

GENERAL AGREEMENT ON TARIFFS AND TRADE

Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Technical Barriers to Trade"

POINTS BEFORE THE SUB-GROUP

Note by the Secretariat

1. At its meeting of May 1976, the Sub-Group requested the secretariat to revise the document setting out the proposals before the Sub-Group (MTN/NTM/W/37) in the light of its discussions at the meeting.
2. This document is circulated in response to this request. It sets out:

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3. The proposals relate to the text of the Proposed Code of Conduct for Preventing Technical Barriers to Trade contained in MTN/NTM/W/49.

A. PROPOSALS BEFORE THE SUB-GROUP

Preamble

- Some delegations felt that it was premature to draft a definitive version of the preamble at this stage.

- Insert the following paragraph in the preamble:

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

Terms

General

One delegation reserved the right to revert to the question of terminology used in the Code.

"Technical specification"

- (United States) - Add: "For the purposes of this Code 'technical specifications' includes processes and production methods in so far as they are necessary to achieve the final product desired."
- (Canada) - Add: "Patents, copyrights, trademarks, certification marks and registered industrial designs by themselves do not constitute technical specifications for the purposes of this Code."

"Standard"

- Clarify the words "recognized body". One suggestion was that the expression "recognized national standardizing body" should be used.
- (United States) - Exclude standards which are prepared for use by a single enterprise, whether governmental or non-governmental, either for its own production or purchasing for its own consumption.
- (EEC) - Exclude only genuine company standards.
 - It was suggested that, if an understanding could be reached in the Sub-Group regarding the substance of the two previous suggestions, it would not be necessary to amend the text of the Draft Code.
 - Another suggestion was that the problems raised might be taken care of if the terms were to read: "A technical specification approved by a recognized standardizing body for continued and general application."
- (Japan) - Insert "approved by a body, either central governmental body, local governmental body, regulatory body, a body other than a central or local governmental body, a non-governmental organization or any other standardizing body, for continued application and with which there is no legal obligation to comply".

"Technical regulation"

- The Sub-Group agreed to revert to the question as to whether the term should also cover technical regulations which cite standards or technical specifications for illustrative purposes, in a descriptive or informative way.

"Standardizing body"

- (United States) - Delete the term:

Operative provisions

Section 2

- Paragraph (a) - There was general agreement that the second sentence of the existing text should be replaced. The following two proposals are before the Sub-Group:

- (Switzerland) - "They shall likewise ensure that neither technical regulations themselves nor their application have the effect of creating obstacles to international trade which are disproportionate to the legitimate objectives of the regulations concerned."

- (Canada) - "They shall likewise ensure that neither the technical regulations themselves nor their application have the effect of creating obstacles to international trade which are unnecessary for the achievement of the objectives of the technical regulations concerned."

These suggestions are relevant to a number of other provisions in the text, e.g. 4(a), 5(a), 9(a), 13(c).

- Many delegations proposed to add "particularly to developing countries" at the end of both sentences. (Also relevant to e.g. 4(a), 5(a), 9(a), 13(c)). Some delegations said that they would prefer to deal with this suggestion by putting a general text in one place in the draft. The United States has agreed to propose such a text. The Sub-Group will examine where this text might be put when the draft is before it. There are two main possibilities: (a) preamble; (b) body of the text.

