

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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Agreements and Arrangements

AGREEMENT ON TECHNICAL BARRIERS TO TRADE: ASPECTS
OF THE AGREEMENT PROPOSED FOR NEGOTIATION

Note by the Secretariat

1. At the meeting of the Group on 27 May 1987, the secretariat was requested to prepare factual background notes on those aspects of the MTN Agreements and Arrangements which had been raised in the discussions (MTN.GNG/NG8/2, paragraph 11). The present note provides background information on the issues relevant to the Agreement on Technical Barriers to Trade identified by the delegations of the United States (MTN.GNG/NG8/W/1, Section B), Japan (MTN.GNG/NG8/W/6), the European Economic Community (MTN.GNG/NG8/W/8) and India (MTN.GNG/NG8/W/9, Section (iv)) and also communicated by the Chairman of the Committee on Technical Barriers to Trade (MTN.GNG/NG8/W/13).
2. The note gives a brief description of each of the issues identified, in the light of the provisions of the Agreement on Technical Barriers to Trade, and summarizes the main points raised in the past discussions of the issue in the Committee. Where applicable, the note also includes information on relevant action taken.
3. This information should not be regarded as exhaustive. The intention is to provide sufficient information on earlier discussions for an understanding of the issues in the context in which they have been raised, and on any relevant developments, including actions or decisions that might have followed from such previous consideration.

4. The contents of this document are as follows:

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A. ITEMS RELATING TO THE FURTHER IMPROVEMENT OF THE AGREEMENT

1. CODE OF GOOD PRACTICE FOR NON-GOVERNMENTAL
STANDARDIZING BODIES(a) Issues raised in MTN.GNG/NG8/W/8 and 13

5. "In order to make the obligations already laid down in Articles 4, 6 and 8 of the Agreement more concrete, and to provide some yardstick by which the performance of both Parties and private bodies could be measured, Parties might be obliged to take all reasonable measures to persuade private bodies to adhere to a voluntary code of good practice. This Code (to be drafted by the Committee) might include existing obligations of transparency, non-discrimination, etc., imposed on such bodies under the Agreement, perhaps in a more detailed or practical form."

6. "Parties might notify to the GATT the names of the private organizations adhering to the Code, thereby providing a "register" by means of which the persuasiveness of governments in advocating the principles of the Agreement could be measured."

(b) Description of the issue in the light of the relevant provisions of the Agreement

7. Non-governmental standardizing bodies have an important rôle in the standardization work carried out in the territories of a number of Parties. Articles 4, 6 and 8 of the Agreement prescribe the obligation of Parties in respect of non-governmental standardizing bodies. The aim of these provisions is to ensure that these bodies comply with the basic obligations of the Agreement while taking into account the fact that only central governments have accepted obligations under the Agreement. Parties are therefore required to "take such reasonable measures as may be available to them to ensure" that these bodies comply with the relevant provisions of the Agreement. Article 14.24 enables a Party to invoke the dispute settlement procedures in cases where it considers that its trade interests are significantly affected by another Party's failure to achieve satisfactory results under Articles 4, 6 and 8.

8. Under the exemptions contained in Articles 4.1 and 8.1, Parties are not obliged to take reasonable measures to ensure that non-governmental bodies notify proposed technical regulations and rules of certification systems. However, there are obligations to take reasonable measures to ensure that copies of proposed or adopted technical regulations, standards or certification systems are provided, that they can be commented upon and that comments and the results of discussions can be taken into account. (Parties have these obligations, provided that comments and discussion of comments relating to technical regulations proposed or adopted by non-governmental bodies may also be with interested parties in other

Parties; and provision of copies of proposed and adopted certification systems and notifications, comments and discussions of comments relating to adopted certification systems are through Parties). Information on technical regulations, standards and certification systems adopted, proposed or operated by non-governmental bodies can also be obtained through the enquiry points established in individual Parties under Articles 10.1 and 10.2

(c) Points raised in previous discussions

9. One Party held the view that with the growing trend in some Parties to reduce the direct involvement of central government authorities in standards-related activities, the activities of non-governmental standardizing bodies would become increasingly important. Parties should, therefore, exercise their responsibility to ensure the observance of the objectives of the Agreement as regards transparency and non-discrimination by non-governmental bodies by drawing up a voluntary code of good practice which would define more direct obligations in respect of the activities of these bodies. It was suggested by another Party that there should be adequate opportunity for non-governmental bodies to contribute to the development of the proposed code (TBT/M/20, paragraph 39, TBT/M/21, paragraphs 51-54).

(d) Committee action

10. Following a request by the Committee in 1981, and based on a feasibility study (TBT/W/36), the secretariat compiled factual information on the activities of approximately sixty individual standards-writing and certifying bodies operating in the territories of different Parties, which was circulated in document TBT/W/44 and Addenda. At that time, the Committee reached no conclusions on the relevance of this information to its work (TBT/M/7, paragraph 7, TBT/M/8, paragraphs 56-57, TBT/M/9, paragraphs 15-18, TBT/M/10, paragraphs 21-27).

11. In the context of the second three-year review held in 1985, the European Economic Community submitted an idea concerning non-governmental standardizing bodies. (TBT/23) This idea is similar to the issue raised in the NG8. There were discussions of this idea at the twentieth and twenty-first meetings of the Committee, but no action was taken (TBT/M/20, paragraph 39, TBT/M/21, paragraphs 51-54).

2. VOLUNTARY DRAFT STANDARDS AND THEIR STATUS

(a) Issues raised in MTN.GNG/NG8/W/9 and 13

12. "Many parties are not notifying voluntary draft standards although these are national standards. In some cases, even though these are not national standards, their wide adoption by the local industry gives them a status similar to that of national standards. Article 2.5.2 requires notification only of technical regulations. Considering that many voluntary standards can hinder trade because of their wide adoption, it is essential that voluntary standards covering products of trade significance are also notified."

