1. The Working Group met from 15-19 May 1972 under the Chairmanship of Mr. P.T. Eastham (Canada). The present note, which has been prepared by the secretariat on its own responsibility, summarizes the main points raised in the meeting.

2. The Working Group had before it a note (Spec(72)18) from the March meeting of the Drafting Group, to which was annexed a revised text of a Proposed GATT Code of Conduct for Preventing Technical Barriers to Trade. The Chairman circulated copies of comments which he had received from the Secretary General of the ISO and IEC on the effects that the implementation of the instrument would have for the work of these organizations.

3. Responding to questions asked at the last meeting, the representative of the secretariat made a preliminary statement on the relationship between the provisions of the proposed instrument and the most-favoured-nation provisions of the GATT. In its opinion, subject to the exceptions provided for elsewhere in the General Agreement e.g. in Articles XX and XXI, the provisions of Article I would apply to mandatory standards and to procedures for determining whether products conform to mandatory standards. Contracting parties would, therefore, have an obligation to accord advantages, favours, privileges and immunities granted to one country in respect of these matters to any contracting parties without requiring reciprocity. Other reasonable conditions, i.e. those which did not artificially debar certain contracting parties from enjoying the advantage in question, could, however, be attached to the granting of such advantages. After a short discussion it was agreed that some time would be necessary for reflection on this matter.

4. The Working Group then examined the points set out in paragraph 5 of Spec(72)18.

(a) The obligations relating to the protective effect of standards and quality assurance systems in 1(a) of the operative provisions and elsewhere in the Code.

5. Discussion centred on the last phrase of the text in Spec(72)18, which provided that "neither the standards themselves, nor the way in which they are applied, constitute an unnecessary obstacle to trade". It was suggested that this should
relate not to obstacles to trade but to protection to domestic production, i.e.
by inserting the phrase "nor are applied to afford such protection". It was
agreed that there would be an explanatory note giving more precision to the
phrase "to afford protection" and that in this connexion the secretariat would
examine the history of the phrase in Article III of the GATT. The Drafting Group
would examine the applicability of this phrase in the corresponding provisions
elsewhere in the text. It was also decided that discussion of the relationship
between 1(a) and Articles XX and XXI of the GATT would be postponed until after
a document had been finalized, when the general question of whether any provision
in the Code modified the rights and obligations under the General Agreement would
be taken up.

(b) The provisions of 11(f), 11(g), 12(g)(iii) and 12(h) regarding the
participation in quality assurance systems of individual adherents and of
regional organizations.

6. It was suggested that the time that systems become operational was for
instance when a country or group of countries begins to apply a mark. The main
problems in this area related to the qualifications in 11(g) and 12(h). Some
delocations considered that these escape clauses should be retained only if the
difficulties which would justify the limitation of participation in the initial
stages could be specified and written into the text. The Working Group heard,
inter alia, a statement by the expert from the EFTA concerning the practical
experience of that organization in this connexion. The discussion on this matter
did not, however, lead to the formulation of any precise conditions which an
adherent would have to meet before it used the escape clause. It was suggested
that if those could not be specified it might be appropriate to delete the escape
clauses in Sections 11 and 12 and to provide for a waiver procedure so that each
case could be judged on its merits when the facts were available rather than
leaving a decision in the hands of the adherent in question. Some delegations
felt that there were differences of substance between Sections 11(f) and 12(g)(iii)
even though the word "participation" was used in both since the former gave foreign
producers the possibility of having their products certified while the latter
gave adherents the possibility of becoming members of multilateral systems. These
delocations consequently felt that the way in which the escape clause was dealt with
might be different in the two cases. Some delegations suggested that it might
be necessary to draw a distinction between systems involving the mutual recognition
of conformity to standards and arrangements for conditional recognition.

(c) Whether the commitment (particularly in respect of "interesting countries")
in 12(e) can, or should be, included in its present form.

7. Some delegations said that it would be necessary to include a counterpart
to Section 11(f) in Section 12 and suggested that Section 12(e) might be re-worded
so as to cover the whole problem of how to deal with the products of countries
which were not members of the system and assurances given to these products under
multinational systems.
(d) The level of obligation in relation to national standards bodies and quality assurance bodies, which are central government bodies as defined in the Code.