- Paragraph (b)
(United States)
- Add the following at the end of the paragraph:
"for such reasons as:
- (i) National security or the prevention of deceptive practices;
 - (ii) Differing levels of protection for human health or safety, animal or plant life or health, or the environment;
 - (iii) Significant climatic or other regional factors;
 - (iv) Fundamental technological incompatibility between the international standard and the needs of the adherents concerned".
- Paragraph (c)
(Argentina)
- Add the following at the end of (c):
"... and shall do everything within their power so that international standards may be established within a framework that is effectively representative from the aspect of the extent of participation of interested countries, particularly developing countries." This is related to the proposal of Section 2(a) relating to developing countries.
- New paragraph before (e)
(Israel)
- Add a new paragraph before (e) to read:
"When adherents decide to adopt a technical regulation substantially based on an international standard, they shall notify the GATT secretariat as soon as possible on the product coverage and the relevant symbol and serial number of the international standard."
- (e) introductory paragraph
(EEC)
- Insert in introductory sentence "and if this content is liable to have a significant effect on international trade".
- (Canada)
- There were two attempts to propose a compromise formula:
delete the word "significant" in the insert,
- (Nordic countries)
- or add "except those that are clearly of no importance to international trade" at the end of (e)(ii).

- Paragraph (e)(i) -- Insert the word "early" before the word "stage".
(Argentina)
- Paragraph (e)(ii) -- Insert the words "at the same time" after the word
(Argentina) "notify".
- (Egypt) -- Substitute "the Committee for Preventing Barriers to
Trade" for "the GATT secretariat".
- (Canada) -- Substitute "the other adherents" for "the GATT
secretariat" and add separate provisions for servicing by
the GATT secretariat.

It was suggested that these proposals should be discussed
in the context of Section 19.

- Paragraph (e)(iii) -- Add to the end of the sub-paragraph "and identify the
(Israel) relevant parts which differ from the international
standard". Add a footnote to the sub-paragraph reading:
"These parts shall also be identified in the technical
regulation when it is published."

- Paragraph (f) -- Replace (f) by the following text:

(Egypt and
Switzerland)

"However, where urgent problems of safety, health,
environmental protection or national security exist,
adherents may omit such of the steps in paragraph (e)
of this section as they find necessary. In that event
they shall immediately notify to the Committee on
Preventing Technical Barriers to Trade of the particular
technical regulation, duration of its applicability, the
product concerned, with a brief indication of the
objectives of the technical regulation and the nature
of the urgent problems. Other adherents may
subsequently present their comments in writing. Upon
request, adherents applying the particular technical
regulation shall discuss these comments and take into
account the results of these discussions in considering
whether to initiate amendments."

- (India) -- Add "or any unforeseen circumstances" after the words
"... or national security exist". In the second
sentence replace "they shall take account" by "they
shall note".

Paragraph (h)
(EEC) - The first phrase of the existing text to read:
"except in those circumstances referred to in paragraph (f) above,"

Paragraph (k)
(Hungary) - "The regional standards of regional standardizing bodies regularly not applied by the member countries to products coming from countries outside the regional organizations are not subject to notifications."

Some delegations had difficulties with this proposal. It was suggested that if any amendment were made it should be made in paragraph (e) and that the proposal to add "except those that are clearly of no importance to international trade" at the end of (e)(ii) might solve the problem behind this proposal.

(India) - Delete the phrase "except to the extent that the regional standardizing bodies have fulfilled their obligations."

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 ...".

This suggestion appears to be relevant to a number of other provisions in the text e.g. 4(a), (c)-(f), (h), (g), 7, 8, 11, 12, 13(b) and (h), 14 and 15, 16(b), (c).

Section 3 - Replace the present text by:

(Australia) (a) "Adherents shall use all reasonable means within their power to ensure that local government bodies and regulatory bodies other than central government bodies within their territories do not prepare, adopt or apply technical regulations with a view to creating obstacles to international trade. They shall likewise use all reasonable means within their power to ensure that neither the technical regulations of local government bodies [and regulatory bodies other than central government bodies/ within their territories nor their application have the effect of creating an unjustifiable obstacle to international trade."