(b) Description of the issue in the light of the relevant provision of the Agreement

13. According to definition 3 in Annex 1, the term "standard" for the specific purposes of the Agreement covers technical specifications approved by a recognized standardizing body (or a national standardizing system) with which compliance is not mandatory. However, there may also exist technical specifications which are not approved by a recognized standardizing body, but which may widely be used by the national industry. Technical specifications prepared by individual companies for their own production or consumption requirements are not covered by the Agreement.

14. While obligations under Articles 2.5.2 and 2.6.1 relating to notifications apply only to proposed or adopted technical regulations, preparation, adoption and application of standards that substantially deviate from international standards and have a significant trade effect are subject to the requirements under Article 2 relating to transparency, including public notice of proposed standards (Article 2.5.2), provision of copies of proposed or adopted standards to interested parties in other Parties (Article 2.5.3 and 2.6.2), discussion and consideration of comments presented by interested parties (Articles 2.5.5 and 2.6.3) and publication of adopted standards (Article 2.7). Furthermore, information about any standards adopted and proposed by central and local government bodies or by non-governmental standardizing bodies within the territory of a Party may be obtained through the enquiry points established under Articles 10.1 and 10.2.

(c) and (d) Points raised in previous discussions and Committee action

15. No discussion or relevant Committee action is recorded on this point in the minutes of the meetings of the Committee.

3. INFORMATION ON VOLUNTARY STANDARDS
BEING MADE MANDATORY BY LEGISLATION

(a) Issues raised in MTN.GNG/NG8/W/9 and 13

16. "In some cases, voluntary standards are made mandatory as they are referred to in legislation. This information should be also notified to other Parties. In many cases, statutory orders under different pieces of legislation make standards mandatory. This information should be notified as this changes the status of the voluntary standards."

(b) Description of the issue in the light of the relevant provisions of the Agreement

17. In definition 2 in Annex 1, for the specific purpose of the Agreement the meaning of the term "technical regulation" is given as a technical specification with which compliance is mandatory. An explanatory note further specifies that the definition of technical regulation covers also a standard of which the application has been made mandatory not by separate regulation but by virtue of a general law. (The tenor of this explanatory note is the same as the definition of mandatory standard under section 11.4 of the ISO/IEC Guide 2-1986 on "References to standards in regulations".) Therefore, the provisions on notifications of technical regulations under Article 2.5.2 of the Agreement already apply to voluntary standards which are made mandatory by statutory orders or legislation.

(c) and (d) Points raised in previous discussions and Committee action

18. This issue has not been discussed previously. There is no relevant Committee action.

4. ESTABLISHING A METHOD OF ENSURING COMPATIBILITY OF STANDARDS
ISSUED BY RECOGNIZED NATIONAL BODIES AND OTHER
STANDARDIZATION BODIES WITHIN PARTIES

(a) Issues raised in MTN.GNG/NG8/W/9 and 13

19. "This is being suggested with a view to help in operating the GATT Standards Code provisions as far as local standards bodies are concerned. In many cases, the country has more than one body formulating standards and it becomes difficult to get information about standards being formulated by the different bodies in the country. Therefore, there should be a national system within the country so that the national body can be made responsible for providing information and ensuring compatibility of standards issued by other recognized bodies within the country."

(b) Description of the issue in the light of the relevant provisions of the Agreement

20. Under Article 2 Parties are required to observe the basic obligations under the Agreement, including those relating to transparency, with regard to formulation of standards by central government bodies, whereas, under Articles 3 and 4 they are required "to take such reasonable measures as may be available to them" to ensure that local government and non-governmental bodies operating in their territories comply with the relevant obligations on transparency. Information about the formulation of standards by central and local government bodies and by non-governmental bodies can be obtained through the enquiry points established under Articles 10.1 and 10.2 of the Agreement. However, no provisions exist which confer responsibility to the recognized national body for ensuring compatibility of standards issued by other standardization bodies within the territories of Parties.

(c) Points raised in previous discussions

21. There has been no previous discussion of this issue as regards standards. In the past the Committee has addressed the problem of gathering early information by authorities responsible for notification in individual Parties on technical regulations and certification systems proposed by different regulatory authorities. According to the procedures agreed in this connection Parties should specify the relevant measures and arrangements in their statements on implementation and operation of the Agreement (TBT/16/Rev.4, Section A2(f)).

(d) Committee action

22. No relevant Committee action has been taken.

5. TRANSPARENCY ON BILATERAL STANDARDS-RELATED AGREEMENTS

(a) Issues raised in MTN.GNG/NG8/W/1 and 13

23. "The operation of the Agreement would be improved through the negotiation and implementation of a requirement that the Parties notify other Signatories of any bilateral agreements reached through formal and informal discussions."

(b) Description of the issue in the light of the provisions of the Agreement

24. In their statements on implementation and administration of the Agreement, several Parties have informed the Committee of the bilateral agreements or arrangements that they have concluded with other Parties at

the public and private level. Document TBT/W/90 contains an illustrative list of bilateral arrangements on testing and inspection, which is based on these statements, as well as the data available to ILAC Task Force F and to the UN/ECE Government Officials Responsible for Standardization Policies. There is no indication, however, whether these arrangements have been concluded under Article 5.2 of the Agreement which encourages mutual acceptance of test results.

(c) Points raised in previous discussions

25. This issue was raised in the Committee by a Party which considered that transparency on bilateral standards agreements could assist Parties in ensuring that most-favoured-nation (m.f.n) treatment is applied as required under the relevant provisions of the Agreement. Even if there were no infringement of the m.f.n. principle, such transparency would benefit all Parties by providing illustrations of the range and type of bilateral agreements that exist in the standards-related area, including information on the technical aspects of these agreement.

