

GENERAL AGREEMENT ON

TARIFFS AND TRADE

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Committee on Technical Barriers to Trade

DRAFT MINUTES OF THE MEETING HELD ON 19 SEPTEMBER 1989

Chairman: Mr. P. van de Locht (Netherlands)

1. The Committee on Technical Barriers to Trade held its thirty-second meeting on 19 September 1989.
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 New Zealand said that in the Uruguay Round when Parties were looking into the possibility of making improvements to the various provisions of the Agreement, it would be opportune to emphasize the importance of promoting the development of international standards and their adoption by Parties which was one of the basic objectives of the Agreement. Both the national enquiry point established under the Agreement, the Standards Association of New Zealand, and the industry held the view that small trading countries, such as New Zealand, were affected disproportionately by the slow progress in the development and adoption of international standards. Manufacturers in these countries with small production runs were frequently faced with the problem of adjusting their production to divergent standards in different markets. These concerns had led the Standards Association of New Zealand to participate actively in the International Electrotechnical Commission (IEC) over the past two years. They had pointed out that a number of IEC standards had not been adopted as the basis for the technical regulations and standards at the national level and that the standards adopted at the regional level had created certain difficulties. In this connection they had drawn attention to Article 2.10 of the Agreement which required Parties to fulfil the obligations under Article 2, paragraphs 1 to 8, when adopting regional standards and to Article 2.2, which expressly imposed the obligation to use international standards unless there were specific reasons not to do

so. These provisions of the Agreement included the presumption that international standards had precedence over regional standards. A recent proposal of New Zealand for greater efforts towards the universal adoption of international standards had received a positive response within the IEC. This proposal included suggestions on how the implementation of IEC standards could be monitored at the national level; how the methods of the national statements of correlation with the IEC standards could be made more meaningful; and how the IEC and the ISO might be more active in promoting standardization both at the national and international level through further cooperation with governments and with this Committee.

4. The representative of the United States said that the following two publications had been circulated recently to all enquiry points: "GATT Standards Code Activities of the National Institute of Standards and Technology" issued by the Department of Commerce and "Directory of International and Regional Organizations Conducting Standards Related Activities".

5. The representative of the Republic of Korea said that the Agreement was new for the Korean industry. The Korean Bureau of Standards, a member body of ISO and a national committee of IEC, had organized several meetings in Seoul in order to inform the relevant governmental authorities and interested parties on the concepts underlying the Agreement and the importance of abiding by the obligations stipulated therein.

6. The representative of Mexico said that although his country had limited experience with the implementation of the Agreement, his authorities were conscious of its importance for international trade. In future they hoped to participate in the implementation of the Agreement in a more creative way. The proposals relating to the clarification of the provisions of the Agreement would help his authorities to understand and fulfil the obligations under the Agreement in a better way. They considered that harmonization of standards facilitated access to international markets and was, therefore, important for the trade of developing countries.

B. Procedures for information exchange

7. After a brief discussion of a proposal by the Nordic countries (TBT/W/125), the Committee agreed to amend the decision on format and guidelines for the notification sheet by adding to the description under item (v) "Title" (TBT/16/Rev 4, pages 5 and 22), the following text: "Number of pages in the notified document". On behalf of the Committee, the Chairman invited persons responsible for notification procedures in Parties to take account of the agreed changes in preparing future notifications.

8. The Chairman recalled that at the informal gathering of persons responsible for information exchange it had been noted that while most signatories applied the harmonized commodity description and coding system

(HS) in their tariff nomenclature, the notification format and guidelines referred only to Customs Cooperation Council Nomenclature or to national tariff heading number. It had been suggested that the notification format and guidelines should include an additional reference to the harmonized commodity description and coding system under point (iv) of the notification format and guidelines (TBT/M/31, paragraph 19). The Committee took note of this statement and agreed to revert to this matter at its next meeting.

C. Improving the provisions of the Agreement on transparency

9. The representative of Finland speaking on behalf of the Nordic countries said that the proposal on improving the provisions of the Agreement on transparency (TBT/W/120/Rev.1) had been discussed with interested delegations. A further revision of this proposal would take into account their comments. The representative of the European Economic Community, Canada, New Zealand, Japan and India supported the general thrust of the proposal.

