

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

TBT/W/172

21 June 1993

Special Distribution

Committee on Technical Barriers to Trade

### DRAFT MINUTES OF THE MEETING HELD ON 11 MAY 1993

Chairman: Mr. C. Cozendey (Brazil)

1. The Committee on Technical Barriers to Trade held its forty-fifth meeting on 11 May 1993.

2. The agenda contained in GATT/AIR/3417 was adopted:

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#### A. Election of officers

3. The Committee elected Mr. C. Cozendey (Brazil) Chairman and Miss V. Nicholas (Canada) Vice-Chairman for 1993.

4. Before beginning the order of business contained in the agenda, the Chairman drew attention to documents TBT/35 and Add.1 and TBT/36 and Add.1, concerning the acceptance of the Agreement on Technical Barriers to Trade (TBT) by the Czech Republic and the Slovak Republic. He informed the Committee that since no party had indicated that it could not accept the accelerated procedure which had been applied, the TBT Agreement had entered into force for the two Republics on 1 May 1993. The Chairman welcomed the Czech Republic and the Slovak Republic as members of the TBT Committee.

5. The representative of the Czech Republic thanked Committee members for their comprehension and for accelerating the process of accession of the Czech Republic to the TBT Agreement and to the activities of the TBT Committee. He informed the Committee that the Czech Office for Standards, Metrology and Testing in Prague was the GATT enquiry point of the Czech Republic.

6. The representative of the Slovak Republic informed the Committee that the Slovak Republic had become a Contracting Party on 15 April 1993 and had asked for membership in certain Tokyo Round Agreements of which the previous Czech and Slovak Republic had been a signatory. He expressed thanks for the smooth accession of the Slovak Republic to GATT and the Agreement on TBT. He informed the Committee that the GATT/TBT enquiry point of the Slovak Republic would be the enquiry point in Bratislava that had been functioning previously for the Czech and Slovak Republic.

B. Observer status of the Kingdom of Saudi Arabia

7. The Chairman drew attention to a request for observer status in the Committee from the Kingdom of Saudi Arabia, contained in document TBT/W/163. The Committee agreed to grant observer status to the Kingdom of Saudi Arabia, and in this regard it recalled that it had agreed at its meeting on 24 April 1980, regarding the Participation of Observers, that "Observers may participate in the discussions but decisions shall be taken only by signatories", and that "The Committee may deliberate on confidential matters in special restricted sessions". The Committee also noted that observers received documents relating to the meetings they attended. The Chairman pointed out that the Committee's decision on this matter would relate only to observer status in the TBT Committee and would not prejudice action in other Tokyo Round Committees.

8. The Chairman welcomed the Kingdom of Saudi Arabia as an observer to the Committee and expressed appreciation for the interest shown by the Government of the Kingdom of Saudi Arabia in becoming acquainted with the work of the Committee in order to develop a better understanding of the prerequisites of a future accession of the Kingdom of Saudi Arabia to the Agreement on TBT. He recalled that accession to the Agreement was subject to separate procedures from those applicable to the granting of observer status.

9. The representative of the Kingdom of Saudi Arabia thanked the Committee for granting his Government observer status. He pointed out that the Kingdom of Saudi Arabia had been granted observer status to the GATT Council in 1985 and this opportunity would allow his country to become acquainted with the work of the TBT Committee and to make further progress towards accession to the GATT and the TBT Agreement.

10. The representative of Egypt expressed welcome and support for the Kingdom of Saudi Arabia as an observer of the TBT Committee.

C. Statements on implementation and administration of the Agreement

11. The Chairman drew attention to a matter which had been raised at the previous meeting concerning requests to the Republic of Korea to provide additional information on the Marks of Origin System it had notified in TBT/Notif.91.194. He pointed out that the representative of the Republic of Korea had agreed at the previous meeting to the request of the Committee Chairman that the delegation of the Republic of Korea would forward to the Committee further information on the Korean Marks of Origin System. He said that on 4 May the delegation of the Republic of Korea had sent to the GATT Secretariat explanatory material about its Marks of Origin System and had requested that it be circulated to members of the TBT Committee as a non-paper.

12. The representative of Switzerland told the Committee that since the last Committee meeting there had been little or no progress concerning the problem that Swiss exporters encountered with the Korean Marks of Origin System and marking requirements. The concerns that his country expressed, on behalf of the EFTA countries, at the 19 October 1992 meeting remained valid. He welcomed the positive move of the Republic of Korea by providing the Committee with a non-paper on the Korean Marks of Origin System. He said that due to the complexity of the matter and the limited time available, his authorities had not been able to make a thorough analysis of the non-paper; as a result his delegation wished to reserve its right to take up the issue in the future.

13. He said that in order to get a clearer idea of the non-paper, his delegation would like to make some preliminary remarks. First, he questioned why the delegation of the Republic of Korea had given the information in the form of a non-paper and not in the form of a normal submission to the Committee. Secondly, he pointed out that the Korean non-paper was related only to the Marks of Origin System and not to all the marking requirements, such as the obligation to mark certain electronic consumer goods in the Korean language. Lastly, he reiterated his view that the Korean Marks of Origin System was discriminatory because it applied only to imported goods.

14. He drew attention to paragraph 2.A. of the Korean non-paper, which stated that the current number of products requiring country of origin marking was 675; however, attached to the non-paper there was a list which contained tariff lines at a four digit level only. He pointed out that the actual number of products subject to marking requirements therefore greatly exceeded the indicated number. He thought that the provision stated in paragraph 2.B.(4), that goods which had been produced more than twenty years prior to their importation into the Republic of Korea were exempted from the marking requirement, had no economic bearing since most goods were not kept in stock for such a long time before they were exported. He said his principal concern remained that the system had been introduced without giving overseas suppliers the necessary time to adapt to the new rules.

15. He said that although paragraph 3.C. of the Korean non-paper stated that Korea's criteria for determining country of origin were in line with the Kyoto Convention and faithfully conformed to international rules, experts of his country had come to a different conclusion after their analysis of the Korean system. Although the rules were based on the Kyoto Convention, a series of discriminatory elements had been introduced into the system. He pointed out that from the text it appeared that application of quite a number of rules was left to the discretion of district directors and commissioners. He asked how many district directors and commissioners there were currently working in Korea and what guidelines regulated their role and actions.

16. He said that although paragraph 6.B.(3) indicated that close examination of country of origin marks was carried out only in cases of high probability of their being unmarked or being falsely marked, exporters from his country had experienced exceedingly cumbersome custom clearance procedures. In conclusion he said that Switzerland welcomed the Korean authority's intention to revise the current Marks of Origin System and he hoped that the Swiss concerns expressed in the Committee meetings and in several bilateral consultations would be given due consideration in the drafting of the new rules.

17. The representative of the European Communities regretted that he had not received the non-paper and could not make any comment on it. He said that his authorities had received answers to some of their requests from the Korean enquiry point for additional clarification and information, which he considered to be a start towards finding solutions. Nevertheless he expressed concern about the growing number of items covered in the Korean Marks of Origin System and questioned again the objective of the system and whether it was really for consumer protection. He associated his delegation with the points made by the delegation of Switzerland. He said that his delegation would look into the Korean non-paper with great interest, and suggested that the Committee could take up, for the fourth time, this matter at its next meeting as an agenda point, so that everybody could be better prepared for the debate.

18. The representative of Finland, speaking on behalf of the Nordic countries, also welcomed the Korean non-paper and especially the proposal to amend the existing system. He shared the concern expressed by previous speakers that it was only a non-paper, since the issue had been discussed in several of the previous Committee meetings and he thought that it was time for the Korean delegation to present an official explanation of their system. He said that because of the short time available to them to analyse the document he could only give preliminary comments. He associated his delegation with the concerns expressed by Switzerland, and added his view of how the Korean system was out of line with the TBT Agreement.

