

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG8/W/83/Add.3/Rev.1  
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Special Distribution

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Group of Negotiations on Goods (GATT)

Negotiating Group on MTN  
Agreements and Arrangements

AGREEMENT ON TECHNICAL BARRIERS TO TRADE

The Negotiating Group met informally on 18-20 September, 8-10 October and 17-18 October 1990 to continue its discussion of the Agreement on the basis of the draft text in document MTN.GNG/NG8/W/83/Add.3.

The attached revised version of the draft text has been prepared in the light of the discussion held during these informal meetings and incorporates the result of the consultations held.

The Negotiating Group noted with satisfaction that most of the issues have now been solved and that the text represents a substantive improvement, clarification and expansion of the Agreement. However, the following points require further attention:

Articles 3 and 7 concerning the obligations of Parties with respect to the activities of local government bodies, on which difference of substance remains. The Negotiating Group agreed that this matter will need to be examined further;

Article 14 on dispute settlement procedures, which will need to be reconsidered in the light of the work in the Negotiating Group on Dispute Settlement. An alternative text suggested by some delegations is included in this document.

The relation of the instrument to the outcome of the negotiations on sanitary and phytosanitary measures under the Negotiating Group on Agriculture will also need to be addressed subsequently.

Article 15 concerning the final provisions and the form of the final instrument will need to be reverted to at an appropriate time.

D R A F T

AGREEMENT ON TECHNICAL BARRIERS TO TRADE

PREAMBLE

Having regard to the Multilateral Trade Negotiations, the Parties to the Agreement on Technical Barriers to Trade (hereinafter referred to as "Parties" and "this Agreement");

Desiring to further the objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT");

Recognizing the important contribution that international standards and conformity assessment 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 conformity assessment systems;

Desiring however to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and procedures for assessment of 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 to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, 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 its essential security interest;

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 procedures for assessment of conformity with technical regulations and standards, and desiring to assist them in their endeavours in this regard;

Hereby agree as follows:

Article 1

General provisions

1.1 General terms for standardization and procedures for assessment of conformity shall normally have the meaning given to them by definitions adopted within the United Nations system and by international standardizing bodies taking into account their context and in the light of the object and purpose of this Agreement.

1.2 However, for the purposes of this Agreement 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 Agreement.

1.4 Purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this Agreement but are addressed in the Agreement on Government Procurement, according to its coverage.

[1.5 The relationship of this Agreement to the outcome of the negotiations on sanitary and phyto-sanitary measures in the Negotiating Group on Agriculture to be addressed.]

1.6 All references in this Agreement to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments thereto and any additions to the rules or the product coverage thereof, except amendments and additions of an insignificant nature.

TECHNICAL REGULATIONS AND STANDARDS

Article 2

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

With respect to their central government bodies:

2.1 Parties shall ensure that in respect of technical regulations, 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.

2.2 Parties shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, inter alia, national security requirements; the prevention of deceptive practices; protection of human

health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, inter alia, available scientific and technical information, related processing technology or intended end uses of products.

2.3 Technical regulations shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner.

2.4 Where technical regulations are required and relevant international standards exist or their completion is imminent, Parties shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

2.5 A Party preparing, adopting or applying a technical regulation which may have a significant effect on trade of other Parties shall, upon the request of another Party, explain the justification for that technical regulation in terms of the provisions of Article 2, paragraphs 2 to 4. Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in Article 2, paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.

2.6 With a view to harmonizing technical regulations on as wide a basis as possible, Parties 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.

2.7 Parties shall give positive consideration to accepting as equivalent technical regulations of other Parties, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.

2.8 Wherever appropriate, Parties shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics.

2.9 Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Parties, Parties shall:

- 2.9.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with it, that they propose to introduce a particular technical regulation;
- 2.9.2 notify other Parties through the GATT secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale; such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;
- 2.9.3 upon request, provide to other Parties, particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards;
- 2.9.4 without discrimination, allow reasonable time for other Parties to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.10 Subject to the provisions in the lead-in to Article 2, paragraph 9, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may omit such of the steps enumerated in Article 2, paragraph 9 as it finds necessary provided that the Party, upon adoption of a technical regulation, shall:

- 2.10.1 notify immediately other Parties through the GATT secretariat of the particular technical regulation and the products covered, with a brief indication of the objective and the rationale of the technical regulation, including the nature of the urgent problems;
- 2.10.2 upon request, provide other Parties with copies of the technical regulation;
- 2.10.3 without discrimination, allow other Parties to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.11 Parties shall ensure that all technical regulations which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties to become acquainted with them.

