

ANNEX 1
SUMMARY REPORT OF THE SIXTH SPECIAL MEETING ON
PROCEDURES FOR INFORMATION EXCHANGE

22 June 2010

Chairperson: Mr. Amit Yadav (India)

1. Pursuant to its decision to hold, on a biennial basis, "regular meetings of persons responsible for information exchange, including persons responsible for enquiry points and notifications", the TBT Committee held its Sixth Special Meeting on Procedures for Information Exchange on 22 June 2010.¹ The objective of the Special Meeting was to provide Members an opportunity to discuss, at a technical level, issues relating to information exchange and to review the functioning of notification procedures and the operation of enquiry points.² The Special Meeting was organized in four panel sessions dealing with (i) good practices in notification; (ii) electronic databases; (iii) operation of enquiry points; and (iv) transparency in standard-setting.

A. SESSION 1 – GOOD PRACTICES IN NOTIFICATION

2. The moderator³ introduced the session on Good Practices in Notification. She recalled that in the Fifth Triennial Review, Members had stressed the importance of transparency in processes and procedures used in the development and application of technical regulations and conformity assessment procedures. The session was intended to examine, *inter alia*, ways to facilitate internal coordination for the effective implementation of the TBT Agreement's notification obligations.

1. Canada: Examples of 'good practices' to facilitate internal coordination for the effective implementation of the TBT Agreement's notifications obligations⁴

3. The representative of Canada outlined that in Canada, the Department of Foreign Affairs and International Trade retained overall responsibility for the coordination and implementation of all WTO Agreements. Since 1980, the Department has maintained an agreement with the Standards Council of Canada (SCC) for the operation of the national Notification Authority and the national Enquiry Point. SCC was responsible for fulfilling the transparency obligations of the TBT, SPS and NAFTA agreements, distributing WTO notifications to Canadians through its service, Export Alert!, answering enquiries and providing information to foreign enquiry points on Canadian standards, technical regulations and conformity assessment procedures. It was noted that the federal regulatory process in Canada was structured so as to provide a consistent approach to making regulations across government while ensuring that the policy commitments and legal obligations of the government of Canada were met. The structured process also ensured predictability and transparency for Canadians, institutions, and businesses affected by the regulation. For this, two mechanisms were employed: first the Triage Statement and then the Regulatory Impact Analysis Statement (RIAS).

4. At the outset of regulatory development, regulatory organizations had to evaluate both a regulatory and a non-regulatory option, or decide whether to amend an existing regulation or to introduce a new regulation. When a regulatory organization had selected as its instrument choice to

¹ The programme for the Special Meeting is contained in G/TBT/GEN/100.

² The participation of 96 representatives from developing country Members was supported through the WTO DDA Global Trust Fund.

³ Moderator of the session was Ms Xueyan Guo, First Secretary at the Permanent Mission of China to the WTO, in charge of both TBT and SPS matters.

⁴ Presentation made by Ms Andrea Spencer, Head of the TBT/SPS Enquiry Point, SCC, Canada.

amend or introduce a regulation, regulatory proposals were assessed at an early stage to determine which processes could be streamlined and where resources should be focused. This process was called "triaging". The assessment was achieved through a Triage Statement which took into account available information regarding the expected level of impact of the regulatory proposal in ten key areas and assigned to each an expected impact of "low", "medium", or "high". The responses to the triage questions enable the regulatory organization to initiate consultations, conduct detailed analysis on the regulatory proposal, and draft the RIAS commensurate with overall level of significance rating indicated by the Triage Statement of the regulatory proposal. A key benefit derived from the triage process included the consistent approach to the Regulatory Impact Analysis Statements across all federal regulatory organizations (e.g. the National Resource Council, Health Canada, etc.). Thus regardless of the regulatory organization, the same main elements are assessed and elaborated accordingly in the RIAS, which ensured predictability and consistency of analysis for the enquiry point and for stakeholders. Furthermore, one of the 10 key areas that were assessed in the Triage Statement was the expected impact on Canada's international obligations such as the WTO TBT Agreement.

5. While the standard comment period was 30 days, a minimum of 75 days was required for measures which affected international trade (which provided a window of 15 days for any activities relating to the review, preparation, submission and issuance of the notification to meet the 60 day comment period recommended by the WTO). All proposals were reviewed and assessed by the Canadian enquiry point and all regulatory proposals that could have a significant impact on trade, including those based on international standards, were notified to the TBT Secretariat.

6. A second tool employed by Canada since nearly 25 years was the Regulatory Impact Analysis Statement (RIAS). When a government agency determined that a regulation was the best means for achieving an objective, it launched a process of planning and public consultation, which involved identifying interested and affected parties and providing them with an opportunity to take part in open and meaningful discussions in all stages of the regulatory process. Following the completion of a Triage Statement, the government agency prepared its regulatory proposal along with a RIAS, which served as a public account of how the proposal followed each element of the federal regulatory policy and as a demonstration for the need of a regulation. The RIAS allowed audiences to understand the government's intention, objectives and the expected impact of the regulation. It also listed who would be affected, the consultations that had taken place to date, the views and comments of stakeholders, and how their comments had been addressed, the benefits of the regulation and how the government intended to evaluate and measure the regulation's performance against its stated objective. The regulatory proposals including the RIAS then were pre-published in the *Canada Gazette*, which gave an avenue to all interested parties to review the regulation and provide further comments.

7. In order to estimate the expected impact that a proposed measure may have on trade, particular attention was given to the executive summary, the issue, the objectives, the description, the cost/benefits analysis, the rationale, and the consultation parts of the RIAS. These elements assisted the enquiry point in determining whether an international standard existed, the impact of the regulation, the countries affected by it, and whether it fell under the SPS or the TBT agreement. A contact name was also provided at the end of the regulation, which allowed the enquiry point to follow up with the regulator should additional information be required. Once the decision had been reached to notify the proposal to the TBT Committee, every effort was made to follow the decisions and recommendations of the TBT Committee from G/TBT/1/Rev. 9, as well as from other Committee documents. Using the RIAS, the enquiry point produced a clear and descriptive outline of the regulatory proposal which allowed Members to gain an understanding of the government of Canada's regulatory intent in absence of the full text.

8. The SCC served a coordination role in the receipt and transmission of comments. The regulatory department itself conducted a review of all comments while finalizing its regulation. The

final regulation or conformity assessment procedure was published in the *Canada Gazette*, Part II, with an updated RIAS that included a summary of comments received during the pre-publication process and an explanation of how they were taken into account. If no comments were received this would also be stated in the regulation. Part II of the *Canada Gazette* was reviewed by the Enquiry point to identify adopted regulations to be notified to the WTO. The updated RIAS provided key information to this end, including the date of pre-publication which allowed for cross reference to the original draft measure. Copies of the adopted text were also sent to Members who had submitted comments.

9. In response to questions raised during the discussion, the representative of Canada informed delegations that the Triage Statement of a regulatory proposal was not published, as it was an internal regulatory tool of the Canadian government. She confirmed that elements of the RIAS were reflected in propositions for regulatory texts and that the regulatory body that had put forward the proposal also carried out the necessary analysis for the RIAS in consultation with an overseeing body of the Federal Government. She further clarified that key areas in the Triage Statement that had been assessed to have an expected "high" impact thereafter underwent a lengthier and more detailed analysis for the RIAS than areas that had been assessed as only having a "low" impact. Regarding the number of notifications submitted per Member, she was of the view that, among other things, this depended on the regulatory activity of countries and the frequency of their publications – Canada, for example, published its regulatory proposals on a weekly basis, whereas the United States had daily publications.

2. The European Union's efforts to facilitate access for third countries to European Union notifications⁵

10. The representative of the European Union stated that the Enquiry Point advised services involved in legislative activities to include references to international standards in a notification form when issuing a draft measure, and to allow for a comment period of 60 or 90 days. The Enquiry Point made all draft measures available on its website, and all notifications to the WTO contained a link to this website in order to disseminate the full text to other Members without delays. Draft proposals for the Commission usually were usually available in only one language, which usually was English and sometimes French. Draft proposals for the Parliament or for the Council were always available in all languages of the European Union, so links to the English, French and Spanish versions were provided in the WTO notification.

