

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Multilateral Trade Negotiations

Group "Non-Tariff Measures"

Sub-Group "Technical Barriers to Trade"

TECHNICAL BARRIERS TO TRADE

Revision

The following proposed revision of the text of the Draft Standards Code is circulated by the Chairman of the Sub-Group, in response to the request of the Sub-Group that he put together the texts in MTN/NTM/W/192 and Add.2, incorporating the results of informal consultations to the extent possible, (paragraph 8 of MTN/NTM/58), on his own responsibility after consulting with a number of delegations from both developed and developing countries.

This third revision incorporates a number of amendments designed to make the Draft Code applicable to agricultural products and reflects the decision of Group "Agriculture" to remove the square brackets in Section 1.3 (MTN/AG/9, paragraph 8).

All proposals remain on the table and the circulation of this document does not prejudice the right of delegations to revert to specific issues.

The precise wording of some provisions in the text, particularly the final provisions, will need to be re-examined.

PROPOSED DRAFT GATT CODE OF CONDUCT
FOR PREVENTING TECHNICAL BARRIERS TO TRADE

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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, including packaging, marking and labelling requirements, and methods for certifying conformity with technical regulations and standards do not create unnecessary 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, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade;

Recognizing that no country should be prevented from taking measures necessary for the protection of the environment, 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;

hereby agree as follows:

1. General provisions

1.1 General terms for standardization and certification shall normally have the meaning given to them by definitions adopted within the United Nations System and by international standards organizations taking into account their context and in light of the object and purpose of the Code.

1.2 However, for the purposes of the Code the meaning of the terms given in Annex 1 applies.

1.3 All products, including industrial and agricultural products, shall be subject to the provisions of this Code.

1.4 Purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this Code but are addressed in the Code on government procurement.

1.5 Adherents shall not take measures which have the effect of, directly or indirectly, requiring or 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.

1.6 All references in the Code to technical regulations, standards, methods for assuring conformity with technical regulations or standards 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.

Technical regulations and standards

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

With respect to their central government bodies:

2.1 Adherents shall ensure that technical regulations and standards are not prepared, adopted or applied with a view to creating obstacles to international trade. Furthermore, products imported from the territory of any adherent shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country in relation to such technical regulations or standards. They shall likewise ensure that neither technical regulations nor standards themselves nor their application have the effect of creating unnecessary obstacles to international trade.

2.2 Where technical regulations or standards 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 or standards except where, as duly explained upon request, such international standards or relevant parts are inappropriate for the adherents concerned, for inter alia such reasons as national security requirements; the prevention of deceptive practices; protection for human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological problems.

2.3 With a view to harmonizing technical regulations or standards 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 or standards.

2.4 Where appropriate, adherents shall specify technical regulations and standards in terms of performance rather than design.

2.5 Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation or standard is not substantially the same as the technical content of relevant international standards, and if the technical regulation or standard may have a significant effect on trade of other adherents, adherents shall:

2.5.1 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 particular technical regulation or standard.

2.5.2 notify other adherents through the GATT secretariat of the products to be covered by technical regulations including a brief indication of the objective and rationale of proposed technical regulations.

2.5.3 upon request, provide without discrimination to other adherents in regard to technical regulations, and to interested parties in other adherents in regard to standards, particulars or copies of the proposed technical regulation or standard and, whenever possible, identify the parts which in substance deviate from relevant international standards.

2.5.4 in regard to technical regulations, allow without discrimination reasonable time for other adherents to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.5.5 in regard to standards, allow reasonable time for interested parties in other adherents to make comments in writing, upon request, discuss these comments with other adherents, and take these written comments and the results of these discussions into account.

2.6 Subject to the provisions in the heading of 2.5 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 2.5 as it finds necessary provided at least, upon adoption of a technical regulation or standard, that the adherent shall:

2.6.1 notify immediately other adherents through the GATT secretariat of the particular technical regulation, the product covered, with a brief indication of the objective and the rationale of the technical regulation, including the nature of the urgent problems;

2.6.2 upon request, provide without discrimination other adherents with copies of the technical regulation, and interested parties in other adherents with copies of the standard;

2.6.3 allow without discrimination other adherents with respect to technical regulations and interested parties in other adherents with respect to standards, 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.

2.6.4 take also into consideration any action by the Committee as a result of consultations carried out in accordance with the procedures established in section 14.

2.7 Adherents shall ensure that all technical regulations and standards are published promptly in such a manner as to enable governments and traders to become acquainted with them.

