INTERIM DRAFT - MEETING OF 28 JUNE TO 2 JULY 1971

/POSSIBLE ELEMENTS FOR A SET OF PRINCIPLES ON STANDARDIZATION/

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

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 concludes, where appropriate, testing packaging, marking or labelling requirements, as well as codes of practice to the extent that they affect products rather than processes. The term standard is not intended to be confined to industrial products.

2. USES OF STANDARDS

For the purposes of this document, standards are classified according to their application, as follows:

(a) in the voluntary area: standards with which there is no obligation to comply, either legal or de facto, hereafter referred to as "voluntary standards";

(b) in the mandatory area: standards and technical regulations with which there is an obligation to comply, imposed by an authority legally endowed with the necessary power, through regulations or administrative rules, hereafter referred to as "mandatory standards";
(c) in the **quasi-mandatory area**: standards with which there is no legal obligation to comply but which, for some reason have a mandatory force in practice, hereafter referred to as "**quasi-mandatory standards**".

/Explanatory Note:/

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 Group discussed the question of defining the term
"international" both with regard to standards, and with regard
to organizations that formulate standards. As no working
definition was arrived at to differentiate between the
controversial concepts involved, the following square brackets
have been added wherever called for in the text:

1. Organizations [of which they are, or are entitled to become
members]
to cover open membership standardization bodies.

2. Organizations [which are open to all contracting parties]
to cover bodies which are open at least to all
the contracting parties.

3. Organizations [open to all contracting parties with a
significant trading interest]
to cover bodies with limited membership but open
to contracting parties under certain circumstances.

The use of the term "international" with regard to standards was recognized
as a problem needing an early solution. In this context, see the preliminary
views of the Swedish delegation in document Spec(71)72. The proper use of terms,
for the purpose of the draft code or set of principles, is expected to be
settled at the next meeting in September 1971.
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 shall 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.

   (a) bis Contracting parties shall ensure that voluntary standards formulated by government agencies and by organizations subject to their control are not prepared with a view to affording protection to domestic production and do not constitute a **undue** barrier to trade.

   (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 protection to domestic production.

   (b) bis Contracting parties **should** **shall** use all means open to them to ensure that voluntary standards formulated by other bodies within their territories are not prepared with a view to affording protection to domestic production and do not constitute a **undue** barrier to trade.

   (c) Contracting parties which have a significant interest either as producers or consumers of a product **should** **shall** make a full contribution towards the formulation of a voluntary standard for that product by any appropriate
international organization [of which they are, or are entitled to become members] [which is open to all contracting parties] [which is open to all contracting parties with a significant trading interest].

(c) bis Contracting parties [should] [shall] make a full contribution [where practicable] towards the formulation of international voluntary standards by any appropriate international organization of which they are, or are entitled to become members.

(d) Contracting parties [should] [shall] use their best endeavours to ensure that voluntary standards bodies within their territories co-operate fully in the formulation of voluntary standards by international organizations [of which they are, or are entitled to become members] [which are open to all contracting parties] [which are open to all contracting parties with a significant trading interest] [for products of which their country is a significant producer or consumer].

(e) Contracting parties [should] [shall] 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 significant 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 world-wide membership, with a view to its serving as a basis for a \(\text{fully}\) international standard.

(e) bis Contracting parties [should] [shall] use their best endeavours to ensure that international systems to harmonize voluntary standards are open to all contracting parties [having a significant trading interest in the products in question]. Such participation should begin with the stage of formulating the rules of the system. Where for practical reasons such systems have been formulated with limited participation, contracting parties shall use their best endeavours to ensure that other contracting parties [having a significant trading interest in the products in question] are invited to participate.

(e) ter Contracting parties which are not members of existing multilateral harmonization systems\(^1\) for particular products or groups of products 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 international, covering those aspects should be suitable in form and content for adoption in whole or in part as that mandatory standard.

\(^1\) Systems is to be understood as schemes, not as limited groupings or organizations.
(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) If practicable and appropriate, contracting parties should use their best endeavours to ensure that voluntary standards 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 shall ensure that mandatory standards are not such as to afford protection to domestic production.

(a) bis Contracting parties shall ensure that mandatory standards are not prepared with a view to affording protection to domestic production and do not constitute undue barriers to trade.

(b) Where mandatory standards are required and appropriate voluntary standards exist, or can be formulated without undue delay, 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 and those of other contracting parties are harmonized and should co-operate to that end in the formulation of international standards by
organizations [of which they are, or are entitled to become members] [which are open to all contracting parties] [which are open to all contracting parties with a significant trading interest].

