

GENERAL AGREEMENT ON

RESTRICTED

TBT/W/114

11 August 1988

TARIFFS AND TRADE

Special Distribution

Committee on Technical Barriers to Trade

DRAFT MINUTES OF THE MEETING HELD
ON 12 JULY 1988

Chairman: Mr. E. Contestabile

1. The Committee on Technical Barriers to Trade held its twenty-eighth meeting on 12 July 1988.

2. The agenda of the meeting was as follows:

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A. Statements on implementation and administration of the Agreement

3. The representative of the United States said that the annual publication of the United States enquiry point "GATT Standards Code Activities of the National Board of Standards" had been issued for 1987. Copies had been made available to enquiry points in other Parties.

4. With regard to the implementation and administration of the Agreement by other Signatories, the representative of the United States said that Greece and Mexico would need to provide information on measures to ensure the implementation and administration of the Agreement in their countries. The representative of Finland, speaking on behalf of the Nordic countries, said that the information called for under Article 15.7 of the Agreement had to be submitted promptly after the entry into force of the Agreement by every new Party. The representative of the United States also pointed out that Greece and Mexico had yet to establish their enquiry points.

5. The representative of Mexico informed the Committee that the Agreement had been made part of the national law through the promulgation of the Government Decree published in the Official Journal of 20 April 1988. The Federal Law on Metrology and Standardization, adopted on 28 December 1987 and published in the Official Journal of 26 January 1988 (L/6304, page 4), replaced the General Law Concerning Standards and Weights and Measures of 1961.

6. The representative of the United States reiterated the concern of his delegation by the lack of information from Argentina on the status of its ratification procedures.

7. The Committee took note of the statements made under this item.

B. Updating the definitions of terms used in the Agreement

8. The Chairman invited the Committee to address the first item of the Nordic proposal which suggested that "the Committee might study the new and amended definitions in the fifth edition of the ISO/IEC Guide 2 for terms used in the Agreement in order to assess possible implications for the Agreement" (TBT/W/103). At the last meeting, on the basis of a note by the secretariat, (TBT/W/106) the Committee had compared the definitions in ISO Guide 2-1978 and ISO/IEC Guide 2-1986 for a selection of terms used in the Agreement. Several delegations had raised questions concerning the scope of the definition for the term "code of practice" in ISO/IEC Guide 2 and the meaning of the term "processes and production methods" used in the Agreement; and also concerning the relationship of the new term "declaration of conformity" in the ISO/IEC Guide 2-1986 to the term "self-certification" used in the Agreement.

9. The representative of the European Economic Community sought clarification regarding the terms which applied to declaration of conformity based on the sole responsibility of the manufacturer and to declaration of conformity with third party intervention. In this connection the observer from the ISO/IEC drew attention to definition 13.2 and its note for the term "declaration of conformity" in the ISO/IEC Guide 2-1986. The representative of Finland, speaking in his capacity as Co-ordinator of the UN Economic Commission for Europe to the ISO/IEC

Working Group on definitions, stated that at its meeting held in May 1988 the Working Group had decided not to provide a definition for the term "self-certification" which had previously been deleted from the ISO/IEC list of terms. The Working Group concluded that conformity assessment by the manufacturer would be called "declaration of conformity" and conformity assessment by a third party would be called "certification".

10. The representative of the European Economic Community said that there was a close link between the problem of definitions and the substantive issues raised under the agenda items on processes and production methods and procedures for type approval. The Committee might not be able to pursue its discussion too far on the relevant proposals without having an agreed definition of certain terms such as "code of practice", "process and production method" or "quality assurance".

11. The representative of Finland, speaking on behalf of the Nordic countries, said that the Committee could reach a conclusion on the first item of the Nordic proposal without the resolution of the outstanding question of the definitions for the terms "code of practice" and "process and production method" for the following reasons. First, the term "code of practice" was not used in the Agreement and the ISO/IEC Guide 2 did not contain a definition for "process and production method". Therefore, the study of the changes in the definitions of these terms fell outside the scope of the first item of the Nordic proposal. Second, the definition for the term "self-certification", which was used in the Agreement, in the second edition of the ISO Guide 2 and the definition for the new term "declaration of conformity" included in the fifth edition of the ISO/IEC Guide 2 was in substance the same. He therefore suggested that, on the basis of the discussion of the matter at the last and the present meetings (TBT/M/27, paragraphs 9-13), the Committee conclude that the new and amended definitions in the ISO/IEC Guide 2 for terms used in the Agreement had not affected the substance of the Agreement but had in many cases improved the understanding of its relevant provisions. It was so agreed.

