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Sub-Group "Technical Barriers to Trade"

DRAFT CODE OF CONDUCT FOR PREVENTING TECHNICAL BARRIERS TO TRADE

Note by the Secretariat

1. At its meeting of September 1977, the Sub-Group decided that the secretariat should issue the text of the Draft Code of Conduct for Preventing Technical Barriers to Trade (often referred to as the Draft Standards Code) on which the Sub-Group's work is based (MTN/NTM/25, paragraph 5).
2. Appendix A of this document sets out the text of the Draft Code of Conduct for Preventing Technical Barriers to Trade. It is based on the text in MTN/NTM/W/94 incorporating amendments the insertion of which was agreed at the meeting of the Sub-Group in September 1977.
3. Proposals relating to the text which are before the Sub-Group are set out in MTN/NTM/W/120.
4. Appendix B of this document contains the report of Group 3 on Standards, which drew up the original text of the Draft Code. Much of this report is still relevant.

APPENDIX A

Proposed GATT Code of Conduct for Preventing Technical
Barriers to Trade

TABLE OF CONTENTS

	<u>Page</u>
Preamble	5
Chapter I - Terms	
Section 1 Terms	6
Chapter II - Operative Provisions	
A. Technical regulations and standards	
Section 2 Preparation, adoption and use of technical regulations by central government bodies	6
Section 3 Preparation, adoption and use of technical regulations by local government bodies and regulatory bodies other than central government bodies	8
Section 4 Preparation, adoption and use of standards	9
B. Conformity with technical regulations and standards	
Section 5 Test methods and administrative procedures for determining conformity with technical regulations of central government bodies	12
Section 6 Assurance of conformity with technical regulations of central government bodies	13
Section 7 Conformity with technical regulations of local government bodies and regulatory bodies other than central government bodies	14
Section 8 Conformity with standards	15

TABLE OF CONTENTS (cont'd)

	<u>Page</u>
C. Certification Systems	
Section 9 Certification systems for certifying conformity with technical regulations of central government bodies	15
Section 10 Certification systems of central government bodies for certifying conformity with standards	17
Section 11 Certification systems for certifying conformity with technical regulations of local government bodies and regulatory bodies other than central government bodies	17
Section 12 Systems operated by certification bodies other than central government bodies for certifying conformity with standards	18
Section 13 International and regional certification systems for certifying conformity with technical regulations of which central government bodies are members or participants	18
Section 14 International and regional certification systems, of which local government bodies and regulatory bodies other than central government bodies are members or participants, for certifying conformity with technical regulations	22
Section 15 International and regional certification systems for certifying conformity with standards	22
D. Information and Assistance	
Section 16 Information about technical regulations and standards and certification systems	23
Section 17 Technical assistance to other adherents	25

TABLE OF CONTENTS (cont'd)

	<u>Page</u>
E. Amendments to technical regulations or standards and certification systems	
Section 18 Amendments to technical regulations or standards and certification systems	26
Chapter III - Other Provisions	
Section 19 The Committee for Preventing Technical Barriers to Trade	26
Section 20 Application	26
Section 21 Enforcement	27
Section 22 Final provisions	29
Annexes	
1. Terms-	31
2. List of countries referred to in Section 22(a)	34

PREAMBLE¹

The adherents to the GATT Code of Conduct for Preventing Technical Barriers to Trade, hereinafter referred to as "the Code";

Desiring to further the objectives of the General Agreement on Tariffs and Trade;

Recognizing the important contribution that international standards and certification systems can make in this regard by improving efficiency of production and facilitating the conduct of international trade;

Desiring therefore to encourage the development of such international standards and certification systems;

Desiring however to ensure that technical regulations and standards and methods for certifying conformity with technical regulations and standards do not create obstacles to international trade;

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;

Recognizing the contribution which international standardization can make to the transfer of technology from developed to developing countries;

Recognizing that developing countries may encounter special difficulties in the formulation and application of technical regulations and standards and methods for certifying conformity with technical regulations and standards, and desiring to assist them in their endeavours in this regard;

¹This text 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.

Hereby agree as follows:

I. TERMS

1. For the purposes of the Code the terms used in Annex 1 apply.

II. OPERATIVE PROVISIONS

A. TECHNICAL REGULATIONS AND STANDARDS

2. Preparation, adoption and use of technical regulations by central government bodies

With respect to their central government bodies:

(a) Adherents shall ensure that technical regulations are not prepared, adopted or applied with a view to creating obstacles to international trade. They shall likewise ensure that neither technical regulations themselves nor their application have the effect of creating unnecessary obstacles to international trade.

