Examination of items in Part 3 of the Illustrative List
(Standards acting as barriers to trade)

1. Working Group 3 was established by the Committee on Trade in Industrial Products in December 1969, to examine the following subjects in the Illustrative List (Annex I of document L/3298): disparities in existing legislation or regulations, disparities in future legislation or regulations, lack of mutual recognition of testing, unreasonable application of standards, packaging, labelling and marking regulations. The Group met from 27 May to .. May under the chairmanship of Mr. S. Kadota (Japan).

2. The following organizations had been invited to send experts to attend the meeting as observers: ECE, EFTA, IMF, OECDD, UNCTAD and WHO.

3. The following Articles of the General Agreement were referred to as being relevant to the subject: III, VIII, IX, X, XI:2(b), XIII (with reference to Article XI), XX, and more generally, Articles XXII and XXIII.

4. At the request of one delegation, the examination of the topics as set out in the Illustrative List took into account an alternative classification of subjects into "Industrial, Health and Safety Standards". During the course of the discussion,
it became apparent that the problems arising from standardization were too intricate and inter-dependent to be readily separable into clear-cut headings.

Nature and scope of the problems

I. Standards and regulations

5. It was generally recognized that the increasing number of standards and regulations resulted in numerous barriers to trade and that new ones were likely to develop. This called for international co-operation to work towards an ultimate goal of harmonization. It was felt that a difference should be drawn between the elaboration of standards proper on the one hand, and standardization policy on the other hand. The CONTRACTING PARTIES' role should be in the field of standardization policies in so far as they had trade effects; the technical elaboration of standards should be left to the competent international standardization bodies. The GATT was already competent to deal with standardization, through its existing provisions.

6. At the outset of its work the Group noted the important difference to be drawn between compulsory regulations and voluntary standards. Compulsory regulations are issued by governmental authorities while voluntary standards are usually issued by private organizations on a regional, national or international basis. The distinction is not always clear-cut; in some cases, government authorities can influence considerably on the elaboration of voluntary standards; in some cases indirect support is given through specifications set out in government procurement contracts. However, the distinction between compulsory regulations and voluntary standards was important to draw because of the different possibilities and limits it entailed for government action.
7. It was pointed out that the rôle of governments in the field of standardization differed greatly from one country to another. In some countries, governments were responsible for compulsory regulations, while in other countries the elaboration of voluntary standards was left to private organizations over which governments had little or no influence. This great difference in government responsibility in the field of standardization was an important fact to bear in mind when seeking solutions to the problems of non-tariff barriers caused by standards.

8. It was noted that the elaboration of national standards was usually based on criteria relevant to national or local production. Modifications were frequently introduced to keep in line with technological progress. Such changes, however necessary, resulted in considerable expense and some uncertainty particularly if they were too frequent. Delays for adapting to new standards were often too brief. In such cases national producers who participate in the elaboration of new or modified compulsory regulations or voluntary standards enjoyed an advantage over foreign producers. It was also noted that standards-making bodies pursued their own objectives, with different emphasis according to their membership - producers, consumers, local authorities, government, or mixed membership - and that these objectives were not primarily concerned with possible trade effects.

9. It was noted that there were relatively few cases where the object of standardization was of a protective nature and that in most cases regulations or standards applied equally to national products and imported products. However, disparities between countries in standards and regulations often resulted in a
degree of trade discrimination against imported products as opposed to domestically produced products. This was particularly apparent when it came to methods of enforcing standards such as testing or production inspection and certification, which at the best involved expenses and delays and at the worst made it practically impossible for foreign products to fulfill or obtain the necessary approval. It was also pointed out that the difficulties encountered in the enforcement of standards - through control, inspection testing and certification - resulted from disparities in standards. To the extent that standards and regulations could be harmonized these difficulties would be overcome.

10. Another problem which was highlighted was the intrinsic difficulty of harmonizing regulations or standards at an international level. There were no accepted or definable criteria by which to select the good from the bad standard. Thus, it was often difficult to decide which countries' standards should be adopted by other countries.

11. There was a short discussion on specific items of the Illustrative List. New information, specifically concerning individual items in the List, will be introduced as amendments to the texts of the notifications.

