

GENERAL AGREEMENT ON TARIFFS AND TRADE

Special Distribution

Committee on Technical Barriers to Trade

DRAFT MINUTES OF THE MEETING HELD ON 6-10 MAY 1985

Chairman: Dr. B.N. Singh

1. The Committee on Technical Barriers to Trade held its nineteenth meeting on 6-10 May 1985.
2. The agenda of the meeting was as follows:

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A. Statements on Implementation and Administration of the Agreement

3. The representative of Japan referred to the external economic measures announced by his government on 9 April 1985, communicated in document L/5795, and said that his authorities would keep under review the implementation of March 1983 measures of the Liaison and Co-ordination Headquarters on Standards and Certification Systems. Present efforts for improvement of market access in the field of standards, certification systems and testing procedures included the acceptance of foreign chemical test data for certain medical equipment and the simplification of technical standards for telecommunications terminal equipment pursuant to the privatization of the Nippon Telegraph and Telephone Public Corporation (NTT). In connection with the latter, further measures had to be devised to ensure the prevention of harm to the network. He also informed the Committee that since the previous meeting his authorities had nominated two additional foreign testing organizations: one organization in France under the Consumer Product Safety Law and another one in the United States under the Electrical Appliances and Materials Control Law.

4. The representative of the United States indicated that in the bilateral consultations held between his government and the government of Japan on type approval procedures for pharmaceutical products and medical equipment, the Japanese authorities had undertaken to make available final criteria for acceptance of foreign-generated chemical test data for medical devices, in vitro diagnostic reagents and pharmaceutical products by 1 July 1985.

5. The representative of Brazil informed the Committee of the establishment of a centre for information and documentation within the National Institute of Metrology, Standardization and Industrial Quality (INMETRO) which would shortly become operational. The centre would facilitate a prompt dissemination of TBT notifications, and the handling of a greater number of comments and enquiries from interested parties in the country. In addition, it would be responsible for preparing notifications on technical regulations or certification systems proposed in Brazil.

6. The representative of India said that since the last meeting the enquiry point in his country had responded to five enquiries and eleven requests for documentation relating to notifications made by India.

7. The representative of the United States announced that the annual report of the National Bureau of Standards (NBS) for the calendar year 1984 was being issued in the series entitled "GATT Standards Code Activities of the NBS". The report which described various activities performed by the NBS in the framework of the Agreement would be made available to the enquiry point of each Party.

B. Testing and Inspection

8. In response to the invitation extended by the Committee at its previous meeting, the Chairman of the ISO Council Committee on conformity assessment (ISO/CASCO) made a presentation on the work being carried out in ISO/CASCO on the subject of testing and inspection. He said that the ISO Committee on

Certification (ISO/CERTICO) was set up in 1970 to work on product certification. Subsequent development in the area called for addressing other components of the certification process that applied to the movement of products across borders. The terms of reference of the recently established ISO/CASCO was expanded to reflect the total concept of conformity assessment with the three components relating to the assessment of quality systems, testing and certification. He further said that bilateral acceptance of test results initially based on national standards could ultimately develop into a multilateral quality assessment system based on regional or international standards. Product certification schemes at the international level could be reached by two routes. The first was the "from the top down" approach by which all the interested parties participated in the scheme from the outset and continued working together throughout all the stages in order to prepare the agreements or rules necessary for solving various problems before the certification scheme for a product, process or service rendered could be devised at the international level. The second route was the step-by-step approach according to which a certification scheme was introduced by two trading parties which mutually accepted their test data and quality assessment. The scheme would gradually evolve into a multilateral system through the participation of a third party and then others. Nineteen guides and information documents, addressing the essential aspects of international certification systems, had been issued by ISO/CASCO. An additional guide on the assessment of quality systems would be completed by 1986.

9. The representative of the United States asked the observer from the ISO about the effect of an arrangement among a certain group of countries for acceptance of certificates of conformity on other countries outside that group. He asked how international efforts could influence the development of regional certification arrangements. In reply, the observer from the ISO referred to the International Electrotechnical Commission Quality Assessment System (IECQ) for component parts and said that this system would be accessible to any supplier, whether a member of ISO and IEC or not. The representative of Finland, speaking on behalf of the Nordic countries, said that the IEC/CB system was at present the only practical example of application of the step-by-step approach to the development of an international certification system. It had originated from the so-called CEE/Arnhem system which had been open to Western European and successively to all European countries. It had evolved into an international system two years ago within the context of IEC.

