Committee on Technical Barriers to Trade

DRAFT MINUTES OF THE MEETING HELD ON
20-22 OCTOBER 1981

Chairman: Mr. S. Tamura

1. The Committee on Technical Barriers to Trade held its eighth meeting on 20-22 October 1981.

2. The agenda of the meeting was as follows:
   A. Request for accession by Bulgaria
   B. Enquiry points
   C. Second annual review of the operation of the Agreement
   D. Regional standards-related activities
   E. Individual standards-writing and certifying bodies
   F. Derestricion of documents
   G. Revised Inventory of non-tariff measures
   H. Report to the CONTRACTING PARTIES
   I. Date and agenda of the next meeting

3. The Chairman, on behalf of the Committee, welcomed the Philippines as a new signatory to the Agreement.

A. Request for accession by Bulgaria

4. At the invitation of the Chairman, the Chairman of the Working Party on the Accession of Bulgaria presented, on his own responsibility, his third progress report on the work of the Working Party. He said that intensive consultations had been held, resulting in a draft text of terms of accession dated 23 July 1981, which members of the Working Party had decided to submit to their authorities for approval. On 19 October the delegation of Bulgaria had submitted some amendments to the draft text. The Working Party, noting that delegations had not had enough time to examine these amendments, had decided to pursue consultations and to meet again when such consultations had reconciled divergent views sufficiently for an understanding to be reached on a text setting forth terms of accession and for the Working Party to take a decision. The text of his progress report, together with the text of the draft proposal for terms prepared on 23 July 1981 and a new version of this text
including changes suggested by Bulgaria, has been circulated as document TBT/9.

5. The representative of Hungary explained the basic considerations that had determined his delegations' approach in the negotiations for the accession of Bulgaria. First, the Agreement was a self-contained permanent juridical instrument in the GATT system, i.e. all its provisions except Article 14.23 had been elaborated in order to ensure the independent management of the Agreement. Secondly, Article 14.23 provided signatory contracting parties with an additional procedure which did not relate to the provisions of the Agreement itself but to matters falling outside those provisions. Thirdly, the fact that a non-contracting party could not avail itself of Article 14.23 had nothing to do with the full applicability of the other provisions of the Agreement, and it did not follow that there was a need to establish conditions relating to the internal functioning of the Agreement which differed from those applicable to other signatories. Fourthly, the Hungarian delegation would judge whether a non-contracting party should be accorded the benefit of all the provisions of the Agreement against its readiness and willingness to undertake all the obligations arising thereunder. In this connexion, he noted that the Bulgarian policy and practice falling within the scope of the Agreement had been thoroughly examined to the satisfaction of all concerned. In conclusion, he said that the elements of judgement which he had outlined would determine the Hungarian delegation's approach in all similar cases of requests for accession.

6. The observer from Bulgaria recalled that at its previous meeting, the Committee had heard an interim report by the Chairman of the Working Party to which had been attached a compromise text of terms of accession which could then be accepted by most delegations. The text annexed to the third progress report of the Chairman of the Working Party embodied a new approach to the issues at hand. At this stage also, it was noted that most delegations could accept this text or a text based on it on which a consensus would be reached in the Working Party. For its part, the Bulgarian delegation had submitted a number of amendments to the text which he hoped would be given due consideration in further negotiations. The Bulgarian delegation could accept the new approach embodied in the text of 23 July provided the solution reached remained within the GATT framework. This meant that any unilateral action taken should be without prejudice to the dispute settlement procedures of the Agreement, that it should be provisional and should run parallel to Articles 14.1 - 14.22, and that it should only be taken in exceptional circumstances in which there was no other way to restore the balance of rights and obligations under the Agreement. These conditions were more or less adequately reflected in the text of 23 July but there were two other principles which were equally valid and which did not appear in that text. First, action should not be taken at a stage when no consultations had taken place or before the Committee had been made aware of the issue. This element was reflected in the first of Bulgaria's suggested amendments to paragraph 2 of the text of 23 July, which implicitly referred to Articles 14.1-14.8 of the Agreement. Secondly, the possibility of
taking unilateral action should be given only to the same extent and in the same context as the possibility to refer matters to the GATT was given to signatory contracting parties. This was the reason for the second proposed change in paragraph 2 of the text of 23 July, which used a formulation similar to that of Article 14.23. In addition, Bulgaria had proposed a minor technical addition to paragraph 3, to bring it into line with the procedures spelled out in paragraph 2 and to clarify the meaning of the word "examine". Bulgaria stood ready to discuss its proposals at any time as soon as other delegations were in a position to react to them.

