1. Working Group 3 on Standards met from 28 February to 3 March, under the Chairmanship of Mr. P.T. Eastham (Canada). The Working Group had in front of it a note on the January meeting of the Drafting Group on Standards (Spec(72)3), containing the text of a proposed GATT instrument for preventing technical barriers to trade.¹

2. The present note, which has been prepared by the secretariat on its own responsibility, summarizes the main points raised in the Working Party's discussions.

3. The Chairman welcomed Poland as a member of the Working Group.

4. The Working Group discussed whether the text should take the form of a binding code, of a voluntary code, or of a set of principles, etc. (see Spec(72)3, paragraph 5(a)). Some members were in favour of a binding code. Other members took the view, in the light of the decisions of the Committee on Trade in Industrial Products, that work should be pursued to the stage of submitting ad referendum solutions to governments, it might have been expected that the Group should draw up a range of possible solutions for consideration. These delegations, however, agreed to work on a text in contractual form both for reasons of convenience and because such a text could serve as a basis for other types of approach, if other solutions were preferred.

5. The Working Group discussed whether, if the instrument were to take the form of a binding code, it would constitute an interpretation of the existing provisions ¹The meeting of Working Group 3 was immediately followed by a meeting of the Drafting Group, a note on which has been issued as Spec(72)18.
of the General Agreement, an amplification of these provisions, or an independent instrument (see Spec(72)3, paragraph 5(b)). The general view was that the present text was partly an interpretation of existing provisions and partly an amplification of the GATT, in that it would create certain new rights and obligations. Some delegations emphasized that even where new rights and obligations were created, they flowed naturally from the present provisions of the GATT and were aimed at the attainment of its objectives.

6. It was pointed out that an amendment of the General Agreement in accordance with the provisions of Article XXX would present practical difficulties. It was the general view that the main possibilities were that the instrument would be either completely independent of the General Agreement, or that, like the text annexed to Spec(72)3, the instrument would be independent in some respects (containing its own provisions for its entry into force) and dependent on the GATT in others (e.g. in the enforcement provisions and its final provisions). It was noted that a decision as to the eventual legal status of the instrument would be a matter for higher GATT bodies.

7. A question was raised concerning the relationship between obligations under the proposed Code and obligations under the GATT. The secretariat was asked to examine whether, in its opinion, contracting parties would have a legal obligation under the most-favoured-nation provisions of the GATT to apply the provisions of a code to all contracting parties even those which did not themselves accept the provisions of the code, (i) to the extent that these provisions interpret existing GATT obligations and (ii) to the extent that they go beyond existing GATT obligations.
8. The Working Party then discussed particular points arising from the text annexed to Spec(72)3. In connexion with paragraph 2 of the Preamble referring to safety, health, welfare and the protection of the environment, the question was raised whether the intention was to create an exception from the provisions of the instrument. Paragraph 4 of Chapter V dealing with enforcement was noted in this regard.

9. Some delegations said, in principle, all contracting parties should adhere to the Code and that all contracting parties should subscribe to the objectives in paragraph 3 of the Preamble. It was suggested that a recommendation to this effect might be included in the Working Group's report to the Committee on Trade in Industrial Products.

10. With regard to the inclusion of packaging, marking or labelling specifications in the definition of "standards" (II:1(a)), the decision of the CONTRACTING PARTIES at their twenty-seventh session that the Working Group would turn to questions relating to packaging and labelling as and when its present tasks permitted, was noted by the Working Group. Some delegations expressed the views that a standards code would deal with many, if not all, of the problems associated with packaging, marking and labelling.

11. Certain delegations expressed reservations over the definition of "voluntary standards" and the way in which "voluntary standards with quasi-mandatory effect" were dealt with in the definitions and throughout the text. These delegations expressed the view that problems in the "quasi-mandatory" area could, in practice, only be dealt with if they involved an action, or lack of action, by government bodies. The Drafting Group was instructed to examine the formulation of problems that had been raised.
12. It was suggested that the Drafting Group should attempt to find a more exact term than "regional standards organization" to cover all organizations the membership of which is not open to the relevant bodies in all adherents to the instrument. Some delegations considered that a differentiation should be made between groups with a fixed membership that had a recognized responsibility to deal with standards or quality assurance schemes, and ad hoc groupings of countries to deal with the standards of particular products.

13. Some delegations were of the view that there should be a precise definition of the term "protection". It was pointed out, however, that the term had long existed in Article III of the GATT without the need arising for a precise definition.

14. There were differences of opinion in respect of the obligations relating to the protective effect of standards in 1(a) of the Operative Provisions and elsewhere in the text. Summing up the discussion on this point the Chairman said that the Drafting Group would be faced with a difficult choice between a simple wording, such as included in Spec(72)3, or a longer wording dealing with both intent and effect and perhaps including some qualification to the obligation on effect.

15. Certain delegations reserved their position regarding the inclusion, in paragraph 1(c) of the Operative Provisions regarding participation in international standards organizations, of the qualification restricting this obligation to significant producers or consumers of the product in question.

