

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Technical Barriers to Trade

DRAFT MINUTES OF THE MEETING HELD ON 26 FEBRUARY 1985

Chairman: Dr. B.N. Singh

1. The Committee on Technical Barriers to Trade held its eighteenth meeting on 26 February 1985.

2. The agenda of the meeting was as follows:

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A. Election of Officers for 1985

3. The Committee elected Dr. B.N. Singh (India), Chairman and Mr. A.D. Bryce (Canada), Vice-Chairman, for 1985.

B. Statements on Implementation and Administration of the Agreement

4. The representative of the United States presented a communication by his delegation, circulated in document TBT/Spec./13, which contained a "Working Draft Text Protocol on the Approval of Telecommunications Terminal Equipment

(TTE) under Article 5 of the Agreement on Technical Barriers to Trade." His authorities had been seeking a multilateral telecommunications "interconnect" agreement with interested countries over the past several years. In the discussions held on the draft agreement with a number of countries, parties to the Agreement on Technical Barriers to Trade, a consensus had been reached that the agreement should take the form of a protocol under Article 5 of the Agreement on Technical Barriers to Trade. The document placed before the Committee in its draft form was open to comments from interested parties.

5. The "interconnect market" covered products which could be purchased or leased by individuals and enterprises and attached to public telephone networks. Examples of interconnect equipment in the United States were telephone sets, key systems, private branch exchanges, modems, facsimile equipment, intercom systems, dictation systems and mobile radio equipment. The scope of the interconnect market varied among countries. For instance, all telephone sets were part of the interconnect market in the United States, while in some countries the first telephone set per household or enterprise was leased from the network carrier and in other countries all telephones were obtained from the network carrier.

6. Every country with an interconnect market regulated the type of products which could be sold in that market in order to protect the network from harm. In the United States, the Federal Communications Commission (FCC) was the regulatory body. In recent years, the FCC had made it easy to introduce telecommunications products in the interconnect market. By 1980, over 900 companies, domestic and foreign, were competing with the network carriers in supplying terminal equipment for the United States market.

7. In addition to allowing a multitude of telecommunications products to be purchased as interconnect equipment, the FCC had established open and non-discriminatory approval procedures for such products. First, it accepted test data from laboratories regardless of the country of origin as long as the data appeared reliable. This acceptance of foreign test data benefited foreign producers because it saved them the time and expense of having to re-test their products in the United States. Second, the FCC issued product registration authorizing sale of all interconnect products of a particular type from the company seeking type approval. He also stated that the movement to liberalize the interconnect market had begun to spread to other countries. His delegation believed that a mutual opening of the approvals process would benefit all the parties to the Agreement.

8. In the view of his delegation, acceptance of the working draft text protocol submitted to the Committee by interested parties as a protocol under Article 5 of the Agreement on Technical Barriers to Trade would constitute an important step in moving from the general principles of the Agreement to a practical application of these principles to certain of the problems encountered in everyday trade in an important sector.

9. As a preliminary reaction to the statement by the representative of the United States, the representative of Brazil, joined by the representatives of Finland (speaking for the Nordic countries) and India, expressed concern that the working draft text protocol which dealt with type approval and acceptance of test data for a particular category of products was presented under the agenda item on statements on implementation and administration of the Agreement rather than on testing and inspection.

10. In response to the representative of Argentina who asked for the identification of those interested countries who had agreed on the working draft text protocol, the representative of the United States said that all those countries that had participated in the discussions of the working draft text protocol were parties to the Agreement. For the time being they had reached a consensus that any such future agreements would best be in the form of a protocol under Article 5 of the Agreement on Technical Barriers to Trade. His delegation had introduced the document to the Committee on the present occasion in order to inform other parties of the draft text and to seek their observations on it.

11. The representative of Finland, speaking on behalf of the Nordic countries, said that his delegation reserved its position as to the coverage of the working draft text under the Agreement on Technical Barriers to Trade since the draft also addressed issues in the field of public procurement. In reply, the representative of the United States said that the working draft protocol to Article 5 presented to the Committee could not be associated with an agreement on public procurement as references to public networks in the draft text only appeared in connection with purchases by end-users of certain types of equipment.

12. The Representative of the European Economic Community supported the statement made by the delegation of the United States that an agreement of this kind could be associated with the Agreement, but as other delegations he felt that the subject matter of the draft text was more directly related to the agenda item on testing and inspection. He wondered what was the intention of the United States delegation in tabling this text. Was it to serve as a model for future agreements on issues such as testing and inspection? His delegation considered that the text could have illustrative value, but did not regard it as a negotiating document.

