The Drafting Group of Experts on Standards, which was set up by the Group on Standards at its meeting of 9-12 March 1971, met from 25 to 27 May to prepare in the form of principles and possible obligations the material which had been discussed at the March meeting, based on COM.IND/W/41.

The Group worked from a draft which the United Kingdom expert had volunteered to prepare, on the basis of the Group's previous work. Some elements were added from COM.IND/W/41, but time did not permit a systematic review to make sure that account had been taken of all. For example, there was no effort to draft any kind of preamble to define the relationship of this material to GATT and, as noted elsewhere, consultation procedures were not considered.

As a guide to readers, "new" is noted in the margin wherever it was felt that the thought was new or that it had been modified in character by the greater precision given to it in the present draft as compared with COM.IND/W/41. Square brackets denote lack of unanimity in the drafting, or alternative versions.

The experts understood their task to be the preparation of a technically feasible and internally consistent draft, without attempting to resolve the numerous underlying substantive issues. Accordingly neither the draft as a whole nor any part of it is necessarily accepted by any expert or any government which he represents.
I. Definitions and Explanatory Notes

1. The term "STANDARD"

The attached draft is concerned only with standards which affect products. 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, marking or labelling requirements. 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. Uses of STANDARDS

Standards are divided into the following categories, according to their application:

(a) Voluntary standards

The essential feature of voluntary standards is that there is no obligation, either legal or de facto, to adhere to them.

(b) Mandatory standards

By this is meant any standard which is imposed by an authority, legally endowed with the necessary power, through regulations or administrative rules.
(c) **Quasi-mandatory standards**

This term is used to describe standards formulated or adopted by bodies which are not legally endowed with powers of compulsion but whose influence on the market is such that their standards have mandatory force *de facto*.

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

Standards for use in a particular country may be prepared by one or more of the following organizations:

(a) **Voluntary standards bodies**

These include:

(1) **National standards bodies**

This expression is used to describe any nationally recognized standards bodies which are, or are eligible to become, members of international non-governmental standards organizations such as ISO and IEC. Such bodies have no power to give their standards mandatory force. On the other hand such standards may acquire mandatory or quasi-mandatory force by the action of regulatory or quasi-regulatory bodies or may be so generally accepted by purchasers or suppliers that products which do not comply with the standard have substantially less chance of being accepted.

(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, and
professional societies. The extent to which their standards are adopted varies widely.

(b) **Regulatory bodies**

(1) **Central government**

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

(2) **Other public authorities**

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) **Quasi-regulatory bodies**

These are bodies such as 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., which have no overt powers to issue mandatory standards but whose standards, in practice, have mandatory effect, for example because compliance with such standards is a condition for the issue of insurance policies or because of market domination.
4. INTERNATIONAL STANDARDS

Definition

NOTE: The Drafting Group of Experts debated the definition to be given to the term "international". One concept was that use of the term "international" should be confined to standards elaborated in organizations open to all contracting parties or to all contracting parties having a substantial trading interest. Those favouring either of these interpretations would have distinguished a separate category of "multinational" standards to designate those produced within groups or organizations not open to all contracting parties, or to all contracting parties with a substantial trading interest, as the case may be. Others considered that the term should be used to designate all standards written by several countries jointly, whether or not in a grouping open to all other contracting parties or to all other contracting parties having a substantial trading interest.

It was agreed that fundamental substantive issues going well beyond the terms of reference of the Drafting Group were involved. Accordingly the term "international" may be open to different interpretations at various places in the text.
Explanatory Note

International standards include specifications variously described as "recommendations" or "unification documents". They are prepared by:

(a) Representatives from central governments and other public authorities, meeting in organizations such as the Codex Alimentarius Commission, OIML and the Specialist Sub-Committees of ECE and OECD;

(b) representatives of quasi-regulatory bodies, meeting in international organizations such as the CEE (Arnhem); or

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

International standards prepared by the groups described in (a) and (b) above are not automatically mandatory or quasi-mandatory and do not commit the countries represented to their adoption as mandatory or quasi-mandatory standards. Nor are any international standards automatically adopted as national standards 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 as the case may be by the body which prepared them, by other public authorities, or by judicial process.

