DRAFT GATT CODE OF CONDUCT REGARDING STANDARDS
WHICH MAY ACT AS TECHNICAL BARRIERS TO TRADE

I. Note by the United Kingdom Delegation

1. The attached first draft of the proposed "Code of Conduct" has been prepared by the United Kingdom delegation as requested by the Working Group at their last meeting on 9 to 12 March 1971 and in the light of discussion at that meeting. It does not necessarily represent the United Kingdom's point of view: indeed, it could not do so until some of the underlying points of principle have been settled. It will doubtless require amendment (and even, perhaps, substantial rewriting) in the light of further consideration by the Working Group. But it is offered as a basis for discussion by the Group of Experts, at their meeting on 25 to 27 May.

2. The Working Group have yet to decide what precise status they should recommend for this "Code of Conduct". Some provisions are likely to be suitable for framing as firm undertakings - for example, the requirement that regulations should be formulated and enforced in such a way that they do not discriminate against imports. Other provisions can be no more than general guidelines. An example of this is the proposal that governments should encourage the voluntary standards bodies operating under their jurisdiction to play a full part in the preparation of international standards.

3. The present draft attempts to cover all the significant points which have so far been brought up in the Working Group's discussions. As a result, it is somewhat longer than the United Kingdom would prefer.
Its length might be reduced by restricting it in the first instance to those points which:

(a) relate to substantial actual or potential barriers to trade and

(b) are susceptible of precise definition at this stage.

It would, of course, always be possible to amend the code, or to add to it, in the light of further examination of the complex problems which confront us in this field and of experience.

4. The Working Group has already given some consideration to the difference between the undertakings which governments can give in relation to

(a) mandatory standards prepared and enforced by government agencies or by organizations subject to their control; and

(b) mandatory or quasi-mandatory standards prepared or enforced by bodies which are not subject to government control.

Not only are there across-the-board differences between highly centralized systems and those in which responsibility for these matters is decentralized: there are also variations within centralized or decentralized systems in relation to particular products. The attached draft is intended to reflect the discussion on this topic so far.

5. In this context, however, further consideration needs to be given to the special position of customs unions in relation to

(a) the formulation of mandatory standards; and

(b) the proposal that all multilateral schemes for ensuring conformity to standards should be "open-ended".
6. A particularly important but difficult question regarding the balance of obligations and benefits arises in relation to the provisions regarding multilateral schemes in paragraph 8 of the draft Code. Is it desirable to permit a country to use the provisions of paragraph 8(g)(V) to claim admission to a scheme which it considers will be to its national advantage, if at the same time it refrains from joining another scheme for which it is eligible but which it considers will be to its national disadvantage?

7. These policy questions go beyond the task that the Group of Experts has been asked to undertake. But the answers to them will have important effects upon the drafting. The attached draft does not attempt to provide those answers - but rather to provide a starting point for considering both the policy questions and the way in which the Working Group's intentions can best be expressed.
II. Definitions and Explanatory Notes

1. **USE OF THE TERM "STANDARD"**

The attached draft is concerned only with product standards. In it, the term "standard" is used to mean any specification which lays down levels of performance, dimensions, or other characteristics of a product, for general adoption. It includes, where appropriate, testing, packaging or marking requirements. Except where otherwise stated, the term is not intended to be confined to industrial products. Codes of practice are also included, to the extent that they affect products rather than processes.

2. **TYPES OF STANDARD**

The following types of standard are distinguished:

(a) **Voluntary**

The essential feature of voluntary standards is that there is no obligation, either legal or de facto, to adhere to them. The great majority of product standards fall into this category. It is not, however, necessary for such standards to be prepared by "voluntary" standards bodies; nor are all standards produced by "voluntary" standards bodies voluntary. Some of them may be so generally accepted by purchasers or suppliers that products which do not comply with the standard stand substantially less chance of being accepted.
(b) **Mandatory**

By this is meant any standard which is imposed by an authority, constitutionally endowed with the necessary power, through regulations or administrative rules to the exclusion of all other specifications for the product (or aspects of that product).

(c) **Legally approved**

This term is used to mean that the standard is deemed to satisfy legal requirements but not to the exclusion of other standards that meet the fundamental requirements of the legislation. The degree to which legally approved standards are in practice mandatory depends on the difficulty of the procedures which non-standard items are required to undergo.