2.12 Except in those urgent circumstances referred to in Article 2, paragraph 10, Parties shall allow a reasonable interval between the publication of a technical regulation and its entry into force in order to allow time for producers in exporting Parties, and particularly in developing country Parties, to adapt their products or methods of production to the requirements of the importing Party.

### Article 3

#### Preparation, adoption and application of technical regulations by local government bodies and non-governmental bodies

[3.1 Parties shall ensure that local government bodies and non-governmental bodies within their territories comply with the provisions of Article 2, noting that:

- 3.1.1 notification shall not be required for technical regulations the technical content of which is substantially the same as that of previously notified technical regulations of central government bodies of the Party concerned; and that
- 3.1.2 contacts with other Parties, including the notifications, provision of information, comments and discussion referred to in Article 2, paragraphs 9 and 10, may be required to take place through the Party concerned.]

### Alternative text

[3.1 Parties shall take such reasonable measures as may be available to them to ensure that local government bodies and non-governmental bodies within their territories comply with the provisions of Article 2, with the exception of the obligation to notify proposed technical regulations. Contacts with other Parties may be required to take place through the Party concerned. In addition, Parties shall not take measures which require or encourage such bodies to act in a manner inconsistent with the provisions of Article 2.]

### Article 4

#### Preparation, adoption and application of standards

4.1 Parties shall ensure that their central government standardizing bodies accept and comply with the code of good practice for the preparation, adoption and application of standards in Annex 3 to this Agreement. They shall take such reasonable measures as may be available to them to ensure that local government and non-governmental standardizing bodies within their territories as well as regional standardizing bodies of which they or one or more bodies within their territories are members, accept and comply with this code of good practice. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner inconsistent with the code of good practice in Annex 3. The obligations of Parties with respect to compliance of standardizing bodies with the provisions of the code of good practice shall apply irrespective of whether or not a standardizing body has accepted the code of good practice.

4.2 Standardizing bodies that have accepted and are complying with the code of good practice in Annex 3 shall be acknowledged by the Parties as complying with the principles of this Agreement.

CONFORMITY WITH TECHNICAL REGULATIONS AND STANDARDS

Article 5

Procedures for assessment of conformity by central government bodies

5.1 Parties shall ensure that, in cases where a positive assurance of conformity with technical regulations or standards is required, their central government bodies apply the following provisions to products originating in the territories of other Parties:

- 5.1.1 conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Parties under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation; access entails suppliers' right to an assessment of conformity under the rules of the procedure, including, when foreseen by this procedure, the possibility to have conformity assessment activities undertaken at the site of facilities and to receive the mark of the system;
- 5.1.2 conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means, inter alia, that conformity assessment procedures shall not be more strict or be applied more strictly than is necessary to give the importing Party adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create.

5.2 When implementing the provisions of Article 5, paragraph 1, Parties shall ensure that:

- 5.2.1 conformity assessment procedures are undertaken and completed as expeditiously as possible and in a no less favourable order for products originating in the territories of other Parties than for like domestic products;
- 5.2.2 the standard processing period of each conformity assessment procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body as soon as possible transmits the results of the assessment in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the conformity assessment if the applicant so requests; and that, upon request, the applicant is informed of the stage of the procedure, with any delay being explained;
- 5.2.3 information requirements are limited to what is necessary to assess conformity and determine fees;