- Section 3 (cont'd)
(Australia) (cont'd)
- (b) "Where technical regulations are required and relevant international standards exist or their completion is imminent, adherents shall use all reasonable means within their power to ensure that local government bodies and regulatory bodies other than central government bodies within their territories use the international standards, or the relevant parts of them, as a basis for the technical regulations, except where such international standards or relevant parts are inappropriate for the local government bodies or regulatory bodies concerned."
- (c) "Where appropriate, adherents shall use all possible means within their power to ensure that local government bodies and regulatory bodies other than central government bodies within their territories specify technical regulations in terms of performance rather than detailed design."
- (d) "Except where the technical content of proposed technical regulation of local government bodies within the territory of an adherent is substantially the same as the technical content of an international standard, the adherent shall use all reasonable means within its power to ensure that the local government bodies -
- (i) publish a notice at an appropriate stage that they are working on a particular technical regulation;
 - (ii) provide the adherent with particulars or copies of draft technical regulations which the adherents shall transmit to other adherents on request;
 - (iii) allow a reasonable time for comment;
 - (iv) take account of comments received from other adherents."
- (e) "However, where a technical regulation is prepared for the purpose of meeting an urgent problem of safety, health, environmental protection or security any of the steps in paragraph (d) may be omitted, if necessary. In that event, adherents shall use all reasonable means within their power to ensure that the local government body within its territory preparing the technical regulation takes account of comments received from other adherents."

Section 3 (cont'd) (f) "Adherents shall use all reasonable means within their power to ensure that local government bodies within their territories publish all technical regulations which have been adopted by them."
(Australia) (cont'd)

(g) "Except where there are urgent problems of public safety, health, environmental protection /or security/ adherents shall use all reasonable means within their power to ensure that local government bodies within their territories allow a reasonable interval between the publication of the technical regulation and its entry into force in order to allow time for producers in exporting countries to adapt their products or methods of production so as to be able to comply with the relevant standard."

- It was suggested that an attempt should be made to shorten this suggestion.

(Japan)

-- The following proposal, which concerns sections 3, 4, 7, 10, 11, 12 and 20 is presented under section 3 as it forms a coherent whole.

Replace the present text of section 3 by:

(a) "Adherents shall ensure that local government bodies and regulatory bodies other than central government bodies within their territories comply with the provisions of paragraph (a) of Section 2."

(b) "Adherents shall use all reasonable means within their power to ensure that local government bodies and regulatory bodies other than central government bodies within their territories comply with the provisions of paragraphs (b) to (h) inclusive of Section 2."

(c) "Adherents shall fulfil the obligations of paragraphs (e) and (g) of Section 2 with the exception of 2(e)(iv), to the extent that local government bodies and regulatory bodies other than central government bodies within their territories have not fulfilled these obligations."

In Section 4(d), delete the words "by a central government body".

Replace the present text of Section 7 by:

(a) "Adherents shall ensure that local government bodies and regulatory bodies other than central government bodies within their territories comply with the provisions of paragraph (a) of Section 5."

(b) "Adherents shall use all reasonable means within their power to ensure that local government bodies and regulatory bodies other than central government bodies within their territories comply with the provisions of paragraphs (b) to (e) inclusive of Section 5 and with the provisions of Section 6, substituting "Section 3" for "Section 2" in Section 5(b)."

(c) "Adherents shall fulfil the obligation of paragraphs (b) and (c) of Section 5, to the extent that local government bodies and regulatory bodies other than central government bodies within their territories have not fulfilled the obligation."

Delete the whole of Section 10.

Replace the present text of Section 11 by:

(a) "Adherents shall ensure that any certification systems operated by local government bodies, or by regulatory bodies other than central government certification bodies within their territories, comply with the provisions of paragraph (a) of Section 9."

(b) "Adherents shall use all reasonable means within their power to ensure that any certification systems operated by local government bodies, or by regulatory bodies other than central government certification bodies within their territories, comply with the provisions of paragraphs (b) to (f) inclusive of Section 9, substituting "Sections 3 and 7" for "Sections 2 and 5" and "Section 7" for "Section 6" in Section 9(b)."