2.8 Except in those urgent circumstances referred to in section 2.6, adherents shall allow a reasonable interval between the publication of a technical regulation and its entry into force in order to allow time for procedures in exporting countries, and particularly in developing countries, to adapt their products or methods of production to the requirements of the importing country.

2.9 Adherents shall use all reasonable means within their power¹ to ensure that regional standardizing bodies in which they are members comply with the provisions of section 2.1 to 2.8 so far as they are applicable.

2.10 Adherents which are members of regional standardizing bodies shall when adopting a regional standard as a technical regulation or standard fulfil the obligations of section 2.1 to 2.8 except to the extent that the regional standardizing bodies have fulfilled these obligations.

¹ Further discussions are going on between some delegations in regard to the wording of this obligation throughout the code, i.e. whether the present language should be replaced by language of GATT Article XXIV:12: "take such reasonable measures as may be available to them".

3. Preparation, adoption and use of technical regulations and standards by local government bodies

3.1 Adherents shall use all reasonable means within their power to ensure that local government bodies within their territories comply with the provisions of Section 2 with the exception of Section 2.3, 2.5.2, 2.9 and 2.10, noting that provision of information regarding technical regulations referred to in Section 2.5.3 and comment and discussion referred to in Section 2.5.4 shall be through adherents.

4. Preparation, adoption and use of technical regulations and standards by non-governmental bodies, including regulatory bodies other than central government bodies

Adherents shall use all reasonable means within their power to ensure that non-government bodies within their territory, including regulatory bodies other than central government bodies, comply with the provisions of Section 2, with the exception of Section 2.5.2, and providing that comment and discussion referred to in Sections 2.5.4 and 2.6.3 may also be through interested parties in other adherents.

Conformity with technical regulations and standards

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

5.1 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:

5.1.1 imported products shall be accepted for testing under conditions no less favourable than those accorded to like imported products in a comparable situation;

5.1.2 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;

5.1.3 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;

5.1.4 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;

5.1.5 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;

5.1.6 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.

5.2 However, in order to facilitate the determination of conformity with technical regulations and standards where such positive assurance is required, adherents shall ensure whenever possible, that their central government bodies:

1. accept test results, certificates or marks of conformity issued by relevant bodies in the territories of other adherents; or
2. rely upon self-certification by producers in the territories of other adherents

even when the test methods differ from their own, provided they are satisfied that the methods employed in the territory of the exporting adherent provide a sufficient means of determining conformity with the relevant technical regulations or standards. It is recognized that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding regarding the self-certification and test methods employed in the territory of the exporting adherent.

5.3 Adherents shall ensure that test methods and administrative procedures used by central government bodies are such as to permit so far as practicable the implementation of the provisions in paragraph 5.2 of this section.

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

6. Determination by local government bodies, non-governmental and regulatory bodies other than central government bodies, bodies of conformity with technical regulations or standards

Adherents shall use all reasonable means within their power to ensure that local government bodies, non-governmental bodies and regulatory bodies other than central government bodies within their territories comply with the provisions of Section 5.

Certification systems

7. Certification systems operated by central government bodies

With respect to their central government bodies:

7.1 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.

7.2 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.

7.3 Adherents shall:

7.3.1 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;

7.3.2 notify the GATT secretariat of the products to be covered, including a brief description of the objective of the proposed system;

7.3.3 upon request provide without discrimination to other adherents particulars or copies of the proposed rules of the system;

7.3.4 allow without discrimination reasonable time for other adherents to make comments in writing on the formulation and operation of the system, discuss the comments upon request and take them into account.

7.4 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 7.3 as it finds necessary provided at least, upon adoption of the certification system, that the adherent shall:

7.4.1 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;

7.4.2 upon request, provide without discrimination other adherents with copies of the rules of the system;

7.4.3 allow without discrimination other adherents to present their comments in writing, discuss these comments upon request and take the written comments and results of any such discussion into account;

7.5 Adherents shall ensure that all rules of certification systems are published.

8. Certification systems operated by local government and non-government bodies and regulatory bodies other than central government bodies

8.1 Adherents shall use all reasonable means within their power to ensure that local government bodies, non-governmental bodies and regulatory bodies other than central government bodies, within their territories when operating certification systems comply with the provisions of Section 7 except 7.3.2.

8.2 Adherents shall ensure that their central government bodies rely on certification systems operated by local government, non-government bodies and regulatory bodies other than central government bodies only to the extent that these bodies and systems comply with the relevant provisions of Section 7.

9. International and regional certification systems

9.1 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.

9.2 Adherents shall use all reasonable means within their power to ensure that international and regional certification systems in which relevant bodies within their territories are members or participants comply with the provisions of Section 7, with the exception of 7.2.

