

TARIFFS AND TRADE

Committee on Technical Barriers to Trade

DRAFT MINUTES OF THE MEETING HELD ON 16 SEPTEMBER 1987

Chairman: Mr. D. Bondad (Philippines)

1. The Committee held a fourth meeting in restricted session on 16 September 1987, in order to pursue its investigation under Article 14.4 of the case raised by the United States against the European Economic Community Animal Hormone Directive (85/649/EEC).

2. The representative of the European Economic Community said that before the entry into force of the Directive on 1 January 1988, his authorities wished the situation to be clarified as regards the rights and obligations of the European Community. They considered that a mere allegation of circumvention of obligations by another Party should not deter the European Economic Community from implementing the measure as scheduled. As the present dispute related basically to the interpretation of obligations under Article 14.25, a legal examination of the problem was essential. The technical expert group (TEG) requested by the United States could not resolve the matter. The relevant provisions in the Agreement set six months and four months respectively, as the time required by TEGs and panels, which meant that if this course were followed, the Committee would not be able to take any action on the matter before ten months. In their view, rather than following one or the other of the Agreement's procedures in any specified order, the Committee should settle the dispute by resorting to ad hoc procedures within the framework of the Agreement. Under Article 14.19, the Committee could take appropriate action on a disputed matter on the basis of its own investigation, or on the report of a technical expert group, working group, panel or other body. He therefore suggested that the Committee establish a mixed group which would review both the legal and technical aspects of the matter under dispute. This mixed group could conclude its work within a specified time-limit so as to provide the Committee with the elements which would assist it to take action on the matter before the implementation of the Directive.

3. The representative of the United States, informed the Committee that a recent high level meeting between the authorities of the United States and the European Economic Community had not produced any positive results. His delegation considered that the Committee's efforts for finding a solution to the dispute had likewise been unsuccessful, and that its investigation under Article 14.4 should be terminated. He recalled that the United States delegation had alerted the Committee to the urgent nature of the matter since the initiation of the dispute settlement procedures in March 1987. Had the Committee been able to proceed in accordance with the procedures as set out in the text of the Agreement, it would have been able to take action before the date of implementation of the Directive. While his delegation continued to regard the matter as urgent, they did not believe that there was much room for settling the dispute by means of a mixed group as suggested by the European Community because his country was not prepared to renounce its right under Article 14.9. He concluded that, since the Agreement did not function effectively in the present circumstances, this might lead the United States to take necessary steps, should the Directive be implemented by 1 January 1988.

4. The representative of the European Economic Community, said that the United States did not seem to be concerned whether the dispute was resolved before the entry into force of the Directive, but that they saw the recognition of their rights to the establishment of a TEG as the fundamental issue in the present case, which involved PPMs. The Committee had not been able to find a mutually satisfactory solution to the dispute because of the divergences of views among Parties on the question of PPMs. The dispute settlement procedures had to be used in order to resolve the entire problem, without prejudice to the legitimate rights of Parties regarding the interpretation of the relevant provisions of the Agreement. Because the United States delegation referred to unilateral measures, it was very important that the Committee made use of the procedures available to it under Article 14.19, as early as possible, in order to ensure the harmonious continuation of international relations.

5. The representative of Finland, speaking on behalf of the Nordic countries, supported by the representative of Austria, said that unresolved disputes would not be helpful in promoting a successful outcome of the negotiations in the Uruguay Round. The Committee should spare no efforts to avoid a situation in which a Party might take unilateral measures. The recent proposal by the European Community was worth considering but would not produce a successful settlement of the dispute before the entry into force of the Directive. However, if the European Community agreed to postpone the date of implementation of the Directive, its proposal for a mixed group should be accepted,

6. The representative of the European Economic Community, said that he would draw the attention of his authorities to the suggestions for the postponement of the implementation of the Directive. Nevertheless, a Party had no obligation under the Agreement to give up its right to implement a measure unless a violation of obligations had been proved. The adoption of the Directive, and any modifications thereto, were subject to legislative procedures and to numerous technical constraints. However, the Directive provided for certain transitory measures, which the Community could use in order to defer its implementation, without modifying the date that the Directive entered into force.

7. The representative of the United States said that the postponement of the date of entry into force of the Directive would contribute towards a solution of the problem. The United States had been aware of the 1 January 1988 deadline since the beginning of the case, but to date, its repeated calls for an expeditious settlement of the dispute had not been effective. It was unlikely that the proposal by the European Economic Community would serve as a basis for a mutually satisfactory solution of the matter. The text of the Agreement clearly stated the procedures that Parties had agreed to follow when they had signed the Agreement, there was therefore no need to look for alternative procedures, and the United States would not be pressured into doing so. He further stated that the United States maintained its request for the establishment of a TEG under Article 14.9.

8. The representative of Canada, reiterated his delegation's support of the United States' request for the establishment of a TEG. He said that, while the Community might have difficulties in deferring the implementation of the Directive beyond 1 January 1988, it could at least delay its application.

9. In concluding the discussion, the Chairman said that in the course of its investigation under Article 14.4, the Committee had noted a number of proposals relating to the substance of the matter which had been suggested as the basis of a possible solution to the dispute. The Committee had before it a request for the establishment of a TEG under Article 14.9. It had also noted various proposals concerning the procedures that could be used for resolving the matter. He added that the Committee was open to any further suggestions for finding a mutually satisfactory solution to the matter, and that the Committee should meet as appropriate. The Committee took note of this statement.