

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

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**Committee on Technical Barriers to Trade**

**DRAFT MINUTES OF THE MEETING HELD ON 2 NOVEMBER 1993**

**Chairman: Mr. C. Cozendey (Brazil)**

1. The Committee on Technical Barriers to Trade held its forty-sixth meeting on 2 November 1993.
2. The agenda contained in GATT/AIR/3496 was adopted:

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3. The Chairman drew attention to the Decision taken at the Council meeting on 16-17 June 1993 (C/M/264) that the Federal Republic of Yugoslavia (Serbia and Montenegro) could not continue automatically the contracting party status of the former Socialist Federal Republic of Yugoslavia in the GATT, and therefore the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for accession to the GATT and should not participate in the work of the Council and its subsidiary bodies. The Council invited other committees and subsidiary bodies of the GATT, including the Committees of the Tokyo Round Agreements, to take the necessary decisions in accordance with the above. The Committee confirmed the Council Decision.

4. The Chairman then drew attention to documents Let/1831, Let/1835 and Let/1851, reporting the acceptance of the Agreement on Technical Barriers to Trade by Malaysia, Morocco and Indonesia. He also informed the Committee that the Government of Thailand had signed the TBT Agreement on 1 November 1993. The TBT Agreement had entered into force for Malaysia on 3 July 1993, for Morocco on 31 July 1993, for Indonesia on 1 October 1993. The Chairman welcomed Malaysia, Morocco, Indonesia and Thailand as members of the TBT Committee.

5. The representative of Indonesia said that his government's decision to accede to the TBT Agreement had been taken after considerable deliberation, ensuring that it would be able to carry out effectively its obligations under the Agreement. He informed the Committee that the enquiry point of Indonesia, pending further confirmation from his capital, was the Indonesian National Standardization Council.

6. The representative of Malaysia said that steps had been taken by his authorities to pave the way for Malaysia to assume the appropriate obligations in the TBT Committee since Malaysia signed the TBT Agreement. He understood that the many agencies involved were still undertaking preparatory work and he envisaged that Malaysia would be able to provide more information to the Committee on the state of the implementation by the next Committee meeting. He informed the Committee that the Standard Industrial Research Institute of Malaysia was the agency that would assume the role of enquiry point. With respect to consultation under Article 14, members might wish to get in touch with the Ministry of International Trade and Industry.

7. He indicated, on behalf of the ASEAN Contracting Parties, that they wished to avail themselves of any available technical assistance in the implementation and administration of the Agreement. He welcomed Canada's indication of offering assistance and said that ASEAN countries would pursue that further with Canada through the Secretariat.

8. The representative of Morocco said that her country was ready to abide by the obligations of the TBT Agreement. She pointed out the importance of technical assistance which might be rendered to them either by the GATT Secretariat or by other countries bilaterally.

9. The representative of Thailand confirmed that Thailand had signed the TBT Agreement and would appreciate any assistance in the implementation of the Agreement, particularly on the setting up of an enquiry point.

10. The representative of Canada congratulated the new members. She welcomed further discussion with the ASEAN countries regarding technical assistance.

A. Observer status of Chinese Taipei

11. The Chairman drew attention to a request for observer status in the Committee from Chinese Taipei, contained in document TBT/W/174. The Committee agreed to grant observer status to Chinese Taipei, 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.

12. The Chairman welcomed Chinese Taipei as an observer to the Committee and expressed appreciation for the interest shown by the Government of Chinese Taipei in becoming acquainted with the work of the Committee in order to develop a better understanding of the prerequisites of a future accession of Chinese Taipei to the Agreement on Technical Barriers to Trade. He recalled that accession to the Agreement was subject to separate procedures from those applicable to the granting of observer status. He encouraged Chinese Taipei to provide the Committee with reports from time to time on its measures as they related to technical barriers to trade.

B. Statements on implementation and administration of the Agreement

(1) Korean Marks of Origin System

13. The Chairman drew attention to the minutes of the last meeting (TBT/M/44, para.31) where it was stated that the Committee had agreed to revert to the issue of the Marks of Origin System of the Republic of Korea as a separate agenda item at today's meeting and that the representative of the Republic of Korea would provide further information on the questions that had been raised.

14. The representative of the Republic of Korea said that since the last Committee meeting, his delegation had examined very carefully the various issues which had been raised in relation to the adoption by his government of a system requiring that certain imported products bear marks indicating the countries in which they originated. It was his delegation's view that the Korea's Marks of Origin system, whose basic objective was to protect consumers from false or deceitful declarations on the origin of imported goods, had to be examined in the light of the provisions of Article IX of the General Agreement and the Recommendations adopted by the CONTRACTING PARTIES in 1958, and not in light of the provisions relating to "marking" in the Agreement on Technical Barriers to Trade. His authorities also considered that the Korean marking requirements were in full conformity with Article IX as elaborated by the 1958 Recommendation.

15. He stated that the provisions of the TBT Agreement did not apply to marking regulations whose primary objective was to indicate the countries of origin and not the physical characteristics, quality or performance of imported products. That was clear from the definition of "technical regulation" and "marking" in the Agreement itself which stated: "A technical regulation is a specification contained in a document which lays down characteristics of a product such as levels of quality, performance, safety or dimensions. It may include inter alia marking or labelling requirements as they apply to a product." It followed from the definition that marking requirements adopted for the purpose of indicating the origin of imported goods were not technical regulations and therefore did not fall within the purview of the TBT Agreement.

