GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

TBT/M/42
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Special Distribution

Committee on Technical Barriers to Trade

MINUTES OF THE MEETING HELD ON 28 APRIL 1992

Chairman: Mr. J.A. Clarke (Hong Kong)

1. The Committee on Technical Barriers to Trade held its forty-third meeting on 28 April 1992.

2. The agenda contained in GATT/AIR/3308 was adopted:

A. Election of Officers

3. The Committee elected Mr. J.A. Clarke (Hong Kong) Chairman and Mr. C. Cozendey (Brazil) Vice-Chairman for 1992.

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4. The Chairman drew attention to a request for observer status in the Committee from the Russian Federation, contained in a letter addressed to the Director-General and dated 10 April 1992 (copy appended). He pointed out that the request was described as "a further step in examination of the prerequisites for a future accession of the Russian Federation to the General Agreement and the Agreement on Technical Barriers to Trade." He pointed out also that the Committee's decision on this matter would relate only to observership in the Technical Barriers to Trade Committee and would not prejudice action in other Tokyo Round Committees.

5. At the proposal of the Chairman, the Committee took note of the fact that the GATT Council Chairman had informed the Council, at its meeting on 18 February 1992, that "the GATT observer status previously conferred to the former USSR would be continued through the Russian Federation" (C/M/254). The Committee agreed to grant observer status to the Russian Federation, and in this regard it recalled that it had agreed at its meeting on 24 April 1980, regarding the Participation of Observers, that "Observers may participate in the discussions but decisions shall be taken only by signatories", and that "The Committee may deliberate on confidential matters in special restricted sessions". The Committee also noted that observers received documents relating to the meetings they attended.

6. The Chairman welcomed the representatives of the Russian Federation as observers to the Committee. He said that the Committee appreciated the interest shown by the Government of the Russian Federation in becoming acquainted with the Committee's work in order to develop a better understanding of the prerequisites of a future accession to the Agreement on Technical Barriers to Trade. He recalled that accession to the Agreement was subject to separate procedures from those applicable to the granting of observer status. He said that the Committee encouraged the Russian Federation to provide it with reports from time to time on its economic reforms as they related to technical barriers to trade.

7. The representative of the Russian Federation thanked the Committee for granting his Government observer status. He said that observer status would give his Government an opportunity to take fully into account the relevant rules and disciplines of the multilateral trading system, which were of special importance at this time of unprecedented and radical economic reform towards a market economy which was underway in his country. His Government's decision to seek observer status to the TBT Agreement should be seen as a further and logical step in examination of the prerequisites for a future accession of the Russian Federation to the General Agreement. He noted that the Russian Federation had recently been granted full membership in the IMF and the IBRD.

8. The Committee took note of the statement made.

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B. Statements on implementation and administration of the Agreement

9. The Chairman drew attention to document Let/1771, in which the Director-General notified the Committee, pursuant to Article 15.15 of the Agreement, that the Government of Australia had accepted the Agreement on Technical Barriers to Trade and that it had entered into force for Australia on 1 March 1992. He also drew attention to document TBT/1/Add.37, which had been submitted by Australia in accordance with Article 15.7 of the Agreement.

10. The representative of Australia said that his delegation took great pleasure in taking part in the meeting as a Committee member, and looked forward to participating in the Committee's work. His Government's decision to accede to the Agreement had been taken after considerable deliberation on ensuring that it would be able to carry out effectively its obligations under the Agreement. One of Australia's major concerns had been that, as a federation, many technical regulations and standards were not carried out at the federal level. However, as members would see from TBT/1/Add.37, Australia had now put into place administrative arrangements to ensure it could meet its obligations under the Agreement.

11. The representative of the United States welcomed the decision of the Government of Australia to accede to the Agreement. She said that her delegation appreciated the fact that Australia had submitted promptly

information on implementation of the Agreement. With regard to that information, she called attention to page 3 of TBT/1/Add.37 and said that it appeared consumer standards were considered and approved by a Standards Australia Committee and then adopted and published as final regulations by the Federal Bureau of Consumer Affairs; she asked for clarification of how the Australian Government would be able to notify those standards in advance and provide an opportunity for comment from other Code signatories. She asked also for clarification of whether technical regulations and standards for food, drugs and poisons were published in draft or final form only.

