

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

TBT/W/140

28 March 1990

Special Distribution

Committee on Technical Barriers to Trade

DRAFT MINUTES OF THE MEETING HELD ON 27 FEBRUARY 1990

Chairman: Mr. W. Frei (Switzerland)

1. The Committee on Technical Barriers to Trade held its thirty-fifth meeting on 27 February 1990.

2. The agenda of the meeting was as follows:

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A. Accession of further countries to the Agreement

3. The Chairman announced that the Government of Israel had accepted the Agreement on 16 February 1990. In terms of Article 15.6, the Agreement entered into force for Israel on 18 March 1990. In welcoming Israel on behalf of the Committee, he invited the delegation of Israel to submit a written statement on the implementation and administration of the Agreement in accordance with Article 15.7 and the relevant decision of the Committee (cf. TBT/16/Rev.4).

B. Languages for exchange of documents

4. The representative of Switzerland supported the proposal by India on languages for exchange of documents (TBT/W/129) and the amendments suggested by the Nordic countries and Japan (cf. TBT/M/34, paragraphs 9 to 11). His delegation agreed with the view that any Party, including a developed country Party, should be able to request the translation of notified documents. He also emphasized that the request to Parties for

translations should be limited to the draft documents covered by a specific notification. The representative of Japan suggested that the words "developing country" should be deleted in the first line of the proposed text.

5. The Committee agreed to revert to the suggested amendment to Article 10 at an appropriate time on the basis of the following text:

"10 bis Parties shall, if so requested by other Parties, provide copies of the documents and/or summaries of the documents covered by a specific notification in English, French or Spanish".

C. Improved transparency in agreements concluded within the scope of the Agreement

6. The representative of the United States drew attention to the revised proposal on improved transparency in agreements concluded within the scope of the Agreement (TBT/W/128/Rev.1). The representative of Canada said that, in view of the language in the revised text which simply encouraged Parties to consider entering into consultations with other Parties, his delegation withdrew its previous question relating to the necessity of paragraphs 2.12, 5.6 and 7.7 for the achievement of the objective of transparency (TBT/M/33, paragraph 16). The Committee took note of this statement and agreed to revert to the proposal by the United States, together with other proposals relating to the improvement of the provisions of the Agreement on transparency and to conformity assessment procedures.

D. Conformity assessment procedures

7. The representative of the European Economic Community introduced the proposal on conformity assessment procedures contained in document TBT/W/138. In the past several years the Committee had discussed the extension of the coverage of the provisions in the Agreement relating to conformity assessment. The proposal by the European Economic Community took into account the discussion of the subject within the Committee. Its coverage was indicated in the explanatory note to the proposed definition for the term "conformity assessment procedure". It included not only testing and certification, as it had been the case up to present in the Agreement, but extended to a whole range of other procedures for the determination of conformity of a product with a technical regulation or standard in a direct or indirect way. Like the other proposals on the subject, their proposal suggested the strengthening of the Agreement in the area of conformity assessment by applying the basic principles in the Agreement concerning the avoidance of unnecessary obstacles to trade, the treatment accorded to imported products, the use of international recommendations and guides and the transparency of the procedures.

8. The representative of the European Economic Community went on to say that the proposal also clarified the concept of "mutually satisfactory

understanding" in Article 5.2 of the Agreement. As the international trade relations carried out within this framework had become increasingly important, it was essential that the provisions in the Agreement in this connection were made more clear and direct. The text proposed by the Community not only included elements that were designed to encourage Parties to enter into negotiations for arriving at mutual recognition agreements but also proposed the establishment of certain criteria for such negotiations. Among the criteria listed in the proposed Article 6.2 were the technical competence of the bodies concerned and to balance of interests between Parties. However, a Party would retain the right to accept or recognize unilaterally the results of the procedures of conformity assessment carried out by another Party.

9. The representative of the European Economic Community continued by saying that his delegation had presented a comprehensive proposal. They had also taken care to present a text that was clear and avoided duplication. The proposal had tried to regroup the principles that should apply to all the procedures in the field of conformity assessment on which other detailed proposals had been made. His delegation was willing to verify, with delegations which had submitted proposals relating to amendments to Articles 5 to 9, if all the points raised in each proposal were covered and to what extent divergence of views remained on specific issues. At an appropriate time Parties could carry out the negotiations on the basis of a comprehensive text.

