

GENERAL AGREEMENT ON TARIFFS AND TRADE

GROUP 3(e) - WORK ON TASK 15

Draft Code on Standards

Note by the Secretariat

1. The present note has been prepared in response to the request made by Group 3(e) that the secretariat prepare for its next meeting a note on the status of work on the Draft Code on Standards drawn up by the Committee on Trade in Industrial Products, and on the concepts on which this work is based (MTN/3E/2, paragraph 31 refers).

Status of the work on the Draft Code

2. In the context of the Programme of Work established by the CONTRACTING PARTIES in 1967 Group 3 of the Committee on Trade in Industrial Products was instructed to elaborate on an ad referendum basis, concrete solutions to the problems within the area of product standards and quality assurance systems. On 25 June 1973, Group 3 reported on the results of its work together with a draft text of a proposed code for preventing technical barriers to trade (COM.IND/W/108). The implications of the proposed code for developing countries are discussed in document COM.TD/W/191.

3. The draft text takes the form of a separate contractual code, in accordance with one of the working hypothesis of Group 3, as being one possible solution to the problems within the area of product standards and quality assurance systems. As noted in paragraph 6 of the report of the Group some delegations stated that it was not within the province of the Group to determine the precise character of the obligations envisaged in the text and they had agreed to work on the draft of a contractual code, both for reasons of convenience and because the draft could also serve as a basis for other types of approach, such as a voluntary code, a set of principles, etc., if one of these solutions were to be preferred.

4. While a large measure of agreement was reached on the text of the proposed code differences of view remained. These have been set out as clearly as possible in the Group's report or in the text of the proposed code itself. Among the main points on

which differences of view remained were: the question whether, in effect, any obligation to permit equal access by third country suppliers or adherents to national or regional quality assurance systems should be conditional or unconditional (sections 9(e) and 13(h)); the question of the relationship between the General Agreement and the proposed code; and the question of the functions of the Committee for Preventing Technical Barriers to Trade envisaged in section 19 and the enforcement of obligations under section 21 of the proposed code.

5. The Group's report was submitted with the recommendations that administrations should examine (a) the outstanding issues with a view to finding mutually acceptable solutions to them at the appropriate time, and (b) the implications arising from the acceptance of the instrument.

6. Finally, in this connexion, Group 3 in its report noted that the coverage of the text was not restricted to industrial products and that the Agriculture Committee had expressed the wish to review the applicability of the text to agricultural products.

The concepts on which the proposed code is based: General

7. The complexity of the proposed code is in many respects a reflection of the fact that standards and their related test methods and administrative procedures exhibit a particular degree of diversity as regards both their legal status and the bodies (domestic, regional and international) which formulate and apply them. Sections 2, 5, 6, 9 and 13 deal with mandatory standards of central government bodies, section 2 being concerned with the standards themselves and sections 5, 6, 9 and 13 with conformity with these standards. The remaining sections in the operative provisions (sections 2 to 15 inclusive) contain analagous provisions regarding other standards. In the case of mandatory standards and related matters of central government bodies, the obligations envisaged in the proposed code are direct, that is to say a government signatory to the code would be obliged to do certain things and to ensure that standards bodies under its direct control act in compliance with the code. On the other hand, in the case of standards administered by subsidiary bodies or organizations, the obligations which would be assumed by government signatories would be generally to "use all reasonable means within their power" to ensure that subsidiary bodies act in compliance with the provisions of the code. In each case the content of the obligation is much the same but the degree or level of obligation differs. It may be noted however that in default of compliance by subsidiary bodies with the code a residual obligation is sometimes placed on government signatories to carry out the relevant provisions of the code.

8. The terms "standards" and "quality assurance system" are defined as follows:

Standard

The term "standard" means any specification which lays down some or all of the properties of a product in terms of quality, purity, nutritional value, performance, dimensions, or other characteristics. It includes, where applicable, test methods, and specifications concerning testing, packaging, marking or labelling to the extent that they affect products rather than processes. It excludes standards which are prepared for use by a single enterprise, whether governmental, semi-governmental, or non-governmental, either for its own production or purchasing purposes.

Quality assurance system

A formal arrangement having its own rules of procedure and management under which one or more quality assurance bodies provide an assurance that products approved or certified under the system conform to the requirements of the standard in question.

Basic concepts

9. For the sake of convenience the concepts on which the proposed code is based are discussed under three headings although some cross reference is necessary:

- (i) the provisions of the proposed code which are concerned with various aspects of standards -- sections 2 to 4: conformity with standards and international and regional quality assurance systems and arrangements -- sections 5 to 15;
- (ii) the provisions of the proposed code relating to institutional arrangements, application and enforcement -- sections 19 to 21;
- (iii) the provisions of the proposed code relating to information and assistance -- sections 16 and 17.