(c) "Adherents shall fulfil the obligations of paragraph (d) of Section 9 with the exception of sub-paragraphs (d)(iv) and (v), to the extent that local government bodies or regulatory bodies other than central government certification bodies within their territories have not fulfilled these obligations."

In Section 12, delete in title the words "other than central government bodies" and delete in third line the words "other than central government bodies".

In Section 20(b), delete in second line "of central government bodies", and replace with "for assuring conformity with technical regulations".

In Section 20(c), delete in first line "technical regulations and".

delete in second and third line "(other than those already provided for in paragraph (b) of this Section)", and replace with "for assuring conformity with standards".

Section 4

Paragraph (b)
(EEC)

- Amend to read:

"With a view to achieve harmonization of standards on as wide a basis as possible, adherents shall co-operate, within the limits of their resources, in the preparation of international standard and shall encourage voluntary standardizing bodies within their territories to do likewise and shall encourage the local government bodies, and regulatory bodies other than central government bodies to use international standards.

Paragraph (f)
(Czechoslovakia)

- Insert any changes agreed in the introductory sentence of Section 2(e).

New paragraph (l)
(EEC)

- Add a new paragraph (l) to read:

"In respect of those standards prepared and adopted by standardizing bodies under the direct jurisdiction of central government the words "shall use all reasonable means within their power to ensure" in paragraphs (a), (c), (d), (e), (f), (g) and (h) of this Section shall be replaced by the words "shall ensure".

Section 5

Paragraphs (a)
(b) and (d)
(Nordic countries)

- Delete the paragraphs if the definition adopted for "technical regulation" includes test methods. It was pointed out that administrative procedures in paragraph (d) would probably not be covered by the definition.

Section 5 (cont'd)

Paragraph (e) - Replace "should" by "shall".

Section 6

Paragraph (a) - Redraft the paragraph to read: "A positive assurance that
(Switzerland) imported products conform with technical regulations shall only be required when such assurance is necessary to achieve the objective of the technical regulations. In such cases, adherents shall, unless it is not possible"

(Australia) - Delete "whenever possible" in original text and insert:
"unless they have good grounds for doubting the reliability of the declarations or certificates or marks in question."

new sub- - Insert a new sub-paragraph after (a)(ii) to read: "accept
paragraph after certificates of conformity or marks of conformity with the
(a)(ii) relevant technical regulation provided by a governmental
(Brazil) certification body or a certification body officially recognized in the territories of other adherents".

Paragraph (b) - Amend the introductory sentence to read: "In cases when it
(Colombia) 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:"

Paragraph (b)(iv) - Delete the words "if requested".
(Colombia)

Paragraph (b)(vi) - The Sub-Group agreed to the wording in the body of the
text contained in MTN/NTM/W/5, with Australia reserving its position.

Section 8

(EEC) - Replace this section by:
"(a) Adherents shall ensure that certification bodies under the direct jurisdiction of central government shall comply with the provisions of Sections 5 and 6 as regards:
(i) their test methods and administrative procedures for determining conformity with standards, and
(ii) the provision of certificates of conformity or mark of conformity with standards, substituting the word "standard" for "technical regulation" throughout and substituting "Section 4" for "Section 2" in Section 5(b).

Section 8 (cont'd)

(b) Adherents shall use all reasonable means within their power to ensure that other certification bodies within their territories comply with the provisions of paragraph above."

Section 9

Paragraphs
(e) and (f)

(Nordic countries)

- Replace in (e) the texts in the two sets of square brackets by the following:

"Adherents shall ensure that such systems accept products produced in the territories of other adherents at the same time as they accept domestic products and under conditions no less favourable than those accorded to domestic products.

This proposal was presented as a technical illustration of how the section could be drafted if the obligations were to relate to the treatment of products rather than suppliers.

There was considerable support expressed for this compromise proposal. Some delegations, however, expressed preference for the text in the second set of square brackets in MTN/NTM/W/5.