(b) Where technical regulations are required and relevant international standards exist or their completion is imminent, adherents shall use them, or the relevant parts of them, as a basis for the technical regulations, except where such international standards or relevant parts are inappropriate for the adherents concerned.

(c) With a view to achieve harmonization of their technical regulations on as wide a basis as possible, adherents shall play a full part within the limits of their resources in the preparation by appropriate international standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, technical regulations.

(d) Where appropriate, adherents shall specify technical regulations in terms of performance rather than design.

(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.

(f) However, where urgent problems of safety, health, environmental protection or national security exist, adherents may omit such of the steps in paragraph (e) of this section as they find necessary. In that event, they shall take account of comments they may subsequently receive from other adherents in considering whether to initiate amendments.

(g) Adherents shall ensure that all technical regulations are published.

(h) Except in those circumstances referred to in paragraph (f) above, adherents shall allow a reasonable interval between the publication of the technical regulation and its entry into force in order to allow time for producers in exporting countries, and particularly in developing countries, to adapt their products or methods of production to the requirements of the importing country.

(j) Adherents shall use all reasonable means within their power to ensure that regional standardizing bodies in which they are members comply with the provisions of paragraphs (a) to (h) inclusive of this section so far as they are applicable.

(k) Adherents which are members of regional standardizing bodies shall fulfil the obligations of paragraphs (a) to (h) inclusive of this section, except to the extent that the regional standardizing bodies have fulfilled these obligations.

3. Preparation, adoption and use of technical regulations by local government bodies and regulatory bodies other than central government bodies

(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 adherent 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.

4. Preparation, adoption and use of standards

(a) Adherents shall use all reasonable means within their power to ensure that bodies within their territory, whether governmental or non-governmental, do not prepare, adopt or apply standards, with a view to creating obstacles to international trade. They shall likewise use all reasonable means within their power to ensure that neither the standards themselves, nor their application have the effect of creating an unnecessary obstacle to international trade.

(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.

(c) Where standards are required and relevant international standards exist or their completion is imminent, adherents shall use all reasonable means within their power to ensure that, these international standards, or the relevant parts of them, are used as a basis for the standards, except where such international standards or relevant parts are inappropriate for the adherents concerned.

(d) Adherents shall use all reasonable means within their power to ensure that, where appropriate, standards are specified in terms of performance rather than design requirements.

(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.

(f) However, where a standard is prepared for the purpose of meeting an urgent problem of safety, health or environmental protection any of the steps in paragraph (e) of this section may be omitted, if necessary. In that event, adherents shall use all reasonable means within their power to ensure that the body preparing the standard takes account of comments it may subsequently receive from interested parties in other adherents.

(g) Adherents shall use all reasonable means within their power to ensure that all standards adopted by bodies within their territories are published.

(h) Adherents shall use all reasonable means within their power to ensure that regional standardizing bodies of which either they or bodies within their territories are members comply with the provisions of (a) to (g) inclusive of this section so far as they are applicable.

(j) Adherents, or bodies within their territories which are members of regional standardizing bodies, shall fulfil the provisions of paragraphs (a) to (g) inclusive of this section, except to the extent that the regional standardizing bodies have fulfilled these obligations.

B. CONFORMITY WITH TECHNICAL REGULATIONS AND STANDARDS

5. Test methods and administrative procedures for determining conformity with technical regulations of central government bodies

(a) Adherents shall ensure that test methods and administrative procedures for determining conformity with technical regulations of central government bodies are not prepared, adopted or applied with a view to creating obstacles to international trade. They shall likewise ensure that neither the test methods and administrative procedures themselves nor their application have the effect of creating an unnecessary obstacle to international trade.

(b) Adherents shall ensure that, where test methods are to be used by a central government body for the purpose of determining conformity with technical regulations, the test methods are either:

- (i) defined in the technical regulations; or
- (ii) defined in some other published document which is indicated in the relevant technical regulation.

The provisions of Section 2 shall apply to test methods in the same way as to the technical regulations themselves.

(c) Adherents shall ensure that the administrative procedures to be used by a central government body for determining conformity with technical regulations are published.

