

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

TBT/W/135

30 January 1990

Special Distribution

Committee on Technical Barriers to Trade

Original: English

CERTIFICATION SYSTEMS

Submission by Canada

This proposal by Canada to the Committee on Technical Barriers to Trade aims at improving, expanding and clarifying the operation of the Agreement on Technical Barriers to Trade, called for in the Punta del Este Declaration, as it relates to certification systems. Adoption of international certification guides and an enhanced application of certification systems can improve efficiency of production and facilitate the conduct of international trade.

2. This proposal seeks improved rules on operation, transparency and mutual recognition of certification systems under the Agreement. This proposal should be read in conjunction with the Cairns Group submission on Agricultural Health and Phytosanitary Regulations (MTN.GNG.NG5/W/112 - 2 October 1989), of which Canada was a co-sponsor.

Operation of Certification Systems

3. Since the GATT Agreement on Technical Barriers to Trade entered into force, practices for assuring or certifying conformity of products with technical regulations and standards have evolved rapidly. Such practices are identified either by (a) the extent to which third party certification is required; or (b) through declarations of suppliers supported inter alia by post-audits, registration of their facilities based on quality system assessment or laboratory accreditation.

4. As a result, products entering world trade face requirements in several countries ranging from declaration of conformity by suppliers or importers to third party certification. The requirements of certification systems as well as the administrative and other procedures used in implementing them have the potential to be applied with restrictive effect on trade. As the Agreement applies to certification systems but does not explicitly or fully cover declaration of conformity or procedures for operation of certification systems, the proposal seeks to extend the application of the Agreement to these practices.

Transparency

5. Existing transparency provisions in the GATT Agreement on Technical Barriers to Trade cover advance notification and publication of rules for certification systems. The proposal seeks to enhance transparency through a requirement for certification authorities to provide information on processing or results of applications for certification of imported products.

Mutual Recognition of Certification

6. There has been growing recognition of the desirability of encouraging mutual recognition of certification systems to facilitate acceptance and, therefore, market access of imported products. While there are international certification schemes for certain products, international guides in this area generally apply to certification organizations recognizing that acceptance of conformity is based on confidence in the competence of bodies charged with assessing whether technical requirements of products are met. At the same time it is increasingly recognized that even where standards and certification requirements differ between countries, products could be accepted if certified by bodies whose competence is based on international standards or guides for certification organizations. This proposal seeks to encourage recognition of third party certification by acceptance of certification by organizations meeting relevant international guidelines and criteria.

Specific Elements of the Proposal

7. Specifically, the proposed amendments to the GATT Agreement on Technical Barriers to Trade annexed to this submission seek to:

- Establish provisions on operation of certification systems in parallel with those applying to procedures for evaluating conformity (e.g. testing) with technical regulations and standards in Article 5 as appropriate.
- Include declaration of conformity under the Agreement by replacing references to 'self certification' with 'declaration of conformity' in Article 5.2 as agreed to in principle by the Committee on Technical Barriers to Trade.
- Incorporate the principle of encouraging mutual recognition of certification through acceptance of products certified by bodies accredited under relevant international guidelines and standards.
- Expand provisions of the Agreement to ensure transparency of certification procedures.
- Integrate provisions on certification and other conformity assurance methods in the Agreement, e.g. by including Article 9 on regional and international certification systems under Article 7.

ANNEX

AMENDMENTS PROPOSED BY CANADA TO THE AGREEMENT
ON TECHNICAL BARRIERS TO TRADE ON CERTIFICATION SYSTEMS

The operation, transparency and the mutual recognition of product certification systems under the Agreement on Technical Barriers to Trade should be improved through the following amendments:

(a) Amend the title of the Section of the Agreement beginning with Article 7 and now entitled 'CERTIFICATION SYSTEMS' to ASSURANCE OF CONFORMITY WITH TECHNICAL REGULATIONS OR STANDARDS.

(b) Remove Article 9 on international and regional certification systems by including its provisions under Article 7 and include reference to guides for certification bodies since they involve obligations on central governments.

(c) Replace self-certification by declaration of conformity in paragraph 5.2 which would become new paragraph 7.8.

In order to give effect to the proposed amendments in paragraphs (a) to (c) above, the following changes (in brackets) in the text of Article 7 would be required:

ASSURANCE OF CONFORMITY WITH TECHNICAL REGULATIONS
AND STANDARDS

Article 7

Certification systems of central government bodies.

(Existing Article 7.1) With respect to their central government bodies:

7.1 Parties shall ensure that certification systems are not formulated or applied with a view to creating obstacles to international trade. They shall likewise ensure that neither such certification systems themselves nor their application have the effect of creating unnecessary obstacles to international trade.

(Amended Article 7.2) 7.2 Parties shall ensure that certification systems are formulated and applied so as to grant access for suppliers of like products originating in the territories of other Parties under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, including the determination that such suppliers are able and willing to fulfil the requirements of the system. Access for suppliers is obtaining certification from an importing party under the rules of the system.