10. The representative of Canada expressed the appreciation of his delegation for the proposal presented by the Community. The relevant provisions in the Agreement were not contained in a comprehensive article. The representative of New Zealand welcomed the overall approach of the proposal which would help Parties to achieve results which would be more manageable than if the Committee had to discuss all the proposals in the area of determination of conformity as separate amendments to the Agreement. They would examine carefully how the proposal covered the existing obligations under the Agreement and the obligations suggested in some of the new areas. The representative of Switzerland agreed that the Committee should examine whether the proposals by other countries were covered by the proposal by the European Economic Community. The representative of Finland, speaking on behalf of the Nordic countries, welcomed the comprehensive proposal covering all aspects of the conformity assessment procedures. The different proposals on the table on the specific aspects of conformity assessment procedures should be merged into one comprehensive set of provisions. Although the proposal on conformity assessment procedures covered to a large extent the proposal by the Nordic countries on testing and inspection procedures some elements of their proposal were not covered and some of its aspects were presented in a different way in the proposal by the European Economic Community.

11. The representative of Finland, speaking on behalf of the Nordic countries, noted that, according to the explanatory note on the definition

of the term conformity assessment, the scope of the proposal dealt extensively with product requirements but it still excluded PPMs (processes and production methods). The representative of the European Economic Community replied that his authorities had already considered this matter and, in the light of the outcome of the discussion of the problem of PPMs, they might decide to include PPMs in the definition of conformity assessment.

12. The representative of Finland, speaking on behalf of the Nordic countries, said that in paragraph 5.1.6 of the proposal relating to confidentiality of information, the Community made a reference to the limits set by guidelines and recommendations issued by international standardization bodies. He asked what those limits were in practical terms and how they compared to the present requirements in Article 5.1.6 of the Agreement.

13. The representative of Finland, speaking on behalf of the Nordic countries, said that while the provisions relating to transparency in the proposed articles 5.5, 5.6 and 5.7 were similar to the provisions of Article 2.5, 2.6 and 2.7 of the Agreement, there was no proposed article corresponding to Article 2.8 of the Agreement which required Parties to provide a reasonable interval between the publication of a technical regulation and its entry into force. Similar provisions for conformity assessment would allow time for producers in exporting countries to adapt their products and methods of production to the requirements in the importing country. The representative of the European Economic Community replied that they found the text of Article 2.8 superfluous. Since, in order to be sold in the market of export, a product had to be in conformity with the existing technical requirements on that market. The characteristics of the product that entered the market after the publication of the procedures for the determination of the conformity of the product with those requirements would be the same as those of the product before the introduction of the new procedure. These provisions were not necessarily an improvement of the text.

14. The representative of Japan said that the proposed article 5.1.3, which required decisions on applications made in accordance with conformity assessment procedures to be made as expeditiously as possible, was along the lines of the proposal by his delegation on transparency in and acceleration of the operation of certification procedures (TBT/W/115/Rev.1). However, the requirement that the applicants be kept informed of the progress of their application would entail an administrative burden on central government bodies. It would be more practical if the applicant were informed of the processing period of conformity assessment and the reasons for any delays.

15. With regard to the proposed Article 6 relating to mutual recognition agreements concerning conformity assessment procedures, the representative of Canada said that Article 5.2 of the Agreement, as it now stood, provided

for the acceptance of test results and certificates issued by relevant bodies in other Parties. In so doing bodies concerned might wish to have the same assurance that the test methods and results and certificates employed in the territories of other Parties met their own requirements. The proposed Article 6 would provide that Parties shall be willing to enter into negotiations for the conclusion of mutual recognition agreements. The Committee should examine in what way the provisions of Article 5.2, at least as they related to testing and certification procedures, were different from those of Article 6 in the proposal by the European Economic Community. In Article 5.1.1 of the proposal by the the European Economic Community and in the Agreement itself conditions were already set for accepting certification or other conformity assessment results and practices from outside a country. He wondered how the negotiations for mutual recognition agreements suggested in Article 6 were consistent with the obligation to grant national treatment which was designed to ensure access to foreign products. They believed that while the agreed provisions should not exclude the possibility of negotiations, such negotiations should not be the only basis for mutual recognition agreements. He also asked what rôle the international guides and criteria and recommendations would have in these negotiations. The representative of the European Economic Community said that the concept of unilateral acceptance of the results of procedures explicit in Article 5.2 of the Agreement was maintained in Article 5.1.2 of the proposal in which it was stated that "where other conformity assessment procedures offer equivalent or better confidence, Parties shall, wherever possible and without prejudice to Article 6, accept the results of those procedures as well".