(d) 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.

(e) 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 whether the products tested conform to the relevant technical regulation.

6. Assurance of conformity with technical regulations of central government bodies

(a) 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.

(b) To the extent that one or other of the methods provided for in paragraph (a) 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.

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

7. Conformity with technical regulations of local government bodies and regulatory bodies other than central government bodies

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 Sections 5 and 6 as regards:

- (i) their test methods and administrative procedures for determining conformity with their technical regulations, and
- (ii) the provision of certificates and marks of conformity with their technical regulations.

8. Conformity with standards

Adherents shall use all reasonable means within their power to ensure that certification bodies within their territories, whether governmental or non-governmental, comply with the provisions of Sections 5 and 6 as regards:

- (i) their test methods and administrative procedures for determining conformity with standards, and
- (ii) the provision of certificates or marks of conformity with standards, substituting the word "standard" for "technical regulation", throughout and substituting "Section 4" for "Section 2" in Section 5(b).

C. CERTIFICATION SYSTEMS

9. Certification systems for certifying conformity with technical regulations of central government bodies

(a) Adherents shall ensure that certification systems, operated by their central government bodies, or certification systems on which they rely for certifying conformity with their technical regulations, are not formulated or applied with a view to creating obstacles to international trade. They shall likewise ensure that neither such certification systems themselves nor their application have the effect of creating unnecessary obstacles to international trade.

(b) Technical regulations and test methods employed in connexion with any certification system shall be prepared and adopted in accordance with the relevant provisions of Sections 2 and 5. The system shall conform to the requirements of Section 6.

(c) Adherents shall ensure that such systems are formulated from the outset with a view to their application not only to domestic products but also to similar products produced in the territories of other adherents.

(d) Adherents shall:

- (i) publish a notice at an appropriate stage that they propose to introduce a certification system;
- (ii) notify the GATT secretariat of the products to be covered, including a brief indication of the objective of the proposed system;
- (iii) provide particulars or copies of the proposed rules of the system, on request, to other adherents;
- (iv) allow reasonable time for comment;
- (v) take account of comments they may receive from other adherents, both regarding the formulation of the system and, subsequently, regarding its application; and
- (vi) publish all rules of such system.

(e) Adherents shall ensure that such systems are opened to suppliers of similar products produced in the territories of other adherents at the same time as they are opened to domestic suppliers, and under conditions no less favourable than those accorded to domestic suppliers.

Adherents shall ensure that, as soon as such systems are operational they are opened to suppliers of similar products produced in the territories of other adherents on the same basis as to domestic suppliers when it has been established that such suppliers are able and willing to fulfil the corresponding obligations.⁷

(f) The provisions of paragraph (e) of this Section are subject to the qualifications that if for particular reasons it is considered inadvisable or impractical to open such a system to suppliers in the territories of all other adherents from the outset, its application may be limited in the initial stages.¹

10. Certification systems of central government bodies for certifying conformity with standards

Adherents shall ensure that certification systems of their central government bodies or those on which they rely for certifying conformity to standards comply with the provisions of Section 9 substituting "standards" for "technical regulations" throughout and "Sections 4 and 8" for "Sections 2 and 5" and "Section 8" for "Section 6" in Section 9(b).²

11. Certification systems for certifying conformity with technical regulations of local government bodies and regulatory bodies other than central government bodies

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, for certifying conformity with technical regulations comply with the provisions

¹ Some delegations proposed the deletion of Section 9(f).

² One delegation proposed that Section 10 be merged with Section 12 and that the level of obligation used in Section 12 apply. Some other delegations could accept this or the existing text.

of Section 9 above, substituting "Sections 3 and 7" for "Sections 2 and 5" and "Section 7" for "Section 6" in Section 9(b).

12. Systems operated by certification bodies other than central government bodies for certifying conformity with standards

Adherents shall use all reasonable means within their power to ensure that systems operated by governmental or non-governmental certification bodies other than central government bodies within their territories, for certifying conformity with standards, comply with the provisions of Section 9 above, substituting "standards" for "technical regulation" throughout and "Sections 4 and 8" for "Sections 2 and 5" and "Section 8" for "Section 6" in Section 9(b).

13. International and regional certification systems for certifying conformity with technical regulations of which central government bodies are members or participants

(a) Where a positive assurance, other than by the supplier, of conformity with a technical regulation is required, adherents shall, wherever practicable, formulate and become members of, or participate in international certification systems.

