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MTN.GNG/NG8/8
25 October 1988

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**MULTILATERAL TRADE NEGOTIATIONS THE URUGUAY ROUND**

Group of Negotiations on Goods (GATT)

Negotiating Group on
MTN Agreements and Arrangements

# MEETING OF 14 SEPTEMBER 1988

## Note by the Secretariat

1. The Group held its eighth meeting on 14 September 1988 under the Chairmanship of Dr. Chulsu Kim (Korea).

2. At the beginning of the meeting, some delegations made statements concerning the Anti-Dumping Code. These are incorporated into Section C.

3. The agenda proposed in GATT/AIR/2657 was then adopted.

## A. The Agreement on Import Licensing Procedures

4. The Chairman recalled submissions contained in MTN.GNG/NG8/W/16, 17, 27, and 29.

5. The Chairman of the Committee on Import Licensing made the following statement, on his own responsibility, regarding the current work of that body:

> "The Committee attaches importance to a free two-way flow of information with the Negotiating Group. It has agreed to forward to the Negotiating Group the notes regularly produced by the Committee Chairman for the information of the CONTRACTING PARTIES after each meeting, as well as the texts of any decisions or recommendations adopted by it.
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> It must be emphasized that the Committee does not wish to assume the rôle of a negotiating forum, which is clearly the competence of this Negotiating Group. However, the Committee, in managing and interpreting the existing Agreement, performs a technical rôle of which the Negotiating Group should be aware.
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> In its meeting held on 12 September, the Committee heard a presentation by the United States of its recent proposals for improvements and modifications in the Agreement, which were submitted to the Negotiating Group. Some members of the Committee gave detailed reactions to these proposals and asked for clarifications on a number of points; they also stated that they would bring their views and concerns to the Negotiating Group. In addition, some members emphasized that the existing Agreement is essentially procedural in

nature, and in this context, there was some discussion of the balance between substantive and procedural aspects contained in the Agreement. Other participants reserved their comments on the United States' proposals for the meeting of the Negotiating Group.

As part of its regular work programme, the Committee continued its discussion of definitional questions concerning the term "import licensing" as included in Article 1.1 of the Agreement. The secretariat was also requested to undertake some background work concerning a number of terms contained in Article 1.8 and 3 of the Agreement.

The Committee has agreed that it will bear in mind the timing of the next relevant meeting of this Negotiating Group in scheduling its next meeting."

6. The delegation of the United States introduced document MTN.GNG/NG8/W/29. This, as well as its two other proposals[1] reflected private sector concerns about trade distorting effects of existing licensing practices. With regard to automatic licensing, the problems most frequently cited were those of administrative delays, short periods of validity of the licences, and the need to approach multiple ministries or government agents in order to obtain licences. That these problems occurred among Code signatories as well as non-signatories caused particular concern, since one of the goals of the Code was to eliminate such administrative barriers. Many of the same procedural barriers had been reported on non-automatic licensing; of even more concern, however, was the frequent mention of unannounced and unpredictable exceptions or modifications in quota levels. The intention behind the proposal that signatories should provide GATT justification to the Licensing Committee when imposing licensing requirements was not that the Committee should pass judgment on the validity of import restrictions. These were under the jurisdiction of other GATT bodies and Uruguay Round Negotiating Groups. However, when licensing requirements were imposed, they should be accompanied by a GATT justification.

7. A number of delegations noted that the Code was primarily procedural in nature and that its purpose and scope were to ensure that licensing procedures did not represent additional restrictions. Matters related to the restrictions themselves, as well as the question of GATT justification, went beyond the Code. Some of these delegations added that these matters, as well as the idea of working for an overall reduction or elimination of the use of licensing, related to work in other GATT fora.

8. While these delegations, therefore, disagreed on the above-mentioned aspects of the proposal, many of them considered it useful to make clarifications which might improve the functioning of the Code. Some of these participants, as well as other delegations mentioned in this

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[1] MTN.GNG/NG8/W/16 and 27.

connection the definitional problems in Article 1:1 and the inclusion in the Code of recommendations adopted by the Import Licensing Committee. Some also supported, in principle, a clearer definition of the obligation to freely grant licences and considered that a gradual reduction and/or elimination of the use of non-automatic licensing deserved attention, although elimination might be a too ambitious approach.

