Committee on Technical Barriers to Trade

MINUTES OF THE MEETING HELD ON
6-7 MARCH 1986

Chairman: Mr. P. Kennedy

1. The Committee on Technical Barriers to Trade held its twenty-first meeting on 6-7 March 1986.

2. The agenda of the meeting was as follows:

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A. Election of Officers for 1986

3. The Committee elected Mr. P. Kennedy (New Zealand), Chairman and Mr. D. Bondad (Philippines), Vice-Chairman for 1986.
B. **Statements on Implementation and Administration of the Agreement**

4. The representative of Japan said that his authorities were implementing the Action Programme of July 1985 expeditiously. Since the previous meeting new systems of self-certification by producers had been introduced, respectively, under the Consumer Product Safety Law, the Gas Utility Industry Law and the Fire Service Law. Furthermore, a process of preferential handling had been set up for improving the existing procedures for the certification of motor vehicles. He also informed the Committee about the bilateral consultations carried out with the United States over the past year and which would facilitate market access in respect of standardization and certification matters in the sectors of telecommunications, forestry products, electronics, pharmaceuticals and medical equipment.

5. The representative of the European Economic Community called attention to the new situation which resulted from the enlargement of the Community, with the accession of Portugal and Spain on 1 January 1986.

6. The representative of the United States drew attention to a publication entitled "Federal Government Certification Programmes for Products and Services" which had recently been issued by the National Bureau of Standards as part of a series of publications which would, when completed, provide information on the programmes of the Federal Government, of the State and local governments and of the private sector in the area of certification. The present publication described the scope and nature of sixty-one government certification programmes and included information on their relevant testing and inspection practices, the standards used, the methods of identification and enforcement and the procedures for reciprocal recognition of certification with other countries. It would be circulated to the enquiry points in Parties by the National Bureau of Standards.

7. In response to the information sought by the representative of the United States from the signatories concerned about progress in ratifying the Agreement, the representative of Argentina said that the previous discussions of the Committee on this matter had been reported to his authorities in full and the Committee would be informed of any outcome of their assessment of the situation. The representative of the European Economic Community said that he could not report any new developments since the previous meeting concerning the status of ratification in Greece. He also said that Portugal would initiate its ratification procedures in the near future. A representative of the secretariat informed the Committee that the secretariat had transmitted the concerns expressed in the Committee on this point to the authorities in Rwanda through their embassy in Bonn but no reactions had been received as yet from this signatory.

8. The Committee took note of the statements made.

C. **Exception Granted to India under Article 12.8**

9. The representative of India introduced the communication by his delegation, circulated in document TBT/Spec/16, and said that India requested an extension of the exception granted to it in pursuance of Article 12.8 because his authorities would not be able to complete the legislative
procedures for the amendment of the Indian Standards Institution (ISI) Certification Marks Act, necessary to bring it into conformity with Article 7.2, before the end of the present calendar year.

10. The representative of the United States said that his delegation was concerned about a second extension of the exception that had already lasted for three years. Supported by the representative of Japan, he declared that this period of exception should only be granted so as to enable the Indian authorities to finalize the relevant legislative procedures. The representatives of Brazil and the European Economic Community said that their delegations did not object to an extension of the exception as requested by India. The representative of Brazil said that unforeseen administrative delays had compelled the Indian authorities to request a new extension of the exception despite their willingness to expedite the enactment of the amendments to the ISI Marks Act. Moreover, the operation of the exception from the obligations of Article 7.2 did not appear to give rise to any trade problems for other Parties.

11. In conclusion, the Committee agreed to grant India a further extension of the exception under Article 12.8 from the obligations of Article 7.2 in respect of the ISI Certification Marks Act, for a period not exceeding one year.

D. Procedures at the National Level for Gathering Information on Proposed Technical Regulations and Rules of Certification Systems

12. The representative of Switzerland said that the technical regulations issued in his country were generally based on regional and international standards and that his authorities notified all proposed technical regulations, the contents of which were not substantially the same as those of the relevant international standards. The representative of India said that the enquiry point in his country notified proposed technical regulations in accordance with Article 2.5 of the Agreement and the criteria established by the Committee. The representative of Brazil said that the Centre for Information and Documentation would shortly become operational within INMETRO (the National Institute of Metrology, Standardization and Industrial Quality) and would be in charge of preparing notifications of his country. The representative of Czechoslovakia gave a description of the procedures applied in his country for determining the notification of draft technical regulations, which was circulated to Parties informally.