10. The representative of the European Economic Community recalled his suggestion for the deletion of the phrase "when a draft with the complete text of a proposed technical regulation (the rules for a proposed certification system) is made available domestically" in the amendments to paragraphs 2.5.2 and 7.3.2 (cf. TBT/M/31, paragraph 10). The representative of the United States said that they supported the language in the current text. The representative of Canada said that the proposal would be more enforceable if this phrase was deleted. These provisions might not be operative in cases where draft technical regulations were published with the status of public document without making them available domestically beforehand. The representative of New Zealand said that it might be desirable to delete this phrase altogether or to find a more general language which all countries, irrespective of their procedures, could meet. He suggested that the phrase should read "Such notifications shall take place at an early appropriate stage when the content of a proposed technical regulation (the rules for a proposed certification system) is made known".

11. The representative of New Zealand said that the word "government" should be deleted in the reference to "one single central government authority" in paragraph 10.7.2. In his country and a number of other countries the authority responsible for the implementation of notification procedures was not necessarily a governmental body. The representative of Finland speaking on behalf of the Nordic countries recognized that the implementation of information procedures might be delegated to a non-governmental body. However this proposal sought to give the ultimate responsibility for the implementation of the notification procedures under the Agreement to one authority at the central governmental level. Governments as Parties to the Agreement, should undertake this responsibility.

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

D. Improved transparency in bilateral standards-related agreements

13. The representative of the United States introduced the revised proposal in document TBT/W/128. The text in document TBT/W/111 had been redrafted so that the proposed new sub-paragraphs fitted in with the language of the existing Articles 2, 5, 7 and 10 of the Agreement.

14. The representative of Canada supported the new sub-paragraphs 2.11, 5.5 and 7.6. While his delegation agreed with the elements of the information that would be included in the notifications of bilateral standards-related agreements, they questioned whether the elements should be listed in the text of the Agreement or in a notification format and guidelines similar to those adopted by the Committee for the notification of proposed technical regulations and rules of certification systems. The representative of Hong Kong asked whether the delegation of the United States envisaged a time frame for the notification and consultation procedures. The representative of India wondered to what extent the proposed new additions to sub-paragraphs 2.11, 5.5 and 7.6 would improve transparency.

15. The representative of Canada wondered to what extent the provisions on consultations in sub-paragraphs 2.12, 5.6 and 7.7 of the proposal were essential for transparency. The representative of India said that they had no difficulty with the provisions on consultations.

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

E. Testing, inspection and approval procedures

17. The representative of Finland speaking on behalf of the Nordic countries introduced the proposal circulated in document TBT/W/126 which combined the two previous proposals on Testing Procedures and Inspection Procedures (TBT/W/118 and 119). This new proposal suggested amendments to the provisions of Article 5 as well as the extension of its scope to inspection procedures. The representative of Canada said that the procedures which were addressed in the proposal had an important impact as they were widely applied in international trade.

18. The representative of Finland speaking on behalf of the Nordic countries said that the new proposal took into account the draft definitions prepared by the ISO/CASCO Ad Hoc Group on Definitions which at present were under consideration by the ISO member bodies. The representatives of the European Economic Community and India said that the proposed definitions in paragraph 2 of document TBT/W/126 should be discussed in the light of the outcome of the work in ISO/CASCO Ad Hoc Group on Definitions. The representative of India added that the definitions used for the purpose of the proposal, or any other definition that the

Committee might agree to use in future, should be the same as those adopted by the ISO. The representatives of Japan and Hong Kong said that consideration of the appropriate definitions should be delayed until the adoption of the final definitions in the ISO/CASCO. The representative of Finland speaking on behalf of the Nordic countries said that the proposal did not suggest that the draft terms and their definitions elaborated by the ISO/CASCO Ad Hoc Group on Definitions should be adopted by the Committee. The Nordic countries had presented these definitions to illustrate the meaning of the terms used in the proposal and to assist Parties in understanding the proposal. The definitions adopted by the ISO would be reflected in the proposal to the extent that they were applicable.

