

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

TBT/M/3
18 July 1980

Special Distribution

MINUTES OF THE MEETING HELD ON 19 JUNE 1980

Chairman: Mr. D. Newkirk

1. The Committee on Technical Barriers to Trade held its third meeting on 19 June 1980.

2. The agenda of the meeting was as follows:

	<u>Page</u>
A. Requests for observer status	2
B. Statements on implementation and administration of the Agreement	2
C. Procedures for notification	5
D. Avoidance of duplication	5
E. Procedures for accession of non-contracting parties	6
F. Preparations for annual review	7
G. Procedures for circulation of documents	7
H. List of persons available to serve on panels	7
I. United States poultry exports to United Kingdom; applicability of Article 24.25 of the Agreement to United Kingdom Statutory Instrument 1979, Number 693 Schedule I, Part II, interpreting Community directives 71/118 and 78/50.	8
J. Proposed legislation on dangerous substances	10
K. Date of the next meeting.	11

3. In opening the meeting, the Chairman welcomed Singapore and Spain as new signatories to the Agreement on Technical Barriers to Trade on behalf of the Committee.

A. Requests for observer status

4. The Chairman informed the meeting that requests for observer status had been received from Thailand and from the European Free Trade Association. He also said that, as agreed at the last meeting, he had consulted with Mexico on behalf of certain delegations and that Mexico had indicated that it had been an active participant in the negotiation of the Agreement and had a continuing interest in following the proceedings of the Committee.

5. The representative of the United States stated that his authorities were still consulting with Mexico on its requests for observer status in various committees. Pending the outcome of these consultations, they could agree to inviting Mexico to observe this meeting of the Committee while reserving the right to return to the matter at a subsequent meeting.

6. The Committee agreed to invite Thailand as an observer and to invite Mexico to observe its present meeting.

7. Regarding EFTA's request, the Chairman noted that delegations needed time to reflect on the matter and that the Committee would revert to it at a future meeting.

B. Statements on implementation and administration of the Agreement

8. The Chairman indicated that since the last meeting additional statements had been received from four signatories. These had been circulated in TBT/1/Addenda 7 to 10. He invited the members of the Committee which had not circulated statements to give information orally on their implementation plans including, as relevant, the status of their ratification procedures.

9. The representative of Austria said his delegation would endeavour to provide a written statement in the near future. The representative of Spain said his authorities were taking the necessary steps to ratify and implement the Agreement and he hoped his delegation would soon be in a position to submit the information and notifications required under the Agreement. The representative of Switzerland indicated that on a provisional basis the administration of the Agreement had been entrusted to the Federal Office of Economic Affairs which had circulated the relevant documentation to the agencies concerned and hoped to be able to report shortly on standardization activities in Switzerland. A special working party had been established to work out a notification system. It had come to the conclusion that a new ordinance of the Federal Council was necessary to put the scheme into operation: such an ordinance was expected to be ready by early fall. It was hoped that by that time all institutions and bodies necessary for the administration of the Agreement would be in place.

In the meantime the competent body was the Federal Office of Economic Affairs. The representative of Hungary indicated that the Agreement had entered into force on 31 May 1980 for his country. He hoped to be soon in a position to notify all the measures taken to fully implement and administer the Agreement.