12. The Chairman also invited the Committee to consider the second item of the Nordic proposal which suggested that "the Committee might agree to replace in Article 5, paragraph 2, the term "self-certification" by the term "declaration of conformity" at the next revision of the Agreement". The representative of Finland, speaking on behalf of the Nordic countries, said that because the definition of these two terms in the second and fifth editions of the ISO/IEC Guide 2 was in substance the same, the suggested amendment of editorial nature would not affect the substance of the Agreement. The Committee endorsed the second item of the Nordic proposal and decided to replace the term "self-certification" by the term "declaration of conformity" in Article 5, paragraph 2 of the Agreement at an appropriate time in future.

13. The representative of Finland, speaking on behalf of the Nordic countries, asked the Committee to postpone the discussion of items three and four of their proposal (TBT/W/103) until after the discussion of certain issues raised in relation to the improvement, clarification and expansion of the Agreement. It was so agreed.

C. Testing, inspection and approval procedures

14. The Committee reverted to its discussion of the draft proposal by the delegation of the United States on "Procedures for Issuing Product Approval" (TBT/W/107). The representative of Finland, speaking on behalf of the Nordic countries, said that the scope of the proposal should not be limited to action by central government bodies. As a result of deregulation of standards-related activities in many countries, approvals were issued increasingly by non-governmental bodies. In some countries, the marketing of products was subject to product liability and insurance companies issued product approval where there might not even be mandatory approval requirements. Provisions similar to those in Articles 6 and 8 of the Agreement could be used to cover procedures for issuing approval by local government bodies and non-governmental bodies.

15. With regard to the definitions used for the purpose of the proposal, the following comments were made:

15.1 The representative of Finland, speaking on behalf of the Nordic countries, said that the UN/ECE Government Officials Responsible for Standardization Policies had recently requested the ISO/IEC Working Group on Definitions to prepare definitions for the term "approval" and the terms used for different methods of approval.

15.2 The representative of the European Economic Community said that while there was reference in the proposal to the concept of approvals based on manufacturer's declaration of conformity with or without third-party validation (point B.1), no reference was made to the term "declaration of conformity" and its definition contained in the ISO/IEC Guide 2-1986. In response, the representative of the United States said that his authorities would consult the ISO/IEC experts on definitions in this connection.

15.3 The representative of New Zealand said that the definition of the term "legitimate domestic objective" (point A.3) should reflect the wording used in the existing provisions of the Agreement.

16. The representative of New Zealand, joined by the representative of Canada, said that approvals based solely on manufacturer's declaration of conformity should not be given priority over approvals based on third-party validation of a manufacturer's declaration of conformity (point B.2). The representative of Canada said that an approval body might not be able to explain the "legitimate reason" for not issuing an approval based on a manufacturer's declaration of conformity.

17. The representative of Canada said that an approval authority might not be able to select the appropriate method of product approval for any one applicant due to a number of circumstances (point B). The approval authority might have higher enforcement costs than would otherwise need to be incurred if it had to adopt approval procedures "least cumbersome for the applicant".

18. The representative of Brazil said that the time period for granting approvals should be flexible. Approval bodies in some countries might not have the capacity to issue approvals as expeditiously as those in other countries. The representative of Japan, joined by the representative of Canada, said that the requirement for granting or denying approvals based on manufacturer's declaration of conformity within thirty calendar days seemed unrealistic (point L.1). The representative of Japan said that in his delegation's view a standards-processing period for each certification system should be established. The applicant should be informed of the reasons for delays (cf. MTN.GNG/NG8/W/6).

