GENERAL AGREEMENT ON
TARIFFS AND TRADE

Committee on Trade in
Industrial Products

REPORT OF WORKING GROUP 3 ON NON-TARIFF BARRIERS
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 task of the Group was to explore, on the basis of the information in the inventory and any information that might be subsequently furnished, possibilities for concrete action. The work was to be conducted on the understanding that it was exploratory and preparatory in nature, and involved no commitment on the part of any member of the Working Group to take or join in any action under discussion. The Group emphasized that in many cases the views recorded are only tentative at this stage, and that all delegations would have full latitude to supplement and clarify them when the report was brought for discussion by the Committee on Trade in Industrial Products. The Group met from 27 May to 3 June 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, OECD, UNCTAD and WHO.

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

I. Standards, regulations and their enforcement

Nature and scope of the problems

4. It was generally recognized that the increasing number of standards and regulations resulted in barriers to trade when harmonization is not effected on an international basis, and that new ones were likely to develop. This called for international co-operation to minimize adverse trade effects, where it was agreed that the CONTRACTING PARTIES could make a useful contribution. The technical development of standards should be left to the competent international standardization bodies. The suggestion was made that further discussions of the rôle of GATT in this field would benefit from a more detailed study of the relevant provisions of the General Agreement in order to ascertain the degree of their applicability.
5. 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, governmental authorities can exercise a certain influence on the development or enforcement of voluntary standards; or, for example, support them indirectly through specifications set out in government procurement contracts. The distinction between compulsory regulations and voluntary standards was important to draw because of the different possibilities and limits it entailed for government action.

6. It was pointed out that the role of governments in the field of standardization differed greatly from one country to another. In some countries, there were more government compulsory regulations, while in other countries there were more voluntary standards developed by private organizations, over which governments had little or no influence. Furthermore, in certain countries regulations were generally issued by the government while in other countries they were in many cases instituted by regional or local authorities. 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. Some delegations pointed out, however, that the area of voluntary standards was largely confined to industrial products. Safety and health regulations were usually compulsory.

7. The Group noted that the development and enforcement of standards and regulations can have trade barrier effects in different ways. For instance when they are based on characteristics peculiar to national production, when they are modified too frequently (although adaptation to technological progress is a necessity) and thus create additional expenses and some degree of uncertainty; and when periods laid down for adapting to modifications of standards are too brief.

8. Certain trade effects can also result from the type of standardization bodies' membership: producers, consumers, local authorities, government, or mixed membership.

9. Although in most cases regulations or standards apply equally to national products and imported products, disparities between countries in standards and regulations can place products from third countries at a disadvantage. This disadvantage can, in particular become apparent in the case of methods of enforcing standards such as testing or production inspection and certification, which at best involve expenses and delays and at worst make it practically impossible for foreign products to fulfill or obtain the necessary approval. It was also pointed out that some of the difficulties arising from 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 such difficulties would be reduced and solutions to cases of unreasonable application of standards would be facilitated.

10. Members of the Group were aware of the inherent difficulties of harmonizing regulations or standards at an international level.
11. Some delegations were of the opinion that future work would be facilitated if contracting parties had at their disposal a comprehensive survey of the work of international organizations in the field of standardization.

12. 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

13. It was felt desirable that the contracting parties draw up a set of principles or ground rules on standardization. The form to be given to such principles, whether a code or guidelines, and whether they should be put on a contractual or voluntary basis, was left open.

14. In this respect, it was pointed out that, within GATT, guidelines would have 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. These guidelines might not offer an effective solution for problems arising from such regulations, standards and control procedures. Also they would not constitute a comparable commitment on the part of all contracting parties.

15. On the other hand it was pointed out that a code or guidelines would materially assist governments who did not have direct responsibilities in the field of standardization to influence local authorities and private standardization bodies to align their practices and bring them into conformity with these guidelines. Additionally such a code or guidelines would have influence on the work of international standardization bodies.

16. It was suggested by one delegation that the code or guidelines might also deal with those areas where there was difficulty in reconciling the objective of maintaining adequate standards with the most-favoured-nation principle. It was also suggested that such a code or guidelines should supplement rather than replace existing GATT provisions such as those in Article XX.

17. Various members of the Group made suggestions on general principles and on practical methods which would make it possible to solve or reduce the difficulties. These suggestions concern on the one hand the development and harmonization of standards and regulations, and on the other hand their enforcement through control, inspection, testing, certification, etc.

A. Development and harmonization of standards and regulations

18. General principles

(i) Contracting parties should ensure that an effective contribution is made to the work of international organizations concerned with standardization.
(ii) Contracting parties should take all appropriate measures to implement the uniform standards and recommendations adopted by such specialized bodies.

(ii) bis The contracting parties should take into account to the maximum extent feasible, recommendations of international organizations such as the ISO, IEC, WHO and FAO in developing or revising standards.

(iii) 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.

(iv) 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. Such participation should begin with the stage of formulating the rules for the scheme.