13. The representative of Japan said that implementing manuals for use by foreign testing organizations had been drawn up with respect to the following seven out of eighteen relevant laws: the Ship Safety Law, the Road Vehicles Act, the Public Telecommunication Law, the Radio Law, the Industrial Safety and Health Law, the Fire Service Law and the Law concerning Safety Assurance and Quality Improvement of Food. Since the previous meeting his authorities had designated two further foreign testing organizations: one organization in the Federal Republic of Germany under the Consumer Product Safety Law and one in the United States under the Food Sanitation Law.

14. The representative of Brazil drew attention to two booklets published by the National Institute of Metrology, Standardization and Industrial Quality (INMETRO). The first of these was entitled INMETRO - Institutional View. The second concerned the National System of Metrology Standardization and Industrial Quality (SINMETRO).

15. The representative of Norway reported on the establishment of the Norwegian Testing Laboratory Accreditation System (NOLA) by the Norwegian Standards Association. The system was based on the relevant ISO-Guides, the results of the work of the International Laboratory Accreditation Conference (ILAC), the British Standard BS 6460 Part 1 and the National British Testing Laboratory Accreditation System (NATLAS). Membership in NOLA was voluntary and was open to any Norwegian or foreign laboratory conducting objective

tests, whether it was independent or was run as part of a larger organization such as a government department or other public body, a consultancy, a university or technical college or an industrial concern. The accreditation by NOLA was based on scrutiny of the documentation of the laboratory including its quality manual and calibration system, an on-the-spot initial assessment of the laboratory, and subsequent surveillance including semi-annual reassessments. Suitably qualified assessors were drawn from domestic or foreign academic institutions, governmental institutions, private laboratories and commercial and industrial organizations. Laboratories accredited by NOLA would fulfill the highest international requirements. NOLA was recognized by the Norwegian authorities.

16. The representative of Romania informed the Committee of a law adopted by his authorities in December 1984 which regulated specification and standardization activities and aimed at the improvement of product quality and performance. The coordination of the standardization activities in the framework of this law was the responsibility of the Central Council, of which representatives of various industrial and scientific research institutions were members. Product quality control including certification and testing continued to be conducted under the Law for Product Quality.

17. The representative of Canada said that the Canadian Standards Council, which served as Canadian enquiry point, was issuing since mid-October a bi-weekly newsletter entitled INFORMATEC which contained details of TBT notifications received by Canada as well as other standards-related information on topics of interest to manufacturers and exporters. In addition, the Canadian Standards Council established a telephone hotline which gave information on a weekly basis on the contents of the notifications by other Parties.

18. The representative of India said that his country had made twenty-three notifications on proposed technical regulations over the past year. The enquiry point had attended to some forty-seven enquiries for documentation and further information relating to his country's notifications. As had previously been announced, India had organized a training programme on standardization and quality control for officials from a number of developing countries in January 1985.

19. The Committee took note of statements made.

C. Composition of the Committee

20. The representative of the United States recalled that at its last meeting, the Committee had invited the representatives of the signatories that had not ratified the Agreement to report on the official reactions of their governments to the secretariat note on the legal status of signatories contained in document TBT/W/74/Rev. 1 (TBT/M/17, paragraph 17). He said that this note suggested in substance that such signatories were not bound by any legal obligations under the Agreement which in turn signified that Parties to the Agreement could not be certain of benefiting of any rights in so far as these countries were concerned. He proposed that the Committee endorse the findings on the legal status of signatories in the note by the secretariat, in particular those in paragraph 6 of that note.

21. The representative of Argentina said that his authorities had been giving consideration to the matter of ratification on an urgent basis. Meanwhile his country had fulfilled certain requirements of the Agreement including the establishment of an enquiry point and the communication of information on the national legislation relevant to the implementation of the Agreement. With respect to the note by the secretariat, he said that certain points relating to administrative arrangements needed further explanation. The note should have made reference also to the relationship between MTN Agreements and the General Agreement, as formulated in the CONTRACTING PARTIES' decision of 28 November 1979 (BISD 26S/202). He emphasized that this aspect of the question would be essential in determining whether Parties to a specific Agreement could take decisions on the legal status of signatories or whether such action should be taken by the CONTRACTING PARTIES.

