

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Special Distribution

Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Technical Barriers to Trade"

TECHNICAL BARRIERS TO TRADE

Addendum

This document is divided into three parts, each containing a proposed revision for a portion of the Draft Standards Code. The document is circulated at the request of a number of delegations, which are not, in all cases, the same as those delegations requesting the circulation of the text contained in MTN/NTM/W/192.

The three parts of the present document address themselves to the following matters:

- I. Institutions, dispute settlement, relationship of the Code to the GATT, levels of obligation, process and production methods.
- II. Certification systems.
- III. Conformity with technical regulations and standards.

Each of these parts has attracted varying degrees of support among delegations. One of the main aims of the texts is to propose possible solutions to major problems identified in the Sub-Group. Some delegations see a link between the solutions proposed to different problems. Finally, the circulation of these texts does not commit any delegation to them either in whole or in part.

PART I

Draft Proposal for Consultation and Dispute
Settlement Provisions in the Standards Code

14. The Committee on Technical Barriers to Trade

There shall be established under this Agreement:

- (a) A Committee on Technical Barriers to Trade composed of representatives from each of the adherents to this Agreement. This Committee shall elect its own Chairman and shall meet as necessary but no less than once a year for the purpose of affording adherents to this Agreement the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives.
- (b) Working parties, panels or other bodies as may be appropriate, which shall carry out such responsibilities as may be assigned to them by the Committee in accordance with paragraphs 4 and 5 of this part below.

15. [Dispute settlement]

- (a) Each adherent shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding representation made by other adherents with respect to any matter affecting the operation of this Agreement.
- (b) If any adherent considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this

Agreement is being impeded, by another adherent or adherents, the adherent may make written representations or proposals to the other adherents which it considers to be concerned. Any adherent shall give sympathetic consideration to the representations or proposals made to it, with a view to reaching a satisfactory resolution of the matter.

Resolution of disputes

- (c) It is the firm intention of adherents that all disputes under this Agreement shall be expeditiously resolved.
- (d) If no solution has been reached after consultations under (a) and (b) above, the Committee shall meet at the request of any adherent party to the dispute within thirty days of receipt of such a request, to investigate the matter with a view to facilitating a mutually satisfactory solution.
- (e) In investigating the matter and in selecting its procedures the Committee shall take into account whether the issues in dispute relate to commercial policy considerations and/or to questions of a technical nature requiring detailed consideration by experts.
- (f) During any phase of a dispute settlement procedure, competent bodies and experts in matters under consideration may be consulted; appropriate information and assistance may be requested from such bodies and experts.

Technical issues

- (g) If no mutually satisfactory solution has been reached under the procedures of (d) above within three months of the request for the Committee investigation, upon the request of any adherent party to the dispute who considers the issues to relate to questions of a technical nature the Committee shall establish a technical expert group and direct it to: (i) examine the matter; (ii) consult with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and (iii) make statement concerning the facts of the matter and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.
- (h) The time required by the technical expert group considering questions of a technical nature will vary with the particular case. The technical expert group should aim to deliver its findings to the Committee within six months from the date the technical issue was referred to it, unless extended by mutual agreement between the parties to the dispute.
- (j) Reports should set out the rationale behind any findings that they make.

- (k) If no mutually satisfactory solution has been reached after completion of the procedures in this section, and any adherent party to the dispute requests a panel, the Committee shall establish a panel which shall operate under the provisions of (l) to (p) below.

Panel proceedings

- (l) If no mutually satisfactory solution has been reached under the procedures of (d) above within three months of the request for the Committee investigation and the procedures of (g) to (k) have not been invoked, the Committee shall, upon request of any adherent party to the dispute, establish a panel.
- (m) When a panel is established, the Committee shall direct it to:
- (i) examine the matter; (ii) consult with parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and (iii) make a statement concerning the facts of the matter as they relate to the application of provisions of this Code and make such findings as will assist the committee in making recommendations or giving rulings on the matter.
- (n) Panels shall be governed by the procedures in Annex 2.
- (o) Panels shall use the report of any expert group established under paragraph (g) as the basis for its consideration of issues that involve questions of a technical nature.

- (p) The time required by panels will vary with the particular case. They should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, normally within a period of four months from the date that the panel was established.

