

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

TBT/W/130

5 January 1990

Special Distribution

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### Committee on Technical Barriers to Trade

#### DRAFT MINUTES OF THE MEETING HELD ON 23 NOVEMBER 1989

Chairwoman: Mrs. C. Guarda (Chile)

1. The Committee on Technical Barriers to Trade held its thirty-third meeting on 23 November 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 the European Economic Community informed the Committee about the Community's use of international standards. They participated in a hundred and fifteen technical committees and sub-committees of various international standards organisation out of about two hundred. Eighty per cent of CENELEC standards were based on IEC standards. He noted that, had all Parties participated to the international standardization activities to the same extent, the difficulties that the representative of New Zealand had pointed to at the last meeting (TBT/M/32, paragraph 3), would not have existed.

4. The representative of the United States said that Portugal had not notified a regulation concerning a labelling requirement for edible oils. This was an area of some concern to her country and although her authorities had had consultations on this matter both with the Portuguese authorities and with the Commission of the European Communities, the notification of the regulation in question was still pending. In future,

her delegation would draw the attention of the Committee to other cases in which her country considered that it had not received the full benefits to which they had a right under the Agreement because notifications had not been made. The representative of the European Economic Community took note of this statement and said that the implementation of the notification procedures in some of the other Parties was also far from being perfect.

B. Procedures for Information Exchange

5. In the light of the discussion held at the informal gathering of persons responsible for information exchange (TBT/M/31, paragraph 19 and TBT/M/32, paragraph 8), the Committee agreed to amend item (iv) of the notification format and guidelines to include a reference to the harmonized system commodity description and coding system (see Annex I). It invited Parties to take account of the agreed changes in the preparation of future notifications; and to indicate clearly what coding system was being used under item (iv) of the notification sheet.

C. Languages for exchange of documents

6. The representative of India introduced the proposal on languages for exchange of documents (TBT/W/129). He recalled that there had been wide support for the thrust of the proposal when an earlier version had been discussed in the Negotiating Group on MTN Agreements and Arrangements. However, some delegations had had certain reservations because of the additional workload and financial burden that the acceptance of the proposal might imply for some Parties. Taking these comments into account, his delegation had incorporated two new changes in the proposal. The scope of the translations that were now being sought was limited, first by providing for translations of only those documents for which a specific request had been received, and, secondly by limiting the availability of translations to requests from developing country Parties. In the informal exchange of views held with interested Parties, most delegations had been in favour of the revised proposal. One delegation had noted that information concerning any translations undertaken by Parties should be exchanged to enable Parties to share translations among themselves on the basis of an appropriate fee. In response, his delegation had maintained that in order to examine the proposed documents and to provide comments before they were adopted, the translations of documents would need to be obtained as rapidly as possible. Therefore, the exchange of information on translated documents on an ad hoc basis would not be predictable.

7. The representative of Finland, speaking on behalf of the Nordic countries, said that the Nordic countries provided the greatest number of notifications each year and all notified documents were based on documents drafted in a non-GATT language. The acceptance of the proposal would result in increased financial burden and workload for them. This proposal could nevertheless be accepted by the Nordic delegations if it could be agreed that requests for translations would not be made for all notified documents but would be limited to specific notifications. Furthermore, the

Nordic countries preferred that translations should be shared with all Parties, whether developed or developing countries. Accordingly, they suggested that the amendment in the Indian proposal should be introduced under Article 10 and not under Article 11. The representative of India said that his delegation would not have problems with this suggestion. Their present proposal addressed the first point. As regards the second point, the motif in limiting the scope of the proposal to developing countries was to limit the workload and financial burden but they saw no difficulties with other Parties sharing the benefits of any future arrangements in this respect. The representative of New Zealand said that his delegation saw the proposal favourably. They supported the suggested change which would allow all Parties to have access to the documents translated by the notifying Parties.