(d) **Quasi-mandatory**

This term is used to describe standards formulated by bodies which are not constitutionally endowed with powers of compulsion but whose influence on the market is such that their standards have mandatory force de facto. Such bodies may be typically public purchasing agencies, associations of insurance companies, companies which dominate the production or use of the product concerned in the local market, professional societies, institutions which control an established quality mark etc.

3. **TYPES OF ORGANIZATIONS WHICH PREPARE NATIONAL STANDARDS**

Standards for use in a particular country may be prepared by one or more of the following organizations:
(a) **Central government**

This includes ministries, departments and other executive organs of the central government and other bodies to which authority is expressly delegated by the central government.

(b) **Local government**

This term is used to include the governments of States under a federal or confederal system, and other regional, local or other public authorities whose actions have the force of law in particular fields.

(c) **Regulatory bodies**

This term is used to embrace both (a) and (b) above. Such bodies may give voluntary standards mandatory effect.

(d) **Quasi-regulatory bodies**

These are bodies such as professional societies and groups of insurance companies which have no overt powers to issue mandatory standards but whose standards are, in practice, accepted as having mandatory effect either because compliance with such standards is a condition of the issue of insurance policies or because of market domination or for any other reason.

(e) **Voluntary standards bodies**

These include:

1. **National standards bodies**

This expression is used to describe the nationally recognized standards bodies such as AFNOR, ANSI and DNA. The standards prepared by such bodies have no mandatory effect although they may be rendered mandatory or quasi-mandatory by the action of regulatory bodies or by custom.
(2) Other voluntary standards bodies

This refers to bodies which formulate standards but which are not officially recognized as the national body for this purpose. They include associations of manufacturers or users. The extent to which their standards are adopted varies widely.

4. TYPES OF ORGANIZATIONS WHICH PREPARE INTERNATIONAL STANDARDS

International standards are variously described as "standards", "recommendations" and "unification documents". They may be prepared by:

(a) Groups of representatives from central governments and other regulatory bodies, meeting in organizations such as the Codex Alimentarius Commission, OIML and the Specialist Sub-Committees of ECE and OECD;

(b) groups of representatives of quasi-regulatory bodies, meeting in international organizations such as the International Gas Union; or

(c) groups of representatives of the national standards bodies, meeting in bodies such as ISO, IEC, COPANT, CMEA and CEN.

International standards prepared by the groups described in (a) and (b) above are not necessarily made mandatory or quasi-mandatory in the participating countries.

5. TYPES OF ORGANIZATIONS WHICH DETERMINE COMPLIANCE WITH STANDARDS AND ENFORCE THEM

(a) Determination of compliance with mandatory standards

The question whether or not a product complies with a given standard may be determined:

(1) By the regulatory body itself; or
(2) by some other organization which it regards as technically competent and reliable, and to which it is therefore willing to delegate responsibility.

(b) **Enforcement of mandatory standards**

Mandatory standards may be enforced by the body which prepared them or by some other comparable body, or by judicial process.

(c) **Enforcement of quasi-mandatory standards**

Quasi-mandatory standards may be enforced by the bodies which prepare them (e.g. through the refusal of insurance cover) or by other bodies which regard compliance with those standards as necessary to meet their requirements (e.g. electricity supply organizations which may refuse to connect consumers unless their installations or appliances conform with the standard).

(d) **Determination of compliance with voluntary standards**

For the most part, compliance with voluntary standards is entirely a matter between the producer (or, in the case of agricultural products, normally the packer) and the customer. No question of intervention by third parties arises in such cases and failure to comply with the standard is normally dealt with as a breach of contract. Where, however, there is a wilful misdescription of the goods supplied, there may be a case for criminal action under the national laws for the prevention of fraud. In a small proportion of cases, however, compliance with voluntary standards may be attested by some independent body. This is sometimes the same body as formulated the standard in question.
(e) **Enforcement of voluntary standards**

The essence of voluntary standards is that there is no obligation to comply with them. Only where compliance with the voluntary standards is falsely claimed does any question of legal process arise.

However, a number of voluntary standards are made mandatory or quasi-mandatory by the actions of regulatory or quasi-regulatory bodies, or by other circumstances. Such standards become, in effect, mandatory or quasi-mandatory. Determination of compliance, and enforcement, then normally proceeds as in (a), (b) and (c) above.
III. First Rough Draft for Consideration by the Group of Experts on 25-27 May 1971

1. PREPARATION OF VOLUNTARY STANDARDS

(a) Contracting parties should ensure that voluntary standards formulated by government agencies and by organizations subject to their control are not such as to afford protection to domestic production.