10. The representative of Belgium said he had just given the text of the Belgian statement to the secretariat for circulation to the Committee. The representative of Ireland stated that Ireland was about to circulate a statement on implementation and administration. The representative of Italy said the Agreement had been applied in his country since 1 January 1980. The Italian statement on implementation would be circulated in a few days. The representative of the Federal Republic of Germany said the implementation procedures were completed in his country and that these would be notified in a few weeks. In the meantime the Agreement was being applied de facto. The representative of the Netherlands said his delegation would be ready to circulate a statement in the next few weeks. Parliamentary procedures for ratification were well under way and would hopefully be completed before the summer recess. In the meantime, the Agreement was being applied de facto and his Government had already taken a number of implementing measures. The representative of Denmark indicated that he hoped he would soon be able to inform the Committee of Danish implementation procedures, which were already well under way. The representative of France said his Government attached great importance to the objectives of the Agreement. It had for a long time followed liberal policies and participated actively in international standardization efforts. France had recently taken initiatives in the field of mutual recognition of tests. The French mark of conformity with French standards, i.e. the mark "NF", covering more than sixty categories of industrial products had been open to foreign producers for several years. For all these reasons, it had not been necessary to take special legislative action to apply the Agreement in his country. While the French Foreign Trade Ministry would be responsible for co-ordinating the implementation of the various MTN Agreements, the technical administration of this Agreement would be carried out by the interministerial Standards Office (Commissariat à la normalisation). The central enquiry point on technical regulations and standards would be established within AFNOR, the French Standardization Association. AFNOR was already in a position to provide information on French standards and on a large number of technical regulations. The activation of these arrangements required solving certain financial and administrative problems, but the French authorities expected that this could be achieved shortly and that they would be in a position to submit a written statement within the next few weeks.

11. The representative of Japan indicated that the stability test for imported new pharmaceuticals, which Japan had notified as TBT/Notif.80.12, in fact referred to implementation and administration of the Agreement. A rectification would be made accordingly. Additional information relevant to paragraph 4 of TBT/W/1 would be submitted as soon as related internal administrative problems (e.g. identification of the enquiry point) could be solved.
12. Delegations welcomed the responses that had been given at this meeting to requests for information under this item of the agenda. A number of questions were posed. The answers to these are set out below.
13. The representative of Canada said that a formal Government administrative policy directive designed to ensure that the provisions of the Agreement were respected had not been issued, but that as soon as it would be completed his delegation would make it available to the Committee.
14. The representative of the European Economic Community, referring to the draft Council directive relating to access of third-country products to Community certification systems, said this directive was still under consideration in the Council. He drew attention to the complexities of the problem which involved, inter alia, free circulation of goods between the nine member States. The mechanism to be set up was basically an internal matter for the Community, which in principle should not be of direct concern to the Committee. The problem was to determine where and how accreditation of third-country products would be delivered. This did not directly relate to the implementation of the Agreement. However, he hoped to be in a position to inform the Committee of the outcome of the Council's deliberations on the matter by the time of the autumn meeting of the Committee.
15. The representative of Finland, said that the presidential decree referred to in TBT/1/Add.6 was issued on 24 April, but the decision by the Council of State would be delayed for another week. Copies of both the texts of the decree and the decision would be made available to the GATT secretariat.
16. The representative of Sweden said that there was no specific length of time fixed for the presentation of comments on standards or regulations, etc. His delegation could agree to a six-week period as a recommended minimum, with the understanding that a longer period or an extension of the initial period would be allowed if requested whenever possible.
17. The United Kingdom representative said that in order to ensure that all agreements had full effect under United Kingdom law, secondary legislation had been adopted, i.e. Statutory Instrument 1980/8191. This would be made available to the secretariat for circulation to members of the Committee.

18. The representative of Norway indicated that no general period of time for comment had been stipulated by his authorities; the period would be fixed on a case-by-case basis in each notification. However, a minimum six-week period was generally acceptable for Norway.

19. The representative of Japan, the United States and Canada, referring to the proposed directive of the Council of the European Communities relating to the implementation of Article 7.2, said they would look with great care at the content of this directive and reserved their right to revert to the matter at an appropriate future time. The representative of Japan added that his Government was concerned about the provisions of the directive of the Council of the European Communities referred to in TBT/M/2, paragraph 20 relating to measures to ensure reciprocity in the application of the Agreement. These concerns had been conveyed to the European Economic Community bilaterally.

20. The representative of the United Kingdom speaking for Hong Kong said he would provide further details on the implementation of the Agreement by his authorities in the near future.

21. In concluding the discussion, the Chairman noted that the statements heard under this item of the agenda showed that signatories were moving ahead with their implementation plans but that work still remained. Thus this item should continue on the Committee's agenda for future meetings.

