

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 certification 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 certification systems;

Desiring however to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and methods for certifying 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 methods for certifying 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 certification 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

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 All references in this Agreement to technical regulations, standards, methods for assuring conformity with technical regulations or standards and certification systems 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
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

¹See page 22.

nor standards themselves nor their application have the effect of creating unnecessary obstacles to international trade.

2.2 Where technical regulations or standards 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 the technical regulations or standards except where, as duly explained upon request, such international standards or relevant parts are inappropriate for the Parties concerned, for *inter alia* such reasons as national security requirements; the prevention of deceptive practices; protection for human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological problems.

2.3 With a view to harmonizing technical regulations or standards 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 or standards.

2.4 Wherever appropriate, Parties shall specify technical regulations and standards in terms of performance rather than design or descriptive characteristics.

2.5 Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation or standard is not substantially the same as the technical content of relevant international standards, and if the technical regulation or standard may have a significant effect on trade of other Parties, Parties shall:

- 2.5.1 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 or standard;
- 2.5.2 notify other Parties through the GATT secretariat of the products to be covered by technical regulations together with a brief indication of the objective and rationale of proposed technical regulations;
- 2.5.3 upon request, provide without discrimination, to other Parties in regard to technical regulations and to interested parties in other Parties in regard to standards, particulars or copies of the proposed technical regulation or standard and, whenever possible, identify the parts which in substance deviate from relevant international standards;
- 2.5.4 in regard to technical regulations allow, without discrimination, 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;

- 2.5.5 in regard to standards, allow reasonable time for interested parties in other Parties to make comments in writing, discuss these comments upon request with other Parties and take these written comments and the results of these discussions into account.

2.6 Subject to the provisions in the heading of Article 2, paragraph 5, 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 5 as it finds necessary provided that the Party, upon adoption of a technical regulation or standard, shall:

- 2.6.1 notify immediately other Parties through the GATT secretariat of the particular technical regulation, the products covered, with a brief indication of the objective and the rationale of the technical regulation, including the nature of the urgent problems;
- 2.6.2 upon request provide, without discrimination other Parties with copies of the technical regulation and interested parties in other Parties with copies of the standard;
- 2.6.3 allow, without discrimination, other Parties with respect to technical regulations and interested parties in other Parties with respect to standards, to present their comments in writing upon request discuss these comments with other Parties and take the written comments and the results of any such discussion into account;
- 2.6.4 take also into account any action by the Committee as a result of consultations carried out in accordance with the procedures established in Article 14.

2.7 Parties shall ensure that all technical regulations and standards which have been adopted are published promptly in such a manner as to enable interested parties to become acquainted with them.

2.8 Except in those urgent circumstances referred to in Article 2, paragraph 6, 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 countries, and particularly in developing countries, to adapt their products or methods of production to the requirements of the importing country.

2.9 Parties shall take such reasonable measures as may be available to them to ensure that regional standardizing bodies of which they are members comply with the provisions of Article 2, paragraphs 1 to 8. 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 those provisions.

2.10 Parties which are members of regional standardizing bodies shall, when adopting a regional standard as a technical regulation or standard fulfil the obligations of Article 2, paragraphs 1 to 8 except to the extent that the regional standardizing bodies have fulfilled these obligations.

Article 3

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

3.1 Parties shall take such reasonable measures as may be available to them to ensure that local government bodies within their territories comply with the provisions of Article 2 with the exception of Article 2, paragraph 3, paragraph 5, sub-paragraph 2, paragraph 9 and paragraph 10, noting that provision of information regarding technical regulations referred to in Article 2, paragraph 5, sub-paragraph 3 and paragraph 6, sub-paragraph 2 and comment and discussion referred to in Article 2, paragraph 5, sub-paragraph 4 and paragraph 6, sub-paragraph 3 shall be through Parties. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such local government bodies to act in a manner inconsistent with any of the provisions of Article 2.