(b) Contracting parties should use all means open to them to ensure that voluntary standards formulated by other bodies under their jurisdiction are not such as to afford protection to domestic production.

(c) Contracting parties which have a substantial interest either as producers or consumers of a product, should make a full contribution towards intergovernmental discussions aimed at formulating an international voluntary standard for that product.

(d) Contracting parties should use their best endeavours to ensure that voluntary standards bodies under their jurisdiction co-operate fully in the formulation of voluntary international standards for products of which their country is a substantial producer or consumer.

(e) Contracting parties should use their best endeavours to ensure that where, in order to expedite progress, voluntary international standards are formulated by restricted groups of countries:

   (i) full account is taken of any reasonable representations regarding the content of such proposed standard as may be made by any other country which has a substantial interest in the
production or consumption of the product to which the proposed standard relates; and

(ii) any resulting standard is forthwith made available to the appropriate standards body or other organization having worldwide membership, with a view to its serving as a basis for a fully international standard.

(f) Contracting parties should use their best efforts to ensure that any voluntary standard, whether national or international, for a product which is likely to become subject to a mandatory standard, is suitable to serve as a basis for such mandatory standard.

(g) Contracting parties should use their best efforts to ensure that any voluntary standard, whether national or international, for a product which is, or is likely to be, the subject of substantial purchases by public bodies is suitable to serve as a basis for such purchases.

(h) When practicable, voluntary standards should be specified in terms of performance rather than design. (There are, however, major exceptions to this, notably in agricultural products and pharmaceuticals.)

2. PREPARATION OF MANDATORY STANDARDS BY ORGANS OF CENTRAL GOVERNMENT OR BY ORGANIZATIONS SUBJECT TO THEIR CONTROL

(a) Contracting parties should ensure that mandatory standards are not such as to afford protection to domestic producers.

(b) Where appropriate voluntary standards exist, or can be formulated without undue delay, and mandatory standards are required, contracting parties should use them, or the relevant parts of them, as a basis for the mandatory standards (whether by "reference to standards" or by other means).
(c) Contracting parties should strive to ensure that their mandatory standards are in conformity with those of other contracting parties and should co-operate to that end in the intergovernmental bodies responsible for formulating standards.

(d) If the national standard differs from an international standard for the same product, producers should be allowed to comply either with the national standard or with the international standard unless there are compelling reasons to the contrary (i.e. the so-called "optional solution").

(e) Wherever appropriate, mandatory standards should be specified in terms of performance rather than design. (There are, however, major exceptions to this, notably in agricultural products and pharmaceuticals.)

(f) Where mandatory standards are not based upon existing international standards, contracting parties should (except where urgent problems of safety or health render it impracticable) give adequate notice of the mandatory standards they propose to adopt and should allow reasonable time for comment by other contracting parties or by interests likely to be affected. They should also take full account of such comments as they may receive.

(g) Except where urgent problems of public safety or health render it impracticable, contracting parties should allow a reasonable interval to elapse before bringing new mandatory standards, or revisions of existing mandatory standards, into force, in order to allow time for producers in exporting countries to adapt their products or methods of production to the requirements of the importing country.
(h) Contracting parties should use their best endeavours to ensure that where, in order to expedite progress, mandatory international standards are formulated by restricted groups of countries:

(i) full account is taken of any reasonable representations regarding the content of such proposed standard as may be made by any other country which has a substantial interest in the production or consumption of the product to which the proposed standard relates; and

(ii) any resulting standard is forthwith made available to the appropriate organization having world-wide membership, with a view to its serving as a basis for a fully international standard.

3. PREPARATION OF MANDATORY OR QUASI-MANDATORY STANDARDS BY BODIES OTHER THAN THE ORGANS OF CENTRAL GOVERNMENT AND ORGANIZATIONS SUBJECT TO THEIR CONTROL

(a) Contracting parties should use all measures open to them to ensure that where mandatory or quasi-mandatory standards are formulated by local government bodies and by other bodies not being the organs of central governments or organizations subject to their control, the provisions of Section 2 above are adopted.

Note: This is an important but complicated and difficult area. It may be necessary to break it down and go into detail instead of referring to the previous section as in the draft above.
4. ADOPTION AND USE OF INTERNATIONAL STANDARDS

(a) Where appropriate international standards exist, or can be formulated without undue delay, and mandatory standards are required, contracting parties should use them, or the relevant parts of them, as a basis for the mandatory standards (whether by "reference to standards" or by other means).

