

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/NTM/W/120

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Special Distribution

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 September 1977, the Sub-Group requested the secretariat to revise the document setting out the proposals before the Sub-Group (MTN/NTM/W/95) 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/119.

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 the 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."

Section 1 - Replace by the following:

"1. TERMS AND DEFINITIONS

- (Nordic countries)
1. General terms for standardization and certification shall normally have the meaning given to them by definitions adopted within the United Nations System and by the International Organization for Standardization taking into account their context and in light of the object and purpose of the Code.
 2. However, for the specific purposes of the Code the definitions given in Annex 1 apply."

Operative provisions

Section 2

- Paragraph (a) - Replace the second sentence by the following text:
- (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."
- Many delegations proposed to add:
- "particularly to the trade of 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 suggestions for special and differential treatment by putting a general text in one place in the draft. See Suggestions for Special and Differential Treatment on page 22. It was also suggested by several delegations that both approaches - a general text and specific references - could be used.
- Paragraph (b) - Add "or are inconsistent with their economic development." at the end of the paragraph.
- (India)

- (Malaysia) - Add to the paragraph:
"the adoption or adaptation of international standards by an adherent in its technical regulations, shall not exclude the concurrent use of other suitable or acceptable standards by the adherents".
- Paragraph (c) - Add the following at the end of (c):
(Argentina) "... 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.
- The following texts were also proposed:
- (Australia) "Adherents shall do everything in their power to ensure that international standardizing bodies of which they are members so operate that interested adherents are effectively represented."
- (Nordic countries) "Adherents shall use all reasonable means within their power to ensure that international standardizing bodies are organized and operated in a way which facilitates active participation of relevant bodies in developing countries."
- It was suggested that such proposals should be included under Section 2, under Section 4 or in a general text on developing countries.
- (Mexico) "Adherents shall use all means within their power to ensure that international standardizing bodies of which they are members are organized and operate in such a way that facilitates active participation of the relevant bodies of all adherents, particularly those of developing countries, and shall do everything in their power to ensure that international standards are established within a framework that is effectively representative from the point of view of the extent of participation of all interested countries."

- New paragraph before (e) - Add a new paragraph before (e) to read:
- (Israel) "When adherents decide to adopt a technical regulation substantially based on an international standard, they shall ensure that the GATT secretariat is notified as soon as possible on the product coverage and the relevant symbol and a precise reference to the international standard."
- (e) introductory paragraph - Insert in introductory sentence:
- (EEC) "and if this content is liable to have a significant effect on trade of other adherents".
- The following texts were also proposed:
- (Canada) "except those that are clearly of little or no interest to other adherents".
- (Nordic countries) "except those that are clearly of no importance to trade of other adherents" at the end of (e)(ii).
- (United States) "or if this content is of little or no importance to the trade of other adherents".
- Paragraph (e)(ii) - Some delegations expressed reservations concerning the procedures of 2(e)(ii).
- Paragraph (e)(iv) - Some delegations still had some reservations as to whether this was the best way to deal with the question.
- Paragraph (f) - Replace by the following text:
- (Egypt and Switzerland) "However, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for an adherent, that adherent may omit such of the steps in paragraph (e) of this section as it finds necessary. In that event he shall immediately notify the other adherents of the particular technical regulation, the likely duration of its application, 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, the adherent applying the particular technical regulation shall discuss these comments. The adherent shall take into account the written comments and the result of any such discussions in considering whether to initiate amendments."
- The following amendments were proposed to the above text:
- (Canada) Delete "in considering whether to initiate amendments" at the end of the paragraph.
- (India) Add "or any unforeseen circumstances" after the words "...or national security exist".
- (Malaysia) In the fourth sentence replace "shall discuss these comments by" "shall consider these comments".
- (Several delegations) Replace the word "application" by "applicability".

Paragraph (k) - "Regional standards are not subject to notification if they
(Hungary) are not applied to products coming from countries outside the regional organization".

In this context 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 the trade of other adherents" at the end of (e)(ii) might solve the problem behind this proposal.

Section 3
(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."

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)."

- (Japan) (cont'd)
- (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 (e)(iii) - Some delegations still had some reservations as to whether this was the best way to deal with the question.

New Section after
Section 4

(EEC)

- Insert new section to read:

"Preparation, adoption and use of standards by central government bodies

Where standards are prepared, adopted or applied by central government, its ministries and departments or by any body subject to the control of the central government, adherents shall ensure that such central government bodies comply with the provisions of Section 4, with the exception of paragraphs (b), (h) and (j)."