19. First, he said that the Korean system did not meet the two basic obligations of the TBT Agreement, both included in Article 2.1. The first stated that "products imported from the territory of any Party shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country in

relation to such technical regulations or standards". That obligation was unambiguous and an unconditional "shall" obligation which was to accord non-discriminatory and national treatment to imported products. He urged the Korean delegation to convey that message to its Government so that the Korean Government could consider its basic position. The second obligation on Parties stated that "they shall likewise ensure that neither technical regulations nor standards themselves nor their application have the effect of creating unnecessary obstacles to international trade." Although this second obligation was not as unambiguous as the first, he had ample reason to believe that the Korean system did create unnecessary obstacles to trade. He said that if the legitimate objective of the Korean system was consumer protection, then the measures went beyond what was necessary to achieve that aim. His delegation accepted the aim of the measures, but the question was whether all the measures were necessary because they covered a great number of products which were not consumer products. He thought that in order to meet the requirement of the TBT Agreement the coverage of the system should be limited to consumer products only.

20. Secondly, he questioned the need to require certification of goods submitted by the importers. He pointed out that in all the countries that his Government had encountered which required a mark of origin, a supplier's declaration was sufficient and certificates were not required. The requirement of certification went beyond what was necessary and it involved a third party intervention which was expensive and complicated.

21. Thirdly, he thought unnecessary the requirement of the Korean system that the product should be marked in a method which could be preserved indefinitely, because if the aim was for consumer protection it would be sufficient if the mark was there when the consumer received the product. In many cases if the products were for ornamental purposes the consumers would want to remove the marks of origin and such a requirement would go against the interest of consumers. He further questioned the need for marking the origin on both the product and its package, because if the product was sold in its package it would be sufficient if the package was marked, or if the product was sold without packaging, it would be enough if the product was marked.

22. He urged the Korean delegation to convey to its authorities the concerns being expressed in the Committee. He hoped that when the Korean authorities amended their system and before the new regulations came into force on 1 July 1993, they could take into consideration the concerns expressed so that the amendment could be made more profound than had been proposed in the non-paper and the system could be brought thoroughly into line with Korea's obligations under the TBT Agreement. He fully supported the proposal of the representative of the European Communities that at its next meeting the Committee should take up this matter under a separate agenda item. The Nordic delegation was considering presenting a draft recommendation to the Committee for the next meeting on the issue. He said that the recommendation would depend upon the kind of amendments the Korean Government introduced into the system before the next Committee meeting.

23. The representative of the United States associated her delegation with the concerns expressed by other delegations and asked if Korea could clarify the status of its proposed revision to the Marks of Origin System and particularly if it anticipated removing the discriminatory aspects. She said that the issue had been discussed many times before, and she therefore hoped that the Korean revision would reflect the discussions and the concerns which had been made known so that the Committee would not need to have a separate agenda item for the issue at its next meeting. She supported the proposal of the Nordic countries and looked forward to the draft Nordic recommendation. She added that her authorities had not had sufficient time to evaluate the substance of the Korean non-paper, but said that it would be helpful if the Committee could have a response from the Korean delegation regarding the proposed revision before continuing further discussion.

24. The representative of Japan welcomed the Korean non-paper, but regretted that his delegation had not received the document and it wished therefore to reserve its right to come back to the issue at the next meeting.

25. The representative of New Zealand supported the suggestion for a focused consideration of the Korean Marks of Origin System at the next Committee meeting on the basis of an official communication rather than a non-paper from the Korean Government explaining the system.

26. The representative of Austria said that his delegation had not received the Korean non-paper and therefore could not express any view on it, but would like to associate itself with the concerns expressed by the Swiss delegation. He also supported the proposal to come back to this issue at the next Committee meeting.

27. The delegation of the Philippines drew the attention of the Committee to very recent reports from his capital which indicated that exporters from his country were still unable to export floppy disk drives to Korea. That was contrary to their understanding, which Korea had confirmed at the previous Committee meeting, that the issue had been resolved as an administrative solution had been implemented. As he did not have more information on the situation, he could only reserve his right to revert to the issue of the Korean Marks of Origin System at the next regular meeting of the Committee, or even sooner if necessary.

28. The representative of Hong Kong welcomed the Korean non-paper but asked the Korean delegation to clarify the following points: (a) he thought that the system was discriminatory because it applied to imports only; (b) the general exemptions requirements set out in paragraph 2.B.(9) would cause uncertainty to trade if the district directors did not have a set of objective and transparent rules in their decision making process; (c) paragraph 4.(2) stated that "... the importer shall submit additional documents such as the parts list until the time of import permit"; he suggested that clarification about the "parts list" was desirable; (d) no clear rules had been set out concerning paragraph 6.A.(2) under which the district directors could exempt importers from submitting samples.

29. The representative of the Republic of Korea said that in response to the questions raised by different delegations in the previous Committee meetings about the Korean Marks of Origin System, his delegation had sent to all TBT Signatories, the week before, detailed information about the system and hoped that it was useful for a better understanding of the system. He said that he would not give a detailed explanation of the system but would stress some points. He said that the Korean Marks of Origin System was not intended to impede international trade and that the system was applied to all imports indiscriminately. His delegation believed that the System was in line with the TBT Agreement and the Kyoto Convention. He said that he had been told by his authorities that the Korean system had been revised and improved the week before in order to reduce the cost of marking of origin and to ensure consumer protection in a more reasonable manner. A notification had been submitted to the Secretariat the day before with the request that it be circulated to the Committee.

30. Regarding concern that the system was applied discriminatorily, according to Article 3.7.12 of the foreign trade control regulation, Korean exported items should be clearly marked as products manufactured in Korea or made in Korea. He said that the system was applied to both exports and imports indiscriminately. He said that he would forward any additional questions raised by delegations concerning the Korean non-paper and the revised Marks of Origin System to his capital and would try to provide responses as soon as possible. He would make a detailed explanation at the Committee's next meeting referring to the concerns made and he said that, if possible, he would ask his authorities in the capital to attend the next meeting and to provide a detailed explanation.

31. The Chairman said that the Committee took note of the statements made and thanked the Korean delegation for the information provided, for its stated intention to revise the system and to provide further information on the questions that had been raised. The Committee would revert to the issue at its next meeting as a separate agenda item.

32. The representative of New Zealand reminded the Committee of an issue which his delegation had raised, together with quite a large number of other delegations at the previous meeting, concerning the German Ordinance on Packaging and Packaging Waste. He recalled that at the last meeting in October 1992 a large number of delegations had considered that there was an obligation to notify mandatory packaging requirements such as those in the German ordinance on the avoidance of packaging waste. His delegation continued to think that the TBT Agreement did oblige Parties to notify such requirements. He recalled the Committee's decision in TBT/W/159 which confirmed that Parties were obliged to notify all mandatory labelling requirements and, in the view of his delegation, that confirmed equally the obligation to notify mandatory packaging requirements.

33. He recalled at the previous Committee meeting that the representative of the European Communities had clearly indicated his intention to look into the problem with the Member States. He said that he would like to know from the Communities the result of its internal deliberations,

particularly with respect to the specific problem that Parties identified at the last meeting about Germany's obligation to notify its ordinance. He reiterated his delegation's appreciation for the Communities' notification in TBT/Notif.92.330 of 23 October 1992 of the Communities' proposed Directive on Packaging and Packaging Waste. He thought that it was an important contribution to the observance of the fundamental transparency obligations of the Agreement, and looked forward to a similar constructive approach with respect to the German ordinance with similar requirements.

34. The representative of the European Communities said that generally the European Communities notified quite regularly to the Committee, and would continue this approach. He recalled that at the last meeting the Committee had made some distinction between aspects which could be related to the TBT Committee's work and those which might not. He said that as he had mentioned at the last meeting, the Communities had notified its Directive on Packaging and Packaging Waste just to show the importance of transparency, even though it went beyond the scope of the TBT Agreement. He restated that he wished all the other Parties would notify their legislation which pertained to similar matters.

35. Concerning the German legislation, he reported to the Committee that his delegation had had discussions on the issue to see whether it had something to do with technical specifications, and had concluded that the German ordinance need not be notified under the Communities' own internal system. That was the reason why it had not been notified to the GATT Secretariat either. He proposed that if there was something specific in the text that the New Zealand representative thought might fall under the TBT Agreement, the New Zealand delegation could contact him directly through his GATT enquiry point for further discussion.