Sections 2 to 12

10. One of the main concepts, if not the principal concept, underlying the proposed code is the obligation to ensure: (a) that standards are not prepared, adopted or applied with a view to creating obstacles to international trade; and

(b) that neither standards themselves nor their application have the effect of creating an unjustifiable obstacle to international trade. This principle applies to all categories of standards, their related test methods, administrative procedures, quality assurance systems and to the various bodies which formulate and apply them.

11. In order to give effect to this general principle or prohibition against the creation of obstacles to international trade the proposed code proceeds to establish a number of procedural requirements the objectives of which are to provide scope for the practical application of the general principle in the formulation and application of standards and, at the same time, to regulate or minimize the possible adverse effects of the way in which standards may be applied or administered. These requirements apply at the preparatory or adoption stages for standards, quality assurance systems and their related test methods and administrative procedures. The requirements are:

- (i) the publication of a notice at the appropriate stage that a particular measure is being worked on;
- (ii) GATT notification of product coverage including an indication of the objective of the proposed measure where appropriate;
- (iii) to provide particulars on request;
- (iv) to allow reasonable time for and to take account of comments from interested adherents to the code.

Some of these steps may be omitted where urgent problems of health, etc., exist, in which case there is an obligation to take account of subsequent comments in deciding whether to initiate amendments. Measures adopted are to be published and a reasonable interval is to be allowed between publication and entry into force to enable exporters to adapt to the requirements of the importing country. In addition to these procedural requirements the proposed code provides that where appropriate standards and related measures are to be specified in terms of performance rather than detailed design.

12. In establishing these procedural requirements the proposed code provides an opportunity for an interested party to comment and make representations on the conformity of a proposed measure with the code and in particular its conformity with the leading principle relating to the prevention of obstacles to international trade. This generally speaking would occur at the preparatory or adoption stage. It is to be noted, although no agreement was reached on this point, that the proposed code in section 20 provides that to the extent that existing standards and related measures create an unjustifiable obstacle to international trade, adherents shall bring them into conformity with the operative provisions of the code as soon as possible after the date upon

which the code becomes effective for the adherent concerned. The conformity of the manner in which measures once adopted are applied with the general principle on obstacles to international trade is a matter which would come within the ambit of the consultation and other procedures of section 21.

13. Another basic concept underlying the proposed code concerns harmonization of standards and the promotion and use of international standards. It is generally recognized that to some extent the achievement of positive results in minimizing adverse trade effects in the field of standards would be facilitated through the greater use of internationally accepted standards and related practices. To this end the proposed code would make it incumbent upon adherents to use appropriate international standards where they exist and, with a view to harmonizing their standards and related measures on as wide a basis as possible, to participate in the work of international standards bodies. Where the technical content of a proposed measure is substantially the same as the technical content of an international standard the adherent concerned is relieved of having to comply with the detailed procedural requirements outlined in paragraph (11) above.

14. A third basic concept underlying the operative provisions of the proposed code relates to the treatment to be accorded imported products and arrangements for establishing their conformity with standards. In cases where positive assurances are required that an imported product conforms to a particular standard the proposed code establishes three interrelated concepts. In the first place, whenever possible, adherents are required under section 6(a) to rely upon declarations by suppliers or accept assurances provided by quality assurance bodies in the territories of other adherents, or allow tests to be carried out in the territory of other adherents, or any combination of these alternatives. Secondly, in the event that one or other of these alternatives is not followed the proposed code lays down in section 6(b) a number of detailed criteria as to the conditions under which imported products are to be accepted for testing. The general purport of these provisions is that imported products are to be accorded treatment no less favourable than that which is applied to domestic products. Similarly in sections 9 to 12 obligations are established which are designed to ensure that national quality assurance systems are formulated from the outset so as to apply to imported products, and to ensure that such systems are open to suppliers of imported products at the same time and under conditions no less favourable than those accorded to domestic suppliers. Agreement was not reached on whether such access should be conditional or unconditional (see section 9(e)). Thirdly, in sections 13 to 15 the proposed code provides that where positive assurances, other than by the supplier, are required, adherents shall wherever practicable, formulate and become members of or participants in international quality assurance systems or arrangements.