Section 5

(Nordic countries) - Delete the section. The definition of "technical regulation" means that the content of Section 5 is already largely covered by Section 2. Any element in the present Section 5 that needs to be retained should be included in Section 6. (See Section 6.)

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

Section 6

(Nordic countries) - Redraft of Section 6 to read:

6. "Conformity with technical regulations of central government bodies

(a) Adherents shall ensure that test methods and administrative procedures to be used by a central government body are such as to permit so far as practicable the tests to be carried out in the territories of other adherents.

(b) In determining conformity with technical regulations, adherents should permit the use of test methods which differ from their own, provided the importing adherent is satisfied that the exporting adherent's methods provide an equivalent means of determining conformity with technical regulations of central government bodies.

(c) In cases where a positive assurance is required that imported products conform with a technical regulation, adherents shall, whenever possible,

- (i) rely upon declarations by suppliers in the territories of other adherents that their products conform to the relevant technical regulation, or
- (ii) accept certificates or marks of conformity with the relevant technical regulations provided by certification bodies in the territories of other adherents, or
- (iii) allow tests to be carried out in the territories of other adherents, or
- (iv) use any combination of the above.

(d) To the extent that one or other of the methods provided for in paragraph (c) of this section has not been implemented and tests are carried out in the territory of the importing adherent, adherents shall apply the following provisions:

- (i) imported products shall be accepted for testing under conditions no less favourable than those accorded to similar domestic products;
- (ii) the test methods and administrative procedures for imported products shall be no more complex and no less expeditious than the corresponding methods and procedures for similar domestic products in a comparable situation;
- (iii) any fees imposed for testing products of other adherents shall be equitable in relation to any fees chargeable for testing similar domestic products;
- (iv) the results of tests shall be made available to the exporter or importer or their agents, if requested, so that corrective action may be taken if necessary;
- (v) the siting of testing facilities and the selection of samples for testing shall not be such as to cause unnecessary inconvenience for importers, exporters or their agents;
- (vi) 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.

(e) Nothing in this section shall prevent adherents from carrying out reasonable spot checks within their territories."

- Paragraph (a)(ii)
(Malaysia)
- Insert "recognized" before "certification bodies".
- New sub-paragraph
after (a)(ii)
(Brazil)
- Insert a new sub-paragraph after (a)(ii) to read:
"accept certificates of conformity or marks of
conformity with the relevant technical regulation
provided by a governmental certification body or a
certification body officially recognized in the
territories of other adherents".
- Paragraph (b)
(Colombia)
- Amend the introductory sentence to read: "In cases
when 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:".
- Paragraph (b)(ii)
(India)
- Add the following: "provided that in determining the
extent of deterioration in quality due to transit
hazards, such test methods and administrative
procedures are comparable to corresponding international
specifications".
- Paragraph (b)(iv)
(Malaysia)
- Amend to read: "the results of tests, if unfavourable,
shall be made available to the exporter or importer or
their agents so that corrective action may be taken if
necessary".
- (Colombia)
- Delete the words "if requested".
- Section 7
(Mexico)
- 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. 8, 11, 12, 13(b)
and (h), 14 and 15, 16(b), (c).

New Section
after Section 8

(EEC)

- Insert a new section to read:

"Conformity with standards - Certification bodies
which are central government bodies

Where central government, its ministries and departments or any body subject to the control of the central government fulfil the certification functions referred to in Section 8, adherents shall ensure that such central government bodies comply with the provisions of that section."

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.

Section 13

Paragraph (d)

(Mexico)

- Insert at the end of the first sentence: "in the light of their different degrees of economic development".

Paragraphs (f)
and (1)

(Nordic countries)

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

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.

Paragraph (a)
(Canada)

Paragraph (a)(iii)
(Nordic countries)

Paragraph (e)(iii)

(Australia)

- A potential conflict between Sections 3 and 16 was raised
- Delete the second phrase so that (a)(iii) reads: "the locations of notices published pursuant to the Code, and"
- Use the language of Article X:1 of GATT in order to cover more than security interests. "Adherents to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate interests of particular enterprises, public or private".

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".