11. The European Union itself regularly translated the draft measure of other Members. These translations were published on its website and submitted to the WTO so that they could be forwarded to interested Members as a supplement to the original notification. When submitting a notification, the European Union always included a comprehensive description of the content of the text in Box 6 of the notification format in order to provide other Members with a complete overview so that they could assess whether they could be interested in translating the full text of the measure for themselves (if it was not in an official language of the WTO). The European Union felt that comprehensive descriptions reduced the occurrence of follow-up queries for clarification by other Members.

12. The representative of the European Union noted that when notifying an amendment of an earlier text, the European Union always provided a link to the earlier text on the notification format and also included a link to an impact assessment if one had taken place. Amendments to adopted measures were notified as new notifications, amendments to draft measures that had not yet been adopted were notified as addenda, and replacements of measures that had not been adopted were notified as revisions. Finally, supplementary information, such as guidelines, fees, or extensions of

⁵ Presentation made by Ms Patricia McGinley, Coordinator in the European Union TBT Enquiry Point in the Enterprises and Industry Directorate of the European Commission.

time periods were notified as addenda. Due to the different types of information categorized as "addenda", the European Union was not in favour of notifying amendments to adopted texts as addenda. For example, the European Union had to date notified 65 amendments to the Council Directive 91.4.14. If these amendments had been notified as addenda, perhaps their significance would have been evaluated differently by other Members. Finally, she explained that the European Union notified adopted texts as addenda to prior notifications. She noted that comments from other Members were forwarded immediately to the person responsible for the draft measure. Then a comprehensive and detailed written response was always produced, which could involve several different services of the Commission that were involved in the regulation. All comments and responses were published on the Commission's website.

13. In response to questions raised during the discussions, the representative of the European Union delegation explained that member States had the right to adopt their own individual technical regulations and conformity assessment procedures for product groups where the legislation had not been harmonized within the European Union. In these cases, the European Union advised Members to follow principles that in fact resembled those laid out in the TBT Agreement in order to enable the free flow of goods in the European internal market. Proposals for legislation were notified to the European Commission and to all other member States, which also was similar to the practice of the WTO in administering the TBT Agreement. The European Union delegation also informed that translations of draft measures of other WTO Members were done in-house by staff of the European Commission, if these measures were in one of the languages of the European Union, otherwise they were outsourced to external translators. Finally, on a question about the large number of notifications – the representative of the European Union suggested that a possible explanation for the large number of notifications from developing country Members might be explained by the fact that developed countries already had extensive legislations in place, while developing countries were still in the process of developing such legislations.

3. United States: Practices in WTO TBT Notifications⁶

14. The representative of the United States explained that all proposed and final rules by any United States federal government institution were published daily in the journal "Federal Register" (in print and electronically), which was used by the three employees of the United States enquiry point as single source for all potential WTO TBT notifications. She noted that in this journal, comments received by other Members were only published together with responses alongside a "Final Rule". Regarding technical regulations at the sub-central government level, a commercially available daily aggregation of regulations by the 50 States in a database format was filtered electronically and manually for issues relevant to international commerce.

15. It was emphasized that the United States attempted to notify all issues that had a significant impact on trade, regardless of whether or not the proposed rules were based on international standards. Since the rule making process involved a lengthy chain of events and activities, notifications were often supplemented by addenda, corrigenda and revisions over time. The Enquiry Point had produced for its own use a lengthy document detailing how to notify, how to process an addendum, corrigendum, or revision, and how to ask for an extension of a comment period. All notifications to the WTO were also transmitted to the United States SPS enquiry point, to the NAFTA partners (Canada and Mexico) and to 13 other nations with whom the United States had free trade bilateral agreements. Moreover, the United States Enquiry Point made a monthly report of all activities, including on comments, all notifications, addenda, corrigenda, revisions and requests for extension of comment periods, as well as a list of all open requests that still needed to be addressed.

⁶ Presentation by Ms Anne Meininger, Team Leader of the United States Enquiry Point and Notification Authority at the US National Institute of Standards and Technology (NIST).

16. In response to questions raised during the discussions, the representative of the United States informed the Committee that the monthly report of activities was an internal US government document that was not published. Regarding proposals discussed in the US Congress, it was noted that these posed particular challenges with regards to their notification to the WTO, as often individual proposed measures had multiple origins, and oftentimes different proposals would be changed or were frequently merged, so that it was difficult to evaluate which ones would go forward and which ones should be notified to the WTO. The US enquiry point did not translate draft measures of other Members itself; instead, it relied on translations provided by industry. As these translations were proprietary, the United States generally did not forward them to the WTO, however the United States could ask its providers for permission on a case-by-case basis, if requested to do so by other Members. The US delegation noted that written responses were prepared for all comments, which explained how these comments had been taken into account and whether or not they had led to changes in the legislation.

17. In concluding, the moderator recalled that in the report of the 5th Triennial Review of the TBT Committee, the Committee had recommended the establishment of common procedures on how and under which format to notify modifications or any other information relevant to previously notified measures. In her view, this particular point could warrant further discussions in the Committee.

B. SESSION 2 – ELECTRONIC DATABASES

18. The moderator⁷ introduced the session, which was aimed at sharing experiences on how the use of electronic tools and web-based applications can enhance transparency and access to notifications. He noted that over recent years WTO Members had taken advantage of the significant development in electronic tools and web-based applications. He said that the presentations would demonstrate how this had led to improved transparency on TBT-related measures.

1. The Chilean Technical Regulation Portal⁸

19. The representative of Chile spoke about her country's decision on the necessity to establish a portal for the public availability of technical regulations and conformity assessment procedures.⁹ She said that the accessibility of this universe of regulations, in addition to other TBT-related information, exemplified how well Chile's agencies had coordinated their knowledge and improved the availability of information through the internet. Of priority was providing a foundation of common understanding between Ministries, with an undertaking to ensure that information was current and maintained up-to-date. She said that Chile's aim was to meet transparency requirements through the portal; encourage the development of regulations; and provide an opportunity for public consultation.

20. The representative of Chile went on to note that much progress had been achieved since the establishment of the portal in 2007. In performing their coordinating role to strengthen markets through the provision of consistency in technical regulations and conformity assessment, they aimed to ensure that regulations were properly implemented under their obligations. Major challenges remained, notably the development of internal coordination, through training, to enhance awareness and skills. Improved transparency, reflective of good regulatory practice, had also been identified as a key for future advancement.

21. The representative of Korea sought clarification on how Chile decided on the nature of the regulations to be included in their portal. He used the example of one WTO Member's portal that

⁷ This session was moderated by Mr Juan Antonio Dorantes Sánchez, Mexico.

⁸ Presentation by Ms Carolina Ramírez Joignant, TBT Enquiry Point, Department of Foreign Trade at the Ministry of the Economy of Chile, Chile.

⁹ www.reglamentostecnicos.cl/.

covered all regulations by the central government. However in Chile's case the portal covered only technical regulations.

22. The representative of Chile replied that the technical regulation universe was complex, requiring the involvement of all ministries responsible for the development of technical regulations, as well as the private sector. Meetings were held to discuss each regulation, taking into consideration the broader universal context, and bearing in mind that the filtering process required joint analysis with the corresponding regulator. She said the task was not an easy one, with each analysis requiring at least two to three reviews prior to defining a technical regulation's classification. A further time-intensive updating stage follows. After notifications had been submitted to the WTO Secretariat they were tabled for official gazette publication. Depending on the quantity of regulating agencies, there were some 12 agencies in Chile; this process could take a number of years.

23. The representative of Uganda queried whether updates were undertaken by regulatory agencies and whether or not they were centralized.

24. The representative of Chile said that, with respect to data capture and updating, they were both centralized and decentralized. Their approach was that each focal point within a regulating agency, from different ministries, relied on both. Once a technical regulation was published in the official gazette, the regulating agency informed them of the necessity for inclusion in the portal. The format was authorized by the corresponding agency.