26. Another party questioned the feasibility of obtaining information on bilateral standards agreements which were mainly concluded between non-governmental bodies operating in the territories of Parties. Agreements concluded under the jurisdiction of Parties often included understandings and declarations which delegated authority to non-governmental or regional standardizing bodies operating in the field. In this connection, it was suggested that terms comparable to those in Article 10.2 of the Agreement, concerning enquiries on the activities of non-governmental bodies within the territories of Parties, could be applied to the case of bilateral standards-related agreements concluded by non-governmental bodies. It was also suggested that Parties might seek the co-operation of private bodies operating in Parties in order to obtain information on bilateral arrangements concluded through contracts under private law. Several Parties cautioned against over-burdening the notification system under the Agreement with such requirements. (TBT/M/20, paragraphs 45 and 47, TBT/M/23, paragraph 24, TBT/M/24, paragraphs 37-42, TBT/21, and TBT/W/96)

(d) Committee action

27. In the context of the second three-year review, the Committee considered a proposal by the United States for notification of bilateral standards-related agreements concluded between Parties (TBT/M/20, paragraphs 45-46, TBT/21). The Committee pursued the discussion of the matter at its twenty-third and twenty-fourth meetings on the basis of a revised proposal by the United States (TBT/M/23, paragraph 24, TBT/M/24, paragraphs 37-42, and TBT/W/96) and a proposal by the Nordic countries which suggested the use of enquiry points' facilities established under Articles 10.1 and 10.2 in order to exchange information on bilateral standards-related agreements concluded between governmental and

non-governmental bodies (TBT/W/100). At its twenty-fifth meeting the Committee agreed to amend its previous recommendation on "enquiries which the enquiry points should be prepared to answer" to read:

"The enquiry point(s) of a Party should be prepared to answer enquiries regarding the membership and participation of that Party, or of relevant bodies within its territory ... in bilateral arrangements, with respect to a specific product or group of products. They should likewise be prepared to provide reasonable information on the provisions of such systems and arrangements." (TBT/M/25, paragraph 16 and TBT/16/Rev.4, section E.3)

6. TRANSPARENCY ON REGIONAL STANDARDS ACTIVITIES

(a) Issues raised in MTN.GNG/NG8/W/1 and 3

28. "The operation of the Agreement would be improved through the negotiation of a requirement that the Parties to the Agreement ensure that regional standardization bodies of which they are members adopt effective provisions on transparency."

(b) Description of the issue in the light of the relevant provisions of the Agreement

29. According to definition 5 in Annex 1, a regional body or system is one whose membership is open to the relevant bodies of only some of the Parties. Most Parties are members or participants of one or more regional bodies or systems.

30. In terms of Articles 2.9 and 9.2, Parties are required to "take such reasonable measures as may be available to them to ensure that regional bodies of which they are members or participants" provide transparency on their standards-development activities, in accordance with the relevant provisions of the Agreement. Under Article 2.10 Parties are also required to follow the procedures of the Agreement as regards publication, notification, comments and discussion and taking into account of comments when adopting a regional standards as a technical regulation or standard in their countries.

31. Information about technical regulations, standards and certification systems adopted or proposed by regional standardizing or certification bodies of which relevant bodies in the territories of Parties are members or participants can also be obtained through the enquiry points established under Article 10.1 and 10.2 of the Agreement. The following recommendation on "enquiries which the enquiry points should be prepared to answer" has been adopted to reinforce the provisions in these Articles:

"The enquiry point(s) of a Party should be prepared to answer enquiries regarding the membership and participation of that Party, or

of relevant bodies within its territory ... in regional standardizing bodies and certification systems ..., with respect to a specific product or group of products. They should likewise be prepared to provide reasonable information on the provisions of such systems and arrangements." (TBT/16/Rev.4, section E.3)

(c) Points raised in previous discussions

32. The Committee addressed the question of transparency on the activities of regional bodies in the context of its wider discussion on the subject of development of regional standards activities and its effect on trade of non-member Parties. One Party considered that suppliers in non-member countries having a legitimate interest in the activities of regional standards bodies should have access to information on the development of regional standards and rules of certification systems and on the opportunities available to non-members for giving their comments on the formulation of certification procedures.

33. Some Parties considered that Parties, members of regional bodies, did not have the regulatory means which would enable them to assume direct responsibility for these bodies. The Agreement set a code of conduct in order to ensure the compliance of regional bodies with its various provisions. The "best endeavours" clause had been introduced under Articles 2.9 and 9.2 in view of the difficulties involved in imposing binding obligations on governments members of regional standards bodies in which each member had one vote (TBT/M/7, paragraphs 40-47, TBT/M/20, paragraph 47 and TBT/M/23, paragraph 26).

(d) Committee action

34. There was an extensive exchange of views on the subject of regional standardization bodies in the sixth to tenth meetings of the Committee held in 1981-1982 (TBT/M/6, paragraph 30, TBT/M/7, paragraphs 40-47, TBT/M/8, paragraphs 49-55, TBT/M/9, paragraphs 12-14, TBT/M/10, paragraphs 15-19, TBT/W/32), on the basis of a secretariat paper which contained details of membership, main publications, a brief account of activities and a summary of the operating rules of eight intergovernmental and six non-governmental bodies (TBT/W/30) and replies to an agreed set of questions transmitted to the UN/ECE (United Nations Economic Commission for Europe); CENELEC (European Committee for Electrotechnical Standardization), INSTA (Nordic Certification System for Conformity with Harmonized Nordic Standards), PASC (Pacific Area Standards Congress), EFTA (European Free Trade Association), COPANT (Pan American Standards Commission) and CEN (European Committee for Standardization) (TBT/W/44 and Addenda 1-6). Following a proposal by the United States in the context of the first three-year review of the operation and implementation of the Agreement under Article 15.9 (TBT/12 TBT/M/11, paragraphs 30-33, TBT/M/12, paragraphs 14-15, TBT/M/13, paragraphs 35-36), representatives of the following bodies were invited to

make presentations on their procedures and how they related to those embodied in the Agreement: NORDTEST (TBT/M/14, Annex), CENELEC, PASC (TBT/M/15, Annex), CEPT (European Conference of Post and Telecommunications (TBT/M/16, Annex 2).

35. On the occasion of the second three-year review of the Agreement in 1985, the Committee briefly discussed a proposal by the United States which suggested that Parties should ensure that regional standardizing bodies of which they are members adopt transparency provisions consistent with their obligations as Parties to the Agreement. The Committee took no action on this proposal (TBT/M/20, paragraphs 47-48, and TBT/21).

