

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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Special Distribution

Committee on Technical Barriers to Trade

NOTIFICATION

The following notification is being circulated in accordance with Article 10.4.

1. Party to Agreement notifying: <u>EUROPEAN COMMUNITY</u>
2. Agency responsible: Commission of the European Community
3. Notified under Article 2.5.2 [X], 2.6.1 [], 7.3.2 [], 7.4.1 [], other:
4. Products covered (HS or CCCN where applicable, otherwise national tariff heading): Terminals using DECT cordless communication and the Public Access Profile
5. Title and number of pages of the notified document: Attachment Requirements for Terminal Equipment for Digital European Cordless Telecommunications (DECT) Public Access Profile (PAP) Applications (pr TBR 11) Number of pages in the notified document: 28
6. Description of content: This TBR contains the technical characteristics particular to public access services using the DECT Public Access Profile (PAP) provided by terminal equipment which is capable of connection to a public telecommunications network and which uses DECT cordless communications.
7. Objective and rationale: To test the requirements governing type approval of such terminals.
8. Relevant documents: Council Directive 91/263/EEC OJ L 128
9. Proposed date of adoption and entry into force: First quarter of 1994
10. Final date for comments: 30 June 1993
11. Texts available from: National enquiry point [] or address of other body: ETSI Secretariat 06921 Sophia Antipolis Cedex France

TE 001
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This is the first of an occasional series of bulletins covering GATT's activities relating to trade and the environment. The series will cover the work of the Group on Environmental Measures and International Trade; GATT's follow-up to the UN Conference on Environment and Development; environmental issues emerging from the Uruguay Round; environment-related trade disputes handled in GATT and any other relevant news or background.

The initiative has been taken in order to facilitate public understanding and awareness of the many complex issues which arise in the trade/environment policy area. These bulletins should not be seen as having any legal or negotiating status.

Trade/Environment Group examines transparency of trade-related environment measures as well as labelling and packaging issues

The Group on Environmental Measures and International Trade has been active in GATT for over a year. It currently has a three-part working agenda, namely:

- trade provisions of existing multilateral environmental agreements (such as the Montreal Protocol on depletion of the ozone layer, the Basel Convention on trade in hazardous wastes and the CITES convention on trade in endangered species) vis-à-vis GATT principles and provisions;
- the transparency of trade-related environmental measures; and
- the possible trade effects of packaging and labelling requirements.

The Group, along with the Committee on Trade and Development and the GATT Council, was also given a remit by the Contracting Parties to follow up trade-oriented elements of "Agenda 21" which emerged last June from the UNCED in Rio de Janeiro.

Last year, the Group examined the three parts of its initial mandate in some depth, and at the December 1992 Annual Session of GATT Contracting Parties, the Group's Chairman, Ambassador H. Ukawa of Japan, gave a personal assessment of that work (see annex).

At the Group's second meeting this year on 18 and 19 March, discussion was focused on the second and third items in the mandate.

Transparency

It is widely accepted in the Group that to avoid conflict between the trade and environment policy areas, adequate and timely notification of all measures likely to have a trade effect is crucial. If information on intended actions by governments is made known to trading partners at a sufficiently early stage then businesses have more possibility of making necessary adjust-

ments and any significant difficulties with such measures can be taken into account before implementation, thus avoiding the chance of damaging trade disputes.

Various notification procedures exist already, including a general requirement for the publication of trade provisions contained in GATT's Article X, particular provisions in some of the Tokyo Round agreements on non-tariff measures (the Technical Barriers to Trade Agreement, for instance) and a 1979 understanding on notification in the context of dispute settlement. There has been some concern that there is a lack of clarity and specificity in these transparency rules which makes them too general to be effective, but several of the Uruguay Round agreements are expected to clear up many of the problems in this area.

Even so, a variety of measures in the environment field that can have significant trade effects have been suggested by delegations as warranting a further look in terms of their transparency for trading partners. Among those identified are: handling and packaging requirements; labelling, and especially voluntary eco-labelling schemes; environmental measures taken at the sub-federal level of government; deposit refund schemes; measures under GATT Article XX (the general exception to GATT obligations for measures to protect human, animal or plant life or health); measures based on international environmental standards; and environmental taxes and subsidies.