19. Commenting on the section of the proposal on administrative mechanisms, the representative of Canada, joined by the representative of Brazil, said that it might not always be possible to complete the examination of applications in the order in which they were submitted. The proposal should be amended in this respect to take account of situations where for a number of reasons the approval authority would need to assign priority to certain types of products. Similarly, the proposal for issuing approvals within thirty calendar days should be amended to provide the approval bodies with the opportunity of approving certain products on an urgent basis and of delaying the approval of other pending applications.

20. Concerning the impartiality of technical experts (point P), the representative of Brazil said that, in most cases, approval authorities themselves designated the experts. The representative of Canada said that the approval authorities in his country required the use of government experts in product approval in several areas and that the requirement in this respect should not exclude the use of such experts.

21. The representative of Brazil said that, what is considered as indispensable information for determination of conformity of a product might differ from country to country (point Q). Therefore, some objective criteria for minimum technical requirements should be established.

22. The Committee took note of the comments made under this item.

D. Processes and production methods

23. The representative of Finland, speaking on behalf of the Nordic countries, said that the Committee had to solve the problem of definition concerning the coverage of processes and production methods (PPMs) before it could appropriately address the proposal by the United States (TBT/W/108). The representative of the United States said that his authorities would be preparing a definition for the term "PPMs" that would apply to PPMs both in the agricultural and industrial sectors. The representative of the European Economic Community suggested that the preparation of a definition for the term "PPMs" should be entrusted to the specialists on the subject, such as the experts participating in the ISO/IEC Working Group on Definitions.

24. The representative of Finland, speaking on behalf of the Nordic countries, said that determination of conformity of a product with requirements based on characteristics of products could be made in the exporting or importing country whereas for PPM-based requirements, the determination or conformity could only be made on the site of manufacture. Therefore, he had doubts that the provisions of the Agreement could be extended to PPMs simply by including PPMs in the definition of technical specifications in Annex 1. In the case of PPM-based requirements, conformity of products could be determined either on the basis of confidence in the declaration by the manufacturer or through expensive inspection procedures. Therefore, the views which supported the use of PPMs only in exceptional cases, where requirements drafted in terms of product characteristics were not practical, might have merits.

25. The representative of New Zealand said that the Committee should aim to clarify the divergence of interpretation among Parties regarding the application of the present provisions of the Agreement on PPMs. In his delegation's view if a Party based a requirement on PPMs rather than on product characteristics in order to achieve a particular objective which constituted technical barriers to trade, then the PPM-based requirement should be subject to the provisions of the Agreement. The representative of Canada said that whether or not the requirements were drafted in terms of PPMs rather than product characteristics with the purpose of circumventing the obligations of the Agreement was a secondary question. The PPM-based requirements which unnecessarily restricted trade were inconsistent with the letter and spirit of the Agreement. Appropriate disciplines to be developed to address such practices would benefit all Parties to the Agreement.

26. The representative of the European Economic Community held the view that the question of PPMs in respect of agricultural products and problems relating to sanitary and phytosanitary measures, should be addressed in the Negotiating Group on Agriculture. In response, the representative of New Zealand said that the Committee should be guided by the provisions of Article 1.3 of the Agreement in this respect.

27. The Committee took note of the statements made and agreed to revert to this item at its next meeting.

E. Improved transparency in bilateral standards-related agreements

28. The representative of the United States said that the introduction to the proposal (TBT/W/111) explained the benefits that were expected of improved transparency in bilateral standards-related agreements. He emphasised that the objective of the proposal was mainly to share information on the activities between Parties to the Agreement. It did not seek a mandatory opening of such agreements to other Parties. The proposal also gave details of the kind of agreements to be notified.

29. The representative of Canada, Finland, on behalf of the Nordic countries, Hong Kong, Japan, Republic of Korea, Mexico and Romania supported the thrust of the proposal by the United States. The representative of Finland, speaking on behalf of the Nordic countries, joined by the representatives of Czechoslovakia and the European Economic Community, said that the extension of the notification procedures to the area of bilateral standards-related agreements as suggested by the United States would increase the present imbalance between the rights and obligations of Parties in respect of notifications under the Agreement. He recalled that the recommendations adopted by the Committee regarding the exchange of information through the enquiry points provided Parties with the opportunity to request information on bilateral standards-related agreements in any product sector. In his view, the transparency sought could be achieved in a more effective way if this recommendation were to become an obligation under the Agreement.