36. At the twenty-third meeting of the Committee held in October 1986 it was stated by the United States that, under its current procedural rules, CEPT developed recommendations or technical specifications without the participation of suppliers from other sources including the member countries. Suppliers would only have the opportunity to make comments on the technical specifications developed by CEPT once these were proposed as technical regulations by national authorities. The Committee was later informed that future amendments to the administrative procedures of CEPT would allow all interested parties a period of sixty days for comments on draft standards. (TBT/M/23, paragraphs 26-28 and TBT/M/24, paragraphs 43-44)

7. LANGUAGES FOR EXCHANGE OF DOCUMENTS

(a) Issues raised in MTN.GNG/NG8/W/13

37. "Parties should supply documents covered by TBT Notifications in one of the GATT/ISO languages."

(b) Description of the issue in the light of the relevant provisions of the Agreement

38. It is provided in Article 10.5.1 and 10.1.2 of the Agreement that "nothing in this Agreement shall be construed as requiring: the publication of texts other than in the language of the Party; the provision of particulars or copies of drafts other than in the language of the Party".

39. About 50 per cent of notifications made to date are based on texts not drafted in an official GATT language (English, French, Spanish) or an official ISO language (English, French, Russian). An informal survey in a number of Parties on the translation of documents relating to notifications into one of the GATT official languages, which had been undertaken by governmental and non-governmental organizations, showed that Parties translated 25 per cent of total notified texts in 1983, 23 per cent in 1984 and 35 per cent in 1985. Translated documents were mainly Japanese, Swedish and Finnish.

(c) Points raised in previous discussions

40. The discussion of the issue in the Committee focussed on the exchange of translations of documents relating to notifications among interested Parties. It was generally noted that administrations in most Parties, especially in developing country Parties had limited resources for translating texts of the highly technical or specialized nature that are found in standards-related documents. It was difficult for Parties to exercise their right to formulate comments on proposed technical regulations or rules of certification systems if these were not drafted in a GATT working language. During this discussion, certain Parties expressed their willingness to share with other Parties, on mutually agreed terms, translations provided by their translation services. In this connection, one Party raised questions regarding: burden sharing among parties with translation facilities; legal liability for any action taken on the basis of translations shared; and the availability of translated texts within the comment period provided in notifications. It was emphasized by another Party that any action on this matter should not extend beyond the obligations laid down in Article 10.5 of the Agreement. (TBT/M/19, paragraph 36(i), TBT/M/20, paragraphs 12-17, TBT/M/21, paragraphs 18-23, TBT/M/22, paragraphs 19-23, TBT/M/23, paragraphs 12-15, TBT/M/24, paragraphs 21-27)

(d) Committee action

41. The problem of translation of documents relating to notifications was first discussed at the Meeting on Procedures for Information Exchange held in 1981. At the outcome of that meeting the Committee took the following decisions:

"Upon receipt of a request for document, any translated summaries that exist in the language of the requestor or, as the case may be, in a GATT working language, shall be automatically sent with the original of the documents requested." (TBT/16/Rev.4, section C.4)

A second decision, as amended at the twenty-fifth meeting of the Committee, held in July 1987 reads of follows:

"When a translation of a relevant document exists or is planned, this fact shall be indicated on the GATT notification form next to the title of the document. If only a translated summary exists, the fact that such a summary is available shall be indicated." (TBT/16/Rev.4, section C.4)

42. This question was further discussed at the second and third Meetings on Procedures for Information Exchange, held in 1983 and 1985 respectively (TBT/M/13, paragraph 16, TBT/M/19, paragraph 36(i)) and at the twentieth to twenty-fifth meetings of the Committee. (TBT/M/20-TBT/M/25) The following recommendation on the exchange of translations of documents relating to

notifications based on a joint proposal by the delegations of Canada and the Philippines was adopted:

"When a Party seeks a copy of a document relating to a notification which does not exist in that Party's GATT working language, it will be advised, on request, by the notifying Party of other Parties that have requested, as of that date, a copy of the document. The Party seeking a copy of a document relating to a notification may then contact such other Parties in order to determine whether the latter are prepared to share, on mutually agreed terms, any translation that they have or will be making into relevant GATT working language(s)." (TBT/M/25, paragraph 8 and Annex 1, TBT/16/Rev.4, Section C.4)

B. ITEMS RELATING TO THE FURTHER CLARIFICATION OF THE AGREEMENT

1. PROCESSES AND PRODUCTION METHODS

(a) Issues raised in MTN.GNG/NG8/W/1 and 13

43. "Notwithstanding several years of the Agreement's operation there is still no clear consensus on the Agreement's coverage of processes and production methods in the same way as standards that describe a product's characteristics. The Agreement's coverage would be significantly clarified through the negotiation of a consensus interpretation on this point."

(b) Description of the issue in the light of the relevant provisions of the Agreement

44. In the definitions in Annex 1 it is laid down that, for the specific purposes of the Agreement the meaning of the term technical specification is "a specification contained in a document which lays down characteristics of a product, such as levels of quality, performance, safety or dimension ...". Its explanatory note specifies that codes of practice are excluded from this definition. The term "technical specification" is used as a building block in the definitions of technical regulations and standards. The effect of this is that requirements laying down the processes and methods that must be used in the production of products are not covered by the Agreement. Article 14.25 does, however, recognize that the dispute settlement procedures under the Agreement can be invoked in cases where a Party "considers that obligations under this Agreement are being circumvented by the drafting of requirements in terms of processes and production methods rather than in terms of characteristics of products". Specifications in respect of agricultural products and some industrial products are frequently drafted in terms of processes and production methods (PPMs).

(c) Points raised in previous discussions

45. It is considered by some Parties that the way in which the definitions and Article 14.25 are drafted is the result of a compromise reached among the negotiators of the Agreement with regard to the product coverage of the Agreement, the compromise being that the Agreement would cover all products, including agricultural products, but not requirements drafted in terms of PPMs, and that Article 14.25 would be inserted to deal with problems of circumvention that this might cause.

