

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Special Distribution

Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Technical Barriers to Trade"

ISSUES RAISED AND SUGGESTIONS MADE AT MAY MEETING OF SUB-GROUP

Note by the Secretariat

Addendum

Document MTN/NTM/W/12 contained issues raised and detailed suggestions made during the May meeting of the Sub-Group. This addendum contains proposals relating to the text of the Proposed Code of Conduct for Preventing Technical Barriers to Trade (annexed to MTN/NTM/W/5) submitted in writing by a number of delegations since that date.

Preamble

- add the following paragraph:

"Recognizing that nothing in this Code shall be construed with a view to preventing developing countries from the adoption of standards, including packaging regulations, and methods for assuring conformity with standards consistent with their development needs."

Section 1 - Definition

- in Annex 1 replace the definition of the term "standard" by the following:

"The term "standard" means any specification which lays down:

- (i) some or all of the properties of a product, or of the packaging, marking or labelling of a product, in terms of quality, purity, nutritional value, performance, dimensions, or other characteristics; or,

- (ii) some or all of the test methods or administrative procedures by which properties referred to in (i) above are to be measured; or
- (iii) some or all of the information to be provided by marking or labelling a product or its package.

The term does not include specifications regarding patents, copyrights, trademarks, certification marks, registered industrial designs and marks of origin, and specifications prepared for use by a single enterprise, whether governmental, semi-governmental or non-governmental."

Section 2

Paragraph (a)

- add "including packaging regulations" after "mandatory standards" in both sentences;
- add "particularly to developing countries" at the end of both sentences;

Paragraph (b)

- add at the end after the words "except where such international standards or relevant parts are inappropriate for the adherents concerned" - the following "when these adherents are developing countries";

Paragraph (d)

- explain what is meant by "in terms of performance" and what "detailed design" comprises.

Paragraph (f)

- define what is an "urgent problem".

Paragraph (j)

- replace the phrase: "adherents shall use all reasonable means within their power to ensure that..." by the following:

"... developing adherents shall use all reasonable means within their power to ensure, and developed adherents will ensure, that..."

Paragraph (k)

- a reasonable time-limit should be established so as to allow adherents that are members of a regional standards body to harmonize their mandatory standards, where necessary, with the provisions of paragraphs (a) to (h) of Section 2.

Paragraph (k)

- complete the text as follows:

"and except if the regional standard does not concern any country outside the regional organization".

Section 3

- replace the phrase: "adherents shall use all reasonable means within their power to ensure that ..." by the following:

"... developing adherents shall use all reasonable means within their power to ensure, and developed adherents will ensure, that ..."

Section 4

Paragraphs (a), (c) - (f), (h), (j)

- replace the phrase: "adherents shall use all reasonable means within their power to ensure that ..." by the following:

"... developing adherents shall use all reasonable means within their power to ensure, and developed adherents will ensure, that ..."

Paragraph (a)

- add "particularly to developing countries" at the end of the paragraph.

Paragraph (c)

- add at the end, after the words "except where such international standards or relevant parts are inappropriate for the adherents concerned" - the following "when these adherents are developing countries";
- explain what is meant by "in terms of performance" and what "detailed design" comprises.

Paragraph (f)

- add a new provision to the effect that also voluntary standards should be notified to GATT secretariat.

Paragraphs (j) and (k)

- a reasonable time-limit should be established so as to allow adherents that are members of a regional standards body to harmonize, where necessary, their voluntary standards with the provisions of paragraphs (a) to (h) of Section 4.

Section 5

Paragraph (a)

- add "including packaging regulations" after "mandatory standards" in the first sentence;
- add "particularly to developing countries" at the end of both sentences.

Paragraph (e)

- replace the verb "should" by "may".

Section 6

Paragraph (a)

- replace "in cases" by "in all cases" and delete "whenever possible"
- clarify whether the product is in conformity with the standard of the buyer or that of the supplier;
- define what is meant by "positive assurance";
- sub-paragraph (ii) should read as follows:

"(ii) accept assurances of conformity with the relevant mandatory standard provided by a governmental quality assurance body or a quality assurance body officially recognized in the territories of other adherents".

Paragraph (b)

- the introductory part of this paragraph should read as follows:

"In cases where it has been clearly established that it is not possible to implement the methods provided for in paragraph (a) of this section and tests are carried out in the territory of the importing adherent, adherents shall apply the following provisions:"

- sub-paragraph (iv): delete the phrase: "if requested";
- sub-paragraph (vi): replace the existing text by the following:

"The confidentiality of information about imported products arising from or supplied in connexion with such tests shall be respected in the same way as for domestic products, except where problems of safety or health arise."

Sections 7 and 8

- replace the phrase "adherents shall use all reasonable means within their power to ensure that ..." by the following:

"... developing adherents shall use all reasonable means within their power to ensure, and developed adherents will ensure, that ..."

Section 9

Paragraph (a)

- add "including packaging regulations" after "mandatory standards" in the first sentence;
- add "particularly to developing countries" at the end of both sentences.

