

Committee on Technical Barriers to Trade

MINUTES OF THE MEETING HELD ON 3 OCTOBER 1997

Chairman: Mr. T. H.M. Tong (Hong Kong, China)

1. The Committee on Technical Barriers to Trade held its tenth meeting on 3 October 1997.
2. The following agenda, as contained in WTO/AIR/679 was adopted:

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I. REQUEST FOR OBSERVER STATUS IN THE COMMITTEE BY THE AFRICAN, CARIBBEAN AND PACIFIC GROUP OF STATES (ACP); THE EUROPEAN FREE TRADE ASSOCIATION (EFTA); THE OFFICE INTERNATIONAL DE LA VIGNE ET DU VIN (OIV); AND THE LATIN AMERICAN INTEGRATION ASSOCIATION (ALADI)

3. The Chairman drew attention to document G/TBT/W/46 containing the request for observer status in the Committee by the Latin American Integration Association (ALADI). He recalled that at its last meeting of 20 June, the Committee agreed to grant observer status to the African, Caribbean and Pacific Group of States (ACP) and the European Free Trade Association (EFTA) on an ad hoc basis, pending further decision. At that meeting, it was recognized that further consultations would be needed for the requests for observer status by the ACP, EFTA, the Office international de la vigne et du vin (OIV) and the ALADI.

4. The representative of the European Communities recalled that, at the last meeting she had supported the requests for observer status by ACP, EFTA, and the OIV and stated that she could also accept the request for observer status by ALADI.

5. The representative of Mexico had no objections to the three intergovernmental regional bodies, but would like to have more information regarding the OIV.

6. The representative of Venezuela sought clarification of the rules for observer status.

7. The representative of the United States stated that due to ongoing discussions in other WTO bodies, she preferred to wait before adopting a formal decision on observership. At the last meeting, she had agreed to grant observer status to ACP and EFTA on an ad hoc, meeting-by-meeting basis, and would accord the same treatment to ALADI, but would need more information before granting observer status to the OIV even on an ad hoc basis.

8. The Committee agreed to continue to grant ad hoc observer status to the ACP and EFTA, and to grant ad hoc observer status to ALADI. Further consultations would be needed for the request of observer status made by the OIV.

II. TECHNICAL WORKING GROUP OF THE COMMITTEE ON ISO/IEC GUIDES RELATING TO ARTICLES 5 AND 6 OF THE AGREEMENT - REPORT ON THE THIRD MEETING

9. The Technical Working Group of the Committee on ISO/IEC Guides Relating to Articles 5 and 6 of the Agreement held its third meeting on 2 October. At its second meeting, held on 18 June, the Working Group had agreed that a report would be submitted to the Committee after its October meeting, so that it could be taken into account by the Committee in the context of the Triennial Review in November.

10. The Chairman of the Technical Working Group recalled that the mandate of the Group was to examine the various ISO/IEC Guides relating to conformity assessment, and to evaluate their usefulness in the furtherance of the implementation of Articles 5 and 6. Members had underlined the usefulness of the guides in facilitating trade by contributing to a proper level of quality of conformity reports and certificates. They also had exchanged information through both written and oral contributions. The contributions from Members had shown that the guides were widely used on a voluntary basis. However, some Members had difficulties with the practical implementation of certain guides.

11. He stated that at the meeting of 2 October, the Technical Working Group had heard presentations from the representatives of IAF; IEC; ILAC and ISO/CASCO. The briefing had proved

useful in demonstrating not only the importance that the guides present for these organizations, but also how the guides contributed to the operation of international certification and other mutual recognition systems, thereby facilitating the free circulation of products throughout the world. He informed the Committee that the outcome of the discussions of the Group had underlined positive general support for the guides. However, it had not been possible to reach a consensus on a draft recommendation endorsing a wider recourse to the guides, under the aegis of the Agreement, similar to that adopted by the Tokyo Round TBT Committee, as a number of Members had reservations or doubts on its usefulness or opportuneness.

12. He concluded that the Technical Working Group felt it had fulfilled its task and, at present, it could not progress the debate on a recommendation since the issues discussed fell under the Committee's responsibility. If the Committee wished to further the debate, it had at its disposal a large amount of material, presented by Members, which could contribute to concluding the discussions.