Article 4

Preparation, adoption and application of technical regulations and standards by non-governmental bodies

4.1 Parties shall take such reasonable measures as may be available to them to ensure that non-governmental bodies within their territories comply with the provisions of Article 2, with the exception of Article 2, paragraph 5, sub-paragraph 2 and provided that comment and discussion referred to in Article 2, paragraph 5, sub-paragraph 4 and paragraph 6, sub-paragraph 3 may also be with interested parties in other Parties. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such non-governmental bodies to act in a manner inconsistent with any of the provisions of Article 2.

CONFORMITY WITH TECHNICAL REGULATIONS AND STANDARDS

*Article 5**Determination of conformity with technical regulations or standards
by central government bodies*

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

- 5.1.1 imported products shall be accepted for testing under conditions no less favourable than those accorded to like domestic or imported products in a comparable situation;
- 5.1.2 the test methods and administrative procedures for imported products shall be no more complex and no less expeditious than the corresponding methods and procedures, in a comparable situation for like products of national origin or originating in any other country;
- 5.1.3 any fees imposed for testing imported products shall be equitable in relation to any fees chargeable for testing like products of national origin or originating in any other country;
- 5.1.4 the results of tests shall be made available to the exporter or importer or their agents, if requested, so that corrective action may be taken if necessary;
- 5.1.5 the siting of testing facilities and the selection of samples for testing shall not be such as to cause unnecessary inconvenience for importers, exporters or their agents;
- 5.1.6 the confidentiality of information about imported products arising from or supplied in connection with such tests shall be respected in the same way as for domestic products.

5.2 However, in order to facilitate the determination of conformity with technical regulations and standards where such positive assurance is required, Parties shall ensure, whenever possible, that their central government bodies:

accept test results, certificates or marks of conformity issued by relevant bodies in the territories of other Parties; or rely upon self-certification by producers in the territories of other Parties;

even when the test methods differ from their own, provided they are satisfied that the methods employed in the territory of the exporting Party provide a sufficient means

of determining conformity with the relevant technical regulations or standards. It is recognized that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding regarding self-certification, test methods and results, and certificates or marks of conformity employed in the territory of the exporting Party, in particular in the case of perishable products or of other products which are liable to deteriorate in transit.

5.3 Parties ensure that test methods and administrative procedures used by central government bodies are such as to permit, so far as practicable, the implementation of the provisions in Article 5, paragraph 2.

5.4 Nothing in this Article shall prevent Parties from carrying out reasonable spot checks within their territories.

Article 6

Determination by local government bodies and non-governmental bodies of conformity with technical regulations or standards

6.1 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 5. 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 any of the provisions of Article 5.

CERTIFICATION SYSTEMS

Article 7

Certification systems operated by central government bodies

With respect to their central government bodies:

7.1 Parties shall ensure that certification systems are not formulated or applied with a view to creating obstacles to international trade. They shall likewise ensure that neither such certification systems themselves nor their application have the effect of creating unnecessary obstacles to international trade.

7.2 Parties shall ensure that certification systems are formulated 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, including the determination that such suppliers are able and willing to fulfil the requirements of the system. Access for suppliers is obtaining certification from an importing Party under the rules of the system. Access for suppliers also includes receiving the mark of the system, if any, under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country.

7.3 Parties shall:

- 7.3.1 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 certification system;
- 7.3.2 notify the GATT secretariat of the products to be covered by the proposed system together with a brief description of the objective of the proposed system;
- 7.3.3 upon request provide, without discrimination, to other Parties particulars or copies of the proposed rules of the system;
- 7.3.4 allow, without discrimination, reasonable time for other Parties to make comments in writing on the formulation and operation of the system, discuss the comments upon request and take them into account.