9.3 Adherents shall use all reasonable means within their power to ensure that international and regional certification systems 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, a participant 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 or a participant country.

9.4 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 7 and Section 9.3.

Information and assistance

10. Information about technical regulations and standards and certification systems

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

10.1.1 any technical regulations or standards adopted or proposed by central or local government bodies or regulatory 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,

10.1.2 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,

10.1.3 the location of notices published pursuant to the Code, or to provide information as to where such details can be obtained, and

10.1.4 the location of the enquiry points mentioned in Section 10.2.

10.2 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:

10.2.1 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

10.2.2 any certification system operated by a non-governmental certification body within its territory or of which such body is member or participant.

10.3 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.

10.4 The GATT secretariat will, when it receives notifications in accordance with the provisions of the Code, circulate copies of the notifications 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.

10.5 Nothing in the Code shall be construed as requiring:

10.5.1 the publication of texts other than in the language of the country of origin;

10.5.2 the provision of particulars or copies of drafts other than the language of the country of origin; or

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

10.6 Notifications to the GATT secretariat shall be in English, French or Spanish.

11. Technical assistance to other adherents

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

11.2 Adherents shall, if requested, advise other adherents, especially the developing countries and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of national standardizing bodies and participation in the international standardizing bodies, and shall encourage their national standardizing bodies to do likewise.

11.3 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 shall grant them technical assistance on mutually agreed terms and conditions regarding:

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

11.3.2 the methods by which their technical regulations can best be met.

11.4 ~~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 shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of certification bodies for providing a certificate or mark of conformity with standards adopted within the territory of the requesting adherent.

11.5 Adherents shall, if requested, advise other adherents, especially the developing countries, and shall grant them technical assistance on mutually agreed terms and conditions 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.

11.6 Adherents which are members or participants of international or regional certification systems shall, if requested, advise other adherents, especially the developing countries, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such systems.

11.7 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.

11.8 In providing advice and technical assistance to other adherents in terms of Sections 11.1-11.7, adherents shall give priority to the needs of the least-developed countries.

12. Special and differential treatment of developing countries

12.1 Adherents shall provide differentiated and more favourable treatment to developing countries adhering to this Code, through the following provisions as well as through the relevant provisions of other sections of the Code.

12.2 Adherents shall give particular attention to the provisions of this Code concerning developing countries' rights and obligations and shall take into account the special development, financial and trade needs of developing countries in the implementation of the Code both nationally and in the operation of the Code's institutional arrangements.

12.3 Adherents shall, in the preparation and application of technical regulations, standards, test methods and certification systems, take account of the special development, financial and trade needs of developing countries, with a view to ensuring that such technical regulations, standards, test methods and certification systems and the determination of conformity with technical regulations and standards do not create unnecessary obstacles to exports from developing countries.

12.4 Adherents recognize that, although international standards may exist, in their particular technological and socio-economic conditions developing countries adopt certain technical regulations or standards, including test methods, aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Adherents therefore recognize that developing countries should not be expected to adopt international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.

12.5 Adherents shall take such reasonable measures as may be available to them to ensure that international standardizing bodies and international certification systems are organized and operated in a way which facilitates active and representative participation of relevant bodies in all adherents, taking into account the special problems of developing countries.

12.6 Adherents shall take such reasonable measures as may be available to them to ensure that international standardizing bodies, on request of developing countries, examine the possibility of, and, if practicable, elaborate international standards concerning products of special interest to developing countries.

12.7 Adherents shall, in accordance with the provisions of Section 10, provide technical assistance to developing countries to ensure that the preparation and application of technical regulations, standards, test methods and certification systems do not create unnecessary obstacles to

the expansion and diversification of exports from developing countries. In determining the terms and conditions of the technical assistance, account shall be taken of the stage of development of the requesting country and in particular to the least-developed countries.

12.8 It is recognized that developing countries may face special problems, including institutional and infrastructural problems, in the field of preparation and application of technical regulations, standards, test methods and certification systems. It is further recognized that the special development and trade needs of developing countries, as well as their stage of technological development, may hinder their ability to discharge fully their obligations under this Code. Adherents, therefore, shall take this fact fully into account. Accordingly with a view to ensuring that developing countries are able to comply with the Code, the Committee is enabled to grant upon request specified, time-limited exceptions in whole or in part from obligations under the Code. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards, test methods and certification systems and the special development and trade needs of the developing country, as well as its stage of technological development, which may hinder its ability to discharge fully its obligations under the Code. The Committee shall in particular, take into account the special problems of the least developed countries.

