

# WORLD TRADE ORGANIZATION

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## Committee on Technical Barriers to Trade

### MINUTES OF THE MEETING OF 7 NOVEMBER 2003

Chairperson: Mr. Juan Antonio Dorantes Sánchez (Mexico)

1. The Committee on Technical Barriers to Trade held its thirty-second meeting on 7 November 2003.

2. The following agenda, contained in WTO/AIR/2193, was adopted:

- I. Statements on Implementation and Administration of the Agreement
- II. Annual Transitional Review (TRM) Mandated in Paragraph 18 of the Protocol of Accession of the People's Republic of China (G/TBT/W/227 /229 and /231)
- III. The Third Triennial Review of the Operation and Implementation of the TBT Agreement under Article 15.4
- IV. Request for Observer Status in the Committee by the *Office Internationale de la Vigne et du Vin* (OIV), the *Bureau International de Poids et Mesures* (BIPM), the Gulf Organization for Industrial Consulting (GOIC), and the Convention on Biological Diversity (CBD)
- V. OTHER BUSINESS
  - (i) Codex Committee on Food Import and Export Inspection and Certification Systems
  - (ii) Technical Assistance
  - (iii) Next Meeting of the Committee

#### VI. REPORT (2003) OF THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE

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

3. The representative of New Zealand recalled that, since June 2002, her delegation had been raising concerns about EC Regulation 753/2002 on wine labelling (G/TBT/N/EEC/15), given the potential impact of EC polices in this area that stretched back to 1998. The Regulation had entered into force and would be fully implemented on 1 February 2004. Although the two postponements of its implementation were welcomed, the additional time granted had not resulted in any amendments that took into account New Zealand's and a number of other WTO Members' concerns about the proposed regulation.

4. New Zealand's concerns in relation to the Regulation, communicated to the delegation of the EC in writing in August 2002, could be summarized as: its consistency with the core principles of the TBT Agreement, in particular the obligations not to create unnecessary barriers to trade and to ensure that technical regulations should not be more trade restrictive than necessary to fulfil a legitimate objective; its consistency with national treatment and MFN principles in the TBT and GATT Agreements; and the concerns it raised in relation to the TRIPS Agreement which did not extend to the so-called "traditional terms" or bottle shapes and their protection.

5. Her delegation welcomed the European Commission's proposal to amend the Regulation and encouraged the EC member States to make the pertinent amendments to address these concerns raised by New Zealand and other WTO Members regarding Article 2.9 of the Agreement. Her delegation expected the EC to notify the changes in light of WTO Members' comments.

6. She also appreciated that a second round of informal discussions had taken place with the EC Commission officials since the last TBT Committee meeting. Nevertheless, those discussions could not be taken as a substitute for the formal written response to New Zealand's submission. Nor had these discussions addressed her delegation's outstanding concerns with the Regulation. She asked for an indication of when New Zealand could expect to receive a written response. Finally, she reiterated her delegation's request that the Regulation be withdrawn or substantially amended to bring it into conformity with WTO rules.

7. Sharing the concerns expressed by the delegation of New Zealand, the representative of Australia said that her delegation also continued to have problems which had been repeatedly identified bilaterally in informal discussions and in the Committee; she believed that the Regulation imposed unnecessary obstacles to trade, mainly with respect to the substantial and unnecessary costs that suppliers, particularly distant suppliers, would incur in complying with it. Therefore, her delegation and Australian exporters were still waiting for adequate responses.

8. She was of the view that the six-month transition period for the use of existing labels did not provide a lasting solution to the concerns of Australia and other exporters. Since the EC had announced that further changes to the Regulation might be made before 1 February 2004, Australian suppliers did not have a real indication as to what such changes might be or when they might be applied. The Australian wine producers might be obliged to print their labels without knowing the requirements they should comply with.

9. Given the range of concerns, Australia requested that the Regulation be repealed, or alternatively, that its implementation be deferred until at least 12 months after all the amendments had been made to provide adequate notice to third country wine suppliers. She urged the EC to provide written replies to all the concerns raised by WTO Members and to notify any further changes.

10. The representative of Brazil shared the concerns expressed by Australia and New Zealand regarding EC Regulation 753/2002. Her delegation regretted that the Regulation had been enforced without any amendments that took into account Members' concerns. Brazil expected the Regulation to be amended, as announced by the EC, and that further amendments would take into consideration the concerns raised by Members. She requested that either the Regulation be withdrawn or its transition period extended, and urged the EC to provide written replies to Members' comments.

11. The representative of Argentina associated his delegation with the comments made by the previous speakers. He appreciated the consultations with the EC; nevertheless, the understanding of a number of aspects of the Regulation had been absolutely minimal. The Regulation was complex and unclear, and his delegation continued to have concerns about its effectiveness, consistency and compatibility with the TBT provisions. He urged for written responses to the comments and concerns submitted by Argentina, so as to avoid the uncertainty that the Regulation was creating amongst exporters in his country. He requested the EC to take the necessary steps to rectify the situation; to demonstrate that the Regulation was consistent with the WTO obligations, or to postpone its application.