46. The Committee discussion of certain trade issues involving PPMs since the entry into force of the Agreement suggests that Parties maintain their different positions on the scope and application of Article 14.25. In summary, according to some Parties this Article was purposefully included in the Agreement so that the requirements drafted in terms of PPMs could be the subject of complaints under the dispute settlement provisions. According to some other Parties, a Party invoking this provision would first have to demonstrate that a requirement had been drafted in terms of PPMs rather than in terms of characteristics of products in order to circumvent the obligations under the Agreement (TBT/M/3, paragraphs 34-43; TBT/M/4, paragraphs 20-37; TBT/W/24; TBT/W/27; TBT/Spec/4; TBT/Spec/5).

(d) Committee action

47. The question of applicability of Article 14.25 was first raised in connection with a case brought by the United States against the United Kingdom Statutory Instrument 1979 (Number 693, Schedule I, Part II), implementing the EC Directives 71/118 and 78/50 for immersion chilling of poultry, the application of which it considered to have affected imports from the United States. At the third meeting of the Committee held on 19 June 1980, it was argued by the representative of the European Economic Community that the Committee could not investigate the matter under Article 14.4: consultations under Article 14.1 and 14.2 could not have taken place because the measure in question was drafted in terms of a PPM, and was therefore not covered by the Agreement (TBT/M/3, paragraphs 34-43).

48. The matter raised by the United States was discussed further at the fourth meeting of the Committee held on 22 July 1980 with a view to determining the competence of the Committee in the case. Statements explaining the views of Parties on the particulars of this case and on the applicability of the Agreement to PPMs were circulated in documents TBT/Spec/4, TBT/Spec/5 and TBT/W/27. Following the discussion at this meeting, the representative of the United States noted that there was no consensus in the Committee on the substance of the issue and therefore his delegation did not intend to pursue further the particular issue of the UK poultry imports as a dispute settlement case under the Agreement (TBT/M/4, paragraphs 20-37).

49. The Committee reverted to its discussions of the particular issue of the Agreement's applicability to PPMs at its fifth and sixth meetings and heard the views of different Parties on the circumstances under which Article 14.25 would apply, and of the conditions to be met before it could be invoked (TBT/M/5, paragraphs 19-30; TBT/M/6, paragraphs 14-16). The following documents were available to the Committee in this connection: a United States' statement on the the Agreement's applicability to PPMs (TBT/W/24); a statement by the EEC on the coverage and applicability of the Agreement, and the recent United States statements in that regard (TBT/Spec/5); an additional statement by the EEC on the applicability of the Agreement to PPMs (TBT/W/27); and a factual paper by the secretariat on the negotiating history of Article 14.25 (TBT/W/15).

50. At its seventh meeting held on 12 June 1981, the Committee agreed to the following procedures for exchange of information on this subject:

"Delegations may make submissions to the Committee relating to PPMs that might create unnecessary obstacles to trade, which will be circulated to the Committee but not consolidated into a single document in the form of an inventory. Delegations should also be free to submit any relevant working documents and case studies of how the Agreements' coverage of PPMs could lead to the elimination of trade barriers. The secretariat will follow normal practice in circulating any documents submitted by Parties on the subject." (TBT/M/7, paragraphs 48-59 and TBT/16/Rev.4, Section H)

In accordance with these procedures, an illustrative list of measures which fell into the category of PPMs and several case studies of agricultural and industrial PPMs that might create obstacles to trade were communicated by the delegation of the United States (TBT/W/33 and Add.1, and TBT/W/46).

51. The Committee next addressed the matter in the context of the first three-year review under Article 15.9, in the light of a proposal by the United States for the establishment of "a working party to examine generally the Agreement's coverage of PPMs with the aim of arriving at a consensus interpretation of the Agreement's applicability to PPMs" (TBT/12). This proposal was discussed at the eleventh and twelfth meetings of the Committee held on 29 October 1982 and 10 February 1983 but no decision was taken on its establishment (TBT/M/11, paragraphs 44-49; TBT/M/12, paragraph 28).

52. From February to October 1983, interested Parties held consultations on the functioning of Article 14.25, which resulted in the following conclusions, recorded by the Committee at its meeting on 4-5 October 1983:

"The Committee recognizes that there are differences of views among Parties in respect to Article 14.25 (TBT/M/3, paragraphs 34-43; TBT/M/4, paragraphs 20-37; TBT/M/5, paragraphs 19-30; TBT/M/6,

paragraphs 14-16; TBT/M/7, paragraphs 48-59; TBT/M/11, paragraphs 44-49; TBT/M/12, paragraphs 28).

"In this context, where a Party considers that obligations under the Agreement are being circumvented by the drafting of requirements in terms of processes and production methods rather than in terms of characteristics of products, the Parties agree to co-operate in the process of dispute settlement."

In presenting this text, the Chairman stated: "the purpose of preparing a text on processes and production methods was not to introduce any formal interpretation or amendment of the provisions of Article 14.25 of the Agreement nor of Article 14 as a whole. The text therefore in no way affected the rights and obligations of Parties under the existing provisions of the Agreement." (TBT/M/14, paragraphs 13-15)

53. The dispute settlement procedures in Article 14.25 of the Agreement were invoked by the United States in 1987 in a case against the EC Directive Prohibiting the Use in Livestock of Certain Substances Having an Hormonal Action (85/649/EEC). At the request of the United States under Article 14.4, the Committee initiated its investigation of the matter at its meeting on 22 May 1987 and held three further meetings for this purpose in June to September 1987. In a communication dated 13 July 1987, the United States requested the establishment of a technical expert group pursuant to Article 14.9 of the Agreement (TBT/28, Section 5, and L/6240, paragraph 12).

2. RE-EXAMINATION OF THE PROVISIONS OF THE
AGREEMENT IN THE LIGHT OF THE RECOMMENDATIONS
AND DECISIONS ADOPTED BY THE COMMITTEE

2.1. (a) Issues raised in MTN.GNG/NG8/W/13 and 15

54. "The Committee has adopted a number of recommendations and decisions regarding the application of the Agreement. Some of these are of great value for the interpretation of certain Articles of the Agreement. The incorporation of a selection of the said recommendations and decisions into the Agreement would clarify and improve it and would to a certain extent expand the obligations of Parties. Among issues for consideration in this connection, the following would be mentioned: timing of notifications; time period for comments; testing; enquiries which the enquiry points should be prepared to answer."

