

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Technical Barriers to Trade

LEGAL STATUS OF SIGNATORIES

Note by the Secretariat

Revision

1. At its meeting of 10 July 1984, the Committee on Technical Barriers to Trade agreed that, at the request of some delegations, the secretariat should be asked to prepare a note on the legal status of countries that had signed but not ratified the Agreement, taking into account the provisions of Articles 12.8 and 12.9 of the Agreement (TBT/M/16, paragraph 12). The present note deals with this matter.
2. It is a well established legal rule that a government which has signed an agreement subject to ratification is only bound by the agreement - and a party to it - after its ratification. Article 14.1 of the Vienna Convention on the Law of Treaties of 23 May 1969 states: "the consent of a State to be bound by a treaty is expressed by ratification". The same principle applies if an agreement is signed "ad referendum", or subject to acceptance or approval.
3. While some confusion may be caused by the fact that some MTN agreements - but not the Agreement on Technical Barriers to Trade - use the expression "signatory" rather than "party" when describing the governments which have acceded to the agreement, it is quite clear from long-standing international legal practice that "signatory", or "signature" as used in the paragraphs of the MTN agreements relating to the acceptance of the agreements, refer to signatures which are not subject to ratification (or ad referendum, etc.).
4. At the end of the Tokyo Round, there was an informal understanding among governments having participated in the MTN to treat "full" parties to the agreements and countries which had signed them subject to ratification in the same manner during the first stages of operation of the agreements. This understanding related, however, only to administrative arrangements, i.e. the countries having signed but not ratified an agreement were seated among the parties, not among the observers, and were listed under the heading "representatives". It was certainly not intended to create any legal rights under the agreements for such governments. For example, countries that had not ratified the agreements were not invited to participate in the selection of the first chairman and vice-chairman of the Committee on Technical Barriers to Trade.
5. From the "Status of Legal Instruments" of GATT, it is clear that the entry into force of the MTN agreements depends on the date of the ratification, if signed subject to ratification, and not on the date of signature.
6. In summary, a signature subject to ratification but not yet ratified does not confer legal rights on the government concerned, though it may, in practice, give the government the possibility to participate in the work of the Committee pending ratification.