16. The need to examine the consistency of marking requirements under GATT law according to the purpose for which the requirements had been adopted was also emphasized by the recent Panel Report on the complaint by Mexico against the US Restrictions on Imports of Tuna. The Panel had observed that the labelling or marking requirements under the US Consumer Protection Information Act whose main purpose was to indicate that the tuna had been produced in a dolphin friendly way did not fall within the purview of Article IX. The panel had particularly noted that the text of Article IX, entitled "Marks of Origin", covered only marks of origin of imported products. The panel had also noted that Article IX did not require national treatment but only most favoured nation treatment which indicated that its provisions were intended to be applied to marking requirements relating to the origin of imported products and were not relevant where marking requirements applied to both imported and domestically products, indicating to consumers their quality.

17. He thought it was evident from this legal situation that the Korean Marks of Origin System had to be examined in light of the provisions of Article IX as elaborated by the 1958 Recommendation, and not in light of the provisions of the TBT Agreement. He recalled right from the beginning of the discussions on this matter in the TBT Committee that his delegation had expressed doubts as to whether the provisions of the TBT Agreement were applicable to the Korean system. These considerations had persuaded the Korean delegation to submit to the Committee the details of the system on an informal basis and not to notify them formally.

18. He reiterated that it would not be desirable to pursue discussion on this matter in the TBT Committee, as the provisions of the TBT Agreement were clearly not applicable and that the Korean

Marks of Origin System, which had been introduced to protect consumers against false declarations of the origin of imported goods was in full conformity with Article IX and the 1958 Recommendation. With a view "to securing removal of the difficulties encountered by it", his delegation was ready to hold discussions on a bilateral basis, and in accordance with the provisions of paragraph 16 of the 1958 Recommendation, with any exporting country encountering practical difficulties in complying with the Korean marking requirements.

19. The representative of Finland recalled that at the last meeting he had indicated the Nordic countries' intention to present a draft recommendation to the Committee at today's meeting if no official information was received from the Korean delegation on this issue before then. He informed the Committee that a proposal would be made on behalf of the EFTA countries after the Committee concluded its discussion on the coverage of the TBT Agreement.

20. Speaking in his personal capacity, he thought that both the text of the Agreement and the negotiating history made it clear that marks of origin were covered by the TBT Agreement. The definition on technical specification contained in Annex 1 of the Agreement said that technical specification might include or deal exclusively with terminology, symbols, testing and test methods, packaging, marking or labelling requirements as they applied to a product. He noted that "safety", "quality" and "performance" were mentioned only in the first sentence and that the second sentence of the definition stood on its own. It meant that packaging, marking and labelling requirements as they apply to a product were covered by the Agreement irrespective of the purpose and content of the requirements.

21. He recalled that during the Tokyo Round negotiations on the TBT Agreement when the definition of technical specification was discussed, one delegation had questioned whether marks of origin were covered by the Agreement under the definition that was agreed upon. It had been concluded that if marks of origin were to be excluded from the coverage, an amendment to the present definition would be necessary. Since no amendment to the definition was made, it was explicit that marks of origin were covered by the TBT Agreement.

22. He agreed that marks of origin were also covered by Article IX of the General Agreement and the 1958 Recommendation, but then everything which was covered by the TBT Agreement was covered by the General Agreement. The purpose of drafting a specific Agreement on Technical Barriers to Trade had been that the Parties to the TBT Agreement felt the need to go beyond the General Agreement in the field of technical barriers to trade, including in the case of marks of origin.

23. As regards the Tuna-Dolphin-Panel, he thought it did not have any relevance to the applicability of TBT Agreement because it had been taken up under the General Agreement and not under the TBT Agreement. He concluded that it was undisputable that marks of origins were covered by the TBT Agreement and that it was completely appropriate to discuss the Korean System of Marks of Origin within the TBT Committee.

24. The representative of the European Communities supported the view that marking and labelling fell under the TBT Agreement. He said that since the Korean authorities introduced the marks of origin system in July 1991, his delegation had repeatedly expressed deep concern over certain aspect of the Korean system that could be contrary to international rules. Those connected with labelling and marking were relevant to the work of the TBT Committee. He said that while his delegation did not deny the right of Korea to have a marks of origin system and did not question the principle of the objective stated by the Korean authorities that the marks of origin system was for the protection of consumers against misleading or fraudulent indications of origin, his major concern was that the system should not create unnecessary obstacles to international trade.

25. He pointed out from the document distributed by the Korean authorities that the definition of "ultimate purchaser" included also manufacturer, "if he subjects the imported article to a process which results in a substantial transformation of the article". He questioned this unusual interpretation of the concept of consumers which included almost everybody, intermediate as well as ordinary consumers. As a result the Korean system affected products of 800 to 900 four-digit-items which amounted to around seventy per cent of all tariff lines.

26. He said that even if that definition of consumer was acceptable for the purpose of analysing the situation, his second concern would be the question of proportionality, one of the most important aspects of the TBT Agreement. He thought the requirement of marking each article for the information and protection of consumer was not indispensable if manufactures were involved, because manufacturers normally bought large consignments of goods and not a few individual products. He questioned why normal documentation which went with the containers, indicating the origin, would not do. Instead the Korean system required manufacturers to take each product out from the container to check the mark of origin. In this respect, he questioned whether the real objective of the system was for consumer protection. He urged the Korean authorities to reflect upon that and to make the system less burdensome.

27. He thought that Article 6.1.4 of the Korean marks of origin regulation which required the name of the country of origin to be marked in such a way that it could be preserved indefinitely was an unnecessary barrier to trade and was in total contradiction with the principle of proportionality. The labelling obligation should not be extended further than what was necessary to ensure visibility at the time of purchase by the consumer. Marking should not have to be made in such an expensive way as sewing, moulding or engraving because it increased cost unreasonably. He thought that marking with stickers should be allowed, and not only in exceptional cases.