(b) Adherents shall use all reasonable means within their power to ensure that international certification systems in which their central government bodies are members or participants comply with the requirements of paragraphs (c) to (g) inclusive of this section.

(c) International certification systems shall not be formulated or applied with a view to creating obstacles to international trade; and neither the systems themselves nor their application shall have the effect of creating unnecessary obstacles to international trade.

(d) International certification systems shall be formulated from the outset with a view to affording an equal opportunity for membership or participation to all adherents. With this in mind:

- (i) the sole criterion for membership or participation in such systems shall be that the appropriate body of the adherent concerned is able and willing to fulfil the obligations of membership or participation; and
- (ii) the sole criterion for the acceptability of certificates or marks of conformity with technical regulations from members or participants under such systems shall be the technical competence and reliability of the certification body, which may be situated in the territory of any member or participant and may certify the conformity of the products of any other adherent.

(e) Technical regulations and test methods employed in connexion with international certification systems shall be prepared and adopted in accordance with the relevant provisions of Sections 2 and 5. The systems shall conform with the requirements of Section 6.

(f) International certification systems shall be opened to suppliers of similar products produced in the territories of other adherents which are not members of, or participate in, the systems at the same time as they are opened to suppliers in the territories of members of the systems and under conditions no less favourable than those accorded to suppliers in the territories of members of the systems.¹

(g) In formulating and implementing international certification systems or in transforming a regional certification system into an international certification system:

- (i) a notice shall be published at an appropriate stage of the intention to introduce a system;
- (ii) the GATT secretariat shall be notified of the products to be covered, including a brief indication of the objective of the proposed system;
- (iii) an equal opportunity shall be given to all adherents to take part in the formulation of the proposed system;
- (iv) particulars or copies of the proposed rules of the system shall be provided on request to other adherents;
- (v) reasonable time shall be allowed for comment;
- (vi) account shall be taken of comments received from any adherents, both regarding the formulation of the system and, subsequently, regarding its application; and

¹Some delegations proposed that this paragraph and paragraph (1) of this section be deleted.

(vii) all rules of the system shall be published.

(h) Adherents shall use all reasonable means within their power to ensure that regional certification systems of which their central government bodies are members,

(i) comply with the provisions of paragraphs (c) to (g) inclusive of this section, with the exception of paragraph (g)(iii); and

(ii) /are opened to participation by all adherents at the same time as, and under conditions no less favourable than those accorded to members of the system./

/are opened to participation by all adherents as soon as the systems become operational, on the same basis as to members of the systems when it has been established that such adherents are able and willing to fulfil the corresponding obligations. This is subject to the qualification that if for particular reasons it is considered inadvisable or impracticable to open such systems to participation by all adherents from the outset, participation may be limited in the initial stages./

(k) An adherent which is a member or participant in an international or regional certification system shall take the actions prescribed in paragraphs (g) (i), (ii), (iv) and (vii) of this section to the extent that these have not been taken in the context of the system.

(1) An adherent which is a member or participant in an international or regional certification system which does not comply with paragraph (f) of this section, shall ensure that products produced in the territories of other adherents receive treatment no less favourable than that accorded to the products of domestic suppliers.¹

14. International and regional certification systems of which local government bodies and regulatory bodies other than central government bodies are members or participants, for certifying conformity with technical regulations

Adherents shall use all reasonable means within their power to ensure that international or regional certification systems for certifying conformity with technical regulations, and of which their local government bodies or regulatory bodies other than central government bodies are members or participants, conform to the provisions of Section 13, substituting "Sections 3 and 7" for "Sections 2 and 5" and "Section 7" for "Section 6" in Section 13(e).

15. International and regional certification systems for certifying conformity with standards

Adherents shall use all reasonable means within their power to ensure that international or regional certification systems for certifying conformity with standards, and of which governmental or non-governmental certification bodies within their territories are members or participants,

¹Some delegations proposed that this paragraph and paragraph (f) of this section be deleted.

conform to the provisions of Section 13, substituting "standards" for "technical regulations" throughout and "Sections 4 and 8" for "Sections 2 and 5" and "Section 8" for "Section 6" in Section 13(e).

