

GENERAL AGREEMENT ON

RESTRICTED

TBT/W/109

1 June 1988

TARIFFS AND TRADE

Special Distribution

Committee on Technical Barriers to Trade

DRAFT MINUTES OF THE MEETING HELD ON 10 MARCH 1988

Chairman: Mr. E. Contestabile

1. The Committee on Technical Barriers to Trade held its twenty-seventh meeting on 10 March 1988.

2. The agenda of the meeting was as follows:

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A. Election of officers for 1988

3. The Committee elected Mr. E. Contestabile (Switzerland), Chairman and Ms. L. Leger (Canada), Vice-Chairman for 1988.

B. Ratification of the Agreement

4. The Chairman, on behalf of the Committee, welcomed the ratification of the Agreement by Greece and Mexico on 16 October 1987 and 9 February 1988, respectively.

5. The representative of Finland, speaking on behalf of the Nordic countries, said that the Nordic delegations looked forward to receiving information from the delegations of Greece and Mexico on the measures in existence or taken to ensure the implementation and administration of the Agreement in their respective countries. The relevant statements containing such information should be made on the basis of the elements specified under Section A of document TBT/16/Rev.4.

6. The representative of the United States asked about the developments in the ratification procedures in Argentina.

7. The Committee took note of these statements.

C. Updating the definitions for terms used in the Agreement

8. The Chairman recalled that, at its last meeting, the Committee had had a preliminary exchange of views on the proposal circulated by the Nordic countries in document TBT/W/103, regarding the updating of the definitions for terms used in the Agreement in the light of the fifth edition of the ISO/IEC Guide 2 (TBT/M/26, paragraphs 7-11). He suggested that the Committee should pursue its discussion of the subject by addressing this proposal item-by-item (page 3 of document TBT/W/103).

9. The Chairman drew attention to the first item, which suggested that "the Committee might study the new and amended definitions in the fifth edition of the ISO/IEC Guide 2 for terms used in the Agreement in order to assess possible implications for the Agreement", and to the note by the secretariat which compared the definitions in the second and fifth editions of the ISO/IEC Guide 2 for a selection of terms used in the Agreement (TBT/W/106). He said that the Committee might identify any other terms that were important for the rights and obligations of Parties under the Agreement.

10. After a brief review of the definitions in the ISO Guide 2-1978 and the ISO/IEC Guide 2-1986, the Committee noted that, the only changes in the definitions for the terms "certification system" (Article 7) and "conformity with technical regulations and standards" (Articles 5.1 and 5.2) were of editorial nature.

11. After examination, the Committee noted that the amendments to the definitions for the terms "certificate of conformity", "mark of conformity" (Article 5.2) and "certification" (Articles 7.2 and 9.2), had not altered their meaning and that the revision of the texts improved the understanding of the concepts relating to the practice of certification.

12. With respect to the term "harmonized standards" (Articles 2.2 and 2.3), the representative of the European Economic Community said that the definition for this term in the new edition of the ISO/IEC Guide 2, no longer included the words "technically identical or recognized as technically equivalent in practice". He underlined the appropriateness of this change since the notion of technical equivalence contained in the earlier version of the definition could cause certain problems. The representative of Finland, speaking on behalf of the Nordic countries, said that both the ISO/STACO Ad Hoc Group on Definitions and the UN/ECE Government Officials Responsible for Standardization Policies had considered that the term "standards that are technically equivalent" had the same meaning as the term "harmonized standards". The new definition was designed to spell out the meaning of "technically equivalent" in

practice. In conclusion, the Committee noted that the changes in the definition of "harmonized standards" had improved the understanding of this term.

13. The Committee noted that the ISO/IEC Guide 2-1986 introduced definitions for the terms "harmonized technical regulations", "internationally harmonized standards and technical regulations" (Articles 2.2 and 2.3), "performance characteristics", "design or descriptive characteristics" (Article 2.4), "testing", "test methods", "test results" (Article 5), "access to certification system", (Articles 7.2 and 9.3), "member of a certification system", and "participant in a certification system" (Article 9), which would improve the understanding of the relevant provisions of the Agreement. The Committee also noted that the definition of the term "administrative procedures for determining conformity" (Articles 5.1.2 and 5.3) had been eliminated in the ISO/IEC Guide 2-1986.