36. The representative of New Zealand appreciated the work being done by the European Communities in terms of considering the matter internally within the Communities. He recalled that at the last meeting his delegation had indicated that in looking at the German ordinance and the requirements in the TBT Agreement, particularly those in Article 2.5 and in the associated definition in Annex 1, it was clear that there was an obligation for Parties to notify mandatory packaging requirements. His delegation thought that the German ordinance was: (1) a mandatory packaging requirement because the word "obligation" and "shall" were used throughout the text; (2) it had a significant effect on trade; (3) it did not appear to be substantially based on a relevant international standard; and for these reasons there was a requirement to notify the Committee. He was concerned that the Committee should not move towards a situation whereby such mandatory technical requirements concerning packaging would not be notified. He emphasised that transparency was the basis of the Agreement and it was an important requirement that the Committee should not take lightly. He suggested that the Committee might come back to the issue at its next meeting and at the same time he would accept the offer from the European Communities' representative to discuss the matter further with him bilaterally.

37. The representative of the United States associated her delegation with the comments made by the New Zealand delegation. She said that the concern of members of the Committee had been made clear at the previous meeting: it was the lack of notification of the German ordinance. She thought that, if necessary, the substance of concerns would be directed bilaterally and that at the same time, the Committee deserved a response at the present meeting explaining why the German legislation had not been notified.

38. The representative of the Philippines supported the statement made by the New Zealand delegation concerning transparency. He pointed out that notification was equally important no matter whether the requirements were of an environmental or non-environmental nature. He felt that it was a basic obligation of the Agreement that even small measures like health certificates should be notified because they might have a profound effect on trade.

39. The representative of the European Communities said that his delegation supported the importance of transparency. However, he thought that not every piece of legislation was to be notified to the TBT Committee, for example those that were not mandatory. He repeated that the German legislation had not been notified because it did not appear to be a very clear case for notification, but he reiterated that he was open to further discussion should there be precise concerns. He pointed out once more what he had said in the previous meeting that there were different fora in the GATT where these kinds of environmental matters would be examined and that the Committee should not mix up these kind of things. He appealed to other Parties to look into their legislation in this field and to notify, although the work was difficult and the matter was rather new to the Committee. He said that if necessary contact with enquiry points for clarification might be helpful and suggested that if other Parties felt it necessary the Committee could come back for a more general debate in the future.

40. The representative of New Zealand said that his delegation did not share the view that it was not appropriate for the TBT Committee to deal with aspects of the German legislation. He said that the Committee should consider this point carefully and reflect on what kind of doors it might be opening with respect to technical barriers to trade more generally if it moved to accept the view that the German legislation was outside the work of the TBT Committee. He suggested that the Committee might come back to this point at its next meeting.

41. The representative of Brazil said that if his understanding was correct, the European Communities had come to the conclusion that the German packaging regulation did not need to be notified because it did not fall within the scope of the TBT Committee. His delegation did not agree with that and wished to reserve its position on the matter.

42. The Chairman said that although he welcomed bilateral consultation this seemed to be an issue of great interest for the Committee as a whole and he requested that the results of bilateral consultations be reported to the next Committee meeting.

43. The representative of the European Communities said that as a matter of principle it was not necessary to report to the Committee on each bilateral discussion between enquiry points. He said that he would support the Chairman's proposal that the Committee revert to the issue at its next meeting if there was general interest about the outcome of the bilateral consultations or if there was a general problem which could not be solved bilaterally that might need the Committee's attention.

44. The representative of the United States noted that the German ordinance on packaging requirements was a specific issue which had been raised at the previous meeting, not a general one. It required packaging, among other things, to be of a certain type and size and it was that aspect which was related to the TBT Agreement. However, the legislation had not been notified and the Committee still had not received an explanation of why not. This would become a more general issue and topic of debate if the European Communities' position was clear that it was not covered by the TBT Agreement. She urged the European Communities to give a clear answer to what the position was with regard to the German ordinance. She also invited the European Communities to cite specific references if there were in fact indications of legislation by other members concerning recycling which they believed should have been notified yet had not been. She said that it would be of interest to the Committee.

45. The representative of the European Communities, in response to the United States delegation, asked if the U.S. Clean Air Act had been notified. He said that if any delegation after looking into the text of the German technical regulation felt that there were specific points which they thought should be notified or any doubts in that respect, the European Communities was open to further discussion.

46. In summing up, the Chairman said that it was good GATT tradition to promote bilateral consultation, but it was also good GATT tradition that all problems which delegations had might be brought to the attention of the Committee. The Committee took note of the statements made and delegations would be free to return to the issue at the next meeting if they felt it necessary.

47. The representative of Sweden recalled that at the last meeting of the Committee his delegation had voiced its concern regarding the then newly-introduced Mexican rule for the importation of meat. He regretted that these new rules had not been notified to the GATT TBT Committee although they had been introduced nine months ago. He reported to the Committee that although his authorities had held a number of bilateral consultations, they had not received answers to their questions. He urged Mexico to notify the new rule to the GATT so that all members of the Committee could receive relevant information. He said that the question had also been brought up at the Trade Policy Review of Mexico but regrettably no satisfactory response had been given. He thought that it was quite clear that the Mexican rule was creating obstacles to trade and uncertainty for exporters.

48. In August 1992, the representatives of the Mexican authorities had made an inspection of Swedish export facilities, and two-and-a-half-months later final approval for six months had been given. At the beginning of April 1993, a new inspection had taken place; his authorities had not yet received information regarding the result of the inspection. He thought it unreasonable to inspect Swedish export facilities every six months because it involved a lot of expense. The Mexican authorities required Sweden to pay for air travel, local travel, accommodation and all meals during a period of more than two weeks. He thought that a more practical and efficient scheme for inspection must be found, similar to those which Sweden had in place with other countries. He reiterated his Government's view that Mexico had not fulfilled its obligation under the TBT Agreement and strongly urged the Mexican authorities to notify the regulations as soon as possible. He said that his delegation would be interested to hear if the Mexican delegation could provide the Committee with any additional information concerning this matter.

49. The representative of Mexico said that the administrative procedures for obtaining the necessary permits for import and export of agricultural products in Mexico had been significantly simplified and all such measures were published in the official journal of the Mexican Government so that transparency was ensured. She said that in 1986, SPS authorisation was needed for all agricultural products and forestry products but at present these requirements were only applied to high risk goods for quarantine purposes, which included meat. The law established a delay of three days to obtain answers concerning requests for authorisation for import or export. The Mexican Agricultural Secretary had established a bilateral protocol with a number of countries to facilitate the inspection process in this field.

50. In reply to the questions raised by the Swedish delegation at the previous Committee meeting, she said that since 15 August 1992 Mexico required importers to obtain a certificate from the Mexican authorities and that for meat inspection the procedure was the following: if 10 per cent of the facilities inspected were not satisfactory, the whole system of the country was considered not to be in compliance and exports to Mexico were not authorized; once inspection had been taken place, the possibility of authorising imports of meat could be considered before a new inspection; permits granted by the Agricultural Secretary which indicated the country of origin were not transferable and could not cover imports from other countries. She said that the system was applied to all countries indiscriminately and was not stricter than those applied by other countries, such as other North American countries. Information on the system had been communicated ninety days in advance to the governments of interested Parties. She said that her Government recognized the concerns expressed by the representative of Sweden, and the feeling that those measures had created problems for Swedish exporters. She reported to the Committee that bilateral consultations had been carried out in her capital and reminded the Swedish representative that discussion could also take place in Geneva in order to find a satisfactory solution to the problem. She added that, concerning the cost of the inspection system, after the third visit it was the Government of Mexico which bore the costs.

51. The Chairman asked the Mexican representative if her Government had any intention to notify the measure.

52. The representative of Mexico said that she had given a detailed explanation to the questions raised by the Swedish delegation at the previous meeting and that she had no further information.

53. The representative of Sweden said he appreciated the answer given by the Mexican delegation but reiterated that his Government still considered the new Mexican rules fell under the TBT Agreement and should be notified. His Government would pursue further bilateral contacts with the Mexican authorities both in Mexico and Geneva. Concerning the cost of inspection, his authorities were surprised since it was not what they were accustomed to in connection with other Parties coming to inspect their facilities.