(iv) bis Contracting parties which are not members of multilateral harmonization systems should be able to accede thereto to the extent that they so desire and to the extent that they are in a position to fulfil all the conditions in an appropriate manner.

(v) Contracting parties should make use of the possibilities at their disposal for action to prompt local authorities and private standardization organizations to apply international standards and regulations. In cases where trade difficulties resulting from discrepancies in the regulations issued by local authorities or in standards cannot be resolved otherwise, contracting parties should take the necessary measures to deal with such problems.

(v) bis Consistent with the principle of Article XXIV:12 contracting parties should take such reasonable measures as may be available to them, on the one hand to prompt local authorities and private standards organizations to apply international standards and regulations, and on the other hand, to resolve trade difficulties resulting from disparities in standards and regulations.

(vi) In so far as possible, standards and regulations should be based on performance rather than on the physical description of the product.

(vii) 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. Upon request of interested countries, the opportunity for consultation should be provided on a bilateral basis, within the framework of GATT, or in the competent international standardization organizations as the case may be. Consideration should be given to those comments or to the results of those consultations when regulations and standards are being finalized.
Practical methods

19. It was suggested that in the case of technical regulations the practical methods which the contracting parties could encourage would include:

(a) The development of uniform regulations.

(b) The so-called "optional" solution which gives producers a choice between national regulations or an international standard.

(c) The so-called "reference to standards" solution which consists in defining basic requirements accompanied by decisions that compliance with such requirements shall be ensured through equivalence to previously established and internationally harmonized standards. Such standards could be international standards (ISO, etc.) national standards or standards which have been harmonized between a number of countries.

B. Enforcement of standards or regulations (through control, inspection, testing, certification, etc.)

20. General principles

(i) Contracting parties should endeavour to further efforts to harmonize testing methods and quality assurance procedures on a multilateral basis. While it was desirable that the solution to these problems should be sought on an international basis it was recognized that certain solutions could operate only on a bilateral or limited basis.

(ii) The testing procedures for imported products should be as expeditious as possible. The results of such testings should be made available in writing to the exporter so that corrective action may be taken if necessary.

(iii) Testing requirements should be formulated in such a way that imported products have realistic access to domestic markets.

(iv) Multilateral quality assurance and certifications 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.

(iv)bis Multilateral quality assurance and certifications schemes should be open to foreign participation where the participants are willing and able to meet in an adequate manner the obligations of the schemes.

(v) Contracting parties should take into account measures adopted by developing countries to ensure adequate quality standards for their exports. The rigours of testing and inspection procedures which work in some cases as a barrier, could be greatly reduced if the authorities responsible for administration of health and sanitary regulations relied on the measures adopted by the exporting countries for ensuring minimum quality standards, through such means as standardization, quality control, pre-shipment inspection of export products, etc.
Practical methods

21(i) It was suggested that the following practical methods could be encouraged:

(a) to avoid the delays and costs resulting from inspection in the importing country, authorities of that country could delegate control and testing operations 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 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 could be concluded on a basis of reciprocity;

(c) harmonization of methods of testing and controlling between countries could be carried out by reciprocal acceptance of each other's methods even if they are not identical, provided both their methods offer similar reliability guarantees;

(d) acceptance of the foreign producers' certification that products meet the requirements of the importing country should be encouraged;

(e) countries' testing requirements should be clearly defined and publicized so as to enable foreign suppliers to ascertain whether their own testing requirements and products meet the foreign testing requirements.

(ii) 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 schemes.

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.
C. Consultation machinery

22. 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 regulations or voluntary standards. To this end it was also proposed that a GATT committee 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 complained of 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.

23. It was also proposed that any procedures set up for consultation should be along the lines of Article XXII and limited to complaints concerning cases of adverse trade effects or of unreasonably burdensome administrative procedures 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. It was pointed out that marks of origin requirements were also closely related to customs procedures.

24. 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.

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

26. Some members of the Group held the view that Articles VIII, XXII 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.

27(i) Some members of the Group 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 development of new regulations and to consult if
necessary.

(i) bis However, it was pointed out by other members that it would be difficult
to assess in all cases what the future trade effects would be.

II. Packaging, labelling and marking regulations

28. 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.

29. It was pointed out that the question of difference of government responsibility
in the field of packaging, labelling and marking requirements may in some cases
present the same intrinsic difficulties in this field as it does in the field of
standards. Consequently, governments' possibilities for action may also differ
in some cases and this should be borne in mind in considering possible solutions.

30. It was noted that the CONTRACTING PARTIES' 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
Recommendation would be desirable. For this purpose it was considered useful to
ask the secretariat to examine, as a first step, to what extent the Recommendation
on Marks of Origin was effectively implemented by the contracting parties. It was
pointed out, however, that the Recommendation 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.

31. There was general support for the idea that Article IX and further elaboration
of the Recommendation of 1958 would provide the basis for solving the problems
arising from marking requirements. One delegation suggested that this Recommendation
be put on a contractual basis.