

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Technical Barriers to Trade

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PREPARATIONS FOR THE FIRST THREE-YEAR REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT

Communication from the United States

In TBT/W/49, of May 3, 1982, the U.S. Delegation circulated a list of topics to be included in the three-year review of the operation and implementation of the Agreement. At the May 26 and 27, 1982, Committee on Technical Barriers to Trade (Committee) meeting the U.S. Representative explained the intentions of his delegation under each of the items listed in TBT/W/49. His explanations are found in paragraph 27 of TBT/W/10 of June 21, 1982.

At the May 26 and 27, 1982, meeting of the Committee it was agreed that written proposals, questions or topics for discussions in connection with the three-year review could be submitted to the GATT Secretariat so as to allow time for any informal consultations that might be necessary to prepare for the review.

The U.S. Delegation has the following written proposals on each of the items listed in TBT/W/49, for consideration by delegations before the three-year review of the Agreement on October 14 and 15, 1982.

Item 1: Procedures for Notification

Proposal: Regarding the procedures used for signatory countries to notify other signatory countries of proposed regulations, the Committee should:

(1) develop criteria that will assist signatories in determining which proposed technical regulations may have a significant effect on the trade of other signatories (Article 2.5); and

(2) recommend that the current comment period be lengthened from six weeks to 60 days (and, with regard to complex regulations or rules of certification systems to 90 days).

Background:

Criteria. Signatories do not all use the same criteria for identifying and notifying proposed regulations that might significantly affect trade. Since each signatory applies its own criteria or methods for making this determination, there

is no overall consistency in the types of proposed regulations which are notified to the GATT Secretariat. In the absence of uniform criteria, some signatories may narrowly define the types of proposed regulations which could significantly affect trade. These signatories, therefore, may not report proposed regulations which would be of interest to other signatories. Broad definitions, on the other hand, could lead to reporting proposed regulations of little or no interest to other signatories, imposing an unnecessary burden on the notification system.

Possible criteria for assessing the trade significance of proposed regulations could include:

- dollar volume and/or quantity of imports from (and in some cases exports to) signatory countries, individually and collectively;
- market size of the product in the reporting signatory country;
- potential for market growth for the product in the reporting signatory country; and
- the cost or lead time involved for exporters in other signatory countries to comply with the proposed regulation.

Either of the latter criteria, cost and time, can have a major impact on trade. For example, a minor labelling change may not involve significant costs for exporters in other signatory countries. However, there may be a significant lead time required to exhaust the stock on hand that bears the old label.

Comment Period. The Committee has recommended that the comment period on proposed regulations and certification systems be at least six weeks (TBT/W/35). However, experience has shown that in many instances six weeks is not long enough to fully allow interested parties to obtain the full text of foreign regulations and rules of certification systems, translate them, analyse translated documents and provide comments through signatory governments to other signatory governments.

This situation could be alleviated by extending the recommended comment period to 60 days, or 90 days when the proposed regulations or rules of certification systems are particularly complex. Should the Committee agree to extend the comment period, the United States will endeavor to undertake whatever domestic measures are required to ensure that foreign signatory countries are provided 60 to 90 days to comment on proposed U.S. regulations that may significantly affect the trade of other signatory countries.

Item 2. Applicability of the Agreement to Processes and Production Methods (PPMs)

Proposal: The Committee should establish a working party to examine generally the subject of the Agreement's coverage of PPMs with the aim of arriving at a consensus interpretation of the Agreement's applicability to PPMs.

Background: The question of the applicability of the Agreement to PPMs was first raised by the U.S. delegation in connection with a trade problem with another signatory delegation. The specific problem at that time concerned an immersion chilling system for poultry. The United States alleged that the signatory country was creating an "unnecessary" obstacle to trade and acting in a discriminatory fashion in applying its regulation to U.S. suppliers while allowing domestic suppliers a temporary derogation. The signatory country countered that the Agreement was "clearly not intended" to cover PPMs except under very special circumstances. Thus far, efforts to reach a consensus among delegations have been in vain.

Since Spring 1980, the U.S. Delegation has discussed the PPM issue in bilateral meetings with many signatory delegations. In addition, the U.S. Delegation has transmitted to other delegations an "illustrative list" of measures which fall in the category of PPMs (TBT/W/33). Following that, the U.S. Delegation transmitted to other delegations case studies on industrial and agricultural PPMs (TBT/W/46), based on items included in the illustrative list.

Serious problems may arise in the future, including the re-emergence of the issue of the immersion chilling of poultry. Additional potential problems include differences in slaughter and other processing methods between the United States and other signatory countries. In view of these PPM problems, current and potential, the U.S. Delegation believes there should be agreement among signatory delegations that PPMs should be covered by the dispute settlement provisions of the Agreement.

Therefore, while recognizing the position taken by various delegations with regard to the applicability of Article 14 of the Agreement to PPMs, the Committee should establish a working party to examine this issue and report back to the Committee upon completion of its task. The working party could first discuss the significance of PPM regulations in international trade and the need for effective rules governing them. Second, the working party could consider the Agreement as a framework for such rules -- in particular, the adequacy of Article 14.25. In this regard, the working party could examine the technical aspects of PPMs in the light of performance rather than design (Article 2.4), i.e. whether

the performance of a product in some cases must be assured by the regulation of PPMs rather than product specifications. The working party might consider inviting technical experts to participate. The working party need not be charged with making specific recommendations on the interpretation of the Agreement, since that might prejudice the participation of all interested delegations. Participation in the working party should be open also to observer delegations.

