

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

TBT/M/39

15 November 1990

Special Distribution

Committee on Technical Barriers to Trade

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MINUTES OF THE MEETING HELD ON 20 SEPTEMBER 1990

Chairman: Mr. W. Frei (Switzerland)

1. The Committee on Technical Barriers to Trade held its fortieth meeting on 20 September 1990.
2. The agenda of this 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 stated that the United States Congress was currently considering the United States Fasteners Quality Act which would introduce obligatory testing and certification requirements for domestically produced or imported fasteners. He said that the United States should notify the proposed certification system under Article 7.3.2 of the Agreement so as to allow other Parties to make comments before the Act was adopted.

4. The representative of the United States said that in terms of the relevant definition in ISO/IEC Guide 2, a certification system involved action by a third party. The United States Fastener Quality Act dealt with declaration of conformity by manufacturers. Any relevant third party involved in this case would be an accreditation body. They did not consider that the legislation proposed to the Congress should be notified because, as yet, the notification requirements did not extend to accreditation systems.

5. The representative of Canada stated that following a recent decision taken under the Food Sanitation Act, the authorities in the Republic of Korea did not accept the sale and use of glacier water within this country on the grounds that the Act did not contain a classification which allowed the use of this product as a food product. The Korean authorities had not taken into consideration the well-documented technical evidence concerning the purity of water from the source. He requested that the authorities of the Republic of Korea notify to the Committee the relevant decision.

B. Technical assistance

6. The representative of Finland informed the Committee of a seminar organized by the Government of Finland on 20-31 August 1990 for officials from developing countries Parties to the Agreement or observers to the Committee. The seminar had been organized by PRODEC (Programme for Development Cooperation in Helsinki School of Economics) in co-operation with GATT and with the support of the International Trade Centre UNCTAD/GATT and the International Organization for Standardization.

C. Eleventh annual review under Article 15.8

7. The Committee agreed to conclude its eleventh annual review on the basis of the background documentation contained in documents TBT/32, TBT/W/62/Rev.1 and Corrs.1-4, TBT/W/31/Rev.8 and Corrs. 1-2 and TBT/W/25/Rev.12.

D. Report (1990) to the CONTRACTING PARTIES

8. The Committee adopted its Report to the CONTRACTING PARTIES, which was subsequently issued as L/6726.

E. Progress of work in the negotiations in the Uruguay Round

9. The representative of the European Economic Community said that the Committee's earlier discussions of various proposals had been useful in preparing the negotiation of major issues in the context of the Negotiating Group 8. At this meeting, therefore, his delegation felt that it would be useful to inform the other delegations of its views on ideas put forward in the context of the ongoing informal consultations. He recalled that the draft text in document MTN.GNG/NG8/W/83/Add.3, was the result of very hard work over a number of years, reflecting large convergences on a number of major issues, above all the ambition to clarify and strengthen the present Agreement.

10. At the July meeting of the NG8, one could have felt that the Negotiating Group could successfully conclude its work within the given

limit, inter alia because one Party, which had opposed the envisaged provisions for standardizing bodies, had then officially declared that it would be constructive in seeking a solution on this one important remaining issue. It was both surprising and disappointing, therefore, that the Negotiating Group, six weeks before it had to finalize its work, had before it a text by the United States, the content of which went against the draft text submitted to the TNC. While the latter text would strengthen the second-level obligations with regard to regional and national standardizing bodies alike, the text by the United States reflected an entirely different philosophy.

11. With regard to national bodies, it proposed basically to abolish any obligation, whether for the government or for the bodies themselves. This would be a major step backwards and against the spirit, if not the letter, of Punta del Este. In the experience of his delegation, it would be the first time that a Party officially challenged even a second-level obligation.

12. As far as regional bodies were concerned, the proposal by the United States went to the other extreme in imposing a binding obligation on governments to ensure that private, non-governmental regional bodies comply with a whole set of new and very far-reaching obligations. This created a fundamental and unacceptable imbalance in rights and obligations, in the sense that there would be no obligations whatsoever for the more than six hundred standardizing bodies in the United States on the one hand, and extremely stringent first-level obligations for the European regional bodies on the other hand. This would, at the same time, represent a fundamental legal inconsistency, in the sense that a government would have no obligation towards a given national body for its national activities, but first-level obligations towards exactly the same body as a member of a regional organization.