22. The representative of Greece said that the ratification procedures in his country were well under way: the Ministry of Economy was proceeding with the preparations of a draft text of the relevant law which would shortly be submitted to Parliament. He expected the procedure of ratification to be completed before the end of the current year.

23. The representative of the European Economic Community said that the difficulties that some signatories had in becoming full Parties were not confined to the Agreement on Technical Barriers to Trade. He pointed to the occurrence of the problem in some of the other MTN Committees and Councils and suggested that the question could be appropriately examined as part of a larger exercise on the question of obstacles to acceptance of the MTN Agreements and Arrangements. It was therefore premature for the Committee at this stage to adopt a legal position by endorsing the findings in the secretariat note on the legal status of signatories. This view was shared by the representatives of Greece, India and Japan. In this respect the representative of Chile said that the fact that some contracting parties were parties to the MTN Agreements and Arrangements and some were not, created questions relating to the operation of the GATT system that should be addressed in a broader context. The representative of India added that the Committee had only urged the countries concerned to give due consideration to the matter, and that adopting too legalistic approach would not help encouraging new countries to join the Agreement.

24. The representative of Canada said that the situation of countries that had signed but not ratified the Agreement had led to the creation of a provisional form of acceptance that was not provided for in the Agreement. The note by the secretariat constituted a fair assessment of the legal status of these signatories and it would remain so whether the Committee endorsed it or not. He also said that administrative arrangements which allowed these signatories to participate in the work of the Committee should be continued. However, he assumed that the signatories concerned would use due discretion in their use of these informal arrangements. The representative of Brazil recalled that TBT/W/74/Rev.1 had been prepared only at the request of some delegations. There was no provision in the Agreement obliging signatories to ratify the Agreement by a certain date. The Committee should be flexible in this regard, and his delegation would not agree to endorsing the findings in the secretariat note.

25. The representative of the European Economic Community suggested that the Committee should discuss any difficulties that certain signatories might have had in adhering fully to the Agreement at its Special Meeting to be held in response to the action by the CONTRACTING PARTIES at its November 1984 Session (L/5756). Observations made and conclusions reached on the subject would be reported to the Working Group on MTN Agreements and Arrangements. The Working Group could, in turn, try to identify common elements explaining the incidence of non-ratification of certain MTN Agreements and Arrangements by a number of signatories.

26. Following the suggestion made by the representative of Finland (speaking for the Nordic countries), the Committee agreed to take up the matter in the Special Meeting to be held pursuant to the action taken by the CONTRACTING PARTIES in November 1984 taking into account, inter alia, document TBT/W/74/Rev.1, and to revert to this item at its next meeting.

D. Exception granted to India under Article 12.8

27. The Chairman drew attention to a communication by India circulated in document TBT/Spec/11 concerning the exception granted to it under Article 12.8. He invited the Committee first to address India's request for an extension by one more year of the exception from the obligations of Article 7.2 in respect of the Indian Standards Institution Certification Marks Act.

28. The representative of India stated that his authorities had prepared the draft legislation, covering the proposed amendments to the Indian Standards Institution Certification Marks Act, on the basis of consultations held with various agencies, Ministries and Departments of the Government. Steps would be taken to expedite the necessary constitutional procedures so as to enable the enactment of the amendments by the Parliament within the period of extension requested by his delegation.

29. The representative of the United States supported by the representatives of Canada and Japan, said that recourse by a Party to the provisions of Article 12.8 was an important matter. The Committee should allow a Party to depart from its obligations under the Agreement only under most compelling circumstances. Hence any request for an extension of a time-limited exception deserved close attention. However, his delegation did not oppose an extension of the exception requested by the Government of India because the Committee was given to understand that the Indian authorities would have brought their legislation into conformity with the Agreement within the time limit originally granted had it not been for unforeseen developments.

30. In conclusion, the Committee agreed to grant India a one-year extension of the exception under Article 12.8 from the obligations of Article 7.2 in respect of the Indian Standards Institution Certification Marks Act.

31. After having invited the Committee to consider the request for the renewal of the exception relating to AGMARK, the Chairman concluded that the review of the operation of the two-year exception of AGMARK from the obligations of Article 7.2 had not revealed any trade problems for other signatories. In accordance with the terms of the Understanding which had been reached between India and the Parties to the Agreement, the Committee decided to renew the exception of AGMARK.