19. The representative of European Economic Community noted that, following the comments made by his delegation, paragraph 5.2 listed examples of cases in which the use of international recommendations and guides might be inappropriate. Joined by the representatives of Canada and Japan, he said that this paragraph had to be examined further in order to see whether the list of inappropriate cases should be made fully consistent with the criteria enumerated in Article 2.2 of the Agreement.

20. The representative of India said that paragraph 5.2 required Parties to use international recommendations and guides as a basis for their testing and inspection procedures. His delegation maintained that, although harmonization in this area was a laudable goal, Parties should keep in view the special conditions in and the stage of development of certain countries. The revised paragraph did not reflect adequately their earlier remarks in this respect. He suggested that the words "as far as possible" be inserted between the phrase "For testing and inspection procedures, Parties shall " and the words "use relevant international recommendations and guides" in the first sentence of the paragraph 5.2. He also suggested that the word "infrastructural" be added between the words "fundamental technological" and the word "problems" in the last phrase of the paragraph. In response, the representative of Finland, speaking on behalf of the Nordic countries said that Article 12 provided for special and differential treatment of developing countries. If every difficulty faced by developing countries were reflected in the substantive provisions of the Agreement, its text would be weakened unduly for those countries that had the capacity to undertake stricter obligations. The Nordic delegations therefore considered that the concerns expressed by the delegation of India could be met through a possible amendment to Article 12 rather than a revision of the proposed paragraph 5.2.

21. The representative of the European Economic Community said that in paragraph 5.4.2 the reference to "what is reasonable and necessary" should not be limited to the control of individual specimens of a product. The representatives of Canada and New Zealand said that for them paragraph 5.4.2 meant that where individual samples of a product were required for testing and inspection, the number of samples should be limited to what is reasonable and necessary. This paragraph should be explained further

22. The representative of the United States said that paragraph 5.4.5 should specify that any negative results of testing and inspection procedures should be made known before the final results were transmitted.

23. The representative of the European Economic Community said that the confidentiality of information mentioned in paragraph 5.4.7 was a sensitive matter. The national treatment clause in the proposal dealt with this proposal in a reasonable way. The representative of Finland speaking on behalf of the Nordic countries said that paragraph 5.4.7 was consistent with Article 5.1.6 of the Agreement.

24. The representative of the European Economic Community said that paragraph 5.5 concerning mutual recognition arrangements had to be examined further. The representative of Finland speaking on behalf of the Nordic countries said that the contents of paragraph 5.5 was similar to the provisions of Article 5.2 of the Agreement.

25. The representative of Hungary said that the present 5.4.7 on the confidentiality of information could be placed before paragraph 5.4.6 and that the text should end with paragraph 5.7.

26. The representative of the United States introduced the proposal on Product Approval Procedures (TBT/W/127) which had been revised in the light of the comments received on the earlier proposal. The representative of India said that the proposal by the United States would reinforce the effort of the Nordic countries to extend the provisions of the Agreement to the area of conformity assessment. The representative of Finland speaking on behalf of the Nordics countries said that the proposed text aimed to apply the disciplines in the Agreement to an area that was not yet covered by it.

27. The representative of Canada suggested that the language used in paragraph 9.3 included the areas mentioned following the word "inter alia" in para 9.2. In paragraph 9.3 the relationship between approval procedures and certification schemes should be made clearer.

28. The representative of New Zealand said that, under paragraph 9.4.4, reference should be made not only to technical requirements but also to quality assurance systems in order to reflect an important aspect of certification. Certification of a product was becoming less and less a matter of simply checking the conformity of a product with relevant technical requirements. Checking to verify that the product was manufactured with adequate quality assurance at the place of production or the factory was becoming increasingly important.

29. The representative of Japan asked what other information should be made available under paragraph 9.4.5 to exporters, importers or their agents, other than specifying the requirements of the applicable technical regulations that the product failed to meet.

30. The representative of Finland speaking on behalf of the Nordic countries asked what was the difference between the word "parameters" used in paragraph 9.4.5 and the word "characteristics" used in Article 2.4. He suggested that the term in the Agreement be used in this paragraph.