9. A number of delegations supported the proposals or endorsed basic objectives or premises of the submission. Some of these agreed that the use of licensing procedures ought to be reduced and that, when used, they should be non-discriminatory and administered in a predictable and transparent manner. Two delegations considered that the proposals were fully within the mandate of NG8. The point was made that a long-term durable solution was needed and that this made NG8 the appropriate forum. It was also argued that the proposals would not change the basic nature of the Code as a procedural instrument. One delegation added that a framework had to be balanced; a Party administering licensing might, for instance, indicate the rationale for automatic licensing procedures, and in case of non-automatic licensing the GATT justification or GATT coverage.

10. One delegation considered that the question of reinforcing the provisions of the Code should be balanced with that of expanding its membership. If the obligations were made stricter, this might create obstacles for the adherence of non-signatories. It was therefore necessary to accept some flexibility, for example through a period of grace.

11. One delegation thought that some of the difficulties mentioned by the United States indicated enforcement problems rather than a need to create new or different disciplines. The Code had relevant provisions, for example, in respect of unannounced quota levels and the administrative body which had to be approached. Efforts should be made to implement these. Concerning non-automatic licensing procedures, these accompanied measures taken on the basis of GATT provisions. It would be inappropriate, in a framework of procedural implementation of such measures, to try to limit the measures themselves because that would limit the freedom of contracting parties to have recourse to their existing GATT rights. For instance, where GATT did not require degressivity in the use of a restriction, there could be no obligation of degressivity for the administrative means to impose such restrictions. One delegation also referred to the concept of degressivity as going beyond the scope of the Code and affecting GATT rights.

12. One delegation which held a similar view on non-automatic import licensing where GATT justification existed noted that a clarification had been given on this point in the proposal. It added that some such licensing systems did not fall under the jurisdiction of any GATT forum.

13. Concerning automatic licensing procedures, one delegation added that, in attempting to change the scope and nature of the Code on this point, the proposals failed to fully recognize that these could be useful measures. Another delegation noted that there were certain strict obligations in this regard and that, again, the question was one of implementation.

Nevertheless, there was perhaps room for creating certain disciplines and criteria on the basis of which automatic licences might be used, subject to justification.

14. Concerning a review mechanism, some delegations had concerns similar to those expressed on GATT justification and a possible extension of the Code's scope. However, some delegations saw room for valuable discussion in the NG8 if it was limited to procedural aspects. One delegation noted that the Committee was engaged in an ongoing process of updating information on licensing schemes and that this could be the basis for a review mechanism. One delegation stated that a balanced framework could include a mechanism for examination of notifications and the possibility for signatories to challenge these. One delegation added that notification and review procedures might improve transparency while still leaving individual contracting parties free to follow up any problems concerning a particular justification in other appropriate GATT fora.

15. Regarding the proposal for strengthened dispute procedures, some delegations referred to work in NG13 and did not at this stage see a need to develop a separate dispute settlement mechanism within the Code. Another delegation thought a balanced framework might contain dispute settlement provisions to provide for redress where opinions differed.

16. One delegation noted that discretionary licensing was not referred to in the Code; its objective was to eliminate discretion and arbitrary elements in licensing régimes. The proposal implicitly appeared to recognize discretionary licensing; if this was the case, disciplines ought to be strengthened, as necessary. One delegation mentioned discretionary licensing as an example of an area where additional disciplines going beyond the scope and nature of the Code should not be created. One delegation noted that discretionary licensing occurred and that this ought to be eliminated or minimized in accordance with the objectives of the Code.

17. In response to comments made, the United States stated that it was not beyond the mandate of the NG8 to change the scope of the Code. It did not agree that the Group could not discuss aspects which were relevant elsewhere. New signatories were welcomed but signatories also held the responsibility for making the Code an effective and meaningful instrument to the benefit of present and new members - the Code might have provisions which addressed a number of the problems that had been raised, but these sometimes permitted different interpretations. The NG8 had a responsibility also in this regard. Problems in the field of non-automatic licensing, including discretionary licensing, were very important. The idea of degressivity was to reduce, over time, the use of non-automatic licensing; the intention was not to impose degressivity on specific licences used to administer specific measures. Individual licensing requirements should not outlive the GATT justification.