2.1. (b) Description of the issue in the light of the relevant provisions of the Agreement

55. Since the entry into force of the Agreement on 1 January 1980, the Committee on Technical Barriers to Trade has adopted a number of decisions

and recommendations on matters relating to the operation of the Agreement or furtherance of its objectives. Such action was also taken in the context of the first and second three-year reviews of the operation and implementation of the Agreement under Article 15.9, held respectively in 1982 and 1985. The decisions and recommendations adopted by the Committee between 1980 and 1987 are circulated in document TBT/16/Rev.4. The recommendations relating to the issues suggested above for consideration are contained in the relevant sections of this document.

56. In terms of Article 15.9, the Committee shall hold three-year reviews of the operation and implementation of the Agreement "with a view to adjusting the rights and obligations of this Agreement where necessary to ensure mutual economic advantage and balance of rights and obligations and where appropriate proposing amendments to the text of this Agreement having regard, inter alia, to the experience gained in its implementation." It is further stated under Article 15.10 that "the Parties may amend this Agreement having regard, inter alia, to the experience gained in its implementation."

2.1. (c) and (d) Points raised in previous discussions and Committee action

57. To date the Committee has not taken any steps to incorporate its recommendations and decisions into the text of the Agreement.

2.2. (a) Issues raised in MTN.GNG/NG8/W/13

58. "As examples of the action to be taken under this heading, it is proposed that provisions be laid down in the Agreement concerning the following points which have been mentioned in Committee recommendations:

Information requirements for product approval procedures:

Information required for compulsory product approval should be limited to what is essential in order to judge the conformity of a product to technical regulations, and should not include other commercially-sensitive information.

Right to information during product approval procedures:

Parties which have applied for product approval should be informed, on request, of the progress of their application."

2.2. (b) Description of the issue in the light of the relevant provisions of the Agreement

59. The description of the issue under Section 2.1(b) above is also relevant to the present issue.

60. It may be noted that the Committee adopted the recommendations on the two specific points referred to under 2.2(a) in the context of an investigation of type approval procedures in Spain for heating radiators and electrical medical equipment (TBT/M/Spec/1-4). At the conclusion of its investigation, carried out in April-September 1984, the Committee recommended, inter alia, that the authorities in this Party:

"... 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. This means in this case the exclusion of economic information; and

"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 communicate the results of tests, if so requested, so as to allow corrective measures to be taken if necessary; ..." (TBT/M/Spec/3, Annex).

2.2. (c) Points raised in previous discussions

61. When the Committee adopted the set of recommendations in the context of the dispute settlement case mentioned above, it was emphasized by one Party that the object of these specific recommendations was not to bring forth an interpretation of any provision of the Agreement. Consequently other Parties could not be expected to apply the underlying principles of these recommendations in proceeding with their respective type approval requirements. Another Party maintained that a decision by the Committee that was not in every sense related to the provisions of the Agreement would in no way entail new obligations for Parties (TBT/M/Spec/3). It was also stated, however, that the recommendations adopted by the Committee could be invoked as precedents in future cases of a similar nature (TBT/M/Spec/4).

2.2. (d) Committee action

62. The Committee has not taken any steps with a view to incorporating the two points raised above in the provisions of the Agreement.

C. ITEMS RELATING TO THE FURTHER EXPANSION OF THE AGREEMENT

1. TESTING, INSPECTION AND TYPE APPROVAL(a) Issues raised in MTN.GNG/NG8/W/2 AND 13

63. "Article 5.2 of the Agreement encourages Signatories to enter into arrangements for the mutual acceptance of test data. The operation of the Agreement would be greatly improved and expanded through the negotiation of arrangements on the acceptance of foreign-generated test data for particular products on a mutually-agreed basis. Reliance on "type approval", as opposed to case-by-case inspection is a natural element of such an arrangement."

(b) Description of the issue in the light of the relevant provisions of the Agreement

64. Testing, inspection and type approval procedures used for the determination of conformity of products with relevant technical regulations and standards are important in international trade. The provisions of Article 5.1 restate the requirements set forth in other substantive provisions of the Agreement for non-discriminatory treatment of products originating in the territories of other Parties compared to like products or imported products in a comparable situation with regard to the specific elements of testing: testing conditions, test methods and administrative procedures, fees imposed for testing, availability of results of tests, siting of testing facilities, selection of samples and confidentiality of information relating to tests. Article 5.2 is a step further in facilitating trade since it encourages Parties to accept test results, certificates or marks of conformity issued by relevant bodies in the territories of other Parties, without losing sight of the difficulties involved in reaching mutual recognition arrangements in this field among Parties. These difficulties are suggested by the phrases "whenever possible" and "provided that they are satisfied that the test methods employed in the territory of the exporting Parties provide a sufficient means of determining conformity with the relevant technical regulations and standards". Under the same Article, it is recognized that prior consultations may be necessary in order to reach a satisfactory understanding regarding test methods and results, and certificates or marks of conformity employed in the territories of the exporting Party.

65. A number of Parties have entered into mutual recognition agreements in various product sectors. An illustrative list of such agreements concluded between Parties is contained in document TBT/W/90.

(c) Points raised in previous discussions

66. In the Committee discussion of the subject in general terms, it was widely agreed that testing, inspection and type approval would be an important area in the future work of the Committee. In particular, it was recognized by a number of Parties that non-acceptance of test data generated in other Parties was currently the single most important standards-related issue. Acceptance of such data would save time and expense of having products re-tested in the importing country. Trade would be facilitated if exporters could deal with testing laboratories and inspection bodies in their own country and have test data and inspection results accepted by the regulatory authorities in countries of import.