10. The representative of the United States said that the efforts of IEC to promote the IECQ had been inhibited by the pernicious effects of parallel practices at the regional level. Its work had been less than satisfactory for the needs of non-European countries. He had the impression that some of the European members of the IEC were not ready to see the IECQ effective until such time as they could dominate the relevant technology. In this respect, he suggested that the secretariat should continue collecting information on different aspects of the matter of testing and inspection and should prepare a note on the activities of the regional bodies in this field. It was so agreed.

11. In response to a question by the representative of the European Economic Community concerning the instruments which laid down the basic principles in respect of the integrity of a multilateral system as well as the conditions

to be fulfilled for building up mutual confidence among participants in such a system, the observer from the ISO said that three ISO/IEC guides, namely Guides 25, 38 and 40 had been drawn up to address the technical and administrative aspects of these problems. It belonged to the interested parties to dispose of the fundamental rules set out in these guides. In this regard, the representative of Finland, speaking on behalf of the Nordic countries pointed out to the Committee that the UN/ECE Government Officials Responsible for Standardization Policies had endorsed the relevant ISO/IEC Guides and had recommended that member governments of ECE should implement those guides when establishing schemes or agreements for the mutual recognition of tests. With the purpose of paving the way for the discussion of the matter of testing and inspection in the Committee, he suggested that the ISO/IEC Guides 25, 38 and 40 should be circulated to Parties. The Committee could have an in-depth study of those guides in future and could assess to what extent they might be suitably applied by Parties in implementing Article 5 of the Agreement. The representative of the United States supported this proposal. The Committee agreed to proceed accordingly.

11. The representative of the United States, drawing attention to the note on the activities of international bodies in the field of testing and inspection (TBT/W/81), observed that in the section of the note on the International Laboratory Accreditation Conference (ILAC) it was stated that no steps should be taken to institutionalize ILAC. Although ILAC had been useful in establishing criteria for the accreditation of laboratories, this was only one way of looking at the problem. ILAC was not a wholly satisfactory forum, compared with ISO/IEC, for realizing further work on testing and inspection and, in particular, for dealing with the issues raised in the United States proposal contained in document TBT/W/79. He further said that his delegation reserved the right to revert to this proposal at the next meeting and said that the matter should be taken up in the context of the annual review and the three-year review.

12. The representative of India stressed that the issue of testing and inspection played a fundamental rôle in the international transaction of goods and that it was indispensable to persevere with the work of elimination of technical barriers to trade in this area. Considerable delays and costs were caused by the diversity of the procedures for testing and inspection or because of absence of reciprocal arrangements. He drew attention to a number of problems that his delegation considered as having a significant bearing on the matter under discussion. With regard to sampling, he said that despite the progress made in recent years, the application of sampling still presented difficulties in practice because of the diversity of the materials and trade practices. The scale of sampling and the number of tests had to be suitably devised so that while providing the necessary quality assurance, the inspection and testing would not create unnecessary costs. Variations in sampling plans could affect the test results even with the use of the same test methods. On the other hand, if the sampling and inspection procedures applied by individual trade and industry units were not the same, the quality assessment of the same lot of goods would give different results. The criteria for determining conformity and the method of interpretation of test results were also important because if these criteria varied, uniformity of sampling, inspection or testing procedures could not be guaranteed. Hence

there was a need for evolving common or harmonized rules concerning sampling and inspection as well as criteria for determining conformity of products. Test results could also be affected by changes in testing conditions. Each country used one of the three sets of testing conditions devised by the International Organization for Standardization. The option to choose test methods best suited to the local conditions should be open to countries provided the test results obtained were comparable. International standards developed for test methods reflected more the capacities of the developed countries than of the developing countries because of the weak participation of the latter in international standardization efforts. Developing countries used limited, diversified and uncoordinated methods of testing. There was therefore a need for formulating international standards compatible with the financial and trade needs and techno-economic level of developing countries. In terms of Article 11 of the Agreement, developed countries as well as certain developing countries which were advanced in the standardization and certification matters could assist developing countries in dealing with various aspects of the problems of testing and inspection.