(Malaysia, Indonesia,
Philippines, Singapore,
Thailand)

-- Add a new paragraph to read:

"For the purposes of enabling developing countries to meet the provisions of this Code there shall be established a fund with the view, inter alia, to providing financial and technical assistance to developing countries for:

- (a) appropriate technology and skills to be transmitted to industries in developing countries on fair and reasonable terms to meet internationally accepted technical regulations and standards;
- (b) establishing standardization and quality assurance systems and bodies on a national, sub-regional or regional basis, including the training of adequate personnel to effectively implement the systems so established;
- (c) any other measure deemed necessary by developing countries for their effective participations under this Code."

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 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.

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

(Canada)_(cont'd)

"(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 Chairman 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 Canadian proposal relating to Section 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 Chairman 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".

(Mexico)

- Amend the Canadian proposal as follows:

Where reference is made to the Committee for Preventing Technical Barriers to Trade, after the words "not less than once a year" insert the words "or upon request by not less than 25 per cent of the adherents ..."

(Mexico) (cont'd)

Replace the beginning of paragraph (b) of the Canadian proposal up to the words "in consultation with the Chairman of the Committee" by the following text:
"(b) To examine each particular case that arises, there shall be established in the Committee panels consisting of five members appointed by the Director-General of the General Agreement in consultation with the Chairman of the Committee and the parties concerned. The members of the panels shall be appointed on the basis:

1. that they are qualified experts with respect to the case in question and, preferably, internationally recognized;
2. that they are independent and impartial;
3. each panel shall include two members who are experts specialized in problems of developing countries and capable of providing the special support needed by those countries;
4. when problems relating to developing countries are dealt with, the opinion of the two experts mentioned in the preceding paragraph shall have preference."

Insert the following new paragraphs before the part entitled "Notification":

"(c) In carrying out its mandate, the Committee shall ensure that, in all matters dealt with in this Code, developing countries receive the treatment described below in terms of practical and effective application:

1. the treatment provided for in Part IV of the General Agreement, and especially the principles and objectives of Article XXXVI thereof;
2. additional benefits for their exports by adopting special measures in their favour and giving priority attention to products or areas of interest to them;
3. differential measures in ways which will provide special and more favourable treatment for them;
4. special attention to the particular situation and problems of the least developed among the developing countries."

(Mexico) (cont'd)

"(d) It shall be an important responsibility of the Committee to secure promptly, and to harmonize, the technical co-operation referred to in Section 17. To that end, whenever a developing country makes a request for technical assistance, the Committee shall arrange for the technical co-operation of the appropriate international bodies and shall harmonize it with the similar co-operation to be provided by the developed countries adhering to the Code."

"(e) The tasks of the Committee shall include the analysis and study of the technical barriers to trade listed in the GATT inventory of Non-Tariff Measures, beginning with those affecting the trade of developing countries."

"(f) Secretariat functions for the Committee shall be exercised by the secretariat of GATT."

- The following proposals concern the text MTN/NTM/W/71:

(EEC)

- 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 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

(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 unnecessary obstacles to international trade, such regulations, standards, and systems shall be subject to the enforcement provisions in Section 21 of the Code.

A final decision would not be possible until a greater measure of agreement was obtained in relation to Section 21.

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 the Code is being nullified or impaired or that the achievement of any 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.

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

(Canada) (cont'd)

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

"(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:

(Canada) (cont'd)

"(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 the 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."

(Mexico)

- Amend the Canadian proposal as follows:

Insert the following text at the beginning of paragraph (a):

"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.

In paragraph (c), replace "sixty days" by "thirty days" and amend the passage beginning "... the Committee ..." to read: "... the matter shall be brought before the Committee so that the latter may refer it to a Panel as provided under Section 19."

Replace the remainder of the text by the following:

(Mexico)

"(d) The Panel shall promptly investigate the matter and may, as part of the investigation consult with any contracting party or with any competent body. After the investigation is complete, the Committee may:

1. Make a statement concerning the facts of the matter, or
2. Make recommendations to the adherents concerned, or
3. Find that the specific measure taken by an adherent is contrary to the Code and should be terminated forthwith."

"(e) The adherents concerned shall:

1. Have the right to be present at any meeting of the Panel convened to investigate the matter referred to it under paragraph (c) above;
2. Have access to any information supplied to the Panel."

"(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 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:

1. The form in which the recommendations are to be presented to the Committee; and
2. The nature of the recommendations."

