

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/W/31
8 July 1988

Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on MTN
Agreements and Arrangements

Original: English

COMMUNICATION FROM THE EUROPEAN COMMUNITIES

The following communication was received by the secretariat on 1 July 1988, with the request that it be circulated to the Negotiating Group on MTN Agreements and Arrangements.

A CODE OF GOOD PRACTICE FOR NON-GOVERNMENTAL
BODIES IN THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE

1. Articles 4, 6 and 8 of the Agreement currently oblige Parties to take such reasonable measures as may be available to them to ensure that non-governmental bodies within their territories comply with a number of provisions relating to the preparation, adoption and application of technical regulations and standards, the determination of conformity with technical regulations and standards, and the operation of certification systems. Article 14.24 allows a Party to invoke the dispute settlement procedures of the Agreement if it considers that another Party has not achieved satisfactory results in the above respect, such results being equivalent to those as if the body in question were a Party.

2. The EEC considers improvement of the above provisions desirable for the following reasons:

- (a) Standards (and technical regulations) drawn up by non-governmental bodies can, when used on a nation-wide basis, in practice create barriers to trade as serious as if they were technical regulations drawn up by central government bodies;
- (b) A world-wide shift appears to be occurring towards a greater use of standards (and technical regulations) drawn up by non-governmental bodies and a lesser use of technical regulations drawn up by central government bodies. This includes the EEC. In some Parties, this situation already existed;
- (c) The current provisions of the Agreement have not succeeded in ensuring transparency of, access to, and some degree of influence on the activities of non-governmental standardization or certification bodies. Likewise, they have not resulted in Parties achieving results regarding non-governmental bodies as if those bodies were Parties;

- (d) This lack of success could be due to three factors:
- (i) there may be insufficient incentives both for non-governmental bodies and Parties to fully abide by their substantive obligations;
 - (ii) those substantive obligations themselves may be insufficiently strict or elaborate;
 - (iii) the substantive obligations are those of Parties, but then applied to non-governmental bodies. They are not necessarily very practical, operational or even relevant for non-governmental bodies.

3. The EEC proposes to amend these shortcomings by creating, in an annex to the Agreement, a code of good practice for non-governmental bodies. This code would spell out in practical and operational language further-going substantive obligations for non-governmental bodies than presently exist in the Agreement. Acceptance of the code by non-governmental bodies would be voluntary, under the proviso, however, that Parties must take all practicable measures to ensure acceptance of and adherence to the code by non-governmental standardization and certification bodies within their territory.

Parties would notify the GATT secretariat of the non-governmental bodies within their territory having accepted the code, and the names of those bodies would be published in a list. This list would be reviewed annually in the Committee, at which time Parties could draw attention to the fact that a particular body has not adhered to the code in the previous period, or that a Party has not achieved sufficient results in the number of non-governmental bodies in its territory that have accepted the code or in ensuring adherence to the code by non-governmental bodies in its territory that have accepted it. This would entitle another Party to invoke the dispute settlement procedures of the Agreement, the purpose being to restore mutual economic advantage and balance of rights and obligations. This is already foreseen in Article 14.24 jo. 14.21 of the current Agreement. It should provide sufficient incentive both for Parties and non-governmental bodies to ensure adequate fulfilment of the substantive obligations of the code.

4. The substantive provisions of the code of non-governmental bodies could relate to the topics in the indicative and non-exhaustive list below:

I. Coverage

- (1) not only standards would be covered, but also technical regulations (same as in current Agreement). In addition, pre-standards would be covered;
- (2) not only the preparation, adoption and application of technical regulations and standards would be covered, but also the determination of conformity and the operation of certification systems (same as in current Agreement);

- (3) not only non-governmental bodies on a national level would be included, but also on a local level.

II. General

National treatment and the most-favoured-nation obligation would apply (same as in current Agreement), but in more operational language, i.e. expressed as a principle of non-discriminatory treatment.

International standards should, when possible, be followed for the adoption of technical regulations and standards, the determination of conformity, and the operation of certification systems. It might be appropriate to include relevant provisions from the ISO/IEC Guides in the code.

III. Transparency

- (1) Annual information would have to be available on a body's programme for the adoption of standards or technical regulations in the coming year, and on its adoption of international standards during the previous year;
- (2) at least sixty days in advance, information would have to be available on any particular standard or technical regulation to be adopted, unless substantially the same as an international standard, as well as on a certification system to be introduced;
- (3) whether this information should be made available at a national enquiry point, obtainable for interested Parties on request, or should be notified to other Parties via an international central point (such as ISONET) is to be investigated further;
- (4) the full text of a proposed technical regulation, standard or certification system should be available upon request;
- (5) Technical regulations and standards which have been adopted should be published promptly in such a manner as to enable interested Parties to become acquainted with them. They should be made available upon request subject to the usual commercial terms and conditions.

IV. Comments in writing and discussion

There should be a facility for comments in writing and discussion on proposed technical regulations, standards and certification systems during the sixty-day period. Non-conformity with international standards could be raised.