28. He welcomed the revision of the Korean marking system in July 1993 and said that it went in the right direction. However, he thought it did not go far enough and he still had difficulties in understanding parts of the text of the Korean labelling requirement. He asked the Korean authorities to give more information concerning Article 6.1, Article 6.2.3 and Article 6.4.3 of that document. He also questioned the power of district directors and commissioners and the guidelines and rules used by them to apply the marks of origin system. He concluded that the issue of the Korean Marks of Origin system should not be left only to bilateral contacts, and insisted that the Korean delegation should give concrete answers to the questions made and should take into account the remarks expressed in the TBT Committee.

29. The representative of Finland, speaking on behalf of the EFTA countries, Parties to the TBT Agreement (Austria, Norway, Sweden, Switzerland and Finland), shared to a great extent the points raised by the representative of the European Communities. He said that it was difficult for the Committee to base its discussion on because there was no official communication from the Korean delegation. In that spirit, he presented the following statement on behalf of the five EFTA countries which included also a draft recommendation that he proposed the Committee adopt:

30. "The marks of origin system established by the Republic of Korea was brought to the attention of the Committee by the Austrian delegation at the 4 December 1991 meeting. At the 19 October 1992 meeting the Swiss delegation, on behalf of the EFTA countries, made a detailed presentation on the issue. At this meeting the representative of the Republic of Korea agreed to forward to the Committee further information on the Korean Marks of Origin System. At the meeting of the Committee held on 11 May 1993, a non-paper was distributed providing information on the Korean system. No official submission by the Korean Delegation was, however, received. At this meeting several delegations expressed their concern on the Korean system, they also presented a number of questions concerning its content and implementation. Several Parties have also had bilateral consultations with the Korean government with a view to solve the trade problems caused by the Korean requirements. Despite all

these efforts the Committee has not received any official communication from the Korean delegation, and the trade problems caused by the Korean system have not been solved.

31. Therefore the delegations of EFTA countries consider that the Committee should adopt the following Recommendation addressed to the delegation of the Republic of Korea:

- (1) An official communication explaining in full the content and implementation of the Korean Marks of Origin System shall be presented well in advance to the next Committee meeting.
- (2) The communication shall also include replies to questions and comments presented by Parties at the meetings of the Committee as recorded in its minutes.
- (3) Finally, the communication shall present information on any measures the Korean government has taken or has decided to take in order to bring its System of Marks of Origin in line with the pertinent provisions of the Agreement on Technical Barriers to Trade.

The delegations of EFTA countries propose that the following up of this proposed recommendation, if adopted by the Committee, should take place at the next meeting of the Committee under a specific agenda item."

32. He added that the EFTA countries were making this proposal under Article 13 and not Article 14 of the TBT Agreement. The proposed recommendation was not to be seen as initiating the dispute settlement procedure, but merely to ask for further information so that the Committee could have a substantive discussion based on facts.

33. The representative of the United States thanked the representative of Finland for his explanation on the negotiating history under the Agreement. She associated her delegation with the view that marks of origin were in fact covered by the TBT Agreement. She recalled a recent discussion in the Committee on the coverage of labelling requirements which was reflected in the decisions of the Committee that Parties were obliged to notify mandatory labelling requirements which were not based substantially on a relevant international standard, and which might have a significant effect on the trade of other Parties. The obligation was not dependent upon the kind of information provided on the label, whether or not it was in a nature of technical specification.

34. She welcomed the changes of the Korean system notified in TBT/Notif.93.164. She supported the remarks of the EC representative that it was a small step in the right direction. At the same time she said that the basic problem facing US firms of how to comply with the requirements remained. It was still unclear what products must be labelled and what specific size and colour for the labels might apply.

35. She noted that on 3 September 1993, the Korean Ministry of Agriculture published in the Government Gazette its own country of origin regulations applied to agricultural products. She assumed that it was to supplement the Ministry of Trade, Industry and Energy's regulations at the point of entry. Unlike the Ministry of Trade and Industry and Energy, the Ministry of Agriculture's regulations spelt out very specific detailed requirements of the size and colour for the labels. She said that almost all agricultural products with retail sales would be affected, but the measure had not been notified to the GATT Secretariat. It had come into force on 1 November and had allowed less than twenty working days for public comments and another twenty-two working days before implementation. There was no evidence that any public comments had been taken into consideration when the drafting of those regulations was finalized.

36. She reiterated the need for transparency and believed that marks of origin regulations were covered by the TBT Agreement and should be notified, an opportunity for public comment should be given, consideration of comments before the regulation was finalized and adequate time for suppliers to adjust to the requirements should be allowed. She expressed her delegation's view that the use of stickers was a legitimate method of country of origin marking and should be allowed. She urged Korea to make compliance with the marks of origin system easier on a non-discriminatory basis.

37. The representative of the Republic of Korea, responding to the comments made by the representative of Finland, said that he did not know what discussions had taken place during the Tokyo Round negotiation, but in Annex 1 of the TBT Agreement there was an explicit definition of technical specification. He reiterated that the Korean system was not covered by the TBT Agreement because it required only the mark of origin and not any technical specification. He said that the distinction between Article IX of the GATT and the TBT Agreement should be recognised. Article IX of the GATT did not require national treatment but only most-favour-nation treatment. He thought that before the Korean system could be taken up in the light of the TBT Agreement, GATT Article IX should be amended to include the obligation of national treatment.