Section 12

(Australia)

- Delete "government or ..." and "other than central government bodies".

Section 13

Paragraph (d)(i)
(Australia)

- Insert the words "entailed by the adherents" after the word "obligations".

Paragraph (d)(ii)
(Brazil)

- Replace "sole criterion" by "basic criterion". A proposed compromise would be to insert in line 4 of (ii) after "certification body" the words "with respect to the products/test methods concerned. Such a body may be situated in the territory ...".

Paragraphs (f)
and (1)

- The Sub-Group has three possibilities before it:
Retain paragraphs (f) and (1) as worded in MTN/NTM/W/5.
Delete both paragraphs, or

(Nordic countries)

- Replace the text of paragraph (f) in MTN/NTM/W/5 by:
"International certification systems shall accept products produced in the territories of other adherents which are not members of, or participants in the systems at the same time as they accept products from the territories of members of the systems, and under conditions no less favourable than those accorded to products from the territories of members of the systems;" and retain paragraph (1) as worded in MTN/NTM/W/5.

Section 15 (cont'd)

This proposal was presented as a technical illustration of how the section could be drafted if the obligations were to relate to the treatment of products rather than suppliers.

Paragraph (h)(ii)
(Nordic countries)

- The Sub-Group has the following proposal before it, in addition to the two texts in MTN/NTM/W/5: "Accept products produced in the territories of other adherents which are not members of the systems at the same time as they accept products from the territories of members of the systems and under conditions no less favourable than those accorded to products from the territories of members of the systems."

This proposal was presented as a technical illustration of how the section could be drafted if the obligations were to relate to the treatment of products rather than suppliers.

Section 16

(India)
(Japan)

- A suggestion was made that it would be useful to establish a clearing house for information on the activities of international standards bodies and international certification systems. Another suggestion was that the GATT secretariat or the Committee that may be established might as a part of its continuing work, advise adherents as to the organizations from which such information may be obtained. It was suggested that a possible rôle of international standardizing bodies might also be discussed. The Sub-Group agreed to revert to these suggestions when specific proposals were before it.

Section 17

(Brazil)

- Replace throughout the section the words "should consider requests for technical assistance" by: "shall grant them technical assistance on mutually agreed terms and conditions".

Section 19

(Canada)

- Replace the section with the following text¹:

"Institutions

"The adherents to this Code shall establish:

"(a) A Committee on Technical Barriers to Trade (hereafter referred to as the Committee) composed of a representative from each of the adherents to this Code. The Committee

¹The Canadian delegation has also made a proposal regarding Section 21 - Enforcement.

Section 19
(cont'd)

shall elect its own Chairman and shall meet as necessary but not less than once a year for the purpose of affording adherents the opportunity of consulting on any matter relating to the operation of the Code or the furtherance of its objectives. In the discharge of its duties the Committee may consult with any adherent, contracting party or competent body and may request from any adherent such information as it considers necessary and appropriate.

"(b) A standing Panel (hereafter referred to as the Panel), Composed of three (or five) persons qualified in the fields of trade and other matters covered by this Code, and acting in their individual capacities and not representing adherents or any other body. The Panel members shall be appointed by the Director-General of the General Agreement in consultation with the Chairmen of the Committee. The Panel shall carry out the responsibilities assigned to it under this Code and such other functions as may be given to it by the Committee. In the discharge of its responsibilities the Panel may consult with any adherent, contracting party or any other competent body and may request from any adherent such information as it considers necessary and appropriate.

"Notification

"Each adherent shall report annually to the Committee on developments relating to the operation of this Code or the furtherance of its objectives, including developments relating to its own policies and practices. Any adherent wishing to raise before the Committee any particular matter shall notify it in writing at least thirty days before the convening of the meeting."