"(g) If one of the parties concerned does not agree with the proposals of the Panel, the matter shall be referred by the Committee to all the adherents."

"(h) If any party fails to comply with the decision of the Committee, the latter may authorize one or more adherents to the Code to suspend obligations under the Code in respect of one or more adherents."

(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."

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."

(EEC)

- Insert after paragraph (a) in MTN/NTM/W/71: "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."

(Egypt)

- Insert a new clause between (c)(ii) and (iii) in MTN/NTM/W/71 to read: "A certain action by an adherent considered contrary to this Code should be terminated forthwith."

- (Egypt)
- It was also 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.

Section 22

Paragraph (f)

(United States)

- Delete the paragraph.

(Hungary)

- Add at the end of (f) ... "including its Annexes and Protocols."

Other points

1. Scope of Code

- It was agreed that a way should be found of ensuring that obligations under the Code are not circumvented by the drafting of technical specifications in terms of processes and production methods rather than in terms of the characteristics or performance of products.
- (Canada)
- The Code should not apply to patents, copyrights, trademarks, certification marks and registered industrial designs by themselves.
- (United States)
- Standards prepared by government bodies for their own production or consumption requirements should not be subject to the provisions of the Code.
- (EEC)
- The Code should exclude only genuine company standards.
- (Japan)
- Standards should be subject to the provisions of the Code when they are approved by a recognized standardizing body, either central governmental body, local government body, regulatory body, a body other than a central or local government body, a non-government organization or any other standardizing body.

2. Suggestions for additional special and differential treatment

The United States was requested by the NTM Sub-Group on Technical Barriers to Trade to suggest a text for inclusion in the draft Code of Conduct for Preventing Technical Barriers to Trade regarding special and differential treatment for developing countries. (See proposals under Section 2(a).) It was the United States understanding that this text would be in lieu of the "sprinkling" approach under which repeated references would be made throughout the text to special and differential treatment.

As the result of informal consultations with delegations from a number of developing and developed countries, the United States delegation suggested the following text for consideration by the Sub-Group at its March 1977 meeting.

"Preparation and application of technical regulations, standards, test methods, and certification systems"

(United States)

1. "Adherents shall, wherever possible, in the preparation or application of technical regulations, standards, test methods, and certification systems, consider the special development and trade needs of developing countries with a view to ensuring that such technical regulations, standards, test methods and certification systems do not create unnecessary obstacles to exports from developing countries and will facilitate, wherever possible, expansion and diversification of the trade of developing countries.

2. "Adherents shall provide, to the extent possible, technical assistance to developing countries to ensure that the preparation and application of technical regulations, standards, test methods and certification systems aid developing countries in their efforts to expand and diversify exports. Adherents shall also use all reasonable means within their power to ensure that developing countries are afforded every opportunity to participate in the preparation of international standards, particularly as concerns products of special interest to them."

(Nigeria)

- Delete in paragraph 1 on lines 1 and 6 "wherever possible".
- Delete on line 5 "unnecessary".

(India)

- Delete in paragraph 1 in line 2 "consider" and insert "take into account".

Add a new section to the Code:

"Additional, special and differential treatment

(Brazil)

1. "Adherents agree on the importance of providing differentiated and more favourable treatment to developing countries adhering to this code, through the following provisions, as well as through the relevant provisions in other sections of this Code. To this end adherents shall give particular attention to the provisions of this Code affecting developing countries' rights and obligations and shall take into account the special development, financial and trade needs of developing countries in the administration of the Code as a whole, in particular its provisions on application, enforcement and dispute settlement.

2. "It is recognized that developing countries face special problems, including institutional and infrastructure problems, in the field of preparation and application of technical regulations, standards, test methods and certification systems. It is further recognized that the special development and trade needs of developing countries, as well as their stage of technological development, may hinder their ability to discharge fully their obligations under this Code. Adherents, therefore, shall take this fact fully into account when considering any matter arising from the implementation of this Code by developing countries with a view to ensuring that they derive net benefits from this Code.

3. "Adherents shall, in the preparation or application of technical regulations, standards, test methods and certification systems, take account of the special development, financial and trade needs of developing countries, with a view to ensuring that such technical regulations, standards, test methods and certification systems do not create unnecessary obstacles to exports from developing countries. Adherents agree that one of the main objectives of this Code is to promote the expansion and diversification of the exports from developing countries in order to help increase developing countries' share in world trade. To this end and with a view to ensuring that developing countries would be able to meet the requirements of such regulations, standards, test methods and certification systems, developed adherents shall:

(A) "Accord high priority to the transfer of technology to developing countries, so as to enhance their capability to meet the requirements of technical specifications, standards, test methods and certification systems applied in developed countries.