13. The Committee took note of the Report of the Chairman of the Technical Working Group.

III. PREPARATION FOR THE FIRST TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE TBT AGREEMENT UNDER ARTICLE 15.4

14. The Chairman drew attention to the fact that under Article 15.4 of the Agreement, the Committee would carry out its First Triennial Review of the Operation and Implementation of the Agreement not later than the end of 1997. The Triennial Review would be conducted at the Committee meeting of 13 November. He said that 11 delegations had submitted 12 papers for the purpose of the Triennial Review (documents G/TBT/W/36, 39, 40, 41, 44, 45, 47, 48, 50, 51, 53 and 54). In order to facilitate discussions, the Secretariat had prepared an updated informal catalogue compiling proposals and comments made by Members (Job 4704/Rev.1). He invited Members to make general statements on the issue of the Triennial Review.

15. The representative of Philippines drew attention to his delegation's submission contained in document G/TBT/W/54 and stressed that the Triennial Review should not lead to an adjustment of rights and obligations and provided a good opportunity to assess the implementation of the Agreement, including Articles 11 and 12. He proposed that the Committee focus on the following five aspects as stated in G/TBT/W/54: (i) obligations under Article 15.2; (ii) notification procedures and transparency; (iii) Code of Good Practice; (iv) use of international standards by Members; and (v) conformity assessment procedures.

16. The representative of Australia drew attention to her delegation's submission contained in document G/TBT/W/55 and said that the Triennial Review should establish a framework for encouraging maximum adherence to the provisions of the Agreement by: (i) reducing the promulgation of future national technical regulations, when unnecessary, or limiting them to their specific requirements in alignment with prevailing international standards as far as possible; (ii) maximizing adherence to the Code of Good Practice by all standardizing bodies; (iii) optimizing the level of harmonization of conformity assessment systems and facilitating the negotiations of multilateral rather than purely bilateral mutual recognition agreements (MRAs); and, (iv) by making progress towards implementing the portability concept of "one standard, one test, one time, and one certificate". As to international standards, she recalled that some Members had expressed concerns about problems in aligning national standards to international standards. Her delegation considered this concern would best be followed up in the relevant international standardizing bodies, of which many WTO Members were also members.

17. The representative of Egypt drew attention to his delegation's submission contained in document G/TBT/W/56 and said that the Triennial Review could improve the operation and

implementation of the TBT Agreement without amending or changing its provisions, and should aim at ensuring the avoidance of any imbalance between rights and obligations under the Agreement. One of the most important objectives for Egypt was to propose how to enhance, activate, and develop the provisions of Articles 11 and 12. His delegation had made proposals relating to notification procedures and transparency, the Code of Good Practice, international standards, and ISO/IEC guides and recommendations on conformity assessment procedures.

18. The representative of the European Communities said that the Committee should make the necessary arrangements to establish, during the Triennial Review, that all Members have notified the measures taken to ensure the implementation and administration of the Agreement and have submitted the written statements under Article 15.2 according to the relevant decisions contained in document G/TBT/1/Rev.4. The Committee would invite Members that had not complied with their obligations to notify these measures before the Committee meeting of 12-13 November, and the Chairman should organize individual and informal consultations with the Members concerned to provide the necessary assistance to fulfil that obligation. She proposed that, during the Triennial Review, the Committee should evaluate the content of the written statements in the light of the relevant decisions.

19. She also proposed that the Committee should make the necessary arrangements to be in a position to establish, during the Triennial Review, a significant increase in the number of acceptances of the Code of Good Practice by standardizing bodies and invite Members to indicate the steps they had taken to fulfil the obligations under Article 4.1, and, where appropriate, the reasons why the bodies within their territories had not yet accepted the Code.