14. The Committee studied the definition for the term "code of practice" in the ISO/IEC Guide 2, which appeared to be the closest term to the term "process and production method (PPM)" used in the Agreement. It noted that, except for some changes of editorial nature, the definition for this term had not changed in the latest edition of the Guide. In this connection, the representative of the European Economic Community sought clarification concerning the scope of the definition in the ISO/IEC Guide 2 for the term "code of practice" and the meaning of the term "process and production method (PPM)". The representative of the United States said that, while the 1978 edition of the Guide had included a definition for the term "code of practice" but not for the term "PPM", signatories had agreed upon the term "PPMs" in Article 14.25 of the Agreement. There was a need for an in-depth examination of the definition of "code of practice" as it related to PPMs. The representative of Finland, speaking on behalf of the Nordic countries, pointed out that neither the ISO/IEC Guide 2 nor the Agreement provided an agreed definition for the term "PPM". The outstanding problem of the coverage of this term had to be solved before the Committee could fully address the United States' proposal on PPMs (TBT/W/108 and paragraphs 26-29 below). The Committee took note of the comments made and agreed that the discussion of this issue should be held in the light of the discussion under the agenda item on PPMs.

15. The Chairman pointed out that the term "self-certification" used in the Agreement had been deleted in the ISO/IEC Guide 2-1986 which now provided a definition for the term "declaration of conformity". The representative of the European Economic Community asked whether the new definition was associated to the kind of approval method the United States had described under point B.1 of their proposal in document TBT/W/107, where product approval was based solely on the manufacturer's declaration of conformity, i.e. without third party validation. The representative of Finland, speaking on behalf of the Nordic countries, said that this method was being used increasingly for the approval of products. The intervention by a third party could involve, among other matters, the certification of the quality control system of the manufacturer or the control of compliance

of the manufacturer with a code of good manufacturing practice. He also informed the Committee that, following the discussion of the definition of this term in the UN/ECE Group of Government Officials Responsible for Standardization Policies, the ISO/IEC had reconvened the Working Group on Definitions to prepare definitions reflecting the cases in which a manufacturer's declaration of conformity was subject to third party surveillance. The Committee took note of the statements made and agreed to revert to its examination of the definition of the term "self-certification" in the light of progress in the ISO/IEC Working Group on Definitions.

16. The Chairman drew attention to the second item of the proposal by the Nordic countries which suggested that "the Committee might agree to replace in Article 5, paragraph 2, the term "self-certification" by the term "declaration of conformity" at the next revision of the Agreement. After a brief discussion, the Committee agreed to revert to the discussion of this item at an appropriate time.

17. The Chairman invited the Committee to discuss the third item of the Nordic proposal, which suggested that "the Committee might consider the updating of the definitions and explanatory notes in Annex 1 of the Agreement". He drew attention to a draft presented by the Nordic countries in Annex II to document TBT/W/103. With reference to this draft, the representative of the European Economic Community, joined by the representative of the United States, said that the words "codes of practice" should not be replaced by "processes" in the explanatory note to the definition for the term "technical specification" before an examination of the whole question of the definition of the terms "code of practice" and "PPM". The representative of Finland, speaking on behalf of the Nordic countries, said that the existing provisions of the Agreement covered neither codes of practice nor PPMs. The Nordic proposal had suggested the updating of the definitions for terms used in the Agreement in such a way that the substance of the Agreement remained untouched. Therefore, the Committee could carry out its discussion of this point independent of its discussion on the PPMs.

18. The representative of the United States said that his delegation supported the suggestion by the Nordic countries for the deletion of the phrase "Furthermore, the Economic Commission for Europe/International Organization for Standardization definition contains a normative element which is included in the operative provisions of this Agreement." in the explanatory note to the definition for the term "technical regulation". He also supported the suggestion to replace the definitions in Annex 1 of the Agreement for the terms "standardizing body" and "international standard" by the relevant definitions in the ISO/IEC Guide 2-1986. However, he asked what was the purpose of including the phrase "made available to the public" in the new definition for the term "international standard". In response, the representative of Finland, speaking on behalf of the Nordic countries, explained that this change was generated by the amendment of the definition for the term "standard" - a building block used in the definition of the

term "international standard". The phrase had been deleted in the definition of the term "standard" so as to cover standards that were not made available to the public, such as company standards or military standards. However, the definition of the term "international standard" had to reflect their being available to the public, as this was one of the main properties of national, regional or international standards, i.e. that all interested parties could obtain a copy of the relevant document. The Committee took note of the statements made and agreed to revert to the third item of the Nordic proposal at its next meeting.