18. The representative of the EEC introduced document MTN.GNG/NG8/W/17. The problem of definition of import licensing procedures had been discussed in the Code Committee a common understanding had not yet reached. In the

area of non-automatic licensing, documentary means could be employed to administer quantitative restrictions. In order to avoid circumvention, there should be agreement that whatever methods were used for administering restrictions these should be assimilated to a licensing régime and be Code-covered. The proposal on export licensing was not intended to reduce the right for recourse to export restrictions, but to make sure that the administrative procedures used to manage such restrictions did not add discretionary, arbitrary or other trade restrictive effects to the restriction itself. The EEC did not see how export licensing was different from import licensing in terms of arbitrary, discretionary or discriminatory application.

19. One delegation agreed that documentation used to implement quantitative restrictions was an issue worthy of consideration. One delegation supported, in general, efforts towards a clearer definition of Article 1:1.

20. One delegation found the proposal on export licensing interesting and supported a discussion in NG8. Two delegations considered that export controls were different from import licensing both in rationale and operation and could not be properly dealt with within this Code. One of these thought other avenues than Code-provisions were available in GATT. Some delegations suggested that more concrete texts be presented.

21. The Chairman stated that the Group had heard many useful and precise comments whereby delegations should be in a better position for further reflection and for placing additional texts on the table. He encouraged delegations to submit more detailed texts at future meetings.

22. One delegation suggested for consideration that the tabling of written texts by the time of the first meeting of 1989 might be followed by a secretariat compilation of views and proposals.

B. <u>The Agreement on Technical Barriers to Trade</u>

23. The Chairman of the Committee on Technical Barriers to Trade informed the Group that the proposals submitted to the Group by the delegations of the European Economic Community, Japan and the United States on the subjects relating to the improvement, clarification and expansion of the Agreement, had also been forwarded to the Committee. At its meetings on 10 March, 12 July and 13 September, the Committee had had a preliminary exchange of views on these proposals. It would revert to the agenda items relating to these proposals at its next meeting to be held in January 1989.

24. The Chairman invited the Group to continue its discussion relating to this Agreement proposal-by-proposal.

(i) <u>Improved transparency in bilateral standards-related agreements</u>

25. The delegation of the United States introduced the proposal in MTN.GNG/NG8/W/34. The proposal did not suggest a mandatory opening of bilateral standards-related agreements to other Parties. The benefits that

were expected of improved transparency in this area were explained in the introduction to the proposal. Its main objective was to share information on standards-related activities at the bilateral level. The contents of the proposal had been discussed at the July and September meetings of the Committee on Technical Barriers to Trade. The delegations, that had expressed views had concerns regarding two aspects of the proposal. First, the extension of the notification procedures to bilateral standards-related agreements would increase the imbalance between Parties regarding the application of the notification procedures under the Agreement. The objective of transparency in the proposal could also be achieved if a previous Committee recommendation relating to information to be provided by enquiry points were made binding. Second, provisions in the proposal regarding the consultations with other Parties appeared to go beyond the objective of improving transparency on bilateral standards-related agreements. It had also been questioned whether bilateral agreements that were not concluded under the provisions of the Agreement would also be subject to such requirements of transparency. Members of the Committee had also sought clarifications on the following points: (i) the meaning of "the time of promulgation" under point 1; (ii) whether the coverage of the agreements would include bilateral agreements concluded outside the provisions of the Agreement; those concluded under the provisions of the Agreement but which did not incorporate the m.f.n. principle; bilateral certification arrangements; and agreements concluded between local government bodies; (iii) the meaning of the phrase "have, or could have, a significant effect on trade" under point 2.1; (iv) the coverage of "private bodies or systems" under point 2.2. The group took note of the above statement.

26. A number of delegations supported the thrust of the United States proposal. Recalling the concerns that had been expressed on the desirability of increasing the mandatory notification procedures, one delegation said that the existing recommendation, in terms of which the enquiry points were made responsible for responding to enquiries on bilateral agreements, provided a good basis for achieving the objectives of the proposal.

27. With regard to the provisions on consultations under point 5, one delegation questioned whether such a requirement was essential for the achievement of improved transparency on bilateral standards-related agreements. Some delegations asked for further clarification of the significance of the reference to "agreements that concern general policies on standards-related issues" under point 2. One delegation stated that the proposal should define more clearly the type of parties involved in the conclusion of bilateral agreements. For another delegation, the proposal did not take into account the agreements that might be concluded under urgent circumstances. There should be additional provisions which would allow the notification of such agreements after their conclusion.

(ii) Improved transparency in regional standards-related activities

28. The delegation of the United States introduced the proposal on improved transparency in regional standards-related activities (MTN.GNG/NG8/W/35).