(B) "Provide developing countries on a systematic and continuing basis with all the information relating to the preparation and application of technical regulations, standards, test methods, certification systems and administrative procedures in developed countries which concern products of export interest to them.

(C) "Give priority attention, in the operation of the Code, to the special problems experienced by developing countries whose exports face barriers in developed countries.

4. "Adherents recognize that the particular technological and socio-economic conditions of developing countries justify the adoption of technical regulations, standards and test methods aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Adherents further recognize that developing countries should not be compelled to adopt technical regulations, standards and test methods which are not consistent with their development, financial and trade needs. Adherents undertake to take these principles into account in the implementation of the Code.

5. "Adherents shall adopt all necessary measures, both at the national and international levels, to ensure that developing countries would be able to effectively participate in international standardization activities, particularly as concerns products of special interest to them.

6. "Adherents shall provide technical assistance to developing countries to ensure that the preparation and application of technical regulations, standards, test methods and certification systems do not create obstacles to the expansion and diversification of exports from developing countries."

3. 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 an adherent has reasonable grounds for believing a serious problem exists or threatens to arise within its territory in relation to public safety, public health, the environment, national security, or deceptive business practices, and it is apparent that the problem cannot reasonably be remedied or prevented without the suspension by the adherent of its observance of an obligation under the Code, the adherent may, to the extent and for the time necessary to remedy or prevent the problem, suspend its observance of that obligation."

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

4. Packaging and labelling

- (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." See also MTN/NTM/W/75.

B. DRAFTING POINTS

At its meeting of November 1976, the Sub-Group agreed to bear in mind the following drafting points:

1. Appropriate use of the expressions "adherents" and "relevant bodies of adherents".
2. (Canada) - Replace throughout the draft Code the words "use all reasonable means within their power" by the words "take such reasonable measures as may be available to them". These words are contained in GATT Article XXIV:12 also dealing with second level of obligations of contracting parties vis-à-vis local governments and authorities within their territories.

C. 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 that these were covered by the wording of the existing text.

3. It was agreed that an illustrative list of examples referring to paragraph 2(b) would be inserted in the record. The Sub-Group agreed to revert to the drafting of the list. One delegation put forward the following proposal:

(United States)

"for such reasons as:

- (i) National security requirements;
- (ii) The prevention of deceptive practices;
- (iii) Adequate protection for human health or safety, animal or plant life or health, or the environment;
- (iv) Significant climatic or other geographical factors;
- (v) Fundamental technological problems."

D. AMENDMENTS AGREED

At its meeting of September 1977, the Sub-Group agreed to the following amendments in the body of the Proposed Code.

INSERTIONS IN THE TEXT OF THE DRAFT STANDARDS CODE

1. Section 2: After the title, but before the paragraphs, insert the words:
"With respect to their central government bodies:"

2. Section 2(e): Replace the existing text with the following:

(e) Whenever the technical content of a proposed technical regulation is not substantially the same as the technical content of relevant international standards, or whenever relevant international standards do not exist, adherents shall:

(i) publish a notice in an official publication at an early appropriate stage that they are preparing the particular technical regulation,

(ii) notify other adherents through the GATT secretariat of the products to be covered, including a brief indication of the objective and rationale of the proposed technical regulation,

(iii) upon request provide to other adherents particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards,

(iv) allow reasonable time for other adherents to make comments in writing, discuss these comments upon request and take them into account.

3. Section 2(g): Replace the existing text by "Adherents shall ensure that all technical regulations are published."

4. Section 3: Replace the existing text by the following:

"(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, when preparing, adopting or applying technical regulations, comply with the provisions of Section 2 as if they were adherents with the exception of Section 2(c), 2(e), 2(f), 2(j), 2(k) and substituting the words 'Section 3(c)' for the words 'paragraph (f) above' in 2(h).

