

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

TBT/W/27

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Committee on Technical Barriers to Trade

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APPLICABILITY OF THE AGREEMENT TO PROCESSES AND PRODUCTION METHODS

Additional Statement by the Delegation of the European Communities

1. The Communities views on the coverage and applicability of the Agreement on Technical Barriers to Trade and in particular on Article 14.25 of that Agreement are set out in some detail in GATT document TBT/Spec/5 of 17 July 1980.

The Communities would however like to make some additional comments in regard to the document drawn up by the Secretariat on the negotiating history of Article 14.25 (TBT/W/15) and in regard to certain statements made at the last meeting of the Committee on 4-6 November 1980 and in a recent paper drawn up by the United States delegation contained in TBT/W/24 of 3.2.1981.

2. The Secretariat paper would appear to confirm the views set out by the Communities in TBT/Spec/5. The view of the texts of 14.25 and of the definition of technical specification contained in Annex I, held by the Communities are confirmed by the negotiating history described by the Secretariat.

The meaning of the definitions contained in Annex I of the Agreement

3. Taking the matter of definitions first, it is clear from the Secretariat's paper that the first definition of technical specification employed by the subgroup on Technical Barriers in May 1975 spoke only of characteristics of products. When the definitions worked out in ISO and ECE were taken as a basis for the Code definitions, the definition of technical specification was changed precisely because it did include a reference to "processes, conditions of growth and production methods". This reference was removed in discussions held in January/February 1976 and a definition was retained which is by and large similar to the one used in May 1975 and similar to the one contained in the agreement at present. The distinction between specifications drafted in terms of characteristics and those drafted in terms of process and production methods (PPM's) was already well established and recognized.

The United States suggested (TBT/W/24 - p.3, para.9) that negotiations surrounding Article 14.25 were aimed at finding a way to subject technical specifications drafted in terms of PPM's rather than the final characteristics of a product to the objectives of the Agreement. This may have been the objective of the United States but it was not the general negotiating objective shared by all.

Nor is it correct to suggest that for this reason the definition of the term "standard" used by the subgroup at its first meeting in May 1975 was revised according to a suggestion from the Nordic delegation only four months later to include "processes, conditions of growth and product methods which must be met to ensure health and safety".

Firstly, the negotiations concerning art. 14.25 although they took place at a much later stage are linked to the definition of the term "standard" used by the subgroup in May 1975. But at that time the definition did not contain PPMs and only referred to characteristics of a product. Secondly, the definition was not revised by the Committee to include PPM's four months later. The Committee agreed on the principle of using ECE/ISO definitions which were then presented to the Committee for their consideration by the Nordic Rapporteur - the new definitions did not constitute a Nordic proposal as such in the recollection of the Communities. Precisely because the definitions contained PPM's, they were revised at the meeting January/February 1976 and the reference to PPM's was removed at the express wish of the Committee.

The U.S. admit that they agreed to this revised definition "as a way of expediting these discussions" (TBT/W/24 - para. 10). Indeed there was little alternative as the ECE/ISO definitions could not have been adopted unless they were redrafted along the lines of the definitions previously used. Adoption of the ECE/ISO definitions was more a matter of form than substance and to avoid a proliferation of definitions in the standards field. But it was never intended by their adoption to undo the work of the subgroup and the working group that had preceded it in relation to the scope and coverage of the agreement - this scope and coverage was reflected in the definition contained in the Code in May 1975.

4. The U.S. sought to introduce the notion of PPM's (MTN/NTM/W/37 and MTN/NTM/W/50) in the definition of technical specification. That this was not successful is borne out by the definition finally employed in the agreement. This definition contains the same ideas as the definition used at the first meeting of the subgroup in May 1975 and corresponds almost word for word with the definition adopted in January/February 1976 when the ECE/ISO definitions were taken over as revised.

It has been suggested at the last meeting of the Committee (and in TBT/W/24 - para. 11) that in discussions in 1977 the Communities expressed support for language including PPM's and had suggested informally that PPM's be included in so far as they are necessary to achieve the final product desired. There is no record of this informal proposal of the EEC negotiator and in any case it is unlikely such a view was expressed because this never constituted a Community position.

The U.S. proposal and the discussion of it in TBT/W/24 points up one thing, namely that the definition as it stood on its own could not be considered to cover process and production methods. This is highlighted by the fact that any reference to PPM's had to be qualified or completed by a phrase such as "in so far as they affect the characteristics of the final product" or "in so far as they are necessary to achieve the final product desired". Clearly then in the absence of such qualifying language setting out which PPM's are covered exactly the definition as it now stands must be considered as not including it.

5. Finally, there is some clear evidence in the discussions in the agriculture group that the definition of technical specification did not cover PPM's.

As stated in the Secretariat's paper, in March 1977 in group Agriculture the point was made in discussion that "appropriate definitions would need to be included if it is decided that the Code should also cover PPM's" (MTN/AG/W/21). The existing definition was not changed to take account of this suggestion and it must therefore be taken not to cover PPM's.

The Meaning of art. 14.25

6. What is on record is the proposal made by the United States at a meeting of the subgroup of September 1977 to the effect that "process and production methods should be subject to the provisions of the Code..." But this proposal was not accepted then and instead the subgroup agreed that "a way should be found of ensuring that obligations under the Code are not circumvented by the drafting of technical specifications in terms of processes and production methods rather than in terms of the characteristics of performance of products".

This latter language clearly indicated that subgroup had not accepted that process and production methods were subject to the provisions of the Code. Nor does this language suggest that process and production methods should be subject to certain provisions of the agreement and not to others as the United States have maintained. Rather, it states clearly that process and production methods are not subject to the provisions of the agreement but that a way should be found to avoid circumvention of the agreement by drafting standards in terms of processes rather than characteristics. As standards drafted in terms of characteristics alone were covered some way had to be found to avoid circumvention by drafting the standards in another manner.

The way that was found was to allow signatories to raise a complaint in the Committee about the fact of circumvention. This solution was included in the Nordic proposal of March 1978 and is now contained in the present text of 14.25.

The United States made a final attempt to have PPM's included in December 1978 and the text of their informal proposal is set out in annex II of TBT/Spec/5. This proposal was not accepted by the EEC and it is not accurate to impute to the EEC the suggestion that additional changes were not necessary because art. 14.25 already contained the ideas set out in the U.S. proposal (TBT/W/24 - para. 15). The EEC negotiators clearly stated on that occasion that the provisions of the new U.S. proposal were unacceptable. There had been an understanding in regard to art. 14.25 which was clear to all parties when the proposal was made by the Nordic delegation in document MTN/NTM/W/138 of 20.2.1978 which was discussed at the meeting of March 1978. The slightly revised text of this proposal was included in the text of the Agreement and is set out in art. 14.25. The text of art. 14.25 expresses a different approach which corresponds to that described in the Communities paper TBT/Spec/5. The development of this different approach is clearly set out in the Secretariat's paper.

7. By way of general conclusion it is important to recall, as the delegation of Finland has so accurately done (at the meeting of the Committee of 4 - 6 November 1980), that the negotiations on the Agreement on Technical Barriers did not attempt nor could they be expected to cover all standards and technical regulations.

Certain types of regulations including those relating to process and production methods, are not covered by the present agreement. On the other hand art. 15.9 exists for the purpose of possible future expansion of the agreement .

8. In respect of the U.S. proposals contained in para. 16 of TBT/W/24 the Communities retain the full right to express any views on these proposals at the next meeting in June.