29. The first part of the proposal suggested an amendment to the Agreement to include additional obligations regarding the regional standards-related activities of Parties. The second part contained provisions for a draft code of conduct to be agreed by regional bodies or systems. The proposal had been discussed in the Committee on Technical Barriers to Trade at its meetings held in July and September 1988. Concerns had been expressed by a number of delegations on the following points. It had been noted that the division of the proposal into two parts - direct obligations for Parties, and a code of conduct for regional bodies - implied that Parties did not have the capacity to undertake direct obligations for regional bodies or systems. The provisions of Articles 2.9 and 9.2 of the Agreement, which imposed "best endeavours" obligations on Parties, took into account this situation. In the discussion of Part I of the proposal, it had been noted that regional standards were generally based on international standards and that they deviated from international standards when the relevant standards did not provide an adequate basis for addressing problems specific to a region. In this connection, it had been questioned whether the intention of the provisions in Part I was to suggest that international standards should not be developed or modified as a result of regional activities. It had been maintained, moreover, that additional obligations on Parties for the adoption of international standards and rules by regional bodies, went beyond the objective of achieving further transparency on regional activities. There had also been a number of comments on the draft code of conduct in Part II. The requirement in provision 2 for the sharing of information on the standardization and certification programmes of regional bodies or systems went beyond the current obligations of transparency under the Agreement. Provisions in Parts 8 and 9 regarding consultations between a Party to the Agreement and a regional body were considered as being outside the realm of the Agreement. The Group took note of the above statement.

30. One delegation stated that while he understood the motives of the United States' proposal, he had serious doubts with regard to the proposal itself tended to reinforce the existing imbalance of rights and obligations of different Parties under the Agreement. For some delegations, Part I of the proposal went beyond the objective of improving transparency on regional standards activities. According to the proposal, more stringent obligations on Parties members of regional bodies might be imposed with regard to the observance of international standards and rules of certification systems. One delegation noted that the participation in the activities of regional bodies by countries outside the region, would change the status of these bodies from regional to international.

31. Several delegations said that the draft code of conduct in Part II of the proposal brought clarity to the understanding of the existing provisions of the Agreement relating to the activities of regional bodies and would facilitate the implementation of these provisions by Parties members of regional bodies. The application of the code of conduct would release these Parties from certain obligations in respect of regional bodies to the extent that these obligations would be fulfilled by the regional bodies themselves.

(iii) Procedures for issuing product approval

32. The delegation of the United States reverted to the proposal in document MTN.GNG/NG8/W/23, which was introduced to the Group at its meeting of 9 March 1988. The Committee on Technical Barriers to Trade had had an exchange of views on this proposal at its meetings on 10 March, 12 July, and 13 September 1988. It had been stated in the Committee that the scope of the definition for the term "approval" should not be limited to actions by central government bodies (point A.1). Obligations of a "best endeavours" nature, similar to those in the existing provisions of Articles 6 and 8 could be used to cover approvals by local and non-governmental bodies. It had also been noted that work had been undertaken in an ISO Working Group to prepare definitions for the term "approval" and the terms used for different methods of approval. It had been suggested that the definition for the term "legitimate domestic objective" (point A.3) should reflect the language used in the Agreement. It had been questioned whether an approval authority would be able to select the appropriate method of approval "least cumbersome for the applicant", as suggested in the proposal (point B). Several Parties had been concerned that the proposal might indicate a preference for the use of manufacturer's declaration of conformity over other methods of approval (point B.2). In this connection, it had also been argued that an approval body might not be able to explain the "legitimate reason" for not relying on a manufacturer's declaration of conformity. Furthermore, it had been stated that certain countries which did not have a system of product liability had to rely on mandatory controls. One Party had questioned whether the proposal was contingent upon Article 5.2 of the Agreement being strengthened to mandate acceptance of self-certification.