13. The representative of the United States said that the submissions by Parties in response to the request by the Committee in TBT/M/19, paragraph 35(b), should go beyond a mere description of the criteria used by Parties for determining the notification of technical regulations, to provide information on how the activities of national regulatory authorities which proposed new technical regulations or rules of certification systems or amended the existing ones, were brought to the attention of the authority in charge of notifying the proposed texts to other Parties.

14. In conclusion, the Committee invited Parties to pay particular attention to the exchange of information called for in the first part of paragraph 35(b) of document TBT/M/19 and agreed to revert to this item at its next meeting on the basis of the proposal recently circulated by the Nordic countries in document TBT/W/92.
E. Procedures for Adoption of Decisions and Recommendations

15. The representative of the European Economic Community said that his delegation had sympathy for the concerns that had been expressed by the representative of Chile at the previous meeting in respect of unduly accelerated procedures for adoption of decisions and recommendations, but recalled that, in practice, the Committee generally discussed a proposal relevant to a decision or a recommendation a number of times before its adoption. Certain decisions or recommendations relevant to disputes might have been occasionally adopted by the Committee at short notice at the suggestion of the Parties directly concerned. His delegation could not agree to the establishment of any time limits for submitting decisions or recommendations which would render the process of decision-making in the Committee ineffective.

16. The representative of Chile said he welcomed the sympathy expressed by a number of delegations at this and the previous meeting for the problem he had raised, and he also understood the reticence of many delegations to adopt a formal decision on the issue. He therefore did not press his proposal for such a decision, but would welcome an assurance from the chair that the problem he had raised would be taken into account in the work of the Committee.

17. The Chairman thanked the representative of Chile for his comments and stated, on behalf of the Committee, that Parties would make every effort to submit their proposals for a Committee decision or recommendation sufficiently in advance for delegations to consider these and to consult their authorities before the Committee took any relevant action.

F. Translation of Documents Relating to Notifications

18. The representative of the Philippines expressed appreciation for the support extended to the proposal by his delegation (TBT/M/19, paragraph 36(i) and TBT/M/20, paragraph 12) at the previous meeting and said he believed the resolution of the long-standing problem of translation would assist Parties in exercising their rights to make comments on notifications.

19. The representative of Canada said that the proposal by the Philippines presented a number of problems for his authorities: up to now only his country and the United States had supplied information to the Committee on the roles played by their governments in providing translations of draft technical regulations and rules of certification systems issued by other Parties. The Canadian government offered these translations to national enterprises free of charge and on an informal basis, in order to assist them in preparing any comments that might be due on the notified text. The government authorities, nevertheless, disclaimed responsibility for any actions that the individual parties would take on the basis of those translations. In the absence of information from other Parties about the availability of their translation facilities, the Canadian authorities would be the sole source of translations of documents relating to notifications on a no charge basis. In this connection, he invited Parties to provide data on the number of translations that had been made into one of the GATT languages over the past three years so as to enable the Committee to assess if the burden could be equitably shared among Parties. Concerning the procedure proposed by the Philippines, he commented that the delays involved in
notifying translations through the secretariat would not allow Parties to make their comments in time. He also doubted the appropriateness of giving publicity to the type of foreign technical regulations and rules of certification systems that had been solicited and translated by interested parties and authorities in his country. Finally, his authorities did not wish to be involved in legal liability issues with regard to the claims that might arise between two foreign parties as a result of the use made of translation services originating in Canada. As a way of circumventing these problems, he suggested that, when asking notifying countries for copies of a draft technical regulation developing countries might also obtain the names of other countries that had requested copies of the draft regulation in question and that might be translating the proposed text into one of the GATT languages. This would enable Parties to enter into bilateral contacts without channelling their requests through the secretariat.

20. The representative of Japan said that the Action Programme of 1985 recognized the importance of language barriers in respect of standards-related documents. The Ministries which were involved in proposing draft technical regulations or rules of certification systems provided, in co-operation with the national enquiry point, translations or at least a summary of the relevant documents in one of the GATT languages. The Ministry of Foreign Affairs (MOFA) and the Japan External Trade Organisation (JETRO) had also intensified their efforts in this respect. These translations by the public authorities in his country were voluntary and free of charge.

21. The representative of India referred to the difficulty of obtaining rapid and reliable translations of standards-related technical documents in developing countries. The translation of a document could not be considered authentic without the confirmation of the authority that had issued the document. Any translations of documents into one of the GATT languages by Parties made on a voluntary basis would be welcomed. In addition, he suggested that Parties using the same official language might share translations.

