

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

TBT/W/15

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Committee on Technical Barriers to Trade

## NEGOTIATING HISTORY OF ARTICLE 14.25

### Factual Paper by the Secretariat

1. At its meeting of July 1980, the Committee requested the secretariat to prepare a factual paper on the negotiating history of Article 14.25 in consultation with delegations. The present paper has been prepared in response to this request.
2. The Annex to this paper traces the evolution of the text of the Agreement on Technical Barriers to Trade.
3. At its first meeting the Sub-Group "Technical Barriers to Trade" agreed in May 1975 that the text drawn up in the pre-negotiating period should be used as a basis for its work. At that point processes were excluded from the scope of the code by virtue of the definition of the term "standard", which read as follows:

"The term 'standard' means any specification which lays down some or all of the properties of a product in terms of quality, purity, nutritional value, performance, dimensions, or other characteristics. It includes, where applicable, test methods, and specifications concerning testing, packaging, marking or labelling to the extent that they affect products rather than processes. It excludes standards which are prepared for use by a single enterprise, whether governmental, semi-governmental or non-governmental, either for its own production or purchasing purposes."

(MTN/NTM/W/5, page 29)

The terms "standard", "mandatory standard" and "voluntary standard" which were used initially, later became "technical specification", "technical regulation" and "standard" when the definitions that had been worked out in ISO and ECE were taken as a basis for the Code definitions.

4. A change was introduced in the first set of definitions based on the work of ISO/ECE. In September/October 1975, for the purposes of the Code, the definition of the term "technical specification" specifically included "processes, conditions of growth, and production methods, which must be met to ensure health and safety".

(MTN/NTM/W/25, pages 18 and 19)

During the next discussion of definitions, in January/February 1976, this reference was removed, so that the term technical specification was defined as:

"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."

(MTN/NTM/W/38, page 32)

5. Discussion of the issue continued however and a proposal was made in the name of the delegation of the United States that the definition be modified by the addition of the following language:

"For the purpose of this Code 'technical specifications' includes processes and production methods, [which must be met to ensure health and safety"], [in so far as they are necessary to achieve the final product desired."] [in so far as they affect the characteristics of the final product.]"

(MTN/NTM/W/37, page 2)

At the meeting in May 1976, further discussion led to the removal of the square brackets so that the proposal read:

"For the purposes of this Code 'technical specifications' includes processes and production methods in so far as they are necessary to achieve the final product desired."

(MTN/NTM/W/50, page 2)

6. In March 1977 Group "Agriculture" initiated its review of the applicability of the Draft Code to agricultural products. Among the points made in the discussion was that "appropriate definitions would need to be included if it is decided that the Code should also cover processing and production methods".

(MTN/AG/W/21, page 4)

The introduction to this document makes it clear that it aims to reflect the views expressed by one or more delegations and does not necessarily represent a consensus of the Group.

7. At its meeting of March 1977 the Sub-Group "Technical Barriers to Trade" agreed on a text of the definitions for inclusion in the Draft Code.

(MTN/NTM/31, paragraph 5)

The definition of the term "technical specification" contained some minor changes underlining that it related to specifications as they apply to a product but was otherwise unchanged. The discussion of the definitions had been very complex and controversial and no delegation wished to re-open them after this stage. The definition of the term "technical specification" was therefore carried forward unchanged through successive drafts into the text of the Agreement itself. It reads:

"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:

This Agreement deals only with technical specifications relating to products. Thus the wording of the corresponding Economic Commission for Europe/International Organization for Standardization definition is amended in order to exclude services and codes of practice."

8. It was, however, acknowledged that a number of points, including the proposed amendment referred to in paragraph 5 above, remained outstanding. These were thenceforward dealt with under the heading "scope of the Code" and at its meeting of September 1977, the Sub-Group considered a proposal by the United States that "processes and production methods should be subject to the provisions of the Code when they are directly related to the characteristics of a product" (MTN/NTM/W/95) and

"agreed that a way should be found of ensuring that obligations under the Code are not circumvented by the drafting of technical specifications in terms of processes and production methods rather than in terms of the characteristics or performance of products."

(MTN/NTM/W/120, page 21)

9. At the meeting of March 1978 the Nordic countries proposed that

"the enforcement provisions could be invoked in cases where an adherent considers that obligations under the Code are being circumvented by the drafting of technical specifications in terms of processes and production methods rather than in terms of characteristics of products."

(MTN/NTM/W/151, page 27)

During the autumn of 1978 the text of the Draft Code was simplified and revised. The first proposal for a revised text incorporated this proposal with one or two minor changes (MTN/NTM/W/192/Add.2, page 8). In December 1978, a number of changes were introduced into the text of the Draft Code to make it applicable to agricultural products but these did not modify the text of this paragraph in any significant way. The text was therefore carried forward into the Agreement as Article 14.25, which reads:

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

ANNEX

AGREEMENT ON TECHNICAL BARRIERS TO TRADE

Evolution of the Text

<u>Meeting</u>	<u>Text of Code</u>	<u>Proposals</u>
May 1975 MTN/NTM/3	MTN/NTM/W/5, Appendix I	
September/ October 1975 MTN/NTM/W/24	MTN/NTM/W/5, Appendix I	MTN/NTM/W/12 and Add.1
January/ February 1976 MTN/NTM/12	MTN/NTM/W/5, Appendix I	MTN/NTM/W/25
May 1976 MTN/NTM/17	MTN/NTM/W/38	MTN/NTM/W/37
November 1976 MTN/NTM/25	MTN/NTM/W/49	MTN/NTM/W/50
March 1977 MTN/NTM/31	MTN/NTM/W/71	MTN/NTM/W/72
September 1977 MTN/NTM/36	MTN/NTM/W/94	MTN/NTM/W/95

<u>Meeting</u>	<u>Text of Code</u>	<u>Proposals</u>
March 1978 MTN/NTM/41	MTN/NTM/W/119	MTN/NTM/W/120
July 1978 MTN/NTM/47	MTN/NTM/W/50	MTN/NTM/W/151 MTN/NTM/W/135 (Levels of Obligation) MTN/NTM/W/144 (Dispute settlement) MTN/NTM/W/149 (Special and Differential Treatment) MTN/NTM/W/154 (Special and Differential Treatment) MTN/NTM/W/176 (Chapters 5 to 15)
September 1978 MTN/NTM/50	As above	As above
October 1978 MTN/NTM/55	MTN/NTM/W/150 MTN/NTM/W/192	As above
November 1978 MTN/NTM/58	MTN/NTM/W/192 and Add.2	As above, plus MTN/W/37 (Least developed countries)

<u>Meeting</u>	<u>Text of Code</u>	<u>Proposals</u>
Informal on Agriculture	MTN/NTM/W/192/Rev.1 (consolidated W/192 and Add.1)	As above, plus MTN/AG/W/21 (Applicability of Code to Agriculture)
Group "Agriculture" 19 December 1978 MTN/AG/9	MTN/NTM/W/192/Rev.2	As above
21 December 1978 MTN/NTM/62	MTN/NTM/W/192/Rev.3	As above
March 1979 MTN/NTM/65	MTN/NTM/W/192/Rev.4 and Corr.1	As above
	MTN/NTM/W/192/Rev.5 Final text subject to rectifications of a purely formal character	