

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Technical Barriers to Trade

DRAFT MINUTES OF THE MEETING HELD ON 25 APRIL 1984

Chairman: Mr. H.W. Verbeek (Germany, F.R.)

1. The Committee held its second meeting in restricted session on 25 April 1984.

2. The agenda for the meeting was as follows:

A. Committee investigation under Article 14.4 of the Agreement concerning procedures in Spain for type approval of heating radiators and electrical medical equipment.

B. Date of next meeting of the Committee

A. Committee investigation under Article 14.4 of the Agreement concerning procedures in Spain for type approval of heating radiators and electrical medical equipment

3. The Chairman recalled that at its meeting of 29 February 1984, the Committee initiated an investigation under Article 14.4 of the Agreement at the request of the European Economic Community concerning procedures in Spain for type approval of heating radiators and electrical medical equipment. He drew attention to two notifications made by the delegation of Spain in response to the invitation of the Committee at that meeting: the first notification, circulated in document TBT/Notif.84.48 of 13 March 1984, contained the text of the Royal Decree 363/1984 of 22 February 1984 which eliminated discrimination with respect to type approval of imports of fluid-filled radiators and convector heaters. The second, circulated in document TBT/Notif.84.71 of 13 April 1984, communicated the text of the Royal Decree 1231/1983 of 20 April 1983 establishing the applicability of technical standards to electromedical apparatus for monitoring intensive care of patients and the requirement of prior type approval for importation of such products.

4. The representative of the European Economic Community said that, whereas the amendment to the Royal Decree on heating radiators notified recently by the delegation of Spain had put an end to the transitory period allowed for domestic producers, conditions of type approval of imports of this product had not improved. Two approvals had been granted since mid-1983 out of a total of fifteen applications. As a result, exports from the European Economic Community to Spain, situated at around one million ECU per quarter in 1982, decreased to 300, 100 and 150 thousand ECU respectively for the last two quarters of 1983 and the first quarter of 1984. According to the information supplied by Community exporters and

Spanish importers of heating radiators, the following main factors interfered with the effective functioning of type approval procedures: first, technical regulations had been enforced before the laboratories accredited to determine conformity with the regulations were fully operational. Second, the competent Spanish authorities had not adequately informed the applicants for type approval of the progress of their applications through the various stages of the administrative procedures, of the results of tests carried out and of corrective action necessary to assure conformity with the technical requirements. Third, the participation of a representative of the competing domestic industry in the decision-making process of the Committee of the Ministry of Industry and Energy charged with examining applications for approval may have slowed down the procedures for approval of imported products. Fourth, the enquiries directed to applicants for type approval concerning their products involved submitting information of a general economic character or disclosing confidential data on the technological methods used; these requirements exceeded the information needed to determine conformity with the technical specifications. He also reiterated the concern previously expressed by his delegation that now that the transitory period had come to an end, the study of applications lodged for products originating in the European Economic Community may be delayed in order to give preference to new applications introduced by domestic producers from March 1984 onwards.

5. The representative of the European Economic Community also referred to the notification by Spain containing the Royal Decree establishing the applicability of technical standards to electrical medical equipment and said that this notification was incomplete because it did not include information on the implementing decree of the Ministry of Industry and Energy dated 21 May 1983. He also pointed out that Spain had not fulfilled point (iii) of the decision of the Committee of 29 February 1984 inviting it to supply detailed information on the procedures for type approval of electrical medical equipment. His delegation was not able to take a definite position on the matter before such information was made available. In particular, it was necessary to know more about certain problems which European Economic Community exporters had drawn to his delegation's attention, such as the existence of a parallel case-by-case product approval procedure and of technical information requirements which exceeded those normally needed and encroached on the confidentiality of the manufacturing process.

6. The representative of Spain said that technical regulations and related administrative procedures for type approval of certain goods and services had been systematically introduced to meet the demands of consumer groups which had become particularly active in Spain since 1975. These new sets of rules as well as the standards used were similar to those applied by most developed countries, but they constituted a novelty for domestic firms and for foreign firms producing for the Spanish market. His delegation expected that the consultations held with the delegation of the European Economic Community and the investigation currently pursued by the Committee on the specific aspects of type approval procedures practised by Spain would enable the responsible authorities in his country to conform more strictly to Spain's obligations under the Agreement.

7. In connection with the details of the procedures for type approval of electrical medical equipment, the representative of Spain informed the Committee that applications submitted to the competent administrative body must be accompanied by documentation which included the producer's number on the industrial register, information on tests performed by an accredited laboratory, a report from the testing laboratory indicating the methods used by the producer to assure quality control of the product, and a technical note explaining the characteristics and the performance of the product. He recognized that foreign suppliers had failed to submit complete documentation in all cases mainly due to the lack of communication with the Spanish authorities requesting such information. However, he asserted that under Spanish law any interested party had a right to be informed of the state of investigations conducted on a product, and his delegation was ready to examine any specific difficulty that had arisen in this regard with other delegations concerned. With regard to the concern expressed by the representative of the European Economic Community that examination of applications by importers of radiators may be delayed, he said that all applications were addressed in a chronological order and no preference was given to domestic producers. Finally, he informed the Committee that, pursuant to the consultations held with the delegation of the European Economic Community, his authorities had proceeded to amend the Royal Decree 1231/1983, reproduced in document TBT/Notif.84.71, bringing to an end the transitional period granted to domestic producers of electrical medical equipment. A decree issued by the Council of Ministers to this effect would shortly be published in the Official State Bulletin.