22. The representative of Switzerland stated that administrators in both developed and developing country Parties had problems in respect of technical documents in a foreign language. The proposal by the Philippines suggested that the information on translations could be communicated to other Parties on an ad hoc basis. As a first step to the solution of the problem, he suggested that Parties proposing technical regulations or rules of certification systems could indicate in their notification any technical documents relevant to certain elements of the draft text that existed in one of the GATT languages. In their notifications they could also refer to any translations that were made from non-official languages. With regard to the question of legal liability, he said that a government translating a text on a voluntary basis from a non-official language in his country could not be expected to assume legal liability for the accuracy of the text.

23. The representative of Finland, on behalf of the Nordic countries, said that the proposal by the Philippines suggested sharing translations which had already been made on a mutually agreed basis, which could also include any fees involved. No particular burden would be placed on those countries which had translation facilities because they would not be requested to respond to every request for translation from other Parties. His delegation also felt
that the concerns of the delegation of Canada on legal liability of Parties with regard to the use of translations were unfounded because the proposal related only to exchange of translations of draft texts. The only risk of using inaccurate translations in this case would be the exchange of some comments that would not be entirely relevant due to the misunderstanding of the draft texts.

24. The representative of the European Economic Community said that the suggestions, respectively, by the delegations of the Philippines, Canada and Japan on the manner in which information on the translation services could be exchanged were not completely incompatible and each practice would contribute to overcoming language barriers. He also said that public or private bodies in the Community and in the member States issued translations of standards-related documents which could be shared with the potential clients in other Parties.

25. The representative of the United States said that documents relating to notifications were translated to meet the needs of interested parties in his country and these translations could equally be made available to every party that would agree to share the costs involved. In his view, the proposal by the delegation of the Philippines suggested a mere exchange of information as to what translated documents existed in Parties, it being recognized that, whether translations themselves would be made available would depend on the terms and conditions to be mutually agreed between the Parties concerned. He offered henceforth to notify the GATT secretariat on an informal basis of translations done by the United States enquiry point.

26. The representative of the United Kingdom on behalf of Hong Kong thanked the Philippines and Canadian delegations for their interventions which indicated that they were more than willing to make a contribution towards resolving the problem in this area, and said that the problem which led to the Philippines proposal was a real one, particularly for developing country Parties to the Agreement. In the light of the discussions so far, his delegation's preference, on balance, was in favour of the Philippines approach.

27. The representative of New Zealand said that his authorities supplied translations of standards-related documents to the interested parties in the private sector on a cost recovery basis and would be prepared to share the information on these translations as suggested by the Philippines. He considered that the three approaches suggested by the delegations of Canada, Japan and the Philippines were complementary and shared the common objective of transparency regarding translation facilities available in Parties for the benefit of other Parties.

28. In conclusion, the Chairman suggested that interested delegations should meet informally to pursue the discussion on this item and that the Committee should revert to it at its next meeting on the basis of these consultations. It was so agreed.

G. Length of Time Allowed for Comments

29. The representative of Finland, speaking on behalf of the Nordic countries, introduced the proposal for an amendment to the recommendation on
the length of time allowed for comments, circulated in document TBT/W/89. The representatives of Chile, India, New Zealand, Switzerland, the United Kingdom on behalf of Hong Kong and the United States supported the thrust of this proposal. The representative of New Zealand said that forty-five days should be adequate for Parties to determine whether they would be able to make their comments on the proposed action within the given comment period, although the comments as such might not yet be ready for presentation.

30. The representative of Japan said that the proposal was being examined by his authorities. Meanwhile, he wondered whether the amendment suggested to the present recommendation would not incite Parties to request automatically extensions of the time period before the end of the forty-five days. The representative of Switzerland said that the Committee should not overlook the possibility of increased requests for the extension of the comment period which would cause an effective prolongation of the recommended comment period of sixty days. The representative of India suggested that countries should be encouraged to make their requests for extension of the comment period as rapidly as possible so as not to delay the proceedings of the regulatory authorities in other Parties. In this connection, the representative of the United Kingdom on behalf of Hong Kong suggested that Parties which frequently felt the need to request last minute extensions of the comment period should review the operation of their internal procedures for presenting comments.

31. The representative of the European Economic Community said that the amendment of the recommendation as suggested by the Nordic countries would be counterproductive in the case of the Community because the procedures for co-ordinating views in the Community would not allow it to decide whether to request the extension of the comment period within forty-five days.

32. In conclusion, the Committee agreed to revert to the issue at its next meeting on the basis of a revised proposal to be prepared by the Nordic countries in the light of the comments made.