(Australia)

- Amend the above proposal (Canada), 19(b), as follows:

()

"... Panel members shall be appointed by the Director-General of the General Agreement on Tariffs and Trade in consultation with the Chairmen of the Committee on the basis

(i) that they have appropriate technical qualifications;

(ii) that they are independent and disinterested;

(iii) and in such a way that no adherent to this agreement shall acquire de facto permanent representation on the Panel".

Section 19

(cont'd)

(EEC)

- The following proposals concern the text in MTN/NTM/W/49:

- It was recalled that during the preparatory phase of the work an unsuccessful attempt had been made to find a shorter appropriate name for the Committee.

(EEC)

- Add at the end of the first sentence the words "within two months after its entry into force".

(EEC)

- Amend the second sentence in the paragraph to read "to provide that in addition to meeting once a year, the Chairman could call additional meetings either if requested by an adherent or if he considers it necessary to hold a meeting in order to fulfil the objectives of the Code".

(Brazil)

- There is a proposal that the words "after consultation with members" should be added in the above sentence after the words "or if he considers it necessary".

(Egypt)

- An alternative proposal is that the first part of the second sentence should read: "The Committee shall meet from time to time, as necessary, and at least once a year...". Add another sentence at the end of the paragraph: "Furthermore it may rely for technical assistance on the services of the GATT secretariat and may also hear Technical experts proposed by one or more of its members."

(Nordic countries)

- It was suggested, to begin with, that the Committee might be given a mandate "to deal with all matters relating to the implementation of the Code". At a later stage, it might be possible to consider whether any new elements might have to be added to the provisions.

(Mexico)

- It was suggested that the terms of reference of the Committee should include an analysis and study of the non-tariff measures contained in the GATT Inventory.

Section 20

- A number of delegations suggested that the Section should be redrafted.

- Some delegations said that they would have difficulty in accepting the draft text. It was unlikely that adherents would make efforts on their own to identify the technical regulations or certification systems which result in barriers to trade, and take steps to bring them into conformity with the operative provisions of the Code.

Section 20
(cont'd)

The section should therefore be redrafted to state that the Code dealt with all standards and certification systems, whether existing or future. If this course were followed, adherents whose exports were adversely affected would first approach the adherent in question and then, if they did not receive satisfaction, the Committee.

(United States)

Replace existing sub-paragraphs (b) and (c) with the following:

"To the extent that existing technical regulations, standards, or certification systems within the territories of each adherent create unjustifiable obstacles to international trade, such regulations, standards, and systems shall be subject to the enforcement provisions in Section 21 of the Code."

It was pointed out with regard to the word "unjustifiable" in the United States proposal, that consistency should be achieved throughout the text with the wording of Section 2(a).

It was pointed out that many delegations had reserved their position on the enforcement provisions and therefore reserved their position on the last paragraph of the United States proposal. Representatives of developing countries stressed the importance which they attached to additional benefits for their trade, and could agree with the approach embodied in the proposal if additional benefits were effectively provided for in the enforcement provisions.

It was suggested that the notifications in the Inventory of NTMs should provide the starting point for an examination in this field.

- Some delegations felt that the approach in the original text should be retained, at least for certification systems.

Section 21
(Canada)

- Replace the whole of the section with the following text¹:

"Enforcement

"(a) If any adherent considers that any benefit accruing to it, directly or indirectly, under this Code is being nullified or impaired or that the achievement of any

¹The Canadian delegation has also made a proposal regarding Section 19 - Institutions and Notification.

Section 21
(cont'd)

objective of the Code is being impeded by another adherent or adherents it may, with a view to reaching a satisfactory solution of the matter, make written representations to the other adherent or adherents which it considers to be concerned. Each adherent shall afford sympathetic consideration to and shall afford opportunity for prompt consultation regarding such representations as may be made by another adherent.

"(b) In any consultation between any developed and developing country, the provisions respecting technical assistance contained in Section 17 of this Code and the particular difficulties that developing countries may encounter in complying with the operative provisions of this Code shall be taken into account.