12. The representative of South Africa supported the concerns raised by previous speakers. Regarding the specific concerns of his delegation, he recalled that South Africa had concluded a Wine and Spirits Agreement with the EC (the agreement), which included rules related to aspects such as labelling, content description, geographical indications, packaging and trade marks. These elements of the agreement dealt with aspects of wine labelling requirements in EC Regulation 753/2002.

Amongst the objectives set out in the agreement, the parties had agreed, on the basis of non-discrimination and reciprocity, to facilitate and promote trade among wine producers in South Africa and in the EC. Each party had agreed not to submit the imports of wine originating in the territory of the other contracting party to more restrictive imports certificate requirements than those in the agreement. It had also been agreed that amendments to the annexes and protocols should be mutually decided upon in order to consider any amendments to the national laws and regulations of the parties to the agreement. His delegation considered the EC Regulation contradictory to the spirit of the agreement, since it had implications for the wine sector that would be implemented unilaterally. There was also a lack of transparency and inconsistency with the obligations under Article 2.9 of the TBT Agreement.

13. The protection of the so-called traditional expressions in the Regulation was an area of great concern. It seemed that a large part of EC regulation 881/1998, which had not been brought into force by the EC, had now been incorporated in Regulation 753/2002. South Africa did not agree to protect these terms in its wine agreement with the EC, nor had it agreed to recognize and protect geographical indications. The proposed regulation required that exporting countries comply with design and descriptive requirements in a particular prescriptive manner. The use of additional information on wine labels and type of products covered was included in a long list that required that many of these terms be regulated in the country of origin. Another issue of concern was an exception made for the United States that allowed it to deviate from the requirements of the Regulation during a specific period of time; his delegation believed this was contrary to Article 2 of the TBT Agreement. The same applied to a derogation from labelling requirements for certain quality wines of EC member States. He urged the EC not to implement its Regulation; to take the necessary steps to ensure that it met the obligations under the TBT Agreement; and to take into account the comments made by South Africa in order to make the regulation consistent with the TBT and other WTO Agreements.

14. The representative of the United States associated her delegation with the concerns raised by the previous speakers. There had been a lack of responsiveness and a continued uncertainty about the EC Regulation, as well as questions concerning transparency and discrimination. She informed the Committee that during the consultations that had taken place in July 2003, the US had specifically asked a question about the criteria and processes the EC used to determine equivalency of regulation, and why the EC required harmonized regulations. In response, the EC had explained that the decision of equivalency was carried out on an ad hoc basis, in bilateral discussions or negotiations. In the view of her delegation, it seemed that the equivalency decision was a political one, taken by a committee of EC member State representatives. Therefore, it was still unclear how a political decision could relate to the objective of protecting the EC consumer from deception. This type of approach raised serious concerns for her delegation and urged a substantive response from the EC, since the US was disappointed with the responses received or that it failed to receive. She joined her delegation with Australia's request to repeal the EC regulation.

15. The Chairperson, applying the terms of Rule 15 of the Rules of Procedure of the Committee, associated Mexico with the comments made by the previous speakers.

16. The representative of the European Communities, in response to the comments made by delegations, recalled that with respect to the labelling provisions in the EC Regulation 753/2002, the Commission had adopted a transition period from 1 August 2003 to 1 February 2004. The Commission had participated in informal consultations with interested Members in October 2002 and July 2003. The EC continued to reflect on and examine all the comments it had received, including those raised in the Committee meetings, in the informal consultations and in the written submissions following the notification of the Regulation to the Committee. This process would continue and comments made during the meeting would also be taken into account.

17. The representative of Chile recalled that his delegation had expressed concerns at the July 2003 meeting, regarding the Ecuadorian Technical Standard NTE INEN 102:2003,

Revision 3, concerning hot-rolled carbon steel rods for reinforced concrete, that had come into force on 23 April 2003. On 28 October 2003, his delegation had sent its concerns in writing and had requested a response from Ecuador. Considering the delay in responding, Chile was under the impression that the Ecuadorian technical regulation could be discriminatory and more restrictive than necessary, and thus inconsistent with Article 2 of the TBT Agreement. He reserved Chile's right to raise this matter in other WTO fora.

18. The representative of Ecuador explained that in the intervening period to which Chile referred, his authorities had looked at and studied the possible effects of its regulation. Ecuador considered that in accordance with Articles 2.9 and 5.6 of the TBT Agreement, the two circumstances necessary to notify a measure were not met in this case. In particular, the adoption of the measure would not have a significant effect on the trade of other Members. Nevertheless, seeking transparency, Ecuador had notified its measure. As to marking requirement, during the process of rolling, the rods, whether imported or locally produced, should be marked in relief, including, *inter alia*, the name of the producer/importer, and the diameter. This was not a technical obstacle, nor did it involve discrimination with regard to national products; moreover, other international suppliers of rods had already been exporting to Ecuador in compliance with these requirements, including a Chilean exporter. Concerning the legitimate objective, as set out in Article 2.4 of the TBT Agreement, the measure was intended to protect human health and safety, given Ecuador's geographical position and the high seismic risk and great volcanic activity. From the technical inspections that had taken place after the seismic movements it had been clear that, in some cases, the strengthening rods did not comply with technical regulations and the name of the manufacturer or supplier was not marked on the rods; therefore, it had been impossible to establish the legal responsibility. Similar situations had occurred with the break-up of buildings. The measure was consistent with domestic law, in particular, the Ecuadorian Constitution and the Law for Consumer Defence, which recognized the right of protection of safety and health of citizens. Considering the above-mentioned elements, his delegation was of the opinion that the measure was legitimate, necessary and not discriminatory, nor trade restrictive.