(c) Enforcement of quasi-mandatory standards

Quasi-mandatory standards may in practice 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), or through the operation of the market.

(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) Application 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.

II. OPERATIVE PROVISIONS

1. PREPARATION OF VOLUNTARY STANDARDS

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

(b) Contracting parties should/shall use all means open to them to ensure that voluntary standards formulated by other bodies within their territories are not such as to afford/prepared with a view to affording protection to domestic production.

(c) Contracting parties which have a substantial interest either as producers or consumers of a product should/shall make a full contribution towards the formulation of an international voluntary standard for that product by the appropriate international organization.

(c)bis Contracting parties should/shall make a full contribution towards the formulation of international voluntary standards by international organizations.
(d) Contracting parties should use their best endeavours to ensure that voluntary standards bodies within their territories co-operate fully in the formulation of voluntary international standards by international organizations 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 trading interest in 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.

(e)bis All international schemes to harmonize standards should be open to all contracting parties having a substantial trading interest, at the stage of formulation. Where for practical reasons the formulation of such schemes has started out with limited participation, third countries having a substantial trading interest not originally participating should be invited to do so.
(e) Contracting parties which are not members of existing multi-
 lateral 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.

(f) Contracting parties should use their best efforts to ensure that
where aspects of a product are, or are likely to be, subject to a
mandatory standard, any voluntary standard, whether national or inter-
national, covering those aspects should be suitable in form and content
for adoption in whole or in part as that 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 such as to be suitable to serve as a basis for such
purchases.

(h) Where practicable and appropriate, voluntary standards should
be specified in terms of performance rather than design.

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

(a) Contracting parties should ensure that mandatory stan-
dards 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 \(\text{should} / \text{shall}\) 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 \(\text{should} / \text{shall}\) strive to ensure that their mandatory standards and those of other contracting parties are harmonized and should co-operate to that end in the formulation of international standards.

(d) If the national mandatory standard differs from an international standard for the same product, the contracting parties \(\text{should} / \text{shall}\) provide for the alternative to comply either with the national standard or with the international standard unless there are compelling reasons to the contrary \(\text{or unless the country in question has not had an opportunity to participate in the formulation of the international standard.}\)

(e) Where practicable \(\text{and appropriate}\), mandatory standards should be specified in terms of performance rather than design.

(f) Where mandatory standards are not based upon existing international standards contracting parties \(\text{should} / \text{shall}\) (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/shall 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/shall 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/shall 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 presentations regarding the content of such proposed standard as may be made by any other country which has a substantial trading interest in 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.
(h)bis All international schemes to harmonize standards should be open to all contracting parties having a substantial trading interest, at the stage of formulation. Where for practical reasons the formulation of such schemes has started out with limited participation, third countries having a substantial trading interest not originally participating should be invited to do so.

(h)ter 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.

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/ shall use all appropriate means 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: The Drafting Group of Experts believes that this section may need further elaboration but that this can usefully be done only after the previous section has been agreed.
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* *shall* use them, as a basis for the mandatory standards (whether by "reference to standards" or by other means).

(b) Contracting parties *should* *shall* use all means open to them to ensure that, where relevant 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 territories.

(c) Contracting parties *should* *shall* 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* *shall* not, without good reason, prohibit the use of the international standard or allow bodies subject to their control to prohibit its use.
new (a) In any case where a mandatory or quasi-mandatory standard formulated by a local government body or by some other body within the territory of the contracting party differs from the international standard for that product, the contracting party /should/ /shall/ use all /appropriate/ means open to it to ensure that such local government body or other body within its territory does not, without good reason, prohibit the use of the international standard.

5. INFORMATION ABOUT STANDARDS AND DRAFT STANDARDS

new (a) Contracting parties /should/ /shall/ 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.

new (b) Contracting parties /should/ /shall/ also publish, as regards standards formulated by the organs of central government or by organizations subject to their control:

(i) Information on all proposed voluntary standards at such time and in such detail as will enable interested parties in other /countries/ to offer relevant comments in due time;

(ii) details of all proposed mandatory standards in accordance with the provisions of paragraph 2(f).
(c) Contracting parties /should/ /shall/ use all means open to them to ensure that other public authorities within their territories publish details of all proposed standards at such time and in such manner as will enable interested parties in other /countries/ to offer relevant comments in due time.