13. The representative of the European Economic Community observed that the Committee was presently leaving its traditional area of activity aimed at securing transparency and non-discrimination, to enter the area of harmonization of basic standards with respect to testing and inspection. At this stage of the discussions, he would raise the following questions: whether efforts to promote the mutual acceptance of test results and inspection should not concentrate first on those areas where there was already a certain degree of harmonization of the basic standards at the international level? Secondly, whether the very extensive technical work involved could be concluded in the framework of an agreement such as proposed by the United States? It would be worthwhile for the Committee to study the matter further, inter alia on the basis of the ISO/IEC guides, in order to determine the areas where some progress had been made in harmonization and in which it could contemplate proceeding with the formulation of recommendations on the mutual acceptance of test results and possibly, of certification.

14. The representative of Finland, speaking on behalf of the Nordic countries, said that he would support any Committee action on the matter of testing and inspection so far as it aimed at furthering the implementation of the Article 5 of the Agreement. However, any issue that went beyond the existing provisions of the Agreement had to be negotiated between the Parties and could not be dealt with as a simple matter of implementation. The Nordic delegations, therefore, reserved their position on any such aspects of the matter.

15. The representative of the Philippines said that the proposal of the United States related to an important subject matter which fell within the scope of the Agreement. Mutual acceptance of test results by interested Parties would lead to a meaningful implementation of the Agreement and facilitate the expansion of trade. However, different facets of the issue had to be assessed because of differences in the trade, financial and technological resources of Parties. It would seem advisable to deal with arrangements in the area of testing and type approval on an individual product or industry basis rather than on an across-the-board basis, especially in light of the limitations of certain countries, especially developing countries, regarding testing skills and equipment for type

approval. Moreover, until all aspects of the United States proposal had been carefully studied, he was not in a position to say whether the matter would be ripe for consideration in the context of on-going broader trade initiatives in GATT.

16. The representatives of New Zealand and Canada shared the view that the Committee should address the particular issues raised in the proposal by the delegation of the United States. The representative of Canada said that a great number of bilateral and plurilateral consultations were required on the technical aspects of the problem in order to ensure the integrity of the systems to be developed. The representative of New Zealand said that his authorities had been active in promoting accreditation of testing facilities at the international level. The proposal by the delegation of the United States provided a basis for discussion of the matter, but in no way could it set firm parameters to guide other delegations' positions on how to approach the matter in future.

17. The representative of Japan said that his authorities recognized the trade distorting effects of non-acceptance of foreign test data. As mentioned earlier, his country had taken steps to accept foreign test data in certain sectors and intended to pursue this trend in other areas. He stressed that due consideration should be given to the legal framework of any future mutual acceptance schemes.

18. The representative of Hungary said that Article 5.2 of the Agreement encouraged mutual recognition of test results. His delegation welcomed any efforts for a more efficient international cooperation which would restrain certain practices leading to the refusal of foreign test data on unjustified grounds.

19. The representative of Romania, in supporting the proposal by the delegation of the United States, said that mutual acceptance of test data and establishment of quality assessment systems would save a considerable amount of time and cost and would also promote the development of trade. He added that in dealing with the issue due care should be given to safeguarding the right of the importer to carry out his own tests, to the accreditation of laboratories in accordance with national legislation and to the possibility of cancelling certificates based on inaccurate data.

20. The representatives of Brazil and Korea emphasized that the Committee was at a preliminary phase of its discussion of the question of testing and inspection. Their authorities did not find it proper to assume commitments at this stage with regard to any proposals for additional disciplines on the matter. They observed that developing countries were in a disadvantageous position because of the deficiencies in their infrastructure for testing and inspection, and that in any case agreements might be difficult to reach in an area which very often escaped direct government control.

21. The observer from the ISO said that there were a considerable number of developing countries among the sixty-three countries which were actively involved in the ISO work. Many of the views expressed and comments made during the current discussion had already been made in ISO. Needs and conditions prevailing in the developing countries had been taken into account in preparing the relevant ISO guides and documents. He noted that parties

might usefully seek the collaboration of experts in their countries who had been active in the ISO work when reviewing the relevant ISO/IEC guides.

22. In conclusion, the Chairman said that the Committee would take this preliminary exchange of views as well as the material contained in the ISO/IEC guides into account when reverting to the matter at its next meeting, and he invited delegations to assist the secretariat in collecting information on the work of relevant regional bodies, so as to enable it to provide a fully updated report on this subject as a further input into the Committee's discussions.