C. Procedures for notification

22. A detailed exchange of views took place on the basis of a proposed format for notifications put forward by the secretariat. As a result of this discussion, the Committee recommended the format for notifications contained in Annex I which incorporated suggestions made in the discussion. The Committee agreed to review the operation of the recommendation during the annual review at its autumn meeting.

D. Avoidance of duplication

23. The Chairman recalled the discussion that had taken place on this item at the previous meeting and noted that the secretariat now proposed simplified arrangements for dealing with the problem based on paragraphs 7.2 and 7.3 of TBT/W/3. The observer from the FAO/WHO Codex Alimentarius Commission confirmed the secretariat's view on the question of duplication. He added that the Commission had from the start endeavoured to ensure that standards were being applied by its member countries in conformity with the principle of national treatment. Consultations had taken place on a regular basis between the Commission and the GATT secretariat and members of the Commission had taken measures at the national level to ensure that no difficulties would arise as regards duplication with the Agreement on Technical Barriers to Trade.

24. After a short discussion, the Committee agreed to the following simplified arrangements:

1. The Committee on Technical Barriers to Trade would invite Codex Alimentarius to transmit copies of notifications which they receive from governments which are also signatories to the GATT Agreement for circulation to signatories. As foreseen in Article 10.4, the GATT secretariat would provide Codex Alimentarius with copies of notifications made to it which relate to products of interest to Codex Alimentarius.

2. The secretariats of Codex Alimentarius and GATT would be invited to participate in meetings of the other organization as observers in discussions on items of interest to them in accordance with the procedures adopted for the participation of observers.

3. Any signatory which believes that problems of duplication may exist between the work under the Agreement on Technical Barriers and the Codex Alimentarius Commission could raise the matter during the Annual Review.

25. The Chairman then noted that members of the Committee would assist the secretariat by indicating if, in their view, there were problems of duplication with other international standardizing organizations listed in TBT/W/8. The secretariat would investigate in more detail the products for which international standards have been drawn up by these organizations.

E. Procedures for the accession of non-contracting parties

26. The Chairman indicated that informal consultations had been held on this subject. Reporting on them, the representative of the secretariat recalled that TBT/W/6 had been issued in response to requests made in this and other Committees for a more concrete proposal pursuant to the paper circulated as TBT/W/4. Following the consultations that had taken place, the secretariat had concluded that it would be difficult at this stage for delegations to adopt the proposals setting out detailed procedures and terms which were common to all applicants and agreements, in view of the differences which they saw between potential applicants and between agreements. Delegations were also somewhat reluctant to discuss detailed procedures now, as no applications had been received. The secretariat then made a revised proposal.

27. The observer from Ecuador stated that his country and countries of the Andean Group were currently studying the MTN Agreements and in particular the Agreement on Technical Barriers to Trade and were following closely the activities of the Committee. The Government of Ecuador had examined the proposals put forward by the secretariat in TBT/W/4 and TBT/W/6 and had considered that adequate flexibility should be provided in practice to take

into account the particular interests of different countries. The contracting parties to GATT had not accepted all the provisions of the General Agreement, notably those of Part II. It was therefore not possible to ask non-contracting parties to assume all the obligations of GATT. Conditions of accession should be flexible and reasonable in particular for developing countries, in order to facilitate the attainment of the objective of universality in the application of each MTN agreement.

28. The Committee accepted the procedures outlined by the secretariat. These are set out in Annex II.

F. Preparations for annual review

29. The Committee discussed this item on the basis of a secretariat proposal based on document TBT/W/9. There was a detailed exchange of views. In summing-up, the Chairman suggested that, while there had been some hesitations about the proposed outline, the revised outline (Annex III) which took into account points raised in the discussion could be used as a basis for governments to prepare for the first annual review due to take place prior to the meeting of the CONTRACTING PARTIES in November 1980. The arrangements would be subject to modification for future reviews in the light of experience with their application. The aim of the review should be to check that the main provisions of the Agreement were working satisfactorily: this would be borne in mind by delegations when deciding on the comprehensiveness of the information they would provide under the various points listed in the outline. On this understanding, the Committee agreed to the proposed arrangements.

