

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

TBT/M/2

5 June 1980

Special Distribution

Committee on Technical Barriers to Trade

MINUTES OF THE MEETING HELD ON 24 APRIL 1980

Chairman: Mr. D. Newkirk

1. The Committee on Technical Barriers to Trade held its second meeting on 24 April 1980.

2. The agenda of the meeting was as follows:

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3. In opening the meeting, the Chairman welcomed Hungary as a new signatory to the Agreement on Technical Barriers to Trade on behalf of the Committee.

A. Procedures for the participation of observers

4. Introducing the procedures for participation of observers reproduced in the Annex, the Chairman said with regard to paragraph 5 that taking into account the procedures agreed to in other groups, he had consulted with signatories to this Agreement and believed that a consensus existed regarding the granting of observer status to other international organizations. In summary, if an

international organization requested observer status, this request would be considered on a case-by-case, meeting-by-meeting basis. Procedurally, if he, as Chairman of this Committee received a request for observer status, he would consult with signatories to this Agreement to determine if there was objection to issuing an invitation to the requesting international organization. This consultation would take place before the draft agenda for the next meeting had been issued in final form. The informally circulated draft agenda sent to signatories should include a list of those international organizations which had requested observer status for that meeting.

5. The Committee adopted the procedures and took note of the Chairman's statements regarding paragraph 5.

6. The Chairman informed the meeting that requests for observer status had been received from three non-contracting parties, Bulgaria, Ecuador and Mexico.

7. The representative of the United States stated that his delegation agreed to Bulgaria and Ecuador being admitted as observers and requested the Chairman to seek further clarifications from the Mexican delegation as to its interest in following the proceedings of the Committee. This request was supported by the representative of the European Economic Community. The representatives of Argentina, Chile, Brazil and the United Kingdom speaking for Hong Kong said that they would be ready to accept all three candidate countries: if there was a request for the Chairman to seek further clarification, this should be addressed to the delegation of Mexico on behalf of certain delegations and not of the Committee as a whole. The representative of Canada said his delegation could, in principle, welcome all three non-contracting parties as observers in the Committee, but he agreed that the Chairman might informally contact Mexico before a decision was taken in its regard. The representative of Hungary reserved the position of his delegation. The observers from India and Trinidad and Tobago registered their sentiment that it would be inadvisable to set criteria for the admission of observers from non-contracting parties.

8. In concluding the discussion, the Chairman noted that there was a consensus for the admission of Bulgaria and Ecuador. Taking into account the wide range of views on the issue he would, as had been suggested, informally contact the Mexican delegation on behalf of certain delegations in the Committee and would report at the next meeting.

9. The Chairman referred to letters sent by the IMF and UNCTAD asking for observer status in meetings of the Committee. It was agreed that these organizations would be invited to follow particular issues of the Committee in an observer capacity in accordance with the procedures for participation of observers, and the guiding principles set out by the Chairman. The representatives of the IMF and UNCTAD were accordingly invited to attend the present meeting of the Committee.

10. The representative of the European Economic Community proposed that the Committee invite the secretariats of ISO, IEC and the FAO/WHO Codex Alimentarius Commission to take part in the meetings of the Committee in accordance with the first sentence of paragraph 5 of the procedures just adopted, when the issues discussed related to their activities. This proposal was supported by the representative of the United States. It was so agreed.

B. General policy statements

11. The representative of the United States stated that in the view of his Government the Agreement on Technical Barriers to Trade was one of the most significant achievements of the MTN. The United States firmly supported the Agreement, including its basic principles and, of particular importance, the notion of using open procedures and of making information on standards and certification systems readily available to the public which was embodied in it. The development of standards was becoming increasingly important in the United States, due to the heightened awareness of the public of the need for legitimate health, safety and environmental regulations. The United States Government agencies were informing the public of the contents of the Agreement, and in the view of the United States Government, it was in the interest of all signatories to make similar efforts to acquaint their citizens with the fundamental provisions of the Agreement. Furthermore, it was crucial that signatories implement the Agreement on a timely basis in fulfilment of their obligations. Therefore the United States urged other signatories to move quickly in their implementation process so that participants could begin to examine more substantive issues facing the Committee. Some of the areas of work the United States Government would suggest for future consideration by the Committee were:

- (a) The exchange of information prior to the publication of a notice of a proposed standard;
- (b) The resolution of bilateral standards-related issues;
- (c) The establishment of reciprocal testing and certification arrangements;
- (d) As they arise, the interpretation of key provisions of the Agreement.

The representative of the United States concluded by saying that present signatories of the Agreement should seek to encourage other countries to become signatories. For their part, the United States intended to participate actively and co-operatively in all the proceedings of the Committee.

