

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

TBT/W/122

1 May 1989

Special Distribution

Committee on Technical Barriers to Trade

DRAFT MINUTES OF THE MEETING HELD ON 18 JANUARY 1989

Chairwoman: Mrs. C. Guarda

1. The Committee on Technical Barriers to Trade held its thirtieth meeting on 18 January 1989.

2. The Agenda of the meeting was as follows:

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A. Election of officers

3. The Committee elected Mrs. C. Guarda (Chile) as Chairwoman, and Mr. P. van de Locht (Netherlands) as Vice-Chairman for 1989.

B. Statements on implementation and administration of the Agreement

4. The Chairwoman informed the Committee that, as agreed at the previous meeting (TBT/M/29, paragraph 5), informal consultations had been held between Mexico and interested Parties on 18 December 1988, concerning the request made by Mexico for time-limited exceptions under Article 12.8 of the Agreement.

5. The representative of Mexico said that his delegation had informed the Committee at the previous meeting that their authorities had considered the possibility of requesting exceptions from the implementation of certain obligations under the Agreement. At that time, internal considerations, such as budgetary restraints under the programme of anti-inflation, the possibility of certain changes in the administrative structure within the Secretariat of External Trade and Industrial Development (SECOFI), the governmental body which dealt with standards-related trade matters, had led his authorities to believe that the implementation of a number of obligations under the Agreement might cause problems for Mexico. In the informal consultations held on 18 December 1988, his delegation and interested Parties, had discussed these problems, as well as the concerns expressed by other Parties with regard to the commitments Mexico had under the Agreement. Since those consultations, the delegation of Mexico had submitted a statement on the implementation and administration of the Agreement (TBT/1/Add.36/Suppl.3 and Corr.1). At the present meeting, Mexico formally withdrew its request for exceptions under Article 12.8. The Committee took note of the statement by the representative of Mexico.

6. The representative of the European Economic Community said that the Agreement had been incorporated as part of the national law in Greece by the Presidential Order 229 of 1988. Greece had also established an enquiry point under Article 10 within the Hellenic Organisation for Standardization (c.f. document TBT/W/31/Rev.6/Corr.3).

7. The representative of Hungary gave information concerning a new decree on standardization and quality matters which had entered into force on 1 January 1989 (c.f. TBT/1/Add.18/Suppl.1).

C. Testing, inspection and approval procedures

8. The representative of Finland, on behalf of the Nordic countries, introduced the two draft proposals by the Nordic countries on Testing Procedures (TBT/W/118), and Inspection Procedures (TBT/W/119). He first explained the general background to these proposals. The procedures and activities leading to approval of products consisted of three levels. The first level related to the determination of the characteristics of products through testing but also through other means. The second level related to the assessment of conformity of the characteristics of products with specific requirements through certification but also through other means such as manufacturer's declaration of conformity. At the third level, the approval of the conformity of the characteristics of products with specific requirements was granted by approval authorities through accredited quality

control systems. The Agreement covered only the procedures and activities relating to testing and certification. The basic aim of the Nordic proposals was to improve and further expand the relevant provisions of the Agreement so as to cover fully all of the three levels of procedures and activities under the Agreement.

9. In continuing his introduction to the proposals in TBT/W/118 and TBT/W/119, the representative of Finland, on behalf of the Nordic countries, drew attention to the problem of definitions in this area. The ISO/IEC had started to further develop the ISO/IEC Guide 2-1986 "General Terms and Their Definitions Concerning Standardization and Certification" in order to take into account the developments in the field of testing, inspection and other conformity-assessment procedures. In his capacity as representative of the UN/ECE Government Officials Responsible for Standardization Policies to the ISO/IEC Working Group on Definitions, the representative of Finland informed the Committee that, at its second meeting held in December 1988, the Working Group had arrived at the conclusion that there were no definitions relating to all the procedures and activities in the three levels mentioned above. He went on to say that so far there was no generic term to cover all aspects of determining the characteristics of a product, nor to cover procedures and activities for determining the characteristics of a product other than those covered by the term "testing". Similarly, there were respective definitions for the terms "certification" and "declaration of conformity" but a generic term and its definition did not exist to cover the activities and procedures in the second level. The definition in the ISO/IEC Guide 2-1986 for the term "testing" was intended for specific purposes only and did not have a general application. When further developing their proposals, the Nordic delegations would take into account any results of the work in the ISO/IEC Working Group on Definitions. However, this work had been progressing rather slowly. He saw commonly-accepted terms and their definitions relating to concepts under discussion as indispensable in assisting the Committee in its further work on the subject and suggested that the Committee stress to the ISO/IEC the urgency of preparing the relevant definitions. The observer from the ISO said that, in his reply to the letter by the Chairman of the Committee, the Secretary General of ISO had mentioned that the work for including the relevant definitions in the ISO/IEC Guide 2 had been proceeding. In future, the work in this area would be given increased priority.