G. Procedures for the circulation of documents

30. The Chairman stated that the question had arisen whether international organizations would receive documents for a particular meeting at the same time as they received the invitation to it. It seemed to him that it would be normal for these organizations to receive the same documentation as other observers when they received the invitation. This was also the view of the Chairmen of other Committees.

31. The Committee so agreed.

H. List of persons available to serve on panels

32. The Chairman announced that he had received nominations from the delegation of Japan. A revised list of panelists will be circulated in TBT/W/7/Rev.1.

33. The representative of Austria said his authorities were prepared to make persons available on an ad hoc basis upon request. In view of the variety of problems that might be involved in dispute settlement, they believed this might be the best way to proceed.

I. United States exports of poultry to the United Kingdom; applicability of Article 14.25 of the Agreement to United Kingdom Statutory Instrument 1979, Number 693, Schedule I, Part II interpreting Community directives 71/118 and 78/50

34. The representative of the United States said that his Government was concerned about the discriminatory effects against United States produced poultry of United Kingdom Statutory Instrument 1979, Number 693, Schedule I, Part II (which implemented EC Directive 71/118, as amended by EC Directive 78/50). As they understood it, this statutory instrument prohibited the importation of United States produced poultry that was not produced in accordance with the provisions contained therein. The United States Government believed that United States poultry exports to the United Kingdom, valued at \$10 million in 1979, would be sharply reduced, if not altogether eliminated, by the enforcement of this Statutory Instrument. On the other hand, United Kingdom poultry plants were not required to meet the provisions of this Statutory Instrument until 15 August 1982. As he understood it, the majority of United Kingdom plants were utilizing this derogation.

35. The United States considered this to be discriminatory treatment against United States produced poultry, in that United States poultry was required to meet certain health and veterinary regulations which United Kingdom produced poultry was not required to meet. The United States Government believed this clearly contrary to the United Kingdom's obligations under Article 2.1 of the Agreement on Technical Barriers to Trade. To be in compliance with its obligations under Article 2.1 the United Kingdom must treat imported products under Statutory Instrument 1979, Number 693, Schedule I, Part II in the same manner as it treated domestic products. Since the United Kingdom action specifically discriminated against United States poultry the United States believed the United Kingdom action unquestionably impaired a right accruing to it under Article 2.1 of the Agreement on Technical Barriers to Trade.

36. On June 3 and 4, 1980, the United States Government had held consultations on this issue with the Government of the United Kingdom (and the Commission of the European Economic Community) pursuant to Articles 14.1 and 14.2 of the Agreement, and on an EC Directive for immersion chilling of poultry. In regard to the United Kingdom discriminatory action, the United States objective in these consultations had been to obtain the agreement of the Government of the United Kingdom to apply in a non-discriminatory manner the previously cited United Kingdom Statutory Instrument, so that United States exports of poultry and poultry parts to the United Kingdom that had been stopped as a result of the United Kingdom action could be resumed immediately.

37. No solution to this problem had emerged from the June 3-4 consultations. Therefore, the United States had requested the Committee, in a letter to its Chairman dated 16 June 1980, to investigate the matter under Article 14.4 of the Agreement with a view to obtaining, from the United Kingdom, agreement to apply its Statutory Instrument in a non-discriminatory manner. They firmly hoped that the Committee would act expeditiously in this regard.

38. The representative of the European Economic Community expressed surprise at the declaration of the United States delegation. He felt that the matter was being incorrectly brought up in this Committee since the EC Directive in question related to a poultry slaughtering process which did not fall under the purview of the Agreement, as the long history of negotiations of the latter and the definitions in its Annex abundantly showed. Moreover, the European Economic Community strongly held that consultations under Articles 14.1 and 14.2 could not have taken place since the directive was not covered by the Agreement. The Community had merely accepted to discuss with the United States a particular trade problem which had nothing to do with the Agreement. In addition, there had not been and could not have been any consultations between the United Kingdom and the United States, since the directive at issue was a Community directive and only the Community was competent to discuss the matter with the United States. The representative of the European Economic Community said he was nonetheless prepared to discuss the interpretation of the Agreement which was, in his view, the problem at hand.