12.9 During consultations, developed countries shall bear in mind the special difficulties experienced by developing countries in formulating and implementing standards and technical regulations and methods of ensuring conformity with those standards and technical regulations, and in their desire to assist developing countries with their efforts in this direction, developed countries shall take account of the special needs of the former in regard to financing, trade and development.

12.10 The Committee shall examine periodically the special and differential treatment as laid down in this Code, granted to developing countries, on national and international levels.

Institutions, consultation and dispute settlement

13. The Committee on Technical Barriers to Trade

There shall be established under this Agreement:

13.1 A Committee on Technical Barriers to Trade composed of representatives from each of the adherents to this Agreement (referred to in this Code as "the Committee"). The 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.

13.2 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 Section 14.7 to 14.10 and Section 14.11 to 14.15.

14. Consultation and dispute settlement

Consultation

14.1 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.

14.2 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

14.3 It is the firm intention of adherents that all disputes under this Agreement shall be promptly and expeditiously resolved, particularly in the case of perishable products.

14.4 If no solution has been reached after consultations under Section 14.1 and 14.2, 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.

14.5 In investigating the matter and in selecting subject, inter alia, to the provisions of Sections 14.8 and 14.12, the appropriate 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.

14.6 In the case of perishable products the Committee shall, in keeping with Section 14.3, consider the matter in the most expeditious manner possible with a view to facilitating a mutually satisfactory solution within three months of the request for the Committee investigation.

14.7 During any phase of a dispute settlement procedure including the earliest phase, competent bodies and experts in matters under consideration may be consulted and invited to attend the meetings of the Committee; appropriate information and assistance may be requested from such bodies and experts.

Technical issues

14.8 If no mutually satisfactory solution has been reached under the procedures of Section 14.4 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:

1. examine the matter;
2. consult with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;
3. make statement concerning the facts of the matter; and
4. make such findings as will assist the Committee in making recommendations or giving rulings on the matter, including inter alia and if appropriate, findings concerning the detailed scientific judgments involved, whether the measure was necessary for the protection of human, animal or plant life or health, and whether a legitimate scientific judgment is involved.

14.9 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] [shall] 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.

14.10 Reports should set out the rationale behind any findings that they make.

14.11 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 Section 14.12 to 14.16 below.

Panel proceedings

14.12 If no mutually satisfactory solution has been reached under the procedures of Section 14.4 within three months of the request for the Committee investigation and the procedures of Section 14.8 to 14.11 have not been invoked, the Committee shall, upon request of any adherent party to the dispute, establish a panel.

14.13 When a panel is established, the Committee shall direct it to:

1. examine the matter;
2. consult with parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;
3. 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.

14.14 Panels shall be governed by the procedures in Annex 2.

14.15 Panels shall use the report of any expert group established under Section 14.8 as the basis for its consideration of issues that involve questions of a technical nature.

14.16 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

14.17 After the investigation is complete or after the report of a 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]

[promptly after] receipt of the report, including:

1. a statement concerning the facts of the matter, or
2. recommendations to one or more adherents to the Agreement; or
3. any other ruling which it deems appropriate.

14.18 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.

14.19 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 5 through 9, in order to restore mutual economic advantage and balance of rights and obligations.

14.20 The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

Other provisions relating to dispute settlement

Procedures

14.21 If disputes arise between adherents relating to rights and obligations of this Code, adherents should complete the dispute settlement procedures under this Code 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 Section 14.8 to 14.16 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

14.22 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 Sections 3, 4, 6, 8 and 9 and its trade interests are significantly affected. In this respect, such results shall be equivalent to those envisaged in Sections 2, 5 and 7 as if the body in question were an adherent.¹

Processes and production methods

14.23 The dispute settlement procedures set out above can be invoked in cases where an adherent considers that obligations under this Code are being circumvented by the drafting of requirements in terms of processes and production methods rather than in terms of characteristics of products.

Retroactivity

14.24 To the extent that an adherent considers that technical regulations, standards, methods for assuring conformity with technical regulations or standards, or certification systems which exist at the time of entry into force of this Code are not consistent with the provisions of the Code, such regulations, standards, methods and systems shall be subject to the enforcement provisions in Section 14 of the Code.

¹The issues raised by provision 14.22 relate to the same issues identified in the footnote on page 9. Delegations concerned are pursuing these matters further.

15. Final provisions

Signature and acceptance

15.1 This Code shall be open for signature in Geneva, at the headquarters of the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade, from until by governments contracting parties to the General Agreement on Tariffs and Trade and by the European Economic Community. It shall also be open for signature by other governments undertaking to observe the provisions of this Code and such other provisions related to the effective application of rights and obligations as may be agreed.¹

15.2 This Code shall be accepted by each adherent only after fulfilment of its respective constitutional procedures.

15.3 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; and each such territory shall be treated as though it were an adherent.