19. The representative of Barbados drew attention to a Brazilian notification circulated on 27 October 2003 concerning a decree setting out amendments to definitions for certain beverages and spirits, specifically aguardiente, cachaza and rum (G/TBT/N/BRA/135). The measure, adopted under Article 2.10 of the TBT Agreement, had entered into force on 3 October 2003 as Decree N°4851, without giving opportunity for comments to be made. She noted that bilateral discussions had taken place between industry representatives from Brazil and the West Indies Rum and Spirits Producers' Association (WIRSPA), of which Barbados was a member, given that the draft decree contained various elements that would have a significant negative effect on trade from WIRSPA members. Her delegation requested that an appropriate opportunity be given, in accordance with the TBT provisions, to inform the Brazilian Government in writing about its concerns and suggested amendments and that these be taken into consideration for the amendment of Decree N° 4851.

20. The representative of the Dominican Republic expressed her delegation's interest in the issue raised by Barbados since the products covered by the measure were of trade interest to her country. Since the notification took place under Article 2.10 of the Agreement, she requested Brazil to inform the Committee about the nature of the urgent problems and to provide her authorities with a copy of the complete text of the measure in order to present written comments in accordance with Article 2.10.3 of the Agreement.

21. The representative of Trinidad and Tobago shared the concerns expressed by Barbados and the Dominican Republic. Her delegation also wished to know whether there was still time for Members to submit comments and questions to the relevant authority in Brazil, and for these comments and questions to be taken into account. She also wished to know more about the urgent nature of the problems.

22. The representative of Brazil stated that her authorities were making their best efforts to comply with their obligations under the Agreement, regarding the notification of proposed measures, the period for comments and the date of entry into force. Comments and questions raised by delegations on this subject would be welcomed and could be sent to the Brazilian Mission in Geneva and also directly to the enquiry point in Brazil in order to facilitate the process. Regarding the specific questions about the urgency of the measure, her delegation would convey the concerns expressed to the capital and would come back to these issues in future meetings. As to the full text of the measure, it was already on the Brazilian enquiry point website<sup>1</sup>, but she would also send it to interested Members.

23. The representative of Japan drew attention to a newly proposed technical regulation on the registration, evaluation and authorization of chemicals (the REACH system) in the European Union that had not yet been notified to Members. His delegation had fully understood that the proposed regulation had, as legitimate objectives, the protection of human health and the environment. However, Japan had concerns as it would be more trade restrictive than necessary and would have a negative impact on trade and investment of non-European WTO Members. The chemical industry in his country had concerns about this regulation and the Japanese Government had expressed these concerns to the European Commission, through the Internet consultation held in July 2003 and on other occasions.

24. He appreciated the EC's efforts to take into account his Government's comments in the new draft that had been adopted on 29 October 2003, as well as the transparency and openness shown by the EC since the new text had been improved. Nevertheless, some aspects of the regulation were still creating concern, such as an exemption for substances that had already been registered which apparently would only apply to manufacturers inside the EC territory. These issues were trade restrictive and a burden for importers; thus, he requested the EC to revise those provisions in search of predictability and to avoid unnecessary notifications by exporters as a precautionary measure.

25. The representative of the United States shared the concerns expressed by Japan. She welcomed the early notification made by the EC under Article 2.9.1 when submitting document G/TBT/W/208. Her delegation had understood that a number of governments and stakeholders had responded to the EC's request of comments through the Internet. Concerning the revised text, she considered that there were some steps in the right direction as well as an intention to refine the regulatory scope, to clarify the procedures and to reduce bureaucratic burdens. Nevertheless, those changes did not fully address the range of concerns expressed by the US in July 2003, since some aspects remained unclear and unworkable. An unworkable approach would impede the attainment of the EU's health and environmental policy objectives, probably adversely impacting innovation, and trade disruptive. In her view, the proposal's impacts, both positive and negative, should be fully and transparently assessed. She encouraged the EC to reduce the scope of the Regulation to better focus its resources on substances that were likely to pose the highest risk, to clarify and simplify the process by which the regulatory decisions should be made. She also urged the Commission to promptly make public the full impact assessment on its revised proposal.

26. The representative of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), shared the concerns raised by Japan and the US. His authorities were in the process of reviewing the impact of the revised draft and would come back to this issue with further comments.