15. As a general comment one of the aims of sections 13 to 15 is to facilitate and significantly improve the procedures and scope for establishing the conformity of imported products with standards and for this purpose to promote the formation and development of quality assurance systems and arrangements on as wide a basis as possible. The particular emphasis of these sections is therefore on access to or membership of such arrangements. The general requirements in this respect are: that such systems or arrangements are to be formulated from the outset with a view to affording equal opportunity for membership or participation to all adherents; that the sole criterion for membership or participation is that the appropriate regulatory body of the adherent is able and willing to fulfil the relevant obligations. As in the case of national quality assurance systems, agreement was not reached on whether access to regional, as distinct from international, quality assurance systems or arrangements should be unqualified; and that the sole criterion for acceptability of assurances shall be the technical competence and reliability of the quality assurance body, which may be situated in the territory of any member. An additional requirement, which some delegations proposed should be deleted, is that international and regional quality assurance systems and arrangements should be open to suppliers of products which are produced in a country which is not a member of the system or arrangement but which is nonetheless an adherent to the code itself (section 13 (f)). The related section 13(1) would require that in default of compliance with section 13(f) such products should nevertheless receive treatment no less favourable than that accorded to the products of domestic suppliers.

Institutional arrangements, application and enforcement - Sections 19-21

16. Some aspects of the provisions relating to the application and enforcement have been mentioned in paragraph 12 above. The main points left for discussion here concern the institutional arrangements and the nature of the enforcement procedures envisaged in the proposed code. It is to be noted that Group 3 was unable to reach agreement on the institutional and other provisions in sections 19 to 21 (see paragraphs 12 to 14 of COM.IND/W/108).

17. As the draft text of the proposed text stands section 19 provides for the establishment of a "Committee for Preventing Technical Barriers to Trade" composed of adherents to the code who would meet to consult on matters relating to the implementation of the code. In the case of nullification or impairment or any other matter affecting the implementation of the code there is a primary obligation to consult. Failing the attainment of a mutually satisfactory solution within a reasonable period of time provision is made in section 21 for the disputed matter to be referred to the Committee established under section 19.

After having promptly investigated the matter, in the course of which the Committee may consult any contracting party or competent body, the Committee may:

- (i) make a statement concerning the facts of the matter, or
- (ii) make recommendations to one or more adherents to the code, or
- (iii) authorize one or more adherents to the code to suspend obligations under the code in respect of one or more adherents.

18. An alternative formulation of the Committee's powers would provide for the disputed matter to be referred to a panel, appointed in consultation with the parties to the dispute, which would be empowered to make a statement on the facts, or make recommendations but which would not be empowered to authorize suspension of obligations.

Information and technical assistance

19. The main concept underlying section 16 is that in order to facilitate access to information concerning standards, test methods, administrative procedures and quality assurance systems, adherents should be required to establish "enquiry points" which are able to answer all reasonable enquiries from interested parties. In addition the GATT secretariat would be required to circulate the information contained in notifications it receives to all adherents and international standards bodies and to draw the attention of developing adherents to any notifications relating to products of particular interest to them.

20. With regard to technical assistance the draft code recognizes that to overcome some of the problems which arise, developing countries would require technical assistance and provides that adherents should, when requested, advise and consider requests for technical assistance from other adherents, especially developing countries, and defines situations in which such assistance should be provided. Briefly, the purposes for which an adherent is required to advise and to consider requests for technical assistance from other adherents are:

- (i) for the establishment of national standards bodies;
- (ii) for the establishment of quality assurance systems;
- (iii) to enable producers from the requesting adherent to participate in quality assurance systems of the importing adherent; and
- (iv) to enable the requesting adherent to establish such institutions and legal framework as would enable it to participate in regional or international quality assurance systems.

It is also provided that adherents should, if a specific request is made, advise other adherents as to the methods by which their mandatory standards could be met.

Other matters

21. A final point in connexion with the conceptual framework of the proposed code concerns the applicability of its provisions to standards dealing with one or other of the subjects mentioned in the fifth recital of the preamble, viz:

"Recognizing that no country should be prevented from taking measures necessary for the protection of human, animal or plant life or health, environment and national security, or for the prevention of deceptive practices; "

The draft text of the preamble is of an indicative nature only since the preamble in its definitive form would need to reflect the final juridical status and content of the instrument. It may be noted in this connexion that the obligations envisaged in the proposed code do not vary according to the subject matter of the standard although it is recognized that departure from the code's detailed procedural requirements may be necessary where urgent problems of safety, health, environmental protection or national security exist. In such cases the proposed code imposes an additional or supplemental obligation to take account of comments subsequently received in considering whether to initiate amendments. The relevant section would seem to contemplate that such amendments would be directed to subsequently bringing the measure into conformity with the provisions of the code including its leading principle on the prevention of obstacles to international trade. This could be taken to suggest that in the absence of "urgent problems" the régime of the proposed code would apply to standards dealing with one or other of the subjects specified in the preamble and in section 2(f).