54. The Committee took note of the comments made. The Chairman asked the Mexican delegation to examine the question of notifying the Mexican measure to the Committee.

55. The representative of Singapore, referring to the Austrian notification in TBT/Notif/93.123 dated 22 April 1993, said that her delegation welcomed the decision of the Austrian Government to withdraw the provision relating to the discriminatory labelling requirement of tropical timber and timber products; however, they were concerned about the voluntary quality marks which covered all timber especially with regard to the implementation of the provision. She asked the Austrian delegation to clarify the following questions: (1) whether the law had already been implemented, since in the notification, it indicated that the proposed date of adoption and entry into force was 1 April 1993; (2) whether the Commission had decided all the criteria and if any quality marks had been awarded already; (3) how the Austrian authorities were going to determine the criteria for the guidelines and which competent international organization had Austria used for the purpose of determining the guidelines?

56. Her delegation understood that there was no international organization dealing with guidelines for sustainable management of temperate forests. According to the Austrian notification to the TBT Committee, it was said that the voluntary quality labelling would be established according to guidelines prepared by the respective international organizations as laid down in UNCTAD document TD/TIMBER.2/R.1 (25 February 1993). She said that her delegation was seeking further clarification of which specific parts of the document were being referred to, as that document contained proposals from consumers as well as from producers for an amendment to the current ITTA. She understood that those remained only proposals and were still subject to negotiation in UNCTAD, and that the consumer proposal only related to sustainable management of tropical forests. Her delegation wondered if it was the intention of Austria to extend those guidelines also to temperate forests.

57. The representative of Austria reported that since the previous meeting of the TBT Committee, bilateral and plurilateral consultations between Austria and the ASEAN Contracting Parties had been taking place with the assistance of the Chairman of the Council, and beyond that high ranking political consultation had been taking place. These consultations had finally led to the amendment of the Austrian tropical timber rules. At the Council meeting of 24 March 1993, the Contracting Parties had been informed of the abolition of mandatory labelling of tropical timber and timber products and that the voluntary use of the quality mark for timber and timber products from sustainable forest management had been maintained. He said that the use of the quality mark was voluntary and irrespective of the origin and the raw material of the product; however, the use of such a voluntary quality mark must fulfil certain criteria and guidelines which had been accepted by the respective international organizations.

58. Referring to the questions of the Singapore delegation, he replied that the law had been implemented in April 1993. As to the criteria, he said that if such a voluntary quality mark would be used, an application must be made and in awarding such a quality mark criteria accepted by respective international organizations were applied. He said that he had no concrete knowledge of which international organizations had established such guidelines; if there were none, then they could not be applied. He repeated that the quality mark, if applied, was applicable to all timber including both tropical and temperate timber and therefore there was no discrimination, which had been the concern of the ASEAN countries. He said that he had no further information concerning the voluntary quality mark but that he would ask for further information from his authorities if necessary. He concluded that certain parts of the problem went beyond the framework of the TBT Committee, and therefore it was quite appropriate that the Council had been dealing with it. He said that as the issue was considered to have been concluded at the Council meeting of 24 March 1993, his delegation considered the problem settled. However, they would provide further information if requested or come back to the matter at the next Committee meeting. He added that the text in English translation had been handed to the embassies of ASEAN countries in Vienna and ASEAN missions in Geneva.

59. The representative of Singapore welcomed the reply from the Austrian delegation and said that her delegation would forward the questions she had asked in written form to the Austrian authorities.

60. The Committee took note of the comments made.

61. The representative of Finland, speaking on behalf of the Nordic countries, said that the United States had recently issued a regulation based on Section 611 of the U.S. Clean Air Act. It included requirements on labelling of products in which specific substances had been included or had been used in the production process. He said that the regulation had not been notified to the TBT Committee and that his delegation considered that kind of regulation clearly fell within the scope of the TBT Agreement because it was a labelling requirement and had a significant effect on some

of the trade of the Nordic countries. His delegation wanted to know the reason why that regulation had not been notified and urged the United States' authorities to notify it at their earliest convenience. He said that his authorities would consult bilaterally with the U.S. delegation on the trade problem that the Nordic countries had encountered.

62. The representative of the United States explained that the reason why the regulation had not been notified was due to an error by their enquiry point and not because they thought it did not fall within the TBT Agreement. It was brought to the attention of her authorities only after the regulation had been finalized and at that point they did not think it was useful to notify because it was already a final rule. She said that her authorities had no plan to notify the regulation unless it was the wish of the Committee. She informed the Committee that information on the rule was available at their enquiry point.

63. The Chairman welcomed the information from the United States and asked the U.S. delegation to notify the regulation.

64. The representative of the European Communities recalled that at the last Committee meeting, his delegation had taken up an issue concerning nutrition labelling of food for human consumption and of meat and poultry in the United States. He emphasised that it was important legislation concerning a large number of food products and that it affected trade between the United States, the European Communities and other Parties. His delegation had sent comments to the U.S. delegation and at the last meeting the representative of the United States had indicated positively that answers would be given to the comments; however, his delegation still had not received any answer. He urged the delegation of the United States to provide some precise information on that legislation.

65. The representative of the United States said that the issue referred to by the European Communities was contained in TBT/Notif.91.330, TBT/Notif.91.331, TBT/Notif.92.214 and TBT/Notif.92.258. They all concerned different aspects of the nutrition labelling requirement. Two of the notifications were from the Food and Drug Administration and the others from the Department of Agriculture. She told the Committee that her authorities also considered this legislation important. The objective of the legislation was to enable consumers to make nutritional comparisons amongst various food products, to assist them in interpreting the information about the nutritional content in food, and to provide them with accurate nutritional labelling information. She said that at the time of the last meeting, the regulation had not been finalized, but that it had been finalized on 6 January 1993 and published in the U.S. Federal Register. She provided the Secretariat and the delegation of the European Communities each with a copy of the final regulation from the Food and Drug Administration.

66. She said that the final regulations addressed the comments which had been received on the proposals. She noted that as the number of comments received was in the thousands, it was not possible, and also not common practice, for agencies to respond individually to comments though the

comments were addressed in the publication of the final rule. There, some indication was given as to whether comments had been accepted or not, and why. She invited the European Communities to review the final rules and, if necessary, offered to provide further information on the outcome of those comments in relation to the final rule. She said that it might be in the interest of the European Communities to discuss the comments with, or send written comments to, the regulators involved and the U.S. enquiry point. She said that there were also a number of countries which had made written submissions when those rules were proposed and she invited them to review the final documents.

67. The representative of the European Communities asked the U.S. delegation to clarify if the information covered all four notifications. He appreciated the work done by the U.S. authorities and said that his authorities would look into it with care because they considered the issue very important to trade. They thought the rules differed substantially from the Codex Alimentarius Guidelines and that they created real problems. He suggested that after studying the information the Committee could come back to the issue at the next meeting if necessary.

68. The representative of the United States indicated that the information covered only two of the notifications and that further information would be provided.

69. The Committee took note of the statements made.

70. The representative of Canada reported to the Committee that her delegation was continuing its efforts to resolve the issue that they had raised at the last meeting concerning Mexico's ban on the importation of seed potatoes from Canada, and it appreciated the cooperation of the Mexican Government in that regard. Regarding the Committee Decision on the matter of transparency obligations in relation to both mandatory and voluntary labelling schemes, she said that her delegation shared the view expressed by the Brazilian delegate at the last meeting of the Group on Environmental Measures and International Trade that the TBT Agreement created an obligation on Parties to have available through their enquiry points information on both mandatory and voluntary standards, including government-supported voluntary environmental labelling programmes. With this obligation in mind, she said that information on Canada's environmental choice programme, including both the provisions enforced and proposed changes which were in draft form, had been available from the Canadian enquiry point for some time. Her delegation welcomed any confirmation from other Parties on whether they shared the same view, and information as to whether environmental labelling programmes were available from their enquiry points.