19. The Chairman invited the Committee to discuss the fourth item on the proposal by the Nordic countries, which suggested that "the Committee might consider the inclusion of additional terms and their definitions in Annex 1 of the Agreement". In this connection, the representative of Finland, speaking on behalf of the Nordic countries, suggested that the definition of the term "access to certification system" in Articles 7.2 and 9.3 of the Agreement be removed from the main text of the Agreement and introduced in the list of terms and their definition used for the purposes of the Agreement in Annex 1. The representative of the European Economic Community reserved the position of his delegation on this proposal. The Committee took note of the statements made and agreed to revert to the fourth item of the Nordic proposal at its next meeting.

20. The observer from the ISO/IEC expressed the appreciation of the ISO and the IEC for the work carried out in the Committee regarding the harmonization of the standards-related terminology.

D. Testing, inspection and approval procedures

21. The representative of the United States referred to the draft proposal by his delegation on "Procedures for Issuing Product Approval" (TBT/W/107). The Negotiating Group on MTN Agreements and Arrangements (NG8) had discussed this proposal, which had been circulated to it in document MTN.GNG/NG8/W/23 at its meeting held on 7-9 March 1988 (MTN.GNG/NG8/6, paragraphs 8-13). He gave the following explanation concerning some of the elements of the proposal on the basis of the comments made during that discussion:

21.1 The proposal aimed to establish binding obligations for Parties comparable to those provided in Articles 2, 5 and 7 of the Agreement. With regard to local government bodies, Parties did not have the same level of obligations. Therefore, the definition of the term "approval" for purposes of the proposed text (point A.1) did not apply to approvals issued by these bodies. Furthermore, non-governmental bodies did not have the authority to grant permission for specified uses of goods. As the proposal addressed the mandatory nature of approvals, it did not extend to the activities of non-governmental bodies.

21.2 The five criteria listed under the definition of "legitimate domestic objective" (point A.3) were based on the experience of the national regulatory authorities in his country. The Preamble and Article 2.2 of the Agreement also referred to such criteria.

21.3 The proposal did not establish any order of preference among the appropriate methods for product approval (point B.1). While the proposal suggested that the use of the method of approval based on manufacturer's declaration of conformity would facilitate the acceptance of imported products, it also recognized that the approval body might have a legitimate reason for not relying solely on a manufacturer's declaration of conformity (point B.2).

21.4 The proposal suggested the establishment of a legal basis which would facilitate access to the approval authorities in the importing country by a representative or an affiliated intermediary of suppliers in other Parties (point F).

21.5 The approval authorities issued approvals based on the manufacturer's declaration of conformity after the review of information supplied by the manufacturer. Under the section on transparency, the proposal suggested that applicants be advised of the decision of the approval authority within thirty calendar days even if all procedures for granting such approvals had not been completed (point L.1).

21.6 While in many countries approval decisions might not be based on the advice of technical experts (point P), the proposal under the section on administrative mechanism had been drafted on the basis of a recommendation by the Committee concerning the relevant practice in one Party (TBT/M/Spec/3, Annex).

21.7 The use of spot checks to verify conformity of the product in procedures based on type approval (point R) was consistent with the provisions of Article 5.4 of the Agreement, which allowed Parties to carry out reasonable spot checks within their territories.

22. The representative of Finland, speaking on behalf of the Nordic countries, made the following comments concerning some of the points under the section of the proposal on administrative mechanisms:

22.1 The proposed text on the use of impartial technical experts (point P) implied that approval authorities had always to base their decisions on the advice of these experts. The text would better reflect the usual practice if it read: "If the approval authorities based their decisions on the advice of technical experts, these experts should be impartial."

22.2 The scope of the required information (point Q) should extend to all legitimate information, such as information required to establish fees for approval procedures.

He also said that the delegation of the United States should explain how the different elements of the proposed text would be included under the various provisions of the Agreement.

23. The representative of Hong Kong asked whether the present proposal was linked to the proposal on strengthening the provisions of Article 5.2. In response to a question by the representative of Canada, the representative of the United States said that the Committee could carry out its discussion on the proposal on procedures for issuing product approval independently of any possible proposals concerning the issues of testing and inspection.

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

E. Processes and production methods

25. The representative of the United States drew attention to the proposal on processes and production methods (PPMs) (TBT/W/108) which had also been presented to the Negotiating Group on MTN Agreements and Arrangements (MTN.GNG/NG8/W/24) at its meeting on 7-9 March 1987. He gave the following clarifications in the light of the comments made at that meeting (MTN.GNG/NG8/6, paragraphs 14-19):

25.1 The proposal suggested the amendment of the definition of the term "technical specification" used for the purposes of the Agreement.

25.2 In due course, there would be a need to address the question of the the definition of the term "PPM".

25.3 While the proposal suggested the amendment of the text of Article 14.25, the deletion of this Article could also be considered in the light of further developments.