C. Working Draft Text Protocol on the Approval of Telecommunications Terminal Equipment (TTE)

23. The representative of the United States referred to the Working Draft Text Protocol on the Approval of Telecommunications Terminal Equipment (TTE) presented by his delegation at the last meeting and said that although consultations had been held on the text with officials in certain capitals, his delegation hoped for further reactions from the Parties after circulating the text in document TBT/Spec/13. He believed that a subset of protocols subscribed to by interested Parties would be a way of widening the scope of the Agreement and furthering its objectives. His delegation was willing to conclude such a protocol under Article 5 of the Agreement with any interested Party. Other interested Parties could be admitted subsequently to participate in the protocol.

24. The representative of the United States further stated that the Working Draft Text Protocol had originated from an agreement between the governments of the United States and Japan which was referred to as "Joint Statement on Interconnect Issues". Since the conclusions of this agreement in December 1980, the government of Japan had taken significant steps to achieve an open and fair approval system with the aim of promoting trade in the telecommunications sector: An independent approval institute had been created which accepted the test data generated in the exporting country for all customer premises equipment in accordance with a "document check only" approval system. The criteria for approval of telecommunications terminal equipment were limited to those aimed at preventing harm to the telecommunications network. Their number was expected to be reduced from fifty-three to twenty in the near future. Terminal equipment would no longer be tested for speech quality, sound power levels or voice transmission. There would be no requirement of a power back-up supply for private branch exchanges or on acoustic couplers. With the effective application of these measures it should be a simple matter to obtain approval from the Japanese regulatory authorities in future for telecommunications equipment to be attached to the telecommunications network. The Protocol under Article 5 proposed by his delegation aimed at sharing the benefits of what had been achieved between the governments of Japan and the United States in the telecommunications sector with the largest possible number of Parties.

25. The representative of Japan confirmed that a joint statement had been agreed to in the telecommunications sector as a result of bilateral discussions held in 1980 between his government and the government of the United States. Notwithstanding this, his delegation reserved its position at

this stage concerning the Working Draft Text Protocol communicated by the delegation of the United States. The representative of Chile said that his delegation were studying the United States' proposal and he would revert to

representative of Finland speaking on behalf of the Nordic countries his delegations welcomed all efforts to improve upon the provisions of the Agreement to the fullest extent possible. He would convey a final position on the matter once the experts on telecommunications issues had completed their assessment of the Working Draft Text Protocol. Meanwhile, he wondered whether the text communicated in TBT/Spec/13, which applied to one product sector, was to be conceived as a model for a sector-by-sector approach and if the intention was to conclude identical protocols covering other products. It seemed to him that this might not be the best approach. Perhaps it would be preferable to work on general recommendations first, and only later on sectoral agreements if necessary.

27. The representative of Brazil reiterated his comment on the subject of testing and inspection to the effect that his delegation was not prepared to assume any additional disciplines in this area for the time being. He said that one needed to reflect carefully before embarking on such new initiatives which could lead to the proliferation of sectoral protocols.

28. The Committee took note of the statements made.

D. Status of Work on Standards Notifications in the Inventories of Non-Tariff Measures

29. The representative of the United States reverted to the proposal of his delegation concerning the section of the Inventory of Non-Tariff Measures relating to standards. He observed that circulation of the notifications included thereof would serve as an incentive for addressing individual problems bilaterally between the Parties concerned and would in no way give rise to discussions or action in the Committee.

30. The representatives of Canada, Chile, the European Economic Community, New Zealand, and the United Kingdom on behalf of Hong Kong supported the proposal of the United States delegation, on the understanding that it would in no way prejudice the work of the Group on Quantitative Restrictions and Other Non-Tariff Measures.

31. The Committee agreed to the circulation of the notifications concerned among Parties.

E. 1985 Meeting on Procedures for Information Exchange

32. The third meeting on procedures for information exchange was held on 7 May 1985, under the Chairmanship of Mr. Bondad (Philippines). As in previous such meetings interested observers were also represented. The meeting addressed itself to the items contained on the agenda circulated in document TBT/W/78.