30. With regard to the coverage of agreements to be notified, the representative of the European Economic Community said that his delegation had doubts whether bilateral agreements concluded outside the provisions of the Agreement, and those concluded under the provisions of the Agreement but which did not incorporate the m.f.n. principle, should be notified. The representative of Finland, speaking on behalf of the Nordic countries, asked whether bilateral certification arrangements would also be notified. The representative of Hong Kong asked for clarification on what was meant by agreements that "have, or could have, a significant effect on trade".

31. Supported by the representatives of Canada, Finland, on behalf of the Nordic countries, and Hong Kong, the representative of the European Economic Community said that the provision on consultations with other Parties (point 5) appeared to go beyond the objective of improving transparency on bilateral agreements. The representative of Hong Kong asked whether the requirement to enter into consultations also applied to bilateral agreements not concluded under the provisions of the Agreement. In response, the representative of the United States said that the proposal did not obligate Parties but only encouraged them to hold consultations for the purpose of concluding similar agreements.

32. The Committee took note of the statements made and agreed to revert to this item at its next meeting.

F. Improved transparency in regional standard activities

33. The representative of the United States introduced the proposal on improved transparency in regional standards bodies (TBT/W/112). Part I of the proposal suggested that the Agreement be amended to include an additional obligation regarding the regional standards-related activities of Parties. Part II laid out the provisions of a draft code of conduct to be agreed by regional bodies or systems. The code of conduct proposed did not negate any of the existing obligations of Parties under the Agreement

with respect to regional bodies. The list of examples of regional bodies and systems attached to the proposal showed that the majority of these bodies were in Europe. The disadvantages that might result from the activities of regional standards bodies for suppliers in non-member countries were explained in the introduction to the proposal.

34. The representative of the European Economic Community said that his delegation shared the concerns of the United States about the need for further transparency on regional standards-related activities. The relevant provisions in Article 2, paragraphs 9 and 10 of the Agreement might indeed not have been effectively applied in the past. However, he had doubts about the appropriateness of the suggestion in the last paragraph of the introduction (page 3 of TBT/W/112) which seemed to suggest that regional bodies should be opened to participation from third parties. He also questioned the motives for listing together intergovernmental organizations such as EFTA and OECD and certain federations of industries in the attachment.

35. With regard to the text of the proposal, the representative of the European Economic Community made the following comments:

35.1 The two parts of the text of the proposal appeared to be contradictory. Part I contained direct obligations for Parties with respect to regional standards-related activities, whereas the suggestion for a code of conduct to be agreed by regional bodies and systems themselves in Part II implied that Parties did not have the capacity to undertake any direct obligations for these bodies or systems. The provisions of Articles 2.9 and 9.2 took into account this situation and imposed a "best endeavours" obligation on Parties in respect of regional bodies.

35.2 Regional standards, like national standards, were generally based on international standards. They deviated from international standards only when international standards did not provide an adequate basis for addressing the problems peculiar to the region. It was not clear in Part I of the proposal whether the international standards should "not be modified" or "not developed" as a result of regional activities. The proposal which required Parties to ensure that regional bodies observed international standards and rules went beyond the objective of further transparency on regional activities.

35.3 The code of conduct did not apply to bodies or systems with fewer than three members (Note one). Therefore, a body or system that might be created as a result of the Bilateral Agreement between the United States and Canada would not be subject to the proposed code.

35.4 The requirement that regional bodies or systems give information on their standardization or certification programmes (provision 2) went beyond the obligations on transparency currently imposed on Parties under the Agreement.

35.5 It was questionable whether a Party should hold consultations with the relevant regional body or system concerning a dispute against another Party.

36. The representative of Romania said that it might not be possible to ensure the observance of the proposed code by regional bodies such as COMECON, some members of which were not Parties to the Agreement. Romania was not a signatory to the Agreement on CMEA Standards. It applied the CMEA certification system only in the framework of bilateral agreements. The CMEA Secretariat did not have the capacity to represent Romania in other international organizations or bodies.

