RESTRICTED

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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Technical Barriers to Trade

DRAFT MINUTES OF THE MEETING HELD ON 10 JULY 1984

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

1. The Committee held its third meeting in restricted session on 10 July 1984 with a view to pursuing its investigation under Article 14.4 of the Agreement concerning procedures in Spain for type approval of heating radiators and electrical medical equipment.

2. The Chairman drew attention to information transmitted by the delegation of Spain since the Committee's previous restricted meeting in April 1984: the Ministerial Order of 10 February 1983, notified in document TBT/Notif.84.93 and Add.1, laid down type approval requirements and test methods applicable to fluid-filled radiators and heating convectors. Compliance with these technical specifications was made mandatory by the Royal Decree 3089/1982 of 15 October 1982 which was notified previously in document TBT/Notif.83.248. The delegation of Spain also communicated a description of procedures for type approval of this category of products in document TBT/Spec/10. In response to the request of the delegation of the European Economic Community at the second meeting in restricted session (TBT/M/Spec/2, paragraph 5), the delegation of Spain notified in document TBT/Notif.84.94 and Add.1, the Ministerial Order of 31 May 1983 which established technical specifications and type approval procedures for electro-medical apparatus for monitoring intensive care of patients. The Royal Decree 1231/1983 of 20 April 1983 declaring mandatory compliance with these technical specifications was notified in document TBT/Notif.84.71. The delegation of Spain also informed the Parties in document TBT/Notif.84.92 of the Royal Decree 895/1984 of 11 April 1984 which revoked the inequality of treatment between domestic and imported electrical medical apparatus and provided for type approval of all such products as from 15 July 1984. In addition, document TBT/Spec/10/Add.1 contained details of administrative procedures for type approval of electrical medical equipment, communicated by the delegation of Spain in response to a request by the Committee at its previous meeting (TBT/M/Spec/2, paragraph 9).

3. The representative of the United States referred to his statement made at the second meeting in restricted session (TBT/M/Spec/2, paragraph 8) and said that consultations were held with the delegation of Spain under Article 14, paragraph 1 in May 1984. His delegation had deferred resorting to procedures under Article 14, paragraph 2, in expectation of approval of outstanding applications for imports of electrical medical equipment from his country, submitted in December 1983.

4. The Chairman recalled the discussions held in the meeting of the Committee on 25 April 1984, on the proposals put forward by the delegation of the European Economic Community, requesting the Committee to adopt a set of recommendations to the delegation of Spain concerning type approval procedures for heating radiators and electrical medical equipment (TBT/M/Spec/2, paragraphs 10 to 15). The representative of Austria enquired whether the adoption of these recommendations by the Committee would imply that Parties should accept the mark of conformity delivered by the Spanish authorities. The representative of the European Economic Community said in reply that these recommendations could not lead to the acknowledgement of the Spanish mark of conformity by any Party. On the other hand, the Spanish authorities were free to place their mark on imported products sold in Spain.

5. The representative of the European Economic Community further indicated that the Committee pursued its investigation on a matter concerning his delegation and the delegation of Spain, and that its recommendations would only apply in this bilateral context. Each element of the recommendations suggested by his delegation aimed at settlement of concrete problems faced by the Community exporters in relation to procedures for type approval in Spain. He emphasized that the object of these 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 the specific recommendations in proceeding with their respective type approval requirements. The representative of Spain, whilst supporting the views of the delegation of the European Economic Community on the matter, nevertheless stated that the recommendations adopted by the Committee could be invoked as precedent in future cases of similar nature.

6. In connection with the proposed text of the recommendations, the representative of Japan suggested that the reference to the exclusion of economic information in point (v) on page 4 of document TBT/M/Spec/2 should be modified since, in occasional cases, his authorities found it necessary to make use of the relevant economic information for purposes of quality control of products. The representative of the European Economic Community said that the principles underlying the recommendations proposed by his delegation were based on Article 2.1 of the Agreement: queries of an economic nature could be regarded as unnecessary barriers to trade in so far as the provision of such information involved revealing technical know-how or trade secrets; in order to avoid this, some suppliers might prefer to renounce the market of the country requesting such data. He wondered whether any sort of economic information, relating to the case under investigation or to any other case, could be considered indispensable for determination of conformity of the product with such criteria as protection of health and safety. The representative of Japan disagreed with this interpretation of Article 2.1.

7. After some discussion, the representative of Finland, (speaking for Nordic countries) proposed to amend the recommendation under point (v) to read:

> "(v) to limit the information which the exporter or importer is obliged to provide in order to obtain type approval to what is indispensable in order to establish the conformity of the product to technical specifications. This means in this case the exclusion of economic information."

8. The Chairman suggested that the Committee adopt the recommendations contained in paragraph 10 of document TBT/M/Spec/2, as amended. It was so agreed. (The full text of the recommendations is reproduced at Annex.)