One suggestion put forward is the establishment by governments of enquiry points (as now required under the Technical Barriers to Trade Agreement) that can provide centralized information on particular environmental measures affecting traded goods and services. The idea was taken up by several delegations and, for the most part, in a favourable light. It was suggested that this was an approach which could be

used to deal with voluntary environmental measures - standards and conformity assessment, for instance. At the same time, enquiry points could be used to inform exporters of potential benefits relating to environmental measures (consumption incentives, voluntary environmental standards affecting government procurement preferences, and promotion programmes for ecologically-sound products conducted by NGOs). They could also serve to inform developing countries of the availability of technical assistance to help them comply with or take advantage of environmental measures.

There seems to be wide agreement in the Group that it would be best to concentrate on those measures likely to have the most profound trade effects. One delegation said, in this respect, that measures for notification might be classified in three categories: those which would affect market access conditions; those, like labelling or packaging requirements, which could affect marketing opportunities; and those introduced on a non-discriminatory basis without any intended trade effects.

Several delegations stressed the importance of prior notification of measures before they are implemented. According to some, advance notification of eco-labelling schemes was especially important.

Packaging and Labelling Requirements

This is the most specific element of the Group's present mandate, partly reflecting the fact that new packaging and labelling regulations are already having an impact on international trade. Traditionally, packaging requirements have focused on public health and safety concerns but the new environmental concerns emphasise the reduction of packaging entering the waste stream - notably for final disposal through incineration or landfill - and the resource intensity of packaging, both with respect to materials and production methods.

In considering packaging policy instruments and their potential trade effects it may be noted that packaging falls into three categories: sales

or primary packaging, which ends up with the consumer or final user of the product; grouping or secondary packaging, which is removed at the point of sale; and transport or tertiary packaging, which facilitates transport and handling of bulk products.

While packaging regulation policies at the national level are increasingly based on life-cycle analysis, the resultant regulations are nevertheless often very different. For some, this suggests a need for greater efforts at international harmonization. However, it would appear that some trade effects and concerns relate primarily to differences in comparative advantage. Similarly, differences in national factor endowments of materials from which to manufacture packaging and of disposal facilities to deal with the waste, as well as different national preferences of industry and consumers, appear to account to a large degree for the variety of packaging requirements and regulations that exist. Given that the packaging associated with imported products is not likely to contribute the major share of domestic packaging waste, that national priorities for disposing of packaging waste are likely to differ, and that it is unlikely to be economical to set up programmes to deal with all non-standard forms of packaging waste, it may be unavoidable that overseas suppliers suffer some disadvantage. International harmonization of packaging and of disposal services may offer a means to reduce that disadvantage, but it is unlikely to remove it entirely; nor is it necessarily desirable that it should do so to the extent that national factor and environmental endowments differ.

The packaging needs of overseas suppliers are generally little different from those of their domestic competitors, but they may still encounter higher costs or other difficulties. Thus, they may have to meet a variety of different requirements in the various markets they supply; they may not receive sufficient information about requirements in particular markets; and they may be faced with unreasonably short deadlines to meet new requirements.

Competitiveness may be affected in a number of specific ways. For instance, restrictions may

be imposed on the use or sale of packaging from certain materials - say, aluminium cans, plastic bottles or wooden crates - which may be the preferred packaging for overseas suppliers for national-resource, technological or other reasons. Short of an outright ban, the proportion of certain types of packaging in the domestic market may be restricted, again to the disadvantage of overseas suppliers.

Equally, requirements that packaging waste be recovered, re-used or recycled may impose a greater burden on overseas suppliers. Recovery and re-export back to its source is unlikely to be commercially viable and re-use locally may be excluded because of dimensions, design or other factors. Overseas suppliers will therefore probably have to rely on local distributors or independent local waste disposal services to undertake the recovery and disposal. Again, they may find themselves at a disadvantage with respect to access to such services, their costs and conditions associated with using them. Where recovery, re-use or recycling is impossible, overseas suppliers are likely to be worst affected by high incineration or landfill charges because of their non-standard packaging.

In previous discussions in the Group it was apparent that the reduction of unnecessary trade effects of differences in national packaging requirements might principally be achieved, first, by ensuring the greatest transparency possible and, second, ensuring national treatment for overseas suppliers in their access to local programmes for the use and disposal of packaging, including testing, certification and labelling.