20. The representative of the United States said that the basic objective of the Triennial Review was to assess whether the Agreement was helping governments evaluate whether standards, technical regulations and conformity assessment procedures were being used to protect domestic producers arbitrarily from competition or otherwise unfairly restrict trade. To that extent, the transparency provisions of the Agreement were aimed at preventing the establishment of technical trade barriers. She recalled the obligation for Members to submit statements under Article 15.2 and stated that the Committee should try to ascertain the reasons for low compliance, the problems faced in submitting those statements as well as on specific needs for technical assistance. It would be useful for Members to exchange information on the administrative procedures established to ensure that their domestic regulators and agencies comply with the Agreement. She considered this exercise instructive not only for Members who had not submitted their statement, but also for those who had complied and might be striving for more effective and efficient means of compliance. She supported the practical and illustrative guide provided in New Zealand's submission (G/TBT/W/44), and recalled that her delegation had proposed for voluntary exchange of information on the procedures taken by Members to ensure domestic compliance (G/TBT/W/40). She said that there was the need for governments to inform authorities and private bodies of their responsibilities under the Agreement, and the need for institutional mechanisms to accomplish this on a continuous basis.

21. Her delegation believed that the definition of proportionality and least trade restrictive measures would not adequately or accurately capture the obligation under Article 2.2. With respect to the Code of Good Practice, she stated that problems could arise if bodies emanating standards had not adhered to the Code, or were otherwise not in compliance with the TBT Agreement.

22. The representative of Japan said that Japan was highly interested in the issues of international standards and technical regulations, and more specifically, the effectiveness and transparency of international standardizing bodies' activities and the proactive participation of national standardizing bodies in international standardization activities. She supported harmonization of technical regulations with international and national standards. With respect to the suggestion that Members should attach to their notification form the text of their draft technical regulations or conformity assessment procedures

translated into one of the official WTO languages, she feared that such a new obligation would create a burden on Members within the notification procedure and would increase the number of notifications providing a comment period of less than 60 days. This would be burdensome, especially for those Members whose national language was not one of the WTO working languages.

23. The representative of Canada shared the view that it was necessary for the Committee to ask itself the reasons for low compliance with the basic obligations of Article 15.2. With respect to the Code of Good Practice, he informed Members that the Standards Council of Canada was currently revising its accreditation documents to ensure that its accredited standardizing bodies were automatically in compliance with the Agreement and the Code of Good Practice. He said that, once this process was completed, and the standardizing bodies were found to be in compliance, the Standards Council of Canada would notify the acceptance of the Code of Good Practice.

24. The representative of India noted the interest expressed by delegations on the obligations under Article 15.2. He proposed that the treatment given to that issue should be given equally to the implementation of Article 12.

25. The representative of Mexico favoured an approach to identify the compliance problems on obligations under Article 15.2 and the Code of Good Practice, and to assess and evaluate solutions which would rectify that situation. She did not consider appropriate to change undertakings at this stage, including notification comment period and formats because it would be counterproductive to increase the obligations incumbent upon Members since they were already unable to discharge existing obligations.

26. The representative of Pakistan did not support the European Communities' proposal that Members who had not fulfilled their obligations under Article 15.2 would submit their statement prior to the Committee meeting on 13 November 1997. He said that the Agreement did not contain any reference to a cut-off date. With respect to the European Communities' suggestion that the Committee should invite Members to indicate the steps that they had taken to fulfil their obligations under Article 4.1 and also the reasons why the bodies within their territories had not accepted the Code, he pointed out that Article 4 did not require Members to provide any such information. He stressed the importance to understand the difficulties faced by many Members in implementing their obligations under Articles 4 and 15.2.

27. The representative of Korea shared Japan's view that the European Communities' proposal to attach the translated texts to TBT notifications would be too burdensome for those Members whose official languages were not WTO official languages. As to the proposal to notify eco-labelling programmes, he stressed that non product-related processes and production methods were excluded from the coverage of the TBT Agreement.

28. The Committee took note of the statements made.

IV. STATEMENTS ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

29. The representative of Canada recalled that, at the Committee meeting of 20 June, he had raised the issue of non-notification by the European Communities of its technical regulation on genetically-modified organisms (GMOs). The European Communities had replied that this regulation had already been notified on 12 November 1992 (TBT/Notif.92.355) and that a second draft regulation in the same field had been notified on 21 April 1997 (G/TBT/Notif.97.151). He also noted that the European Communities had subsequently notified on 6 August 1997, following his delegation's written request, the labelling-related amendment to Directive 90/220/EEC on the Deliberate Release of GMOs into the Environment (G/TBT/Notif.97.382). He hoped that in the future such regulations would be notified prior to their proposed date of entry into force.

