and local government agencies, 25 institutions and 260 professional technical, trade, labour and consumers organizations. She said that her government was making efforts to ensure that the US delegations participating in activities of the ISO represented broad range of interests. She encouraged other Members to do the same.

133. She said that it was necessary to be very careful in drawing conclusions from the discussions on the issue of eco-labelling since they would have an impact on the principles and functioning of the TBT Agreement, such as disciplines provided for ISO 9000 and ISO 14000 management standards which were not related to the final characteristics of products. She believed that this was an issue to be considered in future discussions in the TBT Committee and the CTE.

134. The representative of Morocco said that Canada's paper represented a sound basis for the work of the TBT Committee and the CTE. He stressed the need for close co-operation with other international standardizing bodies when dealing with the issue of eco-labelling. The TBT Agreement encouraged Members to participate in work of international standardizing bodies and Article 11.6 stated that "Members which are members or participants of international or regional systems for conformity assessment shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such systems".

135. He welcomed ISO and UNCTAD participation as observers in the Committee and said they were carrying out significant work in the field of eco-labelling. He drew attention to the resolution on Environmentally Sustainable Industrial Development, adopted by the General Conference of UNIDO in December 1995 and to its emphasis on closer interaction and cooperation between UNIDO and WTO in the area of eco-labelling. He said that the resolution reflected the concerns of developing countries on eco-labelling schemes that they could impose additional economic burden on developing countries thus diminishing their competitiveness and comparative advantage. Cooperation with UNIDO would provide technical support for standardizing bodies in developing countries and facilitate them to comply with ISO standards. He believed that an *ad hoc* observer participation of UNIDO in the work of the TBT Committee and the CTE would be useful. He requested the Secretariat to prepare for the next Committee meeting an informative document on UNIDO's contribution to eco-labelling.

136. The Chairperson said that the Secretariat would consider the preparation of an informative paper on UNIDO's contribution to eco-labelling as requested by the delegation of Morocco. The Committee took note of the statements made and agreed to continue discussions on the issue of eco-labelling in joint informal meetings of the TBT Committee and the CTE and to derestrict document G/TBT/W/21-WT/CTE/W/21 (Communication from Canada on Eco-labelling) and that the Canadian Communication would be published in the *Trade and Environment Bulletin*.

#### K. ISO 9000 AND ISO 14000

137. The Chairperson drew attention to document G/TBT/W/20 containing a communication from the ISO providing further information clarifying questions raised by Members on ISO 9000 and ISO 14000 standards at the previous meeting.

#### L. OTHER BUSINESS

138. The Committee agreed to hold its next meeting on 25 June 1996.