Access for suppliers also includes receiving the mark of the system, if any, under conditions and procedures no less favourable than those accorded to suppliers of like products of national origin or originating in any other country. (To this end Parties shall apply the following provisions:

7.2.1 certification shall be undertaken and completed without undue delay and in a no less favourable order for imported products as for like domestic products.

7.2.2 any fees required for certification of imported products shall be equitable in relation to fees charged for certification of like domestic products and limited to the cost of services necessary for certification including communications and transportation costs arising from differences between geographic location of facilities of the supplier and the certification body.

(New sub-paragraphs 7.2.3 information for certification of 7.2.1 to 7.2.6) imported products shall be requested only to the extent necessary for certification and establishing the fees therefor.

7.2.4 information on the application of certification procedures shall be promptly provided to the exporter or the importer or their agents, if requested, including reasons for any delays or requirements not met by products.

7.2.5 the confidentiality of information about imported products arising from or supplied in connection with certification shall be respected in the same way as for like domestic products.

7.2.6 the siting of certification facilities shall not be such as to cause unnecessary inconvenience for importers, exporters or their agents.)

(Amended Article 9.1)(7.3) Where a positive assurance, other than by the supplier, of conformity with a technical regulation or standard is required, Parties shall, wherever practicable, formulate (and adopt) international (systems for certification of products and guides for certification bodies).

(Amended Article 9.4)(7.4) Parties shall ensure that their central government bodies rely on international or regional (systems for certification of products and guides for certification bodies) only to the extent that the systems (and guides) comply with the provisions of Article 7.

(Existing Article 7.3)(7.5) Parties shall:

7.5.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with it, that they propose to introduce a certification system;

7.5.2 notify the GATT secretariat of the products to be covered by the proposed system together with a brief description of the objective of the proposed system;

7.5.3 upon request provide, without discrimination, to other Parties particulars or copies of the proposed rules of the system;

7.5.4 allow, without discrimination, reasonable time for other Parties to make comments in writing on the formulation and operation of the system, discuss the comments upon request and take them into account.

(Existing Article 7.4)(7.6) However, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may omit such of the steps enumerated in Article 7, paragraph 5 as it finds necessary provided that the Party, upon adoption of the certification system, shall:

7.6.1 notify immediately the other Parties through the GATT secretariat of the particular certification system and the products covered, with a brief indication of the objective and the rationale of the certification system including the nature of the urgent problems;

7.6.2 upon request provide, without discrimination, other Parties with copies of the rules of the system;

7.6.3 allow, without discrimination, other Parties to present their comments in writing, discuss these comments upon request and take the written comments and results of any such discussion into account.

(Amended Article 7.5)(7.7) Parties shall ensure that all adopted rules of product certification systems (including guides for certification bodies) are published (or otherwise made available in such a manner as to enable interested Parties to become acquainted with them).

(Amended Article 5.2)(7.8) Parties shall ensure, whenever possible, that their central government bodies accept (certification) issued by relevant bodies, or rely on (declaration of conformity) by producers, in the territories of other Parties, even when the certification (or other conformity assurance) methods differ from their own, provided they are satisfied that the methods employed in the territory of the exporting party provide a sufficient means of (assuring) conformity with the relevant requirements (including accreditation criteria). It is recognized that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding regarding certification methods and results employed in the territory of the exporting Party, in particular in the case of perishable products or of other products which are liable to deteriorate in transit.

(Amended Article 5.3)(7.9) Parties shall ensure that their certification systems are such as to permit, as far as practicable, the implementation of the provisions in (Article 7, paragraph 8).

(Existing Article 5.4)(7.10) Nothing in this Article shall prevent parties from carrying out reasonable spot checks within their territories.

(Amended Article 9.2)(7.11) Parties shall take such reasonable measures as may be available to them to ensure that international and regional (systems for product certification and guides for certification bodies) in which relevant bodies within their territories are members or participants comply with the provisions of Article 7, with the exception of paragraph 2 having regard to the provisions of Article 8, paragraph 3. In addition, Parties shall not take any measures which have the effect of, directly or indirectly, requiring or encouraging such systems to act in a manner inconsistent with any of the provisions of Article 7.

(Amended Article 9.3)(7.12) Parties shall take such reasonable measures as may be available to them to ensure that international and regional (systems for product certification and guides for certification bodies) in which relevant bodies within their territories are members or participants, are formulated and applied so as to grant access for suppliers of like products originating in the territories of other Parties, under conditions no less favourable than those accorded to suppliers of like products originating in a member country, a participant country or in any other country, including the determination that such suppliers are able and willing to fulfil the requirements of the system. Access for suppliers is obtaining certification from an importing Party which is a member of or participant in the system, or from a body authorized by the system to grant certification, under the rules of the system. Access for suppliers also includes receiving the mark of the system, if any, under conditions no less favourable than those accorded to suppliers of like products originating in a member country or a participant country.