7.4 However, 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 7, paragraph 3 as it finds necessary provided that the Party, upon adoption of the certification system, shall:

- 7.4.1 notify immediately the other Parties through the GATT secretariat of the particular certification system and the products covered, with a brief indication of the objective and the rationale of the certification system including the nature of the urgent problems;
- 7.4.2 upon request provide, without discrimination, other Parties with copies of the rules of the system;
- 7.4.3 allow, without discrimination, other Parties to present their comments in writing, discuss these comments upon request and take the written comments and results of any such discussion into account.

7.5 Parties shall ensure that all adopted rules of certification systems are published.

*Article 8**Certification systems operated
by local government and non-governmental bodies*

8.1 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 when operating certification systems comply with the provisions of Article 7, except paragraph 3, sub-paragraph 2, noting that the provision of information referred to in Article 7, paragraph 3, sub-paragraph 3 and paragraph 4, sub-paragraph 2, the notification referred to in Article 7, paragraph 4, sub-paragraph 1, and the comment and discussion referred to in Article 7, paragraph 4, sub-paragraph 3, shall be through Parties. 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 any of the provisions of Article 7.

8.2 Parties shall ensure that their central government bodies rely on certification systems operated by local government and non-governmental bodies only to the extent that these bodies and systems comply with the relevant provisions of Article 7.

*Article 9**International and regional certification systems*

9.1 Where a positive assurance, other than by the supplier, of conformity with a technical regulation or standard is required, Parties shall, wherever practicable, formulate international certification systems 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 certification systems in which relevant bodies within their territories are members or participants comply with the provisions of Article 7, with the exception of paragraph 2 having regard to the provisions of Article 9, paragraph 3. 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 Article 7.

9.3 Parties shall take such reasonable measures as may be available to them to ensure that international and regional certification systems, in which relevant bodies within their territories are members or participants, are formulated 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 originating in a member country, a participant country or in any other country, including the determination that such suppliers are able and willing to fulfil the requirements of the system. Access for suppliers is obtaining certification from an importing Party which is a member of or participant in the system, or from a body authorized by the system to grant certification, under the rules of the system. Access for suppliers also includes receiving the mark of the system, if any, under conditions no less favourable than those accorded to suppliers of like products originating in a member country or a participant country.

9.4 Parties shall ensure that their central government bodies rely on international or regional certification systems only to the extent that the systems comply with the provisions of Article 7 and Article 9, paragraph 3.

INFORMATION AND ASSISTANCE

Article 10

Information about technical regulations, standards and certification systems

10.1 Each Party shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from interested parties in other Parties 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 certification systems, or proposed certification systems, 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 certification bodies of which such bodies are members or participants;
- 10.1.4 the location of notices published pursuant to this Agreement, or the provision of information as to where such information can be obtained; and
- 10.1.5 the location of the enquiry points mentioned in Article 10, paragraph 2.

10.2 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 interested parties in other Parties regarding:

- 10.2.1 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
- 10.2.2 any certification systems, or proposed certification systems, which are operated within its territory by non-governmental certification bodies, or by regional certification bodies of which such bodies are members or participants.

10.3 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 the same price (if any) as to the nationals of the Party concerned.

10.4 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 certification bodies and draw the attention of developing country Parties to any notifications relating to products of particular interest to them.

10.5 Nothing in this Agreement shall be construed as requiring:

- 10.5.1 the publication of texts other than in the language of the Party;
- 10.5.2 the provision of particulars or copies of drafts other than in the language of the Party; or
- 10.5.3 Parties to furnish any information, the disclosure of which they consider contrary to their essential security interests.

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

10.7 Parties recognize the desirability of developing centralized information systems with respect to the preparation, adoption and application of all technical regulations, standards and certification systems within their territories.

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 certification bodies for providing a certificate or mark 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 certification bodies for providing a certificate or mark 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 take part in certification systems 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 certification systems 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 certification bodies within their territories, if such bodies are members or participants of international or regional certification systems 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 their 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, test methods and certification systems, take account of the special development, financial and trade needs of developing countries, with a view to ensuring that such technical regulations, standards, test methods and certification systems and the determination of conformity with technical regulations and standards do not create unnecessary obstacles to exports from developing countries.