10. Turning to the proposal on Testing Procedures (TBT/W/118), the representative of Finland, on behalf of the Nordic countries, said that this proposal was based on discussions held within the Committee over the past ten years concerning the improvement of the provisions of the Agreement on testing procedures. It incorporated in part both the recommendations already adopted by the Committee and the relevant elements in the draft proposal by the United States on Procedures for Issuing Product Approval (TBT/W/107).

11. With regard to the section of the proposal on "international recommendations for testing and determination of conformity", the representative of Finland, on behalf of the Nordic countries, said that in

the Agreement there were no references to internationally agreed recommendations concerning testing and certification procedures since, such recommendations had not been issued at the time of its negotiation. In recent years, however, the International Laboratory Accreditation Conference (ILAC) and the ISO/IEC had produced a number of international recommendations and guides in this area. The Nordic countries suggested that references to international recommendations and guides, similar to those in Articles 2.2 and 2.3 relating to international standards, should be included under the provisions on testing.

12. The representative of the United States expressed her delegation's support for the suggested provisions regarding the use of relevant international recommendations and guides by Parties in their activities on testing and determination of conformity. Joined by the representative of Canada, she said that the work of ILAC had a particular bearing on the the proposals under the present agenda item. The Committee should, therefore, be informed of the recent developments in ILAC.

13. The representative of Japan sought clarification on the section of the proposal on international recommendations for testing and determination of conformity, and the difference between the provisions in the new paragraph 5.2 and the relevant recommendation adopted by the Committee (document TBT/16/Rev.4, page 14). In response, the representative of Finland, on behalf of the Nordic countries, said that Committee recommendations were not legally binding on Parties, whereas any amendments to the Agreement as suggested in the new provisions for Article 5.2 would be. Furthermore, a recommendation enumerated specific guidelines which could be subsequently amended. The provisions of the Agreement, however, were of a general nature and not subject to frequent amendments. The representative of Japan also asked to what extent the new provisions imposed strict obligations on Parties to base their testing activities on principles and rules in the relevant international recommendations and guides. The representative of Finland, on behalf of the Nordic countries, said that in this respect the proposal suggested obligations in the same manner as those in Article 2.2 which required Parties to base the technical regulations prepared, adopted and applied by their central government bodies on relevant international standards. Thus, the obligations that Parties already had vis-à-vis international standards would be extended to relevant international recommendations and guidelines on testing and determination of conformity.

14. With regard to the same section of the proposal, the representative of India said that harmonization, a desirable goal in itself, would need to be achieved progressively. Developing countries had infrastructural and other problems in following the ISO/IEC Guides. In view of the different stages of technological development among signatory countries, balanced and non-discriminatory arrangements should be sought. According to his authorities, the ISO/IEC Guides should initially be considered as being recommendations and not obligations until most Parties had reached the level of development which would enable them to apply these Guides without problems. At this stage, it was not necessary to include the new paragraph 5.3 in the text of the Agreement.

15. With regard to the proposal in the section on "declaration of conformity", the representative of Finland, on behalf of the Nordic countries, noted that the Committee had already decided to replace, at an appropriate time in the future, the term "self-certification" in Article 5.2 of the Agreement by the term "declaration of conformity" used in ISO/IEC Guide 2-1986 (TBT/M/28, paragraph 13).