Reservations

15.4 Reservations may not be entered in respect of any of the provisions of this Code.

Entry into force

15.5 This Code shall enter into force [on 1 January 1980] as among the parties which have accepted it. For each government which accepts thereafter, the Code shall enter into force on the thirtieth day following the date of such acceptance.

¹ Some delegations attach great importance to the retention of the text in MTN/NTM/W/150, and in particular to the deletion of the words "and such other provisions related to the effective application of rights and obligations as may be agreed".

Accession

15.6 Any government not an adherent to this Code may accede to it on terms to be agreed between that government and the adherents to the Code.

15.7 Accession shall take place through signature of a Protocol of Accession to be deposited with the Director-General to the CONTRACTING PARTIES to the GATT.

Review

15.8 The Committee shall review annually the implementation and operation of this Code taking into account the objectives thereof. The Committee shall annually inform the Contracting Parties to GATT of developments during the periods covered by such reviews.

15.9 Each adherent shall, after the date upon which the Code becomes effective for the adherent concerned, inform the Committee of measures in existence or taken to ensure the proper administration of the Code.

15.10 Not later than the end of the fifth year from the entry into force of the Code and at the end of each five-year period thereafter, the Committee shall review the operation and implementation of this Code with a view to adjusting the rights and obligations of the Code where necessary to ensure mutual economic advantage and balance of rights and obligations, and where appropriate amending the text of the agreement having regard inter alia, to the experience gained in its implementation.

Amendments

15.11 This Code may be amended any time. Any decision to amend this Code shall be taken [by a two-thirds majority] of the adherents to this Code and shall become effective, for the adherents accepting the amendments, upon acceptance by [two thirds] of the adherents which have accepted the Code and thereafter for each other adherent upon its acceptance of the amendments.

Withdrawal

15.12 Any adherent may withdraw from this Code. The withdrawal shall take effect upon the expiration of ninety days from the date on which the written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. The Director-General shall promptly inform each adherent. Any adherent may, upon receipt of such information, request an immediate meeting of the Committee.

Non-application

15.13 This Code shall not apply as between any adherent accepting this Code or government acceding thereto, if at the time of acceptance of the Code or of accession thereto, an adherent to the Code or the acceding government does not consent to such application.

Annexes

15.14 The Annexes hereto constitute an integral part of this Code.

Secretariat

15.15 This Code shall be serviced by the GATT secretariat.

Deposit

15.16 This Code shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph [Signature and Acceptance] or of each accession thereto, pursuant to paragraph [Accession], to each adherent to the Code.

Registration

15.17 This Code shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this day of
nineteen hundred and seventy-eight, in a single copy, in the English,
French and Spanish languages, each text being authentic.

ANNEX 1

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.

Standard

A technical specification approved by a recognized standardising body repeated or continuous application, with which compliance is not mandatory.

anatory 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. This definition does not cover technical specifications prepared by an individual company for its own production or consumption requirements.

International body or system

A body or system whose membership is open to the relevant bodies of all adherents to the Code.

Regional body or system

A body or system whose membership is open to the relevant bodies of some of the adherents.

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 apply.

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

AD HOC PANELS

The following procedures shall apply to panels established in accordance with the provisions of Section 14.

1. In order to facilitate the constitution of panels, the Chairman of the Committee 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 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 Code 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 adherents concerned, citizens of countries whose central governments are parties to a dispute shall not be eligible for membership of the 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 adherents, 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. In case such consultation with competent bodies and experts is necessary it should be at the earliest possible stage of the dispute settlement procedure. Any adherent 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 to a dispute 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 to a dispute 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 to this Code.

POINTS FOR THE RECORD

1. Definitions

"Standard"

- The word "body" covers also a national standardizing system

"Technical Regulation"

- For the purposes of the Code, this definition covers also a standard of which the application has been made mandatory not by separate regulation but by virtue of a general law.

"Standardizing Body"

- The term includes a body or organization whose principal function is in the field of standardization.

2. Sections 5.2 and 5.3

Paragraphs 5.2 and 5.3 do not apply to such characteristics of perishable products or other products which are liable to deteriorate in transit.

3. Section 14

It is understood that where disputes arise affecting products with a definite crop cycle, every effort would be made by the Committee to deal with these disputes within the period of that cycle.

4. Section 15

It is understood that unnecessary duplication should be avoided between the work under the Code and that of governments in other technical bodies, e.g. Codex Alimentarius. As a first step, the secretariat would examine the likely scope of this problem.