7. The Committee noted the progress report made by the Chairman of the Working Party and the statements made by delegations. It noted that consultations would be held and that the Working Party would meet again when there was a real possibility that an agreed decision on the terms of accession could be reached. The Committee agreed to meet again, in normal or special session, when the report by the Working Party is presented to it.

B. Enquiry points

8. As agreed at the last meeting, the Committee invited persons responsible for enquiry points to hold informal consultations and to report back at the current meeting. The Committee agreed that representatives of interested observers could take part in these consultations. It designated the secretariat (Mr. Nusbaumer) as convener of the informal consultations of enquiry points.

9. In the general discussion which preceded these consultations, the representative of Finland, speaking for the Nordic countries, suggested that the people responsible for enquiry points should devote attention, inter alia, to two practical matters, namely the implementation of Article 2.5.3 of the Agreement and the clarification of the meaning of "reasonable enquiries" referred to in Articles 10.1 and 10.2.

10. The representative of the European Economic Community, referring to the objectives of the enquiry points meeting, stated that it should keep in mind that attempts to establish too elaborate information systems could break down. It was essential to remain pragmatic and to concentrate on making the system work as efficiently as possible.

11. The Committee resumed consideration of this item after consultations between enquiry points had been held. The convener presented an oral report (reproduced at Annex) on the results of the consultations, including a number of specific points which had emerged from them and on which the Committee was requested to take action.

12. The Committee noted the oral report of the convener and took the following action:

(1) The Committee recommended that Parties give, as a rule, sympathetic consideration to requests for extension of the comment period when necessary to overcome delays in obtaining
documentation relevant to proposed technical regulations, standards or certification systems.

(2) The Committee agreed that:

(a) Any request for documentation should be processed if possible within five working days. If a delay in supplying the documentation requested is foreseen, this should be acknowledged to the requestor;

(b) Requests for documentation should contain all the elements permitting the identification of the documents and in particular, the GATT notification number (TBT/Notif...) to which the requests refer. The same information should appear on the documents supplied in response to such requests.

(3) The Committee decided that:

(a) When a translation of a relevant document exists, this fact shall be indicated on the GATT notification form next to the title of the document. If only a translated summary exists, the fact that such a summary is available shall be similarly indicated;

(b) Upon receipt of a request for documents, any translated summaries that exist in the language of the requestor or, as the case may be, in a GATT working language, shall be automatically sent with the original of the documents requested.

(c) Parties shall indicate under point 11 of the GATT notification form the exact address of the body responsible for supplying the relevant documents if that body is not the enquiry point.

(4) The Committee requested the secretariat to propose, for the next meeting of the Committee, a set of common elements that might be included in information booklets which Parties might wish to issue.

13. The representative of Switzerland, taking into account the discussions that had been held among enquiry points, reiterated a suggestion he had made at a previous meeting of the Committee concerning possible bilateral and reciprocal arrangements for the automatic exchange of documentation on technical regulations, standards and certification systems. He asked whether there were other parties which might be interested in concluding such arrangements and what would be the reaction of other parties to any such arrangements being concluded.

14. The representative of Chile expressed an interest for the Swiss proposal and said that in his view, other signatories would have no reason to object to any such arrangement being concluded.
15. The representative of Finland said he would be prepared to consider any proposal from the point of view of mutual benefits and reciprocity as between the parties to an arrangement.

16. The representative of Austria also found the Swiss proposal interesting, but noting the conclusions of the experts, thought that more experience was necessary before he would be in a position to react to it.

17. The Committee noted the Swiss proposal and the statements made and agreed to revert to the question in due time in the light of further developments in this area.

C. Second Annual Review of the Operation of the Agreement

18. The Chairman drew attention to the basic documentation for the review contained in documents TBT/6, TBT/6/Suppl.1, TBT/W/25/Rev.2, TBT/W/28 and Suppl.1, TBT/W/31/Rev.1 and TBT/W/37. He recalled that the Committee had agreed to take up in turn each of the headings contained in the plan for the Review. (TBT/M/6, para. 28).