12. The representative of the European Communities also welcomed the Australian Government's decision. He said that he also had questions relating to Australia's implementation of the Agreement, but that at this stage he assumed that Australia would fulfil all of its obligations under the Agreement.

13. The representative of Australia said he was not in a position at this meeting to provide answers to the detailed questions, but would provide them at a later date. He welcomed the assumption that Australia would fulfil its obligations under the Agreement, and confirmed that was so.

14. The representative of the Philippines informed the Committee of on-going consultations between the Philippines and the Republic of Korea over a Marks of Origin system which Korea had introduced in July 1991.

15. He said that on 18 May 1991, the Korean Ministry of Trade and Industry had announced the introduction of a Marks of Origin system to be applied on some 323 products beginning on 1 July for the purposes of consumer protection. This was subsequently notified to the Committee on 3 July in TBT/Notif.91.194. Among other things, the notification indicated that a 35 per cent value added and process criterion would be applied successively on the 323 products "in cases where manufacturing or processing operations are not regarded as substantial, despite a change in the tariff heading ...". This practice resulted in the embargo of floppy disk drives exports of the Philippines to Korea on the basis of an allegation by the Korean Customs Authorities (KCA) that the floppy disk drives, which fall under HS 84.71, did not meet the 35 per cent value added criterion.

16. His delegation was raising this matter for the attention of the Committee because: (1) while not questioning Korea's right to introduce its own Marks of Origin system, the Philippines had serious reservations over the manner by which Korea administered the system; and (2) the embargo which spanned practically the whole of the second half of 1991 had resulted in cancelled orders for 1992.

17. With regard to the first point, he said that it was not clear under what provisions of the TBT Agreement Korea had made its notification. If the notification was made under Article 2.5, the Philippines was of the view that Korea did not fulfil the provisions therein. Moreover, as the notification was made after the entry into force of the measure, there appeared to be a lack of conformity with the provisions of Article 2.8.

If, however, the notification was made under Article 2.6, Korea had not provided the necessary justification for bypassing Article 2.5 nor indicated the nature of the urgent problem in the notification.

18. Furthermore, his delegation considered that Korea's administration of its Marks of Origin system lacked transparency and that such a system was not in conformity with Article 2.1 of the Code since it created obstacles to trade. When the 35 per cent value added criterion was made known to the Philippine exporter in early July 1991, certification from the Philippine Government as well as the Philippine Chamber of Commerce and Industry to the effect that the floppy disk drives in question contained more than 35 per cent value added was submitted to Korea. Deeming this submission inadequate, Korea in August 1991 required a breakdown of the Magnetic Head Assembly, a major component of floppy disk drives, to determine if the value added criterion was met by such a major component. In September 1991, yet another requirement was imposed; that the D-Motor, another major component of floppy disk drives, be broken down to parts constituting less than 5 per cent of value to determine if these met the 35 per cent value added criterion.

19. He added that: (1) these series of requirements were made on a piecemeal basis while at the same time the floppy disk drive shipments were held by the KCA; (2) the second and third requirements covered products which fell under HS 84.73 and therefore were not part of the scope of the notification to the Committee. Parenthetically, he said that these products or components were now included in the scope of Korea's Marks of Origin system as notified in TBT/Notif.92.7 of 27 January 1992 which expanded the product coverage from 323 to more than 500 tariff lines; (3) in the course of the embargo, Philippine authorities repeatedly asked the KCA for full information on the implementing rules and other requirements in order for the floppy disk drives to clear customs. Such information was never provided by the KCA; and (4) the release of the embargoed floppy disk drives began on 20 December 1991. Korea had explained that "... the tardiness in the release of customs clearance for the floppy disk drives can be attributed to insufficient documents being represented by the exporter, or incomplete submission of the necessary and required documents in accordance with the concerned regulation of Customs in Korea."

20. He said that, furthermore, even with the full release of last year's embargoed shipments, Korea has conveyed during the consultations in Geneva that the release did not constitute a change in the administration of the measure nor an assurance that the 1992 shipments would not be embargoed.

