

# GENERAL AGREEMENT ON

RESTRICTED

## TARIFFS AND TRADE

TBT/W/142

24 April 1990

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### Committee on Technical Barriers to Trade

#### DRAFT MINUTES OF THE MEETING HELD ON 19 MARCH 1990

Chairman: Mr. W. Frei (Switzerland)

1. The Committee on Technical Barriers to Trade held its thirty-sixth meeting on 19 March 1990.

2. The agenda of the meeting was as follows:

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A. Conformity assessment procedures

3. The representative of Canada noted that the definition of the term "conformity assessment procedures" in the proposal by the European Economic Community (TBT/W/138) embodied procedures that were already in the Agreement such as testing, certification of products and manufacturer's declaration of conformity (replacing the term "self-certification" in Article 5.2 in accordance with a decision of the Committee (TBT/M/28, paragraph 13)) and also included various product approval procedures and the accreditation of testing laboratories or inspection bodies addressed in other proposals. The representative of Finland, speaking on behalf of the Nordic countries, said that the provisions relating to conformity assessment should have a broad scope as envisaged in the proposal by the European Economic Community. The representative of New Zealand, joined by the representatives of Canada and Finland, speaking on behalf of the Nordic countries, supported the European Economic Community's idea of using a generic term for conformity assessment procedures (TBT/W/138) for the discussion of the group of proposals relating to different procedures in this area.

4. The representative of the United States noted that the term "approval" in their proposal on product approval procedures (TBT/W/127/Rev.1) related to procedures undertaken to ensure access of a regulated product to a market. The nature of these procedures was more permissive than the approval procedures specified in the explanatory note to the definition in the proposal by the European Economic Community (TBT/W/138).

5. The representative of Canada, joined by the representatives of New Zealand and Finland, speaking on behalf of the Nordic countries, noted

that the procedures set out in the explanatory note to the definition in the proposal by the European Economic Community should apply both to conformity assessment of products and of processes and production methods.

6. The representative of Finland, speaking on behalf of the Nordic countries, said that the Nordic countries had reservations on the exact language to be used in the definitions until the outcome of the ongoing work in the ISO on the terminology relating to conformity assessment procedures was known. Joined by the representative of the United States, he suggested that the Committee could proceed with its discussion of the substantive issues relating to this area before it tackled the question of any new terms and their definitions.

7. The Committee noted that the basic obligation in the Agreement relating to the avoidance of the creation of unnecessary obstacles to trade was reflected in the proposals on different aspects of conformity assessment procedures. The representative of New Zealand said that it would be reasonable to have a generic provision, based on the standard language used in Articles 2.1 and 7.1 of the Agreement, which would cover the specific provisions in the various proposals relating to this principle.

8. The representative of the United States said that in their proposal on product approval procedures they had illustrated the circumstances in which the use of such procedures would be deemed not to create unnecessary obstacles to trade (TBT/W/127/Rev.1, paragraph 9.2). The representative of New Zealand considered that this proposal did not improve the present provisions in the Agreement. The demonstrable purpose of a measure should not be the only consideration in determining whether a measure created unnecessary obstacles. In order to justify the necessity of a particular measure it was essential to look at the means used to achieve its purpose. The purpose of a measure might be a perfectly legitimate purpose but the means that had been chosen to implement the measure might have the effect of creating unnecessary obstacles to trade. Among a range of procedures at its disposal which could be used satisfactorily to achieve the same objective, a government might select the one which was inherently more trade restrictive than others.

9. The representative of Canada supported a further clarification of the application of this principle as provided in the proposal by the European Economic Community (TBT/W/138, paragraph 5.1.2). The representative of New Zealand said that the reference to Article 6 in the same proposal seemed to suggest that this basic principle of the Agreement would be subject to the provisions of the proposed Article 6. The representative of the European Economic Community said the reference to paragraph 6 in paragraph 5.1.2 was not directly related to the principle of avoiding the creation of unnecessary obstacles to trade.

10. The representative of Canada said that, in parallel to the consideration of the provisions relating to unnecessary barriers to trade

in relation to conformity assessment procedures, the Committee might wish to reflect on the need to clarify the relevant provisions in Article 2.1 in respect of the preparation, adoption and application of technical regulations and standards. The representatives of the European Economic Community and the United States said that the Committee should take up this point at an appropriate time.

11. With regard to the proposed provisions concerning the granting foreign suppliers access to conformity assessment procedures applied in the territory of a Party, the representative of the United States stated that their proposal on systems for the accreditation or approval of testing laboratories, inspection or quality system registration bodies (the second sentence of paragraph 7.2 of TBT/W/133) should be amended to read: "Access for testing laboratories, inspection or quality system registration bodies is the ability to obtain accreditation or approval from an importing Party under the rules of the system." The representative of the European Economic Community said that this provision, even in its amended version, seemed to suggest a direct participation in the accreditation or approval systems of other Parties. He asked what relation the provisions of this paragraph had to the concept of national treatment.