27. The representative of Thailand stated that his authorities had not yet revised in detail the regulation (REACH) adopted on 29 October and would provide comments at a later stage. He recalled that his delegation had submitted comments to the EC in the past, stating that the proposal would affect trade between Thailand and the European Union, and hoped that its comments would be taken into consideration.

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<sup>1</sup> [www.inmetro.gov.br/barreirastecnicas](http://www.inmetro.gov.br/barreirastecnicas)

28. The representative of Australia joined her delegation with the concerns expressed and informed the Committee that there were consultations with the national industry to determine whether the comments made had been taken into account.

29. The representative of Malaysia associated her delegation with the previous comments concerning the European draft regulation on chemicals. Malaysia had not only sent written comments to the Commission, but had also participated in the public Internet consultation over this issue; moreover, her delegation supported APEC's comments which listed the concerns of APEC's members in a written communication. She also expected Malaysia's comments to be considered.

30. The representative of Korea shared the concerns and comments made.

31. The representative of Chile echoed the concerns raised by other delegations and thanked the EC for the transparent process it had displayed and for its availability and willingness to receive comments on its Regulation.

32. The Chairperson, in accordance with Rule 15 of the Committee's Rules of Procedure, joined Mexico with the comments that delegations had raised.

33. The representative of the European Communities recalled that on 20 May 2003, under Article 2.9.1 of the Agreement, the EC had communicated an early notice on the REACH system, so as to provide Members with the opportunity to become acquainted with the REACH system and to participate in an Internet consultation (document G/TBT/W/208). The comments received from several countries had resulted in changes to the REACH system which made it less costly, less bureaucratic and more workable, while reinforcing the health and environmental protection objectives. The proposal, adopted on 29 October 2003, would soon be notified under Article 2.9.2 of the TBT Agreement and a reasonable period of time to present comments would also be provided.

34. The representative of New Zealand recalled that concerns had been raised by her delegation concerning the prohibition of fish head (i.e. Hake, Cod and Pollock) imports to Korea, as they were considered as waste. She noted that under WTO rules "to regard a product as waste" was not a legitimate reason to prohibit imports of such products. Her authorities had informed Korea that New Zealand could process Hake heads to an edible standard and could provide appropriate government assurances in this regard. Her delegation was not aware of any specific sanitary risks to human health that could justify the prohibition. Korea had not responded yet to New Zealand's concerns, nor had it notified this regulatory approach to Members. Regarding the concerns, she noted that, other than sanitary conditions, Korea did not place specific restrictions on fish heads cut by Korean fishing vessels abroad, nor to fish heads cut in Korea for human consumption in Korea, which posed a problem of discrimination. She informed Members that her authorities had also sought clarification at the World Customs Organization (WCO), where it had been confirmed that "Hake heads for human consumption (e.g. for the manufacture of soups)" could be classified as a tariff sub-heading 0303.78 (Chapter Three) of the Harmonized System.

35. Her delegation believed that, if the product was accompanied by appropriate certification of assurance that it was fit for human consumption, Korea should allow the importation of Hake heads. She encouraged Korea to address these concerns as soon as possible and recalled that New Zealand had sought to resolve this issue through bilateral discussions over the past 18 months, and that at a TBT meeting in March 2003, her delegation had submitted an aide-mémoire to the Korean delegation. She urged Korea to explain the justification for the import ban on Hake heads in terms of relevant GATT and TBT provisions, particularly Article 2.5 of the TBT Agreement.

36. The representative of Korea explained that, in the view of his delegation, fish heads were generally regarded as waste, and not as an edible product. Accordingly, the WCO had classified fish heads as a by-product, inappropriate for human consumption, under the heading 0511. He believed

that the issue was to classify specific fish heads, like Hake heads and Cod heads, whether as food or as inedible waste. He questioned the scope of the TBT Committee as the right forum to discuss these issues, especially since Korea did not impose any standard-related requirements on imports of fish heads.

37. Regarding the discriminatory treatment between Hake heads and Cod heads, he recalled that, traditionally, Korean consumers had eaten Pacific Cod and Cod heads caught in the territorial waters, so Pacific Cod heads had been considered and treated as food. In addition, Cod and Hake did not belong to the same family of fish and could not be treated as like products. As to the opinion provided by the WCO Secretariat, Korea was of the view that it was merely an advisory opinion to classify Hake heads under subheading 0303.78 for human consumption but not an official decision of the WCO. His delegation would welcome any further information exchange in this regard, and was ready to continue consultations on a bilateral basis.

38. The representative of the European Communities reminded the Committee that on 9 March 2002, his authorities had submitted comments to India concerning the notification G/TBT/N/IND/1 on labelling of pre-packaged consumer products and the mandatory certification for 133 products. The requirement to indicate the maximum retail price at which the commodity packaged might be sold to the ultimate consumer in India was overly burdensome to economic operators. He questioned whether other less burdensome and trade restrictive measures had been considered. Concerning the mandatory certification of 133 products, he requested clarification about the costs of conformity assessment and questioned to what degree the standards, for which conformity assessment was required, were based on international standards.