Enforcement

- (q) After the investigation is complete or after the report of the working group, panel, or other subsidiary body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to panel reports, the Committee shall take appropriate action within thirty days of receipt of the report, and
- (i) make a statement concerning the facts of the matter, or
 - (ii) make recommendations to one or more adherents to the Agreement;
or
 - (iii) make any other ruling which it deems appropriate.
- (r) If a party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

- (s) If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more adherents to this Agreement to suspend, in respect of any other adherent, such obligations under this Agreement as it determines to be appropriate in the circumstances. In this respect, the Committee may, inter alia, authorize the suspension of obligations, including those in sections 4 through 8, in order to restore mutual economic advantage and balance of rights and obligations.
- (t) The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

Relationship of Code to GATT

- (u) If disputes arise between adherents relating to rights and obligations of this agreement, adherents should complete the dispute settlement procedures under this agreement before availing themselves of any rights which they have under the GATT. Adherents recognize that, in any case so referred to the CONTRACTING PARTIES, any finding, recommendation or ruling pursuant to paragraphs (g) to (p) above may be taken into account by the CONTRACTING PARTIES, to the extent they relate to matters involving equivalent rights and obligations under the General Agreement. When adherents resort to GATT Article XXIII a determination under that Article shall be based on GATT provisions only.

Levels of obligation

- (v) The dispute settlement provisions set out above can be invoked in cases where an adherent considers that another adherent has not achieved satisfactory results under II:A(2) and (3), II:B(5), II:C(7) and II:C(8) and its trade interests are significantly affected. In this respect, such results shall be equivalent to those envisaged in II:A(1), II:B(4), II:C(6) as if the body in question were an adherent.

Note: Draft text to be inserted in operative sections of the Code.

Adherents shall not take measures which have the effect of, directly or indirectly, encouraging bodies, other than central government bodies, to act in a manner inconsistent with provisions of this Code which apply to their central government bodies.

Process and production methods

- (w) The dispute settlement procedures set out above can be invoked in cases where an adherent considers that obligations under this Agreement are being circumvented by the drafting of technical regulations or standards in terms of processes and production methods rather than in terms of characteristics of products.

Annex 2

AD HOC PANELS

The following procedures shall apply to panels established in accordance with the provisions of this chapter:

1. In order to facilitate the constitution of panels, the Chairman of the Committee of Signatories shall maintain an informal indicative list of government officials knowledgeable in the area of technical barriers to trade and experienced in the field of trade relations and economic development. This list may also include persons other than government officials. In this connexion, each adherent to this Agreement shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two governmental experts whom the adherents to this Agreement would be willing to make available for such work. If a panel is requested, the Chairman, after seven days shall propose the composition of the panel consisting of three or five members and preferably government officials. The parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

Except by agreement of the parties concerned, citizens of countries whose central governments are parties to a dispute shall not be eligible for membership of panel concerned with that dispute. Panel members shall serve in their individual capacities and not as government representatives, nor as

representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

2. Each panel shall develop its own working procedures. All parties, having a substantial interest in the matter and having notified this to the Committee shall have an opportunity to be heard. Each panel may consult and seek information and technical advice from any source it deems appropriate. Any signatory to this Agreement shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the government or person providing the information, will be provided.

3. Where the parties have failed to come to a satisfactory solution, the panel shall submit its findings in a written form. Panel reports should set out the rationale behind any findings and recommendations that it makes.

4. To encourage development of mutually satisfactory solutions between the parties and to enable the panel to take note of observations of the parties and take them into account when it deems appropriate, each panel should inform the parties to the dispute of its conclusions before they are circulated to the adherents of this Agreement.

PART II

C. Certification systems

6. Certification systems operated by central government bodies

With respect to their central governments bodies:

- (a) Adherents shall ensure that certification systems 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) Adherents shall ensure that certification systems are formulated and applied so as to grant access for suppliers of like products originating in the territories of other adherents under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, including the determination that such suppliers are able and willing to fulfil the requirements of the system. Access for suppliers is obtaining certification from the importing adherent under the rules of the system. Access for suppliers also includes receiving the mark of the system, if any, under conditions no less favourable than those afforded to members of the system.
- (c) Adherents shall:
 - (i) publish a notice in a publication at an early appropriate stage, in such a manner as to enable governments and traders to become acquainted with it, that they propose to introduce a certification system;
 - [(ii) notify the GATT secretariat of the products to be covered, including a brief description of the objective of the proposed system;]
 - (iii) upon request provide to other adherents particulars or copies of the proposed rules of the system;

- (iv) allow reasonable time for [interested parties in] other adherents to make comments in writing [on the formulation and operation of the system], discuss these comments upon request and take them into account.

However, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for an adherent, that adherent may omit such of the steps enumerated earlier in this paragraph as it finds necessary provided at least, upon adoption of the certification system, that the adherent shall:

- (v) [notify immediately the other adherents through the GATT secretariat of the particular certification system, the product covered, with a brief indication of the objective and the rationale of the certification system including the nature of the urgent problems;]
- (vi) upon request, provide other adherents with copies of the rules of the system;
- (vii) allow [interested parties in] other adherents to present their comments in writing, discuss these comments upon request and take the written comments and the results of any such discussion into account.
- (d) Adherents shall ensure that all rules of certification systems are published.

7. Certification systems operated by local government and non-governmental bodies

- (a) Adherents shall use all reasonable means within their power to ensure that local government and non-governmental bodies within their territories when operating certification systems comply with the provisions of Section 6 except 6(c)(ii).

- (b) Adherents shall ensure that their central government bodies rely on certification systems operated by local government or non-governmental bodies only to the extent that these bodies and systems comply with the relevant provisions of Section 6.

8. International and regional certification systems

- (a) Where a positive assurance, other than by the supplier, of conformity with a technical regulation or standard 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 and regional certification systems [and bodies], in which relevant bodies within their territories are members or participants comply with the provisions of Section 6, with the exception of 6(b).
- (c) Adherents shall use all reasonable means within their power to ensure that international and regional certification systems [and bodies] in which relevant bodies within their territories are members or participants, are formulated and applied so as to grant access for suppliers of like products originating in the territories of other adherents under conditions no less favourable than those accorded to suppliers of like products originating in a member country or in any other country, including the determination that such suppliers are able and willing to fulfil the requirements

of the system. Access for suppliers is obtaining certification from an importing adherent which is a member of or participant in the system - under the rules of the system. Access for suppliers also includes receiving the mark of the system, if any, under conditions no less favourable than those afforded to suppliers of like products originating in a member country.

- (d) Adherents shall ensure that their central government bodies rely on international or regional certification systems only to the extent that the systems comply with the provisions of Section 6 and paragraph (c) of this section.

PART III

B. Conformity with technical regulations and standards

4. Determination by central government bodies of conformity with technical regulations or standards

- (a) Adherents shall ensure that, in cases where a positive assurance is required that products conform with technical regulations or standards, central government bodies apply the following provisions to products originating in the territories of other adherents:
- (i) imported products shall be accepted for testing under conditions no less favourable than those accorded to like products of national origin or originating in any other country;
 - (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, in a comparable situation for like products of national origin or originating in any other country;
 - (iii) any fees imposed for testing imported products shall be equitable in relation to any fees chargeable for testing like products of national origin or originating in any other country;
 - (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.
- (b) In order to facilitate the determination of conformity in paragraph (a), adherents shall, upon request, engage in talks with a view to arriving at mutually satisfactory arrangements, whenever possible, on the basis of which their central government bodies shall:
- (i) accept test results, certificates or marks of conformity issued by relevant bodies in the territories of other adherents, even when the test methods differ from their own, provided they are satisfied that those methods provide a sufficient means of determining conformity with the relevant technical regulations or standards, or
 - (ii) rely upon self-certification by producers in the territories of other adherents.
- (c) Adherents shall ensure that test methods and administrative procedures used by central government bodies as such as to permit so far as practicable the implementation of the provisions in paragraph (b) of this section.
- (d) Nothing in this section shall prevent adherents from carrying out reasonable spot checks within their territories.

5. Determination by local government bodies and non-governmental bodies of conformity with technical regulations or standards

Adherents shall use all reasonable means within their power to ensure that local government bodies and non-governmental bodies within their territories comply with the provisions of Section 4.