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Committee on Technical Barriers to Trade

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CODE OF GOOD PRACTICE FOR THE PREPARATION, ADOPTION AND APPLICATION OF STANDARDS

Revised Proposal by the European Economic Community

Introduction

The European Economic Community's proposal for a code of good practice for non-governmental standardizing bodies (TBT/W/124 of 27 July 1989) was discussed at meetings of the TBT Committee in September and November 1989. The European Economic Community was pleased to note that many Parties supported the broad lines of this proposal, in particular the idea itself of creating a voluntary code of good practice which directly addresses standardizing bodies with a set of clearly spelt out rules, the introduction of a regular monitoring system on a governmental level in the Committee on Technical Barriers to Trade, the creation of transparency in the activities of standardizing bodies through the availability of information thereon and through the use of open procedures, the use of the ISONET network, the use by standardizing bodies of international standards and their active contribution to their development, the stimulation of co-ordination between standardizing bodies within the national territory, etc.

The large measure of support which the European Economic Community received encourages it to maintain these broad lines. At the same time, however, the European Economic Community has noted a number of comments and questions which it considers useful with a view to further improving the proposal. In response to those comments and questions the European Economic Community has, therefore, made the following changes to its proposal:

1. The coverage of the proposal is extended to include all standardizing bodies, whether governmental or non-governmental, local, national or regional. This means that central government bodies, local government bodies and regional governmental bodies producing standards have been added to the non-governmental bodies that were already covered. To accommodate for this change, all references to standards have been removed from Articles 2 and 3 of the GATT Agreement on Technical Barriers to Trade. Articles 3 and 4 have been combined into a new Article 3, dealing with technical regulations of local government bodies and non-governmental bodies. The proposed new Article 4 has been revised to provide for the larger scope of the proposal. In this respect, Parties would continue to have an obligation to ensure the behaviour of central governmental standardizing bodies.

2. The proposal's administrative and financial burden for standardizing bodies and ISONET has been significantly reduced by eliminating the transmission of notices of individual draft standards (in the old paragraph G) and the obligation to use a GATT language (in the old paragraphs F and G).

Instead, the same objective of transparency is sought by placing more emphasis on the work programmes of standardizing bodies (see paragraph I and the Recommendation of the Committee on Technical Barriers to Trade below). While no other language than the national language would need to be used for work programmes, the European Economic Community proposes that standardizing bodies should give certain (alpha)numeric indications for each standard in their work programme, by means of which any interested reader could at least identify the product for which the standard is being developed, the stage of development of the standard, and any international standards used as a basis for the standard. Computerization of information storage and transmission would also be greatly facilitated in this manner. To make this possible, the Recommendation of the Committee on Technical Barriers to Trade asks ISO to introduce as part of the rules for the transmission of work programmes to ISONET three standardized (alpha)numeric classification systems: a classification system covering all products, a stage code system, and a classification system covering all international standards.

Apart from this, ISONET would have as its task to publish regularly, for instance in a newsletter available at least to ISONET member bodies, the names and addresses of standardizing bodies that had accepted or withdrawn from the code of good practice and the names and addresses of standardizing bodies from which work programmes had been received since the last publication.

Any interested party in a Party to the GATT Agreement on Technical Barriers to Trade would have the right to request work programmes directly from standardizing bodies themselves, for which a reasonable fee could be asked. This would be without prejudice to existing contractual arrangements for the delivery of documents (see paragraph N below).

Having obtained the work programme, the interested party could, already at the stage at which the decision has been taken to develop a standard but technical work has not yet begun, request the standardizing body concerned to send the text of a particular draft standard at the beginning of the public enquiry. A reasonable fee may be asked for this text. This would be without prejudice to existing contractual arrangements for the delivery of documents (see paragraph K below).

Therefore, by means of the work programme interested parties would still be able to become aware of projects for particular standards and obtain the text of draft standards at the beginning of the public enquiry, even though individual draft standards would no longer be notified.

3. The changes in the information transmission system proposed above much reduce the importance of the question of what the position should be of ISONET member bodies that have not accepted the code of good practice or whose country is not a Party to the GATT Agreement on Technical Barriers to Trade. The only "free" advantage of being an ISONET member body would be that all of them would automatically receive the ISONET publications containing the names and addresses of standardizing bodies that had accepted or withdrawn from the code of good practice and the names and addresses of standardizing bodies from which the ISO Information Centre in Geneva had received work programmes (see point 3 of the Recommendation of the Committee on Technical Barriers to Trade). This information would be much more limited in scope than under the old proposal, where ISONET member bodies received notices of individual draft standards.