C.1 Implementation and Administration

19. The Chairman drew attention to the information contained in documents TBT/6, TBT/6/Suppl.1, Section 2. He invited delegations to respond to specific questions that had been circulated informally before the meeting and to inform the Committee of any new developments regarding implementation and administration of the Agreement.

20. The representative of the Philippines informed the Committee that no specific legislation was required to implement the Agreement which had become fully effective in his country on 15 March 1981. In his view one of the purposes of the Agreement was to provide developing countries with added protection of their trade interests and to help narrow the technological gap between developed and developing signatories in the area of standards. He urged the Committee to give substance to the provisions of Article 12 of the Agreement, in particular Section 8 thereof. The Philippines were in the process of setting up the institutional framework for carrying out their obligations under the Agreement, in particular as to the national enquiry point. Until this process was completed, all enquiries should be channelled through the Philippine mission in Geneva.

21. The delegations of Belgium, Chile, the Federal Republic of Germany and Yugoslavia provided up-to-date information for inclusion in the relevant documentation of the Committee. In addition, the following points were made.

22. The representative of Austria said that in his country local government bodies had no standardization or certification functions; they were bound by the laws adopted by the national parliament.
23. The representative of Argentina said that he had no further information on the status of draft legislation on acceptance of the Agreement and on the study on the harmonization of publication and consultation procedures.

24. The representative of Brazil said that, for technical reasons, the final approval of the Agreement had not yet been published in the Official Gazette but the Agreement was in force.

25. The representative of Belgium confirmed that the Belgian Standards Institute followed the procedures prescribed in the Agreement. She expected the governmental agencies concerned to begin notifying proposed regulations shortly. The representative of France said that it had so far not been considered necessary to issue a formal circular to inform ministries of their obligations under the Agreement. This had been done through inter-ministerial meetings. The present regulations permitted the French government to meet the obligations under Article 2 of the Agreement regarding comment periods, and therefore did not need to be amended. The representative of Italy said that the various government ministries had been informed of their obligations under the Code through EEC directives and through meetings among responsible officers of the ministries. Regional authorities had no competence in the area of standards and technical regulations. A full list of Italy's testing and certifying organizations would be made available shortly. The representative of the Federal Republic of Germany said that all standards issued by the German Standards Institute (DIN) were included in the DITR system and it was planned to provide the Centre in 1985 with information on all technical regulations including those issued by local or non-governmental bodies. At present the DIRT data bank contained information on 27,000 technical regulations. The representative of Greece said that the Agreement was implemented in Greece under the administrative responsibility of the Ministry of Trade. The ratification process was now beginning anew after the recent elections.

26. The representative of Canada stated that a draft policy directive on the implementation of the Agreement had been forwarded to the Treasury Board; once approved by the Board, it would be sent to Cabinet Ministers. In general provincial governments in Canada were not involved in the preparation of standards and technical regulations; they relied primarily on standards prepared by non-governmental bodies and by the Federal government. It was planned to distribute the proposed policy directive to the provincial governments. This would help ensure local compliance with the Agreement.

27. The representative of Chile said that he hoped that it would never be necessary for his government to notify proposed regulations to the GATT as Chile usually adopted ISO or Codex Alimentarius standards and tried to avoid regulations adversely affecting trade. Responding to a remark by the representative of Finland who did not consider it realistic to hope that no notification would ever be required since there were not many international standards and it was
sometimes impossible to avoid national standards having an impact on trade, the representative of Chile pointed out that most standards in Chile were voluntary.

28. The representative of Hungary said that the coordination of the activities relating to the Agreement was in the hands of the Foreign Ministry. All organizations dealing with standards had been informed of Hungary’s obligations under the Code and procedures ensuring a prompt notification of proposed standards to GATT had been set up under the aegis of the Foreign Ministry.

29. The representative of Korea said that a government directive had been issued on 5 December 1980 informing ministries of their obligations under the Code. A consultation point had been designated. His government would soon begin notifying proposed regulations.