16. The representative of Finland, on behalf of the Nordic countries, noted that in the section on the "implementation of paragraph 5.2", it was proposed to replace paragraph 5.3, which referred only to test methods and administrative procedures of central government bodies, by a new text. In many countries, national legislations and regulations did not contain provisions on acceptance of test results from other Parties. Nordic countries had faced situations where it had not been possible for the authorities or relevant bodies within certain Parties to accept the test results from the bodies within the territories of the Nordic countries, on the grounds that the national legislation of the Party did not allow mutual acceptance of test results, or that it required that tests be performed by laboratories situated within the territory of the Party in question. The representative of India said that the suggested amendment to Article 5.3 was not acceptable to his delegation and considered that the text of the present Article 5.3 adequately covered the purpose of the Nordic proposal. The representatives of Canada and New Zealand also had doubts about the need for the proposed amendment to paragraph 5.3. Under the Agreement, Parties were required to ensure the conformity of their legislation, regulations and administrative procedures with the provisions of Article 5.3.

17. The observer from the ISO informed the Committee that, in addition to a revision of the ISO/IEC Guide 39, "General Requirements for the Acceptance of Inspection Bodies" (part of the series of five guides which the Committee had referred to in its relevant recommendation), two new guides, ISO/IEC Guide 54 "Testing Laboratory Accreditation Systems-General Recommendations for the Acceptance of Accreditation Bodies" and ISO/IEC Guide 55 "Testing Laboratory Accreditation Systems-General Recommendations for Operation" had recently been published. The latter guides were issued as a result of the recent ILAC work.

18. The representative of Finland, on behalf of the Nordic countries, introduced the proposal in document TBT/W/119 on inspection procedures. The Committee had previously noted that the set of definitions recently adopted and published as ISO/IEC Guide 2-1986, "General Terms and Their Definitions Concerning Standardization and Certification" did not include a definition for the term "inspection". Following discussion on this point at the previous meeting (TBT/M/29, paragraphs 17-19), the Chairman had written to the Secretary-General of the ISO, on behalf of the Committee, inviting the ISO/IEC to address the question of the preparation of a definition for the term "inspection". The proposal by the Nordic countries was directed at the means for determining the characteristics of a product other than those covered by testing procedures. For those other means, the term "inspection" had been used. The definition in the proposal for the

term "inspection" (section A.1) was not being suggested to be a generally accepted definition for this term. It had been prepared to assist Parties in understanding the purpose of the proposal. The Nordic delegations were prepared to change the term "inspection" in the proposal if, as a result of the work being carried out in the ISO/IEC, this concept was labelled with another term, or if a common term was found to cover all the means for determining conformity. In the meantime, Parties should address the concept itself.

19. The representative of India agreed that further work was needed on the definition of the terms "inspection" and "testing". As it appeared in the ISO 8402:1986 "Quality Vocabulary", the definition of inspection covered activities including measuring, examining, and testing. The representative of Japan asked for detailed information on the terms "inspection" and "inspection method" and the relationship between testing and inspection procedures. According to their experience, there might be some duplication between these two types of procedures. The representative of Finland, on behalf of the Nordic countries, explained the concept introduced in the proposal by giving the following examples. For safety reasons, a product might have to be painted in specific colours. The colour of the product would not be tested but inspected. There might also exist requirements that a machine was accompanied by different manuals for its installation, repair or operation. The existence of these manuals were checked through an operation called inspection but they were not tested. The smell or the taste of a food product was checked by means of inspection procedures and not through testing procedures.

20. The representative of Japan suggested that the section of the proposal on transparency (paragraphs F-H) should be supplemented by a clause similar to the provisions in Articles 2.3 and 7.4 of the Agreement regarding notification of urgent measures.

21. The representative of New Zealand said that some of the elements in the proposal, such as the question of fees in section L, were already covered by the Agreement. Some of the detailed suggestions in the proposal might more appropriately be considered as recommendations or decisions of the Committee rather than as amendments to the Agreement.