While this information could be useful in stimulating new acceptances of the code of good practice, it would not, in itself, create any right to receive work programmes, draft standards or standards, or to make comments on draft standards. In this respect, ISONET member bodies have no special privileges. Any interested party, including any ISONET member body, in a Party to the GATT Agreement on Technical Barriers to Trade would have the right to obtain a work programme directly from the standardizing body that issued it. With regard to ISONET member bodies in countries not Party to the GATT Agreement on Technical Barriers to Trade, it would be for the body that had drawn up the work programme to decide whether it wanted to supply it, and on what terms. Furthermore, if an ISONET member body had accepted the code of good practice (which is possible only if it is located in a Party to the GATT Agreement on Technical Barriers to Trade and if it is itself a standardizing body), then its comments on draft standards would have to be taken into account by the body that drafted the standard. With regard to comments from ISONET member bodies that had not accepted the code of good practice, it would be for the body that drafted the standard to decide whether it wanted to take those comments into account.

4. Certain general provisions have been brought together at the beginning of the code of good practice as new paragraphs A, B and C.
5. Development, financial or trade needs have been recognized as legitimate reasons why using international standards as a basis for their national standards may not always be appropriate for developing countries (see paragraph D below). A similar provision exists in Article 12.4 of the GATT Agreement on Technical Barriers to Trade.
6. A clarification has been given that the period of public enquiry may begin only after a full text of the draft standard has been established (see paragraph J below).

Some suggestions which, on the contrary, the European Economic Community has not accepted in this amended proposal are to eliminate all provision of information to ISONET, to eliminate the monitoring system between Parties in the Committee on Technical Barriers to Trade, to provide

for a stronger system of national co-ordination, to restrict replies to comments to cases where the comment cannot be taken into account, and to reduce the comment period to less than 60 days.

In order not to complicate matters by combining different proposals, the European Economic Community has drafted this proposal without reference to its proposal on local government bodies (TBT/W/113 of 7 July 1988). That proposal is, in this context, particularly relevant for Article 3 of the GATT Agreement on Technical Barriers to Trade. It remains valid, with the proviso that it now becomes limited to technical regulations (and not standards) of local government bodies.

On the basis of the above considerations, the European Economic Community proposes the following amendments:

Amendments to the Agreement on Technical Barriers to Trade

The Agreement's chapter on technical regulations and standards (Articles 2, 3 and 4) is amended as follows:

TECHNICAL REGULATIONS AND STANDARDS

Article 2

Preparation, adoption and application of technical regulations by central government bodies

With respect to their central government bodies:

2.1 Parties shall ensure that technical regulations are not prepared, adopted or applied with a view to creating obstacles to international trade. Furthermore, products imported from the territory of any Party shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country in relation to such technical regulations. They shall likewise ensure that neither technical regulations themselves nor their application have the effect of creating unnecessary obstacles to international trade.

2.2 Where technical regulations are required and relevant international standards exist or their completion is imminent, Parties shall use them, or the relevant parts of them, as a basis for the technical regulations except where, as duly explained upon request, such international standards or relevant parts are inappropriate for the Parties concerned, for inter alia such reasons as national security requirements; the prevention of deceptive practices; protection for human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological problems.

2.3 With a view to harmonizing technical regulations on as wide a basis as possible, Parties shall play a full part within the limits of their resources in the preparation by appropriate international standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, technical regulations.

2.4 Wherever appropriate, Parties shall specify technical regulations in terms of performance rather than design or descriptive characteristics.

2.5 Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not substantially the same as the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Parties, Parties shall:

- 2.5.1 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 particular technical regulation;
- 2.5.2 notify other Parties through the GATT secretariat of the products to be covered by technical regulations together with a brief indication of the objective and rationale of proposed technical regulations;
- 2.5.3 upon request, provide without discrimination to other Parties particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards;
- 2.5.4 allow without discrimination reasonable time for other Parties to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.6 Subject to the provisions in the heading of Article 2, paragraph 5, 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 2, paragraph 5 as it finds necessary provided that the Party, upon adoption of a technical regulation, shall:

- 2.6.1 notify immediately other Parties through the GATT secretariat of the particular technical regulation, the products covered, with a brief indication of the objective and the rationale of the technical regulation, including the nature of the urgent problems;
- 2.6.2 upon request, provide without discrimination other Parties with copies of the technical regulation;
- 2.6.3 allow without discrimination other Parties to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account;
- 2.6.4 take also into account any action by the Committee as a result of consultations carried out in accordance with the procedure established in Article 14.

2.7 Parties shall ensure that all technical regulations which have been adopted are published promptly in such a manner as to enable interested parties to become acquainted with them.

