

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

RESTRICTED

MTN.GNG/NG8/W/77
8 May 1990

Special Distribution

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

Original: English

TECHNICAL REGULATIONS AND STANDARDS
AS UNNECESSARY OBSTACLES TO TRADE
IN THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE

Submission by Canada

1. This proposal by Canada to the Negotiating Group on MTN Agreements and Arrangements seeks to clarify provisions on technical regulations and standards in the Agreement on Technical Barriers to Trade. It aims to establish a more predictable context for the adoption of technical measures for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices.
2. More precise disciplines on adoption of technical regulations and standards could also improve operation of the Agreement. Parallel obligations against application of such measures as unnecessary obstacles to trade are needed for consistency with those proposed for conformity assessment practices. This proposal should be read together with the Canadian submission on certification systems (MTN.GNG/NG8/W/69 of 31 January 1990) and in conjunction with the Cairns Group submission on Agricultural Health and Phytosanitary Regulations (MTN.GNG/NG5/W/112 of 2 October 1989), of which Canada was a co-sponsor.

Scope

3. This submission addresses technical regulations and standards for products within the scope of Article 1 and as defined in Annex 1 of the Agreement. It is also intended to cover technical regulations and standards for processes and production methods. While amendments are proposed to Article 2.1 which applies to central government bodies, the additional obligations would also apply to local government and non-government bodies under the relevant provisions of Articles 3 and 4.

Existing obligations against unnecessary obstacles to trade

4. Article 2.1 requires Parties to ensure that technical regulations and standards are neither used with intent to restrict trade nor applied with the effect of creating unnecessary obstacles to trade. In practice, enforcement of these obligations has been limited by the absence of criteria for determining whether such measures are intended or applied as necessary trade obstacles.

5. At the same time, governments and non-governmental bodies are increasingly called upon to develop and apply technical measures not only for environmental protection, health and safety, but also for quality and technological adaption. Such measures often deal with problems of varying incidence between geographical areas (domestic regions, transboundary, etc.) and industrial applications. They are also used to implement intergovernmental protocols and conventions and international or regional standards. Disciplines incorporating principles of proportional application, degressivity and limitation to products from geographic areas and industrial applications where problems occur could help prevent use of such measures as unnecessary trade obstacles. These obligations could be strengthened by requirements for consistency with measures to implement international agreements and standards.

Elements of the Proposal

6. This submission seeks amendments to Article 2.1 incorporating the principles of proportional and degressive application of technical regulations and standards. The proposed amendments are set out below as new sub-paragraphs to Article 2.1.

Proposed Amendments to Article 2.1

7. TECHNICAL REGULATIONS AND STANDARDS Article 2

Preparation, adoption and application of technical regulations and standards by central government bodies

With respect to their central government bodies:

2.1 Parties 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 Party 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. In so doing, Parties shall, inter alia, ensure that technical regulations and standards including changes thereto:

2.1.1 do not contain requirements that are greater than necessary to meet objectives consistent with this Article and the specific circumstances giving rise to their adoption;

- 2.1.2. are based on an acceptable degree of risk associated with their objectives by taking into account, inter alia, scientific and technical evidence, consumer applications, relevant processing technology;
- 2.1.3. are not maintained if the circumstances giving rise to their adoption no longer exist or if the changed circumstances can be addressed in a less trade-restrictive manner;
- 2.1.4. are not applied in such a way as to affect imported products either originating in geographic areas where the problem being addressed does not occur or destined for industrial or consumer applications where the problem does not exist;
- 2.1.5. are consistent with provisions of this Article when adopted to secure compliance with international agreements or standards;
- 2.1.6. are consistent with provisions of this Article if different from international standards for reasons given in Article 2.2.