"(c) If no mutually satisfactory solution has been reached between the adherents concerned within sixty days from the time that the representations referred to in paragraph (a) of this Section were made, the Committee shall, at the request of any of the adherents concerned, consider the matter with a view to facilitating a reasonable and mutually satisfactory solution.

"(d) If no mutually satisfactory solution has been reached by the Committee within sixty days from the time the matter was referred to it, the Chairman shall, at the request of any of the adherents concerned, direct the Panel to: (i) promptly investigate the matter; and (ii) make a statement concerning the facts of the matter and such appropriate recommendations to the adherents concerned as the facts warrant, based on the provisions and objectives of the Code.

"(e) In the course of its investigation of a matter referred to in paragraph (d) above, the Panel may request from any adherent concerned such information as it considers necessary and appropriate. The adherent concerned shall give full consideration to such a request.

"(f) If the Panel finds that the matter referred to it results in the impairment or nullification of any direct or indirect benefit which accrues, or could be reasonably anticipated to accrue, under the Code, it shall recommend to the adherent or adherents concerned that the measure giving rise to such impairment or nullification be eliminated or modified to the extent necessary.

Section 21
(cont'd)

"(g) If these recommendations are not implemented within sixty days (or, in special circumstances, if this is not feasible and the adherents concerned mutually agree, or as the Panel may prescribe, within such further period of limited duration) the Panel shall, as soon as possible:

"(i) recommend to the Committee that an adherent or adherents be authorized to suspend the application, to any other adherent or adherents, of such obligations under this Code as may be appropriate in the circumstances; and/or

"(ii) recommend to the CONTRACTING PARTIES, in accordance with the provisions of Article XXIII:2, that an adherent or adherents be authorized to suspend to any other adherent or adherents, such concessions or other obligations under the General Agreement, as may be appropriate in the circumstances.

Any recommendation under (i) or (ii) above shall aim at maintaining the balance of rights and obligations at the highest possible level.

"(h) The Panel shall report its recommendations and the results of its actions to the Committee as soon as possible."

(Australia)

- Amend the above proposal as follows:

Add new paragraph to proposed Section 21(e) above:

"The adherents concerned shall:

"(i) have the right to be present at any meeting of the Panel convened to investigate a matter referred to it under paragraph (d) above;

"(ii) have access to any information supplied to the Panel under the procedure laid down under paragraph (e) above".

Section 21

(cont'd)

Amend proposed Section 21(f) above as follows:

"If the Panel finds that the matter referred to it results in the impairment or nullification of any direct or indirect benefit which accrues, or could be reasonably anticipated to accrue, under the Code, it shall formulate recommendations calling for the elimination or modification of the measure giving rise to the impairment or nullification.

Before submitting its recommendation to the Committee, the Panel shall discuss with the adherents concerned:

"(i) the form in which the recommendations are to be presented to the Committee; and

"(ii) the nature of the recommendations".

(Egypt)

- It was suggested that it may be necessary to provide for notification to the Committee of the actions taken by adherents to modify existing standards or certification systems which resulted in barriers to trade.

(Mexico)

- Insert, at the beginning of (a), the following text: "During consultations, developed countries shall bear in mind the special difficulties experienced by developing countries in formulating and implementing standards and technical regulations 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." It was also suggested that the substance of this amendment might be put in the Preamble.

(EEC)

- Insert after paragraph (a): "In assessing whether a benefit accruing to any adherent is being nullified or impaired by the adoption or use of a technical regulation or a standard common to a number of adherents constituting a customs union or a free-trade area, the situation in the whole of the territories in which such technical regulation or standard is applied shall be taken into consideration."

Paragraph (c)

- (Egypt)
- Insert a new clause between (c)(ii) and (iii) to read:
"A certain action by an adherent considered contrary to this Code should be terminated forthwith."

Section 22

- Paragraph (e)
- Add at the end of (e) ", and to the Committee for Preventing Technical Barriers to Trade".