8. The representative of the United States informed the Committee that his delegation had requested consultations with the delegation of Spain under Article 14, paragraph 1 of the Agreement regarding procedures for type approval of electrical medical equipment, including problems of access to certification and excessive information requirements which significantly affected exports of such products from the United States. The representative of Spain said that consultations would be held shortly in respect of the representations made by the delegation of the United States.

9. In response to a request by the representative of the European Economic Community, the Committee decided that Spain should as soon as possible communicate to it in writing details of the procedures for type approval of electrical medical equipment.

10. The representative of the European Economic Community further requested the Committee to adopt the following general recommendations to the delegation of Spain concerning type approval procedures for heating radiators and electrical medical equipment:

- (i) to ensure that tests of conformity to technical regulations are not made obligatory on Spanish territory as long as testing laboratories have not been designated or made operational;
- (ii) to take the necessary measures so that exporters or importers of products originating from the territory of other Parties may be informed of the progress of the type approval procedure for their product, at their request and within a reasonable time of the request being made, and to communicate the results of tests, if so requested, so as to allow corrective measures to be taken if necessary;

- (iii) to ensure that applications for type approval are dealt with and, if possible, the examination of them completed in the order in which they have been submitted to the competent authorities;
- (iv) to adapt their type approval procedures so as to base the decisions of the competent authorities upon the advice of independent technical experts;
- (v) to limit the information which the exporter or importer is obliged to provide in order to obtain type approval to what is indispensable in order to establish the conformity of the product to technical specifications, to the exclusion of economic information.

11. The representative of the European Economic Community added that although the above principles applied to both products under consideration, his delegation only requested the Committee to adopt its proposal in respect of heating radiators, pending receipt of the information requested of Spain on electrical medical equipment. He further requested the Committee to note that the Spanish authorities had agreed, in bilateral consultations, to take position by 25 July 1984 at the latest on all the currently pending applications for type approval, as well as to communicate test results if so requested by exporters or importers. If the Committee agreed to take action as requested, this would constitute, in the view of his delegation, a mutually satisfactory solution in respect of heating radiators.

12. The representative of Spain, expressed his delegation's support for the principles embodied in the proposals put forward by the European Economic Community. Indeed, these principles had general validity and his delegation would consider raising the question whether they could be observed by all signatories at a future regular meeting of the Committee. Such an approach would assist the Spanish authorities in demonstrating to domestic consumer groups the usefulness of the Agreement in helping Spain raise its standards and practices to the level of more advanced countries, and in convincing protectionist lobbies that being a member of the Agreement gives Spain an opportunity to benefit from the experience of other countries in dealing with technical requirements and the administration of technical regulations. Commenting on the situation in Spain regarding various elements of the EEC proposals, he said that in practice, no technical regulation had been enforced before the relevant testing laboratories had entered into operation. There were at present two laboratories in Spain for testing heating radiators and three for electrical medical equipment, and more would be set up. Industry representatives sat in the technical committees of the Ministry of Industry and Energy in their capacities as technical experts in the products concerned but final decisions on type approval were always taken by the administrative authorities. The rôle of the technical committees was purely advisory. Recognizing that some of the requests for information from importers and exporters may have been excessive, he said that this practice would be discontinued subject to amendment of the relevant legislation.

13. The representative of the United States stated the understanding of his delegation that the action requested of Spain by the European Economic Community would apply equally to imports of heating radiators and electrical medical equipment originating in all Parties to the Agreement.

14. The representatives of Austria, Brazil, Canada, Finland, (speaking for the Nordic countries,) and the Philippines wished to reflect further on the proposals put forward by the delegation of the European Economic Community before taking any action in the Committee. They proposed to revert to the issue, notably in the light of the additional information to be supplied by Spain.

15. The Committee agreed to revert to the principles laid down in the proposals of the European Economic Community at its next meeting. Meanwhile, it took note of the agreement reached between the European Economic Community and Spain that Spain would take a position by 25 July 1984 at the latest on all currently pending applications for type approval.

16. The representative of Spain said that at the next meeting of the Committee, his authorities would be able to report on the position taken with regard to all applications for type approval submitted before 1 May 1984, as well as to communicate relevant test results if so requested by importers and exporters. The Committee took note of this statement.

17. The representative of the European Economic Community suggested that the Committee pursue its investigation of the matter at a meeting to be held in conjunction with the next regular meeting of the Committee.

18. The representative of the United States, noting that this may result in an extension of the period of investigation laid down in Article 14 of the Agreement, said his delegation could agree to such a request for extension by the European Economic Community on the understanding that it would not constitute a precedent.

19. The Committee agreed to pursue its investigation of the matter under Article 14.4 in conjunction with its next regular meeting.

B. Date of next regular meeting of the Committee

20. The Committee agreed to hold its next regular meeting on 10 and 11 July 1984.