30. Furthermore, he thanked the delegation of Japan for having notified on 7 August 1997 through the ISO/IEC Information Centre the acceptance of the Code of Good Practice by the Eco-mark eco-labelling programme (G/TBT/CS/N/73). He interpreted this notification, as well as those of other Members, as no prejudice clause to paragraph 185 of the Report of the Committee on Trade and Environment to the Singapore Ministerial Conference. Finally, he noted that a WTO Member had notified on 24 June 1997 its participation in regional eco-labelling programmes, and subsequently withdrawn this notification. He considered this a novel approach to transparency without prejudice. He looked forward to further notifications of eco-labelling programmes under the terms of paragraph 185 of the CTE Report.

31. The representative of the European Communities thanked the Thai delegation for having supplied the translation of its Ministerial Rule (B.E. 2540) on the disclosure of ingredients used in manufacturing cigarettes and cigars, promulgated pursuant to the Tobacco Products' Control Act B.E. 2535. This regulation had been published on 3 August 1997 and would come into force 180 days after its publication. However, it had not yet been notified to the WTO. She asked the delegation of Thailand when and under which agreement this Rule would be notified. Moreover, she expressed similar concerns on another regulation on labelling of cigarette packets.

32. The representative of Thailand said he would contact his authorities on this issue.

33. The representative of United States expressed interest in Thailand's reply on the issue of cigarettes and cigars. She emphasized the importance under the TBT Agreement of providing WTO Members with the opportunity to make comments on proposed regulations and pointed out that many notifications concerned regulations that had already entered into force.

34. She drew attention to two U.S. publications available directly from the United States' Enquiry Point as well as through its home page on the Internet. The first, entitled "Profiles of National Standards Related Activities", identified the metrology, standardization, testing and quality activities of more than 70 countries. A specific entry was provided for each country on its agencies and institutions responsible for metrology and calibration, standards' development, testing, product certification, quality and environmental systems registration and key information sources, mainly the TBT Enquiry Points. The second, entitled "The ABC of the U.S. Conformity Assessment System", was designed to promote a wider understanding of the purpose and nature of various aspects of conformity assessment, as well as the relationship among the related activities in the United States. She hoped that interested delegations would get copies of these publications.

35. The Committee took note of the statements made.

V. OTHER BUSINESS

36. The representative of Canada requested the representative of UNCTAD to provide an update on the UNCTAD Expert Meeting on ISO 14000 and the representative from the ITC to give an update or briefing on the recent UNIDO Survey on the Trade Impact of ISO 9000 and 14000. He suggested that the UNIDO/ITC Report, once finalized, would be a useful document to be circulated as a non-paper or as a contribution for Members of the TBT Committee.

37. The representative of UNCTAD said that the UNCTAD Commission on Trade and Goods, Services and Commodities decided to convene an expert meeting to examine the operation and the possible trade and investment impact of environmental management standards, particularly the ISO 14000 series, on developing countries and to identify possible opportunities and needs in this context. The Expert Meeting was intended to enhance the understanding of the issues under discussion and to

elucidate the policy choices that governments and business sectors, particularly in developing countries, are, or will be facing, in the context of environmental management standards in relation to implementation issues having an impact on international trade.

38. The representative of ISO said that the annual ISO General Assembly, marking the 50th Anniversary of the establishment of the ISO, had been held on 23-24 September 1997 in Geneva. At that meeting, many ISO members, especially the developing countries, had emphasized the importance of fruitful cooperation between ISO and WTO, as both organizations had the common objective of facilitating trade. It was felt that the cooperation between international trade negotiators and national standards bodies could be improved in many countries. He informed the Committee that the ISO had cooperated with various governments, national organizations, as well as international organizations in organizing regional training seminars on the issues of Trade and International Standardization, and on Quality and Environmental Management.

39. The Chairman informed Members that he had received a communication from the Chairman of the Committee on Trade and Environment (CTE), drawing his attention to a request received at the CTE meeting held on 22-24 September, in the context of the CTE discussions on the exports of domestically-prohibited goods (DPGs). At that meeting, several delegations had raised the issue of technical assistance to increase developing countries' capacity to deal with domestically-prohibited goods exported to them.

40. The Committee took note of the statements made.

41. The Committee agreed to hold its next meeting on 12-13 November at which the Committee would carry out its First Triennial Review.