12. The representative of Japan said that his Government was convinced that the Agreement would contribute to the further facilitation and expansion of world trade. Bearing this in mind, his Government had continuously made its best efforts for securing the early acceptance of the Agreement as well as for applying it on a provisional basis even prior to its entry into force in respect of Japan. He announced that steps for the full acceptance of the Agreement by his Government would be completed shortly. The Japanese Government would continue to take a positive part in the work of international standardization. It was of the view that participation of developing countries in the Agreement would contribute to the enhancement of technical standards in these countries and facilitate their trade and it, therefore, looked forward to as many more developing countries joining the Agreement as possible.

13. The representative of Austria announced that the ratification procedures in Austria had recently been completed and that he expected that his delegation would soon be in a position to deposit his country's instrument of ratification. The Austrian legislation relating to standards was in conformity with the terms of the Agreement, so that there was no need for any further legislative action in this regard.

14. The representative of Brazil considered that the proper implementation of the Agreement would be an important step towards eliminating obstacles to the fair participation of developing countries in international trade. His Government attached particular importance to the provisions of the Agreement relating to transparency and the right to consult. Knowledge of the activities of developed countries in the standards area was an essential element for developing countries' export performance. The Agreement should help identify potential obstacles to their exports. His country intended to apply the Agreement to the full extent of its capacity, taking into account its stage of development. For this purpose, Brazil was interested in making full use of the technical assistance provisions of the Agreement.

15. The representative of Czechoslovakia announced that his Government expected that the necessary legislative procedures for acceptance of the Agreement would be completed within two months.

16. The representative of Spain said that his Government expected to be ready to sign the Agreement within two or three weeks.

C. Statements on implementation and administration of the Agreement
(Article 15.7)

17. The Chairman indicated that statements in response to Article 15.7 of the Agreement had been received from Brazil, the United States, Norway, Canada, Switzerland and New Zealand (TBT/1 and Add.1-5). The statement submitted by Finland was available in the meeting room and would be

circulated shortly as TBT/1/Add.6. He recalled his previous suggestion that such statements should be provided in writing without delay and urged delegations which had not yet done so to send the relevant information to the secretariat. He also invited members of the Committee to provide information on the current status of ratification procedures in their countries.

18. In response to the last question, the representative of Chile said that the constitutional procedures in his country were following their normal course, that his authorities would do their best to accelerate the procedures in question, but that he was not in a position to indicate when they would be completed.

19. The representative of Japan said that his Government had taken steps to bring internal legislation and regulations into line with the provisions of the Agreement. Details of the measures taken would be notified shortly. He stressed that some of these measures had been adopted prior to entry into force of the Agreement for Japan. In addition, Japan reached bilateral agreements with some countries for mutual recognition of tests and intended to pursue efforts in this direction. As regards developing countries, Japan had sent expert teams to these countries to assist them in the standards field. His delegation would proceed with the requisite notifications under the Agreement as soon as possible after the coming into effect of the Agreement for Japan.

20. The representative of the European Economic Community said that the procedures in the Community were somewhat complex due to the fact that both the Community and individual member States signed the Agreement and there was, therefore, a need for ratification by each member State in addition to the Community. This had so far been done by most member States. Pending completion of the necessary procedures, it had been decided to apply the Agreement on a de facto basis in the Community as such and in each member State as from 1 January 1980. Action taken to ensure co-ordination of action at national and Community levels was the subject of a Council decision dated 15 January 1980. A further proposal was before the EEC Council regarding in particular the obligations under Article 7.2 of the Agreement; this was expected to be approved by the middle of this year. His delegation would be able to report soon on steps taken to ensure publication and notification of proposed standards and the establishment of enquiry points. At Community level the matter is under active consideration in the General Directorates of the Commission of the European Communities responsible for standards matters. Publication of notices relating to the preparation of standards would be made in the Official Journal of the Communities. Member States would report individually on national standards and regulations. The Community enquiry points would be responsible for notification to the GATT secretariat and for the receipt of comments on standards notified and follow-up action.

21. The representative of Finland, speaking for the Nordic countries, expressed the hope that more statements on implementation and administration of the Agreement would be forthcoming before the next meeting of the Committee and reserved the right to revert to the reports so far received. He stressed that the circulation of information was one of the most important and most urgent tasks facing the Committee in the first year of the Agreement.

22. The representative of Switzerland indicated that, in his country, the constitutional and administrative procedures for acceptance of the Agreement had been completed and it now had legal force. In the view of his Government, it was important that the Agreement be implemented in a liberal spirit. In particular, it was important that, in all areas of application of the Agreement, the objectives of transparency and neutrality should not be jeopardized by inappropriate methods of implementation and administration.