38. In respect of the question raised by the EC delegation concerning the definition of "ultimate purchaser" and the coverage of the system, he said that Korean manufactures were also one of the ultimate purchasers and should have the right to know where products, such as capital goods or intermediate materials, came from. He said that during the enforcement of the system in the previous two years, the Korean authorities had acknowledged some difficulties or problems in the system and therefore had improved it gradually. The improvements were not made under the pressure of the TBT Committee but were made for the reason of implementing the system more precisely. The improvements included the expansion of exemptions from July 1993 which included *inter alia* the marking requirement on most equipment, machinery, parts and raw materials imported directly by manufactures. Because of the exemptions, at present less than fifty per cent of imported products was covered by the system.

39. Regarding the problem of the marking method described by the EC delegation, he told the Committee that the Korean authorities had improved the system and that marking on the product as well as on the package was allowed. 1990 statistics showed that one third of imported products had the marks affixed on the packages or on the containers. He informed the Committee that more improvements had been made by his authorities for the convenience of importers and the effectiveness of implementing the system, allowing some flexibility on the methods of marking, for example, to affix marks in the process of manufacturing or exportation and to use stickers or tags.

40. Regarding the question about the discretionary practices of custom officers, he said that there were regulations, criteria and methodologies on how to identify products where marks of origin were falsely made. If customs officers should decide to use some new criteria or new methodologies, they had to report to the Ministry concerned and to publish their amendments to the public. Therefore, there was no room for arbitrary practice.

41. In responding to the statement made by the US delegation, he said that the recommendation made by the TBT Committee, concerning labelling requirement was irrelevant to the Korean system because the Korean system required only pure marks of origin and did not require any technical specification as expressed in the Annex 1 of the TBT Agreement. Concerning the labelling requirement on agricultural products, he said that he had never been informed about that by his Ministry of Agriculture and thought that his country did not have such requirement at the moment.

42. The representative of Japan thought that the Korean non-paper and the explanation given were useful, but regretted that questions concerning the compatibility of the marks of origin system with the TBT Agreement still remained. He said that his delegation would list those issues in writing for Korea to

respond to. He associated his delegation with the view that the Korean marks of origin rules were covered by the TBT Agreement. He requested the statement made by the Korean delegation today to be circulated as a GATT document together with any other official communication explaining in full the Korean Marks of Origin System.

43. The representative of Finland, speaking on behalf of the five EFTA countries, recalled the Committee's Decision contained in TBT/16/Rev.6, (Decisions and recommendations adopted by the Committee since 1 January 1980) to which the US delegate had referred: "In conformity with Article 2.5 of the Agreement, Parties are obliged to notify all mandatory labelling requirements that are not based substantially on a relevant international standard and that may have a significant effect on the trade of other Parties. That obligation is not dependent upon the kind of information which is provided on the label, whether it is in the nature of a technical specification or not." He said that it was a valid decision by the Committee and the Korean delegation had taken part in that decision.

44. He thanked the Korean delegation for the information provided at today's meeting but maintained the EFTA's proposed recommendation that an official communication be made by Korea so that the Committee could have a substantive discussion on the issue.

45. The representative of the United States clarified that the Korean origin labelling requirements on agricultural products were published in the Korean Gazette number 12508 on 3 September 1993. She reiterated her delegation's support for the EFTA proposal.

46. The representative of the European Communities thought the explanations given by the Korean delegation not satisfactory. He thought that the figure was still very high and unacceptable if fifty per cent of Korean imports came under the marks of origin system. He thought that it was not a real improvement to the Korean system if the exemption of marking was only for products on which it was impossible to put a mark without being destroyed. He shared the concern expressed over the Korean marks of origin on agricultural products and thought that the Korean authorities should provide information on that before the next meeting so that the Committee might look into it.

47. Regarding the linkage of the Korean marks of origin system to the TBT Agreement, he thought the position taken by the Korean delegation was very weak. He urged the Korean delegation to look into all the texts mentioned and take account of the history and the work of the TBT Committee in the past years. He thought it could be more useful and constructive if Korea would concentrate on the substantive problems of the system itself and not on the linkage of the issue with the TBT Agreement, so that acceptable solutions could be found. He reiterated his delegation's support for the EFTA suggestion which he thought was a low-profile approach, asking once more for official comments from Korea. He said that the issue should be kept as a specific agenda item for the next Committee meeting. He urged Korea to provide official information well in advance of the next meeting which would give more explicit explanations to all the questions posed and not just repeating the information given at today's meeting.

48. The representative of the Republic of Korea thought that the Committee's recommendation on labelling requirements mentioned by the representative of Finland should be at a lower discipline of the hierarchy of the TBT Agreement. He reiterated that it was not relevant to quote the Committee's recommendation on labelling requirements since the Korean marks of origin system did not require any technical specification. He said that the Korean System did not have any additional adverse effect on international trade because origin marking was required by other countries. Referring to the comment made by the EC delegation, he indicated that out of the fifty per cent of imported products covered, around one third were exempt from the Marks of Origin System. He reported that from the 1992 figures, only one per cent of those declared at customs clearance required additional documents or additional



explanations. Referring to the comment made by the delegation of the United States, he reiterated that the Korean authorities had not adopted the system on agricultural products.

49. The Chairman noted that there were two proposals: (1) by the EFTA countries, that the Committee would approve the EFTA recommendation; (2) by the representative of Japan, that Korea would circulate the Korean statement concerning the relevance of TBT Agreement to the Korean Marks of Origin System.