Paragraph (f)

- (United States)
- Delete the paragraph.

General safeguard clause

- (Australia)
- It is proposed that a general safeguard clause should be introduced which stands in the same relation to the Draft Code as Article XIX does to the General Agreement on Tariffs and Trade. The principal provision of this clause could be along the following lines:

"If as a result of obligations incurred under the Code, serious problems of safety, health, environmental protection, national security, industrial technology or deceptive practices arise or threaten to arise for an adherent, that adherent shall be free, to the extent and for such time as may be necessary to prevent or remedy such problems, to suspend the obligation in whole or in part."

It is also proposed that the principal clause would be accompanied by post factum notification, consultation and justification procedures.

Packaging and labelling

- (Mexico)
- It is suggested that a distinctive mark of certification for packaging should be established, accepted and issued by each adherent.

(India)

- Incorporate an additional section at an appropriate place in the Code to read: "For transport of bulky packages, adherents should follow the same pictorial and other such markings for safety requirements, handling, storage, etc., which should conform to those laid down by the ISO."

Publication of regulations

- The Sub-Group agreed that all regulations should be published. Differences of opinion existed on how this should be achieved in drafting terms.

B. POINTS FOR THE RECORD

1. During the examination of the applicability of the ECE/ISO definitions, the Sub-Group agreed to insert the following points in the record:

"Standard"

- The word "body" covers also a national standardizing system.

"Technical Regulation"

- For the purposes of the Code, this definition covers also a standard of which the application has been made mandatory not by separate regulation but by virtue of a general law.

"Standardizing Body"

- The term includes a body of organization whose principal function is in the field of standardization.

2. Proposals for new paragraphs 9(g) and (h), 13(d)(iii) and a new paragraph between 13(g) and (h) were withdrawn in the light of the views expressed at the last meeting that these were covered by the wording of the existing text.

3. The Sub-Group agreed to the following amendments in the body of the Proposed Code as contained in MTN/NTM/W/5:

Chapter I

- Amend heading to read: "Terms".

Section 1

- Amend to read: "For the purposes of this Code, the terms used in Annex 1 apply."

Section 2

Paragraph (c)

- Amend the first line to read: "with a view to achieving harmonization of their technical regulations".

Paragraph (d)

- Amend to read: "... in terms of performance rather than design".

Paragraph (e)
Introduction

- Amend to read: "... of a proposed technical regulation".

Sub-paragraph (i)

- Amend to read: "... they are preparing the particular technical regulation".

(ii)

- Insert the words "and rationale" after the words "the objective".

(iii)

- Amend to read: "... or copies of the proposed mandatory standard ..."

(iv) and
(v)

- Delete (v) and replace (iv) by: "allow reasonable time for other adherents to make comments in writing, discuss these comments upon request, and take them into account".

Paragraph (h)

- Amend to read: "allow time for producers in exporting countries, and particularly in developing countries, to adapt ..."

Section 4

Paragraph (a)

- Amend to read: "... to ensure that bodies within their territory, whether governmental or non-governmental, do not prepare, ..."

Paragraph (e)

- Amend as Section 2(d).

Paragraph (f)

- Amend as Section 2(e).

Section 5

- Paragraph (d) - Align French text on English "so far as practicable".⁷

Section 6

- Sub-paragraph (b)(vi) - Delete footnote.

Section 10

- Insert the words "or those in which they rely" after "of their central government bodies".

Section 13

- Sub-paragraph (d)(i) - Delete the word "regulatory" in line 2.

- Paragraph (g) - Add at the end of the Introduction: "or in transforming a regional certification system into an international certification system:"

- Paragraph (j) - Delete the paragraph.

Section 16

- Paragraph (f) - Amend to read: "... in English, French or Spanish".

Section 22

- Sub-paragraph (a)(i) - Amend to read: "This Code shall be open for adherence to all countries, and to the European Economic Community."