31. The representative of India proposed that in paragraph 9.4.6 the word "proven" should be added in the sentence "approval authorities shall make their approval decisions on the basis of sound technical evidence" to read "sound and proven technical evidence".

32. The representative of the European Economic Community said that expert opinion should not be resorted to in every case. Paragraph 9.4.6 should stipulate that in cases where expert opinion was used, this opinion should be impartial. The representative of Finland on behalf of the Nordic countries said that in paragraph 9.4.6 sound technical evidence should be used as one decisive factor when granting approvals but that there might be other important factors that should be taken into account .

33. With respect to paragraph 9.5 the representative of Canada said that they supported the proposal for the availability of review procedures for complaints. Such procedures should be applied following defined disciplines. They were reflecting on the stage of the procedures at which review procedure should be provided.

34. The representative of Japan asked whether acceptance of result in paragraph 9.7 included acceptance of result of product approval. He enquired as to the difference between this paragraph and the provisions of Article 5.2.

35. The representative of India suggested that in paragraph 9.7 the word "recognized" should be added to read "acceptance of results issued by the relevant recognized bodies in the territories of other Parties".

36. The representative of Finland speaking on behalf of the Nordic countries said that paragraph 9.7 should specify the results that were referred to in the phrase "the acceptance of results issued by relevant bodies in the territories of other Parties".

37. The representative of Finland speaking on behalf of the Nordic countries said that they considered paragraph 9.11 as unnecessary. The proposed amendment to Article 10 covered the purpose of this paragraph.

38. The representative of New Zealand asked whether the definition of "approval" relating to a central government body would be appropriate in cases in which that authority was delegated to a non-governmental body. The representative of Finland speaking on behalf of the Nordic countries said that the definition of the term "approval" should be examined. In practice a governmental body or any other body granting approvals should be able to deviate from a set of published criteria if it considered that specific circumstances prevailed. Although the ISO/CASCO Ad Hoc Group on Definitions had not considered it within its competence to prepare a definition of approval, it was worthwhile to review the conclusion of that Group which stated that approval ensured the free circulation of a product on a regulated market.

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

39. The representative of the European Economic Community said that several delegations had expressed support for the approach outlined in the proposed code of good practice for non-governmental bodies (document TBT/W/124).

40. The representative of Czechoslovakia considered that the proposed code would fill a lacuna in the provisions of the present Agreement. The representative of Canada said that the proposal was a comprehensive attempt to address the long-standing issue of second-level of obligations applying to non-governmental bodies.

41. The representative of Finland speaking on behalf of the Nordic countries said that after the discussion of the proposal with the national standards bodies in their countries, the Nordic delegations had concluded that there should not be any substantive difficulty in adopting the proposed code of good practice. Commenting on the scope of the proposal, he said that, while the proposal addressed only non-governmental bodies, in many countries, including in some European countries, the national standards bodies were governmental bodies. Furthermore, in addition to non-governmental regional bodies, certain intergovernmental regional bodies such as the UN/Economic Commission for Europe were involved in the elaboration of standards. Therefore, it was necessary to establish a parallel between the obligations of governmental and of non-governmental bodies and between those of non-governmental regional bodies and of intergovernmental regional bodies.

42. The representative of Finland speaking on behalf of the Nordic countries said that the Committee had to be assured that ISONET members would agree to play the role that was expected of them in the implementation of this proposal. The representative of Japan said that the question of membership and finance in connection with the utilization of the facilities of the ISONET had to be addressed carefully. The representative of the European Economic Community said that the ISO was competent to play that role. His delegation would consult the ISO secretariat on the points that concerned this organization directly.

43. The representative of Japan said that the balance of obligations of non-governmental bodies and central governmental bodies should be carefully considered. Requirements on non-governmental bodies such as those in paragraph F concerning the publication of annual work programmes and in paragraph G concerning the holding of public enquiry of at least sixty days on their draft standards were not imposed to central government bodies under the provisions of the Agreement. The representative of Canada expressed concerns about the feasibility of implementing the requirement for a sixty day public enquiry period. This requirement did not correspond to the existing practice. The representative of the European Economic Community said that the question of balance of obligations of governmental and of non-governmental standards bodies had to be discussed further.