50. The representative of the Republic of Korea reiterated that the Korean system had been adopted in light of Article IX of the GATT and said therefore that his delegation could not accept the recommendations proposed by the EFTA countries. He said that his delegation had provided explanations in the form of a non-paper at the previous meeting and at today's meeting there were four experts from his capital to explain the Korean system. His authorities had amended the regulations with effect from 1 July. If there were still concerns on the Korean system in terms of procedural matters or about the system itself his authorities were ready to discuss with Parties bilaterally and to improve the system. His delegation would provide any information which signatories wished to receive. He accepted the Japanese suggestion that his statement made at the beginning of the session be circulated as an official document.

51. The Chairman concluded that the Committee could not reach a consensus on the proposed EFTA recommendation at this meeting. He proposed that the Committee take note of the statements made and revert to the issue at the next meeting again as a separate agenda item.

52. The representative of Finland, speaking on behalf of the EFTA countries, said that since the Committee did not have a consensus on the proposed EFTA recommendation, he had to agree with the Chairman's conclusion. He regretted the position taken by the Korean delegation and thought that it was not helpful for solving the trade problems facing EFTA and some other countries. EFTA countries considered the present recommendation modest and reasonable, requesting only complete information on the situation, so that the Committee could discuss the issue on a factual basis. He felt that the Korean position on the coverage of the TBT Agreement was not shared by any other delegation and was contrary to the negotiating history and the decision made by the Committee earlier. Taking into account the fact that the Korean delegation had refused to accept the EFTA proposed recommendation under Article 13, the EFTA countries had to consider very carefully the only option still open which was to pursue the issue as a dispute settlement case under Article 14 of the TBT Agreement.

53. The representative of the Republic of Korea thought that discussions on the Korean system could be addressed on a bilateral basis and therefore objected to the Chairman's suggestion that the issue be dealt with in the next meeting as a separate agenda item.

54. The representative of the European Communities said that the reason why the Korean issue had been brought to the Committee was because of the fact that bilateral discussions had not been satisfactory. He suggested that since the Korean position on the TBT coverage was not shared by any other delegation, Korea should take that as a conclusion. He regretted the refusal of the Korean delegation to accept the reasonable recommendation by the EFTA countries. He thought Korea should accept its responsibility of finishing discussions within the content of Article 13 of the TBT Agreement. He appealed Korea to further consider the EFTA suggestion because the issue could not be left as it was.

55. The representative of Mexico said that if Korea did not agree with the EFTA recommendation then the recommendation could not be adopted because the Committee's recommendations had to be taken by consensus. He disagreed with Korea's opposition to considering the issue under a separate agenda item at the next Committee meeting. He thought that it would be a dangerous precedent and

would unduly restrict the work of the Committee. He said that in the TBT Committee, as in all other Committees, matters could be put on the agenda at the request of any member; that did not require the agreement of other Parties.

56. The representative of the United States supported Mexico's remarks. She said that the Korean Marks of Origin system should be taken up as a separate agenda item at the next meeting to emphasize the importance of the issue. She reiterated that there was no disagreement, except from Korea, on the fact that marks of origin were covered by the TBT Agreement.

57. The representative of the Republic of Korea expressed his delegation's firm view that it would not be desirable to pursue discussion on the matter in the TBT Committee. He said that his authorities were ready to discuss the Korean system any where other than in the TBT Committee.

58. The representative of Australia said that the Korean labelling requirements were creating difficulties for Australia. He took note of the fact that Korea was the only Committee member which thought the Korean Marks of Origin System was not covered by of the TBT Agreement, that it should not be put on the agenda of the next meeting, and that the Korean response was to talk about the issue in any other place except the TBT Committee.

59. The Chairman concluded that the Committee would not take a decision on whether the Korean Marks of Origin would be included as a separate item on the agenda of the next meeting. He drew attention to the GATT practice that any delegation could include any item on the agenda in any Committee. He asked Korea to reflect on that and especially on the consequences of that position for the functioning of the GATT system as a whole. He also invited Korea to reflect on the fact that Korea was the only member which maintained that position in relation to the coverage of the TBT Agreement.

60. The Committee took note of the statements made and took note that Korea was going to circulate, as a formal document, its statement made at the beginning of the session on the coverage of the TBT Agreement.

61. The representative of Austria, speaking on behalf of the EFTA countries, voiced concern on a new certification system in Hungary which was contained in Decree 137/1993 of the Hungarian Ministry of Trade and Industry. It covered more than three hundred consumer goods and was required on every lot, but there was only one institution, (KERMI) the State Institute for Quality Control, for certification. The system had only been in force for a month but complaints had been received from firms in Austria and other EFTA countries, that the procedure might last up to sixty days and it created high additional cost. Bilateral contact had been made and the Hungarian authorities had indicated that the system was an old regulation which had come into force only recently. He said that the Hungarian system had not been notified. It was not internationally known and was not available in any international language. He requested Hungary to notify the certification system officially under Article 7.3.2 of the TBT Agreement, so that the issue could be discussed within the TBT Committee.

62. The Committee took note of the statement made and requested the Secretariat to convey to the Hungarian delegation the remarks made by the EFTA countries.

63. The representative of Canada reported that her authorities were seeking to resolve with Mexico, by next month, the issue of Mexico's ban on imports of seed potatoes. Since Canada first raised the issue at the October 1992 Committee meeting, Canadian officials had contacted on a number of occasions the Mexican authorities. In February 1993, Canada and Mexico had agreed to a process whereby the issue had been referred to a third party for binding arbitration. The arbitrator had issued his report in early April, but a number of technical issues remained unresolved. She said that Canadian agricultural officials were continuing to pursue resolution of the issue by next month both bilaterally and through

the North American Plant Protection Organization. In seeking to resolve the issue Canada had proposed measures which were believed to be both feasible for Canada and would allow Mexico to achieve the necessary level of phytosanitary protection. She would keep the Committee informed of further developments.