37. The Committee took note of the statements made and agreed to revert to this item at its next meeting.

G. Code of good practice for non-governmental standardizing bodies

38. The representative of the European Economic Community introduced the proposal on a code of good practice for non-governmental bodies (TBT/W/110). He said that the text of the current provisions of the Agreement regarding the activities of non-governmental bodies might not be easily understood by non-specialists in international trade. The proposed code would spell out the obligations of non-governmental bodies in an operational and practical way. The substantive provisions of the code would cover the topics set out on pages 3 and 4 of TBT/W/110.

39. The representative of Finland, speaking on behalf of the Nordic countries, supported by the representative of New Zealand, said that the code of good practice suggested in the proposal and the code of good practice for regional bodies in the proposal by the United States (agenda item F) might include similar provisions. He saw benefits in discussing the two subjects in parallel.

40. With regard to the section of the proposal on transparency, the representative of Finland, speaking on behalf of the Nordic countries, said that the ISONET system would provide a useful service for exchanging information on standards, technical regulations and certification systems prepared and adopted by non-governmental bodies. He suggested that the Committee invite the observer from ¹ISO to make a presentation on the rules, operation and membership of ISONET¹. It was so agreed.

41. The Committee agreed to revert to this item at its next meeting.

¹The representative of the ISO made a presentation on the services provided by ISONET at the Meeting on Procedures for Information Exchange held in 1985.

H. Extension of major obligations under the Agreement to local government bodies

42. The representative of the European Economic Community introduced the proposal for extending the major obligations under the Agreement to local government bodies (TBT/W/113). His delegation considered that, under the Agreement, the obligations of Parties with federated governments were less important than those of Parties with central governments. The extension of major obligations under the Agreement, in particular the obligation to notify proposed technical regulations would contribute to a better balance of rights and obligations of Parties under the Agreement.

43. The Committee took note of this statement and agreed to revert to this item at its next meeting.

I. Relationship of the work of the Committee to the Negotiating Group on MTN Agreements and Arrangements

44. The representative of the European Economic Community said that his delegation wished the substantive discussions of its proposals to be held in the Negotiating Group on MTN Agreements and Arrangements. Supported by the representative of Mexico, he said that certain non-signatory countries might have an interest in joining the Agreement. They should be allowed to participate in the discussion of the subjects relating to its improvement, clarification and expansion.

45. The representative of Japan referred to the discussion on the proposals submitted by his delegation at the meeting of NG8 of 8-9 March 1988 (MTN.GNG/NG8/W/6 and MTN.GNG/NG8/6). He said that in 1985 the authorities in his country had carried out the approval of around twenty-five million applications within the standards processing period. In a few exceptional cases when this had not been possible, the relevant authorities had informed the applicant of the reasons for delays. The method of calculation of the standards processing period was indicated in the law prescribing the approval procedures for the relevant product. The time taken for the correction of incomplete applications, for the preparation of tests by the applicant and for the response of the applicant to an enquiry were usually excluded from the standards processing period. He also said that a representative of foreign interests of any nationality or place of residence could participate and state his opinion in the drafting process of standards, technical regulations and rules of certification systems.

J. Preparations for the third three-year review of the operation and implementation of the Agreement under Article 15.9

46. The Chairman said that the Committee would hold its third three-year review at its meeting on 13 September 1988 and that delegations could

submit views or comments in writing on the proposals submitted for the three-year review by 26 August 1988.

47. The representative of the European Economic Community stated that the proposals by his delegation introduced under the agenda items on "Code of good practice for non-governmental bodies" (TBT/W/110) and "Extension of major obligations under the Agreement to local government bodies" (TBT/W/113) should be included among the topics to be discussed in the context of the third three-year review under Article 15.9.