(d) [Where practicable [and appropriate], contracting parties should ensure that mandatory standards be specified in terms of performance rather than design.]

(e) Where mandatory standards are not based upon existing international standards formulated by organizations [of which they are, or are entitled to become members] [which are open to all contracting parties] [which are open to all contracting parties with a significant trading interest] contracting parties [should] [shall] (except where urgent problems of safety or health render it impracticable) give adequate notice by publishing the mandatory standards they propose to adopt and should allow reasonable time for comment by other contracting parties and by interests likely to be affected. They [should] [shall] also take full account of such comments as they may receive.

Note: A drafting group may wish to consider a possible reference to this paragraph in Section 5.

(f) 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.
(g) 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 presentations regarding the content of such proposed standard as may be made by any other country which has a significant 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.

(g) bis Contracting parties should ensure that all international systems to harmonize mandatory standards are open to all contracting parties having a significant trading interest in the products in question. Such participation should begin with the stage of formulating the rules of the system. Where for practical reasons contracting parties have formulated such systems with limited participation they should invite other contracting parties having a significant trading interest in the products in question to participate as soon as possible.

(g) 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 \( \text{should} \) \( \text{shall} \) use all \( \text{appropriate} \) 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 Working Group believes that this section may need further elaboration but that this can usefully be done only after the previous section has been agreed. A drafting group may want to consider separating this section into two categories: one for mandatory standards and the other for quasi-mandatory standards.

4. ADOPTION AND USE OF INTERNATIONAL STANDARDS

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

(b) Contracting parties \( \text{should} \) \( \text{shall} \) 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.

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1 The term "international" as it is used in this section is controversial. See note in Section 1, Part 4, page 4.
(c) Contracting parties \textit{should} \textit{shall} use their best endeavours to ensure that where an international voluntary standard is formulated for a product, (whether by a governmental or non-governmental international standards body), the national voluntary standard for that product is brought into accord with the international standard.

5. INFORMATION ABOUT STANDARDS AND DRAFT STANDARDS

(a) Contracting parties \textit{should} \textit{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.

(b) Contracting parties \textit{should} \textit{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 \textit{interested parties in other signatory countries} \textit{other interested contracting parties} to offer relevant comments in due time;

(ii) details of all proposed mandatory standards in accordance with the provisions of paragraph 2(c).

\textbf{Note:} A drafting group may want to consider additions to 5(b) to spell out the cases where prior publication is required, e.g. the Group felt that amendments or revisions of existing standards should carry a prior publication requirement on the same basis as a new standard; whereas a new standard based on an international standard should not carry the requirement.
(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 \[interested parties in other signatory countries\] \[other interested contracting parties\] 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 \[interested parties in other signatory countries\] \[other interested contracting parties\] 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 \[including, so far as is known, their status, whether voluntary, mandatory or quasi-mandatory\].

Note: A drafting group should consider wording to the effect that it is left open to each contracting party to provide this service as it sees fit.
6. **METHODS OF DETERMINING COMPLIANCE WITH STANDARDS**

Note: A drafting group should consider whether the content of this section needs to be separated into paragraphs covering governments' obligations to ensure on the one hand, and governments' obligations to use best endeavours to ensure, on the other hand.

(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) Contracting parties should/shall ensure that, if a special test method is to be used in determining whether or not a product complies with a particular standard, the test method, 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 mutatis mutandis to the formulation and publication of the test methods as are enjoined in relation to the standard itself, elsewhere in this Code.

(c) Contracting parties should/shall ensure that, where a special inspection procedure (or administrative procedure) 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 either be defined in the standard or otherwise be available in some public document.
(d) Contracting parties should/shall ensure that test methods and inspection procedures be formulated in such a way as to permit the test to be carried out in the exporting 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 can be carried out in the country of origin or in a third country, if the exporter so desires.

Note: A drafting group may want to consider wording to cover other aspects of delegation of testing: e.g. the question of the product actually meeting the test requirements, the question of the adequacy of the foreign test, and the question of whether it should be left to the exporter to choose the place of testing. The redrafting should be done in conjunction with Section 7.

(f) Contracting parties should/shall ensure that, where the tests are carried out in the importing country (or in the case of tests carried out by bodies within their territories other than the organs of central government and organizations subject to their control should use their best endeavours to ensure) that:

(i) imported products are accepted for testing/tested on the same basis as similar domestic products;
(ii) the test methods and inspection procedures for imported products are no more onerous and no less expeditious than the corresponding procedures for similar domestic products; and that where a charge is made it should not be higher than the corresponding charge for similar domestic products.