39. The representative of the United States said that his authorities firmly believed that the Committee was competent to investigate the United Kingdom's discriminatory action by virtue of Article 14.25 of the Agreement. Article 14.25 had been purposefully included in the Agreement so that processes and production methods could be the subject of complaints under the dispute settlement provisions of the Agreement. Processes and production methods had not been explicitly covered in the operative provisions of the Agreement since several delegations did not want to subject them to all of the Agreement's procedural requirements. In this regard, the United States had formulated proposals during the negotiations that would have specified those provisions of the Agreement to which processes and production methods would be subject, but the United States did not press these proposals on the understanding that complaints could be brought under the code whenever trading problems resulted from processes and production methods. Any interpretation of Article 14.25 that was restrictive and would limit signatories from complaining about processes and production methods would clearly be contrary to understandings reached during the negotiations on this question. He therefore asked the Committee to investigate the matter and to decide that in fact it does have competence to facilitate a satisfactory solution of the matter. The best way to do this would be to recommend that the United Kingdom eliminate the discriminatory aspects of its statutory instrument. He called on other members of the Committee to take position on this issue.

40. The representative of the European Economic Community said that in the light of the negotiating history of the Agreement, Article 14.25 could only apply if there was a deliberate attempt to circumvent obligations under the Agreement by the drafting of requirements in terms of processes or production methods. This being said, the Article referred to the drafting of requirements and therefore it could not apply to the aforementioned Community directives, which had been adopted prior to the entry into force of the Agreement.

41. Some delegations said that they would prefer to see the matter solved bilaterally. Many delegations said that the Committee was competent to decide whether the matter was covered by the Agreement or not and how to deal with it. Some delegations said that the interpretation of the United States was the correct one; some delegations said that further information was required before they could come to a conclusion on this issue. One delegation said that it would be more appropriate to examine the matter under Article 14.6 of the Agreement. One delegation said that the provisions of Article 14.23 could also be relevant. It might be easier to make out a case under Article III of the General Agreement than within the Committee itself.

42. The representative of the United States asked for an early meeting of the Committee to deal with the question of the applicability of the Agreement to the United Kingdom Statutory Instrument and the Community directives, in view of the urgency of the matter, since United States exports were being significantly impeded. The representative of the European Economic Community said that in view of the reactions of other signatories, his delegation would not oppose the matter being examined in more detail at a future meeting of the Committee. He stressed, however, that he could not agree that the matter was urgent in trade terms. Imports from the United States were not being completely blocked from entry into the United Kingdom so long as United States chilling plants conformed to the Community directives.

43. The Chairman noted there was a consensus in the Committee for taking up the matter at its next meeting with a view to determining its competence in the case. Accordingly, the signatories concerned would provide information on the case to all members of the Committee so as to enable them to make adequate preparations.

J. Proposed legislation on dangerous substances

44. The representative of the European Economic Community said his delegation wished to call the attention of the Committee in general terms to a problem to which it might revert at a future meeting. The point related to legislation which was being adopted in many countries to control the use of dangerous substances in order to protect health and the environment. In many instances, such legislation well-nigh banned the use of such substances, which implied on the part of producers considerable efforts at adapting their production processes to meet these requirements. Cadmium and benzene were examples of substances subject to such legislation. While the underlying concerns were quite understandable, in practice if the legislation was too restrictive and its application too rigid, it may result in an effective ban on imports when the industries in foreign countries have not had sufficient time to adapt to it. Therefore, it was essential that a reasonable period of time be provided to foreign suppliers to adapt to the stringent requirements of particular signatories. In certain cases it might be necessary to provide for several years of transition and to implement the relevant legislation in stages.

Failing such flexibility, the legislation may eventually give rise to special difficulties which would then have to be examined on a case-by-case basis in the Committee. In order to avoid this, the Community suggested that the Committee look into the problem at a future meeting and consider the establishment of a time-frame for the entry into force of restrictions on the use of dangerous substances which would allow sufficient time for industries to adapt to the requirements. This could also be viewed as a question of interpretation of the provisions of the Agreement relating to the need to allow "reasonable time" before the entry into force of technical regulations.