21. With regard to his delegation's second reason for raising this matter for the attention of the Committee, he said that in the four years prior to the implementation of Korea's Marks of Origin system, the Philippine exporter had enjoyed a growing market in Korea. Export sales grew from $4.5 million in 1987, to $36.2 million in 1990. Because of the embargo, which began in July 1991, export sales fell to $29 million last year. For 1992, export orders were expected to amount to $42 million. But so far this year, not a single floppy disk drive had been exported to Korea. Korea had claimed that the main reason orders from Korean importers in 1992

had stopped was that the Philippines had very recently taken on a new reputation as an unreliable supplier. It was the firm conviction of the Philippines delegation, however, that the sudden change in the Philippines' reputation was caused by Korea's untransparent administration of its Marks of Origin system which allowed wide scope for arbitrary interpretation of implementing rules. His delegation had also received unconfirmed reports that Korean authorities had secured an undertaking from Korean importers not to buy floppy disk drives from foreign sources beginning this year. It was the hope of his delegation that Korea would be able to dispel unequivocably those reports, and ensure that no such action would ever be taken.

22. He added that he could not overemphasize the damage Korea's practices had wrought on a Philippine industry. At least 2,000 workers were bound to be affected. Investment plans to expand capacity might have to be postponed or even cancelled if the situation was not rectified. And the lost sales would further increase the chronic trade deficit the Philippines had with Korea, which had averaged more than $200 million every year since the 1980s.

23. In conclusion, he reiterated that consultations were still going on both in Geneva and in capitals. While the Philippines hoped that a mutually satisfactory solution to the issue was still possible, it nevertheless reserved its rights under the TBT Agreement to pursue whatever further action would be necessary to attain a fair solution.

24. The representative of the Republic of Korea said that the application of the Marks of Origin system to 326 items had been notified under the Agreement on 1 July 1991, and that on 1 April 1992 a further 204 items had been added. The purpose of the system was to provide consumers with accurate information concerning a product's real country of origin and to assure fair trade. It had been introduced in response to many cases where imported products without marks of origin were sold as a Korean-made product, and cases where products made in a second country were slightly modified in a third country and bore the third country's mark of origin when sold in Korea. According to the system, the criteria for establishing country of origin were: (a) the country in which the item was wholly produced; (b) the country in which a substantial transformation, such as a change in HS tariff line or an increase of 35 per cent or more in value-added, occurred. The system used a certificate of origin to determine origin; when such a certificate was lacking, or the Korean Customs Authority had a suspicion about the real country of origin, the KCA could request the submission of relevant information from which an appropriate tariff heading could be determined or the ratio of value-added calculated. With regard to rules and marks of origin, his delegation believed that Article IX of the GATT and the Kyoto Convention provided general guidelines, and that Korea's system was operated within the framework of these internationally accepted rules. Korea had notified the system under the Agreement not because the system as a whole was covered by the Agreement, but because the system might involve marking or labelling requirements as defined in Annex 1 of the Agreement. The notification was made to provide information and increase transparency of the system. He

emphasized that only the issue of the marking requirement involved in the system was covered by the TBT Agreement.

25. With regard to the specific issue raised by the delegation of the Philippines, the products in question had been cleared through Korean customs towards the end of December, 1991. Therefore they were not pending clearance any longer. In order to prevent unreasonable delays in customs clearance under the Marks of Origin system, the Government of the Republic of Korea was increasing its training of customs officials; there would be no delay in customs clearance if proper documentation and evidence was provided. Bilateral consultations with the Philippine authorities had been held, but so far no mutually satisfactory solution had been reached. His delegation was not in a position now to give specific answers to the detailed questions asked by the Philippine delegation; however, his authorities were willing to have further consultations with the Philippines authorities under Article 14 of the Agreement.