39. The representative of the United States associated her delegation with the comments made. She had understood that there might be changes to the Indian labelling requirements and sought clarification about those changes, since the issue had been raised in the Committee in 2002 and 2003 and subsequent notifications had also taken place.

40. The representative of India confirmed that his delegation had attempted to provide responses in the previous Committee meeting as well as on a bilateral basis; nevertheless, he would convey the new comments raised to his authorities.

41. The representative of the European Communities recalled that on 1 October 2002, his authorities had submitted comments concerning Indian notification G/TBT/N/IND/9 on second-hand and new vehicles. The concerns referred to the prohibition on importing second-hand or used vehicles that were over three years old; and to the non-acceptance, by the Indian authorities, of certificates and documents issued by other countries. He requested India to provide an answer to the EC's comments.

42. The representative of India recalled that his authorities had tried to explain the rationale of the measure bilaterally; and amongst the reasons for adopting it, he mentioned the safeguard of consumers' interests with regard to changes in technology and the availability of spare parts. He informed the Committee that India had joined, as an observer, the World Forum for Harmonization of Vehicle Regulation and was in the process of considering whether to join either or both of the 1958 and the 1998 UN/ECE Agreements on reciprocal recognition of type approval of motor vehicles.

43. The representative of the European Commission referred to notification G/TBT/N/KOR/34 on the use of liquor labels and other labelling requirements. He acknowledged the legitimacy of the Korean authorities' objectives to prevent tax evasion on the sale of liquors and to introduce health warnings and recycling marks. However, the labelling requirements appeared to be more trade restrictive than necessary to meet the stated objectives and there was also a lack of transparency in the development of some of the amendments and measures on labelling. His delegation recognized that

there had been changes and positive developments in the legislation, as well as extended implementation periods, but was still concerned about the Korean measures in this area.

44. The representative of Korea recalled that, in previous Committee meetings, the EC had already made detailed remarks about labelling requirements for spirits and liquors. He would convey the comments raised to his authorities, and the concerns related to the notification of the changes that had been introduced to the regulation; for Korea, the fulfilment of the transparency obligations under the Agreement had capital importance.

45. The representative of the European Communities recalled that his delegation had submitted comments with regard to the Argentinean notifications G/TBT/N/ARG/90 on olive oil; G/TBT/N/ARG/101, on sulphate contents for wine; G/TBT/N/ARG/104, on labelling of pre-packaged food; and G/TBT/N/ARG/107, on the legal appellation system for wine products. He requested Argentina to provide answers to the comments and noted that all the texts concerned had been adopted before their notification.

46. The representative of Argentina explained that, with regard to the four notifications mentioned by the EC, consultations had been taking place, but that not all of them were at the same stage. His authorities were ready to continue the exchange of views, to receive further comments and to provide responses to them. In the case of notification G/TBT/N/ARG/104, on labelling of pre-packaged food, the situation was more complex than the others, given that it was not an Argentinean measure but a MERCOSUR one. The issue of delays when notifying was a matter of great concern to his authorities; these delays were basically due not to a lack of transparency, but to a lack of coordination with other organizations and departments. His authorities were in the process of improving coordination amongst national regulators in order to comply strictly with deadlines and obligations under the Agreement. Nevertheless, it was a task that was not always easy to achieve.

47. The Committee took note of the statements made.

## **II. ANNUAL TRANSITIONAL REVIEW (TRM) MANDATED IN PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA**

48. The Chairperson recalled that, at the Doha Ministerial Conference, a Decision was made concerning the Accession of the People's Republic of China on a "Transitional Review Mechanism" (WT/L/432). Accordingly, he drew attention to submissions from the European Communities, Japan and the United States respectively, in documents G/TBT/W/227, 229 and 231 containing questions put to China in this respect.

49. The representative of the European Communities thanked the Chinese authorities for the efforts they had made in organizing several seminars, open to both government officials and industry, to handle questions that had been addressed by the EC in 2002 (document G/TBT/W/182), particularly concerning issues such as food labelling, cosmetics, automobiles, and the new certification system (CCC system). However, since a relatively small number of participants had attended the seminars, his delegation would appreciate China's reply on various areas: (i) the CCC system that, although it was a step forward from the previous conformity assessment scheme, continued to raise some concerns, such as the issue of spare parts and components, especially when spare parts were supplied separately for the purposes of repair or maintenance, or when components were assembled in China; the fees for conformity assessment that were rather expensive and where there appeared to be variations according to the specific product under question that could lead to discrimination between the fees applied to domestic and to importing producers; the confidentiality of the detailed technical documentation support to be supplied by manufacturers; and the recognition of different conformity assessment procedures, particularly where products had already been certified according to the previous system; (ii) the approval marks for automobiles, while it seemed that China did not accept UNEC's approval marks, even though China's standards were basically the same



standards as UNEC. This could lead to a repetition of tests for several parts, and to different certificates for identical products when produced in different plants; (iii) the so-called "active pharmaceutical ingredients", given the hurdles encountered by EC producers when exporting to China, and the import drug licence registration that was required, the specifications of which had been the subject of frequent changes without external communication or consultation; (iv) the pre-market registration for cosmetics, performed by the Ministry of Health, was lengthy and onerous, and appeared to be different from the one required for domestic producers. There was another pre-import registration for imported cosmetics, required by AQSIQ, which apparently established a double registration system for imported products.