2. China's Experiences in Information Processing¹⁰

25. The representative of China described her country's experiences in information processing. She said that China had established a TBT/SPS notification database and enquiry network to facilitate information exchange and management.¹¹ Supported by 220 databases with links to relevant websites, the network provided access to notifications; technical regulations; standards; complementary assessment procedures; market access, etc. The search engine provides key word criteria options such as notification number, date or title and HS code. She informed delegations that TBT notifications had been available in Chinese and English since 2001, highlighting that the Chinese and English language versions of their database were not the same. Free public access provided risk alerts on certain laws, both domestic and international, and timely availability assisted manufacturers from product recall in importing countries.

26. The representative of China noted that statistical analysis of the website and notification database was undertaken, from which analysis reports could be generated by users - providing information on the number of notifications, notification type, notifying Member, products covered, objectives and rationale.

27. The representative of the European Union queried whether China had encountered problems on the differentiation between new notifications and addenda. For instance, some Members notified amendments to adopted texts through an addendum, rather than a new notification. The EU representative asked whether the Chinese database encountered the same problem, and if a resolution had been found.

28. The representative of China replied that their website distinguished new notifications from addenda (to old ones). She recommended the WTO TBT Information Management System as it included new notifications, addenda and corrigenda, and was easy to use. She said that in hindsight some applications would have been developed differently, for example an online subscription service.

¹⁰ Presentation by Dr. Xu Zhanju, China WTO/TBT Enquiry Point, China.

¹¹ www.tbt-sps.gov.cn/Pages/home.aspx.

3. The EU Electronic Tools: A more efficient management and better circulation of TBT notifications¹²

29. The representative of the European Union noted how the number of WTO TBT notifications had doubled in less than five years; this entailed a challenge to create an IT management application. It was now available through the multilingual European Commission Enterprise and Industry TBT website.¹³ Since inception in 2004, some 50,000 searches had been performed each year. Upon receipt of TBT notifications the automated procedure extracted relevant data. It provided added value as it was an effective timesaving tool; it served as a basis for research criteria for economic upgrading for internal services; it provided a clear overview of each notification; and, it facilitated follow-up. The public website provided users with a single screen overall view of each notification; search facilities; access to online library; monthly summaries; email subscription; useful website links; contact and comment options.

30. The representative of the European Union noted that the usefulness of the EU site was dependent upon effective communication with ministries, enterprises and external operators. The database allowed for identification of notifications requiring development or submission to the WTO. The internal warning service advised designated colleagues of incoming notifications that could require analysis. Mindful of the value of improving their web services, the EU had anticipated a new notification system in the more stable portable document format (pdf).

31. The representative of Malawi noted that the EU offered public access through a separate portal and queried whether this had resulted in a loss of relevant, timely information. He also asked whether Malawi, as a developing country, could gain detailed advice on developing its own IT system.

32. The representative of the European Union replied that the public site provided equivalent information to the management application. However, the management application provided the additional facility of an internal follow-up mechanism, as well as documents emanating from industry whose views did not necessarily represent those of the Commission.

4. The Indian experience on the Development of online TBT portal by Centre for WTO Studies¹⁴

33. The representative of India said that the Centre for WTO Studies¹⁵ had been established in 2002 with the main objectives of providing independent research and analytical support to Government; disseminating information on trade-related issues; and performing outreach and capacity building programmes. The portal serviced exporters and policy makers, enabling them to examine market access opportunities through a consolidated site. The previous incapacity to capture combined information on non-tariff measures; the imperative to look beyond tariffs; and the necessity to link WTO Member notifications with HS codes had been the driving force to create a comprehensive database capable of disseminating timely information. The process had taken six years and now hosted all WTO TBT and SPS notifications (to March 2010) with HS nomenclature. Currently their portal offered free registration to applicants, without restriction as to the number of registrations per organization.

34. In establishing the portal, the Centre encountered a number of practical problems, for instance the lack of HS codes in TBT notifications. This had a knock-on effect as an importing country's

¹² Presentation by Mr. Cyril Hanquez, European Commission.

¹³ <http://ec.europa.eu/enterprise/tbt/index.cfm?dspLang=en>.

¹⁴ Presentation by Professor Rajan Sudesh Ratna, Centre for WTO Studies, IIFT, New Delhi, India.

¹⁵ <http://wtocentre.iift.ac.in/>.

customs agency oftentimes decided upon the product classification at the time of import. This, in turn, could result in additional fees, the need for re-classification and time delays for the exporter. Additionally, he noted that there were repetitive notification submissions to the WTO for the same standard or regulation, due to addenda or modifications. This highlighted the need for raising Members awareness and WTO Secretariat technical assistance. Although language was an additional challenge, the representative of India noted that the US website was particularly helpful due to the availability of English translations. In respect of the challenges mentioned, he said that the WTO TBT data management system could contribute to addressing them.

35. The representative of Mauritius asked whether the Indian database provided information on streamlining of measures on a particular HS code or product, with regard the compilation of NTM identification and including SPS activity.

36. The representative of India replied that because database had been developed on the basis of notifications from WTO Members, how those measures could be streamlined had not been considered. For instance, if a query on an HS line per country was made, the system would list the number of notifications per HS line, per country.

37. The representative of Mexico voiced concern that although the website provided free access at present, in the future there could be restrictions or user costs.

38. The representative of India confirmed that at this point in time the portal was freely available. He anticipated that this would continue, as the purpose of developing the website had been to assist Indian exporters. Additionally, he represented an academic institution that had promoted their portal to researchers working on the areas of TBT and SPS, for whom obtaining information from one major source was relevant.

5. Information System on Notification – Indonesia's Experience¹⁶

39. The representative of Indonesia said that the National Standardization Agency of Indonesia (BSN) had, since 1995, been the appointed Enquiry Point and Notification Body accountable for the implementation of the WTO TBT Agreement. He said that BSN was responsible for handling all notifications and related enquiries and for the development and maintenance of cooperation with stakeholders. Incoming notifications were monitored and distributed amongst related technical bodies; working groups were established with regulators and industry; and coordination meetings were conducted with stakeholders for review and analysis. Outgoing notifications were likewise subject to monitoring and analysis. He noted that all draft technical regulations were analyzed and reviewed and then notified to the WTO Central Registry of Notifications (CRN).

40. The BSN database allowed for submission of online enquiries from domestic and foreign stakeholders. Recently Indonesia had established a TBT information system which included Indonesian notifications, incoming notifications from WTO Members, and a list of technical regulations.¹⁷ The online system indicated to an enquirer the timetable for the technical regulation (for instance, green for 15 days, yellow for seven, red for deadline expiry), and enabled downloading of documentation. BSN had an action plan to undertake improving the information system based on stakeholder reviews; improved promotion to stakeholders as well as traders; and the establishment of an alert system according to product and destination.

¹⁶ Presentation by Mr I. Nyoman Supriyatna, National Standardization Agency of Indonesia, BSN TBT WTO Notification and Enquiry Point, Indonesia.

¹⁷ <http://tbt.bsn.go.id/index.php/notif/usulan/pub/en>.

6. Electronic Databases in the USA WTO TBT Enquiry Point: "Notify US"¹⁸

41. The representative of the United States presented the USA Enquiry Point electronic database Notify US¹⁹, developed at the National Institute of Standards and Technology (NIST). Launched in 2005, she said it was an integration of three modules: a data processing component which captured WTO TBT notifications; an administrative component which allowed the Enquiry Point to manage registered users and enabled running of reports and statistics; and a public website user interface that facilitated registered users to access Notify US. Over the last five years some 5,000 users had registered, representing some 3,000 individual businesses and 50 WTO Members (the system had been opened for the use of all WTO TBT Enquiry Points). In 2009 alone, some 63,000 TBT information items had been delivered, a challenge that could not have been overcome with a manual system. An additional website, allowing access to all US notifications in one place, would soon be publicly available.

42. The target users for Notify US were national business and industry (as well as other domestic global trade stakeholders); these were the driving forces that had led to the development of the application. It provided the opportunity to improve federal government outreach, in collaboration with national industry. Through user customized pages, Notify US allowed for access to full texts and extensive WTO TBT-related information; provided deadlines for comment, advised on how to submit effective comments and requests for deadline extensions. The application also provided an early warning system to US exporters on changing standards and technical regulations used in the global market. Trade stakeholders were immediately informed about changing conditions; had the opportunity to comment and potentially influence the outcome; and were given assistance on global trade issues.