67. Two approaches emerged from the discussions in the Committee regarding ways and means for reinforcing the implementation of the relevant provisions of the Agreement in Article 5.2 and promoting increased acceptance of test data among Parties. A proposal made in the context of the second three-year review of the Agreement under Article 15.9 involved the negotiation of "an internationally binding agreement for mutual recognition of test data among Parties which would incorporate: the principles relating to acceptance of foreign test data, specific mechanism to achieve such acceptance and conditions for establishing confidence among Parties, as well as certain principles governing type approval procedures for covered products" (TBT/W/79 and TBT/21). Taking another approach, one Party considered that it was essential to ensure the confidence and commitment of parties directly concerned rather than concluding agreements at the level of regulatory authorities, as the activities of laboratories and specialized bodies in this highly technical area were not always under direct government control (TBT/M/20, paragraph 38). According to this Party, Parties should first promote the relevant work being carried out in international specialized bodies such as the International Organization for Standardisation (ISO), the Electrotechnical Commission (IEC) and the International Laboratory Accreditation Conference (ILAC), so as to create a favourable environment for the elaboration of internationally accepted rules and principles for the accreditation or acceptance of testing laboratories, inspection bodies and certification bodies. Secondly, Parties could encourage the conclusion of agreements and arrangements on mutual recognition of test data between public or private entities operating in the field within their territories and those in the territories of other Parties on the basis of objective criteria. Thirdly, the Committee could give official recognition to these arrangements concluded between interested parties, which would confer on these arrangements the virtue of obligation between Parties (TBT/M/20, paragraph 38 and TBT/W/91). The Committee also had a brief discussion on the status and scope of accreditation systems in connection with a suggestion by one Party (TBT/W/94 and TBT/M/23, paragraphs 17-22).

68. The Committee also took note of the views of some developing country Parties on this subject. These countries found it difficult to participate in mutual recognition agreements: they lacked the infrastructure and expertise to carry out testing and inspection on the basis of international standards for test methods, which they considered mainly reflected the capacities of developed countries (TBT/M/24, paragraph 31).

(d) Committee action

69. The subject of testing, inspection and type approval in general was on the agenda of the seventeenth to twenty-sixth meetings of the Committee (TBT/M/17-TBT/M/26). The following data provided the basis for the discussion of the matter: the notes on the activities of international and regional bodies in the field of testing and inspection (TBT/W/18, TBT/W/30 and Corrs., TBT/W/42 and Adds. and Corrs., TBT/W/43, TBT/W/81 and Add.1, and TBT/85); a presentation by the Chairman of the ISO Council Committee on Conformity Assessment (ISO/CASCO) on the work in ISO on assessment of quality systems, testing and certification (TBT/M/19, paragraphs 8-9); an illustrative list of arrangements on testing and inspection concluded at the bilateral level (TBT/W/90); and the series of relevant ISO/IEC Guides (TBT/W/84 and Corr.1 and Add.1).

70. The Committee also received from the delegations of Japan and the United States a "Joint Statement on Standards, Testing and Certification Activities", dated 7 December 1979, which contained, inter alia, certain principles relating to mutual acceptance of test data and to non-discrimination and transparency aspects of type approval procedures (TBT/Spec/1).

71. At its eighteenth and nineteenth meetings held in February and May 1985, the delegation of the United States introduced a "Working Draft Text Protocol on the Approval of Telecommunications Terminal Equipment under Article 5 of the Agreement on Technical Barriers to Trade" (TBT/Spec/13; TBT/M/18, paragraphs 4-12; and TBT/M/19, paragraphs 24-29).

72. At its meetings held in restricted session from February to September 1984 (TBT/M/Spec/1-4), the Committee investigated the procedures for type approval of heating radiators and electromedical equipment introduced by Spain in 1983. At the conclusion of its investigation of the matter under Article 14.4, the Committee adopted a set of recommendations on the application of type approval procedures in Spain (TBT/M/Spec/3, Annex).

73. At its twenty-third meeting held on 13-14 October 1986, the Committee considered the following Guides of the International Organization for Standardization/the International Electrotechnical Commission (ISO/IEC) as

providing an important contribution to the establishment of mutual confidence in testing and inspection activities between Parties:

- ISO/IEC Guide 25-1982 - "General Requirements for the Technical Competence of Testing Laboratories";
- ISO/IEC Guide 38-1983 - "General Requirements for the Acceptance of Testing Laboratories";
- ISO/IEC Guide 39-1983 - "General Requirements for the Acceptance of Inspection Bodies";
- ISO/IEC Guide 43-1984 - "Development and Operation of Laboratory Proficiency Testing";
- ISO/IEC Guide 45-1985 - "Guidelines for the Presentation of Test Results",

and agreed to recommend that any testing and inspection activity developed within the territories of Parties be based on the principles and rules presented in these Guides (TBT/M/23, paragraph 23; TBT/16/Rev.4, Section F). At its twenty-fifth meeting held on 22 June 1987, it also recommended that Parties provide information on national measures taken to promote the implementation of the principles and rules in ISO/IEC Guides 25, 38, 39, 43 and 45 as a basis for testing and inspection activities in their territories (TBT/M/25, paragraph 9; and TBT/16/Rev.4, Section F). In accordance with the latter recommendation, a number of Parties made assessments of how the criteria established in the Guides are applied by the relevant bodies in their countries (TBT/28, pages 19-21).

2. TRANSPARENCY OF THE OPERATION OF CERTIFICATION SYSTEMS

(a) Issues raised in MTN.GNG/NG8/W/6 and 13

74. "The existing Agreement addresses the issue of transparency basically in terms of notification/comments or rules of certification systems. But it is also necessary to ensure the operational part of transparency in order to prevent the system from becoming an undue obstacle to international trade. The existing Agreement is not adequate in this respect and needs to be strengthened."

75. "For example, it is appropriate for signatories to officially announce the standard processing period to complete all the certification procedures managed by the central government bodies, and in case the agency in charge cannot deal with the application within this period, it is appropriate to put the agency under obligation to inform the applicants of the situation together with the reason for delay."

