NOTE to Spec(70)62/Rev.1

In putting the draft together paragraphs 13, 14, 15 and 16 of Spec(70)62 were inadvertently omitted. For technical reasons it was not possible to reinsert them within the time available. The content of paragraph 13 is partially covered by paragraph 11 of the new draft (Spec(70)62/Rev.1). The members of the Group may wish to reinsert some or all of these paragraphs in the new draft.

NOTE concernant le document Spec(70)62/Rev.1

Lors de l'établissement du texte de ce document, les paragraphes 13, 14, 15 et 16 du document Spec(70)62 ont été omis par inadvertance. Faute de temps et pour des raisons d'ordre technique, il n'a malheureusement pas été possible de fournir un texte complet. La teneur du paragraphe 13 se retrouve en partie dans le texte du paragraphe 11. Les membres du Groupe voudront peut-être rétablir ces paragraphes en tout ou en partie dans le nouveau texte.
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)

Revision

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 and from 5 to November under the chairmanship of Mr. S. Kadota (Japan).

2. The following organizations were invited to send experts to attend the meeting as observers: ECE, EFTA, IMF, OECD, UNCTAD and WHO.
I. Standards, regulations and their enforcement

Nature and scope of the problems

3. It was generally recognized that the increasing number of standards and regulations, and the likelihood that new ones will develop, may result in barriers to trade if harmonization is not effected on as wide an international basis as possible. It was also recognized that standards should not be used with a view to affording protection to domestic industry. This called for international co-operation to minimize adverse trade effects. It was agreed that the CONTRACTING PARTIES could make a useful contribution in this area, on the understanding that the technical development of standards should be left to the competent international standardization bodies.

4. It was also emphasized that care should be taken to co-ordinate work so as to avoid duplication with the work of other intergovernmental organizations and that steps should be taken to benefit by their experience. A survey of the work of such organizations might facilitate future work. The suggestion was also made that further GATT work 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. The following Articles of the General agreement were referred to as being relevant to the subject: III, VIII, IX, XI, XI:2(b), XIII (with reference to Article XII), XX, and more generally, Articles XXII and XXIII.

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, government 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 rôle 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 fulfil 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.

Possible solutions

11. It was agreed that further work should be done by the CONTRACTING PARTIES in an effort to develop a multilateral instrument. The question of the character of an instrument was left open, although there was general agreement on the desirability of a contractual code. One member of the Group was of the view that a Code drawn up by GATT should not, at this stage, include pharmaceutical products, which were in a category of their own due to the special health problems involved.

12. The Group heard statements by two countries whose central governments have had relatively small roles in the formulation and enforcement of standards other than in regard to health and safety. The United States reported steps taken to establish a quasi-governmental group incorporating representation both of the main private standards-making bodies and of the government looking towards the creation of an authorized national standards institution with possible widened governmental authority. Canada reported adoption by the Canadian Parliament of the proposal to
establish a national standards institution. It was recognized that both developments went some way towards improving the prospects for an international code, and it was pointed out that GATT work in this area would also serve a useful purpose in hastening the action proposed in the United States.

13. The Group undertook at the recent meeting a detailed examination of the elements for a multilateral instrument which had been evolved at the first meeting, and worked out the revised statement on that subject which appears in the remainder of this report. Several points require some interpretation which did not easily find a place in the text itself. These are given below as notes to the paragraphs indicated:

14. Ad paragraph 18(i). It was noted that a fundamental problem remained to be clarified, i.e., the definition of an "international standard". The adoption of a standard in the form of a Recommendation by an international standardization body could not, in the view of some, qualify it as "international" without reference to the degree of its application by the main trading countries. It was pointed out, for example, that some standards, evolved and recommended by international standardization bodies, had little relevance to economies outside Europe and thus were not "applicable". Others noted that there would be difficulty in any interpretation which could lead to complaints that a country which had given effect to an internationally recommended standard had failed to live up to its GATT obligation, as might be the consequence of allowing the reopening of questions supposedly settled in the competent technical body.

15. Ad paragraph 18(iv) and (iv)bis. Some delegations were of the opinion that, unless the right to participate at the outset in the elaboration of a harmonization scheme was ensured, rules might be formulated in such a way as to make it virtually impossible for third parties to "fulfil all the conditions in an appropriate manner". Other delegations were of the opinion that the right to participate at the outset in the elaboration of a harmonization scheme was unrealistic for practical reasons, and would set a dangerous precedent which would restrict the freedom of countries to discuss matters of international interest otherwise than multilaterally.
16. **Ad paragraph 20(v).** It was the Group's interpretation that developed countries were asked, by this paragraph, to take into account to the greatest extent possible, the standardization measures which were being applied by developing countries to ensure minimum quality through quality control, preshipment inspection of export products and the like.

17. **Ad paragraph 21(ii) (or (iii) if Version 2 is accepted for 21(i)).** It was the view of most members of the Group that the provisions designed to permit inspection of the goods of non-participants in multilateral quality assurance and certification schemes were intended to take care of the problems of developing countries or of small countries which might not have the technical capacity to carry out such inspection or might not find it financially possible to establish such facilities given the small scale of their production. The countries favouring this narrow application of the facility for equal treatment of the goods of non-participants took this view on the ground that the question of the openness of such multilateral arrangements should be resolved as a matter of principle in paragraph 18, and that all that was at issue here was to ease the trade possibilities of countries which could not in any event hope to become participants. One country did not share this view and considered that the practical method should also make possible certification of the goods of countries not participants "for legitimate reasons".

