

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Special Distribution

Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group on Technical Barriers to Trade

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

Note by the Secretariat

The note has been prepared by the secretariat in accordance with the decision taken at the May meeting of the Sub-Group, "Technical Barriers to Trade", that a paper should be prepared setting out the issues raised and the detailed suggestions made during the meeting, as well as the specific proposal that may be submitted in writing by 15 June 1975. This note covers points made at the meeting. Proposals submitted in writing will be circulated in an addendum.

In MTN/NTM/3 the Chairman summed-up the May meeting of the Sub-Group and recorded the decisions which had been taken. The present note does not take up the more general issues dealt with in that document but concentrates on the main points relating to specific provisions in the text of the proposed Code of Conduct for Preventing Technical Barriers to Trade which is annexed to MTN/NTM/W/5. No attempt has been made to indicate the degree of support received for individual proposals.

Preamble

It was pointed out that it was premature to draft a definitive version of the preamble (see footnote on page 12 of MTN/NTM/W/5).

Section 1 - Definitions

The Sub-Group agreed that as a first step the secretariat should prepare a working paper on the Code definitions and the definitions adopted in the United Nations Economic Commission for Europe and therefore did not examine the existing definitions in detail.

Section 2

Paragraph (a)

It was pointed out that there was a difference between the English and French texts of the paragraph, as the French has "injustifié" ("unjustified" in English).

It was suggested that the drafting should be tightened up by using "unjustifiable or unreasonable", or by providing that the application of the standards should not create obstacles to trade which were "disproportionate to the objectives of the standards".

It was also suggested that the words "particularly with regard to developing countries" should be added at the end of the paragraph.

Paragraph (b)

The issue here was whether or not the obligation should be made stricter e.g. by using "clearly inappropriate" instead of "inappropriate" or by deleting the last phrase beginning "except".

Paragraph (c)

It was suggested that the paragraph should begin as follows: "with a view to ensuring the widest possible harmonization of their mandatory standards, adherents shall participate within the limits ..."

Paragraph (e)

It was suggested that this and other similar provisions in the text, such as Section 4(f), should be unified to avoid unnecessary repetition. It was, however, pointed out that these provisions were not identical, and reference was made in particular to Sections 2(e)(iii) and 4(f)(iv) in this regard.

The main issue with regard to this paragraph was whether or not the text should be modified in order to reduce the paperwork which would be involved. One specific suggestion was that the following should be added to the introductory part: "and if this content is liable to have a significant effect on international trade". It was also suggested that the notifications to the GATT secretariat and their circulation (provided for in Section 16(d)) would be very onerous. The representative of the secretariat pointed out that the notifications have to be made in an official language of the GATT and would each be very brief.

Delegations from developing countries indicated the importance which they attached to retaining the provisions of this paragraph. It was suggested that the work of other organizations was relevant to this question and that the Code should only attempt to fill any lacuna which exist. The Sub-Group agreed that the secretariat should prepare a paper on the ISO/UNESCO work in connexion with the establishment of an information network.

Some delegations from developing countries suggested that a longer transitional period should be allowed before mandatory standards were applied to imports from developing countries.

Paragraphs (f) and (h)

These exceptions should be made narrower e.g. by spelling out in more detail the circumstances in which adherents could have recourse to them.

Paragraphs (j) and (k)

It was suggested that, as regional standards bodies do not draw up mandatory standards, these paragraphs should be deleted. Some delegations preferred to retain them, however.

Paragraph (i)

It was suggested that the word "reasonable" be deleted, so that the obligation would read "adherents shall use all means within their power" and that this change should be made throughout the text where the formula is used.

Paragraph (k)

It was suggested that, if the introduction to Section 2(e) is not amended as suggested above the following be added at the end of the paragraph "and when the mandatory standards of regional standards bodies do not concern third countries".

Section 3

Regarding the interpretation of the phrases "use all reasonable means within their power", it was suggested that adherents should, if necessary, go as far as to withdraw financial support from bodies which do not comply with provisions of the Code.

Section 4

It was suggested that the text of this Section was unclear and that voluntary standards of central government bodies should be dealt with separately. It was further suggested that Sections 8 and 12 should be amended in the same way.

Paragraph (k)

It was suggested that the words "or bodies within their territories" should be deleted, as only adherents could be bound by the provisions of the Code.

Section 5

Paragraph (e)

It was suggested that the word "should" in the first line be replaced by "shall". It was proposed that, in the third line, the text should be amended to read "that the exporting adherent's methods provide either a guarantee or equivalent means of determining". This proposal created difficulties for some delegations who, therefore, suggested that the words "wherever possible" also be inserted after the word "provide".