- 5.2.4 the confidentiality of information about products originating in the territories of other Parties arising from or supplied in connection with such conformity assessment procedures is respected in the same way as for domestic products and in such a manner that legitimate commercial interests are protected;
- 5.2.5 any fees imposed for assessing the conformity of products originating in the territories of other Parties are equitable in relation to any fees chargeable for assessing the conformity of like products of national origin or originating in any other country, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body;
- 5.2.6 the siting of facilities used in conformity assessment procedures and the selection of samples are not such as to cause unnecessary inconvenience to applicants or their agents;
- 5.2.7 whenever specifications of a product are changed subsequent to its determination of conformity to the applicable technical regulations or standards, the conformity assessment procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the technical regulations or standards concerned;
- 5.2.8 a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified.
- 5.3 Nothing in Article 5, paragraphs 1 and 2 shall prevent Parties from carrying out reasonable spot checks within their territories.
- 5.4 In cases where a positive assurance is required that products conform with technical regulations or standards, and relevant guides or recommendations issued by international standardizing bodies exist or their completion is imminent, Parties shall ensure that central government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request, such guides or recommendations or relevant parts are inappropriate for the Parties concerned, for, inter alia such reasons as national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.
- 5.5 With a view to harmonizing conformity assessment procedures on as wide a basis as possible, Parties shall play a full part within the limits of their resources in the preparation by appropriate international standardizing bodies of guides and recommendations for conformity assessment procedures.
- 5.6 Whenever a relevant guide or recommendation issued by an international standardizing body does not exist or the technical content of a proposed conformity assessment procedure is not in accordance with relevant guides and recommendations issued by international standardizing bodies, and if



the conformity assessment procedure may have a significant effect on trade of other Parties, Parties shall:

- 5.6.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with it, that they propose to introduce a particular conformity assessment procedure;
- 5.6.2 notify other Parties through the GATT secretariat of the products to be covered by the proposed conformity assessment procedure, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;
- 5.6.3 upon request, provide to other Parties particulars or copies of the proposed procedure and, whenever possible, identify the parts which in substance deviate from relevant guides or recommendations issued by international standardizing bodies;
- 5.6.4 without discrimination, allow reasonable time for other Parties to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

5.7 Where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may omit such of the steps enumerated in Article 5, paragraph 6, as it finds necessary provided that the Party, upon adoption of the procedure, shall:

- 5.7.1 notify immediately other Parties through the GATT secretariat of the particular procedure and the products covered, with a brief indication of the objective and the rationale of the procedure, including the nature of the urgent problems;
- 5.7.2 upon request, provide other Parties with copies of the rules of the procedure;
- 5.7.3 without discrimination, allow other Parties to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

5.8 Parties shall ensure that all conformity assessment procedures which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties to become acquainted with them.

5.9 Except in those urgent circumstances referred to in Article 5, paragraph 7, Parties shall allow a reasonable interval between the publication of requirements concerning conformity assessment procedures and their entry into force in order to allow time for producers in exporting Parties, and particularly in developing country Parties, to adapt their products or methods of production to the requirements of the importing Party.

Article 6

Recognition of conformity assessment by central government bodies

With respect to their central government bodies:

6.1 Without prejudice to the provisions of Article 6, paragraphs 3 and 4, Parties shall ensure, whenever possible, that results of conformity assessment procedures in other Parties are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures. It is recognized that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding regarding, in particular:

- (a) adequate and enduring technical competence of the relevant conformity assessment bodies in the exporting Party, so that confidence in the continued reliability of their conformity assessment results can exist; in this regard, verified compliance, for instance through accreditation, with relevant guides or recommendations issued by international standardizing bodies shall be taken into account as an indication of adequate technical competence;
- (b) limitation of the acceptance of conformity assessment results to those produced by designated bodies in the exporting Party.

6.2 Parties shall ensure that their conformity assessment procedures permit, as far as practicable, the implementation of the provisions in Article 6, paragraph 1.

6.3 Parties are encouraged, at the request of other Parties, to be willing to enter into negotiations for the conclusion of agreements for the mutual recognition of results of each other's conformity assessment procedures. Parties may require that such agreements fulfil the criteria of Article 6, paragraph 1 and give mutual satisfaction regarding their potential for facilitating trade in the products concerned.

6.4 Parties are encouraged to permit participation of conformity assessment bodies located in the territories of other Parties in their conformity assessment procedures under conditions no less favourable than those accorded to bodies located within their territory or the territory of any other country.

Article 7

Procedures for assessment of conformity by local government bodies

[7.1 Parties shall ensure that local government bodies within their territories comply with the provisions of Articles 5 and 6, noting that:

7.1.1 notification shall not be required in cases where a local government body acts only as a sub-contractor for a central government body; and

7.1.2 contacts with other Parties including the notifications, provision of information, comments and discussion referred to in Article 5, paragraphs 6 and 7, may be required to take place through the Party concerned.]