30. The representative of Singapore said that his government would notify the name of a panelist as soon as possible. Notification to the GATT would be made as and when there were proposals to institute new rules or technical regulations and certification systems. Three notifications had already been made.

31. The representative of Yugoslavia said that the ratification process was expected to be completed in November 1981. No legislative changes were required to implement the Agreement. Panelists would be notified shortly.

C.2 Notification

32. The Chairman called attention to the note prepared by the secretariat (TBT/W/37) on this subject and to supplementary statistical information circulated informally.

33. The representative of the European Economic Community, referring to certain notifications made under Article 4.1, recalled that there was no obligation to notify standards under this paragraph and requested the secretariat to clarify the position with the delegation concerned.

34. The representative of the United States pointed out that about one third of all notifications so far had come from the United States, and he encouraged other delegations to follow the notification procedures conscientiously.

35. It was noted that the results of consultations on the operations of enquiry points was relevant to this item (see paragraphs 8-17).

C.3 Technical Assistance and Special and Differential Treatment

36. A number of delegations provided additional information on assistance to developing countries to the secretariat for inclusion in the relevant Committee documentation. (TBT/W/28 and TBT/W/28/Suppl.1)
37. The representative of Greece said the Agreement's provisions on technical assistance would be applied in accordance with the provisions of Greece's treaty of accession with the European Communities, including the provisions on the transitional period.

38. The representative of Brazil said that Brazil was receiving technical assistance from the secretariat which would however be more useful if a longer period of time was available for comments.

39. The representative of New Zealand stated that his country's national standards organization had provided technical assistance to a number of countries in the South Pacific and its staff had taken part in training programmes for Asian countries. Assistance had also been offered to China. The accreditation body (TELAR) was planning assistance to Hong Kong in the area of laboratory accreditation.

C.4 The use of international standards, participation in regional standardizing bodies or international and regional certification systems

40. Information on this subject is contained in documents TBT/6 and TBT/6/Suppl.1, Section 7.

41. The representatives of Austria and Greece provided additional information under this heading for inclusion in the relevant documentation.

C.5 Transparency

42. The representatives of Austria and Greece gave details of their publication procedures for inclusion in the relevant documentation.

43. The representative Finland, speaking for the Nordic countries, recalled that Article 10.1 of the Agreement stipulated that there should only be one enquiry point. According to document TBT/W/31/Rev.1, four signatories still had two or more enquiry points. He wondered when these signatories would unify their information system.

44. The representative of the European Economic Community said that one should look at the realities behind the information system chosen. The European Economic Community had separate enquiry points for industrial and agricultural products; this, in his view, did not cause administrative inconveniences.

45. The representative of the United States said that it would be preferable to have a single enquiry point which could then direct questions to other sources of information. The distinction between agricultural and industrial products was not always clear.

C.6 Conclusion

46. The Chairman noted that the Committee had concluded the Second Annual Review of the operation of the Agreement in accordance with
Article 15.8. The review had shown that the Agreement was working well. No major problems had been raised. The Committee now seemed fairly well informed of the steps taken by signatories to implement and administer the Agreement. The question was important, however, and it should remain on the agenda of future meetings of the Committee. Efforts to implement the Agreement must be judged from the point of view of their effectiveness, and there was a need to continue to pay attention to implementation in respect of local government and non-governmental bodies. Notification procedures which were a key element of the Agreement, should also be kept under review. He also stressed the importance of technical assistance to developing countries.

47. Regarding the use of international standards, the Chairman suggested that the secretariat be invited to prepare, for the next meeting, information on the main areas in which international standards exist that are susceptible of forming the basis for technical regulations of signatories. The Committee might also consider requesting the secretariat to prepare, for consideration at a future meeting, a study on activities in the field of testing and inspection. Finally, he suggested that delegations give thought to the preparation of the next review in particular because Article 15.9 as well as 15.8 would be relevant. This question should therefore appear on the agenda of the next meeting of the Committee.

48. The Committee endorsed the Chairman's suggestions for further work and agreed to keep the notification procedures under review and to resume consideration of this item as the need arises.

D. Regional standards-related activities

49. The Chairman recalled the questions on activities of regional bodies circulated in document TBT/W/32 and invited responses to them.