22. With regard to the section on reciprocal recognition of inspection results, the representative of New Zealand, joined by the representative of India, said that in the light of the requirements in the preceding paragraph O, paragraph P seemed to be superfluous. On the same section, the representative of Japan asked for clarification on the meaning of the phrase "a sufficient means of determining conformity with relevant requirement". In response, the representative of Finland, on behalf of the Nordic countries, said that this phrase had the same wording and meaning as the phrase in Article 5.2 of the Agreement.

23. The representative of Canada said that once the problem of definition had been adequately addressed, it might not be necessary to include separately all the proposed texts on testing, inspection and approval

procedures in the Agreement. In his country, inspection was not carried out following detailed procedures but at the factory-floor level in accordance with the indications in the inspection manual.

24. The representative of India said that on account of the level of development of certain Parties, the requirement to base the inspection procedures in Parties on relevant international standards or guidelines, stated in paragraph D of the proposal, should not be mandatory.

D. Processes and production methods

25. The representative of the United States drew attention to the suggested definitions on processes and production methods, in document TBT/W/108/Add.1. In the preparation of these definitions, the ISO Central Secretariat had been consulted informally. As they understood it, ISO/IEC had no plans to develop (an) internationally agreed definition(s) for the term "processes and production method". Her authorities had prepared the suggested definition in order to initiate a discussion on a common understanding of the term PPMs. They hoped that the exchange of views on this definition would enable Parties to further evaluate the proposal on PPMs (TBT/W/108).

26. The representative of Finland, on behalf of the Nordic countries, said that the scope of this definition seemed to be indefinite. The representative of the European Economic Community said that, although the definition in its present form was not very precise, it could be a good starting point for further discussion of the relevant proposal.

27. The representative of Canada asked the significance of the terms relating to approval operations such as "testing" and "inspection" along with a number of functions denoting production operations in the definition. He also asked to what extent central government bodies would have obligations in respect of codes of practice as these were generally applied on a voluntary basis.

28. The representative of India reverted to the comments made by his delegation at the previous meeting. He stated that the definition of "technical specification" in Annex 1 of the Agreement covered only products, whereas the definition proposed by the United States extended to processes, conditions of growth and production methods. While this was acceptable, his authorities had noted that the explanatory note applicable to the definition in Annex 1, which specifically excluded services in addition to codes of practice, had been deleted in the proposal. Since services were outside the purview of the Agreement and the proposal did not relate to services, his delegation had suggested that this note should be amended to read "corresponding ECE/ISO definition is amended in order to exclude services".

E. Improving the provisions of the Agreement on transparency

29. The representative of Finland, on behalf of the Nordic countries, introduced the proposal on Improving Transparency in document TBT/W/120. This proposal mainly suggested to include the recommendations adopted by the Committee in the Agreement. It also sought to bring further clarifications to certain provisions of the Agreement. The first proposal concerning the timing of notifications took over the relevant recommendation of the Committee (TBT/16/Rev.4, section C.2 on page 6). The representative of New Zealand said that the implications of formally incorporating the text of this recommendation into the provisions of the Agreement had to be considered carefully. Although in his country the procedures for consultations at the domestic level were different from those outlined in the proposal, the relevant authorities generally tried to ensure that time was provided for public comments before the full text of the regulation was prepared. The representative of Japan said that this section of the proposal had common objectives with the proposal by Japan on transparency in the drafting process of technical regulations, standards and certification systems by central government bodies (TBT/W/116).

30. The representative of Finland, on behalf of the Nordic countries, said that three amendments were suggested in the section on the functions of the enquiry point. The first amendment to Article 10.1 stressed the desirability of establishing one enquiry point. In countries where there was more than one enquiry point, complete and unambiguous information should be given on the scope of each enquiry point established in the territories of Parties. Furthermore, the provisions of Article 10, paragraph 3, were not sufficiently clear as regards the provision of documents relevant to enquiries made under Article 10, paragraphs 1 and 2. The second amendment suggested to spell out the obligations of enquiry points in this respect. The third amendment, suggesting the extension of the scope of issues on which enquiry points were required to provide information, took over the relevant recommendation by the Committee (TBT/16/Rev.4, section E.3(b) on page 13). The representatives of New Zealand and Japan supported the proposed amendments regarding the functions of enquiry points.