Alternative text

[7.1 Parties shall take such reasonable measures as may be available to them to ensure that local government bodies within their territories which operate conformity assessment procedures comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures. Contacts with other Parties may be required to take place through the Party concerned. In addition, Parties shall not take measures which require or encourage such bodies to act in a manner inconsistent with the provisions of Articles 5 and 6.

7.2 Parties shall ensure that their central government bodies rely on conformity assessment procedures operated by local government bodies only if these bodies comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures.]

Article 8

Procedures for assessment of conformity by non-governmental bodies

8.1 Parties shall take such reasonable measures as may be available to them to ensure that non-governmental bodies within their territories which operate conformity assessment procedures comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such bodies to act in a manner inconsistent with the provisions of Articles 5 and 6.

8.2 Parties shall ensure that their central government bodies rely on conformity assessment procedures operated by non-governmental bodies only if these latter bodies comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures.

## Article 9

### International and regional systems

9.1 Where a positive assurance of conformity with a technical regulation or standard is required, Parties shall, wherever practicable, formulate and adopt international systems for conformity assessment and become members thereof or participate therein.

9.2 Parties shall take such reasonable measures as may be available to them to ensure that international and regional systems for conformity assessment, in which relevant bodies within their territories are members or participants, comply with the provisions of Articles 5 and 6. In addition, Parties shall not take any measures which have the effect of, directly or indirectly, requiring or encouraging such systems to act in a manner inconsistent with any of the provisions of Articles 5 and 6.

9.3 Parties shall ensure that their central government bodies rely on international or regional conformity assessment systems only to the extent that these systems comply with the provisions of Articles 5 and 6, as applicable.

## INFORMATION AND ASSISTANCE

### Article 10

#### Information about technical regulations, standards and conformity assessment procedures

10.1 Each Party shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from other Parties and interested parties in other Parties as well as to provide the relevant documents regarding:

- 10.1.1 any technical regulations adopted or proposed within its territory by central or local government bodies, by non-governmental bodies which have legal power to enforce a technical regulation, or by regional standardizing bodies of which such bodies are members or participants;
- 10.1.2 any standards adopted or proposed within its territory by central or local government bodies, or by regional standardizing bodies of which such bodies are members or participants;
- 10.1.3 any conformity assessment procedures, or proposed conformity assessment procedures, which are operated within its territory by central or local government bodies, or by non-governmental bodies which have legal power to enforce a technical regulation, or by regional bodies of which such bodies are members or participants;

- 10.1.4 the membership and participation of the Party, or of relevant central or local government bodies within its territory, in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements within the scope of this Agreement; they shall also be able to provide reasonable information on the provisions of such systems and arrangements;
- 10.1.5 the location of notices published pursuant to this Agreement, or the provision of information as to where such information can be obtained; and
- 10.1.6 the location of the enquiry points mentioned in Article 10, paragraph 3.

10.2 If, however, for legal or administrative reasons more than one enquiry point is established by a Party, that Party shall provide to the other Parties complete and unambiguous information on the scope of each of these enquiry points. In addition, that Party shall ensure that any enquiries addressed to an incorrect enquiry point shall promptly be conveyed to the correct enquiry point.

10.3 Each Party shall take such reasonable measures as may be available to it to ensure that one or more enquiry points exist which are able to answer all reasonable enquiries from other Parties and interested parties in other Parties as well as to provide the relevant documents or information as to where they can be obtained regarding:

- 10.3.1 any standards adopted or proposed within its territory by non-governmental standardizing bodies, or by regional standardizing bodies of which such bodies are members or participants; and
- 10.3.2 any conformity assessment procedures, or proposed conformity assessment procedures, which are operated within its territory by non-governmental bodies, or by regional bodies of which such bodies are members or participants;
- 10.3.3 the membership and participation of relevant non-governmental bodies within its territory in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements within the scope of this Agreement; they shall also be able to provide reasonable information on the provisions of such systems and arrangements.

10.4 Parties shall take such reasonable measures as may be available to them to ensure that where copies of documents are requested by other Parties, or by interested parties in other Parties, in accordance with the provisions of this Agreement, they are supplied at an equitable price (if any) which shall, apart from the real cost of delivery, be the same for the nationals of the Party concerned or of any other Party.

10.5 Developed country Parties shall, if requested by other Parties, provide, in English French or Spanish, translations of the documents covered by a specific notification or, in case of voluminous documents, of summaries of such documents.

10.6 The GATT secretariat will, when it receives notifications in accordance with the provisions of this Agreement, circulate copies of the notifications to all Parties and interested international standardizing and conformity assessment bodies, and draw the attention of developing country Parties to any notifications relating to products of particular interest to them.

10.7 Whenever a Party has reached an agreement with any other country or countries on issues related to technical regulations, standards or conformity assessment procedures, which may have a significant effect on trade, at least one Party to the agreement shall notify other Parties through the GATT secretariat of the products to be covered by the agreement and include a brief description of the agreement. Parties concerned are encouraged to enter, upon request, into consultations with other Parties for the purposes of concluding similar agreements or of arranging for their participation in such agreements.

10.8 Nothing in this Agreement shall be construed as requiring:

- 10.8.1 the publication of texts other than in the language of the Party;
- 10.8.2 the provision of particulars or copies of drafts other than in the language of the Party except as stated in Article 10, paragraph 5; or
- 10.8.3 Parties to furnish any information, the disclosure of which they consider contrary to their essential security interests.

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

10.10 Parties shall designate a single central government authority that is responsible for the implementation on the national level of the provisions concerning notification procedures under this Agreement except those included in Annex 3.

10.11 If, however, for legal or administrative reasons the responsibility for notification procedures is divided among two or more central government authorities, the Party concerned shall provide to the other Parties complete and unambiguous information on the scope of responsibility of each of these authorities.

Article 11

Technical assistance to other Parties

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

11.2 Parties shall, if requested, advise other Parties, 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 Parties shall, if requested, take such reasonable measures as may be available to them to arrange for the regulatory bodies within their territories to advise other Parties, 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 bodies for the assessment of conformity with technical regulations; and

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

11.4 Parties shall, if requested, take such reasonable measures as may be available to them to arrange for advice to be given to other Parties, especially the developing countries, and shall grant them technical assistance, on mutually agreed terms and conditions, regarding the establishment of bodies for the assessment of conformity with standards adopted within the territory of the requesting Party.

11.5 Parties shall, if requested, advise other Parties, 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 have access to systems for conformity assessment operated by governmental or non-governmental bodies within the territory of the Party receiving the request.

11.6 Parties which are members or participants of international or regional systems for conformity assessment shall, if requested, advise other Parties, 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 Parties shall, if so requested, encourage bodies within their territories which are members or participants of international or regional systems for conformity assessment to advise other Parties, 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 Parties in terms of Article 11, paragraphs 1 to 7, Parties shall give priority to the needs of the least-developed countries.

## Article 12

### Special and differential treatment of developing countries

12.1 Parties shall provide differential and more favourable treatment to developing country Parties to this Agreement, through the following provisions as well as through the relevant provisions of other Articles of this Agreement.

12.2 Parties shall give particular attention to the provisions of this Agreement 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 this Agreement, both nationally and in the operation of this Agreement's institutional arrangements.

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

12.4 Parties recognize that, although international standards, guides or recommendations may exist, in their particular technological and socio-economic conditions, developing countries adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Parties therefore recognize that developing countries should not be expected to use 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 Parties shall take such reasonable measures as may be available to them to ensure that international standardizing bodies and international systems for conformity assessment are organized and operated in a way which facilitates active and representative participation of relevant bodies in all Parties, taking into account the special problems of developing countries.



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

12.7 Parties shall, in accordance with the provisions of Article 11, provide technical assistance to developing countries to ensure that the preparation and application of technical regulations, standards and conformity assessment procedures 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 of 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 and conformity assessment procedures. 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 Agreement. Parties, therefore, shall take this fact fully into account. Accordingly, with a view to ensuring that developing countries are able to comply with this Agreement, the Committee is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures, 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 this Agreement. 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 conformity assessment procedures, 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 Agreement, granted to developing countries on national and international levels.

INSTITUTIONS, CONSULTATION AND DISPUTE SETTLEMENT

Article 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 Parties (hereinafter referred to 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 Parties the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives, and shall carry out such responsibilities as assigned to it under this Agreement or by the Parties.

13.2 Working parties, technical expert groups, 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 the relevant provisions of this Agreement.

[13.3 It is understood that unnecessary duplication should be avoided between the work under this Agreement and that of governments in other technical bodies, e.g. the Joint FAO/WHO Codex Alimentarius Commission. The Committee shall examine this problem with a view to minimizing such duplication. - This paragraph to be addressed subsequently.]

Article 14

Consultation and dispute settlement

[Article 14, paragraphs 1 to 26 of the Agreement of 1979.]

Alternative text

[Article 14.1

Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall be subject to the procedures of Articles XXII and XXIII of the GATT, including the Dispute Settlement Procedures as adopted by the CONTRACTING PARTIES, and shall take place under the auspices of the Committee on Technical Barriers to Trade.

Article 14.2

At the request of a Party to a dispute, or at its own initiative, a panel may establish a technical expert group to assist in questions of a technical nature, requiring detailed consideration by experts. Technical expert groups shall make such findings as will assist the panel in its work, including inter alia and if appropriate, findings concerning the detailed scientific judgement involved.

Article 14.3

Technical expert groups shall be governed by the procedures of Annex 2.

Article 14.4

Levels of obligation

The dispute settlement provisions set out above can be invoked in cases where a Party considers that another Party has not achieved satisfactory results under Articles ... and ... and its trade interests are significantly affected. In this respect, such results shall be equivalent to those envisaged in Articles ... and ... as if the body in question were a Party.

Article 14.5

Retroactivity

To the extent that a Party considers that technical regulations, standards, conformity assessment procedures which exist at the time of entry into force of this Agreement are not consistent with the provisions of this Agreement, such regulations, standards, conformity assessment procedures shall be subject to the provisions in Articles 13 and 14 of this Agreement, insofar as they are applicable.]

FINAL PROVISIONS

Article 15

Final Provisions

[To be addressed subsequently.]

## ANNEX 1

### TERMS AND THEIR DEFINITIONS FOR THE PURPOSE OF THIS AGREEMENT

The terms presented in the fifth edition of the ISO/IEC Guide 2, General Terms and Their Definitions Concerning Standardization and Related Activities, and in the draft amendment sheet to this Guide, as it stood on 18 October 1990 shall, when used in this Agreement, have the same meaning as given in the definitions in the said Guide and in the amendment sheet thereto taking into account that services are excluded from the coverage of this Agreement.

For the purpose of this Agreement, however, the following definitions shall apply:

#### 1. Technical regulation

Document which lays down characteristics for products, processes and production methods including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

##### Explanatory note

The definition in ISO/IEC Guide 2 is not self-contained, but based on the so-called "building block" system.

#### 2. Standard

For the term "Standard" the following definition shall apply:

Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products, processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

##### Explanatory note

The terms as defined in ISO/IEC Guide 2 cover products, processes and services. This agreement deals only with technical regulations, standards and conformity assessment procedures related to products processes and production methods. Standards as defined by ISO/IEC Guide 2 may be mandatory or voluntary. For the purpose of this Agreement standards are defined as voluntary and technical regulations as mandatory documents. Standards prepared by the international standardization community are based on consensus. This agreement covers also documents that are not based on consensus.

3. Conformity assessment procedures

Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

Explanatory note: Conformity assessment procedures include, inter alia, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations.

4. International body or system

Body or system whose membership is open to the relevant bodies of at least all Parties to this Agreement.

5. Regional body or system

Body or system whose membership is open to the relevant bodies of only some of the Parties.

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.

Explanatory note:

In the case of the European Economic Community the provisions governing central government bodies apply. However, regional bodies or conformity assessment systems may be established within the European Economic Community, and in such cases would be subject to the provisions of this Agreement on regional bodies or certification systems.

7. Local government body

Government other than a central government (e.g. states, provinces, Länder, cantons, municipalities, etc.), its ministries or departments or any body subject to the control of such a government in respect of the activity in question.

8. Non-governmental body

Body other than a central government body or a local government body, including a non-governmental body which has legal power to enforce a technical regulation.

ANNEX 2

TECHNICAL EXPERT GROUPS

[The following procedures shall apply to technical expert groups established in accordance with the provisions of Article 14.

1. Technical expert groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.

2. Participation in technical expert groups shall be restricted to persons of professional standing and experience in the field in question.

3. Citizens of parties to the dispute shall not serve on a technical expert group without the joint agreement of the parties to the dispute. Members of technical expert groups 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 technical expert group.

4. The Parties to a dispute shall have access to all relevant information provided to a technical expert group, unless it is of a confidential nature. Confidential information provided to the technical expert group shall not be released without formal authorization from the government or person providing the information. Where such information is requested from the technical expert group but release of such information by the technical expert group is not authorized, a non-confidential summary of the information will be provided by the government or person supplying the information.

5. The technical expert group should submit a draft report to the Parties concerned with a view to obtaining their comments, and taking them into account, as appropriate, in the final report.]

### ANNEX 3

## CODE OF GOOD PRACTICE FOR THE PREPARATION, ADOPTION AND APPLICATION OF STANDARDS

### GENERAL PROVISIONS

A. For the purposes of this code the definitions in Annex 1 of this Agreement shall apply.

B. This code is open to acceptance by any standardizing body within the territory of a Party to the GATT Agreement on Technical Barriers to Trade, whether a central government body, a local government body, or a non-governmental body; to any governmental regional standardizing body one or more members of which are Party to the above Agreement; and to any non-governmental regional standardizing body one or more members of which are situated within the territory of a Party to the above Agreement (hereafter collectively called "standardizing bodies" and individually "the standardizing body").

C. Standardizing bodies that have accepted or withdrawn from this code shall notify this fact to the ISO/IEC Information Centre in Geneva. The notification shall include the name and address of the body concerned and the scope of its current and expected standardization activities. The notification may be sent either directly to the ISO/IEC Information Centre, or through the national member body of ISO/IEC or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

### SUBSTANTIVE PROVISIONS

D. In respect of standards, the standardizing body shall accord treatment to products originating in the territory of any other Party to the GATT Agreement on Technical Barriers to Trade no less favourable than that accorded to like products of national origin and to like products originating in any other country.

E. The standardizing body shall ensure that standards are not prepared, adopted or applied with a view, to or with the effect of, creating unnecessary obstacles to international trade.

F. Where international standards exist or their completion is imminent, the standardizing body shall use them, or the relevant parts of them, as a basis for the standards it develops, except where such international standards or relevant parts would be ineffective or inappropriate for instance, because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems.

G. With a view to harmonizing standards on as wide a basis as possible, the standardizing body shall, in an appropriate way, play a full part within the limits of its resources in the preparation by relevant



international standardizing bodies of international standards regarding subject matter for which it either has adopted, or expects to adopt, standards. For standardizing bodies within the territory of a Party, participation in a particular international standardization activity shall, whenever possible, take place through one delegation representing all standardizing bodies in the territory that have adopted, or expect to adopt, standards for the subject matter to which the international standardization activity relates.

H. The standardizing body within the territory of a Party shall make every effort to avoid duplication of, or overlap with, the work of other standardizing bodies in the national territory or with the work of relevant international or regional standardizing bodies. They shall also make every effort to achieve a national consensus on the standards they develop. Likewise the regional standardizing body shall make every effort to avoid duplication of, or overlap with, the work of relevant international standardizing bodies.

I. Wherever appropriate, the standardizing body shall specify standards based on product requirements in terms of performance rather than design or descriptive characteristics.

J. At least once every six months, the standardizing body shall publish a work programme containing its name and address, the standards it is currently preparing and the standards which it has adopted in the preceding period. A standard is under preparation from the moment a decision has been taken to develop a standard until that standard has been adopted. The titles of specific draft standards shall, upon request, be provided in English, French or Spanish. A notice of the existence of the work programme shall be published in a national or, as the case may be, regional publication of standardization activities.

The work programme shall for each standard indicate, in accordance with any ISONET rules, the classification relevant to the subject matter, the stage attained in the standard's development, and the references of any international standards taken as a basis. No later than at the time of publication of its work programme, the standardizing body shall notify the existence thereof to the ISO/IEC Information Centre in Geneva.

The notification shall contain the name and address of the standardizing body, the name and issue of the publication in which the work programme is published, the period to which the work programme applies, its price (if any), and how and where it can be obtained. The notification may be sent directly to the ISO/IEC Information Centre, or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

K. The national member of ISO/IEC shall make every effort to become a member of ISONET or to appoint another body to become a member as well as to acquire the most advanced membership type possible for the ISONET member. Other standardizing bodies shall make every effort to associate themselves with the ISONET member.

L. Before adopting a standard, the standardizing body shall allow a period of at least sixty days for the submission of comments on the draft standard by interested parties in a Party to the GATT Agreement on Technical Barriers to Trade. This period may, however, be shortened in cases where urgent problems of safety, health or environment arise or threaten to arise. No later than at the start of the comment period, the standardizing body shall publish a notice announcing the period for commenting in the publication referred to in paragraph J. Such notification shall include, as far as practicable, whether the draft standard deviates from relevant international standards.

M. On the request of any interested party in a Party to the GATT Agreement on Technical Barriers to Trade, the standardizing body shall promptly provide, or arrange to provide, a copy of a draft standard which it has submitted for comments. Any fees charged for this service shall, apart from the real cost of delivery, be the same for domestic and foreign parties.

N. The standardizing body shall take into account, in the further processing of the standard, the comments received during the period for commenting. Comments received through standardizing bodies that have accepted this code of good practice shall, if so requested, be replied to as promptly as possible. The reply shall include an explanation why a deviation from relevant international standards is necessary.

O. Once the standard has been adopted, it shall be promptly published.

P. On the request of any interested party in a Party to the GATT Agreement on Technical Barriers to Trade, the standardizing body shall promptly provide or arrange to provide a copy of its most recent work programme or of a standard which it produced. Any fees charged for this service shall, apart from the real costs of delivery, be the same for foreign and domestic parties.

Q. The standardizing body shall afford sympathetic consideration to, and adequate opportunity for, consultation regarding representations with respect to the operation of this code presented by standardizing bodies that have accepted this code of good practice. It shall make an objective effort to solve any complaints.

Recommendation of the Committee on Technical Barriers to Trade

The Committee recommends that the GATT secretariat reach an understanding with the ISO to establish an information system under which:

1. ISONET members shall transmit to the ISO/IEC Information Centre in Geneva the notifications referred to in paragraphs C and J of the code of good practice for the preparation, adoption and application of standards in Annex 3 to the GATT Agreement on Technical Barriers to Trade, in the manner indicated there;
2. the following (alpha)numeric classification systems shall be used in the work programmes mentioned above:
  - (a) a standards classification system which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the subject matter;
  - (b) a stage code system which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the stage of development of the standard; for this purpose, at least five stages of development should be distinguished: (1) the stage at which the decision to develop a standard has been taken, but technical work has not yet begun; (2) the stage at which technical work has begun, but the period for the submission of comments has not yet started; (3) the stage at which the period for the submission of comments has started, but has not yet been completed; (4) the stage at which the period for the submission of comments has been completed, but the standard has not yet been adopted; and (5) the stage at which the standard has been adopted;
  - (c) an identification system covering all international standards which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the international standard(s) used as a basis;
3. the ISO/IEC Information Centre shall promptly convey to the GATT secretariat copies of any notifications referred to in paragraph C of the code of good practice;
4. the ISO/IEC Information Centre shall regularly publish the information received in the notifications made to it under paragraphs C and J of the code of good practice; this publication, for which a reasonable fee may be charged, shall be available to ISONET members and through the GATT secretariat, to the Parties to the Agreement on Technical Barriers to Trade.

Decision of the Committee on Technical Barriers to Trade

Without prejudice to provisions on consultation and dispute settlement, the Committee decides that, in conformity with Article 13, paragraph 1, it shall at least once a year review the publication provided by the ISO/IEC Information Centre on information received according to the code of good practice in Annex 3 of the Agreement, for the purpose of affording Parties opportunity of discussing any matters relating to the operation of that code.

In order to facilitate this discussion, the GATT secretariat is requested to provide a list by country of all standardizing bodies that have accepted the code of good practice, as well as a list of those standardizing bodies that have accepted or withdrawn from the code since the previous review.

The GATT secretariat is also requested to distribute promptly to the Parties copies of the notifications it receives from the ISO/IEC Information Centre.