33. The Chairman presented an oral report on the meeting on his own responsibility (reproduced in the Annex). He also forwarded the texts of a number of proposals relating to some of the matters that the participants had discussed at the meeting.

34. The Committee noted the oral report of the Chairman of the meeting and took the following action:

(a) In order to receive more information on the implementation of the provisions of the Agreement relating to information and documentation, the Committee invited Parties to report the number of enquiries originating in other Parties received by their respective enquiry points in accordance with these provisions in the basic documents prepared for annual reviews. Such information could be presented under the item "Transparency". The number of requests answered should also be reported. If possible, the data should be broken down into requests concerning proposed regulations and rules of certification systems and requests concerning existing ones. The Committee requested the secretariat to initiate technical work on this matter in consultation with delegations.

(b) To facilitate an efficient implementation of the notification and other procedures for information exchange, the Committee considered it useful to receive information from Parties on any procedures established, or other efforts made, on the national level in order to gather information on proposed technical regulations elaborated by central government bodies. In view of the criteria that it had established previously (TBT/16/Rev.2, page 7), the Committee requested Parties who had not yet done so to provide information on the procedures followed in their respective countries to determine which draft technical regulations should be notified.

35. The Committee also took note of the following specific points raised in the oral report of the Chairman of the meeting:

- (i) a proposal by the Philippines concerning exchange of information on translations of documents relating to notifications under the Agreement, to the effect that Parties in a position to do so should inform other Parties through the secretariat of any translation of documents relating to notifications under the Agreement into one of the GATT languages, made or in the making, so as to enable the interested Parties to obtain such translations on mutually agreed terms;
- (ii) a proposal by the Nordic countries on the handling of comments, contained in document TBT/W/82;
- (iii) a proposal by the United States for providing more detailed information in the description section of the notifications, in order to assist Parties in determining whether to translate the basic documents;

- (iv) a proposal by Sweden on the length of time allowed for comments, designed to avoid last minute requests for extension of the period for comments;
- (v) a proposal by Chile to extend the length of time allowed for comments beyond the recommended period of sixty days.

36. The Committee agreed to return to points (i), (ii) and (iii) at its next meeting and to points (iv) and (v) at an appropriate time in the future.

F. Information Meeting on the Implementation and Operation of the Agreement

37. In reporting on the Information Meeting with the developing country signatories and non-signatories held on 8 May 1985, the Chairman stated that interested delegations had made presentations which gave detailed explanations and views on various topics contained in an outline of discussions circulated in document TBT/W/77. He said that despite the efforts which had been made by the Committee to organise such a meeting, the attendance by non-signatory developing countries had not met the expectations. However, non-signatory developing countries that were present in the meeting had had the support of experts from capitals who had reported that preparations for acceptance of the Agreement had reached an advanced stage in their countries. These delegations had sought clarification under various topics presented by Parties and had discussed the scope of the Agreement with regard to standards-related issues of concern to their countries and to developing countries in general.

38. The Committee took note of this statement by the Chairman and agreed that the transcripts of the presentations made by Parties to the Agreement would be made available to signatories and non-signatories on request.

G. Special Meeting of the Committee

39. The Committee held a special meeting on 9 May 1985 in response to the invitation of the CONTRACTING PARTIES to examine the adequacy and effectiveness of the Agreement and the obstacles to acceptance which contracting parties may have faced (L/5756). It adopted the report, circulated in document TBT/20, on the observations made and conclusions reached at that meeting.

H. Composition of the Committee

40. The representative of the United States reiterated the concern of his delegation about the status of those countries that had signed but not ratified the Agreement. The discussion at the Special Meeting had revealed that the issue could be resolved without recourse to Committee action provided that the countries concerned took the necessary steps to complete the relevant legislative procedures. His delegation would revert to this subject once the Working Group on MTN Agreements and Arrangements had reached conclusions on the issue.

I. Preparations for the Sixth Annual Review

41. The Committee agreed to proceed with the preparations for the sixth annual review in accordance with the arrangements for previous reviews. Parties should submit to the secretariat information about any action taken by them under items of the review (listed in TBT/M/3, Annex III, paragraph 1) by 12 September 1985, to the extent that this had not already been done in the normal course of the Committee's work during the period under review. As agreed at this meeting, Parties were also invited to submit information, under the review item "Transparency", on the number of enquiries received and responses given by their respective enquiry points. The secretariat would issue by 30 September 1985 a basic document containing any changes in the information contained in TBT/10, supplements 1 and 2, TBT/17, supplements 1 and 2, TBT/18, supplement 1, as well as updated versions of the documents on consultation points (TBT/W/62/Rev.1 and Corr.1), enquiry points (TBT/W/31/Rev.4 and Corr.1 and 2) and panelists (TBT/W/25/Rev.9).