**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 standards organizations, in order to develop truly international standards.

(ii) Contracting parties should take all appropriate measures to implement (where applicable) /to the maximum extent possible/ the (uniform standards and) recommendations adopted by such specialized bodies.
(iii) Contracting parties should ensure, through the appropriate national bodies participating in the work of international organizations concerned with standardization, that due account is taken of the need to avoid the creation of trade barriers and to eliminate existing barriers.

(New) Contracting parties should seek to ensure that standards and regulations are not formulated or implemented so as to afford protection to domestic production.

(iv) All international schemes to harmonize standards should be open to all contracting parties, at the stage of elaboration. If for practical reasons the elaboration of such schemes started out with limited participation, it is important that universal participation remain possible, and that third parties not originally participating be invited to do so.

(iv)bis Contracting parties which are not members of existing 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 fulfill 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) Where applicable, standards and regulations should be based on performances rather than design.
Contracting parties should take all reasonable 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.

Each contracting party should establish a central point to maintain complete information on existing governmental standards and related regulations as well as those developed by nationally recognized private organizations and to answer reasonable enquiries concerning such standards or otherwise make information available to interested parties.

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, IEC), 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. It was desirable that the solution to these problems should be sought on an international basis except where technical problems required solutions which 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) Product inspection and testing requirements should not be formulated in such a way that imported products do not have effective 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

Version 1:

US II
B-3
and A-2

21. (i) In order to provide effective access for imported products, contracting parties could employ, individually or pursuant to reciprocal arrangements, inter alia, the following methods:

(a) Define testing requirements clearly and publicize them so as to enable foreign suppliers to ascertain whether their own testing requirements and products meet foreign testing requirements.

*Secretariat has rearranged slightly from last Group understandings. Underlining for variation from source text.
(b) Delegate control and testing operations in exporting countries to designated laboratories which would perform their task on the basis of the prescriptions and standards required by the importing country.

(c) Make facilities available at the point of importation to test products manufactured abroad to determine their equivalence to domestic standards.

(d) Where necessary, inspect foreign manufacturing facilities.

(e) Accept certificates of foreign governments or recognized foreign institutions that products meet the requirements of the importing country. (Institutions agréées)

(f) Where forms of control are similar, recognize the validity of certain tests carried out in the exporting country and limit testing of the imported product to those additional or different specifications which have not been tested in the exporting country.

(g) Accept another country's method of testing or controlling even if it is not identical to the national method, provided the other country's methods provide equivalent reliability guarantees.

(No section (ii) required)

Version 2:

21. (i) It was suggested that, inter alia, the following practical methods could be encouraged, for use by contracting parties in reciprocal arrangements:

(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 to those additional or different specifications which have not been tested in the exporting country.
(c) Harmonization of methods of testing and controlling between countries could be carried out by acceptance of another country's method, even if it is not identical, provided the other country's methods provided equivalent reliability guarantees.

(d) Countries could agree to accept documentation issued by governments or recognized institutions (institutions agréées) certifying that products meet the requirements of the exporting country or of the certifying institution.

(e) Countries could undertake to define testing requirements clearly and to publicize them so as to enable foreign suppliers to ascertain whether their own testing requirements and products met the foreign testing requirements.

(ii) Individual contracting parties could also, by unilateral action, reduce the barriers to trade resulting from standards requirements, by

(a) undertaking on their own initiative action of the kind outlined in the sub-sections of (i) above;

(b) making facilities available to test products manufactured abroad to determine their equivalence to domestic standards;

(c) where necessary, themselves undertaking to inspect foreign manufacturing facilities.

Paragraph 21(ii) (or (iii) if Version 2 of the proceeding is accepted)

Multilateral quality assurance and certification schemes could make provision for the testing and acceptance of products from countries which, for lack of technical capacity or on financial grounds, cannot participate 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.
Paragraph 21(ii) bis

Multilateral quality assurance and certification schemes could make provision for the testing and acceptance of products from countries which for legitimate reasons 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. Some of these members, while in favour of special consultation machinery, were of the view that any procedures set up 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 while marks of origin requirements were related to customs procedures, some aspects would be relevant to a consultation body on standards.

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. Other members of the Group held the view that Articles of the GATT, such as Articles VIII, XXII and XXIII provided sufficient basis for consultation and that Article XXIII already provided for a complaints procedure. Those Articles were applicable should any contracting party feel that its rights under the General Agreement were being impaired. They were therefore opposed to setting up special machinery for consultation on standards.

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 notification of significant changes or new regulations. 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.

27.(ii) However, most members were not in favour of a notification procedure. They pointed out that the administrative difficulties involved would not be commensurate with the results.

II. Packaging, labelling and marking regulations

28. It was recognized that packaging, labelling and marking requirements, many of which were designed to protect consumers, could also have adverse trade effects. Efforts to tackle these problems are presently under way in the OECD.
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 suggested that the desirability of incorporating packaging and labelling under the provisions relevant to standards be considered, and that the question of Marks of Origin be referred to Working Group 2. However, it was generally thought that some aspects of Marks of Origin remained relevant to the question of standardization.

31. 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.

32. 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.