8. The representative of Japan said that there should be no substantial problems with the exchange of translated documents if all Parties observed fully the relevant recommendations adopted by the Committee. These recommendations should be taken into account in seeking ways to solve this problem. His delegation wished to reserve its position on this proposal. They were concerned that those Parties which did not use one of the GATT working languages as their official language would be subject to excessive burdens and additional obligations. They understood the considerations of technical assistance to developing countries. However, the extension of the scope of the proposal to all countries might create an imbalance of obligations between Parties. The representative of India maintained that recommendations of the Committee had not been adequate to solve this problem. He considered that the funds available for technical assistance could be used to respond to requests from developing country Parties for translation of documents.

9. The representative of Yugoslavia felt that the proposal of India might have an effect on the number of documents circulated by countries that did not use a GATT working language as their official language and lacked facilities for translating all notified documents.

10. The representative of Brazil supported the thrust of the proposal and said that while the proposal could cause problems for countries that did not have a GATT language as their official language, they also encountered problems in examining the documents notified by other Parties in a language that was not one of the official GATT languages.

11. The representative of the European Economic Community said that, although they recognized that exchange of translations of documents would cause more problems for some Parties than others, the proposal should be discussed in a constructive spirit.

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

14. The representative of Finland, speaking on behalf of the Nordic countries, reiterated their concern with the proposal in document TBT/W/128. They questioned the necessity of including additional sub-paragraphs under Articles 2, 5 and 7 dealing with notification procedures. Transparency in this area could also be improved by an amendment to Article 10. The extension of the obligations on notification procedures would increase the imbalance between those Parties that fulfilled their present obligations on notifications under the Agreement and others. In response, the representative of the United States stated that her delegation sought to include the requirements on notifications of standards-related agreements under the substantive provisions.

15. The representative of Canada supported the thrust of the proposal. He noted that bilateral agreements relating to areas covered by the Agreement could be of different kinds. They could be concluded as separate agreements between countries; they could be part of more general trade agreements; they may result from consultations held by Parties in the framework of the Agreement itself; or they may also represent informal understandings between the various authorities in different countries. Improved access to information on the provisions of these agreements would enable Parties to assess the operation of the relevant provisions of the Agreement in a better way.

16. The representative of India said that they still questioned the appropriateness of the provisions which encouraged other Parties to conclude agreements similar to those that had been notified. The representative of Canada supported the provision relating to consultations which would enable Parties to obtain information on the particulars of various agreements that may have an effect on their trade. However, they wondered whether the requirements in sub-paragraphs 2.12, 5.6 and 7.7, which envisaged consultations with a view to arranging for the participation in existing bilateral standards-related agreements, were essential to achieve this objective.

17. The representative of India said that the proposal concerning agreements on issues relating to laboratory accreditation had to be studied further.

18. The representatives of the Republic of Korea and Mexico welcomed the proposal. The representative of the Republic of Korea considered that the qualification under the proposed paragraphs 2.11, 5.2 and 7.6 concerning the notification of agreements "whether or not the agreements were concluded under provisions of the TBT Agreement" would involve a subjective judgement by the notifying Party.

19. The observer from Australia stated that National Association of Testing Authorities (NATA), which was the national authority for laboratory accreditation in his country, had concluded a memorandum of understanding with the Federal Government which required NATA to consult on the establishment of mutual recognition agreements relating to acceptance of test data.

20. In response to a question by the representative of Finland, speaking on behalf of the Nordic countries, the representative of the United States said that the text should be revised to include trilateral and plurilateral agreements.

21. In response to another question put by the delegation of Hong Kong at the previous meeting (TBT/M/32, paragraph 14), the representative of the United States said that it should not be necessary to give a specific time frame for notification and consultation in the text of the proposed paragraphs.

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

E. Testing, inspection and approval procedures

23. The representative of Finland, speaking on behalf of the Nordic countries, agreed with the suggestion by the representative of Brazil that Article 12.4 of the Agreement be modified to include a reference to inspection procedures. Such an amendment would enable developing countries to benefit from the special and differential treatment in respect of the requirements in the proposed paragraph 5.2 of the proposal on testing and inspection procedures (document TBT/W/126). The representative of Brazil suggested that Article 12.4 of the Agreement should also be modified to include a reference to approval procedures.