26. The representative of Finland, speaking on behalf of the Nordic countries, voiced his concern about the Korean Marks of Origin system notified in TBT/91.194. In his view, the system was not in conformity with Article IX of the GATT, the Recommendation of 21 November 1958 (BISD 7S/31) or the TBT Agreement. The marking requirements had already come into force by the time the notification was distributed, thus not providing Parties with an opportunity to comment on the new system before its introduction, as stipulated in the Agreement. The Nordic countries also questioned the objective and rationale of the system; marking requirements usually increased the cost of the product, which would not be to the benefit of the consumer. Furthermore, the requirement that the mark of origin must be made in the exporting country was not in line with the GATT. Furthermore, the mark of origin requirement was discriminatory in character since it was applied only to imported merchandise; it was thus inconsistent with the obligations of the TBT Agreement.

27. The representative of the European Communities said the issue was complex. Lack of transparency was the concern that came to mind first, since the Committee was lacking information. The Mark of Origin system seemed to be very complicated, and he urged the Korean authorities to elucidate it as much as possible. For example, with regard to the new items which had been notified in January 1992 as having been added to the list, it was not easy to know exactly what products were covered.

28. He said that two other aspects were also important. First, the obligation that this kind of system did not discriminate against imported products, and second that it should not cause unnecessary obstacles to trade. In this regard, he questioned how was it possible that the system had to be applied to such a large number of imported products; the rationale of consumer protection had been given, but for a lot of products it was not evident that this was well-justified. Similarly, while marking requirements were permitted under the TBT Agreement, it was not clear in this particular case how they worked, product by product. He also had the feeling that the origin documents which had to be provided were excessive; perhaps they could be justified, but for the moment he did not have enough

information to form a clear judgement. The procedure for confirmation of origin did not appear to be reasonably easy to comply with; and he also had questions regarding the documentation which had to be provided for trans-shipped goods coming from non-origin countries. He therefore repeated the earlier request of his delegation that the Korean authorities provide full information on the system as soon as possible.

29. The representative of Switzerland said that his authorities had also received complaints from Swiss exporters about the Korean system. He expressed his delegation's concern, and urged the Korean authorities to meet Committee members' requests for further information.

30. The representative of the United States associated her delegation with the concerns expressed by other delegations and also asked for more information to be provided urgently.

31. The representative of Singapore registered her delegation's interest in the matter, and said there appeared to be a case of intentional or unintentional harassment of imports and an unnecessary obstacle to trade created by Korea's implementation of its Marks of Origin system. She agreed with the concerns expressed by other delegations. She welcomed the fact that Korea and the Philippines were in consultation, and urged the Korean authorities to be more forthcoming with information so as to resolve the issue within the shortest time possible.

32. The representative of New Zealand supported the request for greater transparency and clarity in Korea's administration of its Marks of Origin system. Transparency lay at the basis of the TBT Agreement and was therefore fundamental. A related concern of his delegation was the apparent delay in the notification in 1991.

33. The representative of Canada associated her delegation with the statement made by the European Communities and with general calls for increased transparency regarding the issue raised by the Philippines. She urged the continuation of consultations between the two Parties consistent with the letter and spirit of Article 14, and hoped a solution would be reached that would not only solve the particular problems raised by the Philippines but would also serve the interests of all exporters.

34. The representative of Australia said that his delegation was also interested in the matter under discussion, and in particular the link between the measure and its stated rationale of consumer protection.

35. The representative of the Republic of Korea said that his authorities believed that the Marks of Origin system was operated in a GATT-consistent manner. The system applied to all countries in a non-discriminatory way, and its main objective was to protect consumers. It was not at all Korea's intention to cause unnecessary harassment of international trade. He recognized that the notification of the system had been late, but because notification was delayed the system had been applied only to shipments which arrived after 1 July 1991. He said that he was not in a position to provide answers to all of the detailed questions asked at this meeting, but

his authorities were willing to provide detailed and specific information to any country which submitted its questions.

36. The Chairman said that the Committee took note of the statements made and noted the intention of the Government of the Republic of Korea to supply further information. Given the number of requests for information, he urged the Government of the Republic of Korea to respond fully and promptly in the Committee, rather than relying upon bilateral exchanges of information.

37. The representative of the European Communities said that it was well known that enquiry points were essential to the working of the Agreement. While many enquiry points made real efforts to respond to written requests for information, some did not. He urged the delegation of Korea to look into this matter and to ensure that Korea's national enquiry point would become more efficient.