12.4 Parties recognize that, although international standards may exist, in their particular technological and socio-economic conditions, developing countries adopt certain technical regulations or standards, including test methods, 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 certification systems 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, test methods and certification systems 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, test methods and certification systems. 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, test methods and certification systems 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 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.

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.

*Article 14**Consultation and dispute settlement**Consultation*

14.1 Each Party shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding representations made by other Parties with respect to any matter affecting the operation of this Agreement.

14.2 If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded, by another Party or Parties, and that its trade interests are significantly affected, the Party may make written representations or proposals to the other Party or Parties which it considers to be concerned. Any Party shall give sympathetic consideration to the representations or proposals made to it, with a view to reaching a satisfactory resolution of the matter.

Dispute settlement

14.3 It is the firm intention of Parties that all disputes under this Agreement shall be promptly and expeditiously settled, particularly in the case of perishable products.

14.4 If no solution has been reached after consultations under Article 14, paragraphs 1 and 2, the Committee shall meet at the request of any Party to the dispute within thirty days of receipt of such a request, to investigate the matter with a view to facilitating a mutually satisfactory solution.

14.5 In investigating the matter and in selecting, subject, *inter alia*, to the provisions of Article 14, paragraphs 9 and 14, the appropriate procedures the Committee shall take into account whether the issues in dispute relate to commercial policy considerations and/or to questions of a technical nature requiring detailed consideration by experts.

14.6 In the case of perishable products the Committee shall, in keeping with Article 14, paragraph 3, consider the matter in the most expeditious manner possible with a view to facilitating a mutually satisfactory solution within three months of the request for the Committee investigation.

14.7 It is understood that where disputes arise affecting products with a definite crop cycle of twelve months, every effort would be made by the Committee to deal with these disputes within a period of twelve months.

14.8 During any phase of a dispute settlement procedure including the earliest phase, competent bodies and experts in matters under consideration may be consulted and invited to attend the meetings of the Committee; appropriate information and assistance may be requested from such bodies and experts.

Technical issues

14.9 If no mutually satisfactory solution has been reached under the procedures of Article 14, paragraph 4 within three months of the request for the Committee investigation, upon the request of any Party to the dispute who considers the issues to relate to questions of a technical nature the Committee shall establish a technical expert group and direct it to:

examine the matter;

consult with the Parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;

make a statement concerning the facts of the matter; and

make such findings as will assist the Committee in making recommendations or giving rulings on the matter, including *inter alia*, and if appropriate, findings concerning the detailed scientific judgments involved, whether the measure

was necessary for the protection of human, animal or plant life or health, and whether a legitimate scientific judgment is involved.

14.10 Technical expert groups shall be governed by the procedures of Annex 2.¹

14.11 The time required by the technical expert group considering questions of a technical nature will vary with the particular case. The technical expert group should aim to deliver its findings to the Committee within six months from the date the technical issue was referred to it, unless extended by mutual agreement between the Parties to the dispute.

14.12 Reports should set out the rationale behind any findings that they make.

14.13 If no mutually satisfactory solution has been reached after completion of the procedures in this Article, and any Party to the dispute requests a panel, the Committee shall establish a panel which shall operate under the provisions of Article 14, paragraphs 15 to 18.

Panel proceedings

14.14 If no mutually satisfactory solution has been reached under the procedures of Article 14, paragraph 4 within three months of the request for the Committee investigation and the procedures of Article 14, paragraphs 9 to 13 have not been invoked, the Committee shall, upon request of any Party to the dispute, establish a panel.

14.15 When a panel is established, the Committee shall direct it to:

examine the matter;

consult with Parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;

make a statement concerning the facts of the matter as they relate to the application of provisions of this Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

14.16 Panels shall be governed by the procedures in Annex 3.²

14.17 Panels shall use the report of any technical expert group established under Article 14, paragraph 9 as the basis for its consideration of issues that involve questions of a technical nature.