H. Testing and Inspection

33. The representative of the United States said that his authorities had undertaken an assessment of the use of the ISO/IEC Guides in his country: The guidelines, respectively on federal agency use of private sector third-party certification programmes and on self-certification by producer or supplier, published in the Federal Register Notices of 15 February 1984, made reference to ISO/IEC Guides 38 and 39 (cf. TBT/M/15, paragraph 8). ISO/IEC Guides 25 and 38 were substantially compatible with the guidelines on laboratory accreditation, also issued in 1984. The criteria established by ISO/IEC Guides 25, 38 and 43 and by the recent ISO/IEC Guide 45 were reflected in the operating procedures of the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Bureau of Standards. He also referred to the note on bilateral arrangements on testing and inspection circulated by the secretariat in document TBT/W/90 and said that the Committee should pursue its investigation in this area. His authorities would confirm and supplement the information contained in document TBT/W/90 and suggested that other Parties should do the same, so as to enable the secretariat to complete this information.
34. The representative of India said that, although a national accreditation system of laboratories had not yet been established in his country, the Indian Standards Institution had registered some two hundred and twenty-five laboratories under the ISI Certification Marking Scheme which followed the procedures laid down in the ISO/IEC Guides. Developing countries would have difficulty with a mandatory implementation of the ISO/IEC Guides, given the lack of infrastructure for testing facilities to enable these countries to comply fully with the requirements of these Guides. The provisions of the Agreement on technical assistance might be used to set up national accreditation systems in developing countries.

35. The representative of Finland, supported by the representative of Switzerland, said that the documentation before the Committee on the activities in the field of testing and inspection was adequate to enable it to pursue its work on the matter. He suggested that transparency on bilateral arrangements on testing and inspection could be improved by extending the functions of the enquiry points to cover exchange of information concerning those arrangements concluded by their countries.

36. The representative of Finland, speaking on behalf of the Nordic countries, said that the Nordic delegations had the intention of submitting a proposal on how the ISO/IEC Guides could be used in furthering the objectives of the Agreement. He also suggested that the ISO/IEC Guide 36, which he did not consider directly relevant to the work of the Committee, be withdrawn and be replaced by ISO/IEC Guide 45 as part of the set of guides circulated to the Committee. It was so agreed.

37. The representative of the United States said it would be useful to assess the use that was being made of the ISO/IEC Guides by Parties in the conclusion of bilateral arrangements.

38. The representative of Canada said that Parties should try to improve the data base on bilateral arrangements on testing and inspection in order to elucidate the appropriate approach to be adopted for the conclusion of such agreements.

39. The representative of Romania said that the Committee should examine the possibility of total or partial implementation of the ISO/IEC Guides and continue the collection of data on bilateral arrangements, as well as on the activities of regional and international arrangements. He added that subjects such as purchasers' rights to perform tests in accordance with national legislation and to cancel certificates based on inaccurate data should be given particular attention in any future discussions of the matter.

40. The representative of the European Economic Community referred to the statement by his delegation circulated in document TBT/W/91 and said that the approach of the Community to the question of testing and inspection involved building confidence among Parties directly concerned rather than concluding agreements at the level of governments. The existing guides which provided a factual reference to methods of work at the international level, could serve as a basis for promoting mutual confidence among testing laboratories and certification bodies in individual Parties. The governmental authorities in Parties could in turn commit themselves to provide the necessary conditions for arrangements between the parties concerned and to grant recognition to such arrangements.
41. In response to a question by the representative of Finland speaking on behalf of the Nordic countries, the representative of the European Economic Community said that the Committee was fully competent to decide on the ways of giving effect to the provisions of the Agreement on testing and inspection. However, he doubted whether recommendations which the Committee might adopt at this stage would be adequate to meet the objective of extending the coverage of these provisions; as both his delegation and that of the United States had suggested, discussions of substance on the matter could only take place in a body that would be entrusted with the future round of multilateral trade negotiations.

42. The representatives of Japan and Switzerland expressed support for the approach put forward by the European Economic Community in document TBT/W/91. The representative of Japan said that his country participated actively in the work being carried out in international organizations on the general requirements for acceptance of testing laboratories, inspection and certification bodies. The Japanese authorities were proceeding with the mutual recognition of test data on a case-by-case basis and with the extension of self-certification systems. He added that testing and inspection would be an important issue to be addressed in the new round of multilateral trade negotiations.

43. In conclusion, the Committee agreed that the Parties should check the accuracy of the information in document TBT/W/90 and transmit comments relevant to arrangements concerning their country to the secretariat. It also agreed to pursue its discussion of the matter at its next meeting.