16. The representative of New Zealand said that they were concerned that the tenor of the obligations under 5.2 might not be reflected in the proposal by the European Economic Community. Some form of conditionality appeared to be attached to a Party's implementation of the obligations as stated under the Agreement. In particular, they wondered who would have the ultimate task of making the assessment under the proposed Article 5.2(c) as to whether or not a balanced situation existed in a particular stage of the negotiations.

17. The representative of the United States said that they considered that language encouraging consultations rather than requiring negotiations in the Agreement might be more appropriate. The provision for introducing a balanced situation as part of the criteria for negotiations on mutual recognition did not have a place in this type of international agreement. The approach in their proposal on transparency in agreements concluded within the scope of the Agreement (TBT/W/128/Rev.1) was consistent with the current Article 5.2 of the Agreement which encouraged prior consultations. In fact, mutual recognition agreements would not be concluded if there was not some sort of balance of advantages between parties to agreements. In response, the representative of the European Economic Community said that, up to present, the provisions in the Agreement relating to the recognition of test results and certificates had not been implemented adequately, given

to their potential for facilitating trade. The undertaking in Article 5.2 of the Agreement was less important than the provisions of Article 6 in their proposal. To encourage consultations was not as positive as to provide for negotiations aimed at concluding mutual recognition agreements. Agreements could be concluded between Parties with equal levels of industrial development which applied a similar set of procedures and had the same technical competence. It might also be possible to provide certain guarantees between Parties which did not have the same structures for carrying out conformity assessment procedures. Negotiations could not be initiated if Parties did not have some assurance as to advantages that they would derive from the future agreement. It was essential that an agreement provide for "a balanced situation" otherwise there would be the risk of concluding agreements which for one or the other party stayed a dead letter.

18. The representative of Finland, speaking on behalf of the Nordic countries, said that the proposed suggested Article 7 relating to conformity assessment procedures operated by local government bodies and non-governmental bodies did not include a reference to intergovernmental regional bodies which operated conformity assessment systems. However, the UN/Economic Commission for Europe operated certification systems for car parts, etc., the OECD certification system for fruits and vegetables and for agricultural tractors, while NORDTEST operated a number of various schemes. Such intergovernmental regional bodies should not be excluded from the coverage of Article 7. The representative of the European Economic Community said that they would consider the possibility of including a reference to intergovernmental regional bodies.

19. On the question of international standards, the representative of Canada noted that the proposal did not take into account the provisions, such as those in Article 9.1, which required Parties, wherever practical, to formulate international certification schemes, become members thereof and participate therein. There were also international recommendations and guides for the establishment and operation of bodies involved in conformity assessment practices. There should be specific reference in the proposed provisions on conformity assessment procedures to international certification schemes as well as to international recommendations and guides. The representative of the European Economic Community said that there was an indirect encouragement to the use of international recommendations and guides in Article 6.2(a). The representative of Canada said that this encouragement should be made an explicit requirement in the proposed provisions.

20. The Committee took note of the statements made under this item and agreed to revert to this proposal together with the other proposals relating to conformity assessment procedures.