13. The code of practice for non-governmental standardizing bodies proposed by the delegation of the United States showed some resemblances to elements of the code of good practice for the preparation, adoption and application of standards included in the document submitted to the TNC, but was in fact entirely different. It would only apply to national bodies and did not foresee any real link with the Agreement. Private bodies would negotiate voluntary guidelines among themselves. Such voluntary guidelines might or might not have any link with GATT objectives. Adherence of the bodies to such guidelines would be assumed. As a result, any transparency or surveillance would be missing.

14. In the light of the above, and possible consequences for a successful outcome of the work of the Negotiating Group, he urged the delegation of the United States to reconsider its position in the document, the status of which was still open. From its side, the European Economic Community remained willing to work together with all participants towards the finalization of the text submitted to the TNC.

15. The representative of the United States stated that her delegation had made some suggestions in informal consultations and that a number of other

delegations had made similar suggestions. Their opposition to the proposal by the European Economic Community for a code of good practice was well known, also in the Committee, and, basically, stemmed from the inability of the Government of the United States to prescribe its acceptance for private parties. They attempted to make a constructive alternative to a proposal that could not be implemented and ran the risk of removing standards from the coverage of even the current Agreement. Her delegation had never understood the text submitted to the TNC as having any other status than that of reflecting where the discussions were at a certain point in time. The Government of the United States was committed to improving and clarifying the Agreement and considered that it would be a major step backwards if participants could not continue a constructive dialogue in the informal consultations and if the Negotiating Group were to find itself at the end of the negotiations without a clear text for Ministers to make a decision on. Like any other delegation the United States would not be willing to sign an agreement that was not acceptable to it. It would, through whatever form was necessary, work toward achieving a text that was acceptable to all.

16. The representative of Finland, speaking on behalf of the Nordic countries, considered that in the negotiations under the Uruguay Round a great degree of consensus had been reached on most of the provisions of a new and improved Agreement. Therefore, the recent disagreement at the end of the negotiations on the code of good practice for the preparation, adoption and application of standards was most unfortunate. The Nordic countries supported the text as it now stood in Annex 4 of the MTN.GNG/NG8/W/83/Add.3. It was a workable, practicable and pragmatic approach to strengthening the obligations of governments towards standardizing bodies on national, sub-national and regional levels, and also to giving guidance to those bodies in their implementation of the Agreement. They considered it unfortunate, therefore, that the United States delegation had not been able to support this most important proposal, with the result that negotiations had been blocked on some other important issues as well. They welcomed the assurance by the United States delegation that it was willing to proceed with the discussions in a constructive way, and considered the United States decision not to table the informal paper officially as a sign that the United States was not committed to it and that there was room for further negotiations.

17. The representative of Canada said that it appeared from the statements by the delegations of the European Economic Community and the United States that this issue threatened to undermine the very good progress that the Negotiating Group had made in the course of the past two years. He appealed to the two delegations most directly concerned to engage this matter constructively and purposefully in order to resolve the remaining outstanding issues in view of the very short time left, in line with the objectives of the Uruguay Round. Some of their comments could be construed as being positive. First, they both seemed to suggest that the text or position of the other side would take obligations on standards organizations outside of the Agreement which implied that neither delegation wished to see that happening. Secondly, both delegations had indicated willingness to continue working towards a resolution of the

issue. The fact that they both felt that each other's positions were unworkable in some practical sense seemed to suggest that there were ways of moving towards such a resolution.

18. The representative of New Zealand said that there were many far more difficult problems to solve in the Uruguay Round than the present disagreement over the code of good practice. The Negotiating Group had been successful so far in making progress on the basis of informal texts, but since at present it risked a blockage, progress had to be made very rapidly on this point. His delegation was among those who could support the proposal by the European Economic Community in its present form, but was ready to engage in discussions to reach a compromise. It was necessary that the Negotiating Group made progress on a package of key issues; the particular one raised at the present meeting was not of major interest to his delegation. In this connection he recalled that one proposal had been on the table for nearly two years. While it had not been opposed by any single delegation, not much progress had been made on this proposal. A sense of urgency required compromises so that the Negotiating Group could continue the progress it had made so far.

19. The Committee took note of the statements made under this item and also agreed that the Chairman should transmit the above statements to the Negotiating Group on MTN Agreements and Arrangements.

F. Date of the next meeting

20. The Committee agreed to hold its next meeting in early 1991. The exact date of the meeting will be fixed in consultation with interested delegations.