23. The representative of the United States stated that, according to the relevant sub-title of Title IV of the Trade Agreements Act of 1979, no Federal agency might engage in any standards-related activity that created unnecessary obstacles to the foreign trade of the United States, and such agencies would ensure that imported products were treated no less favourably than domestic products. The Act also encouraged Federal agencies to use international standards when appropriate and to develop standards on the basis of performance rather than design criteria. With regard to certification systems, Federal agencies shall permit access to foreign suppliers on the same basis as domestic suppliers. The Act directed the President to take such reasonable measures as might be available to ensure that State agencies and private persons did not engage in standards-related activities which created unnecessary obstacles to trade. The Office of the United States Trade Representative was assigned the responsibility for co-ordinating United States discussions and negotiations with foreign countries in the standards area. Technical offices were established in the Department of Commerce and Agriculture to deal with non-agricultural and agricultural products respectively and a Standards Information Centre (SIC) was maintained in the Department of Commerce to serve as the central national collection facility for information relating to standards activities for both Departments of Commerce and Agriculture. The SIC was responsible for notifications of proposed standards to GATT. Notices of proposed or final technical regulations, standards or certification systems were published in the Federal Register. State governments typically published such information in State Registers or State administrative codes. The vast majority of United States private sector proposed regulations or standards could be found in Standards Action, published by the American National Standards Institute (ANSI) and in Standardization News, published by the American Society for Testing and Materials (ASTM). With regard to the expected length of time allowed for presentation of comments in writing, the Federal government allowed the public at least sixty days to comment on proposed regulations, State governments typically provided for periods of ten to thirty days, and ANSI normally allowed sixty days.

24. Some delegations stressed the importance which they attached to information being supplied as soon as possible under this item of the agenda by all signatories. The Committee agreed to revert to this item of the agenda at its next meeting.

D. Procedures for notifications

25. The Chairman noted that notifications had been received under the relevant articles from Canada, Sweden, Japan and the United States. He drew attention to the suggestions presented by the secretariat in its note TBT/W/2.

26. The representatives of Canada, the United States and the European Economic Community said that they could go along with the format of notifications proposed by the secretariat. In this connexion, it was suggested that a brief statement on the objective and rationale of the proposed regulations or standards, an indication of the length of comment period applicable and the date of entry into force of the regulations or standards should be added. The representative of Finland, speaking on behalf of the Nordic countries, while agreeing to these proposals, expressed concern at the additional administrative burden that might be involved and suggested that signatories be given additional time to consider the matter in capitals before a final decision was taken by the Committee.

27. With respect to the provision of information on notifications received, the Chairman noted that the secretariat had been in touch with developing country signatories in order to draw up a list of products of particular interest to them and would draw their attention to notifications concerning products on that list as required in Article 10.4. As a first step toward implementation of the provision of Article 10.4 relating to international standardizing bodies, it would circulate in advance of the next meeting a list of the main bodies that may be concerned.

28. The representative of the European Economic Community, addressing the interpretation of the phrase "reasonable time" stated that it would appear difficult to fix a definite period but that in his view this provision would be a self-policing one: in practice the time allowed for comments would need to be extended whenever it was obvious that the provisions of the Agreement could not be effectively applied otherwise. Regarding the interpretation of the phrase "that may have a significant effect on trade", he said the objective should be to strike a pragmatic balance between too many and too few notifications. For its part his delegation would be attentive to the practices followed by other signatories in this regard and it hoped that Parties to the Agreement would be able to develop a common position on the matter over time.

29. The Chairman noted that all delegations had had an opportunity to discuss any problems connected with the procedures for notification. The Committee agreed to revert to the question of the format for the notifications at its next meeting. In the meantime, it was agreed that parties should submit notifications in accordance with the format proposed by the secretariat in TBT/W/2.

E. Avoidance of duplication

30. The Chairman invited the Committee to consider the proposals contained in paragraph 7 of the secretariat paper on this question (TBT/W/3). He indicated that the paper which the secretariat intended to circulate listing some of the main international standardizing bodies should enable the Committee to identify other possible areas of duplication at its next meeting. The Committee was in general agreement with the proposals contained in paragraph 7 and decided to return to the matter at its next meeting in the presence of a representative from the secretariat of the FAO/WHO Codex Alimentarius Commission. In that connexion the representative of Switzerland drew attention to the need to consider problems of duplication in areas other than notification, including those of consultations and the settlement of disputes.

F. Procedures for accession of non-contracting parties

31. The Committee agreed to follow the general approach suggested by the secretariat in paragraphs 10 to 14 of its note on the subject (TBT/W/4) and asked the secretariat to provide a further paper expressing the points made in paragraphs 10 and 11 of that note in a more operational form, in consultation with Chairmen of other Committees concerned and interested delegations.