(b) Description of the issue in the light of relevant provisions of the Agreement

76. Article 7, paragraphs 3, 4 and 5 of the Agreement require Parties to provide transparency on the certification systems formulated by central government bodies, but there are no specific requirements in the Agreement to provide transparency on the operation of certification procedures in Parties. The Committee discussed a relevant issue in the context of a dispute settlement case concerning Spain's type approval procedures for heating radiators and electrical medical equipment. On that occasion, it was recommended that the authorities in this Party "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 communicate the results of tests, if so requested, so as to allow corrective measures to be taken if necessary." (TBT/M/Spec/3 and Annex). The following Committee recommendation on the processing of requests for documentation relevant to notification may be cited as a further example of a possible action: "If a delay in supplying the documentation is foreseen, this should be acknowledged to the requestor." (TBT/16/Rev.4, Section B.5).

(c) and (d) Points raised in previous discussions and Committee action

77. This specific issue has not previously been discussed in the Committee. No action has been taken.

3. TRANSPARENCY IN THE DRAFTING PROCESS OF STANDARDS,
TECHNICAL REGULATIONS AND RULES OF CERTIFICATION SYSTEMS

(a) Issues raised in MTN.GNG/NG8/W/6 and 13

78. "The existing Agreement stipulates that the technical regulations and certification systems be notified to the GATT secretariat after completing their drafting, and that thereafter the Parties are to be given time to make comments in this regard. When standards or certification systems which have significant effect upon international trade are drafted or revised, however, it is desirable to allow representatives of foreign interests to have the opportunity to participate in the drafting process or to state their opinion during the process. It is appropriate to strengthen the Agreement to secure such opportunities as much as possible and to ensure that such opportunities are secured for representatives of foreign interests in a non-discriminatory and most-favoured-nation treatment basis."

(b) Description of the issue in the light of the relevant provisions of the Agreement

79. With regard to proposed technical regulations and rules of certification systems, the Agreement requires Parties to allow other

Parties to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account (Article 2.5.4 and 7.3.4). A recommendation on "timing of notifications" requires Parties to make the notifications "when a draft with the complete text of a proposed technical regulation and rules of a proposed certification system is available and when amendments can still be introduced and taken into account." (TBT/16/Rev.4, section C.2). Information about technical regulations and certification systems proposed in the territories of other Parties may also be obtained through enquiry points established under Articles 10.1 and 10.2. The provisions of the Agreement do not expressly give representatives of foreign interests the opportunity to participate in the drafting process or to state their opinion during this process as suggested in the above issue.

(c) and (d) Points raised in previous discussions and Committee action

80. This issue was not raised in earlier discussion and no relevant action was taken.

4. EXTENSION OF MAJOR OBLIGATIONS UNDER THE AGREEMENT
TO LOCAL GOVERNMENT BODIES

(a) Issues raised in MTN.GNG/NG8/W/8 AND 13

81. "Local government bodies might be bound by all major obligations under the Agreement, particularly those of notification (through the Parties) of proposed technical regulations or certification systems from which they are currently exempted. This would involve removing the clauses exempting such bodies from notification in Articles 3 and 8 of the Agreement."

82. "The activity of local government bodies in the establishment of technical regulations or certification systems is insufficiently transparent because of the absence of any notification process under the Agreement. Parties have to rely on the "best efforts" of central governments, in accordance with Articles 3 and 8, to protect their interests, and tend to learn about the creation of technical barriers to trade by local authorities after the event. A procedure by which local draft technical regulations which significantly depart from international standards, or previously notified national technical regulations, were systematically notified through the Party concerned to other Parties would increase the pressure upon local government bodies to take account of existing standards when formulating their regulations."

(b) Description of the issue in the light of the relevant provisions of the Agreement

83. The provisions of the Agreement which lay down the level of obligations of Parties with respect to local government bodies are included

in Articles 3, 6, 8 and 14.24. These provisions are drafted to take into account the status of standards-related activities in Parties with federal systems. They aim to extend the coverage of the Agreement to local government bodies by imposing a requirement on Parties to "take such reasonable measures as may be available to them to ensure" that local bodies comply with the main obligations of the Agreement under Articles 2, 5 and 7. Article 14.24 enables a Party to invoke the dispute settlement procedures under the Agreement if it considers that a Party's failure to achieve satisfactory results under Articles 3, 6, 8 has significantly affected its trade interests.

84. Under Article 3.1 and 8.1 Parties are exempted from the obligation to "take such reasonable measures as may be available to them to ensure that" local government bodies notify proposed technical regulations and rules of certification systems. However, there are obligations to take reasonable measures as may be available to Parties to ensure that local government bodies comply with certain other obligations under the Agreement relating to transparency. This is subject to the condition that procedures such as the provision of copies of documents on proposed or adopted technical regulations, standards and certification systems, notification of adopted certification systems and comments, discussion of comments and taking into account the results of discussion of comments on proposed or adopted technical regulations and adopted standards and rules of certification systems, be carried out through Parties. Information on any technical regulation, standard or certification system, proposed or adopted by local government bodies within the territories of Parties, can also be obtained through the enquiry points established under Article 10.1.

(c) Points raised in previous discussions

85. One Party considered that there was an imbalance in the commitments undertaken by Parties with centralized governments and those with decentralized administrative systems, which might among other things affect the degree to which Parties fulfilled their obligations on notification. In order to redress the situation, major obligations under the Agreement, including the obligations on notifications, should be extended to cover the standards-related activities of local government bodies. This view was contested by another Party which called attention to the fact that no formal case had been raised under Article 14.24 which proved the existence of a problem with local government bodies. On the basis of the number of notifications made by individual Parties, it could not be confirmed that Parties with centralized governments made more notifications than those with federal governments. The difficulty of controlling the activities of local government bodies was also underlined by several other Parties: constitutional issues could be raised if obligations were imposed on central government authorities in Parties with federal governments to provide notifications on the activities of local government bodies (TBT/M/20, paragraph 39, TBT/M/21, paragraphs 44-50, and TBT/M/22, paragraphs 32-37).

(d) Committee action

86. In the context of the second three-year review, the European Economic Community submitted a statement explaining its idea on this issue (TBT/23). At its twentieth to twenty-second meetings the Committee heard comments by various Parties on this matter but took no action (TBT/M/20, TBT/M/21 and TBT/M/22).