

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Technical Barriers to Trade

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REQUEST FOR INITIATION OF DISPUTE SETTLEMENT PROCEDURES UNDER ARTICLE 14.4 OF THE AGREEMENT

The following communication, dated 16 February 1984, has been received from the delegation of the European Economic Community.

Request under Article 14.4 of the Agreement for the Committee to investigate problems posed for Community exports by Spanish homologation requirements for heating radiators and electrical medical equipment, with a view to facilitating a mutually satisfactory solution

1. The European Community's request to the Committee, under Article 14.4 of the Agreement, follows the failure of consultations under Article 14.1 and 2 of the Agreement between the Community and Spain, held on 24 October 1983 and 2 February 1984, to reach a satisfactory solution regarding the problems posed by Spanish homologation requirements for heating radiators and electrical medical equipment.

Heating Radiators

2. By Royal Decree No. 3089/1982 of 15 October 1982 the Spanish Government made the sale of fluid-filled radiators and convectors subject to authorisation. The criteria and procedure for such authorisation were established by a Ministerial Order of the Ministry for Industry and Energy dated 10 February 1983, which came into force on 1 March 1983.

Neither of these measures was notified to other Parties to the Agreement until the Community drew the attention of the Spanish authorities to this omission in the consultations held on 25 October 1983. The measures were subsequently notified under Article 2.5.2. of the Agreement and circulated to Parties as TBT/Notif. 83.248, dated 14 December 1983.

3. The Community considered that the content of these regulations and their implementation constituted a breach of the provisions of Article 2

paragraph 1 and Article 5 paragraph 1 of the Agreement, inasmuch as

- imported products were accorded treatment that was less favourable than that accorded to like products of national origin, and
- the application of the regulations had the effect of creating unnecessary obstacles to international trade.

On the first point, the Royal Decree allows Spanish manufacturers of radiators a transitional period of one year from the entry into force of the new requirements (i.e. until 1 March 1984). For imported products, however, authorisation was needed from the date of entry into force of the regulations. Apart from its clearly discriminatory nature, this provision is also contrary to Article 2 Paragraph 8 of the Agreement, which provides that "... Parties shall allow a reasonable interval between the publication of a technical regulation and its entry into force in order to allow time for producers in exporting countries to adapt their products or methods of production to the requirements of the importing country." Moreover, Article 5 of the Agreement, in its paragraphs 1.1 and 1.2, specifically provides for non-discriminatory test conditions and administrative procedures in relation to imported goods.

As to the application of these measures, it appears that the facilities in Spain for testing imported products were not in operation at the time that the measures came into force for foreign manufacturers, and that the single testing centre in operation up to the Autumn of 1983 had, prior to the first round of consultations, not processed any requests for type approval⁽¹⁾. This administrative delay has brought imports of radiators into Spain to a complete halt, and constitutes an unnecessary obstacle to international trade.

4. These problems were discussed at the consultations on 24 October 1983 and the Community subsequently received a letter dated 11 November from the Permanent Mission of Spain in Geneva. In this letter it was stated that the Spanish authorities had decided to modify the legislation

⁽¹⁾ At the time, according to the Spanish authorities there were some 25 such requests pending.

to remove possible discriminatory elements. Although no definite date was given for the implementation of this amendment, it was stated that every effort would be made for the amendment to enter into force well before the expiry of the transitional period on 29 February 1984.

Furthermore the Spanish authorities undertook in the meanwhile to accelerate procedures for type approval of the pending requests so as to ensure that they were completed before the modification of the legislation entered into force.

5. In the light of these assurances the Community informed the Spanish authorities, by letter dated 25 November, of its agreement to suspend provisionally the consultation procedure. However, when no further improvement to the system had occurred by late January 1984, the Community requested a further round of consultations which took place on 2 February.
6. At these consultations it became clear that there was no certainty of the amending legislation coming into effect before the end of the transitional period on 29 February. Furthermore, type approval had only been granted for some of the products of one Community exporter while it appeared that type approval for products of other Community exporters was held up not at the testing stations but at the level of a working committee in the Ministry of Industry, composed of government as well as industry representatives. The Community also noted with concern that the testing procedures involved the supply of economic information (e.g. total production volume domestic market share, origin of production technology) which was hardly relevant to a technical standard. The Community is also concerned by further procedural requirements, involving substantial cost to exporters, which are applied after type approval has been obtained.
7. A further acute problem was also raised regarding imports of electric radiator bodies to be assembled and filled by Spanish manufacturers. A consignment of these bodies has been held up at the Spanish border.

since April 1983 due to insistence that type approval be obtained. It is however impossible for testing to take place until assembly and filling of the bodies have been completed (i.e. after import into Spain).

8. The Community wishes to underline the extent to which its trade interests are affected by the regulations adopted by Spain. Although it is not possible to establish precisely the amount of trade directly affected by these measures, Community exports of radiators to Spain amounted to 3.6 million ECU in 1981 and 4.2 million ECU in 1982.

Since the entry into force of the new legislation on 1 March 1983, exports of the products affected have been halted.

Electrical Medical Equipment

9. At the consultations on 2 February the Community also raised the problem posed by Royal Decree No. 1231/1983 of 20 April 1983 which made the sale of electrical equipment for the monitoring of intensive care patients subject to certification (criteria were established by Ministerial Order of 31 May 1983 which came into force on 20 June 1983). This legislation contains an identical discriminatory provision to that on heating radiators, introducing a transitional period of one year for domestic industry. It had not been notified to Parties.
10. The Spanish delegation stated that it had now received instructions to notify this legislation. Furthermore work was in hand to amend the legislation to render it non-discriminatory.

Conclusion

11. In the light of the prevailing unsatisfactory situation with regard to this legislation, the Community requests the Committee to investigate the problems described above, under Article 14.4 of the Agreement, with a view to facilitating a mutually satisfactory solution.