16. Some delegations were not in favour of the inclusion of the qualification "where practicable and appropriate" to the obligation to specify standards in terms of performance rather than design in paragraph 1(d), 3(f) and 5(f).
17. Several points were raised regarding obligations relating to regional standards organizations in paragraphs 1(j) and 1(k) of the Operative Provisions. It was suggested that the "relevant provisions" be precisely identified in 1(j)(ii). Commenting on questions, several delegations said that as they read the wording of paragraphs 1(j) and 1(k) the fact that individual adherents were members of regional standards organizations would not permit them to evade any of their obligations, since, if the regional organization did not fulfil them on their behalf, the full obligation would revert to the individual adherent. The Working Group instructed the Drafting Group to re-examine these paragraphs and the corresponding paragraphs elsewhere in the text, particularly with a view to ensuring that there was an equitable equivalence between obligations on individual adherents and on adherents as members of regional organizations.

18. It was noted that Section 2 and the other Sections would eventually have to be set out in full so that they could be examined in detail.

19. It was suggested that the level of obligation in Section 3(d) of the Operative Provisions should be raised to the level in 3(a). Some delegations said that, while it was, in general, appropriate to use the "best efforts" formula with respect to voluntary standards prepared by central government bodies since a consensus procedure was used, they would be prepared to accept a higher level of obligation in 3(a) in view of the importance of this provision. Certain delegations enquired as to which national standards bodies would fall under Section 3. These delegations said that the equivalence of treatment among national standards bodies of different countries was important for them and said that one way of dealing with the matter might ultimately be the merging of Sections 3 and 5.
20. The Drafting Group was asked to examine Section 6, relating to the preparation and use of voluntary standards with quasi-mandatory effect, in the light of the comments made on the practicability of dealing with problems in this area.

21. Certain delegations expressed doubts in regard to the principle of a time-period for the modification of existing standards in Section 7 and elsewhere in the text. These delegations were of the view, inter alia, that individual adherents might not even be aware that one of their standards afforded protection to domestic industry until a question was raised with them by other adherents. Thus, a pre-determined time-period would be impractical. Some delegations said that, if a time-period were adopted, it might need to be longer for quality assurance systems than for standards. Other delegations supported the retention of the concept of a fixed time-period.

22. The Working Group was in favour of deleting Section 8(e) and there was a body of opinion in favour of deleting 8(d). A number of other detailed suggestions relating to Section 8 were referred to the Drafting Group.

23. The Working Group then examined Sections 5, 10 and 11 dealing with quality assurance. It was suggested that the Drafting Group should make it plain that an adherent would not have a once for all choice among the different routes laid down in these Sections. It was also suggested that it was necessary to establish an equitable equivalence between the obligations relating to individual adherents and to regional groups. The Working Group also examined a number of specific points relating to Sections 9, 10 and 11 and referred some suggestions to the Drafting Group.
24. Several points were raised with regard to Section 11 dealing with multilateral systems for assuring conformity to mandatory standards of which central government bodies are members. It was understood that "the relevant obligations of membership" referred to in Section 11(b) should not be such as artificially to debar other countries from membership.

25. During discussion of Section 11(f), the secretariat was asked whether, in its opinion, under the most-favoured-nation provisions of the GATT, contracting parties would have a legal obligation to accept assurances of conformity to standards given by quality assurance bodies in other participants in respect of the products of a contracting party which (i) was able to join an international or regional system but did not do so; or (ii) was unable to join.

26. The Working Party also discussed Section 11(g)(iii) and 11(h) at some length, the main problems being connected with the meaning of the word "operational" in 11(g)(iii) and the qualification in Section 11(h). The Working Party agreed that the Drafting Group should examine these questions in detail having regard to what would be an appropriate equivalence between the obligations relating to individual adherents and to regional groups.

27. A number of specific suggestions regarding the wording of Section 21 relating to assistance to other contracting parties were referred to the Drafting Group.

28. The Working Party turned to Chapters IV, V and VI of the proposed instrument dealing with the establishment of a Committee, Enforcement and Final Provisions.

29. With regard to Chapter IV, some delegations suggested, inter alia, that the functions of the Committee might change if the status of the instrument changed. Some delegations suggested that a GATT committee would not normally take decisions
by majority vote but would make recommendations to a higher authority. Some delegations suggested that a Committee might decide its own voting procedure.

30. Several changes were suggested in Chapters V and VI. Some delegations favoured the deletion of Section 3(c) and 3(d). Other delegations favoured the deletion of 3(d). Still other delegations said that the difficulty of drafting these provisions was related to the question of the relationship between the instrument and the General Agreement. These delegations emphasized, however, that the Code should contain effective enforcement provisions. The withdrawal provision in Section 6 of Chapter VI and the consequences of a withdrawal of a key country were also discussed in this regard. It was decided that it would be premature for the Drafting Group to take up Chapters IV, V and VI at this stage.

31. The Working Group noted that at a later stage the Agriculture Committee would wish to determine the applicability of the text to agricultural products. The Chairman suggested that each delegation should ensure effective liaison with ministries of agriculture to ensure as far as possible that problems were avoided later.

32. The Chairman was authorized to contact the Secretary Generals of the ISO and the IEC with a view to getting their comments on the effects that the implementation of the instrument would have on the work of their organizations.

33. The Working Group agreed provisionally that its next meeting would be held in the week of 15 May 1972. It was suggested that the best way of proceeding might be to have both a short meeting of the Working Group and a meeting of the Drafting Group in the course of the week.