9. The representative of Spain recalled his statement at the previous meeting concerning the disposition of his authorities with regard to all pending applications for type approval submitted before 1 May 1984 (TBT/M/Spec/2, paragraph 16). He drew attention to two lists circulated by his delegation at the present meeting providing information on the status of applications concerning heating radiators and electrical medical equipment, respectively. Recently, seventy-two applications for type approval of heating radiators had been examined by the Spanish authorities. Out of these, two requests for type approval were cancelled. Another seven applications relating to electrical radiators, of which four concerned imported products, were also cancelled since these products had nothing to do with the procedures in question. Type approval was granted to thirty-four applications concerning domestically-produced heating radiators. Further information was requested from domestic producers in connection with another eight applications. Procedures for type approval of two domestically-produced radiators were initiated after 1 May 1984. Five applications concerning imported heating radiators were concluded positively. Additional information was requested on five similar applications and three other such files were submitted after 1 May 1984. Examination of these applications, conducted on 6 July 1984, resulted in approval of one application concerning imported products. With regard to electrical medical equipment, out of ten currently pending applications, submitted before 1 May 1984, seven related to imported products. Two of these were planned to be approved in a meeting of the Commission scheduled for 15 July 1984. Further data would be necessary on other applications before dealing with them. Eight new applications, concerning imported products filed after 1 May 1984, were also being studied. He expected that his authorities would take a position by 25 July 1984 on all pending applications submitted before 1 May 1984, in accordance with the agreement reached between his delegation and the delegation of the European Economic Community at the previous meeting (TBT/M/Spec/2, paragraph 15).

10. The representative of the European Economic Community said that his delegation welcomed the information made available by the delegation of Spain at the present meeting. However, his authorities needed time to go over it in detail. Meanwhile, he wished to make the following remarks on the processing of applications for type approval in Spain. First, he asked for explanation of the term "aprobados" applied to the procedures relating to heating radiators: did this mean that importation was authorized or were there other formalities needed before imports could be carried out?

Second, concerning the status of applications designated as "completados", did this mean that the files were complete with certificates of conformity issued by test laboratories and approval by the responsible Ministry? Third, thirty-four approvals of domestically-produced radiators were processed as soon as the transitory period for these products had ended, whereas only five applications on imported radiators were granted approval over the whole period in which type approval had been obligatory for them. This gave the impression that applications for type approval were not dealt with by the Spanish authorities in the order in which they had been transmitted by the applicants. Fourth, he wished to know if Spanish customs officers were informed of the Royal Decree 895/1984 of 11 April 1984, which exempted electrical medical equipment from the requirements of type approval for a period of two months until 15 July 1984, and if any imports benefitting from such exemption had taken place during this grace period?

11. The representative of Spain gave the following explanation in reply: once an application on a model of heating radiators was approved, the relevant decision of the Ministry of Industry and Energy was published in the Official Gazette usually within fifteen days. Automatic import licences for products corresponding to the approved model was delivered within forty-eight hours after publication. Applications were classified as "completados" when all the information required had been made available and the files were ready for submission to the technical committees in charge of studying them. Concerning the order of approval of applications, he said that the files for both domestic and imported products were examined in the order in which applications were submitted. Many domestic producers had prepared and transmitted their applications before the end of the transitory period allowed for their products. Their files had in most cases been prepared by specialized staff whereas the files presented by importers were not always in due order, causing some delay. In connection with the Royal Decree exempting imports of electrical medical equipment from type approval requirements for a period of two months, he said that relevant administrative circulars explaining the decree had been sent to customs offices by the Central Directorate of Customs in accordance with normal procedures. For the time being, he did not have information on licences issued for such imports.

12. The representative of the European Economic Community raised two further points concerning procedures for type approval of electrical medical equipment. He said that in accordance with the provisions of Article 5.1.2 of the Royal Decree 2584/81, the specific model of the apparatus which had been subject to testing should be kept in store by the producing firm. In view of his delegation, this requirement was an expensive and unnecessary burden for the firm. Secondly, he referred to the reports by so-called co-operating entities, described in document TBT/Spec/10/Add.1, which were required to accompany applications for type approval. Determination by these entities as to whether an exporter had established an adequate quality-control system at factory level was not based on any standards published in a decree or order. He asked what standards were used and drew attention to the lack of transparency involved in this procedure.

13. The representative of Spain said that he was not able to respond to the first remark made by the representative of the European Economic Community, because he was not familiar with the contents of the Royal Decree mentioned by him. Concerning the second point, he held the view that standards were not necessary for effecting tests in connection with quality-control systems. Four co-operating entities, referred to in the document TBT/Spec/10/Add.1, were entrusted with ascertaining that the quality-control systems established by the producing firms were functioning adequately. This task could either be discharged by holding inspections within the factories or by testing the finished products.

14. The Committee took note of the statements made.

15. The representative of the European Economic Community said that his authorities would need to study further the data provided by the delegation of Spain at the present meeting. In addition, they were looking forward to information on the position taken by Spain by 25 July 1984 on all currently pending applications for type approval. Therefore, he suggested that the Committee continue its investigation in a meeting to be held in September 1984. The representative of Spain said that his delegation did not oppose a new extension of the investigation period. The representative of the United States, referring to his statement at the last meeting (TBT/M/Spec/2, paragraph 18), noted that a further extension of the investigation period could only take place with the mutual consent of the two Parties concerned in this case.

16. The Committee took note of these statements and agreed to extend the period of investigation on the understanding that this would not constitute a precedent and that the extension was predicated on the agreement of the two Parties concerned in this case. The next meeting in restricted session to deal with this case was scheduled for 11 September 1984.

ANNEX

RECOMMENDATION

With respect to type approval procedures for heating radiators and electrical medical equipment, the Committee recommends that the Spanish authorities:

(i) ensure that tests of conformity to technical regulations are not made obligatory on Spanish territory as long as testing laboratories have not been designated or made operational;

(ii) 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;

(iii) ensure that applications for type approval are dealt with and, if possible, the examination of them completed in the order in which they have been submitted to the competent authorities;

(iv) adapt their type approval procedures so as to base the decisions of the competent authorities upon the advice of independent technical experts;

(v) limit the information which the exporter or importer is obliged to provide in order to obtain type approval to what is indispensibe in order to establish the conformity of the product to technical specifications. This means in this case the exclusion of economic information.