24. In response to a question by the representative of Brazil, the representative of Finland, speaking on behalf of the Nordic countries, stated that the proposed paragraph 5.5 did not include a reference to acceptance of certificates or marks of conformity issued by relevant bodies in the territories of other Parties. This issue might be addressed more appropriately in a proposal on Articles 7, 8 and 9. In response to another question by the representative of Brazil concerning paragraph 5.6 of the proposed text, he said that, unlike Article 5.3 of the Agreement, this paragraph did not specify central government bodies because Article 5 as a whole addressed the procedures by central government bodies.

25. The representative of Yugoslavia suggested that the phrase "even when the testing and inspection methods differ from their own" be modified to read "when the testing and inspection methods are in accordance with internationally recognized practices".

26. The representative of Canada said that paragraph 5.4.3 of the proposal in document TBT/W/126 and paragraph 9.4.3 of the proposal in document TBT/W/127 on the fees imposed, should take into account the additional costs incurred by international communications or travel in the course of testing, inspection and approval of imported products. The representative of Finland, speaking on behalf of the Nordic countries, said that the language in these paragraphs was similar to the text of Article 5 of the Agreement which provided that fees imposed for imported products shall be

equitable in relation to any fees chargeable for testing like products of national origin. According to them, the term equitable implied that the fees would reflect additional expenses required for imported products. The representative of Canada said that the earlier interpretation of the term equitable might not apply to the fees paid for inspection and approval procedures. The proposed provisions should allow those bodies in charge of implementing these practices to reflect in their fees the legitimate costs of dealing with imported products.

27. The representative of Canada expressed concern with respect to paragraph 5.4.5 of document TBT/W/126 and paragraph 9.4.5 of TBT/W/127 which required the availability of information on the results of testing, inspection and on the progress of approval. Central government agencies assigned private bodies to do testing and inspection on their behalf. Before the release of information to the exporter, importer or their agents, the body concerned should obtain authorization from the agency that had contracted the work.

28. The representative of Canada said that paragraph 9.4.1 of document TBT/W/127 should take into account those instances in which regulatory authorities were called upon to grant approvals in various national emergencies.

29. The representative of Brazil said that, in order to allow adjustment to the new procedure, there should be a delay between the adoption of a new regulation on approval procedures or a modification thereof, and the application of the approval procedures in their final form. This delay should be separate from that provided for comments on the proposed procedure. The representative of Finland, speaking on behalf of the Nordic countries, said that the language of Article 2.8 should be appropriate for this purpose.

30. The representative of Brazil suggested that paragraph 9.9 which provided for comments on proposed changes in approval procedures should state explicitly that the acceptance of comments was not obligatory.

31. The Committee noted the statements made and agreed to revert to this item at its next meeting.

#### F. Accreditation systems

32. The representative of the United States introduced briefly their proposal relating to systems for the accreditation or approval of testing laboratories, inspection or quality systems registration bodies (TBT/W/133). In this connection, she recalled the recommendation of the Committee concerning the relevant ISO/IEC Guides and invited Parties, which had not done so already, to provide information on national measures taken to promote the implementation of the principles and rules in these guides as a basis for testing and inspection activities in their territories.

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

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

34. The representative of the European Economic Community said that his delegation would reflect on the question whether central government or local government bodies which prepared standards would be subject to rules similar to those foreseen in the proposed code for non-governmental bodies in order to provide a certain degree of balance. One way of establishing that balance would be to incorporate certain principles in the Agreement itself. Another approach would be to subject all bodies which developed standards, whatever their status, to the same system of rules. The question of what role the ISONET would have in the dissemination of information on the annual work programme if all its members did not adhere to the code of practice remained open. In principle, those bodies which did not undertake obligations would not be granted benefits under the code. As regards the question of financial burden for non-governmental bodies, his delegation felt that this question should be considered in the light of the benefits that were aimed to be achieved for trade and industry in general rather than in terms of budgetary considerations of individual bodies. With respect to the suggestion that the sixty day period for public comments should be made shorter, he said that all interested parties should be allowed a reasonable time period within which to respond. As the code would apply to bodies within a wide geographical area, a period shorter than the sixty days would not be practical. There could be more flexibility in the provisions relating to annual work programmes and to obtaining draft texts or copies of standards through agency arrangements of national standards organizations.