43. The representative of Argentina said that in their attempt to subscribe to Notify US, the system advised that it was only available to subscribers who were US citizens and individuals that were part of US-based organizations and industries. The representative requested modification to facilitate outside government agencies.

44. The representative of the United States replied that they had restricted use to US parties. However, an exception had been made for WTO Enquiry Points. Further, Notify US was debating whether the application should be made available to a wider audience.

45. The representative of Jordan asked how Notify US determined the methodology used to inform stakeholders about global changes and how exactly the action was performed.

46. The representative of the United States said that Notify US classified incoming notifications by the International Classification of Standards (ICS) code industry sectors. Users of the system identified their preferences within their online profiles. A sorting was then undertaken, matching the user with the notification through the ICS code industry sectors. An email to the user was automatically generated. She noted that many experienced users were not reliant on Notify US email notification, preferring instead to check the system daily.

¹⁸ Presentation by Ms Anne Meininger, Team Leader of the US Enquiry Point and Notification Authority, United States.

¹⁹ <https://tsapps.nist.gov/notifyus/data/index/index.cfm>.

7. The WTO TBT Information Management System²⁰

47. The representative of the WTO Secretariat presented the TBT Information Management System (IMS)²¹, an online source for searching and custom-reporting TBT-related information. Launched in 2009, it allowed for Members and interested parties to track TBT information. He informed the Committee that from 1995 to date, TBT notifications totaled some 14,000. The online interface facilitated the task of the Secretariat in the timely provision of a high volume of notifications, as well as up-to-date information on Enquiry Points. Searches for notifications could be done by document symbol, date of distribution, different products, HS codes up to the 6th digit level, and comment deadlines. Incoming notifications to the Central Registry of Notifications (CRN) were allocated any of the 45 notification key words, such as animal feed or biofuels. Custom reporting was available and allowed users to create a table formulated by different criteria that could be exported into Excel. The representative of the Secretariat also informed Members about a new feature on information related to specific trade concerns (STCs).

48. The representative of Uganda stated that they used the IMS system in their day-to-day running of their National Enquiry Point for TBT. He queried whether it was possible to make modifications for search criteria, as they were unable to retrieve all Member notifications through the notifying Member search.

49. The representative of the Secretariat replied that leaving the "Member" search option blank would enable all Members notifications to appear. He further stated that the Secretariat would raise the issue with their IT team to see whether it would be possible to incorporate a clearer search option to retrieve all Member notifications.

50. The representative of Switzerland recalled that at the Fifth Triennial Review the Committee had recommended the feasibility of utilizing the TBT IMS for comments and replies on notifications. He inquired about the feasibility of such an exercise. Moreover, as the numbers of notifications were ever-increasing, he suggested that the WTO Secretariat could inform private users of their ability to sign up to the TBT IMS, therefore negating the need for Members to distribute the notifications themselves: this would mean that the information could be channeled directly through the WTO website rather than individual Members' national websites.

51. The Secretariat responded that they were aware of the growing trend for using websites as for discussions, including with respect to notifications. Considering the mentioned recommendation from the Triennial Review, the Secretariat would consider its current scope of IT capabilities. Meanwhile, it was not possible to make online comments on individual notifications on the WTO TBT IMS.

52. The moderator concluded that the presentations had illustrated how the use of electronic tools was indeed making implementation of the TBT Agreement's transparency provisions more effective. In fact, the development as such of these tools helped Members in their own national coordination activities, between regulatory agencies and other stakeholders, including the private sector. The same electronic tools enabled the Membership to better capture statistics and identify trade interests – and provided information between Members. However, there were many challenges that needed to be overcome. For instance, the diversity of languages in which technical regulations were written could inhibit efficiency when authorities in different countries sought to consult them. Also, Internet was not yet readily available everywhere. In terms of technical assistance it was important for Members to share their experiences of IT development, be they from developed or developing countries. He suggested that a better use of resources might be for the TBT IMS to provide links to all Members' websites that had information on TBT notifications and Enquiry Points.

²⁰ Presentation by Mr. Pablo Jenkins, WTO Secretariat.

²¹ <http://tbtime.wto.org/>.

C. SESSION 3 – OPERATION OF ENQUIRY POINTS

53. The moderator²² opened the session by emphasizing the importance of well-functioning Enquiry Points as part of the TBT notification procedure. She explained that the purpose of this session was to identify the challenges which Enquiry Points were facing and to envisage solutions to overcome them.

1. Brazil: Promoting Awareness of TBT-Related Issues among Brazilian SMEs²³

54. The representative of Brazil presented the experience of the Brazilian National Institute of Metrology Standardization and Industrial Quality, referred to as INMETRO, in promoting awareness of TBT related issues among Brazilian companies, especially small and medium enterprises (SMEs) through activities on the scope of responsibility under the TBT Agreement and through an electronic tool known as "Export Alert".

55. INMETRO had been responsible for enquiry point functions concerning the TBT Agreement since 1995 while also conducting a number of other activities, including: scientific and industrial metrology; legal metrology; the authority to establish technical regulation and conformity assessment procedures; accreditation of test laboratories and certification bodies; innovation and technology information; and biology, health and biotechnology. The representative of Brazil recalled that the establishment of an enquiry point had been an important element in ensuring the transparency of information on technical regulations being applied or prepared. The principle of transparency had been extended, through Article 10 of the TBT Agreement, to govern the application of technical regulations, standards and conformity assessment procedures. These provisions had the main objective of guaranteeing that mandatory regulations were not formulated or applied by Members with the intention in creating unnecessary obstacles to trade.

56. In Brazil, INMETRO provided information to local exporters through the operation of an electronic service of enquiries about foreign technical requirements called "Export Alert". This service allowed exporters to gather the minimum information necessary to prepare an enquiry to a foreign TBT enquiry point. Information available included the classification of the product in the Harmonized System and a preliminary check of past notifications; some research was also possible by using key words. Moreover, with a simple search it was possible to find the original notification, the complete text of the proposed technical regulation, and a summary in Portuguese of the notification's content and the addendum form that contained the website address where the adopted final text could be obtained.

57. INMETRO had actively promoted this electronic facility through presentations, including around 200 appearances in 5 years at foreign trade fairs. This had helped promote an export culture in Brazil, and raise awareness of INMETRO's TBT website. Additionally, through the distribution of registration forms at foreign trade fairs, INMETRO had been able to increase the number of subscribers to "Export Alert". The development of publications and studies, done jointly with international organizations had helped raise the awareness of the TBT Agreement and "Export Alert" among exporters.

58. The representative of Brazil concluded by presenting some statistics on the number of enquiries and subscribers to "Export Alert". He explained that even with the global economic crisis, in 2010, "Export Alert" had reached 8000 subscribers.

²² This session was moderated by Meike Wolf, EU TBT Notification and Enquiry Point, Coordinator of TBT Issues, Directorate General Enterprise and Industry, European Union.

²³ Presentation by Mr. Eduardo Trajano Gadret, INMETRO, Brazil.

2. Paraguay: Operation and Challenges of the Paraguayan Enquiry Point of the TBT Agreement²⁴

59. The representative of Paraguay presented his country's National System of Information and Notification of Technical Regulations, Standards and Procedures of Conformity Assessment (SNIN). Financed through an agreement with the European Commission to promote Paraguayan exports, the system had been created in 2005 by Decree 6499. By 2006, Paraguay had been able to comply with the notification requirements of the TBT Agreement. And, in 2009, Paraguay created the National Technical Committee on Technical Barriers to Trade.

60. It was noted that SNIN was composed of ten public regulatory bodies, including: the Ministry of Industry and Trade (general coordinator), Ministry of Foreign Affairs (focal point), the Ministry of Agriculture, the National Service for Animal Health and Quality, the Ministry of Public Health, the National Food Institute. The regulatory and notification procedures in Paraguay started with the regulatory bodies developing a draft technical regulation. Regulatory projects were then forwarded from the coordination unit of the regulatory bodies to the plenary of SNIN and the National Technical Committee on Technical Barriers to Trade where it would be analysed and disseminated. Finally it would be sent to the Ministry of Foreign Affairs who would notify it to the WTO. By 2010, Paraguay had submitted to the WTO Secretariat a total 32 notifications in conformity with Article 10.6 of the TBT Agreement.