31. The representative of Finland, on behalf of the Nordic countries, said that the third section of the proposal on the responsibility for the notification procedures was new in substance. Often, the Nordic countries had expressed concern that only a few Parties were able and willing to comply with their obligations on notification. Although the Committee had adopted a number of recommendations relating to this matter, there had been no noticeable improvements in the situation. Certain Parties might continue not to fulfill adequately their obligations on notifications under the Agreement if individual authorities and departments continued to be responsible for the notification of proposed measures. Based on their experience at the national level, the Nordic countries had come to the conclusion that the only way to ensure that Parties fulfilled their obligations on notification under the Agreement was to have one single authority in each Party, at the central government level, which would have the responsibility for the implementation of the procedures. The representative of New Zealand said that Articles 2 and 3 excluded local

government and non-governmental bodies from the obligations on notification under the Agreement. The text replacing Article 10.7 might imply that these bodies would also be required to make notifications. In response, the representative of Finland, on behalf of the Nordic countries, said the proposal suggested that, to the extent Articles 3 and 4 imposed obligations of second-level in respect of notifications on the activities of local government bodies and non-governmental bodies, one single central government authority should have the responsibility for the implementation of these obligations.

32. The representative of India supported the proposals on improving transparency.

F. Improved transparency in bilateral standards-related agreements

33. The representative of the United States reverted to the questions raised at the previous meeting in connection with the proposal in document TBT/W/111 (TBT/M/29, paragraphs 26-32). The purpose of the proposal on consultation requirements was to encourage a wider application of the agreements between Parties or between Parties and bodies or systems in other Parties. Her delegation shared the view expressed by many that certain Parties had failed to comply with the existing requirements on notification under the Agreement. While she fully supported the view that the Committee should determine the reasons for this, she also believed that a resistance to provide transparency on bilateral standards-related agreements would not help Parties to solve this problem. In response to a question on the meaning of the term "private bodies" used in the proposal (TBT/M/29, paragraph 27), she said that the definition in the Agreement for non-governmental bodies adequately covered this term. For example, those bodies which required no authorization or financial assistance from a central government body might qualify as private bodies. She also supported the suggestion that information circulated in document TBT/W/90 on bilateral standards-related agreements entered into by Parties should be updated (TBT/M/29, paragraph 30) on the basis of the elements set out in the proposal by the United States.

G. Improved transparency in regional standards activities

H. Code of good practice for non-governmental bodies

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

34. The representative of Finland, on behalf of the Nordic countries, said that all three proposals concerning improved transparency on regional bodies (TBT/W/112), a code of good practice for non-governmental bodies (TBT/W/110) and the extension of major obligations under the Agreement to local government bodies (TBT/W/113), addressed basically the same issue, namely strengthening the implementation of the obligations under the

Agreement at the second level. The Agreement as such was applicable on central government bodies but included "best endeavours" obligations for regional, non-governmental and local bodies. In order to have a consistent approach in the discussion of these proposals, they should be developed in parallel. The Nordic countries considered that the establishment of codes of good practice for these bodies would be the best way of strengthening the implementation of the second level of obligations.

J. Transparency in the operation of certification systems

35. The representative of Japan said that, in order to facilitate the application procedures on the proposed (TBT/W/115), certification bodies were required to establish a standard processing period for each certification system, taking into account factors such as approval method and administrative procedures. Each certification body would be required to publish the standard processing period in an appropriate way. Where a certification body was not able to process an application within the standard processing period, the applicants would be notified of the reasons for the delay. Certification bodies would not be bound by any obligations to process applications within the standards time-limit. In response to a comment made at the previous meeting (TBT/M/29, paragraph 49) he said that each certification body should process applications as expeditiously as possible and in such a manner that the establishment of a standards processing period did not cause unnecessary delays. In response to another comment (TBT/M/29, paragraph 50), he said that each certification system should have flexibility in establishing the standards processing periods on account of the particularities of processing certification for different products. The representative of Austria said that the setting up of a standards processing period for certification was not acceptable to his delegation.