In the debate at the March meeting, it was pointed out that between 25 and 50 per cent of all waste was packaging waste and that, therefore, reducing the amount of packaging was an urgent environmental task in most industrialized countries. New packaging requirements would lead to new trade patterns, with some producers gaining and others losing - something which occurs continuously in merchandise trade as new technologies emerge and adaptation follows. Consequently, the Group should concentrate on measures with a protectionist intent.

However, the view was also put forward that developing countries and those in the process of economic reform may have particular difficulties in conforming to packaging requirements in their export markets. This was especially the case where alternative packaging materials were not readily available locally and necessary capital investment to produce them too costly. It was suggested that technological assistance should be offered to developing countries to help them meet environmentally-friendly packaging guidelines.

It was widely felt that the Group should not try to prescribe what kind of packaging measures should or should not be used for environmental protection. Instead, the emphasis should be on understanding the potential trade effects of the various packaging measures. With such an approach, appropriate solutions could be devised which secure environmental objectives while not distorting trade at the same time.

The Group is expected to meet next in early May.

Annex

3 December 1992

Group on Environmental Measures and International Trade

Interim Report by the Chairman, Ambassador H. Ukawa (Japan)

1. This report is made on my own responsibility as Chairman of the Group on Environmental Measures and International Trade to inform contracting parties of the work that has been undertaken by the Group since it was convened. It is a progress report and as such does not attempt to draw any substantive conclusions: it would be premature to do so, since further work is needed. I have advised both the Council of Representatives and the Group of my intention to make this statement.

2. The Group was originally established in November 1971 by Council decision and was given the task of examining, upon request, any specific matters relevant to the trade policy aspects of measures to control pollution and protect the human environment, and reporting back to the Council. After a careful process of informal consultation undertaken at the request of the GATT Council by the then Chairman of the CONTRACTING PARTIES, Ambassador Rubens Ricupero of Brazil, the Group was activated for the first time in October 1991 when the Council took note of the CONTRACTING PARTIES Chairman's statement that agreement had been reached on an agenda of work, for the present, of three items, namely: (i) trade provisions of existing multilateral environmental agreements (such as the Montreal Protocol, the Basel Convention and the CITES) vis-à-vis GATT principles and provisions; (ii) the transparency of trade-related environmental measures; and (iii) possible trade effects of packaging and labelling requirements (the full text of the Group's agenda is attached).

3. The consultation process undertaken by the Chairman of the CONTRACTING PARTIES was pursuant to the request of the delegations of the EFTA countries at the Uruguay Round Ministerial Meeting in Brussels in December 1990 that the

1971 Group be convened to examine the relationship between environmental and trade policies. The consultations also led to the holding of a structured debate on environment and trade in the GATT Council in May 1991, which formed the background for the three agenda items that were subsequently agreed upon.

4. Those who were actively involved at the time would recall that many delegations originally approached the proposed exercise with considerable concern and misgivings. There existed a wide divergence of views and positions among delegations not only on how to handle the exercise but also on what to seek by way of a possible outcome. I accepted the Chairmanship of the Group with considerable hesitation.

5. The Group has held seven meetings to date. After a first, largely organisational meeting in November 1991, six substantive sessions have been held — the first in January and the latest in mid-November. Notwithstanding the original misgivings which I mentioned, the Group has been able to conduct an in-depth, wide-ranging deliberation in a constructive and pragmatic manner. The considerable goodwill exercised by participants has, in my view, contributed to the progress made in identifying, clarifying and focusing on issues in this complex area of interface of environmental and trade policies, as well as to de-mystifying the subject and dispelling some of the original concerns.

6. Many delegations have observed that one of the most valuable aspects of the Group's work to date is that delegations have had an opportunity to engage in an educational process and to broaden their knowledge of this often complex area. That has helped to enrich the dialogue between government officials responsible for trade matters and their counterparts dealing with environmental matters, and to reinforce the process of exploring at the national as well as the international level the scope that exists to improve policy coordination. Trade liberalization and the protection of the environment should not be considered as mutually conflicting

objectives; they call for greater integration of environmental and trade policies at the national level, as well as for parallel efforts to promote international cooperation on the basis of multilateral rules both in the trade and environment fields.