12. The representative of Canada said that the provisions relating to the administration of conformity assessment procedures were specified as applications of the principles of national treatment and non-discrimination and presented as sub-paragraphs to the general provisions relating to these principles in most of the proposals in this area. The representative of the European Economic Community said that in their proposal, the general provision on the national treatment applied to all administrative procedures used in conformity assessment processes. The representative of Canada said that most of the proposals provided that applications should be undertaken without undue delay and in an order which was no less favourable for imported products than for like domestic products. The representative of New Zealand said that a general statement on non-discriminatory treatment of applications from foreign suppliers should adequately cover the obligations of a Party in this respect without explicitly obliging Parties to treat the applications in a no less favourable order. The representative of Finland, speaking on behalf of the Nordic countries, said that the Nordic countries were in favour of having a rather detailed clarification of what the principles of national treatment and non-discrimination signified in practice. A clear understanding regarding the application of administrative procedures would ensure that the relevant provisions to be agreed were implemented effectively.

13. In connection with the requirement that information be provided to the applicant on the progress of applications, the representative of Japan said that the proposal by his delegation which required Parties to provide information on the standard or the anticipated processing period and the reasons for any delays upon request of the applicants (TBT/W/115/Rev.1), would place less of a burden on the administrative body than the proposal by the European Economic Community that the applicant be provided with the information at any time (paragraph 5.1.3 of TBT/W/138).

14. The representative of the European Economic Community said that many private bodies drew income from their activities in the area of conformity assessment and asked whether it was appropriate to limit the fees of these bodies to the cost of services necessary for certification as required in the proposal by Canada (paragraph 7.2.2. of TBT/W/135). In reply, the representative of Canada said that the cost of services of these bodies should normally include profit.

15. The representative of the United States supported the proposals concerning the use of international recommendations and guides as a basis for conformity assessment procedures. Their proposal on product approval procedures (TBT/W/127/Rev.1) did not contain such a provision because approval was a decision at the national level and there were no international guides on product approval. The representative of Canada said that, further to the provisions of Article 9.1 of the Agreement that required Parties to participate in international certification schemes, the proposal by Canada on certification systems suggested the use of international recommendations and guides as a basis for the practices of certification bodies. He recalled that the Committee had recommended that any testing and inspection activity developed within the territories of Parties should be based on the principles and rules presented in certain ISO/IEC Guides (TBT/16/Rev.1, section F page 14). This requirement should be extended to all conformity assessment procedures. They also considered that the use of international recommendations and guides was essential towards achieving recognition of conformity assessment between different Parties.

16. The representative of India said that the proposals on the use of international recommendations and guides relating to conformity assessment procedures (paragraph 5.3 of the proposal on conformity assessment procedures (TBT/W/138), paragraph 5.2 of the proposal on testing and inspection procedures (TBT/W/126/Rev.1) and paragraph 7.2 of the proposal on systems for the accreditation or approval of testing laboratories, inspection or quality system registration bodies (TBT/W/133)) should take account of the difficulties certain countries might experience in complying with the requirements in such recommendations and guides. The list of exemptions which took over the language in Article 2.2 of the Agreement should also include a reference to infrastructural problems.

17. With respect to the proposed provisions relating to transparency of conformity assessment procedures, the representative of Finland, speaking on behalf of the Nordic countries, was in favour of extending the existing obligations in the Agreement regarding the notification of rules of certification systems to all conformity assessment procedures. Joined by the representative of Canada, he supported the idea in the proposal by the European Economic Community that the notification should be limited to those procedures which have a significant effect on international trade. A lead-in phrase similar to that in Article 2.5 as regards the notification of technical regulations would make the burden of notification less cumbersome while ensuring the required transparency between Parties.

18. The representative of Finland, speaking on behalf of the Nordic countries, also considered that a provision relating to the allowance of a reasonable interval between the publication of requirements relating to conformity assessment procedures and their entry into force, similar to the provisions of Article 2.8, should be introduced in respect of conformity assessment procedures.

19. With regard to the recognition of conformity assessment, the representative of Finland, speaking on behalf of the Nordic countries, joined by the representative of Switzerland, said that the provisions for unilateral recognition of results in the present Agreement should be extended to cover other aspects of recognition including mutual, bilateral and multilateral recognition of results. The representative of Switzerland considered that Article 5.1.2 and Article 6 of the proposal by the European Economic Community (TBT/W/138) related, respectively, to unilateral recognition and to bilateral recognition, but that the multilateral aspect of recognition was not covered satisfactorily in this proposal. Any amendments to Article 5.2 should take into account the objective of establishing multilateral instruments for mutual recognition. To establish new national obligations on the basis of the existing international regulations and standards would facilitate mutual recognition. He supported the suggestion by Canada that the application of Article 9.1 of the existing Agreement be extended to conformity assessment procedures.