8. It was pointed out that governments could not undertake a direct obligation when their role was that of a secretariat and a consensus procedure applied. It was agreed that the Drafting Group should re-examine the relevant parts of the text, including the definitions, amalgamating Sections 3 and 5 providing for adherents to "use their best efforts" with respect to the preparation of voluntary standards whether they are prepared by a central government body or by a voluntary standards body. Some delegations said that a distinction should be made between bodies over which the government had control and those over which they did not.

(e) The level of obligation in 3(a) and 3(d).

9. It was suggested that the problem with respect to standards might be solved in the amalgamation of Sections 3 and 5 as suggested above.

(f) The limitation of the obligations in 1(c), 3(b) and 5(b) to significant producers and consumers.

10. While it was generally agreed that there should be some limitation to the obligations on adherents to play a full part in the preparation of standards by international standards organizations (in 1(c), 3(b) and 5(b)), certain delegations could not accept that this limitation be on the basis of whether countries were significant producers or consumers of the product in question. It was agreed to re-phrase the limitation in terms of whether the product was or was likely to be the subject of a mandatory standard, and that the Drafting Group should seek the appropriate wording for the corresponding obligations in Sections 3 and 5, with a view to amending them in such a way that, while adherents would not be obliged to participate in all the activities of international standards organizations, failure to participate in any activity would not relieve an adherent of the obligations to harmonize national standards with international standards.

(g) The level of obligation and the qualifications attached to the provisions of 1(d), 3(f) and 5(f).

11. It was agreed that the word "practicable" could be deleted on the understanding that this would be included in the term "appropriate".

(h) The timing of the entry into force of the various provisions of the instrument.

(i) Whether and in what manner the instrument should apply to existing standards and quality assurance systems (e.g. Sections 7, 11(j) and 25).

12. The Working Group discussed Sections 7 and 25, relating to the protective effect of existing standards and quality assurance bodies. Some delegations supported the present text, which provides a two-year period for bringing these
into conformity with the provisions of the Code. Other delegations favoured a longer period. Still other delegations doubted whether a fixed time period should be included in the text at all since, inter alia, it would imply that a complaint against a flagrantly protective standard could not be brought until the time period had expired. There was widespread support for an obligation to bring existing measures into conformity with the provisions of the instrument as rapidly as possible since this would enable consultations to be engaged from the outset.

13. It was suggested that Section 11(j) should be applied retroactively and that it, together with a similar provision relating to Section 12, should be incorporated in the revised Section 25. It was pointed out that the provisions relating to Sections 11 and 12 would not be identical because the situations dealt with in these two Sections were not the same in all respects.

14. The Working Group then discussed Section 5 of the Final Provisions. This provision dealt with general laws, regulations and administrative procedures and not with individual standards etc. One delegation proposed that the time period should be extended from two to five years. Other delegations considered that adherents should take immediate steps to bring their laws into conformity with the requirements of the Code. It was suggested that the paragraph should be amended to provide that all adherents should start to take action immediately, but that a two-year time-limit should be retained with the provision that the Committee could grant an extension under specified conditions.

(j) The treatment of "quasi-mandatory standards" e.g. Section 6.

15. Some delegations said that the definitions of "standards which have quasi-mandatory effect" and "quasi-regulatory body" should be re-examined and a list of quasi-regulatory bodies drawn up. These delegations said that the provisions of the instrument in this area should relate only to cases where the quasi-mandatory character was acquired through direct or indirect interference of public bodies. Other delegations agreed that this area should not include voluntary standards which are widely accepted in the market place simply because they are good standards. Some delegations doubted whether it was necessary to deal separately in the instrument either with standards which have quasi-mandatory effects or with quasi-regulatory bodies because there was little or no practical difference between the level of obligation applied to these ("use all reasonable means") and that applied to the generality of voluntary standards ("use best efforts"). The obligation to use best efforts was not a static concept and would be more effective if the government was able to interfere directly or indirectly. The use of two levels of obligation rather than three as at present would also lead to a considerable simplification of the text - Sections 3, 4, 5 and 6 might, for instance, be amalgamated. Some delegations, while agreeing that the "use all reasonable means" level of obligation could be dropped, pointed out that it would be difficult to amalgamate these Sections since there were differences among them not only in the level of obligation but in the obligations themselves. It was suggested that the relevant parts of the instrument should be examined in the light of the following guidelines; that the quasi-regulatory area should be precisely defined, that there should be only two levels of obligation and that
the obligations themselves should resemble those relating to the mandatory rather than the voluntary area. It was also decided to delete the note following the present definition of a "standard which has a quasi-mandatory effect".