(b) Whenever the technical content of a proposed technical regulation of a local government body within the territory of an adherent is not substantially the same as the technical content of the relevant international standard, or whenever relevant international standards do not exist, the adherents shall use all reasonable means within its power to ensure that the local government body:

- (i) publishes a notice in an official publication at an early appropriate stage that it is preparing the particular technical regulation;
- (ii) upon request to the adherent from other adherents provides, through the adherent, particulars or copies of the proposed technical regulation and whenever possible identifies the parts which in substance deviate from relevant international standards;
- (iii) allows reasonable time for other adherents to make comments in writing to the adherent which would discuss these comments upon request;
- (iv) takes such comments into account.

(c) However, where urgent problems of safety, health, environmental protection or security exist, any of the steps in paragraph (b) 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 in considering whether to initiate amendments."

5. Section 4 paragraph (b): Replace the existing text with the following:

(b) With a view to harmonizing standards on as wide a basis as possible, adherents shall co-operate, within the limits of their resources, in the preparation of international standards 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.

6. Section 4 paragraph (e): Replace the existing text with the following:

(e) Whenever the technical content of a proposed standard is not substantially the same as the technical content of relevant international standards, or whenever relevant international standards do not exist, adherents shall use all reasonable means within their power to ensure that the bodies preparing standards within their territories:

- (i) publish a notice at an early appropriate stage that they are preparing the particular standard;
- (ii) upon request provide to interested parties in other adherents particulars or copies of the proposed standard and, whenever possible, identify the parts which in substance deviate from relevant international standards;
- (iii) allow reasonable time for interested parties in other adherents to make comments in writing and take them into account.

7. Section 22 paragraph (a)(ii): Displace the footnote to the fourth line and insert a semi-colon so that it reads "... that GATT is being applied in respect of such territories¹; and ..."

ANNEX ITermsTERMS AND THEIR DEFINITIONS FOR THE SPECIFIC PURPOSES OF THE CODE

Note: References to the definitions of International Standardizing Bodies in the explanatory notes are made as they stood on .../date/

1. Technical specification

A specification contained in a document which lays down characteristics of a product such as levels of quality, performance, safety or dimensions. It may include, or deal exclusively with terminology, symbols, testing and test methods, packaging, marking or labelling requirements as they apply to a product.

Explanatory note:

The Code deals only with technical specifications relating to products. Thus the wording of the corresponding ECE/ISO definition is amended in order to exclude services and codes of practice.

2. Technical regulation

A technical specification, including the applicable administrative provisions, with which compliance is mandatory.

Explanatory note:

The wording differs from the corresponding ECE/ISO definition because the latter is based on the definition of regulation which is not defined in this Code. Furthermore the ECE/ISO definition contains a normative element which is included in the operative provisions of the Code.

3. Standard

A technical specification approved by a recognized standardizing body for repeated or continuous application, with which compliance is not mandatory.

Explanatory note:

The corresponding ECE/ISO definition contains several normative elements which are not included in the above definition. Accordingly, technical specifications which are not based on consensus are covered by the Code.

4. International body or system

A body or system whose membership is open to the relevant bodies of at least all adherents to the Code.

5. Regional body or system

A body or system whose membership is open to the relevant bodies of only some of the adherents.

6. Central government body

Central government, its ministries and departments or any body subject to the control of the central government in respect of the activity in question. In the case of the European Economic Community the provisions governing central government bodies /would/ apply.

Explanatory note:

If the EEC were to sign the Code, the word "would" and the square brackets would disappear.

7. Local government body

Government body which is not subject to the control of the central government in respect of the activity in question, such as:

(i) the authorities of States, Provinces, Lander, Cantons, etc. in the case of a federal or decentralized system, and

(ii) local government authorities.

8. Regulatory body

A governmental or non-governmental body which has legal power to enforce a technical regulation. This may or may not be the same body which prepared or adopted the technical regulation.

9. Standardizing body

A governmental or non-governmental body, one of whose recognized activities is in the field of standardization.

10. International standard

A standard adopted by an international standardizing body.

Explanatory note:

The wording differs from the corresponding ECE/ISO definition in order to make it consistent with other definitions of the Code.

11. Membership in a certification system

An adherent or a relevant body of an adherent has the same rights and obligations as any of the other adherents, or their relevant bodies under the rules of the system, including the rights of participation in, and management of the system, and of formulating or amending its rules.

12. Participation in a certification system

An adherent or a relevant body of an adherent has:

- (i) the same rights to furnish evidence of conformity of products with particular technical regulations or standards and have it accepted, as members of the system, and
- (ii) the same obligations to accept such evidence itself as members of the system.