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IMPROVED TRANSPARENCY IN BILATERAL STANDARDS-RELATED
AGREEMENTS IN THE GATT AGREEMENT ON TECHNICAL BARRIERS TO TRADE

Proposal by the United States

INTRODUCTION

The United States maintains that signatories to the GATT Agreement on Technical Barriers to Trade (TBT Agreement), in principle, are entitled to improved access to information on bilateral discussions on standards-related activities which lead to agreements between signatories to the TBT Agreement. Agreements that result from bilateral consultations often produce a valuable exchange of technical information which could be of immediate interest and use to other Parties. An increased awareness and understanding of foreign technical standards, including the administration and operation of requirements, facilitates trade by making it easier to deal with new technical requirements, standards, rules of certification and testing and inspection. The United States believes that all Parties to the TBT Agreement would benefit from transparency in bilateral standards discussions between signatories that result in an agreement on standards, technical regulations, testing, inspection or certification, or laboratory accreditation programmes.

In the course of the TBT Agreement's "Second Three-Year Review" held in 1985, the United States circulated a proposal that Parties should:

"Notify the Committee of any agreements reached through formal/informal bilateral standards discussions and provide other Parties with an opportunity to request reasonable information. The notification would include: the type of agreement (e.g. acceptance of test data), specific regulations, commodities involved, and terms of agreements reached."

The United States stated that such a proposal could reveal information pertinent to the Agreement's provisions on "most-favoured-nation" (m.f.n.) treatment. Where m.f.n. is not in question, the effect of the proposal would benefit all Parties by illustrating the range and type of bilateral agreements reached in the standards area. For example, Parties could use the information obtained on bilateral agreements to:

- (1) inform their exporters that, under a bilateral agreement, product approval granted in one Party will be recognized by another Party;

- (2) seek to enter into similar agreement, on mutually agreed terms, with one or both of the Parties to a bilateral agreement; or
- (3) use the agreement as a model for its own bilateral agreement with another Party.

Subsequent to the United States' proposal, the GATT secretariat issued a list of bilateral arrangements on testing and inspection (TBT/W/90). Though the scope of this list is less comprehensive than that envisioned under the United States' proposal, it could serve as the basis for implementing the proposal. In addition to arrangements on testing and inspection, the United States proposes that agreements on (1) the harmonization or concordance of standards and regulations and (2) the general issues of standards policy be included.

Although the proposal received only limited support at the second Three-Year Review, discussion continued in subsequent TBT Committee meetings. Some delegations criticized the proposal as a requirement to disseminate "superfluous" information; others questioned its utility if bilateral agreements between private bodies were excluded. The proposal's relevance to m.f.n. was questioned since certain provisions of the TBT agreement (e.g. mutual acceptance of test data) and the Agreement itself are non-m.f.n.. It was also suggested that, rather than establish a new notification procedure, Parties should obtain information on bilateral standards-related agreements directly from the "enquiry points" established under the Agreement. The TBT Committee essentially agreed to that at its June 1987 meeting. A previous recommendation by the TBT Committee on the type of enquiries which the enquiry points should be prepared to answer was revised to read as follows:

"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 international and regional standardizing bodies and certification systems, as well as 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."

The United States maintains the view that transparency regarding bilateral standards-related agreements could assist Parties in ensuring that m.f.n. is applied as required under, inter alia, Articles 2 and 7 of the Agreement. Thus, the information to be provided under the original United States proposal (via the GATT secretariat) would not be superfluous. Moreover, the suggestion that information be requested by individual Parties through "enquiry points" is practical only when prior knowledge of an agreement exists. A Party is likely to make an enquiry only if it has reason to believe that there may have been a bilateral agreement.

The United States believes that information concerning bilateral standards-related agreements could be improved by a requirement to report such agreements, when concluded, to the GATT secretariat.

TEXT OF PROPOSAL

1. At the time of promulgation, Parties shall notify the GATT secretariat of agreements reached through formal bilateral standards-related discussions.

2. Agreements subject to the notification requirement in paragraph one shall include those that concern testing and inspection, harmonization of standards and regulations, or, other general policies on standards-related issues and:

2.1 have, or could have, a significant effect on trade; and

2.2 are concluded between them and other Parties, private bodies or systems or regional bodies or systems.

3. Parties shall ensure that notifications to the GATT secretariat include:

3.1 the names of adherents to bilateral agreements;

3.2 whether or not the agreements were concluded under provisions of the TBT Agreement;

3.3 the ministries, departments or agencies responsible for their implementation;

3.4 the title of agreements;

3.5 the effective dates of adoption and entry into force;

3.6 the products or sectors covered; and

3.7 a summary of the general provisions of the agreements.

4. Upon request, enquiry points shall provide additional reasonable information on the provisions of such agreements.

5. Upon request, Parties shall enter into consultations with other Parties for the purpose of concluding similar agreements or of arranging for the participation in such agreements.