71. Finally, she recalled a comment which her delegation made at the last Committee meeting regarding the need to recognize the overall contribution to trade liberalization made by specifying technical regulations and standards in terms of performance rather than design or descriptive terms, in conformity with TBT Article 2.4. Her delegation remained concerned about the potential loss of trade due to employment of non-performance based standards, for example the case of recycled content requirements.

72. The representative of New Zealand welcomed the Canadian statement and said he would convey it back to his capital for reflection.

73. The Committee took note of the statements made. The Chairman said that in relation to Canada's questions posed to other members it would be useful if other Parties could contact the Canadian delegation to provide information on whether their environmental labelling programmes were available at enquiry points.

74. The representative of Finland, speaking on behalf of the Nordic countries, informed the Committee of a Nordic environmental labelling system which was common to the four Nordic countries: Iceland, Norway, Sweden and Finland. Information on those labelling systems, he said, was available at their enquiry points. He said that his delegation shared the view of Canada that information on environmental labelling systems, voluntary or mandatory, should be available at the national enquiry points under the TBT Agreement and that the notification obligation was relevant if the requirements were mandatory and had a significant effect on trade.

75. The representative of the Philippines voiced concern over the Korean Green Card Declaration System. He said that according to TBT/Notif.93.14 dated 15 January 1993, in which Korea notified its Green Card Declaration System, simplified customs inspection for agricultural imports was available if information about the kind of pesticides used on such imports during cultivation, storage and transportation and the date of application was declared in advance. He said that besides those explanations there was no detailed information in the TBT notification, no adequate information on administrative and implementing guidelines in the Government official gazette which announced the measure in December 1992, nor information from the enquiry point. His authorities had received reports that the implementation of that new measure had been postponed from 15 March to 1 July 1993. He said that his delegation would like to seek clarification from the Korean delegation on the following points: (1) could Korea confirm that the effective date of the measure had been postponed from 15 March 1993 to 1 July 1993; (2) was complete information on the administrative and implementing guidelines of the Green Card Declaration System available so that his Government could study it and see how its exporters could comply with the requirement; and (3) did the Green Card Declaration System take into account the fact that in many cases of fruit exports, plantation areas could cover as much as 25,000 hectares and that given this size the variation of the type of pesticide used, their dosages and dates they were applied could vary widely in terms of plantation sub-area and export lots?

76. The representative of the Republic of Korea said that the ministry responsible for the implementation of the Korean Green Card Declaration System would be reviewing the proposed system during the second half of 1993. He was not sure of the exact implementing period. He said that the guidelines of the Korean Green Card Declaration System were being prepared and, once completed, his Government would convey them to the Philippines delegation. He explained that the purpose of the Korean system was to accelerate customs clearance. If an importer fully and voluntarily

notified the pesticide used in producing agricultural goods, the importer would benefit from speedy customs clearance. He added that the Korean Green Card Declaration System was not a mandatory requirement but was applied voluntarily. Therefore, if there was no notification, the normal procedure would apply.

77. The representative of the Philippines welcomed the preliminary and useful answers from the Korean delegate. He expressed his delegation's interest in knowing more about the voluntary aspect of the Korean system.

78. The Committee took note of the statements made.

D. Report on the Sixth Meeting on Procedures for Information Exchange

79. The Chairman reported to the Committee, as Chairman of the Sixth Meeting on Procedures for Information Exchange which was held 2 November 1992, on the meeting and on recommendations to the Committee arising from it. He drew attention to document TBT/W/167 in which the Secretariat reported on the Sixth Meeting on Procedures for Information Exchange.

80. He recalled that the following suggestions had been made during the meeting, and felt that delegations might consider acting upon them if they thought appropriate.

- (a) Concerning the Annual Review, it was suggested that clearer guidelines should be given on how and what information should be submitted by Parties in the context of the Annual Review of the Agreement on the number of enquiries received and answered by their respective enquiry points. Also, a new category of "45-60 days" should be added to the table concerning "observation of the recommended comment period by Parties" in the Secretariat report prepared for the Annual Review of the Agreement in order to have a more precise view of the situation regarding the length of time allowed for comments on notifications.
- (b) Concerning the problem of responsiveness of enquiry points, it was suggested that first class mail or telefax should be used in answering requests by enquiry points in order to solve the problem of postage delay. Enquiry points might provide the GATT Secretariat with information with respect to their experience with the responsiveness of other enquiry points so that the Secretariat could prepare a background paper in which it would be possible to establish a clearer picture of the extent of the problem.
- (c) Concerning comments received by enquiry points, it was suggested that enquiry points could furnish to all other Parties the comments which they had received on a particular notification, so that interested parties could have a clearer picture of the comments being made.

- (d) Concerning technical assistance to other Parties, in view of the implications of the completion of the Uruguay Round for the increasing number of new signatories and enquiry points, it was suggested that the established procedure reproduced in TBT/16/Rev.5, page 15, should be more actively used by both donors and Parties which needed assistance. It was also suggested that central organised training programmes at enquiry points might be provided if requested.

81. The Chairman asked the Committee to take note of the above suggestions for improving the procedure of the implementation of the Agreement.

82. The Chairman then suggested that the Committee adopt the following recommendations concerning information contained in the notification form. He said that those recommendations, if adopted, would be included in document TBT/16/Rev.5 which contained Decisions and Recommendations adopted by the Committee since 1 January 1980.

- (1) Information should be as complete as possible and no section should be left blank. Where necessary, "not known" or "not stated" should be indicated.
- (2) Under point 4 of the notification form concerning products covered, where applicable, ICS numbers (International Classification for Standards of the ISO) could also be supplied.
- (3) Under point 10 (final date for comments), a specific date should be indicated.
- (4) Under point 11, if the text was available from a body other than the national enquiry point, it would be useful to supplement the address of that agency, where available, with a telefax number.

83. The representative of Japan said that his delegation could not accept recommendation number (2) concerning the use of ICS numbers for products covered. In Japan's view, this could create confusion. He said that his delegation needed more time to study these recommendations and would like to come back to them at a later stage.

84. The representative of European Communities welcomed the Chairman's presentation and thought that some conclusion of the Sixth Meeting on Procedures for Information Exchange should be made. He regretted that there had not been many participants from GATT enquiry points at that meeting. He said that the representatives from GATT enquiry points were those who actually handled everyday procedures of the TBT Committee and they had had some useful suggestions to make. He said that the Committee should take note of what had been discussed in that meeting. Concerning recommendation (4) he explained that, practically, requests could be replied to more efficiently if enquiry points were to be used as much as possible and as a linkage to all other agencies. He said that normally if information was requested, enquiry points would reply that the request had been transmitted to the body involved and the address and

telefax number of that agency would also be provided. If no answer was given from that body, Parties could push for more information from the enquiry point. In this way, these agencies could avoid answering requests for texts on a regular basis. He suggested that the Committee come back to recommendations (2) and (4) at its next meeting so that delegations could have more time to study them.

85. The representative of Finland, speaking on behalf of the Nordic countries, said that they shared some of the concerns expressed by the representatives of Japan and the European Communities and that more time was needed to consider the implications of recommendations (2) and (4). He suggested that the Committee endorse recommendations (1) and (3) and revert to recommendations (2) and (4) at the next Committee meeting.

86. The representative of Canada clarified recommendation (2), saying that the wording used was "where applicable, ICS numbers could also be supplied", and it indicated that it was optional and would be at the discretion of the enquiry point involved to use ICS numbers.

87. The Chairman supported the interpretation of the Canadian delegation. He recommended that delegations enter into close contact with their enquiry points to see what items they would like to be included in the notification form. Taking into consideration of the comments made, the Committee adopted recommendations (1) and (3) and agreed to revert back to recommendations (2) and (4) at the next Committee meeting.

88. Finally, the Chairman reported that the following proposals had arisen during the meeting on Procedures for Information Exchange which concerned the activities of the GATT Secretariat in servicing the TBT Agreement.

89. The first one concerned sending out notifications in a double system, using telefax in addition to the regular system of circulation, to provide Parties with more time to work on the notifications.