50. He also thanked China for the seminar on food labelling that had been organized in July 2003; however, the EC still had some issues, clearly stated in document G/TBT/W/227, mainly related to the registration procedure for labelling and the transparency criteria for the approval of labels.

51. The representative of the United States noted that amongst the areas of concern was the lack of notification of all of the Chinese proposals, as required under the Agreement, since not all the ministries in China had notified their proposals; and the unnecessary restriction to use standards promulgated by only three Chinese bodies. Her delegation had also requested an update of China's conformity assessment procedures. She noted that her delegation had been pursuing the steps that China had been taking to implement the Agreement; that in the operation of the CCC system there had been improvements on the past, as the EC had also noted, and recognized China's significant effort to comply with the Agreement.

52. The representative of Japan also thanked China for the serious efforts it had undertaken to make the CCC system more transparent and predictable. He assured that Japan, on its side, would make the necessary efforts to render the annual transitional review more fruitful and to build mutual confidence. Japan's specific comments in document G/TBT/W/229 referred to the registration of initial imports of chemical products, and to the situation of the regulations, both drafted and implemented, of these products. He asked China to provide explanations of, or comments on, the questions raised in document G/TBT/W 229.

53. The representative of the Peoples' Republic of China drew the attention of the Committee to document G/TBT/W/235, which contained the information required in Annex 1A to China's Protocol of Accession. He explained that some of the concerns raised by Members, such as the authorization, the terms of reference, an updated list of conformity assessment bodies, and progress on international standards adoption, were included in China's submission. As to transparency and coordination among domestic agencies involved in TBT notifications, he informed the Committee that on 30 October 2003, China had replied to the same question during the SPS Annual Transitional Review (TRM).

54. With regard to the other comments on the CCC system, he informed the Committee that China recognized the importance of adopting international standards, which had been used as a basis for the development of its technical regulations, standards and conformity assessment procedures (CAPs). A publication of the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), had recognized as international the standards issued by 42 international organizations. There was no discrimination, nor multiplication or duplication of CAPs between imported and domestic products. The spare parts and components to which the CCC system applied and that were listed in the First Catalogue of Products were exempted from a separate certification; but if those goods were imported and sold separately, they would require a separate mandatory certification. Those goods, whether produced domestically or imported, for maintenance, end-use, or the maintenance of products that were no longer manufactured, were exempted from the mandatory certification. Specific conditions were set out to apply for an exemption from the CCC system; a unified fee scheme applied to both imported or domestic goods, and any difference in fees was due to the different testing costs.

55. The certification bodies were obliged to protect the confidentiality and non-disclosure of the technical information and trade secrets that were required to obtain certificates. Mutual recognition of results should be based on bilateral or multilateral agreements between governments or organizations duly authorized by the government. China supported the recognition of certification/testing results on an equal basis; in this sense China had joined the IECEE; and, therefore, recognized the CB certificates issued in the context of the IECEE system. As to telecommunications, the issue of test duplication of equipment had been solved progressively.

56. The import registration for pharmaceutical products exported to China required those products to meet both the Chinese and the national standards of the country of origin. Therefore, domestic and foreign pharmaceutical producers were treated equally. Imported cosmetics were subject to an assessment and approval of their safety and hygiene qualities and to a labelling approval. The approval of food labels had been regularly completed within the time-limits set out in the pertinent regulations. The Chinese regulations on food labelling applied to all pre-packaged food to be sold in China, including wines and spirits; and the information to be provided was not discretionary, since it had to meet the pertinent regulations. Food labels for imported food products were subject to approval in the Chinese language; this required accompanying the request with the sales certificate of the country of production. Imports of bulk products for food processing did not require a label.

57. In the case of new chemical substances, the data testing of foreign certification bodies was accepted in China, provided that these bodies had been accredited by the competent national institution. The ecological and toxicological information on those products should include the information and data obtained from tests carried out in China. The inventory of existing chemical substances consisted of the chemical substances produced, sold, utilized in or imported into China from 1 January 1992 to 30 April 2003. Foreign chemical companies could access the inventory through the Internet.<sup>2</sup> As to hazardous chemicals, China was in the process of revising a final text.

58. The Chairperson drew Members' attention to the draft report 2003 prepared by the Secretariat (that would be issued as document G/TB/W/236) and announced that, in compliance with the Ministerial Decision, he, as the Chairperson of the TBT Committee, would inform the Committee for Trade in Goods of the results of the Annual Transitional Review Mandated in Paragraph 18 of the Protocol of Accession of China.

59. The Committee adopted its 2003 Report to be submitted to the Council for Trade in Goods on the Transitional Review mandated in China's Protocol of Accession.