50. The representative of the European Economic Community, referring to question number 2 in that document, stated that suppliers from non-member countries of CEN were granted access under CENCER. Regarding paragraph 3 of the document, he said that the objectives of CENELEC fell within the ambit of the Agreement and of the GATT and he disagreed that the stated purpose of CENELEC could have the effect of creating trade barriers between members' national standards and the standards of all other signatories. Suppliers from non-member countries were granted access to the CECC. Regarding CEE, he noted that the appropriate entities to which access to the CB certificate was granted were bodies, not suppliers, from non-member countries. Mutual acceptance of certificates of conformity under the CEE was a matter which fell within Article 5 of the Agreement, not Article 7, and such acceptance was naturally based on normal feasibility.

51. In connexion with CENCER, the representative of Norway noted that this body had approved new rules for marking at its meeting in Vienna on 8-10 October 1981.
52. The representative of the United States, which is not a member of the certification systems referred to in TBT/W/32, said he would not necessarily agree with some of the statements made regarding their activities. He stressed in particular that the notion of reciprocity was not embodied in the Agreement as regards access to certification systems. He reiterated his delegations' previous request that some regional bodies be invited to address the Committee meeting to explain their operating rules.

53. The representatives of Finland, Chile, United Kingdom on behalf of Hong Kong, and Canada supported this proposal.

54. The representative of the European Economic Community doubted whether it was advisable to invite participation in the Committee's work by organizations other than international standardizing bodies whose activities were related to specific obligations under the Agreement, and he requested that delegations be given time to reflect on the proposal.

55. After some further discussion and consultation, the Committee agreed that the secretariat should transmit a number of agreed questions to regional bodies and that further consultations should take place on the specific questions to be sent. The Committee would revert to this item at its next meeting on the basis of additional information so obtained.

E. Individual standards-writing and certifying bodies

56. The Committee discussed the possible content of a secretariat study on this subject on the basis of the feasibility study contained in document TBT/W/36 and of further clarifications presented by the secretariat regarding possible approaches to the subject.

57. The Committee agreed that the paper to be prepared by the secretariat would limit itself to giving factual information on major standards-writing and certifying bodies in the territories of signatories, without going into the question of their status under the Agreement.

F. Derestriction of documents

58. The Committee agreed to derestrict the full set of documents resulting from the Second Annual Review.

59. In addition the Committee agreed to the proposal for derestriction of documents as set out in TBT/W/38.

G. Revised Inventory of non-tariff measures

60. The Chairman informed the Committee that a revised version of the Inventory of non-tariff measures relating to industrial products had just been issued and that for agricultural products a revision would be issued in the near future. These documents contain sections on technical barriers to trade and he suggested that it would be
appropriate at some future time for the Committee to examine their relevance to the Agreement. It was so agreed.

H. Report to the CONTRACTING PARTIES


I. Date and agenda of the next meeting

62. The Committee agreed to hold its next meeting on 4-5 March 1982.

63. Among items for inclusion in the agenda are the following:

   A. Regional standards-related activities
   B. Individual standards-writing and certifying bodies
   C. Statements on implementation and administration of the Agreement
   D. Information on existing international standards and their use
   E. Testing and inspection
   F. Preparations for the first three-year review of the operation and implementation of the Agreement
Annex

AGENDA ITEM B: ENQUIRY POINTS

Report presented by the convener on his own responsibility

1. The participants proceeded to an exchange of information on the organization, structure and operations of their respective enquiry points, from which it emerged that not all enquiry points were in the same situation as regards stage of organization, access to information on national standards and regulations, data systems, communication systems and staff resources. In addition, some enquiry points had direct responsibility for notifying the GATT and some did not, some looked after publication of notifications and some did not. In some cases enquiry points had had some difficulties resulting from the fact that bodies in their countries were not yet fully aware of obligations arising under the Agreement. The exchange of information also made clear, however, that the operational needs of national enquiry points differed greatly, some handling a few dozens of regulations per year, some several thousand. Given the different demands on them, all enquiry points were actively engaged in establishing the informational and documentary handling capacities necessary to meet the requirements of the Agreement.

2. Against this background, the participants identified a number of problems which they had experienced in the day-to-day management of their operations in the framework of the provisions of the Agreement and of the guidelines set by the Committee.