E. Testing and Inspection

32. The representative of the United States introduced the proposal by his delegation on testing and type approval, circulated in document TBT/W/79.

33. The representative of the European Economic Community said that his delegation subscribed to the suggestion by the delegation of the United States that the Committee should address the matter of testing and inspection in order to further the objective of removing unnecessary barriers to trade. However, the discussion of the matter should not be linked to proposals for a new round of multilateral trade negotiations and should be treated as "business as usual". Testing and inspection was a highly technical area in which laboratories and specialized agencies responsible for conducting the relevant activities were only exceptionally under direct government control. It was therefore difficult to reach binding commitments in this area. He felt that an overall approach to the issue would be needed so that all parties could find a reasonable balance of advantages in the outcome of discussions. Examination of the issue should cover all relevant problems in a comprehensive way, including, for example, local testing requirements in states with a federal structure.

34. The representatives of Argentina, Canada, Finland, (speaking for the Nordic countries), Japan, New Zealand, Romania and Switzerland agreed that discussions in the Committee on the subject of testing and inspection would be useful, but that these should not be linked to the question of a new round. The representative of Canada said that operation of the relevant provisions of the Agreement needed improvement. It was fundamental for governments and non-governmental agencies to ensure the reliability of mutually exchanged test data on an ongoing basis in order to maintain the integrity of their certification systems. The representative of Romania said that agreements on mutual recognition of test data could be concluded on a number of products to be specified by the Committee. The representative of Switzerland said that international cooperation in the field of testing and inspection was being developed in both ILAC and ISO as well as in the context of a number of individual schemes and conventions. The provisions of Article 5.2 encouraged such cooperation.

35. The representative of New Zealand noted that agencies dealing with testing and inspection in his country were participating in the work of ILAC. The Testing Laboratory Registration Council had concluded a number of agreements with a number of countries on mutual recognition of test data including one with the National Voluntary Accreditation Program in the United States.

36. The representative of Brazil said that his delegation could agree to a preliminary discussion of the issue in the Committee provided that the Committee did not give priority to this item in its work and that no linkage was made with the notion of a "new round". He wondered, however, whether the proposal by the United States implied that a sectoral approach to the problem should be followed, in contrast to the approach of ILAC. The representative of Korea also said that it would be inopportune at this stage to give priority to the subject of testing and inspection, which was less urgent than promoting the harmonization of technical regulations and technical assistance. But the Committee could review the current situation as long as

this did not prejudice its normal activities and no link was made with a "new round". The representative of India also expressed doubt on the appropriateness of giving priority to the discussion on testing and inspection rather than to more basic problems such as the development of international product standards. He pointed to the different stages of development in signatory countries in the area of testing and inspection. In general, the recognition of test results was dealt with at bilateral level, and the Committee might not be the right forum to take up this matter. He also said that technical experts in other international organizations were working on the matter. In any event, he did not see the connection between this issue and the question of a "new round".

37. The representative of the United States said that the harmonization of standards was not a task of the Committee and, therefore could not take priority over the subject at hand. His delegation would in any case appreciate any progress that could be made on the issue without necessarily waiting for the initiation of a new round of multilateral trade negotiations. While agreeing that an across-the-board agreement would be preferable to agreements on sector-by-sector basis, he noted that the work of ILAC could not lead to agreements of a binding nature. The proposal by his delegation did not, at any rate, imply a preference for a sector approach. At this juncture, his delegation merely wished to share with the Committee its experience in implementing the provisions of Article 5. He further explained that the working draft text protocol on interconnect had been presented under the agenda item on implementation and administration of the Agreement because it was not designed to provide a basis for discussion under the present item. However, if other signatories so wished, they could of course refer to the principles or even to the specific language of the working draft text on interconnect in further discussions of the United States proposal on testing and type approval.

38. The representative of Finland, speaking for the Nordic countries, drew attention to the complexity of the matter and suggested that as a first step, the secretariat could update the note on the activities of international bodies in the field of testing and inspection that it had circulated in February 1982 (TBT/W/43). He further suggested that the observer from ISO be invited to make a presentation at the next meeting of the Committee on the relevant work being carried out in his organization and to answer questions by signatories. It was so agreed.