45. The Committee took note of the statement and agreed to revert to the question at a later date.

K. Date of the next meeting

46. The Chairman suggested that the next meeting be held on 22 July 1980. The agenda would include the following points:

1. Requests for observer status;
2. Statements on implementation and administration of the Agreement;
3. Applicability of Article 14.25 to United Kingdom Statutory Instrument, 1979, Number 693, Schedule I, Part II interpreting Community directives 71/118 and 78/50.
4. Other business.

The draft agenda for the meeting would be circulated to signatories in accordance with established procedures.

47. The fifth meeting of the Committee which would, inter alia, conduct the first annual review would take place in the second half of October, unless an earlier meeting was called at the request of one or more signatories.

ANNEX I

NOTIFICATIONS

1. The Committee recommends that the following format should be used as a basis for notifications:
 - 1.1 The provision of the Agreement under which the notification is being made.
 - 1.2 The party or agency proposing to adopt or which has adopted a regulation, or a certification system.
 - 1.3 The products covered, if possible indicating the CCCN tariff heading (and their own tariff heading where this is different) under which the products fall.
 - 1.4 The title and a brief description of the project, including objective and rationale.
 - 1.5 Reference identifying document(s) relevant to the proposed text (where available) and publication in which the text will be published when adopted.
 - 1.6 Comment period and/or final date for submission of comments.
 - 1.7 Proposed date of adoption and entry into force (where available).
2. The Committee also recommends six weeks as a suggested minimum length for the period for comments on notifications, with the understanding that a longer period or extension when requested would be allowed where possible.
3. The Committee will review the operation of this recommendation during the Annual Review.

ANNEX II

PROCEDURES FOR ACCESSION OF NON-CONTRACTING PARTIES

The Committee:

1. Notes the provisions of Article 15.3 of the Agreement and the statement on this subject accepted by the Trade Negotiations Committee at its meeting of April 1979 (MTN/P/5, paragraphs 2, 4 and 9),
2. Agrees that any non-contracting party which wished to negotiate for accession to the Agreement under Article 15.3 would indicate this fact in a letter addressed to the Chairman of the Committee, a copy of which would also be sent to the GATT secretariat,
3. Agrees that negotiations for the accession of such governments would be conducted on a case-by-case basis, and
4. Agrees that documents TBT/W/4 and TBT/W/6 could be taken into account in any such negotiations.

ANNEX III

OUTLINE FOR ANNUAL REVIEW OF THE OPERATION
OF THE AGREEMENT

The Committee agrees to the following arrangements for its first annual review to take place prior to the CONTRACTING PARTIES' meeting in 1980.

1. The annual review would give particular attention to the following main provisions:

- (a) implementation and administration (Article 15.7);
- (b) notification (Articles 2.5, 2.6, 3, 4, 7.3, 7.4, 8);
- (c) technical assistance and special and differential treatment (Articles 11 and 12);
- (d) dispute settlement (Article 14);
- (e) accession and reservations (Article 15);

The review may also cover:

- (f) the use of international standards (Articles 2.2, 2.5, 2.6); participation in regional standardizing bodies (Articles 2.9, 2.10) or international and regional certification systems (Article 9);
- (g) transparency: publication (Articles 2.5.1, 2.7, 3, 4, 7.3.1, 7.5, 8) and information (Article 10);
- (h) testing procedures and acceptance of test results (Articles 5 and 6).

2. The review would also examine the overall implementation and operation of the Agreement (Article 15.8).

3. The secretariat would prepare a factual document on which the review could be based. Parties to the Agreement would submit to the GATT secretariat information about the action taken by them under items listed in paragraph 1 above to the extent that this has not already been done in the normal course of the Committee's work. This information would be collated by the secretariat in a single document, together with summaries of notifications received, relevant activities of other international organizations etc.

4. The report referred to in the second sentence of Article 15.8 would cover all aspects of the work of the Committee. The secretariat would present a draft report to the Committee for examination and adoption.