7. The Group has proceeded in part on the basis of an evolving list of issues and questions that have been raised in the course of discussions. This approach has permitted the Group to address its subject matter flexibly, and it has helped to bring about a better mutual understanding of where the needs lie for improved policy coordination at the multilateral level in the area of trade and environment. The willingness of delegations to use the list as an evolving tool for analysis not only reflects, in my view, the constructive spirit with which delegations, after their initial hesitation, have approached the issues, but also has led to a process of confidence building. I have no doubt that all delegations share the expectation that this constructive climate will prevail as the Group continues its deliberations and will provide a solid basis on which to conduct its future work.

8. Attention needs to be drawn to the fact that, at a very early stage in its deliberations, the Group came to a generally shared view that it was not its role to pronounce on the consistency, or otherwise, of specific trade-related provisions in existing multilateral environmental agreements with GATT provisions. The view is also generally shared that the GATT is not the forum in which environmental standards should be established, nor global policies on the environment developed. In my view, the GATT does not question the right of its members to have the highest possible environmental standards.

9. In the Group the view is widely shared that GATT provisions provide for and permit a wide variety of trade-related environmental measures. Article III of the GATT, for example, permits governments to apply the same internal taxes, regulations and requirements to imported products that they apply to domestically produced goods. Trade-related environmental measures may also be admitted as exceptions to GATT provisions under Article XX, as long as they conform with certain conditions specified in the Article and its

sub-paragraphs, such as not constituting a means of arbitrary or unjustifiable discrimination nor a disguised restriction on international trade. In preliminary discussions, many delegations have emphasized the scope of exceptions to GATT rules available under Article XX and have also emphasized the need to ensure safeguards against the misuse of those exceptions. There has been strong agreement that the risk of environmental objectives being used as a basis for protectionist trade actions must be avoided. The conditions contained in the Article reflect the checks and balances in the GATT system that are intended to prevent abuse which would be as detrimental to the environmental agenda as to the trade agenda.

10. Many delegations have expressed the view that resort to trade measures taken for environmental objectives must be weighed carefully before imposition to ensure they are consistent with the requirements and disciplines provided for in the GATT. Action that is not in conformity with GATT rules was an issue that received extensive attention in the discussions. At the same time, there is a widely shared view of the importance of international cooperation for dealing with environmental problems of common concern, and that trade-related environmental measures designed to address global environmental concerns are best pursued via cooperative multilateral efforts.

11. It should be emphasised that there is general agreement that environmental objectives and trade policy objectives can be, and must be, mutually supportive. The view is widely shared that trade and the GATT trading system are supportive of better environmental protection at the national and international levels. Many delegations have observed that broadly-based trade liberalization in favour of all GATT trading partners, as is being pursued in the Uruguay Round negotiations, and the maintenance of an open, non-discriminatory trading system can make significant contributions to sustainable development.

12. In respect of Agenda Item 1 (Trade provisions of existing multilateral environmental agreements vis-à-vis GATT principles and provisions), the Group has set about its examination

of the trade provisions in existing multilateral environmental agreements in a generic manner. Many issues have been raised in the course of the discussions. It is not feasible to list them all here, nor to do justice to the full range of views that has been expressed on them by delegations, but I would like to mention some of them.

At an early stage, the Group took up the issue of what guidance can be provided by the principles of international public law when considering the relationship between the trade provisions of multilateral environmental agreements and GATT provisions. Whereas it would appear that in general a later and more specific agreement takes precedence over an earlier agreement, certain conditions must be fulfilled, including that the agreements address the same subject matter and have the same membership. Considerations raised in that context led the Group into discussion of the key characteristics of an international agreement. Mention has been made in that regard of the number of countries participating in the negotiation of the agreement, the number of signatories to it, how representative those countries are in terms of their various stages of development and their geographical diversity, and whether membership subsequently is open or restricted. Mention has been made also of how a regional agreement might be viewed in this context.

Related to these issues are important questions of the extra-jurisdictional application of trade measures in the context of dealing with global environmental concerns and the treatment of non-parties by trade provisions contained in a multilateral environmental agreement. Many delegations have focused on the difficult issues which arise when trade restrictions would be aimed at extending or enforcing environmental agreements, standards or processes and production methods vis-à-vis countries that have not accepted them. The relevance of considering the reasons why a party may choose not to accede to a multilateral environmental agreement has also been mentioned in this regard, for example when a party considers the environmental problem as having a relatively low priority, or feels that the scientific evidence of the problem is not adequate or that the asso-

ciated costs are not affordable. More detailed analytical work is planned in these areas for further meetings of the Group.