90. It was also proposed that the Secretariat should prepare two documents based on information provided by signatories. One would contain a list of agencies responsible for notifications in different Parties, in order to provide a better understanding of the procedures used in Parties at the national level, especially in cases when agencies other than enquiry points were responsible for preparing and sending notifications to the Secretariat. The second would contain a compendium of the operation of enquiry points in different Parties, providing information such as the name, the nature, personnel and publications of the enquiry points, the languages and facilities being used and the way they handled comments and notifications. Such consolidated information might be useful for new members setting up their enquiry points.

91. The representative of the Secretariat commented that if the Committee wished to have notifications distributed also by telefax, it would have an additional cost, given the existing number of notifications, of about Sw F 75,000 a year. If it were the wish of the Committee to send out notifications in a double system, the Secretariat would have to go through

the Budget Committee in order to secure the necessary funds. He said also that, upon completion of the Uruguay Round, the number of members of the Agreement would more than double. He asked the Committee to take that into account and reflect on its cost implications. Concerning the papers, he said the Secretariat would prepare whatever papers the Committee wanted. Those requested would need to be based on questionnaires, since the Secretariat did not have the information which would be needed to compile the two papers. He said the Secretariat would seek Committee members' assistance in compiling the papers the Committee was asking for.

92. The representative of Finland said that all of the proposals should be considered by the Committee, but the Committee would need a little bit more time to consider them carefully and to discuss with the Secretariat the practical implications of the three proposals. As to the first proposal, he thought there could be one new system which was based only on telefax to replace the existing system. As to the second proposal, he sought further clarification about the list of agencies other than enquiry points which was involved. Concerning the third proposal, he thought that a better way for new members to set up enquiry points would be to seek technical assistance, according to the provisions of the Agreement, from some other more experienced Parties. That kind of technical assistance would be better than compiling a compendium of information which would, in any case, not be sufficient for new members seeking advice on setting up their enquiry points. He suggested the Committee come back to these proposals at a later stage.

93. The representative of Japan thought the proposals were important and would affect activities of the TBT Committee, especially the one concerning the notification system. He endorsed the suggestion of the Finnish delegation that careful consideration would be needed in capitals before coming back to the proposals at the next meeting.

94. The representative of New Zealand suggested that, in connection with the first proposal concerning the distribution of notifications by telefax, the Secretariat should provide more information on the time the Committee would gain from such a system and the cost it would involve, including the personnel and the work time involved.

95. The Secretariat reported that, at the moment, notifications were sent out to 55 addresses in Geneva, 4 in Berne and 21 outside Switzerland. Normally it took two days for delegations to receive a notification which had been prepared in the Secretariat and for it to be distributed to missions. With the system of telefax, delegations in Geneva would gain two days.

96. The representative of the European Communities recalled that at the last Meeting on Procedures for Information Exchange, the concern had been to find a system which would enable enquiry points to receive information more efficiently. He thought those suggestions were useful and if there were problems in realising them at the moment, the Committee should leave those proposals open. He suggested the Secretariat and the Committee take note of them and if better solutions could be found, the Committee could come back to the issue at the next meeting.

97. The representative of Finland, speaking on behalf of the Nordic countries, requested the Secretariat to make a written presentation on the issue, giving different alternatives with a comparison of the time Parties would gain by different alternatives and the cost, so that the Committee could have a more solid base for discussion. He said that he would welcome any further suggestions besides the three alternatives which were the present system, a double system and the alternative of using only telefax.

98. The Chairman concluded that the Committee would come back to the three proposals at its next meeting and requested the Secretariat to prepare the paper that the Nordic representative had suggested. Concerning the proposed document containing a list of agencies responsible for notification, he explained that in some countries enquiry points were not responsible for making the notifications. Concerning the compendium of enquiry points, he said that the idea was not to have a very thorough document containing the details of the enquiry points, but rather a summary containing the main aspects and featuring the work of different enquiry points. He recommended that delegations contact their representatives at the last Meeting on Procedures for Information Exchange in order to have a common view on the decisions made at that meeting.

99. The representative of ISO, speaking as an observer, thanked the Chairman and the Secretariat for having the date of the Meeting on Procedures for Information Exchange coordinated with those of the ISONET Management Board. He thought it was very useful because thirty of the forty-one GATT/TBT enquiry points were ISONET centres, among them twenty-three answering all enquiries and seven only for standards. He hoped that, for the next meeting, the two bodies could again manage to coordinate dates.

100. The representative of Finland, speaking on behalf of the Nordic countries, said that, concerning the recommendation of giving Parties sixty days for comments, he was greatly concerned that the recommendation was less and less implemented and that more and more notifications were issued which gave only one week or ten days for comments. He thought it made the whole notification system useless because Parties could not make comments in such a short time. He proposed that the Committee remind other Parties to implement the recommendation as far as possible.

101. The Committee took note of the statements made.

#### E. Recommendations on testing, inspection and type approval

102. The Chairman drew attention to document TBT/W/165 concerning updated information on ISO/IEC Guides 25:1982, 38:1983 and 45:1985 which had implications for the Committee's decisions and recommendations in the area of testing, inspection and type approval adopted in October 1986, and contained in TBT/16/Rev.5, page 14. He also referred to the information provided by the ISO representative before the meeting concerning ISO/IEC Guide 39:1983 contained also in TBT/16/Rev.5, page 14, noting that it had been superseded by a revised edition, ISO/IEC Guide 39:1988.

103. The Committee agreed to the Chairman's proposal to amend the references in TBT/16/Rev.5 to ISO/IEC Guide 25:1982, 38 and 45 and ISO/IEC Guide 39:1983 by replacing them with a reference to ISO/IEC guide 25:1990 and ISO/IEC Guide 39:1988.

F. ISO/IEC Code of Good Practice for Standardization

104. The Chairman drew attention to documents TBT/W/168, concerning the draft ISO/IEC Code of Good Practice for Standardization, and TBT/16/Rev.5 containing the Committee's decision of October 1991 that "The Committee emphasizes the importance it attaches to a continuous dialogue taking place between GATT and the ISO/IEC on this matter, as took place in connection with the adoption of mutually consistent definitions for use in the TBT Agreement and the ISO/IEC." The Committee had also decided that it would, "upon completion of the ISO/IEC Code, evaluate its implications for the operation of the Agreement (1991) on Technical Barriers to Trade and take whatever further action it may consider appropriate at that time." The Chairman asked the Committee to take into account that Annex 3 of the 1991 draft Agreement on TBT was part of the negotiation of the Uruguay Round, and the Committee should reflect on its competence before going into any discussion on the issue.

105. The representative of ISO, speaking as an observer, reported that since the previous TBT Committee meeting, during which he had reported on the progress of a consensus-building process for the preparation of an ISO/IEC Code of Good Practice for Standardization (CGP), the work had been completed. He said that a working group had drafted a revised text, taking into account comments received from ISO and IEC national bodies and international organizations in liaison. An attempt to include the essential features of Annex 3 of the GATT draft TBT Agreement had been made in order to obtain compatibility of the two documents. The revised text had been circulated to ISO member bodies and IEC national committees to be voted on in accordance with their procedures to check that consensus had been reached on the submitted text. He informed the Committee that voting had closed on 30 April 1993 and the result of the vote was positive. The required majority had been reached in ISO and IEC; so the text given in TBT/W/168 of 14 January 1993 had been approved subject to minor modifications following the review by the competent Boards of ISO and IEC of the comments received.

106. He said that it was normal ISO and IEC procedure to analyse all comments received with the votes. The competent Board would have to decide on the best way to submit the final text for the adherence of standardizing bodies and standardizing organizations, as well as standards bodies, taking into account that some of their members required clarification of the relation between the ISO/IEC CGP and Annex 3 to the GATT Agreement. He said the latter point would have to be considered in light of the position of GATT and its judgement as to whether the ISO/IEC CGP might possibly be considered as a potential alternative or replacement for the present Annex 3 to the GATT 1991 draft TBT Agreement.