¹See page 24.

²See page 24.

14.18 The time required by panels will vary with the particular case. They should aim to deliver their findings, and where appropriate, recommendations to the Committee without undue delay, normally within a period of four months from the date that the panel was established.

Enforcement

14.19 After the investigation is complete or after the report of a technical expert group, working group, panel or other body is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to panel reports, the Committee shall take appropriate action normally within thirty days of receipt of the report, unless extended by the Committee, including:

a statement concerning the facts of the matter; or

recommendations to one or more Parties; or

any other ruling which it deems appropriate.

14.20 If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event the Committee shall consider what further action may be appropriate.

14.21 If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more Parties to suspend, in respect of any other Party, the application of such obligations under this Agreement as it determines to be appropriate in the circumstances. In this respect, the Committee may, *inter alia*, authorize the suspension of the application of obligations, including those in Articles 5 to 9, in order to restore mutual economic advantage and balance of rights and obligations.

14.22 The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

Other provisions relating to dispute settlement

Procedures

14.23 If disputes arise between Parties relating to rights and obligations of this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT. Parties recognize that, in any case so referred to the CONTRACTING PARTIES, any finding, recommendation or ruling pursuant to Article 14, paragraphs 9 to 18 may be taken into account by the CONTRACTING PARTIES, to the extent they relate to matters involving equivalent rights and obligations under the General Agreement.

When Parties resort to GATT Article XXIII, a determination under that Article shall be based on GATT provisions only.

Levels of obligation

14.24 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 3, 4, 6, 8 and 9 and its trade interests are significantly affected. In this respect, such results shall be equivalent to those envisaged in Articles 2, 5 and 7 as if the body in question were a Party.

Processes and production methods

14.25 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.

Retroactivity

14.26 To the extent that a Party considers that technical regulations, standards, methods for assuring conformity with technical regulations or standards, or certification systems which exist at the time of entry into force of this Agreement are not consistent with the provisions of this Agreement, such regulations, standards, methods and systems shall be subject to the provisions in Articles 13 and 14 of this Agreement, in so far as they are applicable.

FINAL PROVISIONS

Article 15

Final provisions

Acceptance and accession

15.1 This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT, and by the European Economic Community.

15.2 This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

15.3 This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed.

15.4 In regard to acceptance, the provisions of Article XXVI:5 (a) and (b) of the General Agreement would be applicable.

Reservations

15.5 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

Entry into force

15.6 This Agreement shall enter into force on 1 January 1980 for the governments¹ which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

Review

15.7 Each Party shall, promptly after the date on which this Agreement enters into force for the Party concerned, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement. Any changes of such measures thereafter shall also be notified to the Committee.

15.8 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such reviews.

15.9 Not later than the end of the third year from the entry into force of this Agreement and at the end of each three-year period thereafter, the Committee shall review the operation and implementation of this Agreement, including the provisions relating to transparency, with a view to adjusting the rights and obligations of this Agreement where necessary to ensure mutual economic advantage and balance of rights and obligations, without prejudice to the provisions of Article 12, and where appropriate proposing amendments to the text of this Agreement having regard, *inter alia*, to the experience gained in its implementation.

¹The term "government" is deemed to include the competent authorities of the European Economic Community.

Amendments

15.10 The Parties may amend this Agreement having regard, *inter alia*, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

Withdrawal

15.11 Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any Party may upon such notification request an immediate meeting of the Committee.

Non-application of this Agreement between particular Parties

15.12 This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

Annexes

15.13 The annexes to this Agreement constitute an integral part thereof.

Secretariat

15.14 This Agreement shall be serviced by the GATT secretariat.

Deposit

15.15 This Agreement shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish to each Party and each contracting party to the GATT a certified copy thereof and of each amendment thereto pursuant to Article 15, paragraph 10 and a notification of each acceptance thereof or accession thereto pursuant to Article 15, paragraphs 1 to 3 and of each withdrawal therefrom pursuant to Article 15, paragraph 11.