35. The representative of Japan considered that the implementation of the proposed code of good practice would not be practical. The representative of Canada said that, according to private standards bodies in his country, the practices suggested in the proposed code of practice were already in play within the national standards system of Canada. A clearer language for the proposed text would enable Parties to encourage the adoption of the proposed code of practice by the non-governmental bodies within their territories.

36. The representative of Brazil said that his delegation would wish to see provisions similar to those in Article 12.4 of the Agreement in the code of good practice.

37. The representative of Brazil reserved the position of his country on the requirement for the publication of annual work programmes in paragraph F. The Brazilian Association of Standardization had also concerns regarding the publication of these programmes in a GATT working language.

38. The representative of Brazil asked what was meant by public enquiry in paragraph G. The representative of Canada asked at what point in time this public enquiry of sixty days was to begin.

39. The representative of the United States asked whether an ISONET information centre had been established at the Community level.

40. Concerning paragraphs H and K, the representative of Brazil drew attention to the provisions of Article 10.5.2 of the Agreement which exempted Parties from the obligation to provide the text of draft standards or copies of standards in a GATT language.

41. The representative of Brazil said that, in order to facilitate the acceptance of the Code by standardization bodies, paragraph I should state explicitly that non-governmental standardization bodies would have the obligation to take comments into account but not to adopt them.

42. The representative of Canada said that if at any given time large number of complaints were made with respect to any of the good practices specified in the Code, the great number of consultations held in terms of paragraph L could impede the development of national standards.

43. The observer from Australia said that there might be some difficulties if adherence to the Code was limited only to those bodies, such as national standards bodies, over which governments had influence. In a number of countries, many trade associations which prepared standards might choose not to comply with the guidelines laid down in the proposed Code. It would be useful for Parties to have consultations with as many non-governmental standardization bodies within their territories as possible.

44. The Committee noted the statements made and agreed to revert to this item at its next meeting.

#### H. Processes and Production Methods

45. The representative of New Zealand said that their aim in submitting their proposal on processes and production methods (PPMs) (TBT/W/132) was to contribute to more substantial discussion in the Uruguay Round of what they considered to be a key issue for the Agreement. While they agreed with the objective of the proposal by the United States, his delegation had tried in their proposal to see in more concrete terms what would be the changes required in order to incorporate PPMs within the scope of the Agreement and to make its coverage of PPMs clearer. The question of the Agreement's coverage of the PPMs had been recognized as an important issue from the time it had been negotiated in the Tokyo Round. Those negotiations had led to Article 14.25 which resulted in a most unsatisfactory coverage of PPMs. From the outset, the provisions in this Article had not been effective and had been subject to different interpretations among various Parties to the Agreement. An attempt made subsequently in 1983 to clarify the understanding on the interpretation of this article amongst the Parties had not succeeded. Experience with an understanding reached at that time regarding co-operation in the process of dispute settlement had shown that the fundamental problem of differences in interpretation of this Article remained, that, whatever the merits of those various interpretations might have been, the Article was ineffective and that there was a serious gap in the Agreement. They felt it important to seize the opportunity to try to improve the coverage of the Agreement as regards PPMs in the Uruguay Round for the following reasons. First, as had



been pointed out in the proposal by the United States, PPMs were widely used and they were being used increasingly in some areas. They had similar objectives to product-based standards and were just as likely and, in many cases more likely, to have the potential of creating unnecessary obstacles to trade. Second, in the Uruguay Round Parties had their first major opportunity to improve the Agreement. Such an opportunity would probably not come again for several years. They also considered that this whole area would become more important after the Uruguay Round. It was essential to make the Agreement as effective an instrument as possible. Some of the other proposals that were being discussed in the Committee were complementary to the present proposal and part of a whole package of improvements to the Agreement which would be coming out of the Uruguay Round.