The approach outlined above would serve to (1) keep the subject of PPM before signatory countries, (2) provide an opportunity to demonstrate the importance of PPMs commercially and the problems that they pose for trade, and (3) set the stage for an unanimous consensus of the Committee on the Agreement's applicability to PPMs.

Item 3. Meeting of Inquiry Points.

Proposal: The Committee should schedule regular meetings of the inquiry point representatives once every year-and-a-half. The next meeting would be held at the time of the Committee's Spring 1983 meeting to address common problems and to improve procedures for information exchange among signatory countries.

Background: The inquiry point meeting held in October, 1981, gave the participants an opportunity to learn about one another's standards information activities and problems. The meeting provided a productive forum and resulted in more efficient exchange of information.

Regular meetings would enable signatories to learn about new activities and give representatives an opportunity to resolve problems and develop concepts for providing more effective services. Signatory countries who have not yet developed fully operational inquiry points could also exchange ideas with those signatories who have operational inquiry points.

Suggested topics for future meetings include:

- computerized information systems;
- criteria for identifying trade-significant regulations;
- availability of rules of certification information;
- procedures for translating regulations;
- length of comment periods; and
- updating information on inquiry point addresses and available information.

Item 4. Regional Standards-Related Activities.

Proposal: The Committee should keep abreast of the activities of regional standardizing and certifying bodies by, for example, inviting representatives of such bodies to address the Committee on their procedures and how they relate to those embodied in the Agreement.

Background: At the Committee's October, 1981, meeting it was agreed that the Secretariat would transmit agreed questions to a number of regional standardizing and certifying bodies (TBT/M/8). The GATT Secretariat has compiled the questions and replies that have been received in TBT/W/42 (and Addenda 1 through 5).

Information has been received on the following six regional bodies:

- the United Nations Economic Commission for Europe (UNECE);
- the European Committee for Electrotechnical Standardization (CENELEC);
- the Nordic Certification System for Conformity with Harmonized Nordic Standards (INSTA);
- the Pacific Area Standards Congress (PASC);
- the European Free Trade Association (EFTA);
- the Pan American Standards Commission (COPANT).

The Committee has been addressed by representatives of international standardizing bodies in the past to acquaint delegations about their procedures and how they relate to those embodied in the Agreement. It would benefit all delegations to listen to similar presentations by representatives of regional standardizing and certifying bodies. As in the past, such addresses would be in the form of presentations rather than open fora where questions would be solicited from delegations. It would prove useful, however, to request delegations that so choose to provide agreed questions to representatives of regional standardizing and certifying bodies before they made their presentations.

Item 5. Examination of the Standards Notifications in the Inventories of Non-Tariff Measures

Proposal: The Committee should examine standards-related notifications on the NTM Inventories with a view toward eliminating outdated notifications and resolving remaining problems.

Background: The GATT maintains one industrial inventory and two agricultural inventories of non-tariff measures notified by contracting parties. No notification can be eliminated from the inventories without the consent of the notifying party, and work has been extraordinarily slow in dealing with the listed measures.

As of June 1, 1981, there were 1150 notifications listed in the industrial inventory. Of the five GATT categories of industrial non-tariff measures, category three is listed as standards and consists of four sub-categories:

- A. Industrial standards,
- B. health and safety standards,
- C. other standards concerning product content,
- D. requirements concerning marking, labelling, measurement and packaging.

In the agricultural series, two NTM Inventories cover:

- A. marketing, and packaging and labelling standards; and
- B. health and safety standards.

As of December 8, 1976, the NTM Inventory on Agricultural Marketing Standards and Packaging and Labelling Standards listed approximately thirty notifications, citing thirteen countries as maintaining regulations which may constitute NTMs. Eleven of these countries are signatories of the Agreement. As of August 11, 1976, the NTM Inventory on Agricultural Sanitary and Phytosanitary Regulations listed approximately fifty-five notifications, citing twenty-three countries as maintaining regulations which may constitute NTMs. Eighteen of these countries are signatories to the Agreement. These two agricultural NTM inventories are in the process of being updated.

Since the NTM Inventories predates the TBT Committee they were intended to be separate from the Agreement's provisions. It would be beneficial both in terms of resolving needless items on the NTM Inventories, and in terms of bringing standards and certification problems to the attention of Committee representatives who are perhaps unaware of them, for the Committee to examine the standards-related portions of the NTM Inventories.

Item 6. Applicability of the Agreement to Services

Proposal: The Committee should request the Secretariat to offer its assistance to any other Committees (existing or to be established) that may address the issue of the role of services in international trade.

Background: A major initiative is to be made at the GATT Ministerial Meeting in November, 1982, concerning the role of services in international trade. In discussing this issue, experts have often cited the type of provisions included in the Agreement on Technical Barriers to Trade as illustrative of the type of provisions that might be included in work on the role of services in international trade, i.e. the

provisions dealing with preparation, adoption and applications of specifications and certification systems. For example, the Working Party of the Trade Committee of the the Organization for Economic Cooperation and Development (OECD) has produced a series of studies on services and trade. A recent draft of the study on construction/engineering and consultancy services (TC/WP(82)20), makes numerous references to the Agreement on Technical Barriers to Trade.