25.4 The purpose of the proposal was not to establish a preference for technical specifications drafted in terms of product characteristics as opposed to those drafted in terms of PPMs.

25.5 The review of the provisions of the Agreement should cover all products, including agricultural and industrial products.

26. In response to a question by the representative of the European Economic Community, the representative of the United States stated that, while the United States' proposal in the Negotiating Group on Agriculture suggested, inter alia, that the rules of the General Agreement should be strengthened to apply explicitly to PPMs, the proposal on PPMs before the NG8 and the Committee suggested the extension of the application of the provisions of the Agreement on Technical Barriers to Trade to PPMs.

27. The representatives of Canada, Hong Kong and India shared the view that aspects of the PPMs relating to technical barriers to trade should be addressed in the context of the negotiations on improvement, clarification and expansion of the Agreement.

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

F. Preparations for the third three-year review under Article 15.9

29. The Chairman invited the Committee to discuss the arrangements for the third three-year review of the Agreement due to be held in 1988.

30. The representative of the European Economic Community said that the provisions of the Agreement relating to the three-year reviews did not specify how these reviews should be carried out during a round of multilateral trade negotiations. The issues that might have a bearing on the improvement, clarification and expansion of the Agreement had been raised in the Negotiating Group on MTN Agreements and Arrangements (NG8). His delegation had submitted the proposals that it had initially made in the context of the second three-year review to the NG8. Therefore, he considered that the discussion in the three-year review should not be a mere repetition of the discussion of the issues raised in the NG8. The Committee should limit its review, rather, to issues of a more technical and less important nature. Furthermore, the discussion under the agenda item on definitions (paragraphs 8 to 20 above) had shown that the solution of a number of technical problems hinged upon the solution of questions of substance.

31. The representative of Finland, speaking on behalf of the Nordic countries, joined by the representatives of Hong Kong, New Zealand and the United States, said that under the provisions of Article 15.9, the Committee had the responsibility of carrying out the review of the operation and implementation of the Agreement at the end of each three-year period. The negotiations in the Uruguay Round should not impinge upon this mandate. They further considered that it was up to each Party to determine the opportunity of making submissions on any subject in the context of the three-year review, including those relating to the issues raised in the NG8. The representative of New Zealand said that Parties would not necessarily have the same views on the importance or technical nature of a subject. Supported by the representative of Canada, she also said that while there might be a repetition of the discussion, examination of the issues would allow an improved understanding of the issues presented to the NG8. The representative of the United States recalled that the Committee had not made any amendments to the text of the Agreement at the conclusion of its first and second three-year reviews.

32. In concluding the discussion of this item, the Chairman suggested that: (i) the Committee would hold its third three-year review at its meeting in the autumn; (ii) the Committee invite delegations to submit by 17 June 1988 any specific proposals that they might wish the Committee to consider, or topics for discussion in the context of the three-year review; (iii) if possible, other delegations would submit views or comments in writing on the subject matters raised in those proposals by 5 August 1988 so as to allow for any informal consultations that might be necessary prior to the review. It was so agreed.

G. Relationship of the work of the Committee to the Negotiating Group on MTN Agreements and Arrangements

33. The Chairman recalled that under agenda items D and E the Committee had addressed two proposals by the United States (TBT/W/107 and TBT/W/108) which had also been discussed by the Negotiating Group on MTN Agreements and Arrangements (NG8) at its meeting of 7-9 March 1988 (MTN.GNG/NG8/W/23, MTN.GNG/NG8/6, paragraphs 8-19).

34. The representative of India said that since every Party to the Agreement was also a participant in NG8, a process which allowed a better understanding of the issues raised in the NG8 would be beneficial to all participants. Supported by the representative of Hong Kong, he also stressed that, in order to maintain continuity between the discussion of the matters in the Committee and in NG8, participants in NG8 should be informed of the exchange of views in the Committee relating to the issues raised in the NG8. In this connection, the Chairman said that in accordance with the relevant decision of the Committee, the Note by the Chairman of the present meeting (L/6348) would be transmitted to NG8.

H. Date of the next meetings; agenda of the next meeting

35. The Committee agreed to hold its next two meetings on 12 July 1988 and 13 September 1988.

36. The agenda of the next meeting would include the following items:

1. Statements on implementation and administration of the Agreement;
2. Updating the definitions for terms used in the Agreement;
3. Testing, inspection and approval procedures;
4. Processes and production methods;
5. Preparations for the third three-year review;
6. Preparations for the ninth annual review;
7. Relationship of the work of the Committee to the Negotiating Group on MTN Agreements and Arrangements.