D. INFORMATION AND ASSISTANCE

16. Information about technical regulations and standards and certification systems

(a) Each adherent shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from interested parties in other adherents regarding:

- (i) any technical regulations or standards adopted or proposed by central or local government bodies within its territory or by regional bodies of which such bodies are members, or participants, together with the associated test methods and administrative procedures,
- (ii) any certification systems, or proposed certification systems, which are operated by central or local government bodies or by regulatory bodies other than central government bodies within its territory or of which such bodies are members or participants,
- (iii) the location of notices published pursuant to the Code, or to provide information as to where such details can be obtained, and
- (iv) the location of the enquiry points mentioned in Section 16(b).

(b) Each adherent shall use all reasonable means within its power to ensure that one or more enquiry points exist which are able to answer all reasonable enquiries from interested parties in other adherents regarding:

- (i) any standards and test methods adopted or proposed by voluntary standardizing bodies within its territory or by regional bodies of which such bodies are members or participants; and
- (ii) any certification system operated by a non-governmental certification body within its territory or of which such body is member or participant.

(c) Adherents shall use all reasonable means within their power to ensure that where copies of documents are requested by other adherents, or by interested parties in other adherents, in accordance with the provisions of the Code, they are supplied at the same price (if any) as to the nationals of the adherents concerned.

(d) The GATT secretariat will, when it receives notifications in accordance with the provisions of the Code, circulate a list of the products and countries concerned to all adherents and interested international standardizing bodies and draw the attention of developing adherents to any notifications relating to products of particular interest to them.

(e) Nothing in the Code shall be construed as requiring:

- (i) the publication of texts other than through the recognized channels of the bodies concerned or other than in the language of the country of origin;
- (ii) the provision of particulars or copies of drafts other than in the language of the country of origin; or

(iii) adherents to furnish any information, the disclosure of which they consider contrary to their essential security interests.

(f) Notifications to the GATT secretariat shall be in English, French or Spanish.

17. Technical assistance to other adherents

(a) Adherents shall, if requested, advise other adherents, especially the developing countries, on the preparation of technical regulations.

(b) Adherents shall, if requested, advise other adherents, especially the developing countries, and should consider requests for technical assistance from them regarding the establishment of national standardizing bodies and participation in the international standardizing bodies, and shall encourage their national standardizing bodies to do likewise.

(c) Adherents shall, if requested, use all reasonable means within their power to arrange for the regulatory bodies within their territories to advise other adherents, especially the developing countries, and should consider requests for technical assistance from them regarding:

(i) the establishment of regulatory bodies, or certification bodies for providing a certificate or mark of conformity with technical regulations; and

(ii) the methods by which their technical regulations can best be met.

(d) Adherents shall, if requested, use all reasonable means within their power to arrange for advice to be given to other adherents, especially the developing countries, and should consider requests for technical assistance from

them regarding the establishment of certification bodies for providing a certificate or mark of conformity with standards adopted within the territory of the requesting adherent.

(e) Adherents shall, if requested, advise other adherents, especially the developing countries, and should consider requests for technical assistance from them regarding the steps that should be taken by their producers, if they wish to take part in certification systems operated by governmental or non-governmental bodies within the territory of the adherent receiving the request.

(f) Adherents which are members or participants of international or regional certification systems shall, if requested, advise other adherents, especially the developing countries, and should consider requests for technical assistance from them regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such systems.

(g) Adherents shall, if so requested, encourage certification bodies within their territories, if such bodies are members or participants of international or regional certification systems to advise other adherents, especially the developing countries, and should consider requests for technical assistance from them regarding the establishment of the institutions which would enable the relevant bodies within their territories to fulfil the obligations of membership or participation.

E. AMENDMENTS TO TECHNICAL REGULATIONS OR STANDARDS
AND CERTIFICATION SYSTEMS

18. Amendments to technical regulations or standards and certification systems

All references in the Code to technical regulations or standards, test methods and certification systems shall be construed to include any amendments thereto including any additions to the rules of, or products covered by, such systems - other than amendments of an insignificant nature.

III. OTHER PROVISIONS

19. Retroactivity

To the extent that an adherent considers, that existing technical regulations, standards, methods for assuring conformity with technical regulations or standards, or certification systems are not consistent with the provisions of the Code, such regulations, standards, methods and systems shall be subject to the enforcement provisions in section 21 of the Code.