61. The process in Paraguay for receiving notifications by other WTO Members started with the coordination unit of SNIN who would analyze and disseminate the text to the relevant regulatory entities, the private sector, the plenary of SNIN, and the National Technical Committee on Technical Barriers to Trade.

62. The representative of Paraguay noted that SNIN regulatory agencies also followed a code of good practice when issuing new regulations. Various recommendations included notifying the WTO 60 days before the implementation and following international standards in the national legislation. Additionally, international consultations had been carried out to support the establishment and strategic positioning of the SNIN, to modernize the information and notification system, to train exporters, and to improve technical skills through training of the various staff Members of SNIN.

63. Some of the various difficulties and challenges faced by the Paraguay Enquiry Point were outlined. First, translation of foreign notifications was time consuming and hindered Paraguay's ability to comment on planned technical regulations. Paraguay often did not receive support from developed countries that had much greater capacity in this regard. Second, notifications often did not follow the Harmonized System to identify the products concerned, which made it difficult for industry in Paraguay to know whether they would be affected by technical regulations or standards in another country. Third, the Paraguay Enquiry Point needed to improve its infrastructure and technology. Fourth, a scarcity of human resources (the enquiry point was comprised of only one director and 4 officials) had resulted in a strategy to distribute the work to different agencies that had more capacities. Fifth, training programs at the national and international level for SNIN officials were often ineffective, as Paraguay faced major problems in strengthening capacity, such as frequent changes of public authorities. As a consequence, important human resources were lost and no long-term management could be provided.

64. Additional challenges existed: for instance with respect to the private sector's ability to comment on draft regulations. In order to address this lack of technical capacity, the representative of Paraguay suggested organizational restructuring, including adding staff for market surveillance.

²⁴ Presentation by Mr. Ricardo Herreros Usher, Director General of Foreign Trade at the Ministry of Industry and Commerce, Foreign Trade Advisor to the Secretary of State for Trade, Paraguay.

Furthermore, he stressed the need to improve the dissemination and communication of its official technical regulations. He suggested that Paraguay could publish the projects of technical regulations in the official gazette (as is the practice in other countries), a process that would be faster than the current email and mail notifications. This would increase access to the relevant information as well as increase transparency.

65. International cooperation was also important for Paraguay's Enquiry Point. Cooperation with the European Union had continued after the establishment of SNIN to secure the achievements with respect to the Enquiry Point. At the regional level, Paraguay within MERCOSUR was participating in the working subgroup on technical regulations and conformity assessment procedures in which the regulations of MERCOSUR countries were harmonized. He stressed that MERCOSUR had 294 harmonized regulations which were common to all MERCOSUR members and which all had been notified to the WTO. He concluded that despite the major challenges faced by the enquiry point in Paraguay, the SNIN was complying with all obligations of the TBT Agreement and was aiming to further improve its functioning.

3. Turkey: Challenges Faced by the Turkish Enquiry Point²⁵

66. The representative of Turkey presented the challenges faced by the Turkish Enquiry Point. In Turkey, the Secretariat of Foreign Trade served as Enquiry Point while also facilitating consultation between regulatory agencies at the national level. Since 2005, the Undersecretariat of Foreign Trade (UPF) had managed a web-based programme where users had been able to access instantly all notifications made by other WTO Members, based on enquiries from other National Enquiry Points. In addition to regulatory agencies, all relevant parties could gather information from this system.

67. Regarding the process for enquiries and notification in Turkey, the Enquiry Point received enquiries from both domestic stakeholders and from foreign Enquiry Points and foreign exporters. Simple enquiries from domestic stakeholders were addressed by the Turkish Enquiry Point while more complex enquiries were sent to the relevant foreign Enquiry Points. Enquiries from foreign Enquiry Points were classified and recorded in the web-based programme run by the UPF so that responses could be coordinated. If information was easily available a response was sent right away, otherwise help was sought from the agency responsible for the regulation. The Enquiry Point also handled notifications. All notifications published on the WTO website were complied and distributed to the relevant stakeholders in Turkey. The Enquiry Point would then coordinate and draft the comments related to concerns over the notifications.

68. Challenges that the Turkish Enquiry Point faced included: (i) National Enquiry Point's own operation, (ii) coordination of regulatory agencies, (iii) customs union requirements, (iv) effective communication with other National Enquiry Points, (v) domestic stakeholders' concerns, and (vi) the process of the TBT mechanism.

69. With regards to the Turkish Enquiry Point's own operation, the representative of Turkey noted that the actual priorities inside the Turkish Enquiry Point were not always in line with TBT priorities and other trade concerns. In addition, the Enquiry Point preferred bilateral over multilateral processes; it was dealing with a heavy workload, was facing an increasing number of notifications and was dogged with a lack of personnel and frequent changes in their positions. The representative of Turkey questioned, given these challenges, whether combining enquiry and notification functions was efficient. He noted that TBT notifications had been rising rapidly, more than tripling over the past 15 years.

²⁵ Presentation by Mr. Tarik Gencosmanoglu, Senior Trade Expert, Undersecretariate for Foreign Trade, Turkey.

70. With regards to challenges in coordinating Turkish regulatory agencies, the representative of Turkey explained that there existed a number of obstacles, for instance, agencies were not always aware or competent enough to know what and where a notification was required. High turnover among employees made establishing institutional awareness difficult. Furthermore, there was a faulty perception within the agencies that the TBT mechanism was not effective enough.

71. Turkey had also been obliged to align its technical legislation with the European Union, a complex process which created challenges for the Turkish Enquiry Point. Uncertainties arose with regards to when notifications were required; this was particularly the case when Turkey translated legislation on procedures within the EU harmonized area. The representative of Turkey asked whether Turkey should notify regulations that were already being put into force by the European Union.

72. The Turkish Enquiry Point also highlighted difficulties that existed in communicating with other countries' enquiry points. In some cases, no confirmation of the receipt of enquiries was made, making it difficult to coordinate follow-ups. Additionally, sometimes domestic enquiries were not responded to and the full text of foreign technical regulations were not made available.

73. Domestic stakeholders also faced challenges with regards to the enquiry process. Foreign texts received in languages other than WTO official languages created difficulties in examining and commenting on proposed regulations. And incomplete notification forms (i.e. lack of HS codes), created additional work for national Enquiry Points.

74. Finally, the representative of Turkey outlined the challenges his Enquiry Point faced with the TBT mechanism. He explained that an increasing number of notifications had imposed a heavy workload on the TBT Committee. As a result, there was often not enough time to discuss specific trade concerns at the Committee meetings. Additionally, fundamental problems emerged on differences between Members' interpretations of technical issues. The slow and drawn out nature of the process gave the impression to Turkish stakeholders and the Turkish Enquiry Point that the TBT mechanism was limited in its usefulness.

75. In conclusion it was suggested that: (i) all Members improve their coordination between National Enquiry Points, (ii) technical assistance become more effective and customized (i.e. differentiating between high level and technical levels), and (iii) TBT Committee meetings be extended from two to five days, as was the practice in the SPS Committee.

76. During the questions, Malawi noted that they faced similar challenges as the Turkish Enquiry Point. He stressed the importance of IT but noted that internet access was not always possible in Malawi. When disseminating notifications to stakeholders, the Malawi Enquiry Point often had to supplement them with hard copies. Additional difficulties existed due to the high illiteracy rate among certain sectors.

77. The moderator concluded that the biggest challenge highlighted in the session was that of coordination: domestic coordination between regulatory agencies; coordination within the agency that housed the Enquiry Point; and coordination with external stakeholders. Additional challenges included: the increasing number of TBT notifications, lack and variability of personnel within certain Enquiry Points, lack of IT infrastructure, language of texts, and incomplete notifications (in particular absence of HS codes). Solutions identified by Members included the use of databases to increase information availability and training of the Enquiry Point personnel. She concluded that such information exchanges should continue within the TBT Committee as well as on bilateral basis.