Registration

15.16 This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twelfth day of April nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

ANNEX 1

TERMS AND THEIR DEFINITIONS FOR THE SPECIFIC PURPOSES OF
THIS AGREEMENT

Note: References to the definitions of international standardizing bodies in the explanatory notes are made as they stood in March 1979.

1. *Technical specification*

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.

2. *Technical regulation*

A technical specification, including the applicable administrative provisions, with which compliance is mandatory.

Explanatory note:

The wording differs from the corresponding Economic Commission for Europe/International Organization for Standardization definition because the latter is based on the definition of regulation which is not defined in this Agreement. Furthermore the Economic Commission for Europe/International Organization for Standardization definition contains a normative element which is included in the operative provisions of this Agreement. For the purposes of this Agreement, this definition covers also a standard of which the application has been made mandatory not by separate regulation but by virtue of a general law.

3. *Standard*

A technical specification approved by a recognized standardizing body for repeated or continuous application, with which compliance is not mandatory.

Explanatory note:

The corresponding Economic Commission for Europe/International Organization for Standardization definition contains several normative elements which are not included in the above definition. Accordingly, technical specifications which are not based on consensus are covered by this

Agreement. This definition does not cover technical specifications prepared by an individual company for its own production or consumption requirements. The word "body" covers also a national standardizing system.

4. *International body or system*

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

5. *Regional body or system*

A 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 certification 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*

A 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*

A 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.

9. *Standardizing body*

A governmental or non-governmental body, one of whose recognized activities is in the field of standardization.

10. *International standard*

A standard adopted by an international standardizing body.

Explanatory note:

The wording differs from the corresponding Economic Commission for Europe/International Organization for Standardization definition in order to make it consistent with other definitions of this Agreement.

ANNEX 2

TECHNICAL EXPERT GROUPS

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

1. Participation in technical expert groups shall be restricted to persons, preferably government officials, of professional standing and experience in the field in question.
2. Citizens of countries whose central governments are Parties to a dispute shall not be eligible for membership of the technical expert group concerned with that 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.
3. 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 revealed 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.
4. To encourage development of mutually satisfactory solutions between the Parties and with a view to obtaining their comments, each technical expert group should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the Parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Parties.

ANNEX 3

PANELS

The following procedures shall apply to panels established in accordance with the provisions of Article 14.

1. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of government officials knowledgeable in the area of technical barriers to trade and experienced in the field of trade relations

and economic development. This list may also include persons other than government officials. In this connection, each Party shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two governmental experts whom the Parties would be willing to make available for such work. When a panel is established under Article 14, paragraph 13 or Article 14, paragraph 14, the Chairman, within seven days shall propose the composition of the panel consisting of three or five members, preferably government officials. The Parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons. Citizens of countries whose central governments are Parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members 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 panel.

2. Each panel shall develop its own working procedures. All Parties having a substantial interest in the matter and having notified this to the Committee, shall have an opportunity to be heard. Each panel may consult and seek information and technical advice from any source it deems appropriate. Before a panel seeks such information or technical advice from a source within the jurisdiction of a Party, it shall inform the government of that Party. In case such consultation with competent bodies and experts is necessary it should be at the earliest possible stage of the dispute settlement procedure. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government or person providing the information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information will be provided by the government or person supplying the information.

3. Where the Parties to a dispute have failed to come to a satisfactory solution, the panel shall submit its findings in a written form. Panel reports should normally set out the rationale behind any findings and recommendations that it makes. Where a bilateral settlement of the matter has been found, the report of the panel may be confined to a brief description of the case and to reporting that a solution has been reached.

4. To encourage development of mutually satisfactory solutions between the Parties and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the Parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Parties.