E. Certification systems

21. The representative of Canada said that the proposal on certification systems (TBT/W/135) contained three main elements: the first element suggested the strengthening of the provisions in the Agreement as regards the avoidance of unnecessary obstacles to international trade, non-discrimination and national treatment in the application of certification systems. The specific provisions relating to administrative practices in the sub-paragraphs of the proposed Article 7.2 contained many common elements with the relevant provisions in the proposal by the European Economic Community on conformity assessment. The second element of the proposal aimed to improve transparency in the operation of certification systems. While the present Agreement imposed an obligation to provide advance notification of the proposed certification systems, there was no similar requirement to provide information to applicants for certification on the status of their applications, including the reasons for any delays in processing, or information on any requirements that had not been met by the product. This element of the proposal shared a common objective with the relevant provisions in the proposals by the European Economic Community on conformity assessment procedures and in the proposal by Japan on transparency and acceleration of the operation of certification systems. As regards the provisions in the proposal relating to mutual recognition of certificates, he said that Article 5.2 of the present Agreement was the only provision that currently allowed Parties to consider the acceptance of certificates issued by relevant bodies outside their territories provided that they assured themselves that foreign certification practices met their own requirements. In addition, the proposal by Canada suggested that requirement of certification systems as well as the practices of certification bodies be based explicitly on international guides and criteria. Most of the substantive provisions of the Agreement promoted, as much as possible, the use of international guides and standards. His authorities believed that international certification systems had an important rôle to play in the encouragement of mutual recognition. One way of ensuring that the agreements concluded between Parties were consistent with the Agreement, and that they were not operated in discriminatory way against non-parties, would be to require their consistency with international guides. To the extent that mutual recognition agreements were based on international guides for certification bodies or on international certification systems for products, there would be a number of mutual recognition agreements between countries that would be consistent with the principles in the Agreement.

22. The representative of Japan, joined by the representative of the United States, welcomed the proposal by Canada as a useful attempt to improve the provisions in the Agreement relating to certification.

23. The representative of the European Economic Community said that the proposal by Canada had a number of points in common with the proposal by his delegation on conformity assessment procedures. There was direct

encouragement to Parties regarding the use of international recommendations and guides in the proposed Article 5.3 on conformity assessment procedures. A further reference to international certification in the proposal on conformity assessment procedures should not create problems. However, the Agreement itself provided for flexibility in the use of international standards in order to facilitate the acceptance of the relevant obligations by Parties.

24. The representative of Japan said that the proposal on transparency and acceleration of the operation of certification systems by central government bodies (TBT/W/115/Rev.1) had been revised in the light of the comments made in the Committee on the earlier version of their proposal. The revised text suggested that, when it was difficult to publish the standards processing period of each certification system, Parties should communicate the anticipated processing period to the applicant.

25. The representative of Mexico said that, while his delegation supported the improvement of the procedures for ensuring transparency of the operation of certification systems, his authorities had doubts that the requirements in the proposal could be implemented fully in their country because of the very nature of their administrative infrastructure.

26. The representative of the United States supported the proposal to insert a reference to the standards processing period in a revision of Article 7.5. It would be up to the Parties to choose either to publish the standards processing period of each certification system or to communicate the anticipated processing period to the applicant upon request. The representative of Canada found the suggestion to indicate the anticipated processing period reasonable. He saw a similarity between this proposal and the proposal by his country on certification systems.

27. The representative of Finland, speaking on behalf of the Nordic countries, felt that instead of accelerating the operation of the certification systems, the implementation of the requirement in the proposal might cause delays. With the first alternative, certification bodies would have a tendency for publishing maximum processing periods in order to make sure that they could issue certificates within the standards processing period in every case. The representative of the European Economic Community said that the idea of publishing the standards processing period of each certification system appeared to be too rigid. Joined by the representative of Finland, speaking on behalf of the Nordic countries, he said that the proposal by Japan should be discussed in conjunction with the other proposals which addressed the problem of transparency in conformity assessment procedures.

28. The Committee took note of the statements made and agreed to revert to the proposals by Canada and Japan under this item at its next meeting together with the other proposal on conformity assessment procedures.

F. Product approval procedures

29. The representative of the United States drew attention to the revised proposal on product approval procedures (TBT/W/127/Rev.1). The representative of Australia said that the following elements of the proposal required careful consideration. The suggested paragraph 9.5 on appeals could imply a commitment of resources for the establishment of an appropriate body and suitable mechanisms for conducting such process. The proposed paragraph 9.7, which suggested an undertaking by Parties to accept the testing and inspection result issued by relevant bodies in the territories of other Parties even when they were different from their own, could be problematic for his country. They believed that the standards applied in his country were more stringent than those applied in some other countries. The process of verifying the acceptability of methods and procedures applied by other Parties could be costly and complex. They also considered that the reference in paragraph 9.13 to allowing for a reasonable interval between the publication of requirements and their entry into force could create problems in cases in which the product in question might be a cause a risk for health and safety and that the relevant requirements had to be enforced urgently.