(b) Contracting parties should use all means open to them to ensure that, where appropriate international standards exist or where they can be formulated without undue delay; they are used as a basis for any mandatory or quasi-mandatory standards which may be formulated by local governments and other bodies within their jurisdiction.

(c) Contracting parties should use their best endeavours to ensure that where an international voluntary standard is formulated for a product, (whether by an international "voluntary" standards body or by an intergovernmental body), the national voluntary standard for that product is brought into accord with the international standard.

(d) In any case where a national standard for a product (whether voluntary or mandatory) does not accord with the international standard for that product, contracting parties should not, without good reason, prohibit the use of the international standard or allow bodies subject to their control to prohibit its use.

(e) In any case where a mandatory or quasi-mandatory standard formulated by a local government body or by some other body within the jurisdiction of the contracting party differs from the international standard for that product, the contracting party should use all means open to it to ensure that such local government body or other body within its jurisdiction does not, without good reason, prohibit the use of the international standard.
5. INFORMATION ABOUT STANDARDS

(a) Contracting parties should publish details of all standards, whether mandatory or voluntary, which have been formulated by the organs of central government or by organizations subject to their control.

(b) They should also publish details of all such proposed standards at such time and in such manner as will enable other contracting parties to offer relevant comments in due time.

(c) Likewise, they should use all means open to them to ensure that local government bodies and other bodies within their jurisdiction which formulate mandatory or quasi-mandatory standards publish details of all proposed standards at such time and in such manner as will enable interested parties in other contracting parties to offer relevant comments in due time.

(d) Each contracting party should establish an enquiry point, from which other contracting parties may obtain information regarding all mandatory or voluntary standards formulated by the organs of central government or by organizations subject to their control, and all mandatory or quasi-mandatory standards formulated by other bodies within their jurisdiction, or information as to where such details can be obtained in respect of specific standards.

(e) Contracting parties should use their best endeavours to ensure that voluntary standards bodies within their jurisdiction:

   (i) publish all standards they formulate;

   (ii) publish advance information about all proposed standards at such time and in such manner as will enable interested parties in other contracting parties to offer relevant comments in due time; and should take full account of any comments they receive; and
(iii) maintain an enquiry point which is able to answer all reasonable enquiries regarding the standards they have formulated and their status (i.e. whether voluntary, mandatory or quasi-mandatory).

6. METHODS OF DETERMINING COMPLIANCE WITH STANDARDS

(a) If a special test method or inspection procedure is to be used in determining whether or not a product complies with a particular standard, the test method or inspection procedure should, wherever practicable, either

(i) be defined in the standard; or

(ii) be defined in a document which is referred to in the standard.

Where the second of these alternatives is adopted, the same provisions apply to the formulation and publication of the test method or inspection procedure as are enjoined in relation to the standard itself, in paragraphs 1 to 5 above.

(b) In addition, test methods and inspection procedures should not be formulated in such a way as to require the test to be carried out in the importing country, except in those cases (such as perishable foodstuffs) where the condition of the goods as imported may differ in an important respect from their condition when consigned by the producer, or where they cannot effectively be carried out in the country of origin.

(c) Contracting parties should ensure (or, in the case of tests carried out by bodies within their jurisdiction other than the organs of central government should use their best endeavours to ensure) that:
(i) imported products are accepted for testing on the same basis as similar domestic products;
(ii) the testing procedures for imported products are no more onerous or expensive, and no less expeditious, than the testing procedures for similar domestic products;
(iii) the results of such tests are made available forthwith to the exporter or his agent if requested, so that corrective action may be taken if necessary;
(iv) wherever practicable, the tests are carried out in the country of origin if the exporter so desires;
(v) where tests are carried out in the importing country due regard should be had to the convenience of importers in siting the testing facilities or in selecting samples for testing;
(vi) commercial secrecy is respected no less for imported products than for products manufactured in the importing country.

(d) Contracting parties should harmonize their test methods (or, in the case of bodies within their jurisdiction other than the organs of central government and organizations subject to their control should use their best efforts to secure the harmonization of test methods) with those of other contracting parties on as wide an international basis as possible.