33. With regard to the section entitled "Establishment of Procedures" it had been pointed out that the provisions regarding non-discrimination, required further elaboration. As for the section on "Transparency", a number of Parties had suggested the need for more flexibility on the time period for processing of approvals. Situations where approvals might have to be issued on an emergency basis had to be taken into account (point L). Doubts had been expressed regarding the suggestion that approvals based on manufacturer's declaration of conformity be granted or denied within thirty calendar days (point L.1). In this connection, one Party had recalled its proposal for the use of a standard-processing period for approvals. Comments had also been made on the section on "Administrative Mechanisms". Some Parties had felt that more flexibility should be provided in the provisions that required the examination of the approvals in the order in which they were submitted (point O). In certain situations, approval of

products might have to be carried out on a priority basis. Several parties were also concerned that the proposal might imply that approval authorities must always base their decisions on the advice of impartial technical experts (point P). It had been suggested that this provision be changed to read: "if authorities base their approval decision on the advice of technical experts, these experts should be impartial". It had also been asked whether "impartial technical experts" excluded government experts. It had been suggested that the scope of the "required information" (point Q) should cover all legitimate requests for information. It had also been mentioned that the consideration of "indispensable information" for determination of conformity of a product might differ from country to country, and that some criteria had to be established in this respect. The Group took note of the above statement.

34. A large number of delegations reiterated their support for including in the Agreement detailed rules on procedures for issuing product approval. However, several delegations emphasized that approvals based on third party validation of a manufacturer's declaration of conformity should be the common method of approval, leaving approvals based solely on the manufacturer's declaration of conformity to appropriate cases (point B.2). One delegation said that conditions should be established for the acceptance of a manufacturer's declaration of conformity. It was also suggested that the approval body should be allowed to select the appropriate method among the different methods of approval available to it (point B.1). The delegation of the United States stated that, as indicated by the introductory clause "barring a legitimate reason for not doing so" the purpose of the proposal was not to mandate reliance on manufacturer's declaration of conformity in all cases. One delegation was concerned that if the concept of "legitimate domestic objective" were not defined more precisely in the proposal, approval authorities might use approval procedures as a means of creating unnecessary obstacles to trade (point C.1). It was noted by another delegation that the section of the proposal on "Access" did not adequately reflect the need for a legal entity responsible for the approval of specified products within the territory of a country. It was commented that the requirement for notification of proposed changes, under the section on transparency, should be limited to those changes in approval procedures which had a significant effect on the trade of other Parties. Referring to the section on "Administrative Mechanisms", one delegation asked whether the criteria for impartiality of experts could be defined.

35. In reverting to the question of mutual acceptance of test data, one delegation said that any proposal on this subject should be limited to those areas in which the technological gap between countries at different levels of development was not too important. Another delegation stated that not all countries had developed a national accreditation system.

36. By way of general remarks, one delegation said that the proposal should be developed to include criteria used for approvals at the technical level. Several delegations also found it desirable for the proposal to be

rearranged in order to relate more closely to the provisions contained in the present Agreement. A number of delegations said that they expected the delegation of the United States to submit a revised version of the proposal in the light of the comments made and the questions raised by various delegations.

(iv) Processes and production methods

37. The delegation of the United States reverted to the proposal on processes and production methods (PPMs) introduced to the Group at its meeting of 9 March 1988. The Committee on Technical Barriers to Trade had also addressed this proposal at its meetings in March, July and September 1988. In the discussion, it had been noted that there was no internationally agreed definition for the term "processes and production methods". One Party had pointed out the difference between the procedures used for determination of conformity of a product with technical specifications drafted in terms of product characteristics and with those drafted in terms of PPMs. Where the product characteristics were the basis, the determination could be made in the importing or exporting country, whereas for PPMs-based requirements the control could only be made on the site of production. Doubts had been expressed whether all the provisions of the Agreement could be applied to PPMs by a simple change in the definition for the term "technical specification" used in the Agreement, as seemed to be implied by the United States' proposal. Some Parties had stressed the importance of bringing appropriate disciplines to PPM-based requirements which created unnecessary obstacles to trade. In this connection, it had been noted that the provisions of the Agreement currently applicable to PPMs required further clarification. The Group took note of the above statement.

38. The delegation of the United States stated that they would be preparing a definition which would apply to PPMs in both the agricultural and industrial sectors. While the proposal suggested an amendment to the text of Article 14.25, its deletion, as had been suggested by some Parties, could also be considered. The proposal did not suggest that the requirements should be drafted on the basis of product characteristics rather than on PPMs.

39. A number of delegations expressed support for the objective of extending the coverage of disciplines under the Agreement to PPMs. A number of delegations maintained that it was essential to have a definition of PPMs before proceeding with any detailed discussion of the proposal. One delegation noted that the PPMs that were made mandatory by technical regulations were distinct from PPMs in the form of quality assurance systems. One delegation said that if the obligations under the Agreement were extended to technical specifications drafted in terms of PPMs, there should not be a hierarchy between the PPM-based requirements and others. In that event, Article 14.25 which addressed the circumstance of circumvention would be redundant. One delegation noted that the operation of the provisions of Article 14.25 had proved unsatisfactory. It had been

possible to block the dispute settlement procedures because of lack of clarity between Parties on the application of this Article.