2.8 Except in those urgent circumstances referred to in Article 2, paragraph 6, Parties shall allow a reasonable interval between the publication of a technical regulation and its entry into force in order to allow time for producers in exporting countries, and particularly in developing countries, to adapt their products or methods of production to the requirements of the importing country.

Article 3

Preparation, adoption and application of technical regulations by local government bodies and non-governmental bodies

3.1 Parties shall take such reasonable measures as may be available to them to ensure that local government bodies and non-governmental bodies within their territories comply with the provisions of Article 2 with the exception of Article 2, paragraph 3 and paragraph 5, sub-paragraph 2, noting that provision of information regarding technical regulations referred to in Article 2, paragraph 5, sub-paragraph 3 and paragraph 6, sub-paragraph 2 and comment and discussion referred to in Article 2, paragraph 5, sub-paragraph 4 and paragraph 6, sub-paragraph 3 shall be through Parties. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such local government bodies and non-governmental bodies to act in a manner inconsistent with any of the provisions of Article 2.

Article 4

Preparation, adoption and application of standards

4.1 With respect to their central government bodies Parties shall ensure that standards are not prepared, adopted or applied with a view to creating obstacles to international trade. Furthermore, products imported from the territory of any Party to the GATT Agreement on Technical Barriers to Trade shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country in relation to such standards. They shall likewise ensure that neither standards themselves nor their application have the effect of creating unnecessary obstacles to international trade.

4.2 Parties shall ensure that their central government standardizing bodies accept and comply with the code of good practice for the preparation, adoption and application of standards in annex 4 to this Agreement. They shall take such reasonable measures as may be available to them to ensure that local government or non-governmental standardizing bodies within their territory as well as regional standardizing bodies of which they or one or more bodies within their territory are member, accept and comply with this code of good practice. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner inconsistent with the code of good practice in annex 4.

4.3 As soon as possible after a body mentioned in Article 4.2 has accepted or withdrawn from the code of good practice in annex 4, Parties shall notify other Parties through the GATT secretariat of this fact, except, in the case of a regional body, to the extent that the regional body has itself fulfilled this obligation. The notification shall include the name and address of the body concerned and the products covered by its current and expected standardization activities.

Decision of the Committee on Technical Barriers to Trade

Article 13.1 of the Agreement provides that the Committee on Technical Barriers to Trade shall meet no less than once a year for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. Without prejudice to the dispute settlement procedures of the Agreement, in particular Article 14.24 thereof, the Committee decides that, in conformity with Article 13.1, it shall at least once a year review a list, drawn up by the GATT secretariat and sub-divided into separate sections for each Party, of the bodies mentioned in Article 4.1 that have accepted the code of good practice in annex 4, for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of that code.

Recommendation of the Committee on Technical Barriers to Trade

The Committee recommends that ISO establish an information system under which:

1. ISONET member bodies shall transmit to the ISO Information Centre in Geneva the notifications referred to in paragraph C and the work programmes referred to in paragraph I of the code of good practice for the preparation, adoption and application of standards in annex 4 to the GATT Agreement on Technical Barriers to Trade, in the manner indicated there;
2. the following (alpha)numeric classification systems shall be used in the work programmes mentioned above:
 - a. a standards classification system which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the subject matter;
 - b. a stage code system which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the stage of development of the standard; for this purpose, at least five stages of development should be distinguished: (1) the stage at which the decision to develop a standard has been taken, but technical work has not yet begun; (2) the stage at which technical work has begun, but the period of public enquiry has not yet started; (3) the stage at which the public enquiry has started, but has not yet been completed; (4) the stage at which the public enquiry has been completed, but the standard has not yet been adopted; and (5) the stage at which the standard has been adopted;

- c. an identification system covering all international standards which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the international standard(s) used as a basis;
3. the ISO Information Centre in Geneva shall regularly publish in a publication available at least to ISONET member bodies, the names and addresses of standardizing bodies that have accepted or withdrawn from the code of good practice and the names and addresses of standardizing bodies from which work programmes have been received since the last publication.

Annex 4 to the GATT Agreement on Technical Barriers to Trade

Code of good practice for the preparation, adoption and application of standards

GENERAL PROVISIONS

- A. For the purposes of this code the definitions of the GATT Agreement on Technical Barriers to Trade shall apply.
- B. This code is open to acceptance by any standardizing body within the territory of a Party to the GATT Agreement on Technical Barriers to Trade, whether a central government body, a local government body, or a non-governmental body; to any governmental regional standardizing body one or more members of which are Party to the above Agreement; and to any non-governmental regional standardizing body one or more members of which are situated within the territory of a Party to the above Agreement (hereafter collectively or individually called standardizing bodies).
- C. Standardizing bodies shall notify their relevant central government authorities or, in the case of a regional body, those of their members, of the fact that they have accepted or withdrawn from this code. The notification shall include the name and address of the body concerned and the products covered by its current and expected standardization activities. Regional standardizing bodies may alternatively make this notification directly to the GATT secretariat.