The need to gain a good understanding of why it has been felt necessary for trade measures to be included in multilateral environmental agreements and what purposes they are intended to serve has been a subject of discussion, as has the need to examine the efficiency and effectiveness of using trade measures in this context.

Many references have been made to the need for a common and more precise understanding about the applicability of various GATT provisions in the context of trade measures designed to address global environmental concerns. Mention has been made in particular of:

- Article I (most-favoured-nation treatment and non-discrimination);
- Article III (national treatment and non-discrimination, as well as its relationship to trade-related environmental measures that are based on processes and production methods);
- Article XI (elimination of quantitative restrictions on imports and exports);
- Article XX, particularly the terms "arbitrary or unjustifiable discrimination between countries where the same conditions prevail" and "disguised restriction on international trade", as well as "necessary to" in sub-paragraph (b), and "relating to" in subparagraph (g). Also, whether the language "human, animal and plant life and health" in subparagraph (b) covers fully the concept of environmental resources;
- and the provisions of the Agreement on Technical Barriers to Trade.

13. Under its second agenda item, the Group is conducting a review of the scope and adequacy of the "transparency provisions" of the GATT and of prospective Uruguay Round agreements in the light of national environmental regulations that are likely to have trade effects. The publication and notification provisions of the GATT, in particular Article X and the 1979 Understanding

Regarding Notification, Consultation, Dispute Settlement and Surveillance, are recognised to play an essential role in facilitating the proper functioning of the multilateral trading system, building confidence in the security and predictability of market access and helping to prevent the emergence of unnecessary trade disputes. The "transparency provisions" that would be added by the Uruguay Round agreements, for example the establishment of the Central Registry of Notifications under the Agreement on the Functioning of the GATT System with its indicative list of notifiable measures, are expected to reinforce the scope and implementation of existing GATT provisions in this area.

Notification of a trade-related regulation prior to its adoption is called for under the specific transparency provisions of the Agreement on Technical Barriers to Trade, and this feature has attracted favourable comments. It provides an opportunity for prior consultation with trading partners likely to be affected by the new regulation, and would allow time for producers to adjust to new market conditions. It has been observed from national experience in the Group that a draft regulation can often be modified so as to take account of other Parties' trade or other concerns without sacrificing the regulation's original objective or effect, and this can help to prevent potential trade disputes from developing. A large number of national trade-related environmental regulations have been notified already under existing GATT provisions, many prior to their adoption.

14. The Group has approached the subject covered by Item 3 of its agenda (possible trade effects of packaging and labelling requirements) by preparing for a generic examination of the trade effects of mainly new forms of packaging and labelling requirements aimed at protecting the environment. Packaging requirements have taken on increased environmental importance in the context of national waste management policies, and environmental labelling is already used widely to enhance environmental awareness among consumers. While noting the important environmental purposes that are designed to be served by the introduction of these measures, many delegations have observed that

the potential trade effects of certain types of measures in this rapidly developing area of environmental policy-making can be considerable and they have pointed to the need to undertake a close and careful examination of this aspect of the measures in the course of the Group's further work.

15. The next meeting of the Group is scheduled tentatively for early February 1993, taking into account developments in the Uruguay Round. There is wide support for the current tempo of meetings to be maintained next year.

16. Let me end by stressing, first, how widely shared is the view among delegations that there is a broad range of measures for the protection of the environment that can be taken in conformity with the provisions of the GATT, or when necessary as an exception to GATT provisions provided that certain conditions are respected. The rule-based framework of the GATT provides safeguards against the misuse of trade measures for protectionist purposes. It has enabled enormous growth in trade in the post-war years to take place and it has been an effective underpinning for upholding international commerce and global economic well-being.

17. Second, delegations believe that it is essential to dispel any misperceptions that the GATT contradicts or puts in jeopardy collective efforts to address environmental problems or that GATT seeks to impose trade over environmental values. The seriousness with which the Group's deliberations are being conducted, as shown in the impressive preparation and thought invested by delegations in meetings, in my view, testifies to the fact that environmental concerns are deeply shared by delegations and that there is a strong desire to search for constructive solutions.

18. Finally, as Chairman I wish to underline my appreciation for the contributions that have been made by all parties concerned, delegations as well as the Secretariat, to the progress achieved in the Group over the past ten months. I have no doubt that environmental concerns will continue to play an increasingly important role in future GATT activities.