(v) Code of Good Practice for Non-Governmental Bodies

40. The delegation of the European Economic Community introduced the proposal in document MTN.GNG/NG8/W/31. The proposal had been discussed by the Committee on Technical Barriers to Trade at its meetings held on 12 July and 13 September 1988. On the basis of the comments which had been made in the Committee, he said that the scope of the proposal extended to non-governmental bodies at national and local level. While a number of Parties had expressed the desirability of limiting the number of bodies that would be expected to adhere to the Code, this delegation maintained that, in accordance with the spirit of the Agreement, the proposed code of good practice should be subscribed to by those bodies whose activities might have an effect on the trade of other Parties.

41. One delegation supported the thrust of this proposal which was part of the effort to strengthen the implementation of the present provisions of the Agreement that imposed a second level of obligations to Parties with respect to standards-related activities at the regional, local and non-governmental level. The same delegation considered that this proposal contained certain elements in common with the proposal by the United States for a code of conduct for regional standards-related bodies. In response, the delegation of the European Economic Community said that no parallel could be drawn between the two proposals. The objective of the Community's proposal was to redress the imbalance of rights and obligations between Parties, whereas, in their view, the proposal by the United States was aimed at reinforcing this imbalance towards central government bodies.

42. One delegation informed the Group that most voluntary standards activities in his country were co-ordinated under the national standards system and that the criteria that governed the operation of these bodies were consistent with the provisions of the Agreement. Several delegations said that they would need to study carefully the feasibility of the acceptance of the proposed code by non-governmental bodies in their countries. According to another delegation, Parties had the obligation to ensure the compliance of non-governmental bodies with the provisions of the Agreement. Therefore, they should have the capacity to establish the elements of a code of good practice that would further the principles of the Agreement without needing to consult these bodies.

43. The delegation of the European Economic Community explained that the proposal did not aim to set new obligations but rather to spell out in more practical and operational terms the existing provisions in the Agreement regarding transparency on the activities of non-governmental bodies. One delegation felt, however, that requirements such as provisions on information on pre-standards or on programmes for adoption of standards or

technical regulations under the proposed code, went further than the requirements imposed on central government bodies under the Agreement. Another delegation noted that the suggestion that adherence to the code by non-governmental bodies should be voluntary, was not consistent with the present obligations, which required central bodies to use their best endeavours to ensure the compliance of these bodies with the basic obligations under the Agreement. It was not clear how this code would be more effective than the present provisions of the Agreement in achieving the objective of transparency.

44. One delegation expressed concerns regarding the implications of the provision that would entitle a Party to involve dispute settlement provisions against another Party that had failed to ensure adherence to the code by non-governmental bodies in its territory. The implications of this commitment had to be carefully evaluated. Another delegation felt that the proposal would benefit from further clarification on the section relating to dispute settlement. The delegation of the European Economic Community, joined by another delegation, said that the proposal did not bring new elements to the provisions of Article 14.24. One delegation said that the provisions of the Agreement on dispute settlement would be applicable to non-governmental bodies that had accepted the code if the code were made part of the Agreement. Several delegations asked for further clarification of what would be considered as a sufficient number of non-governmental bodies that accepted the code.

(vi) Extending the major obligations under the Agreement to local government bodies

45. The delegation of the European Economic Community introduced the proposal in document MTN.GNG/NG8/W/32. In the view of this delegation, the present obligations under the Agreement on transparency were directed at central government bodies and did not enable Parties to acquire information on the activities of local government bodies. The proposal had been discussed at meetings of the Committee on Technical Barriers to Trade held in July and September 1988. In response to the concern expressed by a number of delegations that the notification by every local government body in certain Parties would result in a considerable number of notifications, the delegation of the European Economic Community stated that the proposal suggested notification of measures at the local government level which had a significant effect on trade.

46. Certain delegations noted that, given the constitutional division of powers between federal and local governments in their countries, it would be difficult to impose binding obligations to local government bodies. A voluntary set of rules similar to those suggested for non-governmental bodies would be more effective in addressing the problem in countries with decentralized governments.