### **III. THE THIRD TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE TBT AGREEMENT UNDER ARTICLE 15.4**

60. The Chairperson recalled that the Committee was mandated to conduct the Third Triennial Review of the Operation and Implementation of the TBT Agreement under Article 15.4 before the end of 2003; that after intensive and constructive consultations carried out on the basis of the draft document prepared by the Secretariat (Job(03)/200 of 16 October 2003), Members had arrived at an agreement on the results of the Triennial Review. He proposed that the current draft be adopted by the Committee as the Report of the Third Triennial Review.

61. The Committee adopted its Report of the Third Triennial Review of the Operation and Implementation of the Agreement under Article 15.4. (Document G/TBT/13).

62. The Chairperson announced that the Report of the Third Triennial Review would be submitted as part of the Report for 2003 of the Committee to the Council for Trade in Goods.

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<sup>2</sup> www.zhb.gov.cn and www.crc-sepa.org.cn

63. The representative of the European Communities welcomed the Report; his delegation was particularly pleased that the review had several forward-looking elements which would allow the Committee to continue work in interesting fields over the forthcoming period.
64. The representative of Chile welcomed the report and recalled that, in Chile's view, the issue of labelling should be subject to the same principles and provisions that applied to technical regulations. The Suppliers' Declaration of Conformity (SdoC) should have a real application to products from all Members, but especially in the case of products from developing country Members, given the positive impact on their exports. He drew the Committee's attention to the fact that the Report that had been approved was the Report drafted in English, but not the Spanish and French versions. His delegation would like to receive these promptly.
65. The Chairperson confirmed that the Report that the Committee had approved was the English version and that the Spanish and French versions would have to reflect what had been approved in the English version.
66. The representative of the United States welcomed the report and suggested that future agendas of the Committee should include a new and standing item on the preparation of the Fourth Triennial Review.
67. The representative of Brazil expressed her delegation's satisfaction with the Report, which incorporated all Members' concerns. She recalled her interest in taking part in the consultations on technical assistance since Brazil wanted to ensure an adequate level of sustainability in the provision of technical assistance; in this regard, her delegation was ready to discuss and comment on the details of its proposal. She echoed the proposal by the US on the inclusion of the preparation for the Fourth Triennial Review as an agenda item.
68. The representative of Japan welcomed the Report and expressed Japan's willingness to make the Committee's future discussion fruitful and constructive.
69. The representative of Switzerland welcomed the Report and expressed her thanks to all the others who had been involved in its preparation.
70. The representative of India stated that the Report underscored the importance of the implementation of the Agreement as it related to the difficulties that many developing country Members, and their exporters, faced in the TBT area. He agreed with the EC that there should be a follow-up on the various issues, and that, on the basis of the recommendations, concrete steps would be taken in areas that would enhance market access opportunities to developing country Members, i.e. on technical assistance, conformity assessment, including the question of SDoC, equivalency and transparency.
71. The representative of Chinese Taipei welcomed the report and recognized the efforts and work that had been undertaken by the Committee to finalize it.
72. The representative of Egypt expressed his support for the proposal of the US concerning the agenda and expressed the will of his delegation to take part in the discussions on technical assistance.
73. The representative of the People's Republic of China recognized the efforts made by Members' representatives to finalize the report and thanked all the delegations for having helped China during its second Annual Transitional Review.
74. The representative of the Philippines, on behalf of ASEAN members, recognized the efficient work undertaken during the current triennial review, and stated that this efficiency should be kept up during the work for the Fourth Triennial Review.

75. The representative of Canada associated his delegation with the comments made by previous speakers on the work undertaken during the Triennial Review. He supported the suggestion made by the United States to take stock of progress made on the elements identified in the Report; in this regard, he recalled that Canada had suggested, on the work programme on conformity assessment in the Report, also taking stock of the progress made in this area; he believed that this could be done with all the elements of the Report.

76. The Chairperson thanked Mrs. Emily Earl from New Zealand and Mr. Mathias Francke from Chile, for their work as facilitators in the consultations, and the Secretariat; he considered that the Committee had done an excellent job that showed that the WTO could work and that the WTO could obtain good outcomes and move forward.

#### **IV. REQUEST FOR OBSERVER STATUS IN THE COMMITTEE BY THE OFFICE INTERNATIONALE DE LA VIGNE ET DU VIN (OIV), THE BUREAU INTERNATIONAL DE POIDS ET MESURES (BIPM), THE GULF ORGANIZATION FOR INDUSTRIAL CONSULTING (GOIC), AND THE CONVENTION ON BIOLOGICAL DIVERSITY (CBD)**

77. The Chairperson drew the Committee's attention to documents G/TBT/W/62, 135, 141 and 177, concerning the requests for observer status by the *Office Internationale de la Vigne et du Vin*, the *Bureau International de Poids et Mesures*, the Gulf Organization for Industrial Consulting and the Convention on Biological Diversity. He understood that differences still remained among Members in the context of the General Council, and that further consultations were required. He proposed to come back to these requests at the next Committee meeting. The Committee took note of the statement made.