46. The representative of New Zealand continued his statement by saying that his delegation saw no major difficulty in applying the disciplines of the Agreement as they were set out at present to PPMs, as PPMs had largely identical purposes and functions as product-based standards. However, in one area in particular, they had had to envisage special provisions for PPMs. The disciplines on testing in Article 5 relating to determination of conformity were based on the assumption that the imported products were tested in the importing country. In the case of PPMs, this assumption could not be made. First, the co-operation of the exporting party had to be ensured if the conformity of a PPM with the requirements in the importing country were to be fully assessed. Second, a principle of equivalency was required. Without this principle, there would be a major source of unjustified trade barriers. If an importing country had placed a PPMs-based regulation or standard on a particular product, it should be permissible for an exporting country for whom that particular PPM might not be appropriate or achievable to demonstrate that a different PPM produced equivalent results. If such a demonstration could be made satisfactorily, then the importing Party should accept the PPMs being used in the exporting Party as equivalent. Such a situation would arise when the importing Party based its requirements on a particular technology which it used to produce a particular product, whereas an exporting Party had developed a more advanced and efficient technology for the same purpose. In that case, the exporting Party would clearly not be using the same PPMs as was required by the importing Party. However, the PPM it was using might well be equivalent, or even superior, in achieving the objective sought by the importing country. Their proposal suggested additional provisions to the present Article 5.2, under the general heading of determination of conformity, in order to address the concept of equivalency.

47. The representative of New Zealand explained the other changes to the Agreement in the proposal as follows. If PPMs were to be covered by the Agreement they would have to be incorporated in the definition of technical specifications. In the definition suggested on page 3 of the proposal they emphasized that they aimed to cover processes and methods that must be used in the production of a product. The question of whether an additional definition of process and production method was needed had been discussed in the Committee. They had not considered that such a definition was

essential as there was a great deal of controversy as to what was or was not a PPM. However, they preferred a more general and shorter definition than the one suggested by the delegation of the United States in document TBT/W/108/Add.1. A second change suggested would call upon Parties to draft, where possible and appropriate, requirements in terms of product-based standards rather than in terms of PPMs. Unjustified obstacles to trade were more likely to arise if Parties chose a PPM requirement rather than a product-based standard. PPM requirements restricted the producer and the exporter more than product-based standards. In the case of product standards, the goods themselves would often be accepted no matter how they had been produced, provided they could meet the testing requirements laid down. The proposal did not suggest that, in every case in which there was a choice, Parties should choose to draft regulations and standards in terms of performance or design rather than PPMs. However, there were not many cases in which PPMs were in fact more appropriate than a product-based standard where they were interchangeable. Third, Article 14.25 would become superfluous once PPMs themselves were covered by the Agreement. There would no longer be a question of circumvention by drafting in terms of PPMs rather than product-based standards. PPMs would be subject to the same dispute settlement provisions as product-based technical regulations and standards were at present under the Agreement. Rather than seeking an amendment to this Article, his delegation suggested its deletion.

48. The representative of New Zealand concluded his introductory comments by noting that this proposal was complementary to the proposals on testing, inspection and product approval procedures before the Committee. The discussions in the Negotiating Group on Agriculture were also relevant to the present issue. While the disciplines agreed in the context of those negotiations might contain elements relevant to the question of PPMs, the whole institutional question of where sanitary and phytosanitary regulations were going to be included remained open in the Negotiating Group on Agriculture. At a later stage, his delegation would see to it that any relevant outcome of the discussions on sanitary and phytosanitary questions would be made consistent with the results of the discussions on PPMs in the present context. The proposal by his delegation stood on its own and was aimed at making the Agreement more relevant and more effective in the future.