20. The representative of Japan said that the provisions of the existing Article 5.2 were well founded. He asked how the proposed Article 6.2(c) in the proposal by the European Economic Community on negotiations on mutual recognition agreements would operate in practice. The representative of the United States said that her delegation had concerns about the proposed paragraph 6.2(c).

21. The representative of New Zealand said that the phrase "mutually satisfactory understanding" in the existing Article 5.2 might have caused misunderstanding. This phrase did not imply the conclusion of a mutual recognition agreement but an understanding regarding the acceptance of test methods and results, and certificates and marks of conformity employed in the territory of a Party by another Party which was mutually satisfactory. Although the issue of recognition of results in other Parties was not specifically covered in the proposal by the European Economic Community on conformity assessment procedures (TBT/W/138), the first type of recognition in paragraph 5.1.2 of the proposal, which covered acceptance of test results, certificates or marks of conformity issued in other Parties, was comparable to the provisions of Article 5.2 of the Agreement. The second aspect of recognition, reflected in Article 6 of the proposal, related to mutual, multilateral or plurilateral recognition agreements.

22. The representative of Canada said that Article 5.2 was an important provision of the Agreement. In practice, recognition of conformity

assessment through explicit agreements or in other forms facilitated international trade. The provisions of the Agreement on the acceptance of results, certificates or marks of conformity should be extended to encourage the recognition with respect to other conformity assessment practices. The conditions necessary for a mutually satisfactory understanding should not be inconsistent with the basic obligations relating to non-discrimination and the avoidance of the creation of unnecessary obstacles to trade. The approach to the matter of recognition should be as flexible as possible and should not compromise the basic obligations that were now in the Agreement for mutual recognition agreements. The additional conditions on mutual recognition agreements set out in paragraph 6.2 should be carefully examined. His delegation was concerned that the last sentence of paragraph 5.1.2 of the proposal by the European Economic Community, which provided that acceptance of results of procedures which offer equivalent or better confidence was without prejudice to Article 6, might suggest the imposition of a limitation on the provisions relating to necessary application and non-discrimination. Furthermore, the condition in the proposed Article 6.1 that a Party should be willing to enter into negotiations for agreements with other Parties when that Party's conformity assessment procedures might require a positive assurance was an anomaly. Even if it were accorded that negotiated agreements were an effective means of achieving mutual recognition, how could a Party which did not have a conformity assessment requirement be interested in negotiating such an agreement? How would a determination regarding a balanced situation referred to in paragraph 6.2(c) be made and how would it relate to the basic obligations in the Agreement?

23. The representative of the United States suggested that their proposal on accreditation systems be amended by adding the following wording to Article 5.2: "Parties shall ensure that central government bodies accept the results of conformity assessment procedures conducted by bodies accredited or approved under the rules of the importing Party's system."

24. The representatives of the United States and the European Economic Community supported the suggestion in the proposal by Canada on certification systems (TBT/W/135) which suggested the extension of the provisions of Article 9 of the Agreement on international and regional certification systems to cover conformity assessment procedures in general. The representative of Finland, speaking on behalf of the Nordic countries, asked the significance of the reference to international recommendations and guides for certification bodies in the amended text of Article 9 of the Agreement (paragraphs 7.3, 7.4, 7.11 and 7.12 of TBT/W/135). In reply, the representative of Canada said that international guides for the practices of certification bodies were becoming increasingly important in certification practices. The purpose of the suggested amendments was to extend the application of the provisions of the current Article 9 beyond international systems for certification of products to guides for certification bodies. The representative of Finland, speaking on behalf of the Nordic countries, suggested that, in order not to overload the existing text of Article 9, the provisions on international guides and recommendations should be set out in a separate paragraph.

25. Several delegations suggested that, in order to facilitate the discussion of this item, the secretariat present the proposed provisions on the specific issues relating to Articles 5 to 9 of the Agreement in an integrated text to be drawn up in consultation with interested delegations. It was so agreed.

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

B. Second level of obligations

27. The representative of Finland, speaking on behalf of the Nordic countries, said that the strengthening of the second level of obligations would improve the balance of rights and obligations between different Parties. The code of good practice for the preparation, adoption and application of standards proposed by the European Economic Community (TBT/W/137) extended to all standardizing activities, whether at the governmental, non-governmental, local, national or regional level, whereas the proposal by the United States was limited to the activities of regional bodies (TBT/W/112). However, the proposal for a code of good practice did not cover bodies involved in conformity assessment practices while the proposal by the United States extended to the activities of such bodies. It was equally important to have a code of good practice, similar to that proposed for standardization, also for bodies operating conformity assessment procedures. He suggested that either the proposal by the European Economic Community be amended to apply to bodies operating conformity assessment procedures or a separate code of good practice be drafted for this category of bodies. The representative of the European Economic Community said that the suggestion of the Nordic countries involved a substantial amount of work. He doubted whether all matters relating to the expansion and improvement of the Agreement should be taken together. He proposed the discussion of technical aspects of their proposal on a code of good practice even if all delegations might not yet have developed a position on the approach in the proposal.