#### **V. OTHER BUSINESS**

##### *(i) Codex Committee on Food Import and Export Inspection and Certification Systems*

78. The representative of the United States said that the Codex Alimentarius Secretariat had made a request to the WTO Secretariat concerning the operation of equivalence and mutual recognition within the TBT Agreement. She recalled that the Committee had had a number of discussions on questions of equivalence and mutual recognition, and that during the Third Triennial Review, Members had foreseen the continuation of such discussions. She sought clarification as to whether or not a response to Codex had been sent, and expressed the view that any interpretative issues that the Codex might raise should be brought back to the Committee.

79. The Secretariat said that a communication had been received from the Codex Secretariat in this regard and a response had been provided. The communication had also included an invitation to the WTO Secretariat to attend the next meeting of the Codex Committee on Food Import and Export Inspection and Certification Systems in Brisbane, Australia, in December 2003. Accordingly, a representative of the WTO Secretariat would explain to the Codex Committee members the relevant provisions of the TBT Agreement on equivalency and mutual recognition, and also report to them on the work of the TBT Committee, especially in the context of its Third Triennial Review. The TBT Committee would be informed of any issues raised by the Codex Committee.

##### *(ii) Technical Assistance*

80. The representative of the European Communities drew the Committee's attention to document G/TBT/W/228, which referred to the EC-related technical assistance projects for developing countries. It contained information which might be of assistance to developing countries as it referred to the current available technical assistance, with funds from the Commission or from its member States.

81. The representative of Bangladesh informed the Committee that a WTO/UNIDO workshop on TBT issues would be held in Dakar from 13-14 November 2003. The workshop was specifically designed for the LDCs in the region. He thanked both organizations and highlighted the activity as an example of inter-agency cooperation.

82. The representative of the Secretariat informed the Committee of its technical assistance activities in 2003, and its plans for the year 2004. The Secretariat's activities in 2003 were carried out in the following areas: (i) Three Regional Workshops on the Agreement: in Namibia for English-speaking African countries; in Lebanon for Arab and Mediterranean countries, and in Saint Kitts and Nevis for the Caribbean countries. Another would take place at the end of November in Fiji, for the Pacific Island countries. These regional workshops had provided opportunities for experience sharing among participants and also south-south cooperation, as well as the identification of possible regional cooperation. To the greatest extent possible, cooperation had been sought from regional partners, for example in the case of Lebanon workshop, with ESCWA, and in the case of the Caribbean workshop, with the CARICOM secretariat. (ii) Workshops in cooperation with international standards-setting bodies to enhance the participation of developing countries in the context of the mandate to the WTO Director-General: two regional Workshops, one in Peru for Latin American countries, and another one in Mozambique for SADC countries. The Secretariat had cooperated with the International Electrotechnical Commission (IEC) and the International Organization for Legal Metrology (OIML). (iii) Secretariats' participation in workshops organized by other donor agencies or Members (inter-agency cooperation): regional workshops organized by UNIDO and UNCTAD for West African countries and for the SARC region. There had been also a regional Standards Coordination Workshop for Southeast Europe, organized by the United States Department of Commerce. (iv) National workshops: in response to requests received from individual Members, national workshops had taken place in Georgia, Qatar, Yemen, Lebanon, the Kyrgyz Republic and the Gambia. Another one was scheduled for India in November. The Georgia, Kyrgyz Republic and Lebanon workshops had been joint TBT/SPS workshops. (v) The trade policy courses organized by the WTO Secretariat in different regions of the world, which had regularly included training on TBT issues. (vi) Other technical assistance activities included Geneva-based workshops and the advice to capital-based officials on the various issues related to the operation of the Agreement. In this regard two Geneva-based workshops had taken place: one in March on TBT-related technical assistance, and the other one on labelling, a learning event; which were also part of the technical cooperation activities, because using the Global Trust Fund, capital-based participants from developing country Members were able to attend these workshops; and, in the case of the labelling learning event, the EC had largely contributed to the funding of the participation of developing country Members.

83. Concerning the technical assistance activities for 2004, the Secretariat had circulated the Technical Assistance and Training Plan 2004 (document WT/COMTD/W/119/Rev.1). This Plan, which would be discussed by the Committee on Trade and Development on 16 November 2003, was still under preparation. Since discussions would continue until the end of November, Members had still the opportunity to provide comments on the TBT component of the Plan.

84. The Committee took note of the statements made.

*(iii) Next Meeting of the Committee*

85. The next meeting of the Committee would be held on 30-31 March 2004<sup>3</sup> and its agenda would include the following items: the Ninth Annual Review of the Implementation and Operation of the Agreement under Article 15.3; the Ninth Annual Review of the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 of the Agreement; the Statements on

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<sup>3</sup> Subsequently brought forward to 22-23 March 2004.

the Implementation and Administration of the Agreement; the Fourth Triennial Review of the Operation and Administration of the Agreement under Article 15.4; and Technical Assistance.

**VI. REPORT (2003) OF THE COMMITTEE ON TECHNICAL BARRIERS TO TRADE**

86. The Committee adopted its 2003 Report, based on a draft contained in G/TBT/SPEC/22, to be submitted to the Council for Trade in Goods and for the consideration of the General Council.

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