

GENERAL AGREEMENT ON TARIFFS AND TRADE

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DEFINITIONS

Note by the Secretariat

The following notes have been prepared by Mr. K. Bergholm (Finland) as a personal contribution to the discussion of this subject.

1. Situation

As to the terminology an agreement seems to have been reached at the Sub-Group to use the ECE/ISO terms. Some of the ECE/ISO definitions do not however meet the special needs of the Draft Code. Especially the definitions of the terms "regulation", "technical specification", "technical regulation" and "standard" have been discussed in the Group. On the other hand the ECE and the ISO have now expressed their willingness to consider minor drafting amendments to their definitions if requested by the GATT.

The ISO Working Group on Definitions has already preliminarily agreed to amend the definitions of "regulation" and "technical specification" in order to meet the needs of the GATT.

2. Aim of this paper

The aim of this paper is to define the main problems connected with the application of the ECE/ISO definitions for the Draft Code as well as to indicate some possible solutions to these problems. The underlying idea is that harmonized definitions are in the interest of all parties concerned.

3. Main problems

The first problem is of course that the ECE/ISO definitions are intended for general application whereas the GATT needs definitions for a specific use. Thus in some cases the scope of the ECE/ISO definition is wider than what is agreed for the coverage of the Draft Code. A typical example is the definition of "technical specification".

The second problem is caused by the different approach to the definitions. The ECE and the ISO have in some cases drawn up definitions with a normative purpose, whereas for the GATT a definition must give the coverage of the Code. The normative provisions are then included in the Operational Provisions. As a result some ECE/ISO definitions are too narrow for the purposes of the Draft Code. Typical examples here are the definitions of "standard" and "certification body".

A third problem is that the Sub-Group has not yet agreed on the desired coverage of Section 4 of the Operational Provisions. It seems that for most delegations a coverage given by the original GATT definition for "standard" would be too wide and that a coverage given by the present ECE/ISO definitions for "standard" would be too narrow.

4. Possible solutions

As to the first problem the ECE and the ISO can obviously not be asked to amend their definitions in order to meet the specific needs of the Draft GATT Code. However, limiting the scope of a definition can easily be done by a simple note.

The second problem is harder to solve by adding notes; at least such a solution is not especially elegant. Here requests to the ECE and the ISO could be considered. In fact a normative definition is not very well in line with the ISO Directives. The outcome of such requests is of course by no means guaranteed, because all necessary amendments are not just "minor drafting amendments".

5. Proposals

The following proposals are based on the ECE/ISO terminology and definitions.

1. Regulation

To adopt the definition as amended by the ISO Working Group on Definitions:

"A document which contains binding legislative, regulatory or administrative rules and which is adopted by an authority legally vested with the necessary power and published."

A request could be made to the ECE and the ISO to delete the words "and published", but this is hardly significant because in practice all regulations of importance for international trade are anyway published.

2. Technical specification

To adopt the definition as amended by the ISO Working Group on Definitions with a note:

"A document which lays down characteristics of a product or a service such as levels of quality, performance, safety, dimensions. It may include or deal exclusively with terminology, symbols, testing and test methods, packaging marking or labelling requirements. A technical specification may also take the form of a code of practice.

"Note: For the purposes of the Code such technical specifications are excluded which deal with services, have the form of a code of practice or are prepared for use by a single enterprise, whether governmental or non-governmental either for its own production or purchasing purpose."

A request could be made to the ECE and the ISO to delete the last sentence of the definition. Some second thoughts have already been expressed in the ISO whether codes of practice really should be included in this definition.

A note dealing with processes is needed only if and when the Code shall cover also agricultural products.

3. Standard

The scope of the ECE/ISO definition is partly too wide, partly too narrow for the purposes of the Code. The ECE and the ISO are hardly willing to make any amendments to this definition. Thus this definition must be followed by a note which in fact gives a new definition for the term.

"Note: For the purposes of the Code a standard means a technical specification approved by a recognized body for continued application."

4. Technical regulation

To adopt the ECE/ISO definition as such. No note is needed.

5 ... 13. Not relevant to the Code.

14. Standardizing body

To adopt the ECE/ISO definitions as such.

15. International standardizing body

To adopt the ECE/ISO definition as such.

16. Regional standardizing body

To adopt the ECE/ISO definition with a note:

"A standardizing body whose membership is usually limited to certain countries from a given region of the world.

"Note: For the purposes of the Code it is sufficient that the membership is not open to relevant bodies of all adherents."

17. Not relevant to the Code.

18. International standard

To adopt the ECE/ISO definition as such.

19. Not relevant to the Code.

20 ... 26. Terms related to conformity and certification

To adopt the ECE/ISO definitions as such. No notes are needed to exclude the services, because the services are already excluded by excluding them from the definition of "technical specification".

27. International certification system

To adopt the ECE/ISO definition as such.

28. Regional certification system

To adopt the ECE/ISO definition with a note:

"Certification system organized and managed by a governmental or non-governmental regional organization whose membership is usually limited to certain countries from a given region of the world.

"Note: For the purposes of the Code it is sufficient that the membership is not open to relevant bodies of all adherents."

29. Certification body

The ECE/ISO definition includes several requirements for the certification bodies thus limiting the scope of the term. Thus this definition must be followed by a note which in fact gives a new definition for the term.

"Note: For the purpose of the Code a certification body is a governmental or non-governmental body, independent of the producer or supplier, which operates a certification system."

Because this ECE/ISO definition is not yet finally adopted and in fact is contrary to ISO Directives, a request to the ECE and the ISO to reconsider their definition could be made.

30 and 31. Not relevant to the Code.

Additional definitions not included in the set of ECE/ISO definitions:

Central government body)	
Local government body)	To be defined as in Spec(75)27
Regulatory body)	

The ECE and the ISO hardly have any interest in producing definitions for the two first of these terms. As to the term "regulatory body", the ECE and the ISO could be asked to adopt the GATT definition.

6. Conclusion

If the proposals presented in this paper were adopted, it would mean that of the 18 terms defined by the ECE and the ISO 13 terms could be used as such, 3 terms with notes limiting or clarifying the scope of the term, and 2 terms with notes which in fact give new definitions to the terms concerned. As to these two, one can possibly be reconsidered by the ECE and the ISO.