J. Preparations for the Second Three-Year Review under Article 15.9

42. The Committee agreed to hold its second three-year review of the operation and implementation of the Agreement at its next meeting, in conjunction with the sixth annual review. Parties should submit by 1 August 1985 any specific proposals or topics that they wished the Committee to consider in the context of the three-year review. Parties that would have views or comments on the subject matters raised in those proposals or topics should submit them in writing by 12 September 1985 so as to allow for any informal consultations that might be necessary prior to the review.

K. Spain - Type Approval of Heating Radiators and Electrical Medical Equipment

43. The representative of the United States informed the Committee that his delegation had suspended the consultations with the delegation of Spain held under Article 14.1 of the Agreement, pursuant to the type approval of electrical medical equipment of one producer in his country. His delegation reserved the right to take future action in the event of any failure by the Spanish authorities to approve applications submitted by other United States producers.

L. Request for Accession by Bulgaria

44. The observer from Bulgaria stated that although the decision of contracting parties of the GATT of 30 November 1984 on the examination of the obstacles to the acceptance of the MTN Agreements and Arrangements was limited to contracting parties only, his authorities felt it necessary to point to the obstacles and difficulties which his country had faced in the negotiations for accession to the Agreement. He recalled that the Committee had welcomed the request of his country for acceding to the Agreement already in July 1981. Since that time his delegation had been making every effort to conclude the negotiations while ensuring a balance of rights and obligations within the multilateral framework of the Agreement. In its early

meetings, the Working Party on the Accession of Bulgaria had agreed that Bulgaria met the necessary legal and organizational pre-conditions for assuming the rights and obligations under the Agreement and that the equitable participation of Bulgaria in the Agreement would be in full conformity with the CONTRACTING PARTIES decision of 28 November 1979 on the Multilateral Trade Negotiations.

45. In the negotiations on the terms of accession of Bulgaria, some countries had adopted an approach which tended to diminish or even negate the multilateral character of the Agreement with regard to dispute settlement procedures as well as to the surveillance functions of the Committee. However, a reasonable compromise solution to this problem had been found at the level experts of the Parties concerned at the end of 1983. This solution, however, was undermined by so called "broader considerations" of certain contracting parties, falling outside the purview of the GATT. Attempts to cover these considerations by trade policy arguments were not in conformity with the spirit of the GATT Ministerial Declaration adopted in 1982.

46. The representative of Hungary, in supporting the statement by the observer from Bulgaria, said that the Ministerial Declaration of 1982 generally acknowledged the need to encourage the accession of non-signatory countries to the MTN Agreements. The Bulgarian delegation had duly presented its country's standardization system and expressed several times its readiness to undertake all obligations under this Agreement. In the view of his delegation, Bulgaria had demonstrated its readiness to compromise. The reasons for extending the negotiations for the accession of Bulgaria over such a long time were not clear to his delegation. He hoped that the Bulgarian request for accession to the Agreement would be dealt with positively as soon as possible.

47. The representatives of the European Economic Community and the United States recalled that Bulgaria had not been able to go along with a near compromise solution of the Working Party on the Accession of Bulgaria based on the draft terms of accession of July 1981.

48. The Committee took note of the statements made.

M. Date and Agenda of the Next Meeting

49. The Committee agreed to hold its next meeting on 31 October - 1 November 1985.

50. The agenda of the meeting would include the following items:

- (1) Statements on implementation and administration of the Agreement.
- (2) Composition of the Committee.
- (3) Translation of documents relating to notifications.

- (4) Handling of comments.
- (5) Procedures for determining the notification of draft technical regulations.
- (6) Testing and inspection.
- (7) Procedures for adoption of decisions and recommendations.
- (8) Sixth annual review of the implementation and operation of the Agreement.
- (9) Second Three-Year Review of the operation and implementation of the Agreement.
- (10) Report (1985) to the CONTRACTING PARTIES.