49. The representative of Brazil supported the proposal by New Zealand. The ideas on equivalency were important as methods of production in different Parties were not always compatible. The representative of Finland, speaking on behalf of the Nordic countries welcomed the proposal. It provided a firm basis for continuing the discussion on this topic. He considered that PPMs could not be brought under the coverage of the Agreement simply by amending the definition of technical specifications. The provisions of Article 5 had to be amended. The representative of Canada said the proposal by New Zealand represented an important step forward in the discussion of the same issue. The representative of Japan said that the proposal was important. The representative of India said that his delegation shared the thrust of the proposal. It addressed an important area which had not been covered adequately in the Agreement. It also went further than the proposals on the subject which had been made so far.

50. The representative of Canada said that his delegation supported the proposal to include PPMs in the definition of technical specification used in the Agreement, as had also been suggested in the proposal by the United States. The proposal for setting a preference in Article 2.4 between different specifications was consistent with what was implicitly in the Agreement. The proposal on the technical question of equivalency reflected the fact that different production processes and methods were employed in various countries and in different situations. The proposed changes would take into account certain commercial realities and provide manufacturers with some degree of flexibility in the methods and processes they chose to use in order to achieve such targets as competitiveness in costs, desired levels of product quality, different combinations and kinds of resources used to produce the same product. In addition to the consideration of equivalency between PPMs in different countries, the proposal should also allow the possibility of equivalency between products that were produced through different PPMs. The concept of equivalency would facilitate the movement of the products in question. It would not require having to determine whether the PPM in another country was equivalent or not. He also considered that the question of definition was a moot point. Although PPMs were already referred to in the Agreement, their definition had not been a problem for Parties.

51. The representative of the United States said that they welcomed the introduction of the concept of equivalency in the provisions of the Agreement. They had concerns with requirements drafted in terms of PPMs, particularly in situations in which they effectively excluded goods that had been made by different but equivalent process. There should be disciplines in the Agreement that covered this situation and enabled Parties to consult and to have recourse to dispute settlement procedures. She added that the definition of PPMs in the proposal seemed adequate.

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

I. Tenth annual review under Article 15.8

53. The Committee agreed to conclude its Tenth Annual Review on the basis of the background documentation contained in documents TBT/31 and TBT/31/Suppl.1 (to be issued), TBT/W/25/Rev.12, TBT/W/31/Rev.7 and Corr.1 and TBT/W/62/Rev.1 and Corrs.1-4.

J. Report (1989) to the CONTRACTING PARTIES

54. The Committee adopted its 1989 Report to the CONTRACTING PARTIES, which was subsequently issued as L/6598.

K. Date and agenda of the next meeting

55. The Committee agreed to hold its next meeting on 15 December 1989<sup>1</sup> and its first meeting in 1990 on 30 January.

56. The agenda of the next meeting would include the following items:

1. Improving the provisions of the Agreement on transparency;
2. Improved transparency in bilateral standards-related agreements;
3. Languages for exchange of documents;
4. Processes and production methods;
5. Testing, inspection and approval procedures;
6. Accreditation systems;
7. Code of good practice for non-governmental standardizing bodies.

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<sup>1</sup>Subsequently cancelled.

ANNEX I

NOTIFICATION PROCEDURES

Format and Guidelines

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(iv) Products covered

HS or CCCN (chapter or heading and number) where applicable. National tariff heading if different from HS or CCCN. A clear description is important for an understanding of the notification by delegations and translators. Abbreviations should be avoided.

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# GENERAL AGREEMENT ON TARIFFS AND TRADE

## Committee on Technical Barriers to Trade

### NOTIFICATION

The following notification is being circulated in accordance with Article 10.4.

1. Party to Agreement notifying:
2. Agency responsible:
3. Notified under Article 2.5.2 <input type="checkbox"/> , 2.6.1 <input type="checkbox"/> , 7.3.2 <input type="checkbox"/> , 7.4.1 <input type="checkbox"/> , Other:
4. Products covered (HS or CCCN where applicable, otherwise national tariff heading):
5. Title:
6. Description of content:
7. Objective and rationale:
8. Relevant documents:
9. Proposed dates of adoption and entry into force:
10. Final date for comments:
11. Texts available from: National enquiry point <input type="checkbox"/> or address of other body: