GENERAL AGREEMENT ON TARIFFS AND TRADE

Multilateral Trade Negotiations
Group "Non-Tariff Measures"
Sub-Group "Technical Barriers to Trade"

SYNOPTIC TABLE OF PROPOSALS ON SECTIONS 19 AND 21 OF DRAFT STANDARDS CODE

Note by the Secretariat

1. At its meeting of September 1977 the Sub-Group requested the secretariat to prepare, if possible, a synoptic table which would compare the different proposals made on Sections 19 and 21 of the Draft Standards Code, headed "The Committee for Preventing Technical Barriers to Trade" and "Enforcement" respectively (MTN/NTM/36, paragraph 8).

2. This table is attached. It should be stressed that the table does nothing more than to set out in synoptic form the texts relating to Sections 19 and 21 already contained in MTN/NTM/W/119 (Draft Code of Conduct for Preventing Technical Barriers to Trade) and MTN/NTM/W/120 (Points before the Sub-Group) in a form which, it is hoped, will facilitate their examination.
III. OTHER PROVISIONS

19. The Committee for Preventing Technical Barriers to Trade

(a) The adherents to this Code shall establish a Committee for Preventing Technical Barriers to Trade composed of representatives of the adherents to the Code. The Committee shall meet once each year for the purpose of affording adherents to the Code the opportunity of consulting on matters relating to the implementation of the Code.

(b) A Committee on Technical Barriers to Trade (hereafter referred to as the Committee) composed of a representative from each of the adherents to this Code shall establish:

(i) a Technical Barriers to Trade (hereafter referred to as the Panel), composed of three (or five) persons qualified in the fields of trade and other matters covered by this Code, and acting in their individual capacities and not representing adherents or any other body. The Panel shall be appointed by the Director-General of the General Agreement in consultation with the Chairman of the Committee on the basis:

1. that they have appropriate technical qualifications;
2. that they are independent and disinterested;
3. and in such a way that no adherent to this agreement shall acquire de facto permanent representation on the Panel.

(ii) To examine each particular case that arises, there shall be established in the Committee panels consisting of five members appointed by the Director-General of the General Agreement in consultation with the Chairman of the Committee and the parties concerned. The members of the panels shall be appointed on the basis:

- Amend the Canadian proposal relating to Section 19(b), as follows:

"Panel members shall be appointed by the Director-General of the General Agreement on Tariffs and Trade in consultation with the Chairman of the Committee on the basis:

(i) that they have appropriate technical qualifications;
(ii) that they are independent and disinterested;
(iii) and in such a way that no adherent to this agreement shall acquire de facto permanent representation on the Panel."

- Amend the Canadian proposal as follows:

Where reference is made to the Committee for Preventing Technical Barriers to Trade, after the words "not less than once a year" insert the words "or upon request by not less than 25 per cent of the adherents ..."
“(c) In carrying out its mandate, the Committee shall ensure that, in all matters dealt with in this Code, developing countries receive the treatment described below in terms of practical and effective application.

1. the treatment provided for in Part IV of the General Agreement, and especially the principles and objectives of Article XXXVI thereof;

2. additional benefits for their exports by adopting special measures in their favour and giving priority attention to products or areas of interest to them;

3. differential measures in ways which will provide special and more favourable treatment for them;

4. when problems relating to developing countries are dealt with, the opinion of the two experts mentioned in the preceding paragraph shall have preference.”

(Mexico)

“(d) It shall be an important responsibility of the Committee to secure promptly, and to harmonize, the technical co-operation referred to in Section 17. To that end, whenever a developing country makes a request for technical assistance, the Committee shall arrange for the technical co-operation of the appropriate international bodies and shall harmonize it with the similar co-operation to be provided by the developed countries adhering to the Code.”

(Mexico)
(Mexico)
"(e) The tasks of the Committee shall include the analysis and study of the technical barriers to trade listed in the GATT inventory of Non-Tariff Measures, beginning with those affecting the trade of developing countries."

(Mexico)
"(f) Secretariat functions for the Committee shall be exercised by the secretariat of GATT."

(Canada)
"Notification
Each adherent shall report annually to the Committee on developments relating to the operation of this Code or the furtherance of its objectives, including developments relating to its own policies and practices. Any adherent wishing to raise before the Committee any particular matter shall notify it in writing at least thirty days before the convening of the meeting."
21. Enforcement

Proposed amendments

(a) If any adherent considers that any benefit accruing to it from the implementation of the Code is being nullified or impaired by any other adherent, or if any adherent wishes to raise any other matter affecting the implementation of the Code with any other adherent, other adherents shall accord sympathetic consideration to, and afford adequate opportunity for consultation regarding such representations as may be made by that adherent.

(b) If no mutually satisfactory solution is reached between the adherents concerned within a reasonable time, the matter may be referred to the Committee for Preventing Technical Barriers to Trade set up under Section 19.

(c) The Committee for Preventing Technical Barriers to Trade shall promptly investigate any matter referred to it under paragraph (b) of this Section and may, as part of the investigation, consult with any contracting party or with any competent body. After the investigation is complete, the Committee may:

(i) make a statement concerning the facts of the matter; or
(ii) make recommendations to one or more adherents to the Code; or
(iii) make recommendations to the adherents concerned.

The Panel shall report the results of its action to the Committee for Preventing Technical Barriers to Trade.

(One delegation)

- Replace the whole of Section 21(c) by the following text:

"The Chairman of the Committee for Preventing Technical Barriers to Trade shall appoint a Panel which shall promptly investigate any matter referred to the Committee under Section 21(b) above and may as part of the investigation, consult with any contracting party or with any competent body. After the investigation is complete, the Panel may:

(i) make a statement concerning the facts of the matter; or
(ii) make recommendations to the adherents concerned.

The Panel shall report the results of its action to the Committee for Preventing Technical Barriers to Trade."

(Egypt)

- Insert a new clause between (c)(ii) and (iii) to read: "A certain action by an adherent considered contrary to this Code should be terminated forthwith."

(EEC)

- Insert after paragraph (a) in MTN/NTM/W/71: "In assessing whether a benefit accruing to any adherent is being nullified or impaired by the adoption or use of a technical regulation or a standard common to a number of adherents constituting a customs union or a free-trade area, the situation in the whole of the territories in which such technical regulation or standard is applied shall be taken into consideration."

(Canada)

"Enforcement

(a) If any adherent considers that any benefit accruing to it, directly or indirectly, under the Code is being nullified or impaired or that the achievement of any objective of the Code is being impeded by another adherent or adherents it may, with a view to reaching a satisfactory solution of the matter, make written representations to the other adherent or adherents which it considers to be concerned. Each adherent shall afford sympathetic consideration to and shall afford opportunity for prompt consultation regarding such representations as may be made by another adherent."

"(b) In any consultation between any developed and developing country, the provisions respecting technical assistance contained in Section 17 of the Code and the particular difficulties that developing countries may encounter in complying with the operative provisions of the Code shall be taken into account."

"(c) If no mutually satisfactory solution has been reached between the adherents concerned within sixty days from the time that the representations referred to in paragraph (a) of this section were made, the Committee shall, at the request of any of the adherents concerned, consider the matter with a view to facilitating a reasonable and mutually satisfactory solution."

(Mexico)

- Amend the Canadian proposal as follows:

"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."

- It was also suggested that the substance of this amendment might be put in the Preamble.

(Mexico)

- In paragraph (c), replace "sixty days" by "thirty days" and amend the passage beginning "... the Committee ..." to read:

"...the matter shall be brought before the Committee so that the latter may refer it to a Panel as provided under Section 19."

(Egypt)
(iii) authorize one or more adherents to the Code to suspend obligations under the Code in respect of one or more adherents.

(Some delegations)
- It is premature to include Section 21(c)(iii) in the text.

(d) For the purposes of action under paragraph 2 of Article XXIII, adherents agree that adherents may invoke obligations under the Code.

(Some delegations)
- Delete Section 21(d).

(Egypt)
- It was also suggested that it may be necessary to provide for notification to the Committee of the actions taken by adherents to modify existing standards or certification systems which resulted in barriers to trade.

"(d) If no mutually satisfactory solution has been reached by the Committee within sixty days from the time the matter was referred to it, the Chairman shall, at the request of any of the adherents concerned, direct the Panel to: (i) promptly investigate the matter; and (ii) make a statement concerning the facts of the matter and such appropriate recommendations to the adherents concerned as the facts warrant, based on the provisions and objectives of the Code."

(Mexico)
"(d) The Panel shall promptly investigate the matter and may, as part of the investigation consult with any contracting party or with any competent body. After the investigation is complete, the Committee may:
1. Make a statement concerning the facts of the matter, or
2. Make recommendations to the adherents concerned, or
3. Find that the specific measure taken by an adherent is contrary to the Code and should be terminated forthwith."
(Canada) (cont'd)

"(e) In the course of its investigation of a matter referred to in paragraph (d) above, the Panel may request from any adherent concerned such information as it considers necessary and appropriate. The adherent shall give full consideration to such a request."

"(f) If the Panel finds that the matter referred to it results in the impairment or nullification of any direct or indirect benefit which accrues, or could be reasonably anticipated to accrue, under the Code, it shall recommend to the adherent or adherents concerned that the measure giving rise to such impairment or nullification be eliminated or modified to the extent necessary."

Proposed amendments

(Mexico)

"(e) The adherents concerned shall:
1. Have the right to be present at any meeting of the Panel convened to investigate the matter referred to it under paragraph (e) above.
2. Have access to any information supplied to the Panel."

(Australia)

- Amend the above proposal as follows:
  Add new paragraph to proposed Section 21(e) above:

"(e) The adherents concerned shall:
(i) have the right to be present at any meeting of the Panel convened to investigate a matter referred to it under paragraph (d) above;
(ii) have access to any information supplied to the Panel under the procedure laid down under paragraph (e) above."

(Mexico)

"(f) If the Panel finds that the matter referred to it results in the impairment or nullification of any direct or indirect benefit which accrues, or could be reasonably anticipated to accrue, under the Code, it shall formulate recommendations calling for the elimination or modification of the measure giving rise to the impairment or nullification. Before submitting its recommendation to the Committee, the Panel shall discuss with the adherents concerned:
1. The form in which the recommendations are to be presented to the Committee; and
2. The nature of the recommendations."

(Australia)

- Amend proposed Section 21(f) above as follows:

"(f) If the Panel finds that the matter referred to it results in the impairment or nullification of any direct or indirect benefit which accrues, or could be reasonably anticipated to accrue, under the Code, it shall formulate recommendations calling for the elimination or modification of the measure giving rise to the impairment or nullification. Before submitting its recommendation to the Committee, the Panel shall discuss with the adherents concerned:
(i) the form in which the recommendations are to be presented to the Committee; and
(ii) the nature of the recommendations."
(Canada) (cont'd)

"(g) If these recommendations are not implemented within sixty days (or, in special circumstances, if this is not feasible and the adherents concerned mutually agree, or as the Panel may prescribe, within such further period of limited duration) the Panel shall, as soon as possible:

(i) recommend to the Committee that an adherent or adherents be authorized to suspend the application, to any other adherent or adherents, of such obligations under the Code as may be appropriate in the circumstances; and/or

(ii) recommend to the CONTRACTING PARTIES, in accordance with the provisions of Article XXIII:2, that an adherent or adherents be authorized to suspend to any other adherent or adherents, such concessions or other obligations under the General Agreement, as may be appropriate in the circumstances.

Any recommendation under (i) or (ii) above shall aim at maintaining the balance of rights and obligations at the highest possible level."

"(h) The Panel shall report its recommendations and the results of its actions to the Committee as soon as possible."

(Mexico)

"(g) If one of the parties concerned does not agree with the proposals of the Panel, the matter shall be referred by the Committee to all the adherents."

"(h) If any party fails to comply with the decision of the Committee, the latter may authorize one or more adherents to the Code to suspend obligations under the Code in respect of one or more adherents."