64. The representative of Mexico thanked Canada for the information and said that he would pass on to his authority this information and hoped that a mutually satisfactory solution could be found.

65. The Committee took note of the statements made.

66. The representative of Sweden recalled that at the two previous meetings his delegation had voiced concern regarding Mexican rules introduced in August 1992 for the importation of meat which had caused problems for Swedish exporters. His authorities had had a number of bilateral contacts with Mexico and had requested Mexico to notify those rules because it was Sweden's view that the Mexican rules fell under the TBT Agreement. He recalled that at the last meeting the Chairman had asked Mexico to examine the question of notifying the measures. He regretted that no such notification had been made and said that his authorities still did not understand the exact implication of the regulations. He questioned Mexico's motives of increasing controls and why the previous control system was no longer considered adequate.

67. He said that it was not clear if the new Mexican regulations fulfilled the requirements of Article 2.1 which 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..." His delegation considered that Mexico had not fulfilled its obligations under the TBT Agreement, and had created unnecessary obstacles to trade between Sweden and Mexico. Although at present the practical problems encountered earlier by Swedish exporters had been settled, his delegation still requested Mexico to notify the new measures to GATT.

68. The representative of Mexico said that he would pass on the concern to his agricultural authorities. He suggested the matter to be taken up at the next Committee meeting as a separate agenda item so that a satisfactory solution could be found.

69. The Chairman reiterated that Mexico should examine the question of notifying the measure. The Committee took note of the statements made and agreed to list the issue as a separate agenda item for its next meeting.

70. The representative of the United States welcomed Indonesia, Malaysia, Morocco and Thailand as new signatories to the TBT Agreement, and recalled that in signing the TBT Agreement they were required to submit statements on the implementation of the Agreement: the relevant procedures were spelled out in document TBT/16/Rev.6. She called attention to the fact that Israel had never submitted that statement and requested the Secretariat to inform Israel of her delegation's interest in this regard. She noted that Israel had designated an enquiry point, but had not submitted any notification under the Agreement since accepting it in 1990.

71. She also expressed concern that Australia, one of the recent signatories, had made in the last three months around twenty-four notifications in the area of agriculture, of which only three were fully in compliance with the recommendations of the TBT Committee. Given the United States' interests in the area, her authorities had been especially keen on having adequate time to make comments, but because many of the notifications allowed for less than two weeks between the publication and the final comment date, her authorities had not had enough time to get the texts and distribute them to the interested parties. She understood that Signatories sometimes had trouble fulfilling the recommended

sixty day comment period, but she thought the Australian case appeared to indicate a consistent pattern. She urged Australia to make efforts in observing the recommendation of the Committee.

72. The representative of Australia said that he would take it up with his authorities, in particular the National Food Authority, and would try to get an answer to the United States before or at the next meeting.

73. The representative of the European Communities shared the concern expressed by the United States. He agreed that the Committee should be well informed on the functioning of the enquiry point in Israel and that Israel should notify if there was anything to be notified. He asked the Chairman to look into it and make sure that Israel was implementing the TBT Agreement.

74. The Committee took note of the statements made and requested the Secretariat to convey the concern expressed to Israel.

75. The representative of Sweden expressed concern about certain Japanese rules on engines for fishing boats. He said that Swedish exporters had encountered difficulties exporting fishing boat engines to Japan because of the special and complicated regulations. His authorities had discussed the matter with Japan bilaterally, but the problems still remained. He thought Japan should notify the technical specifications in question and regretted that no such notification had been made. His authorities were not convinced by the explanation given by Japan that the lack of notification was due to time constraints because the measures had been in force for quite some time.

76. Japan had indicated that the objective of the regulations was for the protection of fish resources. Sweden could fully support such a goal, but thought that several other less trade restrictive measures could have been introduced because the current measures had created unnecessary obstacles to trade. He reiterated that the Japanese regulations fell under the purview of the TBT Agreement and that Japan had not fulfilled its obligations under the Agreement. He urged Japan to notify those measures as soon as possible for the benefit of all the members in the Committee.

77. The representative of Japan said that it was the first time his delegation had heard about the specific regulations on engines for fishing boats. He would convey the Swedish concern to his capital and would respond to the questions raised either bilaterally or in the Committee as soon as possible.

78. The Committee took note of the statements made.

#### C. Recommendations and proposals on procedures for information exchange

79. The Chairman drew attention to paragraph 87 of the minutes of the last meeting (TBT/M/44) noting that the Committee had agreed to revert back to recommendations (2) and (4) made at the Sixth Meeting on Procedures for Information Exchange, in connection with the information contained in the notification form.

80. The representative of Canada said that the Standards Council of Canada which operated as the Canadian Enquiry Point, strongly supported the use of ICS numbers (International Classification for Standards of the ISO). She said that Standards Council of Canada assigned ICS numbers to all GATT notifications upon receipt. Her delegation believed that the use of ICS numbers could facilitate cross-referencing and searching of notifications. She reiterated that her delegation supported the recommendation of providing ICS numbers, where applicable, on the notification form.

81. The representative of Japan said that traders were familiar with HS or CCCN numbers, although there were often notifications where no HS numbers were provided. He recalled that at the last

Committee meeting Japan had expressed concern regarding the introduction of ICS numbers, even on a "where applicable" basis, because that might lead to confusion. He invited views from other members of the Committee.