3. Concerning the recommended period for submission of comments to proposed technical regulations or certification systems, the participants noted that a stricter application of the recommended time period would greatly facilitate the handling of requests for documentation on which comments were based. While noting that in practice Parties had shown great understanding for requests for extension of the comment period when delays in obtaining relevant documents occurred, the participants felt that their task would be facilitated if the Committee could agree to recommend to Parties that they give, as a rule, sympathetic consideration to requests for extension of the comment period in such cases.

4. The participants recognized that serious difficulties could arise from the fact that relevant documentation was not available in one of the GATT working languages. While there was no easy solution to this problem, they felt, after discussing several possible solutions, that the following steps would be helpful in making the exchange of information more meaningful:

   (1) when a translation of a document exists this fact should be indicated on the GATT notification form next to the title of the document. If only a translated summary exists, the fact that such a summary is available should be similarly indicated;
(2) upon receipt of a request for documentation, any translated summaries that exist in the language of the requester or, as the case may be, in a GATT working language, should be sent automatically with the original of the documents requested;

(3) enquiry points might to the extent possible consider preparing summaries of documents in one of the GATT working languages in cases where the documents only exist in a language other than English, French or Spanish.

5. The participants had a brief exchange of views on charges for documents requested. Noting that problems of payment should not be a cause for delay in delivering documents requested, they expressed the hope that all enquiry points would do their utmost to avoid such cause for delay. Regarding practical solutions that might be sought to solve particular payment problems, they agreed to seek such solutions in the framework of normal working relationships between enquiry points.

6. The participants discussed in detail the problems they had experienced in supplying or obtaining requested documentation on notified regulations or standards. They identified several steps that could be taken to improve procedures in this regard and which the Committee might recommend Parties to follow: (1) Any request for documentation should identify the GATT notification number (TBT/Notif...) to which it refers; (2) Any request for documentation should if possible be processed within five working days and if any delay in supplying the documents is foreseen this should be acknowledged to the requester; (3) Requests for documentation should follow the standard format proposed in the annex to the document circulated by the United States enquiry point, it being understood that this applies to the content of information and the order in which it is given rather than to the form layout as such; (4) Under point 11 of the GATT notification format, Parties should indicate the exact address of the body responsible for supplying the relevant documents, if that body is not the enquiry point.

7. The participants discussed the proposal by Switzerland regarding reciprocal arrangements for the automatic exchange of documentation that had been put forward in the Committee. While welcoming the proposal, they concluded that such arrangements were not likely to improve procedures for the supply of requested documentation at this stage.

8. The participants also had a detailed exchange of views on the needs for improvement of the internal information and standards elaboration processes. A number of problems were identified concerning access by the enquiry points to information on the activities of their own national regulations and standards writing bodies, and the incidence of these problems on the supply of relevant documentation to other Parties was also discussed. It was agreed that as a rule, enquiry points should make every effort to submit useful
drafts of regulations and standards on request, if possible at a stage where the national consultation process was still underway.

9. The participants also briefly discussed the question of what should be meant by "reasonable enquiries" in Articles 10.1 and 10.2. They noted that on the whole, requests addressed so far to enquiry points had not been unreasonable, and that sometimes what was not feasible free of charge might be feasible at a cost.

10. The participants noted that efforts undertaken at international level to harmonize reporting procedures and improve compatibility of information systems are in the nature of facilitating, in the long run, the more efficient discharge by enquiry points of their responsibilities under the Agreement. In this connexion, they welcomed efforts made at international level to provide guidance to developing countries in establishing efficient national information centres.

11. After an exchange of views on possible ways to improve publicity concerning the role of enquiry points in answering queries from parties as provided in Articles 10.1 and 10.2 of the Agreement, the participants suggested that the secretariat might be asked to establish in consultation with delegations a list of common elements that might be included in information booklets.

12. In concluding their debate, the participants wished to stress that the opportunity that had been given to them to meet and compare notes had greatly helped their understanding of the problems involved in building up an efficient system under the Agreement. It had also provided a sound basis for closer cooperation between them. They noted that it might be useful for them to meet again at some future date to review their operations in the light of experience with the implementation of the conclusions of this first meeting.