Possible solutions

12. It was felt desirable that the contracting parties draw up a set of principles or ground rules on standardization. The ultimate form to be given to such principles, and whether they should be put on a contractual or voluntary basis, was left open. In this respect, it was pointed out that, within GATT, guidelines would have real significance and possible constraining effects only if they applied to regulations imposed by public authorities at national level. Such guidelines would have little significance with respect to regulations issued by local public authorities or as
regards the numerous private standards and private control or testing procedures. The guidelines would not affect the two latter categories of regulations and standards, and would therefore not constitute a real commitment on the part of some contracting parties; and hence would not offer an effective solution for problems arising from such standards and practices. Some delegations were of the opinion that such a code of principles would materially enable governments who did not have direct responsibilities in the field of standardization to get local authorities and private standardization bodies to align their practices and bring them into conformity with these principles. It was also proposed that such a code should attempt to reconcile the most-favoured-nation principle with the objective of maintaining adequate standards.

13. It was agreed that the Group would not draft the text of a code on standards but would limit itself to formulating various suggestions on the scope and content of such a code.

14. Regarding the scope or bearing of the code it was stressed that Article XX of the General Agreement should still remain the overriding general obligation for contracting parties. The purpose of the code would be too specific in those areas where Article XX was general.

15. Some members of the Group suggested that a future code should avoid being so detailed or specific as to exceed the competence of the GATT. Technical details should be entrusted to competent international organizations specialized on the subject.

16. Some members were of the opinion that the code should be addressed to governments and international standardization organizations alike, while others were of the opinion that it should be addressed only to international standardization organizations.
17. The following elements were suggested for including:

- on harmonization

(1) Contracting parties should make an effective contribution to the international organizations concerned with standardization, and take all appropriate measures to implement the uniform standards and recommendations adopted by specialized bodies.

(1) To the maximum extent feasible, account should be taken of recommendations of international organizations such as the ISO, IEC, WHO and FAO in promulgating or revising standards.

(2) Contracting parties should act in the international organizations concerned with standardization in such a way as to ensure that in their work they take due account of the need to avoid the creation of trade barriers and to eliminate existing barriers.

(3) Any country proposing to introduce a new standard should be required to consult on the matter with the competent organization such as ISO or IEC. Any consultation should take place well in advance of the proposed implementation of the new standard.

(4) Contracting parties should endeavour to further efforts to harmonize standards, testing methods and quality assurance procedures on a multilateral basis.

(5) All international schemes to harmonize standards should be open to all contracting parties. If for practical reasons such schemes started out with limited participation, it was important that universal participation remain possible and that third parties not originally participating in a scheme be invited to do so.
(6) Contracting parties should make use of the possibilities for action at their disposal in order to prompt local authorities and private standardization organizations to apply international standards and regulations. In this connexion it was recalled that Article XXIV:12 of the General Agreement required each contracting party to ensure observance of GATT provisions by the regional and local governments and authorities within its territory.

(7) In cases where trade difficulties resulting from discrepancies in the standards or regulations issued by local authorities cannot be resolved otherwise, contracting parties should take the necessary measures to deal with such problems.

(8) Contracting parties should take all necessary action to ensure that any proposed regulation or standard, whether new or revised, receives sufficient publicity well in advance of its implementation so that all interested parties in fact have an opportunity to take cognizance thereof and comment thereon. Account should be taken of those comments when regulations and standards are being finalized.

(9) Proposed new or revised standards should be published so that producers in other countries have an effective opportunity to learn about the proposals and to submit comments thereon. Account should be taken of the comments of foreign producers in promulgating standards.

(10) Contracting parties should promote the following practical methods with the purpose of harmonizing disparate technical regulations:

(a) The elaboration of uniform regulations.

(b) The "optional" situation which permits producers who do not want to incur additional transformation costs involved in adapting to international standards - to continue producing for the national market in accordance with its traditional standard regulations.
(c) The so-called reference to standards solution which consists in defining basic requirements accompanied by a decision that compliance with such requirements shall be ensured through equivalence to previously established and internationally harmonized standards. Such standards could be international standards (ISO, IEC), national standards or standards which have been harmonized between a number of countries.

- on enforcement of standards or regulations (through control, inspection, testing, certification):

18. (1) Some of the following solutions which frequently can only operate on a bilateral or limited basis could be envisaged:

(a) To remedy the delays and costs resulting from inspection in the importing country, authorities of that country could delegate control and testing procedures to a laboratory in the exporting country which would carry out its task on the basis of the prescriptions and standards required by the importing country.

(b) In those cases where forms of control are at least partially similar, the importing country could recognize the validity of certain tests carried out in the exporting country and limit testing of the imported product for those additional or different specifications which have not been tested in the exporting country. Agreements to this effect can be concluded on the basis of reciprocity.

(c) Harmonization of methods of testing and controlling between countries can be carried out by reciprocal acceptance of each others methods even if they are not identical, providing both their methods offer similar efficiency guarantees.
(2) The testing procedures for imported products should be as expeditious as possible. The results of such testing should be made available in writing to the exporter so that corrective action may be taken if necessary.