44. The representative of the United States said that in her country the preliminary reaction of the interested parties to the proposed code had not been quite as positive as in some other Parties. In substance, the activities of non-governmental bodies in her country went in the direction of the goals of the proposed code which made their system generally accessible. However, they could not commit themselves to following certain specific provisions of the proposed code. Her authorities might encounter difficulties if they tried to change a system that had been working effectively.

45. The representative of India said that the proposed code addressed some of the difficulties and problems that were being experienced with regard to second level obligations. The activities of nongovernmental bodies in some Parties had an important influence on standardization. The standards formulated by these bodies were applied not only in their own territories but also in the territories of other Parties. The proposal by the European Economic Community would provide greater transparency on the activities of non-governmental bodies and would give interested parties the opportunity to make comments on these activities. They also felt that the implementation of the code would enhance the relevant work undertaken at the international level.

46. The representative of Canada said that private standards bodies in his country supported the approach of a code of good practice. However, his authorities would have preferred provisions which imposed direct obligation on central governments and which provided a mechanism for the coordination of the activities of non-governmental bodies at the national level. Such coordination would ensure the avoidance of duplication in developing standards and reinforced participation in the development of international standards. They however recognized that a number of countries might have difficulties in enforcing the coordination of the activities of numerous private bodies. While this proposal represented a considerable improvement with respect to the existing provisions in the Agreement, it remained a second best solution to the problems in this area.

47. The representative of New Zealand said that they had consulted with their non-governmental bodies and were able to accept the main thrust of the proposal. They believed that certain obligations on non-governmental bodies would be quite valuable. The national standards body in his country remained concerned that the achievement of increased transparency should not result in increased requirements on non-governmental bodies. Some of the requirements in paragraphs F, G and I of the proposal could lead to increased costs in running a national enquiry point without generating any increased revenues for these bodies. The provisions of paragraph K on requests for standards should be worded so as not to prejudice any agency arrangements which existed amongst members of ISO. These provisions should be drafted so that the usual practice, whereby a company which had a request for a standard in another country was able to obtain the standard in question through the standards organisation in its own country, could continue. The representative of the European Economic Community said that the aim was to ensure that administrative and financial expenses that would result from the code of practice would not exceed the benefits that would be derived of the code for non-governmental bodies and for the industry.

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

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

49. The representative of the United States stated that her country had been continuing its efforts to resolve its differences with the European Economic Community on the hormone directive. Bilateral consultations had continued since the formal proceedings under the Agreement had failed to give the United States the right to relief from what they continued to consider an unjustified trade barrier. The Committee was aware that the United States believed that the restriction on trade caused by the hormone ban could not be justified by scientific evidence. More than two years had lapsed since the United States had requested a technical expert group to examine their complaint in accordance with the procedures of the Agreement. That request had been blocked by the European Economic Community. Bilateral efforts to solve this problem were continuing. Her delegation reminded the Committee of their request and of the fact that the European Economic Community had not permitted their action to be subject to proper scientific enquiry in this forum.

50. The representative of the European Economic Community said that bilateral discussions on this matter were continuing. He therefore was surprised to hear this statement. His delegation continued not to share the views expressed by the delegation of the United States on this subject.

H. Date and agenda of the next meeting

51. The Committee agreed to hold its next meeting in the week of 20 November 1989, the exact date of the meeting to be fixed by the Chairman in consultation with interested delegations. The agenda of the next meeting would include the following items:

1. Statements on implementation and administration of the Agreement;
2. Procedures for information exchange;
3. Improving the provisions of the Agreement on transparency;
4. Languages for exchange of documents;
5. Improved transparency in bilateral standards-related agreements;
6. Improved transparency in regional standards activities;
7. Testing, inspection and approval procedures;
8. Voluntary draft standards and their status;
9. Code of good practice for non-governmental standardizing bodies;
10. Processes and production methods;
11. Tenth annual review of the implementation and operation of the Agreement;
12. Report (1989) to the CONTRACTING PARTIES.