47. In an exchange of views on the application of Article 14.24, one delegation questioned whether the concerns expressed by the European Economic Community about the trade-restrictive effects of standards-related

activities at the non-governmental and local level, were based on any negative experience with the implementation of this Article. This delegation also stated that suggestions for the improvement, clarification and expansion of the Agreement should be based on the experience of Parties in the implementation of the existing provisions. In response, the delegation of the European Economic Community stated that while no cases had been brought up under this Article, this should not detract from the fact that activities of local and non-governmental bodies might have adverse effects on trade of other Parties. It was possible that Article 14.24 had not been invoked by any Party because no mechanism existed which enabled Parties to received timely information on specific cases in which Article 14.24 would apply.

(vii) Transparency of the operation of certification systems

48. The delegation of Japan introduced the proposal in document MTN.GNG/NG8/W/36. One delegation expressed their concerns with the proposal, as it implied a certain link between the standards-processing period and the nature of the certification bodies involved and products certified. It might not be advisable to establish a standards-processing period for every category of products, in so far as all products were not put on the market at regular intervals. Certification bodies might set a standards-processing period longer than was necessary to ensure that this period could also be met in cases where a certification body had to respond to a large number of requests due to seasonal factors. This delegation also noted that the capacity for meeting the standards-processing period might depend on the size of different certification bodies. Furthermore, a certification body may take longer to process applications if it had to deal with requests for different types of products than if it happened to be processing requests for similar products.

(viii) Transparency in the drafting process of technical regulations, standards and certification systems

49. The delegation of Japan introduced the proposal in document MTN.GNG/NG8/W/37. Under the present provisions of the Agreement, notifications were made after the proposed technical regulations and rules of certification had been drawn up. The provisions of the Agreement on transparency would be more operational if interested parties in other Parties were allowed to participate and present their comments in the drafting stage of technical regulations and rules of certification systems.

50. One delegation saw certain difficulties in involving foreign interests in the early stages of the preparation of standards-related rules. He wondered how the terms of the present proposal which required Parties to present their draft to interested parties in other Parties would be associated with the provisions of Article 2.5.2 and 7.3.2. This delegation also asked whether every re-draft of the proposed regulation would need to be circulated to interested parties.

51. In response to a question raised by one delegation, the delegation of Japan asserted that, in terms of this proposal, private parties in other Parties would have the right of recourse to the provisions of Article 14.24 in cases involving the governmental authorities in another Party.

(ix) Voluntary draft standards and their status

52. The delegation of India introduced the proposal in MTN.GNG/NG8/W/9. The provisions of the Agreement relating to transparency on the preparation, adoption and application of standards, were described in the note by the secretariat (MTN.GNG/NG8/W/25,paragraph 14). In the proposal, it was argued that, in some cases, even though voluntary draft standards were not national standards, their wide adoption by the local industry gave them a status similar to that of national standards. Therefore, standards of significance to international trade should be notified in the same way as technical regulations.

(x) Languages for exchange of documents

53. The delegation of India reiterated the contents of the proposal in document MTN.GNG/NG8/W/9. He said that, in order to supply the documents covered by the notifications in one of the GATT languages, Parties could use their existing translation facilities for providing notifications in English, French or Spanish, in accordance with Article 10.6.

C. Further examination and clarification of issues for negotiations

(i) Agreement on Implementation of Article VI ("Anti-Dumping Code")

(a) General statements

54. As mentioned in paragraph 2 above, some delegations made general statements concerning anti-dumping at the beginning of the meeting.

55. One delegation stated, inter alia, that it had a strong interest in multilateral efforts to improve, clarify and expand, as appropriate, the MTN Agreements and Arrangements. It wanted these negotiations to progress in a manner that fully respected the Ministerial Declaration and that was free of external pressures, such as the introduction of regulations or legislation which were aimed at improving the negotiating position of particular participants. On certain crucial issues in the anti-dumping area, two participants had introduced laws which went beyond the GATT and the Anti-Dumping Code, creating new rights and thereby enhancing their negotiating positions. This was most unhelpful to the ongoing negotiations in this Group and was in breach of the Standstill and Rollback commitment under the Ministerial Declaration.