20. The Committee for Preventing Technical Barriers to Trade

(a) The adherents to this Code shall establish a Committee for Preventing Technical Barriers to Trade composed of representatives of the adherents to the Code. The Committee shall normally meet once each year for the purpose of affording adherents to the Code the opportunity of consulting on matters relating to the implementation of the Code.

21. Enforcement

(a) If any adherent considers that any benefit accruing to it from the implementation of the Code is being nullified or impaired by any other adherent, or if any adherent wishes to raise any other matter affecting the implementation of the Code with any other adherent, other adherents shall accord sympathetic consideration to, and afford adequate opportunity for consultation regarding such representations as may be made by that adherent.

(b) If no mutually satisfactory solution is reached between the adherents concerned within a reasonable time, the matter may be referred to the Committee for Preventing Technical Barriers to Trade set up under Section 19.

(c) The Committee for Preventing Technical Barriers to Trade shall promptly investigate any matter referred to it under paragraph (b) of this Section any may, as part of the investigation, consult with any contracting party or with any competent body. After the investigation is complete, 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.¹

(d) For the purposes of action under paragraph 2 of Article XXIII, adherents agree that adherents may invoke obligations under the Code.²

¹One delegation proposed that the whole of Section 21(c) be replaced by the following text:

"The Chairman of the Committee for Preventing Technical Barriers to Trade shall appoint in consultations with the adherents concerned a Panel which shall promptly investigate any matter referred to the Committee under Section 21(b) above and may as part of the investigation, consult with any contracting party or with any competent body. After the investigation is complete, the Panel may:

- .i) make a statement concerning the facts of the matter; or
- (ii) make recommendations to the adherents concerned.

The Panel shall report the results of its action to the Committee for Preventing Technical Barriers to Trade."

Some delegations said that it was premature to include Section 21(c)(iii) in the text.

²Some delegations proposed that Section 21(d) be deleted.

22. Final provisions

- (a) (i) The Code shall be open for adherence to all countries and to the European Economic Community. It shall enter into force on the thirtieth day following the day on which [x] of the above-mentioned countries, including those listed in Annex 2, shall have adhered to it.
- (ii) Contracting parties may adhere in respect of those territories for which they have international responsibility in accordance with the provisions of Article XXVI:5(a) and (b) of GATT, provided that GATT is being applied in respect of such territories;¹ and each such territory shall be treated as though it were an adherent.

(b) The Code shall become effective for each adherent on the day it enters into force in accordance with Section 22(a), or on the thirtieth day after the adherent concerned has adhered to it, whichever is the later.

(c) The text of the Code shall be deposited with the Director-General to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade, who will promptly furnish a certified copy thereof to all contracting parties and adherents, and will also inform all contracting parties of the date when the Code enters into force, and of the names of all adherents. The English, French and Spanish texts of the Code shall be authentic.

¹ Some delegations reserved their position on the proviso in Section 22(a)(ii).

(d) Amendments to the Code and Annexes thereto may be proposed by any adherent to the Code. Amendments shall become effective in respect of adherents accepting them upon acceptance by at least two thirds of all adherents and thereafter for other adherents upon acceptance.

(e) Any adherent may withdraw from the Code. The withdrawal shall take effect upon the expiration of six months from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade.¹

(f) Nothing in the Code shall be construed as detracting from the rights and obligations of adherents under the General Agreement.

¹The Working Group did not examine the consequences of a withdrawal for the rights of remaining adherents.

ANNEX 1

Terms

TERMS 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 in... /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 made 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.

ANNEX 2

List of Contracting Parties Referred to in Section 22(a)

/To be added/

Appendix B

REPORT OF GROUP 3 ON STANDARDS¹

1. The Working Group was instructed to elaborate, on an ad referendum basis, concrete solutions to problems within the area of product standards and quality assurance systems.
2. The Working Group accordingly held an extensive series of meetings under the chairmanship of Mr. P.T. Eastham (Canada) during which it drew up the text annexed to this report.
3. The Working Group reached a large measure of agreement on the text but differences of view still existed in some areas, Sections 9 and 13 having proved to be the most difficult in the operative provisions. The Working Group could have continued to refine the text but it regretfully came to the conclusion that it had taken its work as far as it usefully could at the present stage. Where differences of view remained it limited itself to setting out as clearly as possible what the alternatives were.
4. The Working Group recommended 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.
5. Some delegations from developing countries stated that their main objective was to draw up a clear, non-discriminatory code for preventing technical barriers to trade and underlined the interest of developing countries in the code both as exporters and as importers.
6. In drawing up the text of the instrument, the Group has adopted a number of working hypotheses. The first is that the solution could take the form of a contractual code. Some delegations stated that it was not within the province of the Working 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 preferred.
7. The text annexed takes the form of a separate instrument, a number of provisions of which are inevitably related to the General Agreement. It was the opinion of one delegation that the need for provisions respecting amendments and withdrawals and texts of such provisions if required could not be determined until