Note: A drafting group should reconsider the wording.

(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 arising from such tests and inspection requirements is respected in the same way for imported products as for domestic products.

7. **DELEGATION OF TESTING TO COMPETENT ORGANIZATIONS IN THE EXPORTING COUNTRIES**

(a) Wherever practicable and subject to the provisions of paragraph 6(d), contracting parties should/shall reach agreement with a view to delegating (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) the whole or part of any tests required to determine conformity with standards to bodies or organizations in the exporting country, wherever 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/shall reach agreement with a view to accepting 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 to the satisfaction of the importing country that the products tested conform to the relevant standard.

8. **MULTILATERAL SYSTEMS FOR ASSURING CONFORMITY TO MANDATORY STANDARDS**

(a) Contracting parties should/shall, wherever practicable, formulate and enter into multilateral systems of which they are, or are entitled to become members which is open to all contracting parties which is open to all contracting parties with a significant trading interest whereby the countries concerned accept assurances provided by appropriate bodies in other participating countries that products conform to the relevant mandatory standards.

Note: A drafting group should reconsider the wording to cover *inter alia* the need to first establish confidence and competence before delegating.

(b) Contracting parties should/shall also use their best endeavours to encourage other bodies within their territories whose activities have mandatory force to enter into similar systems wherever practicable.

(i) The sole criterion for membership of such systems should/shall be that the participating regulatory body designated is able to fulfil the obligations of membership.
(ii) The only criteria for accepting assurances of conformity to standards, under such systems should shall be the technical competence and reliability of the designated certifying body.

Note: A drafting group should clarify the question of whether the provisions of (i) and (ii) are applicable at the stage of formulation of the systems or after.

(iii) Wherever practicable, such systems should shall include provision for certifying the products of members which do not possess certifying bodies.

(iv) Such systems should shall not prevent contracting parties from accepting assurances of conformity provided by relating to the products and provided by non-participating countries.

(c) Where multilateral systems for assuring conformity to mandatory standards are formulated by restricted groups of contracting parties, with a view to expediting progress

(i) such systems should shall be formulated from the outset with a view to eventual participation by all contracting parties which are able and willing to fulfill the obligations of membership;

(ii) where they are based on conformity to harmonized standards, existing international standards should shall be used wherever they are suitable;

(iii) where standards are specially formulated to serve as a basis for the multilateral system, the provisions of paragraph 2(g) should shall be followed;
(iv) full account should be taken of any reasonable representations regarding the rules of membership of such systems as may be made by any contracting party which has a significant trading interest in the product to which the system relates;

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

Note: The drafting of this paragraph will have to be reviewed in the light of the future discussions on substantive issues.

(c) bis Contracting parties should ensure that multilateral systems for assuring conformity to mandatory standards are open to all contracting parties having a significant trading interest in the products in question. Such participation should begin with the stage of formulating the rules of the system. Where for practical reasons such systems have been formulated with limited participation, contracting parties should ensure that other contracting parties having a significant trading interest in the products in question are invited to participate as soon as they are willing and able to meet the obligations of the system.

(c) ter Multilateral quality assurance and certification systems should be open to foreign participation where the applicants are willing and able to meet in an adequate manner the obligations of the systems.
9. **MULTILATERAL SYSTEMS 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 Section 8 in relation to multilateral systems for assuring conformity to voluntary international standards.

**Note:** The Group believes that this Section may need further elaboration particularly with regard to the appropriate wording to reflect the degree of obligation but that this can usefully be done only after the previous Section 8 has been agreed.

10. **MULTILATERAL SYSTEMS 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 Section 8 in relation to multilateral systems for assuring conformity to quasi-mandatory standards.

**Note:** The Group believes that this Section may need further elaboration particularly with regard to the appropriate wording to reflect the degree of obligation but that this can usefully be done only after the previous Section 8 has been agreed.

11. **ASSISTANCE TO OTHER CONTRACTING PARTIES**

(a) Contracting parties should be prepared to advise and assist each other in the formulation of mandatory standards.
(b) Contracting parties should be prepared to advise and assist (and should encourage their voluntary standards bodies to advise and assist) developing countries toward establishing national voluntary standards bodies and taking part in the international voluntary standards bodies.

(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.

(d) Contracting parties which are members of multilateral systems 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.

(e) Contracting parties should encourage their national voluntary standards bodies and other bodies within their territories, if they are members of multilateral systems for assuring conformity to voluntary standards, to advise and assist other contracting parties toward establishing the institutions which would enable the relevant bodies within their territories to fulfil the obligations of membership.

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