28. The representative of Canada said that a qualifying phrase "significant effect on international trade" used in relation to the notification of technical regulations should be added to the provisions on transparency in the code of good practice (paragraph J on page 10 of document TBT/W/137). The representative of the United States said such a qualification would align the provisions of the proposed code of good practice on the obligations of central governments under the present provisions of the Agreement.

29. The representatives of Japan and the United States noted that the establishment of an information system in terms of the recommendation of the Committee would require the allocation of administrative and financial resources by the ISO. They wished to be informed of the views of the ISO concerning the feasibility of carrying out this task. The representative

of the European Economic Community said that the representative of the ISO had stated at the meeting held on 30 January that the transparency required was within the purview of the ISONET (TBT/M/34, paragraph 34). The observer from the ISO confirmed that ISO was interested in the proposal by the European Economic Community on a code of good practice for standardizing bodies as it was in line with the objective sought by their information system on standardization. ISONET could play the rôle suggested for it, provided that the dissemination of information was organized in a decentralized manner and that the rôle of ISONET Information Centre was limited to giving the necessary references to the bodies which had the information. The national bodies were to be responsible for providing any detailed information on the activities in their countries. They would give the Committee their views on the precise formulation of the proposed recommendation to the ISO.

30. The representative of the European Economic Community recalled their proposal on local government bodies (TBT/W/113). The representative of the United States noted that the European Economic Community had already made some proposals relating to the activities of local government bodies in their proposal on conformity assessment procedures (TBT/W/138) and asked whether these would be kept separate or would be merged. The representative of the European Economic Community said that they wished to maintain their proposal on local government bodies as it addressed the preparation, adoption and application of technical regulations by local government bodies.

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

C. Improving the provisions of the Agreement on transparency

32. The representative of Finland, speaking on behalf of the Nordic countries, introduced their proposal for the redrafting of Article 10 (TBT/W/141). In response to a question by the representative of the United States, he said that the term "conformity assessment procedures" used in the proposal covered a broad range of conformity assessment procedures, as in the proposal by the European Economic Community (TBT/W/138).

33. The representative of Czechoslovakia said that his delegation supported the thrust of the proposal by the United States on improved transparency on agreements concluded within the scope of the Agreement (TBT/W/128/Rev.1). He added that his authorities were not in a position to guarantee the translation of notified documents as required in the proposal by the delegation of India on languages for exchange of documents (TBT/W/129).

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



D. Processes and production methods

35. The representative of Canada felt that, while different views had been expressed with regard to the question of how the PPMs were to be included in the Agreement, the basic thrust of the discussion showed that the basic disciplines in the Agreement should be extended to PPMs. Joined by the representative of Switzerland and the observer from Australia, he reiterated the support of his delegation for the proposal by New Zealand (TBT/W/132). The representative of the United States said that they looked forward to further progress on this issue. The representative of Finland, speaking on behalf of the Nordic countries, said that, as they understood, there was no opposition to the principle that PPMs should be included in the Agreement and that interested delegations should participate in the consultations held by the delegation of New Zealand in order to make further progress on this issue. The representative of the European Economic Community noted that, as yet, his delegation had not officially taken a position on this question. The representative of Switzerland said that the control of regulations drafted in terms of PPMs was problematic for importing countries. On the other hand, an obligation to draft technical regulations and standards in terms of design or descriptive characteristics limited producers' freedom to innovate. His delegation therefore had a strong preference for the principle that, where possible, technical regulations and standards should be established in terms of performance. As a fall back position, specifications could be drafted in terms of PPMs and, only in the last resort, the design or descriptive characteristics should be used. The representative of New Zealand said that they would continue to hold informal consultations on the proposal and that they would take on board any ideas for improvement of the proposal. He acknowledged that it had to be ensured that there was no conflict between what was achieved in the context of the Agreement and the outcome of the discussions on sanitary and phytosanitary measures in Negotiating Group 5. While it might not be possible to take any definite decisions at this stage of the negotiations the discussion of the proposal should be pursued, as far as possible, in the present context.

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

E. Date and agenda of the next meeting

37. The Committee agreed to hold its next meeting in the week of 30 April 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 of the Agreement on transparency;
4. second level of obligations;
5. processes and production methods;
6. dispute settlement procedures;
7. other business.