Standardizing bodies shall simultaneously make the same notification to the ISO Information Centre in Geneva. Standardizing bodies on a national or local level shall do this through the national member body of ISONET, or in the absence thereof, directly. Standardizing bodies on a regional level shall do this through an international affiliate of ISONET or through one or more national member bodies of ISONET or, in the absence of both, directly.

SUBSTANTIVE PROVISIONS

- D. Where international standards exist or their completion is imminent, standardizing bodies shall use them, or the relevant parts of them, as a basis for the standards they develop, except where such international standards or relevant parts are inappropriate for inter alia such reasons as the prevention of deceptive practices; protection for human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological problems; and, in the case of developing countries, development, financial or trade needs.
- E. With a view to harmonizing standards on as wide a basis as possible, standardizing bodies shall, in an appropriate way, play a full part within the limits of their resources in the preparation by relevant international standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, standards. For standardizing bodies on a national or local level, participation in a particular international standardization activity shall, whenever possible, take place through one delegation representing all standardizing bodies in the national territory that have adopted, or expect to adopt, standards for the products to which the international standardization activity relates.
- F. Standardizing bodies shall make every effort towards the establishment of, and their association with, a member body of ISONET on the national territory or the regional level and towards the acquisition by this member body of the most advanced membership type possible.
- G. Standardizing bodies on a local or national level shall make every effort to avoid duplication of or overlap with the work of other standardizing bodies on the national territory or with the work of regional standardizing bodies which covers the national territory. They shall also make every effort to achieve a national consensus on the standards they develop and on the comments they make under paragraph L.
- H. Wherever appropriate, standardizing bodies shall specify standards in terms of performance rather than design or descriptive characteristics.
- I. At least once every six months, standardizing bodies shall publish in a national or, as the case may be, regional publication of standardization activities a work programme containing their name and address, the standards they are currently preparing and the standards which they have formally adopted in the preceding period. A standard is under preparation from the moment a decision has been taken to develop a standard until that standard has been formally adopted. The work programme shall for each standard indicate, in accordance with ISONET rules, the relevant product classification, the stage attained in the standard's development, and the references of any international standards taken as a basis. No later than at the time of publication of their work programmes, standardizing bodies shall transmit these to the ISO Information Centre in Geneva. Standardizing bodies on a

national or local level shall do this through the national member body of ISONET or, in the absence thereof, directly. Standardizing bodies on a regional level shall do this through an international affiliate of ISONET or through one or more national member bodies of ISONET or, in the absence of either, directly.

- J. Before adopting a standard, standardizing bodies shall hold a public enquiry of at least 60 days on the full text of the draft standard. No later than the start of this public enquiry, standardizing bodies shall publish a notice announcing the period of the public enquiry on the draft standard concerned in a national or, as the case may be, regional publication of standardization activities.
- K. On the request of any interested party in a Party to the GATT Agreement on Technical Barriers to Trade, standardizing bodies shall provide a copy of a draft standard which they submitted to public enquiry. Standardizing bodies shall either send such copies themselves or have them sent by another body with which they have a contractual arrangement for this purpose. Such copies shall be sent by speedy means of delivery at the start of the public enquiry or, if the request has been received after the start but before the end of the public enquiry, as promptly as possible. For this service a reasonable fee may be charged, which shall, apart from the real costs of delivery, be the same for domestic and foreign parties.
- L. Standardizing bodies shall take comments on their draft standards into account whenever those comments have been received during the period of public enquiry from standardizing bodies that have accepted this code of good practice. Such comments shall be replied to as promptly as possible. Standardizing bodies shall make an objective effort to resolve dissenting viewpoints. Where such a comment contests a proposed deviation from an international standard, it is up to the standardizing body that has prepared the draft standard to explain why that deviation is necessary for a legitimate objective such as mentioned in paragraph D.
- M. Once the standard has been adopted, it shall be promptly published.
- N. On the request of any interested party in a Party to the GATT Agreement on Technical Barriers to Trade, standardizing bodies shall promptly provide a copy of their most recent work programme or of a standard which they produced. Standardizing bodies shall either send copies themselves or have them sent by another body with which they have a contractual arrangement for this purpose. For this service a reasonable fee may be charged, which shall, apart from the real costs of delivery, be the same for foreign and domestic parties.
- O. Standardizing bodies shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding complaints with respect to any of the good practices in this code whenever those complaints are made by standardizing bodies that have accepted this code of good practice. They shall make an objective effort to resolve such complaints.