

GENERAL AGREEMENT ON TARIFFS AND TRADE

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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 and from 5 to 10 November 1970 under the chairmanship of Mr. S. Kadota (Japan). A separate Note on the November meeting is annexed.

2. The following organizations were 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, X, 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, 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.

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.

4. 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 the uniform standards and recommendations adopted by specialized bodies.

(ii)bis Contracting parties should take all appropriate measures to implement the uniform standards and recommendations adopted by 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.

(iv) Contracting parties should seek to ensure that standards and regulations are not formulated or implemented with a view to afford protection to domestic production.

(v) All international schemes to harmonize standards should be open to all contracting parties, at the stage of formulation. If for practical reasons the formulation 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.

(v) 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 fulfil all the conditions in an appropriate manner.

(vi) 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.

(vi) 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.

(vii) Where applicable, standards and regulations should be based on performances rather than design.

(viii) 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.

Practical methods

19. (i) 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 (e.g. ISO, IEC), national standards or standards which have been harmonized between a number of countries.
- (ii) 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.

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 by the exporter if necessary.
- (iii) Product inspection and testing requirements should be formulated in such a way that imported products are not prevented from gaining 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.

21. Practical methods

(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.

(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 designated points 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.

(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.

(ii) 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.

(ii)bis Multilateral quality assurance and certification schemes could make provision for the testing and acceptance of products from countries which 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. 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 and were already covered by Article IX, 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. These 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, which would constitute an important precedent in regard to other fields.

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 proposed that packaging and labelling be covered by the provisions relevant to standards and that the question of marks of origin required by customs authorities be referred to Working Group 2. However, it was generally recognized that some aspects of marking requirements 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 marks of origin. One delegation suggested that this Recommendation be put on a contractual basis.

Annex

NOTE BY THE SECRETARIAT
ON THE 5-10 NOVEMBER MEETING OF WORKING GROUP 3

1. The Working Group had before it the following documents: Spec(70)62 - report of the Group's May-June 1970 meeting; Spec(70)122 - a proposal by the United States containing elements of a possible GATT code on standardization, and Spec(70)116 - a note by the United Kingdom delegation introducing a paper originally prepared for the ECE (STAND/Working Paper 8) on the problems connected with standards.
2. At the outset of the meeting the Group was informed of recent developments in the United States and Canada regarding the steps being taken in each case to enlarge the rôle of the central government in the formulation and enforcement of standards beyond the fields of health and safety. Recalling the points made at the previous meeting on the differences in government responsibility in the field of standards and more specifically, the apparent inability of the United States and some other countries to comply with requirements of multilateral quality assurance and certification schemes, the representative of the United States reported that the American National Standards Institute (ANSI) which represented virtually all of United States industry concerned with standards had recently established an Ad Hoc Committee on Government-Industry Relations. This Committee had met in New York in November to define the relationship of government and private industry in the standards area. The objective was establishment of a quasi-public standards institute in the United States. The function of the ANSI Group was the result of endorsement in September 1970 by the ANSI Board of Directors of a recommendation that it is both necessary and desirable that the Federal Government participate more actively in standards and particularly at the policy level in ANSI. Included in the ad hoc group membership were : Electronic Industries Association (EIA), National Electrical Manufacturers Association (NEMA), Automobile Manufacturers Association (AMA), Business Equipment Manufacturers Association (BEMA), American Petroleum Institute (API), American Society of Testing Materials (ASTM), American Society of Mechanical Engineers (ASME), Society of Automotive Engineers (SAE). In the electronics field, the Electronics Industries Association (EIA) had recommended that United States electronic industries participate in an international certification plan and that a national body composed of government and industry be designated as the mechanism to implement United States participation. On the Federal Government side, the matter of the rôle of the Government in the field of standardization was being discussed in the Inter-Agency Committee on Standards Policy, which represented all federal agencies concerned with standards. (The full text of the opening statement made by the United States representative is reproduced in Spec(70)124.)
3. The Working Group was informed that legislation creating a Standards Council of Canada had recently been enacted by the Canadian Parliament. The object of the Council was, inter alia, to promote voluntary standardization in relation to construction, manufacture, production, quality, performance, safety of building, structures, manufactured products and other goods, as well as to facilitate domestic and international trade and to further international co-operation in the field of standards.

4. The representative of the EEC, after having again underlined the fundamental distinction to be made between standards and regulations, stated that harmonization schemes developed within the framework of the Community were to be considered as internal schemes and not multilateral schemes, such harmonization being the logical consequence of the establishment of an integrated common market. In addition, he explained some of the methods employed within the Community and the advantages in terms of keeping the legislative complications down to a minimum. He promised to circulate a document specifying in more detail the methods he was referring to.

5. The Working Group examined in detail the elements evolved at the May-June meeting on principles and practical methods for harmonization and enforcement of standards, and on consultation machinery (paragraphs 18-31 of Spec(70)62). The Group also examined the elements contained in the proposal by the United States (Spec(70)122). The revised text arrived at appears in paragraphs 18-32 of the present report.

6. The Working Group did not discuss paragraphs 1-17 of its May-June report (Spec(70)62), but decided to include them in the present report, unaltered and with the same numbering.

7. The Working Group agreed that further work on standardization should be done by the contracting parties; there was wide support for an effort to develop a code on this subject, but the question of the character of such an instrument was left open. Others felt that for several reasons paragraph 13 of Spec(70)62 reflected the present situation sufficiently at this stage. One member of the Group was of the view that an instrument 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.

8. It was emphasized that care should be taken to co-ordinate work with the work of other intergovernmental organizations, such as the ECE and EFTA, so as to avoid duplication in the areas of work which it seemed desirable for contracting parties to pursue. It was pointed out that this question was covered in paragraph 23 of the Note submitted by the United Kingdom (Spec(70)116) where it was suggested that the GATT was the appropriate body to consider a code or set of obligations.

9. It was suggested by some members of the Working Group that further work on standardization could be facilitated by asking the secretariat, at the appropriate time, to assemble the elements of a draft code on standardization.