(k) Whether the provisions of 1(h) and elsewhere should apply exclusively to actions by central government bodies in international standards bodies or whether they could also apply to actions in national committees.

16. The Working Group examined this point together with the comments made on it to the Chairman by the ISO and IEC. After some discussion there was a general feeling that some form of escape clause was necessary particularly since governments could not agree to be bound to accept decisions of voluntary bodies. Some delegations preferred to maintain the existing escape clause in 1(h); this might lead to more negative votes in ISO and IEC but the more serious attitude to the vote which this implied would, in fact, strengthen the two organizations. The provisions of 1(h) would apply to actions by central government bodies in national committees as well as in international standards bodies and the question was raised whether these actions should be a matter of public record. Other delegations preferred to delete 1(h) and rely on the word "appropriate" in 1(b) since an adherent which relied on the qualifying adjective in 1(b) in order to avoid the adoption of an international standard should be prepared to justify this in the Committee which would be established. It was agreed that the various possible ways of drafting the escape clause in Section 1 and appropriate ways of dealing with the problem in Sections 3 and 5 should be examined.

(1) Whether the assistance referred to in 5(b) could include financial assistance and the implications of this.

17. It was agreed that an appropriate formulation should be sought when Sections 3 and 5 were redrafted, perhaps replacing "assist" by "encourage" as this would not necessarily imply financial assistance.

Other points

18. It was pointed out that in the case of the Community, the provisions relating to individual adherents might apply rather than those relating to regional groupings; this would also depend on the nature of the instrument.

19. It was agreed that the obligations regarding prior publication in the mandatory and voluntary areas should be re-examined.

20. It was agreed that the definitions and, in particular, the suggestions made on these by the ISO and IEC should be reverted to at a later stage.

General statements

21. The representative of a developing country speaking in his personal capacity said that developing countries would accept the obligations of the Code only if it gave them effective benefits and that it would be necessary to
insert provisions to take their special position into account. The provisions dealing with prior publication should contain an additional obligation to notify the Committee and the secretariat which would inform developing countries which had an actual or potential interest in the product in question. Additional obligations were also required to disseminate information to developing countries regarding regional standards organizations and national or regional quality assurance systems of interest to them and to assist the participation of developing countries. He was not asking for different treatment for developing countries since it was recognized that technical competence and mutual confidence were necessary but the Code should contain positive provisions to build up technical competence through the organization of seminars etc. He reserved the right of his government to make additional comments.

22. It was agreed that an attempt would be made to include such provisions in the next draft of the instrument.

23. Other delegations from developing countries welcomed the progress made in the Working Group and said that special emphasis should be placed on the facilitation of the trade of developing countries. They associated themselves with the suggestions for additional commitments noted above.

Future work

24. The Chairman was invited to hold further consultations with the Secretary Generals of the ISO and IEC if he felt that this would be useful.

25. The Chairman was also asked to make an oral report to the Committee on Trade in Industrial Products on which the Committee could base its report to the CONTRACTING PARTIES.

26. There was general agreement in the Working Group that the present text should be simplified without affecting matters of real substance. The Working Group requested Mr. G.T. Rogers (United Kingdom) in his personal capacity, together with the secretariat, to prepare a simplified draft of the complete instrument for the benefit of the Drafting Group taking into account the discussions at the present meeting. Any proposals for drafting changes or suggestions as to how the text might be simplified should be sent to the secretariat by the second week in June.

27. It was agreed that the Drafting Group should meet to examine the new text from 26 September for a maximum of two weeks. Working Group 3 would hold its next meeting from 28 November to 8 December; a meeting of the Drafting Group would probably be held in the latter part of this period.

28. It was also agreed that the objective was to complete the work in Working Group 3 by the end of 1972 so as to present a final report to the Committee on Trade in Industrial Products. It was recognized, however, that a limited number of problems might remain for which the Group would not be able to find a common presentation.