D. SESSION 4 – TRANSPARENCY IN STANDARD SETTING

78. The moderator²⁶ opened the session by reminding delegates of discussions that had taken place during the Fifth Triennial Review on standards. She also referred to the TBT Committee's Code of Good Practice and the Committee Decision on principles for the development of international standards guides, and recommendations.

1. Egypt's experience in Transparency in Standard Setting²⁷

79. The representative of Egypt made a presentation on the steps followed so as to ensure transparency in standard-setting in Egypt. She stressed that Egyptian standards were used to achieve increased productivity and improved product quality as well as consumer and environmental protection. Better communication and understanding of the process had led to increased competitiveness in the local and international markets.

80. The representative of Egypt explained the procedures for ensuring transparency in the establishment of a standard. These were: setting up the standards plan; an initial study; circulation of the draft standard for comment; notification; approval of the Egyptian Organization for Standardization (EOS) Council; and, finally, the numbering, publishing and circulation of the standard. The standards plan looked at the actual needs of stakeholders, this included the private sector, academics, government departments and consumers. The initial study was undertaken by a technical committee which then circulated the draft standard to relevant bodies for review and comments within 60 days. Egyptian standards were then published in the EOS magazine and on the EOS website.²⁸ The representative of Egypt stressed that the involvement of all stakeholders in the standard setting process was essential to transparency in the standard-setting process.

81. In response to a question from the representative of Kenya on how the technical committees ensured that their meetings were well attended by the private sector, the representative of Egypt explained that consumer trust was very important to the private sector industry in Egypt and therefore the consultation meetings were well attended by the chambers of commerce who represented the private sector companies.

2. WTO criteria in European standard setting²⁹

82. The representative of the European Union made a presentation on transparency in standard setting within the European Union. He gave a brief introduction on CEN³⁰ and CENELEC³¹, the bodies responsible for the development of standards in all sectors, excluding telecommunications, within the European Union. He said that these non-profit associations were made up of 31 National Standard Bodies or national committees – 27 were EU member States, 3 from EFTA and one from Croatia. He stressed that CEN and CENELEC were the only European Standards Organisations (ESOs) recognized by EU institutions (together with ETSI – European Telecoms Standards Institute) as per Directive 98/34.

83. The representative of the European Union explained that under the European Standards system, all national members were obliged to adopt a European Standard as a national standard and to

²⁶ This session was moderated by Michelle Cooper, First Secretary at the Permanent Mission of Canada to the WTO.

²⁷ Ms Heba Hammad from the Egyptian Organization for Standardization (EOS).

²⁸ www.eos.org.eg.

²⁹ Georges Malcorps, European Commission [can anything else be said, title?].

³⁰ European Committee for Standardization.

³¹ European Committee for Electrotechnical Standardization.

withdraw any conflicting pre-existing standard. There were also 19 affiliates and various cooperation agreements globally. He outlined the principles of the organizations: consensus; openness and transparency; national commitment (even if a member had voted against the European Standard at the draft stage); technical coherence at the national and European level; correct integration with other international work (with 70 per cent of CENELEC standards identical to IEC standards); market relevance and, finally, the WTO Code of Good Practice. To ensure transparency the programme of work was available on the CEN and CENELEC websites. Consensus building took place in the technical bodies with national delegations designated by the national members of CEN. These Committees were then mirrored at national levels so that stakeholders could also participate. During this process, the draft standard was distributed to CEN national members so that public enquiries could be carried out. In a number of countries, the draft standards could be accessed and reviewed on line. The standard, when finalized, was published on the CEN website.³²

84. The representative of the European Union presented the example of a recent study relevant to SMEs which highlighted areas where improvements in transparency were necessary. Fifty eight recommendations had been made laying down four main objectives: to increase awareness about standards and the related benefits; to improve access to standards; to facilitate the use of standards, and to increase participation in standardization. In order to achieve these objectives, an SME helpdesk with national contact points had been established; the abstract of the standards and draft were made available on the website; an SME Standardization Toolkit and a guide had been prepared to help standard writers take into account the needs of SMEs. Another initiative had been the establishment of a working group to review the membership criteria of CEN and CENELEC so as to ensure that principles were fully respected and implemented by all members; these criteria were wider than those contained the WTO TBT Code of Good Practice. Moreover, members would be subject to peer assessment. In conclusion, it was noted that while the EU system was transparent, there was always room for improvement, especially with regard to how to facilitate access and participation in the European standardization process.

85. In response to questions from Pakistan and Saudi Arabia on whether the standards were voluntary or mandatory for exporters of products into the European Union, the speaker confirmed that they remained voluntary as standards were considered voluntary by nature. In response to a question from Saudi Arabia on what was meant by the on-going work being broader than the WTO Agreements, the representative of the European Union explained that while decisions had yet to be taken, there were additional criteria envisaged such as peer assessment, benchmarking and exchange of best practices.

86. In response to a question from the representative of Kenya on whether standards were referred to in EU legislation and if so, whether they were available free of charge, the representative of the European Union explained that most standards used within the framework of legislation were used within the so called "new approach" regulatory technique which meant the standards remained voluntary. He confirmed that most of the CEN national standard bodies made standards accessible free of charge during the public enquiry period. Concerning a question on how proposed standards were prioritized, he explained that as the standards were proposed, developed and approved by the stakeholders, and then submitted for consultations, it wasn't necessary to establish priorities.

87. The moderator commented on how the presentation highlighted that transparency did not always mean there was awareness amongst stakeholders and how SMEs in particular would welcome the support provided.

³² <http://www.cen.eu>.

3. Standards Development Procedures: the Fijian Experience³³

88. The representative of Fiji made a presentation on how the Fiji Trade Standards and Quality Control Office at the Department of Fair Trading and Consumer Affairs developed standards. She said that this was a five stage process. The first stage entailed an assessment of the new project; stage two decided whether a relevant international standard would be used or whether a new standard would be developed; in stage three public comments were solicited and reviewed; stage four was the adoption of the standard; and, finally, stage five was the introduction of the standard through the Official Gazette and the website.³⁴

89. The representative of Fiji explained that during the first stage, criteria were used to determine whether to proceed with the development of a standard. These assessments were made by experts from areas such as consumer protection, professional engineers, importers, manufacturers and representatives of the food processing industries so as to ensure that all relevant stakeholders were involved in the initial decision making stages of standards development. National benefits such as quality of life, health and safety, trade, harmonization with WTO Agreements were all taken into account. The importance of cost and benefit analysis when developing a standard or mandatory technical regulations were also an important factor when considering the development of a standard.

90. The representative of Fiji stressed the importance of giving all stakeholders and the general public enough time to comment. Fiji did this by ensuring copies of draft standards were available for stakeholder viewing and the proposal for the standard was advertised through print and broadcast media; a two month comment period was provided despite these steps, informing stakeholders was one of the biggest challenges faced by Fiji. She gave the example of a standard on the reduction of sulphur content in fuel which had taken over six years to implement as the sub-committee, which was composed of experts from fuel importers and other stakeholders, was mainly attended by consumers rather than importers. This led to importers saying they had not been informed when the standard appeared in the Gazette. She also stressed the importance of not re-inventing the wheel; in Fiji's case this meant checking with standards in Australia and New Zealand for standards that were already available and made the necessary modifications to suit Fiji's situation. The representative of Fiji said that the benefit of adopting international standards were apparent as these had facilitated trade and they generally reflected the best experience of industry and regulations. Moreover, this underpinned Fiji's obligations under the TBT and SPS Agreements and facilitated participation in international certification schemes.

4. Transparency in Standard-setting: The New Zealand Experience³⁵

91. The representative of New Zealand made a presentation on transparency within the Standards New Zealand governance structure, as well as transparency in standards development. He began by emphasizing the importance of stakeholder interaction in standard settings. Standards New Zealand, he said, used the Four "Cs" – Clients (those who sponsored the standard), Committee (the governmental body), Customers (who bought the standards) and finally Consumers (who benefited from the standard). New Zealand operated under the Standards Act 1988³⁶ which established the Standards Council as a non-profit entity. The Standards Council was the governing body and Standards New Zealand was the trading arm that actually produced the standards. The Standards Act

³³ Ms Seema Sharma, Acting Assistant Director at the Department of Fair Trading & Consumer Affairs of the Ministry of Industry, Tourism, Trade & Communication.