¹Originally issued as COM.IND/W/108 and Corr.1.

the relationship between the Code and the General Agreement had been established. Accordingly, this delegation reserves its position with respect to Section 22(d) and (e).

8. The Group has also worked on the hypothesis that benefits under the Code would accrue as of right solely to other adherents, without these benefits having to be extended to contracting parties which did not adhere to the Code.

9. Some delegations stated that the text took the form of a draft of a binding code which could, if the case arose, impose different levels of obligations for the preparation and application of mandatory standards, voluntary standards and quality assurance systems; they noted that, in particular, this resulted in substantial inequality as between countries with a federal structure and countries with a unitary structure, because of the fact that in the former many of these regulatory provisions are within the competence of the constituent States, while in the latter most of them are within the exclusive competence of the central Government. These delegations said that these disparities of situation were likely to have important consequences.

10. One delegation stated that the present text of the Code imposed different levels of obligations for the preparation and application of mandatory standards, voluntary standards and quality assurance systems, which might have important consequences in the future. This imbalance in obligations was especially acute for this country where all standards were mandatory. This delegation considered that the levels of obligations for adherents should be the same in mandatory and voluntary standard areas and therefore found it necessary to maintain its general reservation in this respect.

11. Other delegations pointed out that the balance of obligations as between different adherents depended on a number of factors, including the number of standards affected, whether they are mandatory or voluntary, and the size of the adherent's market. They said that assessments of balance could not be made until the text of a code was finally agreed. However, it appeared to them that, unlike some other non-tariff areas, product standards might be one where there was a possibility for sufficient balance to enable implementation of a code prior to the conclusion of the broader trade negotiations.

12. The Working Group could not agree on the institutional provisions contained in Sections 19 and 21 of the attached text. For instance some delegations said the Group could not usefully deal with the question of the powers of the Committee provided for in Section 19 since this was a problem of a much wider scope. The Working Group noted furthermore that the relationship between the Committee and the General Agreement was one matter that remained to be decided. In this regard some delegations suggested that the CONTRACTING PARTIES be requested to establish the Committee, if only to provide for the expenses of the Committee to be financed by the GATT. Some delegations said that, if the CONTRACTING PARTIES established the Committee, this could imply that disagreements

which persisted in the Committee would be referred to the CONTRACTING PARTIES. Some delegations said that, as Section 19 was worded in the attached text, either the Committee would not be empowered to take decisions, or any decisions by the Committee would be taken unanimously. Other members said that their interpretation of the present text was that decisions would be taken by consensus rather than unanimity.

13. Some delegations said that a decision regarding Sections 21(c)(iii) and (d) dealing with sanctions went beyond the competence of the Working Group. Other delegations considered that such provisions should be included in the text. One delegation said that the question of sanctions was directly related to the problem of devising equitable procedures for administering such sanctions. This delegation suggested that the establishment of a board of arbitration with the power of taking decisions was one possible solution, rather than the procedures set out in Sections 21(c)(iii) and (d). This delegation thought that, if no equitable procedure could be agreed, there should be no sanctions. Another delegation suggested that provision be made for a panel with the power of making recommendations and an alternative text to this effect is set out under Section 21. Some delegations underlined the importance of devising procedures for the settlement of disputes; they envisaged that such procedures would not necessarily have to involve sanctions.

14. Some delegations said that drafting retroactive provisions such as contained in Section 20 would, inter alia, go further than the Protocol of Provisional Application went with regard to the General Agreement itself. Furthermore, the problem of retroactivity stretched considerably beyond the standards field itself. In addition, retroactivity would have different consequences depending upon whether changes in laws or changes in executive provisions were involved.

15. The Group agreed that if and when widely accepted definitions were arrived at, their applicability for the purpose of the Code should be examined.

16. The Group 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.