Section 6

Paragraph (a)

It was suggested that the introduction read: "A positive assurance that imported products conform with mandatory standards will only be required when such assurance is necessary to achieve the objective of the mandatory standard".

Paragraph (c)

It was suggested that the French version should be brought into line with the English text.

Section 8

It was suggested that the introduction should be amended in a way similar to that suggested for Section 4.

Section 9

One delegation said that the Code should not oblige quality assurance systems to be opened unless administrative procedures were regularized and unless reciprocal legal protection of certification marks were provided: guidelines

should also be laid down for the assessment and evaluation of the technical competence and reliability of participants in or members of quality assurance systems. Sections 9 and 13 should, therefore, be amended, if necessary.

Paragraphs (e) and (f)

The Sub-Group noted the alternatives set out in the text:

- (i) the first bracketed paragraph under 9(e), and
- (ii) the second bracketed paragraph plus paragraph (f).

During the discussion of these alternatives, some delegations said that, in their view, there should be no discrimination between imported and domestic goods and that they therefore preferred the first alternative. To the suggestion that the application of national treatment might be difficult for small countries and in particular for developing countries, these delegations said that if it were not possible to open a system to all suppliers from the outset it should be opened to some domestic and some foreign suppliers. Other delegations said that they preferred the second, more specific, text.

Section 13

Paragraphs (f) and (l)

As noted in the text, some delegations proposed that these paragraphs, which they considered to contradict paragraph (a), should be deleted. Other delegations proposed the retention of the paragraph, one pointing out that suppliers from a particular country should not be penalized if their government could not join an international quality assurance system because the system was based on a standard which was inappropriate for it.

Paragraph (h)

The Sub-Group noted the two alternatives set out in the text and that the problems here were similar to those in Section 9(e) and (f).

Paragraph (j)

Some delegations said that this paragraph should be deleted as it was superfluous.

Section 16

It was suggested that it would also be useful to establish a clearing house for information on the activities of international standards bodies and international quality assurance systems.

Paragraph (d)

See section relating to Section 2, paragraph (e).

Section 17

It was suggested that it might be necessary to spell out the sort of technical assistance which developing countries would need if they were to meet the level of sophistication required by the standards of developed countries. It was also suggested that provision should be made for channelling of technical assistance to developing countries on a multilateral basis.

Section 18

Some delegations said that if amendments of an insignificant nature were to be excluded from the scope of the Code, the concept should be carefully defined, e.g. by specifying that these were amendments which "are not liable to have a significant effect of international trade".

Sections 19 to 22

Some delegations said that the content of these administrative provisions was related to the content of the operative provisions.

Section 19

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.

Section 20

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

Some delegations said the Section might simply lay down that the Code dealt with all standards and quality assurance systems, whether existing or future. They said that 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. It was suggested by other delegations that it should not be necessary to rely on complaints regarding quality assurance systems.

Some delegations said that they would have difficulty in accepting retroactive provisions.

Section 21

The Sub-Group discussed the way in which matters referred to the Committee should be dealt with and recommendations formulated. The Sub-Group noted the two versions of Section 21(c) contained in the text of the proposed Code. Some delegations said that there was a need for equitable and neutral procedures and that one possible solution was contained in the footnote of the section.

The Sub-Group also discussed the question of sanctions.

Some delegations said that procedures for the settlement of disputes would not necessarily have to involve sanctions.

Some delegations said that they did not exclude the possibility of sanctions a priori, but that their view of this matter would depend on the powers of the Committee and that, in any event, the sanctions should not go beyond the withdrawal of benefits enjoyed under the Code. They also said that, while there was evidently some link between the Code and the General Agreement, the Code should operate quite separately from the CONTRACTING PARTIES because it went beyond the General Agreement and because membership of the two instruments would be more different.

Some other delegations said that provision should be made for the withdrawal of benefits enjoyed under the General Agreement, as well as the withdrawal of benefits enjoyed under the Code itself. Some of these delegations were of the opinion that the Committee for Preventing Technical Barriers to Trade should decide on such sanctions, while others suggested that the possibility of recourse to the CONTRACTING PARTIES should be provided for.

Section 22

Paragraph (a)(i)

The Sub-Group agreed that the Code "shall be open for adherence to all countries", whether or not contracting parties to GATT or participants in the Multilateral Trade Negotiations.

The Sub-Group noted that it would, at some stage, have to discuss the provisions in the text relating to minimum participation and key countries.

Paragraph (a)(ii)

Some delegations said that this provision should be retained in or near its present form but that they had no position on the final proviso.

Paragraph (e)

Some delegations said this provision should be reviewed, particularly having in mind the possibility that a key country would withdraw.

Paragraph (f)

There was a difference of opinion as to whether this paragraph should be retained or not.