38. The representative of New Zealand endorsed the statement of the previous speaker, and recalled comments that had been made at the last meeting by his delegation on the lack of responsiveness of some national enquiry points and the difficulties which the Standards Association of New Zealand had encountered in obtaining timely and complete responses for information. One such difficulty had been encountered with the Korean enquiry point in respect of documentation related to TBT/Notif.91.194. Another concerned the enquiry point of the Czech and Slovak Federal Republic.

39. The representative of the Republic of Korea said the government agency which acted as Korea's enquiry point had done its best to provide the necessary information as soon as possible. Nevertheless, he said that he would pass on the concerns expressed.

40. The Committee took note of the statements made and of the pledge by the delegation of the Republic of Korea to follow up on the complaints made about its enquiry point.

41. The representative of the United States expressed concern over Brazil's pesticide registration regulations promulgated by IBAMA (the Institute of Environment and Renewable Natural Resources). She said that Amendment No. 349/90 had been published on 14 March 1992 in final form with no opportunity provided for comments and no notification to other Parties of the Agreement.

42. She said that the regulation posed significant difficulties for U.S. suppliers. Its effect was to require all data in support of new pesticide registrations or re-registrations to be submitted from studies conducted in laboratories in Brazil. Suppliers of agricultural chemicals would have to go through extensive, expensive and sometimes unnecessary and duplicate testing before being allowed to market their product in Brazil. The cost of generating a full data package was estimated to range between $10-30 million. In addition, insufficient facilities existed in Brazil to conduct the testing; her delegation believed that would put foreign

producers at risk that incorrect and damaging test results would be generated and injure a product's reputation in other markets.

43. She said that the regulations required the automatic re-registration of products every five years, whereas the practice in other Parties was for this to take place only every 15-20 years. Failure to comply with the requirements would result in the product being banned from the market. In the view of her delegation, re-registration should be required only in the event of new scientific evidence which showed reason for concern. There were some forty-seven toxicology or environmental studies which were required by the regulation; many would duplicate currently valid data generated outside Brazil. Also, her delegation had concerns with some of the tests, believing them to be of questionable technical value.

44. She added that a number of relevant TBT Agreement disciplines were involved. Her delegation had raised its concerns in this regard directly with the Brazilian authorities, not least over the lack of notification and the lack of opportunity for comment while the regulation was still in draft form. There were also certain aspects which her delegation believed might lead to unnecessary obstacles to trade under the terms of the Agreement. Her delegation was awaiting a response from the Brazilian authorities for updated information, and she asked the representative of Brazil whether he had any new information which could be given to the Committee today.

45. The representative of Brazil replied that although there was no excuse for the lack of notification of the measure in question, the Brazilian authorities had been trying to cover all organs that were responsible for regulations in this area; when the problem had been drawn to their attention, IBAMA had been included in the meetings which followed the work of the TBT Committee. The problem would not, therefore, recur. When his authorities had been asked for information on the issue they had responded immediately and in full. He said that the problem of duplication of testing occurred in many areas, and Brazil's own exports faced the same problem, for example with regard to electrical appliances. It was not IBAMA's opinion that Brazilian laboratories were inadequate for the purpose of testing. IBAMA was an agency that resulted from the regrouping of a number of other agencies in the area of environment and natural resources, and it had been attempting to answer complaints from international bodies that the environment issue in Brazil was not being dealt with adequately. It may therefore have been the case that they had been overzealous in their activities to ensure that pesticides should not harm the environment or health in Brazil. His authorities would be looking into that and other details of the issue to justify the present form of the regulations, and were ready for further consultations.

46. The observer from FAO said that the Committee might be interested to know that there was in effect an FAO Code of Conduct for international trade in pesticides which touched on the question of registration. FAO also had expert scientific panels providing toxicological evaluations and field test studies within the framework of the FAO/WHO joint meeting on pesticide residues. It was his understanding that these two elements were covered in the broader interpretation of Article 2 of the Code.

47. The representative of the United States welcomed the comments of the Brazilian delegate and looked forward to receiving further information before deciding how to proceed on this matter.