82. The representative of Finland, speaking on behalf of the Nordic countries, noted that the recommendation was written "they could also be supplied", and that meant it was up to Parties to decide whether to supply ICS numbers or not. He said that if it was the case, his delegation could support the proposal. He shared the concern expressed by Japan that in some cases it could lead to misunderstanding and confusion. He therefore stressed that ICS numbers should be added only where applicable and that it was not an obligation of Parties. At the same time, his delegation saw merits in adding ICS numbers in the notification form in cases when a draft regulation covered many numbers in the HS system but could be described more adequately by an ICS number. His delegation could support the recommendation if it was a "could" recommendation and ICS numbers were used only where applicable.

83. The representative of the European Communities suggested that the wording "in addition to" should be used, so that ICS numbers could be added if applicable.

84. The representative of Japan accepted the suggestions made by Finland and the European Communities.

85. The Committee adopted the recommendation that ICS numbers might be provided on the notification form in addition to HS or CCCN numbers, where applicable.

86. The representative of the European Communities recalled that at the last meeting he had expressed concern with recommendation (4). He thought that providing the name and telefax number of other bodies on the notification form was useful but his concern was whether that would discharge the GATT enquiry point of its responsibility. Parties might lose time trying to contact those bodies. In order to avoid that, he suggested adding a sentence to the recommendation which could read: "Such indications should in no way discharge the relevant enquiry point of its responsibilities under the provisions of Article 10 of the Code." In that way the enquiry point would still be the centre of the operation, responsible fully for giving information.

87. The Committee adopted the recommendation concerning providing the name and telefax number of other bodies on the notification form that "If available from another body, give its address, telex and telefax number. Such indications should not in any way discharge the relevant enquiry point of its responsibilities under the provisions of Article 10 of the Agreement." It was agreed that the Secretariat would consolidate the recommendations being adopted and would issue a revised document of TBT/16.

88. The representative of Austria noted that recently there had been an increase in notifications not observing the sixty days time limit for comments. He questioned why some notifications gave only twenty-five days, thirty days or even zero days for comments while there was no urgency in implementing the measures. He encouraged Parties to observe the sixty day comment period recommended by the Committee.

89. The Chairman drew attention to paragraph 98 of the minutes of the last meeting (TBT/M/44) noting that the Committee had agreed to come back to three proposals which arose out of the meeting on procedures for information exchange concerning the activities of the GATT Secretariat in servicing the TBT Agreement. The first one concerned sending out notifications in a double system, using telefax in addition to the regular way of circulation, to provide Parties more time to work on the notifications. He drew attention to document TBT/W/173 prepared by the Secretariat at the request of the Committee.

giving information on different alternatives for the distribution of documents with a comparison of the time Parties would gain by different alternatives. The paper also provided estimates of the cost to the GATT Secretariat of using different alternatives.

90. He reported to the Committee that the Secretariat had requested from the Budget Committee financial provisions for a new post as well as an additional amount of SwF 80,000 linked to it to be included in the 1994 revised budget estimates. That request was understood to be contingent upon the Committee agreeing to pursue further one of the approaches set out in TBT/W/173. Neither the new post nor the SwF 80,000 were approved by the Budget Committee and therefore the request was not included in the 1994 revised estimates. He said that if the Committee decided to institute additional processes, the matter would need to be reported to the Budget Committee for its further consideration.

91. The representative of the European Communities thought that it was a common concern in the TBT Committee to get the notifications as quickly as possible. He regretted that the budget authorities had not been able to find the amount of money. He thought that the concern of the Committee still remained and that the Committee should not abandon the idea of using modern communication method. He thought that telefax machines had become so common and inexpensive that he could not understand why the GATT Secretariat was not able to use one.

92. He supported the last alternative contained in the document TBT/W/173 which proposed sending notifications by mail in Geneva and by telefax elsewhere. He thought that should be the least cumbersome and most efficient way. He said that for the delegations in Geneva they could get the notifications through the pigeon-holes in the GATT on the same day and would not gain too much time with the distribution by telefax. He thought it would be more useful to keep the existing distribution system inside the GATT and to send notifications by telefax to the GATT enquiry points outside Geneva. That would be one telefax per member. Delegations in Geneva would have the possibility to check every notification that came in and send them back to their capitals with normal priority mail. It would be a double security system that enquiry points would get the notifications by telefax as soon as possible and then check them against those received by mail from their Geneva delegations later. Enquiry points would be able to make sure that every notification had been received and there would not be any juridical problem of sending documents by telefax. He asked if other Parties would, for the moment, agree with such an improvement. He thought that arrangement would not cost a lot of money and approval might be granted by the Budget Committee.

93. The representative of the Secretariat said that he understood the delegations' position in the Budget Committee had been rather firm in rejecting any increases in expenditure in GATT for the time being. The Secretariat had tried since the middle of the year to speed up the process by sending the notifications by first class mail. He said that he would go back and find out what the reaction might be to an additional expenditure in the region of SwF 13,000.

94. The representative of Canada said that her delegation was quite flexible and remained open to ideas on the subject along the lines suggested by the EC delegation. For the case of Canada, she said that no real problems had been experienced under the current system and any overall benefits to Canada of a new telefax procedure would be marginal, a gain of two days on average. If, however, there was a consensus to pursue further analysis of the telefax - mailing alternatives, she would suggest that the Secretariat look into reducing the estimated staff or related costs through the use of software packages which would allow automatic dissemination of notifications to GATT enquiry points. Standards Council of Canada used such software to its satisfaction and she expressed her delegation's interest in elaborating on that system at a later date.