F. Status of Work on Standards Notifications in the Inventories of Non-Tariff Measures

39. The representative of the United States recalling his delegation's earlier proposal that the section relating to standards in the Inventory of Non-Tariff Measures be issued as a document of the Committee on Technical Barriers to Trade, said that the purpose of this proposal was to bring the issues raised in individual notifications to the attention of the officials dealing with standards-related matters in signatory countries. These officials might then identify those measures which no longer applied and suggest solutions of the remaining problems. A mere updating of the standards-related notifications in the Inventory would not encroach on the

work of the Group on Quantitative Restrictions and Other Non-Tariff Measures. Furthermore, the techniques for liberalizing non-tariff measures suggested in the Group would be observed since his delegation recognized that individual problems could be addressed, at least initially, as bilateral issues between the Parties concerned. Further, if the idea of circulating the notifications in a TBT document created problems for some signatories his delegation would not insist on this procedure.

40. The representative of the European Economic Community noted that under the revised proposal by the delegation of the United States, the Committee would not discuss or take action on the standards notifications in the Inventory, and the circulation of the notifications would merely serve as an incentive for bilateral discussions. Seen in this light, the proposal deserved reflection, and his delegation reacted positively to it so long as it did not involve detracting in any way from the mandate of the Group of Quantitative Restrictions and Other Non-Tariff Measures.

41. The representatives of Finland (speaking for the Nordic countries), New Zealand, Canada and the United Kingdom on behalf of Hong Kong could also agree to the new approach suggested by the United States, which they saw as complementary to the work being carried out in the Group on Quantitative Restrictions and Other Non-Tariff Measures. The representatives of India and Japan also could go along with the revised proposal, provided that the review of the standards-related notifications did not impinge on the work of the Group.

42. The representative of Argentina said that he did not object to the review of the notifications in the Inventory by the standards officials if the Group had not made any progress. He emphasized however that any examination of the Inventory in the context of the Committee should be done with the previous consent of the Group.

43. In concluding the discussion, the Chairman said that although the preliminary reactions of delegations to the revised proposal were positive, time was needed for further study of the matter. He suggested that the Committee revert to the revised proposal at its next meeting. It was so agreed.

G. 1985 Meeting on Procedures for Information Exchange

44. The Committee discussed arrangements for the next meeting on procedures for information exchange on the basis of a note by the secretariat (TBT/W/78). It agreed to a suggestion regarding item C(i) of the draft agenda, made by the representative of the United States to the effect that signatories should submit in writing, for circulation to signatories in advance of the meeting, descriptions of the procedures followed in their respective countries to determine which draft technical regulations or rules of certification systems should be notified.

45. The Committee appointed Mr. A.D. Bryce, Vice-Chairman of the Committee for 1985, to chair the Third Meeting on Procedures for Information Exchange and agreed to hold this meeting on 7 May 1985.

H. Information Meeting on the Implementation and Operation of the Agreement

46. The Committee agreed to hold this meeting on 8 May 1985, that representatives of interested parties would be in charge of making presentations under the items listed in the outline of discussions proposed in document TBT/W/77, and that informal consultations would be held to allocate topics among interested delegations.

I. Special Meeting of the Committee

47. The Chairman drew attention to the decision of the CONTRACTING PARTIES on MTN Agreements and Arrangements (L/5756) and suggested that the Committee hold the Special meeting referred to in that decision on 9 May 1985. It was so agreed.

J. List of Products Covered by the Notifications

48. In response to a question by the representative of Finland, speaking on behalf of the Nordic countries, a representative of the secretariat said that the list had been completed with 1984 data. The three international organizations designated by the Committee to co-operate with the secretariat would conclude their part of the work soon. The complete list would be circulated in early April 1985.

K. Date and Agenda of the Next Meeting

49. The Committee agreed to start its next regular meeting on 6 May 1985 and resume it on 10 May 1985 after the Third Meeting on Information Exchange (7 May 1985), the Information Meeting (8 May 1985) and the Special Meeting of the Committee (9 May 1985).

50. The agenda of the meeting would include the following items:

- (1) Statements on implementation and administration of the Agreement.
- (2) Composition of the Committee.
- (3) Testing and inspection.
- (4) Status of work on standards notifications in the Inventories of non-tariff measures.
- (5) Third meeting on procedures for information exchange.
- (6) Information meeting on the implementation and operation of the Agreement.
- (7) Special meeting of the Committee.
- (8) Preparations for the sixth annual review.
- (9) Other business.

51. The draft agenda for the meeting and the projected agenda would be circulated in accordance with agreed procedures.