107. In developing the ISO/IEC CGP, he said, constant care had been taken to meet one of the essential features of the international voluntary standardization consensus system, namely the direct involvement of those who would have to implement it. Therefore, it would correspond to the expectations of the users, and would offer a good description of practices, ensuring a fair and transparent preparation of standards at national, regional and international level. In comparison with Annex 3 of the GATT Agreement, he said that the ISO/IEC CGP did not specify some operational details because it was felt that those operational details should be specified in the internal management regulations of standardizing bodies and their information centres like ISONET, rather than in the framework of the Code.

108. He recalled that at the last meeting he had reported to the TBT Committee on the development of an ISO/IEC Code of Good Practice on Conformity Assessment. He said that work was progressing well and the competent group of CASCO (the ISO Council Committee on Conformity Assessment) would meet again on 29-30 June, following which the CASCO Chairman would advise, in consultation with the group Chairman, on the circulation of a draft to ISO and IEC national bodies for their comments. He said that care would be taken to avoid any contradiction with the relevant provisions of the GATT/TBT Agreement.

109. The representative of IEC, speaking as an observer, supported the statement made by ISO with respect to the ISO/IEC Code of Good Practice for Standardization and highlighted the following points: (1) within the IEC community, only one member had voted against the text of the Code and that had been, in fact, a qualified non-approval; (2) a great majority seemed to wish to see the ISO/IEC Code at least aligned to Annex 3 of the GATT/TBT draft Agreement and many saw it as a potential replacement at such time as would be in accordance with GATT wishes; (3) in developing the Code, great care had been taken to ensure that one of the essential features of the international voluntary standardization consensus system which was the direct involvement of those who implement it had been taken into account.

110. The representative of Finland, speaking in his personal capacity, reported to the Committee on his role as a liaison officer (appointed by Mr. J. Clarke, Chairman of the TBT Committee) to work on the ISO/IEC CGP. He recalled that he had provided the Committee with written comments concerning the then draft ISO/IEC CGP in which he had pointed out, in his opinion, that the then draft ISO/IEC Code of Good Practice had not covered all the content or substance of the GATT/TBT Code of Good Practice and that its coverage had been rather different from that of the GATT/TBT Code at that stage. He said that he had later participated with representatives of the GATT Secretariat in an ad hoc meeting of the ISO/IEC working group set up to revise their draft Code in order to align it as far as possible with the GATT Code. He said that their task there had been simply to point out where and why they thought that the ISO Code did not in fact cover the same substance as Annex 3 of the draft TBT Agreement. He stated that they had had no involvement in the development of the ISO/IEC Code and the ISO/IEC had been left to draw whatever conclusions they had wanted.

111. Speaking on behalf of the Nordic countries, he then supported the Chairman's view that it was premature for the TBT Committee to take any position on the ISO/IEC draft Code of Good Practice for Standardization, pending conclusion of the Uruguay Round. He said that if the GATT/TBT Code of Good Practice was adopted, only then would it be time for the Committee to take any position as had been envisaged in the Committee's decision that the Committee would assess the outcome of the ISO/IEC Code in due time. He said, however, that nothing prevented the TBT Committee from having preliminary discussions, presenting questions and seeking more clarification from ISO/IEC about their intentions at the moment. He made it clear that there could not be any question of the ISO/IEC Code becoming a replacement for the GATT/TBT Code of Good Practice for Standardization because the coverage of the draft GATT/TBT Code of Good Practice was much wider. He said that, for obvious reasons, the ISO/IEC Code covered only standards based on consensus procedures and the GATT Code covered all standards. He explained that it had been done intentionally so that the GATT Code of Good Practice also covered standards or standard-like documents which were not based on consensus because such documents could, in fact, create barriers to trade. He said, for example, that voluntary government recommendations or technical requirements by insurance companies would be covered by the GATT/TBT Code of Good Practice but not by the ISO/IEC Code. He suggested that it would be useful if the Secretariat could start tentative analysis on the extent to which the draft ISO/IEC Code covered the substance included in the draft GATT/TBT Code. He thought that might facilitate the Committee's discussion of the topic in the future.

112. As to the Code of Good Practice on Conformity Assessment, of which the ISO had announced its preparation, he said that speaking in his own capacity he had told the ISO/IEC representative that he did not think the GATT/TBT Committee could have anything against it, since there was nothing similar on the GATT side. He thought that an ISO/IEC Code of Good Practice on Conformity Assessment could be useful for the GATT/TBT work. At the same time, he thought that in order to ensure the ISO/IEC Code was useful for the GATT/TBT Committee, transparency in the preparatory work should be provided from ISO/IEC so that the GATT/TBT Committee could be aware of the work of the ISO/IEC and, if needed, give comments. He said that from the experience of the preparation work of the Code of Good Practice for Standardization, even if the ISO/IEC had been trying to make their Code compatible to the GATT Code, there was always the danger that ISO/IEC would not achieve that aim. He reiterated that it would be even more important for the ISO/IEC than for the GATT that there be some appropriate involvement of the GATT/TBT Committee in the preparation work of the ISO/IEC Code of Good Practice on Conformity Assessment.

113. The representative of New Zealand recalled the comment made by the ISO representative indicating that the next step for ISO/IEC members would be to look at the judgment of the TBT Committee on whether the ISO/IEC CGP was potentially a possible alternative to Annex 3 of the 1991 draft TBT Agreement. That, he said, would amount to amending Annex 3 of the draft 1991 TBT Agreement. He said, in following the Chairman's comments made earlier, that the TBT Committee did not have competence at present to make

such a decision because it was not responsible for the negotiation of the text of the 1991 draft TBT Agreement and also because the membership of the TBT Committee did not include all Uruguay Round participants. He thought, in connection with the Committee's earlier decision on how to proceed with the issue and the comments made by the Finnish delegation, that it might be possible to start a tentative process of evaluating the implications of the ISO Code on the operation of the Uruguay Round TBT Agreement. He said that it would be consistent with the last sentence of the Committee's decision that the TBT Committee could only take "whatever further action it may consider appropriate at that time" in due course. He reiterated that it would not be appropriate for the TBT Committee to take a decision amending the TBT Agreement at the present time.

114. The representative of Australia endorsed the comments made by the Finnish and New Zealand delegations, and said that his Government was concerned about the possibility of any move to replace Annex 3 of the draft 1991 TBT Agreement by the ISO/IEC CGP and thought that opening up the text was most undesirable for a successful conclusion of the Uruguay Round. He said that his Government was also concerned that it had not been consulted by the local constituency of the ISO, so that it was not aware of the process that had taken place in developing the ISO/IEC CGP. He agreed with the Finnish suggestion to have a side-by-side analysis of the two Codes and said that it should take place as soon as possible, with a view to reaching some conclusion soon after the Uruguay Round was completed. He said that in his view it was not reasonable to compare Annex 3 of the draft TBT Agreement, which formed part of a negotiated text on mandatory requirements, with the ISO text, which was voluntary, and that the people who would vote on the ISO/IEC text were not the same ones who had negotiated the TBT text.

115. The representative of the European Communities expressed his concern about the fact that there were some major ambiguities in the issue and that the word "alternative" had been used again in the statement made by the ISO representative. He recalled that at the last meeting the question of "alternative" had already been discussed. He joined previous speakers in agreeing that the TBT Committee had no mandate to negotiate the Uruguay Round text. He said that the TBT Committee should not be confronted with a text that was not the final text of the ISO/IEC CGP. He recalled the Committee's decision that the Committee would encourage the development of a Code within the private sector if it would be helpful to the work of the TBT Committee and if the two Codes could be mutually supportive and had no contradictions. He hoped that for the future work of the ISO/IEC they would take into account the decision made by the TBT Committee and reflect upon it so that at the next TBT Committee meeting the same kind of ambiguous statement would not be given. He said that his delegation was not against the suggestion of starting a tentative analysis of the ISO/IEC Code to prepare for later discussion but it would prefer to wait until a final text of the ISO/IEC Code was provided and the TBT text was adopted.