Paragraph (d)

- make it clear that at international level publication mentioned in this paragraph should be effected through the intermediary of the GATT secretariat which would make the distribution to adherents to the Code;

Paragraph (e)-(f)

- merge paragraph (e) with paragraph (f) to read:

"Adherents shall ensure that such systems are open, as soon as implented, to suppliers of similar products produced in the territories of other adherents, under conditions no less favourable than those accorded to domestic suppliers; nevertheless, if for particular reasons it is considered inadvisable to open such systems or agreements from the outset to suppliers in the territories of the other adherents, their application may be limited in the initial stages."

Paragraph (g)

- add a new clause 9(g):

"Where quality assurance systems employ certification marks, such systems shall, where applicable, incorporate requirements for adherents to introduce in their territories comparative legislative measures to regularize administrative procedures and to provide for the legal protection of certification marks on the basis of equality of rights and obligations."

Paragraph (h)

- add a new clause 9(h):

"Where quality assurance systems employ certification marks, such systems shall, where applicable, contain guidelines to assess the technical competence and reliability of participants."

Sections 11 and 12

- replace the phrase "adherents shall use all reasonable means within their power to ensure that ..." by the following:

"... developing adherents shall use all reasonable means within their power to ensure, and developed adherents will ensure, that ..."

Section 13

Paragraph (b), (h)

- replace the phrase "adherents shall use all reasonable means within their power to ensure that..." by the following:

"...developing adherents shall use all reasonable means within their power to ensure, and developed adherents will ensure, that..."

Paragraph (c)

- add "particularly to developing countries" at the end of both sentences.

Paragraph (d)

- sub-paragraphs (i) and (ii): the expression "sole criterion" should be replaced by "basic criterion";
- sub-paragraph (ii): clarify which body or bodies establish final criteria for quality assurances;
- add a new clause (iii):

"Such systems and arrangements shall contain guidelines to assess the technical competence and reliability of participants."

Paragraph (e)

- clarify what the concept of "international quality assurance systems or arrangements" comprises.

Paragraph (g)

- add a new clause between 13(g) and 13(h):

"Where international quality assurance systems or arrangements employ certification marks such systems or arrangements shall, where applicable, incorporate requirements for adherents to introduce in their territories comparative legislative measures to regularize administrative measures and to provide for the legal protection of certification marks on the basis of equality of rights and obligations.";

- make it clear that at international level publication mentioned in this paragraph should be effected through the intermediary of the GATT secretariat which would make the distribution to adherents to the Code.

Paragraph (h)

- clarify the concept of an "open" system.

Sections 14 and 15

- replace the phrase "adherents shall use all reasonable means within their power to ensure that..." by the following:

"...developing adherents shall use all reasonable means within their power to ensure, and developed adherents will ensure, that..."

Section 16

Paragraph (b), (c)

- replace the phrase "adherents shall use all reasonable means within their power to ensure that..." by the following:

"...developing adherents shall use all reasonable means within their power to ensure, and developed adherents will ensure, that..."

Paragraph (f)

- add "or Spanish"

Section 17

Paragraphs (b)-(g)

- the sentence "should consider requests for technical assistance from" should be replaced throughout by "shall grant them technical assistance".

Section 18

- in order to clarify the sense of the expression "insignificant", add the following:

"An amendment of insignificant nature does not influence or does not change the level of technical quality or safety requirements."

Section 19

Paragraph (a)

- define possible terms of reference of the Committee for Preventing Technical Barriers to Trade;
- include among the activities of the Committee analysis and study of the non-tariff measures (standards) contained in the GATT inventory.

Section 20

Paragraph (d)

- delete the sentence in brackets.

Section 21

- insert the following before paragraph (a):

"In putting consultation arrangements into practise, developed countries shall bear in mind the special difficulties experienced by developing countries in formulating and implementing standards and technical resolutions and methods of ensuring conformity with those standards and technical regulations, and in their desire to assist developing countries with their efforts in this direction, developed countries shall take account of the special needs of the former in regard to financing, trade and development."

Paragraph (c)

- replace the existing text by the following:

"The Chairman of the Committee for Preventing Technical Barriers to Trade shall appoint in consultations with the adherents concerned a Panel which shall promptly investigate any matter referred to the Committee under Section 21(b) above and may as part of the investigation, consult with any contracting party or with any competent body. After the investigation is complete, the Panel may:

- (i) make a statement concerning the facts of the matter, or
- (ii) make recommendations to the adherents concerned.

The Panel shall report the results of its action to the Committee for Preventing Technical Barriers to Trade.

In the light of the results of the investigations conducted by the Panel, the Committee for Preventing Technical Barriers to Trade may authorize one or more adherents to this Code to suspend obligations under this Code in respect of one or more adherents."

Section 22

Paragraph (e)

- add a provision to the effect that a written notice of withdrawal should also be presented to the Committee for Preventing Technical Barriers to Trade.

Packaging

It was pointed out that the provisions in the existing text seem satisfactory, for covering packaging problems, provided that the expression "including packaging regulations" is inserted, as appropriate, after the word "standards", to make explicit this relationship. As to labelling problems, it is suggested that they be the object of a specific section to be added to the draft Code, with the following language:

"Adherents shall ensure that labelling regulations are not prepared, adopted or applied with a view to creating obstacles to international trade, particularly to developing countries. They shall likewise ensure that neither regulations themselves nor their enforcement have the effect of creating unjustifiable obstacles to international trade, particularly to developing countries."