I. Possible Extension to Local Government Bodies of Major Obligations Under the Agreement

44. The representative of the European Economic Community said that his authorities considered that under the existing provisions of the Agreement, Parties with centralized governments undertook far more commitments than those with decentralized administrative systems. This imbalance had increased with the recent trend towards decentralization in certain Parties. In order to redress the situation, his delegation suggested that local government bodies should comply with the obligations of the central government bodies, in particular, with the obligation to notify their proposed technical regulations or rules of certification systems.

45. The representative of the United States, supported by the representative of Canada, said that allegations by the European Economic Community as regards an imbalance between Parties were unfounded. No formal case had been made to prove the existence of a problem concerning the activities of about thirty-three thousand local government bodies in his country. Only in one instance, which was raised informally, the federal administration had exercised its "best endeavours" to resolve a problem. Moreover, the trend towards decentralization was, if anything, more noticeable in the European Community itself than elsewhere, and did not therefore call for special action by other Parties.

46. The representative of the European Economic Community said that the obligations in the Agreement relating to local government bodies reflected
the concerns of the negotiators of the Agreement with the problems inherent to the standards-related activities of decentralized administrations. His delegation was interested in strengthening the present provisions of the Agreement in order to extend the direct obligations under the Agreement to these bodies.

47. The representative of Switzerland said that the constitutional structure in his country divided administrative responsibilities between the central governments and the cantons and within the cantons themselves. He said that the present terms of the Agreement respected the existing constitutional structure in Parties because any relevant problems could only be addressed on the basis of "best endeavours".

48. The representatives of Japan and of Finland, speaking on behalf of the Nordic countries, said that their delegations shared the concern expressed by the delegation of the European Economic Community on the present dissymmetry in the obligations undertaken by the Parties with different internal administrative structures.

49. The representative of the European Economic Community said that the idea had been launched by his delegation as one of the important issues of balance of rights and obligations that might be taken up in any future renegotiation of the Agreement. He recognized that, while the Committee could develop recommendations for strengthening the various provisions of the Agreement, the task of renegotiation of the Agreement would most probably be entrusted to a larger body so as not to exclude non-signatory contracting parties from these negotiations.

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

J. Setting up of a Code of Good Practice for Non-Governmental Standardizing Bodies

51. The representative of the European Economic Community said that there was an increasing trend by central government authorities in some Parties to entrust non-governmental bodies (NGBs) with standards-related activities. Any negative implications of this trend for the objectives of the Agreement as regards transparency and non-discrimination could be checked by drawing up a code of good practice which would define more direct obligations in respect of the activities of these NGBs. It would also set out criteria for determining the extent to which the activities of these NGBs conformed with the obligations laid down in the Agreement. Parties could use their best efforts to induce the NGBs to subscribe to the code, which would be entirely voluntary.

52. The representative of Finland, speaking on behalf of the Nordic countries, said that a code of good practice to be drawn up under the present Agreement would assist in giving guidance to NGBs on existing obligations under the Agreement and how these could be met. He added, supported by the representatives of India, and Switzerland, that a draft with specific proposals on the contents of such a code was needed to facilitate the discussion of the matter.
53. The representative of the United States said that the private and independent status of these NGBs should be recognized. In his country, there was no question of widening the control of the federal government authorities on private standards bodies. Although the trend mentioned by the representative of the European Economic Community might indeed be perceptible in the Community, in his country the private sector had for a long while been a permanent element of the standardization system. The representative of Canada said that there should be adequate opportunity for the NGBs to contribute to the development of the proposed code and that adherence to the code by the NGBs could only be voluntary. The representative of Japan said that his authorities had recently undertaken an overall review of NGBs in order to assess their activities in the light of the objectives of the Agreement.

54. The Committee took note of the statements made and agreed to revert to this point when a draft code with specific proposals was made available to the Committee.

K. Technical Assistance

55. The representative of Finland announced the organization of a seminar on technical barriers to trade by the Government of Finland for officials from non-European developing country Parties and observers, and circulated a leaflet which gave details of the seminar and of the procedures for the presentation of candidacies.

L. Date and Agenda of the Next Meeting

56. The Committee agreed to hold its next meeting on 28-29 May 1986. The agenda of the meeting would include the following items:

1. Statements on implementation and administration of the Agreement

2. Procedures at the national level for gathering information on proposed technical regulations and rules of certification systems

3. Translation of documents relating to notifications

4. Length of time allowed for comments

5. Testing and inspection

6. Possible extension to local government bodies of major obligations under the Agreement

7. Improvement of transparency in bilateral standards agreements

8. Improvement of transparency in regional standards activities

9. Preparations for the seventh annual review.