48. The Committee took note of the statements made.

K. Preparations for the ninth annual review of the Agreement under Article 15.8

49. In accordance with the arrangements for previous reviews, the Committee agreed that Parties should submit to the secretariat any information that they wish to be included under the items of the review (TBT/M/3, Annex III, paragraph 1) by 3 August 1988. The secretariat would issue the basic document containing this information as well as updated versions of the documents on consultation points (TBT/W/62/Rev.1 and Corrs.1-2), enquiry points (TBT/W/31/Rev.6 and Corr.1) and panelists (TBT/W/25/Rev.11) in advance of the next meeting.

L. Pacific Area Standards Congress (XII)

50. The representative of Canada said that his government had hosted the twelfth plenary meeting of Pacific Area Standards Congress (PASC XII) held in April 1988 in Vancouver. PASC included representatives of governments and national standards bodies and industry from the Pacific Rim countries. It was not a regional standards developing body and did not have a permanent secretariat. Its general objectives were to strengthen the standardization programs of the ISO and IEC and to improve the ability of the Pacific Rim standards organisations to participate effectively in these programs. PASC, which initially met in 1973, was among the first international standards fora publicly to support the conclusion of an agreement to prevent technical barriers to trade. As an expression of continued interest in the effective operation of the Agreement, PASC XII had adopted, inter alia, the following resolutions:

"PASC XII strongly supports the current Uruguay Round of GATT MTN and recommends that the GATT Standards Code be reviewed to ensure transparency in the standards developing process by all signatories to the Code. PASC members are urged to bring this resolution to their respective GATT secretariats;

"In regards to standards, PASC members ask priority attention by GATT in the current MTN (Uruguay) Round to eliminating or substantially reducing barriers to trade in agricultural products and commodities."

51. The Committee took note of this statement.

M. EC Animal Hormone Directive (85/649/EEC)

52. The representative of the United States said that it had been over a year since the European Economic Community had blocked her country's request to establish a technical expert group to review the merits of the European Community Animal Hormone Directive (85/649/EEC). The United States considered the European Community ban on meat produced from animals treated with growth-promoting hormones an unjustifiable restriction on trade. After bilateral consultations held with the European Economic Community regarding this ban, her delegation had raised the matter in the Committee. As the United States was of the view that the ban could not be justified by scientific evidence, they had requested that the issue be examined by a technical expert group. The establishment of this technical expert group had been blocked since July 1987, as a result of the opposition by the delegation of the European Economic Community. This Party had suggested that the procedures set forth in the Agreement were substituted by an ad hoc procedure which could exclude any examination of the scientific evidence on which the United States had based its case. Over the past year, the two delegations had held bilateral consultations on the matter without reaching a solution. She also expressed the frustration of her delegation by their inability to obtain relief from what they considered as an unjustified trade barrier through the procedures under the Agreement. All Parties should be concerned with the failure of the dispute settlement procedures to function as provided in the Agreement as this failure called into question the value of GATT disciplines at a time when negotiations were underway in the Uruguay Round for the extension of those disciplines.

53. The Committee took note of this statement.

N. Avoidance of Duplication

54. The representative of the United States referred to a discussion paper issued in March 1988 by the FAO/WHO Codex Alimentarius Commission on the relationships between the Codex Alimentarius Commission and the GATT. He suggested that the Committee invite the observer from the FAO/WHO Codex Alimentarius commission to make a presentation on this paper at its next meeting. The Committee so agreed.

O. Dates of the next meetings; agenda of the next meeting

55. The Committee agreed to hold its next meeting on 13 September 1988 and tentatively to set 17-18 November 1988 as the date of its last meeting before the end of the year.

56. The agenda of the next meeting would include the following items:
1. Statements on implementation and administration of the Agreement;
 2. Testing, inspection and approval procedures;
 3. Processes and production methods;
 4. Improved transparency in bilateral standards-related agreements;
 5. Improved transparency in regional standards activities;
 6. Code of good practice for non-governmental bodies;
 7. Extension of major obligations under the Agreement to local government bodies;
 8. Relationship of the work of the Committee to NG8;
 9. Third three-year review of the operation and implementation of the Agreement under Article 15.9;
 10. Ninth annual review of the operation and implementation of the Agreement under Article 15.8;
 11. Report (1988) to the CONTRACTING PARTIES.