PROPOSAL OF THE EUROPEAN COMMUNITIES FOR THE DRAFT CODE
FOR PREVENTING TECHNICAL BARRIERS TO TRADE

1. The European Communities have, from the beginning, been concerned with one important aspect of imbalance in the "draft code of conduct for preventing technical barriers to trade", as presently drawn up, resulting from the fact that it imposes different levels of obligation for the preparation and application of technical regulations, standards, certification systems and other standardizing activity subject to the Code. These two levels of obligation are, on the one hand, the obligation imposed on signatories to ensure that certain bodies within their territories conform to the obligations of the Code (first level obligation) and on the other hand the obligation to use "best endeavours" to bring all other relevant bodies and organizations within their territories into conformity with the obligations of the Code in preparing or applying technical regulations, standards, certification systems etc. This has, in the view of the EEC and some other delegations, to quote paragraph 9 of the "report of Group 3 on Standards" contained in Annex B of the draft standards Code, "resulted in substantial inequality as between countries with a federal structure and countries with a unitary structure, because of the fact that in the former many of these regulations and provisions are within the competence of the constituent states, while in the latter, most of them are within the exclusive competence of the central government".

2. Accordingly the European Communities have the following proposal to make:

Signatories would be responsible to other signatories in regard to the preparation, adoption and use of all technical regulations, standards, certification systems and other standardizing activity subject to the Code within their territory:

(a) They would be under an obligation to ensure that the preparation, adoption and use of technical regulations, standards, certification systems etc., of central government bodies are in conformity with the obligations of the Code;

1 A precise draft of the proposal for insertion in the text of the Code should be discussed at a later date.
(b) They would be responsible to other signatories in regard to failure to achieve results identical to those imposed under the first level obligations, under the "best endeavours" provisions where technical regulations, standards, certification systems etc. are prepared by bodies within their territories.

(c) In the event that a signatory is unable to discharge its obligations in regard to the first level obligation, or to achieve results identical to the first level obligation under the "best endeavours" obligations, the matter could be raised by any other signatory, which feels that the obligations of the Code are not being fulfilled, under the provisions of the Code on dispute settlement (to be agreed).