³⁴ www.fiji.gov.fj.

³⁵ Mr. Craig Radford, international trade and standards specialist responsible for the New Zealand TBT Enquiry Point.

³⁶ http://www.legislation.govt.nz/act/public/1988/0005/latest/DLM128139.html?search=ts_act_Standards_resel&p=1.

required the Council to invite public comment, consult and co-operate with all interest parties, and ensure that the Council's activities were supported by stakeholders. It also required New Zealand's participation in the preparation of international standards and other specifications, and in their promulgation. The Ministry of Commerce oversaw the work of Standards New Zealand and the Standards Council through an annual *Statement of Intent*³⁷. The representative of New Zealand explained that New Zealand followed the ISO/IEC Guide 59: Clause 6.5, thereby ensuring transparency through an appropriate range of organizations being invited to submit nominations for seats on that Committee. When the standard was published, a list of those participating nominating organisations was printed inside the front cover.

92. Regarding transparency in the development process, in line with the TBT Agreement, Standards New Zealand initially looked at adopting international standards as a solution to a standardisation need. Where that was not be an appropriate solution, standards jointly developed with Australia were looked at. If producing a joint standard was not suitable, then a national standard was created as a means of meeting the national need. On international standards, he said New Zealand strongly supported and promoted the work of ISO and IEC and sought the views of key stakeholders on all new proposals. Regarding soliciting public comment, the representative of New Zealand explained that this was done through compiling an extensive list of interested parties who were sent the draft standard. For those organizations who were not part of the Committee, a copy was also sent to them for comments, and it was announced in the monthly electronic magazine, Touchstone³⁸, with a 60 day comment period. As the draft was also emailed to those who registered for updates through the "keep me up to date" service, one of the challenges the Committee faced was the huge volume of comments received.

93. The representative of New Zealand spoke about four other aspects of transparency in the development process. These were: the comment clause, whereby many standards had clauses with a side-bar containing additional comments to assist with interpretation of the clause; the SPEC (Standards Project Extranet) – an IT platform where all committee members could view documents, discussion thread and information; the Official Information Act 1982 which required that all information gathered during the development of the standard be made available to anyone who requested it; and finally, ISO 9000 certification which ensured compliance with international quality standards which included internal project audits to ensure quality requirements – of which transparency was one - were met. In summing up, the representative of New Zealand said that his country had a strong transparency focus throughout the standards development process, he also emphasized the significant use of electronic communication as a tool for transparency.

5. How ISO and IEC involve public and private sectors to ensure transparency in setting international standards³⁹

94. The representative of IEC (speaking also on behalf of the ISO) highlighted the social and economic benefits of ISO and IEC international standards to industry, regulators and consumers. They inspired trust and helped industry to comply with regulations. Also, standards such as those developed by the ISO and IEC, facilitated the elimination of unnecessary barriers to trade. The development of an international standards, he said, represented a collective effort on a voluntary basis by committees comprised of experts from industry, business and technical sectors that had identified the need for a standard. He stressed that, unlike in other types of standard setting bodies, all stakeholders could participate in the process. More than 25,000 international standards had been produced by ISO and

³⁷ <http://www.standards.co.nz/NR/rdonlyres/4B0BA081-2FA8-4AC5-A26A-8DCEAE6B150B/0/StandardsCouncil20102013StatementofIntent.pdf>.

³⁸ www.standards.co.nz/touchstone/Issue+20/default.htm.

³⁹ Jonathan Buck, Director at IEC responsible for the organization's outreach to industry and government leaders.

IEC with 100,000 experts worldwide participating in their development. The representative of the IEC explained that to ensure effective representation, experts in technical committees met to discuss and debate the content of a standard until they reached a consensus view. It was then published as a draft international standard and circulated to all ISO or IEC members for comment. Comments received were then compiled and discussed until a final draft was agreed upon for voting. Once approved, the document was published as an international standard.

95. The representative described the National Standard Bodies (NSBs) of ISO and National Committees (NCs) of IEC as the key bodies for collecting national views on international standards. They identified, supported and funded the participation of national delegates, conducted public enquiries, published and distributed standards and promoted their use. Their well-established networks throughout all areas of the economy and professional bodies meant they could easily reach stakeholders. In many countries "mirror" Committees of one or several ISO or IEC technical committees, tailored to national needs were created on a particular technology undergoing standardization. Considerable efforts were being made by ISO and the IEC to encourage participation in the standard-setting processes, particularly amongst SMEs in developing and developed countries. Both organizations, he said, offered programmes and platforms that encouraged participation in the standard setting processes.⁴⁰

96. The representative of the IEC recalled that the Fifth Triennial Review had underscored the importance of basing technical regulations and conformity assessment procedures on relevant international standards, guides or recommendations in line with Articles 2.4 and 5.4 of the TBT Agreement.⁴¹ He reiterated the unique added-value of international standards and ISO's and IEC's long experience in international consensus building, and their transparent and highly inclusive nature of their development processes. In his view, the ISO and IEC business models ensured that international standards were developed in a neutral environment, thereby ensuring global reach and relevance and this made both the ISO and IEC brands among the most widely recognized and respected brands in the world.

97. In response to a question from the representative of Benin on the non-standard sizes and shapes of plugs and sockets internationally, the representative of IEC explained that attempts to develop an international standard went back 75 years without success, as the costs of worldwide installation of one standard plug and socket were too prohibitive. He said this particular area acted as a reminder not to make the same error when applying smart grid technologies today.

98. The representative of IEC also drew the Committee's attention, with respect to a question raised by the delegation of Kenya about publicly available drafts. In this regard he drew the attention of the Committee to several national on-line registration systems being implemented in many countries, whereby registered users were allowed access a draft standard so long as they agreed to limit the use of the draft.

99. In response to a question from the representative of Switzerland on cooperation between ASTM and ISO, the representative of ASTM explained that while there was no formal partnering between the two organizations, many ASTM standards formed the basis of ISO work. This had led to concerns as ASTM was not always getting brand recognition. In the future, he said, he hoped that there would be a programme that combined all globally relevant standards.

100. The representative of ISO confirmed that discussions were on-going between ASTM and ISO on how work could be better coordinated between the two organizations.

⁴⁰ ISO's DEVCO and the IEC Affiliate Country Programme.

⁴¹ G/TBT/26, paragraphs 24, 25 and 27.

6. Embracing Transparency and WTO Principles for International Standardization - ASTM International's Global Approach to Standards Development⁴²

101. The representative of ASTM said that ASTM was established in 1898; it currently had 34,000 members in 135 countries. Each member was an individual technical expert with a voting right in the standards development process. 12,160 standards had been published with an average of 3,200 standards actions per year which included new standards, revisions, re-approvals, and withdrawals of standards. The representative of ASTM highlighted the diversity of the membership, noting that it included heads of the German, Brazilian and Japanese standards organizations.

102. The representative of ASTM said that his organization had invested heavily in technology so as to help boost participation in all standard setting environments. To do this, ASTM had established the "International Standards Tracker"⁴³ – an on-line notification service which provided information on newly approved standards and actions on existing standards free of charge. Also, to enhance transparency, the ASTM magazine was published in English, Chinese, Japanese and Spanish and standards were translated into multiple languages either by ASTM or through translation agreements with interested countries. Employing multilingual staff gave the opportunity to address concerns and comments in other languages other than English. He informed delegations of a successful MoU programme⁴⁴ which provided, free of charge, the complete collection of ASTM standards which could be used as models for national standards or technical regulations. The only obligation on the partner was to report yearly on the use of the ASTM standard. In ten years, MoUs with 69 emerging economies had been signed. These countries also benefited from technical assistance from ASTM experts in building awareness and knowledge in applying standards. Another way ASTM had enhanced transparency, the representative said, was through the use of virtual meetings. In 2009, 933 virtual meetings had taken place which greatly accelerated standards work, engaged more participants and also enabled 350 MoU beneficiaries to participate. ASTM also had a significant digital library with all 12,000 ASTM standards including abstracts available to view prior to purchase.

103. The representative of ASTM assured the Committee that ASTM was committed to comply fully with WTO principles such as transparency, openness and the considerations of developing countries which could be seen through the use of 5,200 citations of ASTM standards in 100 countries worldwide.