95. The representative of the United States supported the comments made by the previous speakers and hoped that a solution to expedite the transmission of notifications without increasing the costs could

be found. She said her delegation would continue to explore that internally and would come back if any ideas came up.

96. The representative of Sweden supported the comment made by the representative of the United States. He noted from the paper prepared by the GATT Secretariat that there were 470 copies sent out for each notification and some delegations seemed to be receiving notifications in all three languages. He wondered if that was really necessary. He thought that for the sake of economizing, there could be a reduction in the number of copies sent out. His enquiry point received ten copies of each notification while only one was needed. He informed the Secretariat that an improvement had been noticed since first class mail had begun to be used.

97. The representative of Japan said that his country, like Canada, did not have specific problems with the present system. He expressed his delegation's view that communication only by telefax could not be an alternative to the present system, because telefax transmission was not always very reliable and might cause uncertainties. Japan would need more time for further consideration of the additional telefax transmission methodology.

98. The Committee took note of the statements made and asked the Secretariat to reflect on those statements in the future practice of sending out notifications.

99. The Chairman invited further comments on the proposal to ask the Secretariat to prepare two documents. One would contain a list of agencies responsible for notification 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 GATT Secretariat. The second would contain a compendium on 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 there and the way they handled comments and notifications. Such consolidated information might be useful for new members setting up their enquiry points.

100. The Committee agreed to ask the Secretariat to prepare the two documents based on information provided by signatories.

D. Fourteenth annual review of the implementation and operation of the Agreement under Article 15.8

101. The Chairman drew attention to the Secretariat's background documentation contained in TBT/37 and Add.1 and invited statements.

102. The representative of Mexico, referring to the table on page 8 of the document which provided the observation of the recommended comment period by Parties, clarified that among the eight Mexican notifications made in 1993, six of them were emergency standards and two were draft standards where a ninety-day-period was provided for the submission of observations. He asked for this correction to be made.

103. The representative of Japan, regarding page 9 of the document, stressed the importance of giving ample time for the consideration of draft legislation. He pointed out that both in 1992 and 1993 most of the Japanese notifications allowed periods longer than sixty days. He also pointed out that Japan had paid much attention to improving the situation and the record in 1993 was much better than that in 1992. He invited other members to act correspondingly.

104. The Committee took note of the statements made and agreed that corrections to the background document would be made by the Secretariat and issued as a corrigendum to TBT/37. The Chairman informed the Committee that the Secretariat would issue a new consolidated list of enquiry points, in the TBT/W/31 series, upon completion of the Annual Review.

E. Report (1993) to the CONTRACTING PARTIES

105. The Chairman drew attention to the draft report that had been prepared by the Secretariat (TBT/Spec/25).

106. The Committee asked the Secretariat to update the draft in the light of developments at the current meeting and agreed to adopt its Report (1993) to the CONTRACTING PARTIES.

F. Other business

107. The Chairman drew attention to paragraph 126 of the minutes of the last meeting and document TBT/Spec/24 in connection with the Committee's request to the Secretariat to prepare a factual comparison between the two texts of the final version of the ISO/IEC Code of Good Practice for Standardization and Annex 3 of the draft 1991 Agreement on Technical Barriers to Trade. He said that since the final text of the ISO/IEC Code was not yet available, the Secretariat had not been able to undertake the comparison.

108. The representative of the ISO recalled that at the previous meeting a discussion in the TBT Committee had been triggered after his report on the progress of the consensus-building process for the preparation of an ISO/IEC Code of Good Practice for Standardization. He had reported the essence of that discussion to his Executive Board, mentioning the reminder from the TBT Chairman that the GATT/TBT Committee had no mandate to negotiate Annex 3 to the draft (1991) TBT Agreement and that on completion of the ISO/IEC Code, the TBT Committee would evaluate its implications for the operations of the draft TBT Agreement and would take whatever action it might consider appropriate at the time.

109. His Executive Board had noted the general feeling of the TBT Committee that the best time for considering the relationship of the ISO/IEC Code would be once Annex 3 of the draft TBT Agreement was formally adopted. He had reported the opinions of some delegations that the scope of Annex 3 was broader than that of the ISO/IEC Code. He said that it was indeed agreed by his Executive Board that the ISO/IEC Code primarily reflected the need of consensus-based voluntary standardizing organizations. The analysis of the situation in ISO and IEC had led ISO/IEC to believe that the possibility of reaching a single document was very low and that the best chance of having a fruitful cooperation between GATT/TBT and ISO/IEC would be if the ISO/IEC Code became, for the moment, an ISO/IEC Guide and that no statement of adherence to the Guide would be sought. This would offer a flexible background for discussing the implementation of Annex 3 of the draft TBT Agreement and for the possibility of considering that the requirements contained in Annex 3 of the draft TBT Agreement be covered by the ISO/IEC Code for voluntary consensus-based standardization.

110. He said that it had been recommended to the ISO and IEC Councils, which would meet in a few weeks time, to decide on a finalized text that would become an ISO/IEC Guide for the use of voluntary consensus-oriented standardizing organizations (incorporating appropriate editorial changes and systematically applying ISO/IEC Guide 2 definitions). The finalized text, approved by both ISO and IEC should be available at the beginning of December 1993. He said that it was the situation as seen from the ISO and IEC perspective and it was due to these new developments within ISO that the GATT Secretariat could not begin a comparison of Annex 3 of the draft (1991) TBT Agreement with the ISO/IEC Code as the latter had not been finalized.



111. The Committee took note of the statement made.

112. The Committee agreed to the Chairman's proposal that the date of the next Committee meeting be worked out by himself in consultation with delegations next spring.