G. List of persons available to serve on Panels

32. The Chairman recalled the invitation to Parties in this regard under paragraph 1 of Annex 3 of the Agreement, and noted that names of persons had so far been received from the European Community and member States, Finland, New Zealand, Norway, Sweden and the United States. The representatives of Sweden and the United States indicated that they were also maintaining in reserve lists of experts who might be available to serve on an ad hoc basis, and that those lists included names of governmental and non-governmental persons. The Committee agreed to revert to this item at its next meeting.

H. Procedures for circulation of documents

33. The Chairman noted that there were two points for consideration under this item, (a) circulation of documents and (b) derestriction of documents. Concerning circulation, he stated that there seemed to be a common approach

on the matter and informed the Committee of the following arrangements which, in his view, met the general need for transparency and the Committee's particular, if occasional, need for confidentiality. He proposed that after each meeting, he would issue under his own responsibility a concise note on the meeting. This would be circulated to all contracting parties. The Committee's working papers, minutes etc., would be issued in their appropriate TBT series and circulated to all participants. These would of course be available to all contracting parties on request. In the case of sensitive documents, for instance notifications under 2.5.2 etc., and dispute settlement procedure, documents would be issued on an ad hoc basis, and would have a restricted circulation, to be determined in each case. He proposed to proceed on this basis.

34. The representatives of India, Nigeria, Colombia and Israel sought clarification on existing GATT practice in regard to circulation of documents, and expressed the view that it did not seem justifiable to withhold from observers the texts of notifications made under the Agreement. The representatives of Austria and Canada stated that the question of circulation of notifications was directly linked to the question of the obligation incumbent on the Parties under the Agreement. While any government was free to decide to whom a document emanating from its services should be given, the Agreement made it clear that notifications would normally be circulated to Parties.

35. On the proposal of the Chairman the Committee agreed to follow the course he had suggested and to review the operation of these procedures at its next meeting.

36. Concerning derestriction, the Chairman explained that in accordance with GATT practice, restricted documents are circulated to governments entitled to receive them for their own, and not for public, use. These documents are also under certain circumstances circulated to international organizations on the understanding that this is for the internal use of the secretariat of those organizations and that, for instance, the substance of the documents should not be communicated to governments not otherwise entitled to receive them. He then stated that he assumed that a procedure based on customary GATT practice for the derestriction of documents would be followed, i.e. that working documents and minutes would never be derestricted and that the secretariat should make a proposal annually regarding other documents to be derestricted at the end of the year and that these documents would be derestricted if no delegation objected to the proposal.

37. The Committee agreed to follow this procedure.

38. The Chairman suggested that the Committee might revert to the question of derestriction of panel reports and decisions pursuant to these reports at a future meeting in the light of informal consultations between himself and interested delegations.

I. Frequency of meetings and preparation for annual review

39. At the suggestion of the Chairman, it was agreed that the Committee should hold more frequent meetings than was provided for in the Agreement during the initial period of implementation. Regarding preparation for review provided for in Article 15.8 the secretariat was invited to prepare a brief outline for the reviews, for consideration by the Committee.

40. The Chairman proposed that the next meeting of the Committee be held on 18 and 19 June 1980, subject to confirmation of those dates after consultation with delegations. He further suggested that the following items be placed on the agenda of the next meeting:

1. Statements on implementation and administration of the Agreement
2. Procedures for notification
3. Avoidance of duplication
4. Procedures for accession of non-contracting parties
5. Preparations for annual review
6. Procedures for circulation of documents.

41. The Committee agreed that the Chairman should draw up the agenda for the next meeting in consultation with delegations and taking into account the procedures adopted for participation of observers. The draft agenda would be informally circulated to signatories three to four weeks in advance of the meeting.

ANNEX

Participation of Observers

Taking into account the decision arrived at by the CONTRACTING PARTIES at their thirty-fifth session on 28 November 1979 (document L/4905), the Committee agreed on the following procedures for the participation of observers:

1. Representatives of contracting parties which are not signatories may follow the proceedings of the Committee in an observer capacity.
2. Representatives of non-signatory countries not contracting parties, which participated in the multilateral trade negotiations and which are interested in following the proceedings of the Committee in an observer capacity, should communicate a request to the Director-General of the GATT indicating their desire to do so. The Committee shall decide on each request.
3. Observers may participate in the discussions but decisions shall be taken only by signatories.
4. The Committee may deliberate on confidential matters in special restricted sessions.
5. The Committee may invite, as appropriate, international organizations to follow particular issues of the Committee in an observer capacity. In addition, requests from international organizations to follow particular issues within the Committee in an observer capacity shall be considered on a case-by-case basis by the Committee.