116. The representative of Singapore shared the view of the Chairman and the previous speakers that it was still premature to discuss the two Codes in the present Committee meeting because the TBT Committee did not have the mandate or the competence to take decisions in regard to the 1991 draft TBT Agreement. In respect of the ISO and IEC statements, she pointed out that the TBT Agreement was a negotiated text which reflected delegations' balance of interest; any amendments to the text would upset that balance. She emphasised that it was her delegation's desire not to reopen the TBT Agreement. She supported the view of the European Communities that there was no urgency for the Secretariat to prepare an initial analysis of the two Codes because the text of ISO/IEC Code of Good Practice was not yet final.

117. The representative of Hong Kong also associated his delegation with concern about the potential risk of reopening the draft TBT Agreement, especially at this particular juncture. He said that Hong Kong could support the proposal for the Secretariat to conduct an analysis, but that exercise should be considered as purely technical.

118. The representative of Canada welcomed the information provided by Mr. Bergholm and the ISO/IEC representatives. She said that her capital had had a preliminary look at the ISO/IEC revised draft Code and had, at the present stage, concerns about its value as a complement to Annex 3 of the draft TBT Agreement. She pointed out that, in Canada's view, its value was already compromised by differences in phraseology and substantively weaker obligations in respect of national treatment and other areas, such as least trade restrictiveness. She said that her delegation would welcome the preparation by the Secretariat of a detailed comparison of the ISO/IEC Code and the Annex 3 text, along the lines which had been suggested by the Finnish delegation. She reiterated that Canada viewed the ISO Code as ultimately intended to complement or co-exist with Annex 3 of the draft TBT Agreement, but certainly not as a replacement. She said Canada associated itself with the views of all the previous speakers and looked forward to dealing with the issue when the timing was right.

119. The representative of Japan appreciated the information provided by ISO/IEC and said that because the present text of the ISO/IEC Code was not a final one, further development of the ISO/IEC Code should be reported to the TBT Committee. He endorsed the position of the previous speakers that at present it was necessary to conclude the Uruguay Round and that the TBT Committee had no mandate to discuss the TBT text. He said that only after making those points clear might the Committee start to discuss the implications of the ISO/IEC draft.

120. The representative of the United States associated her delegation with the comments made by Canada and Japan.

121. The representative of ISO, speaking as an observer, welcomed the opinions expressed by delegations on the development of the ISO/IEC Code of Good Practice for Standardization. Reflecting to the comments made by Mr. Bergholm, concerning the text and validity of the ISO/IEC draft Code, he drew the attention of the Committee to the fact that ISO and IEC had accepted to change the very basic definition of the term "standard",

permitting the extension of the coverage of the document to the kind of organizations that Mr. Bergholm had described. Regarding concerns for transparency in the development of the ISO/IEC Code of Good Practice on Conformity Assessment, he said that ISO had taken note of the desire of the TBT Committee to be kept informed. He said that ISO/IEC would make sure that the TBT Committee would receive drafts of the Code of Good Practice on Conformity Assessment to ensure transparency. He regretted that some kind of lack of communication had been noted in some countries, such as in Australia, and he said that he would make an effort so that the ISO member for Australia would take the necessary steps to inform his own authorities.

122. Regarding the Code of Good Practice for Standardization contained in Annex 3 of the draft 1991 TBT Agreement, he asked whether it was a "best effort" rather than a mandatory Code, concerning essentially non-governmental organizations such as the private sector. Concerning the stand of ISO/IEC for the future, he said that the ISO Board would have to review the comments received from its members. He said that it was not up to the ISO Secretariat to decide alone what the position would be and that any decision would be a formal one of the competent Board. He said that he would convey the statements made to the ISO Board and he believed that the comments would be very useful for the Board to make any further decisions. He assured the Committee that ISO would continue to report to the TBT Committee on any future decisions. He thought that the final text of the ISO/IEC Code of Good Practice for Standardization could be ready very soon because during voting the comments received were not substantive but only editorial ones.

123. The representative of Finland, speaking on behalf of the Nordic countries, thought that, regarding whether the ISO/IEC draft Code covered non-consensus documents, the text of the ISO/IEC Code was a little contradictory. He said that although the representative of ISO had indicated that ISO/IEC had adopted the GATT/TBT definition of "standard", which covered also non-consensus documents, he thought that ISO/IEC had to sort out why in the first paragraph of the introductory commentary of the ISO/IEC draft Code it stated that "These practices are set out here in the form of a code, applicable to governmental and non-governmental, consensus and non-consensus bodies" and, on the other hand, in paragraph E of Article two of the ISO/IEC draft Code, it said that "Formal approval of standards should be based on evidence of consensus."

124. He hoped that the ISO would keep the TBT Committee informed about their work on the Code of Good Practice on Conformity Assessment and that they should also provide the TBT Committee with the opportunity to comment on their work at a time when comments could still be taken into account to ensure that the Code would not conflict with the TBT Agreement.

125. The Chairman, in replying to the question asked by the ISO representative, stated that Article 4.1 of the draft 1991 TBT Agreement established that the GATT/TBT Code of Good Practice was binding for central government standardizing bodies but voluntary for non-governmental and local government standardizing bodies. .

126. The Committee agreed to the suggestion that the Secretariat should prepare a factual comparison between the two texts, based on the final version of the ISO/IEC Code and Annex 3 of the draft 1991 Agreement on TBT. The Chairman would consult with delegations, at a later time, to decide when discussions on the issue would begin.

127. The Committee took note of the statement made by the Nordic countries that the ISO/IEC should keep the TBT Committee informed of their work concerning the Code of Good Practice on Conformity Assessment and that they should provide the TBT Committee with the opportunity to give comments on their work.

#### G. Other Business

128. The Chairman drew attention to document TBT/W/170 on derestriction of documents. He reminded delegations to notify the Secretariat not later than 20 May if they wished any of the listed documents to remain restricted. He also invited delegations to communicate to the Secretariat by 1 July if they wished to update the list of names of Panelists contained in document TBT/W/25/Rev.12 and the information on consultation points in TBT/W/62/Rev.1 and Corrs.1-4.

129. The representative of Finland informed the Committee of the third seminar on TBT organised by Finland for the developing countries in September 1993 in Helsinki. He said that he informed the Committee for reasons of transparency and to demonstrate how to proceed in providing technical assistance to developing countries. The seminars had been organised with the cooperation of the GATT Secretariat and ISO for Parties to the Agreement or for observers of the Committee, due to requests from developing countries that Finland should continue organising such seminars. He said that the 1993 seminar would extend its invitation to the Asian countries: Bangladesh, China, India, Indonesia, Malaysia, Mongolia, Nepal, Pakistan, Papua New Guinea, the Philippines, Sri Lanka, Thailand and Viet Nam. He said that through the Secretariat invitations had been extended and information had been provided and programmes of the seminar would be available to interested delegations.

130. The Chairman welcomed the Finnish information.

131. The representative of Poland, speaking as an observer, asked the delegation of Finland whether there would be plans to organise similar seminars in the future and to extend invitations to such seminars to countries in transition.

132. The representative of Finland replied that so far such seminars had been arranged only for developing countries but said that he could take up the request back in his capital. At the same time he thought that a more appropriate way of providing assistance to countries in transition would be through the joint Programme of the European Communities and EFTA or separately by the European Communities and EFTA. He said that the EFTA countries had organised seminars in Poland, Czechoslovakia and Hungary on notification procedures.

133. The representative of Egypt said that he appreciated the seminar organised by Finland but asked about the criteria of the invitation list. He said that Egypt was also a developing country and it would be appreciated if there would be some kind of regional distribution for this technical assistance.

134. The representative of Finland stated that the previous seminars had not been geographically restricted and Egypt had been one of the participants. The Finnish organiser thought that they could profit more by focusing on the specific problems of a specific part of the world. He said that they would probably continue organising those seminars and other regions of the world might be invited to participate in subsequent seminars.

135. The Chairman noted that at its next meeting the Committee would conduct its fourteenth Annual Review under Article 15.8 of the Agreement and its Annual Report to the Contracting Parties, and he urged all signatories to provide the Secretariat promptly and fully with the information which would be necessary to prepare the background documentation for the Review. The Committee agreed to the Chairman's proposal that the next formal meeting should be held in the autumn, with the exact date to be fixed closer to the time by the Chairman in consultation with interested delegations.