7. DELEGATION OF INSPECTION TO COMPETENT ORGANIZATIONS IN THE EXPORTING COUNTRIES

(a) Wherever practicable, contracting parties should delegate (or, in the case of bodies within their jurisdiction other than the organs of central government and organizations subject to their control, should use their best efforts to ensure the delegation of) any tests required to determine conformity with standards, either:
(i) to producers, packers or shippers in the exporting country; or
(ii) to government bodies or other independent organizations in the exporting country,
wherever either of these are considered to have sufficient technical competence and reliability to carry out the tests to the satisfaction of the importing country.

(b) Contracting parties should accept (or, in the case of bodies within their jurisdiction other than the organs of central government and organizations subject to their control, should use their best efforts to secure the acceptance of) test methods used in the country of export even if they are not identical with the test methods used in the importing country, provided the exporting country's methods provide an equivalent assurance that the products tested conform to the relevant standard.

8. MULTILATERAL SCHEMES FOR ASSURING CONFORMITY TO MANDATORY OR QUASI-MANDATORY STANDARDS

(a) Contracting parties should, wherever practicable, enter into multilateral schemes whereby importing countries accept assurances provided by appropriate bodies in exporting countries that products conform to the relevant mandatory or quasi-mandatory standards.

(b) They should also use their best endeavours to encourage local government bodies and quasi-regulatory bodies within their jurisdiction to enter into similar schemes wherever practicable.

(c) The sole criterion for membership of such schemes should be that the participating regulatory or quasi-regulatory body is willing and able to fulfil the obligations of membership.
(d) The sole criterion for accepting assurances of conformity to standards, under such schemes, should be the technical competence and reliability of the certifying body.

(e) Wherever practicable, such schemes should include provision for the products of members which do not possess certifying bodies having the necessary technical competence and reliability to be certified by the appropriate bodies of other members.

(f) Such schemes should not include any provisions which would prevent individual members from accepting assurances of conformity provided by non-participating countries, except where the non-participation of such countries is due to unwillingness to accept the obligations of membership.

>Note: This somewhat tortuous phraseology is designed to make these schemes as "liberal" as possible, but at the same time to discourage attempts to obtain the benefits of membership without accepting the corresponding obligations. A simpler form of words would be preferable, if it could be found.

(g) Where, in order to expedite progress, multilateral schemes for assuring conformity to mandatory or quasi-mandatory standards are formulated by restricted groups of countries,

   (i) such schemes should be formulated from the outset with a view to eventual participation by all countries which are able and willing to fulfil the obligations of membership;

   (ii) where they are based on conformity to common standards, existing international standards should be used wherever they are suitable;
(iii) where special standards are formulated to serve as a basis for the multilateral scheme, the provisions of paragraph 1(e) should be followed;

(iv) full account should be taken of any reasonable representations regarding the rules of membership of such scheme as may be made by any country which is a substantial producer or consumer of the product to which the scheme relates;

(v) membership should be opened as soon as practicable to all countries which are able and willing to fulfill the obligations of membership.

9. MULTILATERAL SCHEMES FOR ASSURING CONFORMITY TO VOLUNTARY STANDARDS

(a) Contracting parties should use their best endeavours to ensure that their national voluntary standards bodies and other bodies within their jurisdiction implement the provisions of paragraph 8 in relation to multilateral schemes for assuring conformity to voluntary standards.

(Note: Is this sufficient; or should this, also, be spelt out in full?)

10. ASSISTANCE TO DEVELOPING CONTRACTING PARTIES

(a) Contracting parties should advise and assist developing countries in the formulation of mandatory standards. They should encourage their local government bodies, likewise, to advise and assist developing countries in the formulation of such standards.

(b) Contracting parties should advise and assist (and should encourage their voluntary standards bodies to advise and assist)
developing countries to establish national voluntary standards bodies and to take part in the international voluntary standards bodies.

(c) Contracting parties should arrange for their regulatory bodies to advise and assist developing countries in the establishment of arrangements for assuring conformity to the mandatory or quasi-mandatory standards of importing countries.

(d) Likewise, they should use their best endeavours to arrange for quasi-regulatory bodies within their jurisdiction to advise and assist developing countries in the establishment of arrangements for assuring conformity to the quasi-mandatory standards of importing countries.

(e) Contracting parties which are members of multilateral schemes for assuring conformity to mandatory or quasi-mandatory standards should advise and assist developing countries to establish the institutions and legal framework which would enable them to fulfil the obligations of membership.

(f) Contracting parties should encourage their national voluntary standards bodies and other bodies within their jurisdiction, if they are members of multilateral schemes for assuring conformity to voluntary standards, to advise and assist developing countries to establish the institutions which would enable them to fulfil the obligations of membership.