56. In specific terms, this delegation referred first to an anti-dumping regulation by one participant, providing for the extension of anti-dumping duty to products assembled within its territory, where assembly was done by a party related to a manufacturer whose export of products in a similar class was subject to anti-dumping duty. This new provision disregarded the basic requirement of the Code that there must be a determination of the existence of dumping, material injury and a causal link between dumped imports and injury before the imposition of anti-dumping duty. Also, the Code required that in an anti-dumping investigation, comparison of prices was to be between "like products" and the determination of injury was to be in relation to "domestic industry". There were clear definitions of what constituted a "like product" and a "domestic industry" in the Anti-Dumping Code, which were being ignored.

57. The second example was a recent Act in one country, containing provisions far exceeding those of the existing Anti-Dumping and Subsidies and Countervailing Codes. Highlighting what it considered to be the Act's most undesirable aspects, reference was made to (a) tightening of the cumulation requirement and allowing cumulation in cases of threat of injury, thus in effect providing a means of evading the requirements of Article XIX by imposing global restrictions with a low standard of injury and with no compensation; (b) codifying a concept (Downstream Product Monitoring) not sanctioned by the GATT or the Anti-Dumping Code, with no prior determination of dumping or injury for component parts used in assembling a product, and with an anti-circumvention provision covering third country assembly; and (c) ignoring the actual dumping margin and imposing duties to cover the full price difference.

58. The delegation added that the existing Codes were designed to strike a balance between the right of importing countries to deal with problems caused by unfair trade practices and the need to protect the legitimate interests of exporting countries. If the rules were allowed to be freely and unilaterally interpreted, there was a danger that protectionist trade policy measures would be introduced in the name of anti-dumping or countervailing measures. When trade legislation in individual countries threatened to frustrate the operation of comparative advantage, there would be little incentive for countries to sign a Code and to negotiate for an improved framework in this Group.

59. One delegation shared these concerns and reserved its right to comment on these matters in this Group and in other appropriate fora.

60. One delegation expressed surprise that the statement had been made in this Group instead of, for example, the GNG or TNC. As this delegation had stated on several occasions, its regulations were not intended to improve a negotiating position and were not creating new rights; it was a question of defensive measures that were perfectly legitimate under GATT Articles, notably Article XX:(d). The negotiating environment was endangered rather by the increasing circumventions - not necessarily by governments - of justified measures taken within the framework of GATT Articles or Code provisions. It must remain the right of each contracting party to take defensive measures to ensure that justified measures were fully implemented.

(b) Status report on notifications received in response to GATT/AIR/2633

61. The Chairman recalled the results of consultations he had held on 6-7 June 1988, concerning the preparation of a compilation of factual information on anti-dumping measures by the secretariat. The results of these consultations were reflected in MTN.GNG/NG8/7, paragraph 21. In accordance with the decision taken on the work during the first phase, the secretariat had requested the participants to provide the necessary information by 1 September 1988. So far, replies had been received from about 20 participants. He had been informed by the secretariat that, in view of this rather limited number of replies, it would be difficult to prepare a note containing adequate information. He therefore made a strong appeal to all participants who had not replied to do so without further delay.

62. Two delegations indicated that their contributions would be available soon. Another delegation expressed the hope that further replies would be given and that the work would go forward.

63. Three delegations stated their concern that many participants had not responded. Without a fuller response, these delegations had serious questions and reservations about proceeding with a "study" on the basis of insufficient documentation.

64. The Chairman proposed that, in view of these concerns, the Group agree that further notifications be submitted to the secretariat not later than 26 September 1988. In the week of 26 September, the secretariat would consult with delegations regarding the number of replies received. It was understood that those delegations which had expressed reservations at the present meeting, regarding the release of the study by the secretariat, should inform the secretariat in the same week whether they maintained their reservations. The Group so agreed.

D. Other business, including arrangements for the next meeting(s) of the Negotiating Group

65. The Chairman recalled that it had been agreed (MTN.GNG/NG8/7, paragraph 43) that a further meeting be held on 27-28 October 1988, and if necessary, 31 October, to revert to the Codes on Government Procurement and Customs Valuation (27 October) and to the Anti-Dumping Code (28 October and, if necessary, 31 October). The day of 31 October would also be reserved for any other issues which could not be settled before the weekend.

66. The Chairman stated that later in the autumn, and after consultations with members, he was expected to prepare a report to the GNG, which would be on his own responsibility, describing the work accomplished so far and making propositions on the basis of which, through the GNG's report to the TNC, ministers would be called upon to take decisions. He would carry out his responsibilities and, have a draft ready for the next meeting, which he would discuss with interested delegations.