30. The Committee took note of this statement and agreed to revert to this proposal at its next meeting together with other proposals relating to conformity assessment.

G. Accreditation systems

31. The representative of Hong Kong said that the proposal by the United States (document TBT/W/133) recognized the worldwide trend towards establishing national laboratory accreditation schemes. It would obviously be useful to encourage the mutual recognition of such schemes. His authorities had noted that the aspect of the proposal which allowed an individual laboratory in one country to apply to an accreditation scheme in another country for recognition under that scheme was a little less practical than the rest of the proposal. They felt that the process of ascertaining whether that individual foreign laboratory could meet the standards of the scheme might be rather time consuming, costly and laborious and that it therefore did not seem to be a cost effective means of providing the service of accreditation. It would be far better to rely on mutual recognition agreements on a scheme to scheme basis or on a scheme to country basis. He also asked for a clarification regarding the language used in the provisions relating to access to accreditation systems in the second sentence of the proposed Article 7.3.

32. The Committee took note of this statement and agreed to revert to the proposal on accreditation systems together with other proposal in the area of conformity assessment.

H. Transparency in regional activities

33. The representative of Switzerland said that it was important to strengthen the obligations in the Agreement with respect to the activities of regional bodies in the same way as for national bodies following the principle of same functions and same duties. Under point 4 of the draft code of conduct in the proposal by the United States on improved transparency in regional standards activities (TBT/W/112), the procedures relating to advance notification and to comments on notifications of proposed standards should be the same as those for proposed technical regulations in Article 2.5.2 of the Agreement. With regard to point 7 of the proposed code of conduct, he wondered whether the members of the regional bodies and systems concerned which made financial contributions to these bodies and systems should be required to pay the same price for documents as non-members. The representative of Japan, joined by the representative of Mexico, said that they supported the proposal by the United States. They were also concerned that the interested parties had a limited opportunity to comment on proposed standards or certification system of regional bodies. The representative of Canada reiterated the support of his delegation for the thrust of the proposal. The observer from Israel said that it would be important to develop an understanding along the lines of this proposal.

34. The representative of the European Economic Community said that some elements of their proposal on a code of good practice for the preparation, adoption and application of standards to a certain extent covered the objective of transparency suggested in the proposal by the United States.

35. The Committee took note of the comments made and agreed to revert to the proposal by the United States at its next meeting together with the proposal by the European Economic Community relating to second level obligations.

I. Processes and production methods

36. The representative of New Zealand said that his delegations had received formal and informal reactions and comments on their proposal (TBT/W/132). They looked forward to further discussions which would help in reaching consensus on various aspects of the proposal. In particular, the question of the establishment of a hierarchy between the technical specifications drafted in terms of characteristics of a product, its design and processes and production methods, required some further discussion and consultation amongst delegations. There appeared to be three distinct views on this question: the first view supported the three elements of the hierarchy as it stood in the proposal; the second view supported the idea of a preference for technical specifications drafted in terms of performance but nonetheless considered that there should be some adjustment to the proposal, as formulating technical specifications in terms of design or descriptive characteristics might not be inherently less trade restrictive than drafting these in terms of PPMs; according to a third view, the establishment of a hierarchy was not necessary at all. It had

been reassuring to note that there seemed to be no disagreement over the underlying objective of the suggested provision which was the avoidance of arbitrary or unjustified use of PPMs where a better alternative was available.

37. The Committee took note of this statement and agreed to revert to the proposal by New Zealand at its next meeting.

J. Technical assistance

38. The representative of Finland informed the Committee that the the government of Finland would organize a seminar of on 20-31 August 1990 for officials from developing countries Parties to the Agreement or observers to the Committee. The seminar was organized by PRODEC (Programme for Development Cooperation) in co-operation with GATT and with the support of the International Trade Centre UNCTAD/GATT and the International Organization for Standardization.

K. Date and agenda of the next meeting

39. The Committee agreed to hold its next meeting on 19 March 1990.

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

1. statements on implementation and administration of the Agreement;
2. conformity assessment procedures;
3. improving the provisions on transparency;
4. second level obligations;
5. processes and production methods;
6. dispute settlement procedures;
7. definitions;
8. other business.