(d) Each contracting party should /shall/ 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 standards formulated by other regulatory or quasi-regulatory bodies within their territories 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 territories:

(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 countries 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, whether voluntary, mandatory or quasi-mandatory.

6. METHODS OF DETERMINING COMPLIANCE WITH STANDARDS

(a) Contracting parties should shall harmonize their test methods and inspection procedures (or, in the case of bodies within their territories 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.

(b) If a special test method is to be used in determining whether or not a product complies with a particular standard, the test method 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 as are enjoined in relation to the standard itself, elsewhere in this Code.
(c) Where a special inspection procedure (including administrative procedures) is required in determining whether or not a product is to be approved as complying with a particular standard, the details of such inspection procedure and/or administrative procedure should either be defined in the standard or should otherwise be available in some public document.

(d) 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.

(e) Contracting parties /should/ /shall/ ensure that wherever practicable, and subject to the provisions of paragraph 6(d), the tests are carried out in the country of origin or in a third country, if the exporter so desires.

(f) Where the tests are carried out in the importing country, contracting parties should ensure (or in the case of tests carried out by bodies within their territories 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 test methods and inspection procedures for imported products are no more onerous or expensive, and no less expeditious, than the corresponding 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) due regard is paid to the convenience of importers in siting the testing facilities or in selecting samples for testing;

(v) the confidentiality of information of commercial value arising from such tests and inspection requirements is respected in the same way for imported products as for domestic products.

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

(a) Wherever practicable and subject to the provisions of paragraph 6(d), contracting parties should delegate (or, in the case of bodies within their territories 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 territories 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 STANDARDS

(a) Contracting parties, wherever practicable, enter into multilateral schemes whereby the countries concerned accept assurances provided by appropriate bodies in other participating countries that products conform to the relevant mandatory standards.
(b) They should shall also use their best endeavours to encourage local government bodies within their territories to enter into similar schemes wherever practicable.

(c) The sole criterion for membership of such schemes should shall be that the participating 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 shall be the technical competence and reliability of the certifying body.

(e) Wherever practicable, such schemes should shall 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 shall 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.
(g) Where, in order to expedite progress, multilateral schemes for assuring conformity to mandatory standards are formulated by restricted groups of countries,

(i) such schemes \(\underline{\text{should}} \, \underline{\text{shall}}\) 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 harmonized standards, existing international standards \(\underline{\text{should}} \, \underline{\text{shall}}\) be used wherever they are suitable;

(iii) where standards are specially formulated to serve as a basis for the multilateral scheme, the provisions of paragraph 1(c) \(\underline{\text{should}} \, \underline{\text{shall}}\) 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 has a substantial trading interest in 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 fulfil the obligations of membership.
(g)bis Multilateral quality assurance and certification 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.

(g)ter Multilateral quality assurance and certification 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.

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 territories implement the provisions of paragraph 8 in relation to multilateral schemes for assuring conformity to voluntary international standards.

Note: The Drafting Group of Experts believes that this section may need further elaboration but that this can usefully be done only after the previous section 8 has been agreed.

10. MULTILATERAL SCHEMES FOR ASSURING CONFORMITY TO QUASI-MANDATORY STANDARDS

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

Note: The Drafting Group of Experts believes that this section may need further elaboration but that this can usefully be done only after the previous section 8 has been agreed.

11. ASSISTANCE TO OTHER CONTRACTING PARTIES

- **new (a)** Contracting parties should advise and assist each other in the formulation of mandatory standards.

- **new (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.

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

- **new (d)** Contracting parties which are members of multilateral schemes for assuring conformity to mandatory standards should advise and assist other contracting parties to establish the institutions and legal framework which would enable them to fulfil the obligations of membership.

- **new (e)** Contracting parties should encourage their national voluntary standards bodies and other bodies within their territories, if they are members of multilateral schemes for assuring conformity to voluntary
standards, to advise and assist other contracting parties to establish the institutions which would enable them to fulfil the obligations of membership.

Note: The Drafting Group of Experts did not consider complaints and consultation procedures.