104. In response to a question from the representative of Benin on the non-standard sizes and shapes of plugs and sockets internationally, the representative of ISO explained that attempts to develop an international standard went back 75 years without success, as the costs of worldwide installation of one standard plug and socket were too prohibitive. He said this particular area acted as a reminder not to make the same error when applying smart grid technologies today.

105. The representative of ISO also drew the Committee's attention, with respect to a question raised by the delegation of Kenya about publicly available drafts. In this regard he drew the attention of the Committee to the ISO on-line registration system being implemented in many countries, whereby registered users were allowed access a draft standard so long as they agreed to limit the use of the draft.

106. The representative of ASTM explained that they provided "read only" copies of standards during the development and review process so that all concerned could review the draft.

⁴² Mr. James A. Thomas, President of ASTM International.

⁴³ www.astm.org/TRACKER/filtrexx40.cgi?index.frm.

⁴⁴ www.astm.org/ABOUT/images/ASTM_AR09.pdf.

107. The representative of New Zealand confirmed that all public comment drafts were free for download from their website. As there were intellectual property concerns in cases where draft standard was adopted as an international standard, a registration system similar to that of ISO was used.

108. In response to a question from the representative of Switzerland on cooperation between ASTM and ISO, the representative of ASTM explained that while there was no formal partnering between the two organizations, many ASTM standards formed the basis of ISO work. This had led to concerns as ASTM was not always getting brand recognition. In the future, he said, he hoped that there would be a programme that combined all globally relevant standards.

109. The representative of ISO confirmed that discussions were on-going between ASTM and ISO on how work could be better coordinated between the two organizations.

110. The moderator concluded that the session had shown the many challenges faced in ensuring stakeholder awareness and participation in the development of standards, in particular for SMEs. The use of electronic tools and websites was highlighted in a number of presentations as a way of helping to meet this challenge and to reduce the length of time the process took, but there were financial and technical barriers to consider. This, she said, was an area where a lot more discussion could take place. She concluded that the session had shown that for the credibility of standards, transparency throughout the standard setting process was important.

ANNEX 2
REPORT BY THE CHAIRMAN ON THE SIXTH SPECIAL MEETING ON PROCEDURES
FOR INFORMATION EXCHANGE UNDER THE TBT AGREEMENT

Statement by the Chairman

Mr. Amit Yadav (India)

Regular Meeting of the TBT Committee of 23-24 June 2010

1. Pursuant to its 1995 decision to convene, on a biennial basis, "regular meetings of persons responsible for information exchange, including persons responsible for enquiry points and notifications", the TBT Committee held its Sixth Special Meeting on Procedures for Information Exchange on 22 June 2010. Members, Observers and relevant bodies involved in the development of standards were invited to participate.

2. The Special Meeting provided Members with an opportunity to discuss, at a technical level, issues relating to information exchange and to review the functioning of notification procedures and the operation of enquiry points. Discussions were held in four panel sessions dealing with (i) good practices in notification; (ii) electronic databases; (iii) operation of enquiry points; and (iv) transparency in standard-setting. The final programme for the Special Meeting is contained in document G/TBT/GEN/100.

3. In the **First Session**¹ Members discussed Good Practices in Notification. The Panel examined, *inter alia*, ways to facilitate internal coordination for the effective implementation of the TBT Agreement's notifications obligations. For instance, we heard of how Canada uses "triage" and RIAs in the context of the implementation of notification obligations. We also heard about procedures the European Union has put in place, for instance: to make available draft texts (of notified measures); to provide unofficial translations; to provide comprehensive descriptions of notified texts as well as links to "earlier" acts and impact assessments. The United States spoke about their practices and procedures for notifications, both the central and sub-central government levels. It was emphasized that the US process is a notice and comment procedure. The use of the US Federal Register was described, as well as the "State Net", an on-line service for regulatory reporting. In the discussion, participants brought up, *inter alia*, issues related to: "follow-up" on notifications, the notification of acts or bills passed by legislative bodies and the use of RIAs.

4. In the **Second Session**² Members discussed various electronic databases. This was a popular session: several experiences were heard, including from Chile, China, the European Union, India, Indonesia and the United States. It is clear that with the increasing number of notifications, the importance of good management of information is growing – this was a point emphasized by the European Union. Both Chile and Indonesia stressed that for the creation of the database (which involved making an inventory of the "universe" of regulations), it was important to have good coordination with involved agencies. In fact, this process of coordination and cooperation was in itself useful – and it would appear that Members involved in this had enhanced their implementation of the TBT Agreement's transparency provisions. China provided some interesting information from their own database (a combined TBT and SPS database): for instance, in 2009, the largest proportion of notifications were on food products and the most notified "objective" dealt with the protection of human safety, quality and the environment. India stressed some of the challenges, including that several notifications (by several Members) may affect the same product: for the exporters, therefore,

¹ Chaired by Ms Xueyan GUO (China).

² Chaired by Mr. Juan Antonio Dorantes Sánchez (Mexico).

it would be useful to search by product – in this regard, the lack of (and/or inconsistent use of) HS nomenclature in notifications is a problem. We also heard about the "Notify US" and the WTO TBT IMS application was also introduced. In the discussion, a number of other challenges were identified, such as: the fact that languages continue to pose a problem for many Members; that technical assistance may be needed to assist with the setting up and use of databases; and that IT could still pose obstacles in some developing Members countries. It was also proposed that the TBT IMS application could include a page with links to various Members' existing databases on TBT notifications.

5. In the **Third Session**³ Members described the challenges associated with the operation and functioning of enquiry points. We heard an update from Brazil on INMETRO and the establishment of *Alerta Exportador!*. Paraguay described the functioning of their Enquiry Point: this was a good example of how a reorganization had reinforced the implementation of the TBT Agreement's transparency provisions. Several challenges were raised in the presentations and discussions. Turkey noted that the increasing number of notifications was putting more burden on enquiry points. Moreover, escalating bilateral and plurilateral negotiations on TBT issues, the lack of personnel and frequent changes thereof added to the strain. In the discussion, it was stressed that enquiry points need to find better ways of involving the private sector, and in particular the export sector. In this regard it was important to obtain a balanced and varied input from stakeholders.

6. Finally, in the **Fourth Session**⁴ Members considered transparency in the development of standards. Several issues were raised in this Session: I should perhaps say first and foremost that *all* agree on the fundamental importance of transparency in the development of standards. However, transparency, even when assured will not always translate to increased awareness – Members need to work on increasing awareness of the importance of standardizing activities – this is important for the credibility of standards: transparency has to come first; if you don't have transparency, credibility will not follow. It is clear from this session that standards-setting bodies are aware of this. For instance, we heard of efforts in the European Union to involve SMEs. Also, Egypt and Fiji spoke about how transparency is ensured in the development process in their countries; Fiji, in this regard, stressed the importance they put on the need to assess the benefits of standards – and that standards should only be developed if benefits outweigh costs. We also heard from ISO/IEC and ASTM International on their mechanisms aimed at increasing awareness and participation in standardization activities. From comments made by the various speakers, it became clear that the activity of stakeholders in the development process of standards varies: while some Members have many comments on standards under development (New Zealand), others expressed concern of about the need for a more balanced and/or varying stakeholder involvement in the comment process (Fiji). Also in the discussion, Pakistan emphasized the need for Members to participate in the development of standards at the international level.

7. Let me conclude by noting that the discussions at the Special Meeting held on 22 June were rich and important. In fact, participation was substantial: it included 96 capital-based officials from developing countries sponsored by the WTO through the Global Trust Fund. I can only encourage a continued exchange of information between Members on the implementation of the TBT Agreement's obligations. In fact, in the Committee context, this technical discussion should help us move forward on the numerous recommendations we have before us from our triennial reviews.

8. Before turning continuing with our agenda, let me mention that a summary report on the Sixth Special Meeting on Procedures for Information Exchange will be prepared by the Secretariat. I also note that the presentations used during this event will be put on the WTO TBT Webpage.

³ Chaired by Ms Meike Wolf (European Union).

⁴ Chaired by Mrs Michelle Cooper (Canada).