K. Transparency in the drafting process of standards, technical regulations and rules of certification systems

36. The representative of Japan explained that the "drafting process" in the proposal (TBT/W/116) signified the period between the stage when first draft had been drawn up and the stage when the central government body could propose the final draft to interested parties in other Parties as stipulated in Articles 2.5.3 and 7.3.3 (TBT/29, paragraph 53). In response to another comment (TBT/M/29, paragraph 54), he said that interested parties would be informed of re-drafted texts following their comments in a written form. His authorities considered that the establishment of procedures for hearing comments would solve the problem of uncertainty in the preliminary stages of the procedures. The representative of Austria said that his delegation refrained from stating its views before the text of the suggested amendments was submitted.

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

37. The Committee noted that no statements were made under this item.

M. United States case against the EC Animal Hormone Directive (85/649/EEC)

38. The representative of the United States stated that in the GATT Council the European Economic Community had raised the retaliation measures by the United States in response to the EEC's hormone ban (C/M/228 and L/6438). She pointed out the irony involved in the accusation by the European Economic Community that the United States went outside the GATT in this case. Her delegation wished to remind the Committee that her authorities had been driven to protect their legitimate trade interests because of the rigid refusal of the European Economic Community to give the United States a hearing on the unilateral action of the European Economic Community in the appropriate GATT forum. If Community officials wished to appeal to GATT, they only had to let the dispute settlement procedures function in the Committee. It was not the United States that had blocked the settlement of dispute for over eighteen months.

39. The representative of the European Economic Community said that it was not the appropriate occasion to raise the hormone issue before the Committee. Her delegation had participated actively in the discussions in the Committee and had offered alternative solutions within the dispute settlement procedures of the Agreement. Consultations had continued at high level. It was inappropriate to state that the the European Economic Community was blocking any solution to this dispute. It was equally inappropriate to mix up procedures within this Committee and those under the General Agreement.

40. The Committee took note of the statements made.

N. Meeting of persons responsible for information exchange

41. The representative of Finland, on behalf of the Nordic countries, said that meetings on procedures for information exchange were held in general on a biennial basis. The next such meeting was scheduled for this year. In the past, the results of these meetings had been useful in assisting the Committee in the adoption of a number of recommendations relating to the operation of the provisions of the Agreement on transparency. It had also given persons responsible for information exchange the opportunity to exchange views and experiences and to discuss mutual concrete problems. In many countries, the ISONET representatives were also representatives of the national enquiry points established under the Agreement. Although no specific topics had been raised in the Committee for the agenda of such a meeting, they proposed that a gathering of persons responsible for procedures on information exchange be convened in conjunction with the next ISONET meeting to be held in the week of 22-26 May 1989.

42. The representatives of Canada, India, New Zealand and the United States supported the statement by the representative of Finland, on behalf of the Nordic countries. The representative of the European Economic Community said that, although they had doubts about the usefulness of participating in a meeting without any proposals for topics of discussion, they supported the statement above. The representative of the United States urged Parties to ensure the participation of persons responsible for information exchange in their countries in the informal gathering.

43. In conclusion, the Chairwoman said that an informal gathering of persons responsible for information exchange would be convened in conjunction with ISONET meeting in the week of 22-26 May 1989, the exact date to be fixed by the secretariats of GATT and ISO. While no agenda or official report was expected, any specific points which might result from the discussion in this gathering would subsequently be conveyed to the Committee through the delegation of a Party.

O. Derestriction of documents

44. The Chairwoman drew attention to a list of documents issued in 1988 and which were being proposed for derestriction in document TBT/W/121. She invited signatories to give their comments, if any, to the secretariat before 15 May 1989.

P. Date and agenda of the next meeting

45. The Committee agreed that date and agenda of the next meeting be established by the Chairwoman in consultation with delegations.