48. She turned to a separate concern, and recalled the problems that her delegation had raised on previous occasions in the Committee with regard to Mexico's textile labelling regulations (TBT/M/40). The problems involved lack of notification and immediate entry into force of the regulations with no opportunity provided for comments. There had subsequently been an informal examination by the Committee of the Agreement's coverage of labelling requirements, with broad consensus that such requirements were covered. A similar situation now existed with regard to new Mexican energy labelling requirements for electrical appliances, in respect of which the Mexican authorities were contending that they had met their obligations by publishing the requirements in the official gazette in November 1991. Her authorities wished to point out, however, that publication fulfilled only part of the obligations for transparency; Article 2.5.2 called also for notification of the measure through the GATT Secretariat. Mexico had never made a notification under the Agreement. The type of information that the Committee expected to receive in notifications was set out in detail in TBT/16.Rev.4. She asked whether the delegation of Mexico was in a position to provide additional information on the regulations in question, or its view on whether labelling requirements were covered by the Agreement.

49. The representative of Mexico said that he took note of the questions raised and would transmit them to his authorities; he would inform the Committee as soon as he had a response. He added that Mexico had recently made its first two notifications under the Agreement, one with regard to testing methods for switches on domestic appliances and the other to carbon bioxide extinguishers. With regard to the informal consultations that had been held on the question of the Agreement's coverage of labelling requirements, his recollection was that they had not been followed up; in his view it would be useful to conclude them.

50. The representative of the United States said that her recollection of the conclusion of the informal consultations was that the Government of Mexico had agreed to report back to the Committee in light of the broad consensus that labelling requirements were fully covered by the Agreement. She asked the Secretariat for clarification.

51. The Secretariat said that as a result of the informal consultations, information on textile labelling requirements that had been notified under the Agreement had been transmitted to the Mexican authorities. The Chairman of the consultations had proposed that the Committee aim to reach some formal understanding on this matter.

52. The Chairman proposed that he consult further to arrive at a conclusion to the issue, and requested the Secretariat to circulate information on the previous informal discussions that had taken place. This was agreed.

53. The representative of the European Communities asked whether information had been provided by the Government of Israel on its enquiry point. The representative of the United States added that Israel had not yet submitted its statement on the implementation of the Agreement in the document series TBT/1.

54. The Committee took note of the statements made and instructed the Secretariat to request Israel to provide the relevant information promptly.

C. Other business

55. The Chairman drew attention to document TBT/W/156 containing a note by the Secretariat on Environmental Technical Regulations and Standards Notified under the Agreement, which had been prepared at the Committee's request at its last meeting.

56. The representative of New Zealand proposed that, without prejudicing future discussion of the document in the Committee, the Committee agree to forward it to the Group on Environmental Measures and International Trade as a factual document which might be useful to its own work. In that way the TBT Committee could play a part in contributing to the overall operation of the GATT.

57. The Committee so agreed.

58. The Chairman noted that at its next meeting the Committee would conduct its thirteenth Annual Review under Article 15.8 of the Agreement, and he urged all signatories to provide the Secretariat promptly and fully with the information which would be necessary to prepare the background documentation for the Review. The Committee agreed to the Chairman's proposal that the next formal meeting should be held in the autumn, with the exact date to be fixed closer to the time by the Chairman in consultation with interested delegations.

Geneva, 10 April 1992

Dear Mr. Director-General,

I have the honour to inform you that the Government of the Russian Federation would like to obtain observer status at the Committee on Technical Barriers to Trade.

I am also instructed to inform you that this request should be considered as a further step in examination of the prerequisites for a future accession of the Russian Federation to the General Agreement and the Agreement on Technical Barriers to Trade. Observer status will give us an opportunity to take fully into account the relevant rules and disciplines of the multilateral trading system, which is of special importance to us at a time of unprecedented economic reforms in my country.

I would appreciate if the present application could be transmitted to the Chairman of the Committee on Technical Barriers to Trade and circulated among the Parties to the Agreement for their consideration.

Please accept, Mr. Director-General, the assurances of my highest consideration.

E. Makeyev
Ambassador
Permanent Representative of the Russian Federation