(3) Product testing requirements should be formulated in such a way that imported products have realistic access to the domestic market. This could be achieved by: (for example)

(a) Making facilities available to test products manufactured abroad to determine their equivalence to domestic standards and, where necessary, to inspect foreign manufacturing facilities; or

(b) Accepting the foreign producer's certification that the product meets the requirements of the importing country; or

(c) Accepting the results of product testing done in another country where such testing has been demonstrated to be equivalent to that required in the importing country.

(4) Multilateral quality assurance and certification schemes should be open to foreign participation where the participants are willing and able to meet the obligations of the schemes. Such participation should begin with the stage of formulating the rules for the scheme.

(5) Multilateral quality assurance and certification schemes should make provisions for the testing and acceptance of products from countries that, for one reason or another, are not participating in the scheme. This could be accomplished by:

(a) Testing and certifying products from non-participants;

(b) Accepting certifications granted by other participants to products from non-participants; or
(c) Accepting the certification of competent organizations in non-participating countries where this can be demonstrated to be equivalent to the certification requirements of the scheme.

(6) In so far as possible industrial health and safety standards should be based on performance rather than on the physical description of the product.

(7) Contracting parties should take into account efforts made by developing countries in establishing adequate standards and quality control for their exports. To give realistic access to markets for exports from developing countries authorities in importing countries should accept adequate quality controls and standards of the exporting countries.

Consultation machinery

19. Some members of the Group thought it desirable to have consultation procedures to deal with cases of trade difficulties resulting from the application of compulsory or voluntary standards. To this end it was also proposed that a GATT Committee on Industrial, Health and Safety Standards be established to consult on complaints by contracting parties concerning the trade effects of:

(a) Proposed or existing standards and regulations;

(b) The implementation of standards and regulations;

(c) Testing and certification requirements as to compliance with standards and regulations;

(d) Multilateral harmonization programmes for standards and regulations;

(e) Multilateral quality assurance and certification programmes.
This Committee would examine the trade effects of the measures notified and make appropriate recommendations. It should meet on an ad hoc basis as determined by the Chairman in consultation with interested contracting parties. Where necessary the Committee could call on the representatives of other international organizations for technical advice.

20. It was also proposed that any procedures set up for consultation on the basis of Article XXII be limited to complaints concerning cases of trade discrimination resulting from the application of standards or regulations. Such a body should also be prepared to deal with problems arising from packaging, labelling and marking requirements.

21. Generally, the establishment of consultation machinery should not prevent contracting parties from seeking solutions to particular problems outside the GATT on a bilateral or multilateral basis.

22. Such machinery should not be a negotiating body nor should it provide for retaliatory action.

23. It was suggested that a notification procedure, similar to that provided for in Article XVI, paragraph 1, be introduced and include prior notification of new regulations likely to have trade effects. It was felt that this procedure would provide an opportunity to all interested parties to be informed in time of the elaboration of new regulations and to consult if necessary. Other contracting parties expressed the view that a system of notifications would be too burdensome. Other contracting parties held the view that Articles VIII, XII and XXIII of the General Agreement provided sufficient basis for consultation and that Article XXIII already provided for a complaints procedure. These Articles were applicable should any contracting party feel that its rights under the General Agreement were being impaired.
II. Packaging, labelling and marking regulations

24. The Group briefly reviewed the items under this heading in the Illustrative List; new information specifically concerning individual items in the List will be introduced as amendments to the text of the notifications. Two of these items were withdrawn.

25. It was pointed out that the question of difference of government responsibility in the field of packaging, labelling and marking requirements presented the same intrinsic difficulties in this field as it did in the field of standards. Therefore, governments' possibilities for action differed to a very large extent, and this should be borne in mind in considering possible solutions.

26. It was noted that the GATT Recommendation of 21 November 1958 on Marks of Origin (Seventh Supplement, page 30) was relevant to the problems encountered under this heading. It was felt that close observance of this Resolution would be desirable. It was pointed out, however, that the Resolution would need elaboration and further precision on certain points such as its paragraph 2 which provides that marks of origin "should not be applied in a way which leads to a general application to all imported goods, but should be limited to cases where such marking is considered necessary". The concept of "necessary marking" needed closer definition. There was also need to define the clauses concerning penalties.

27. There was generally support for the idea that Article IX and further elaboration of the Resolution of 1958 would provide the basis for solving the problems arising from different packaging, labelling and marking requirements. One delegation suggested that this Resolution be put on a contractual basis.

28. It was thought desirable to consider including the subject of packaging, labelling and marking requirements in the terms of reference of any consultation machinery that would be established to deal with standards.