

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED
MTN.GNG/NG2/W/72
19 July 1990
Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on Non-Tariff Measures

STATUS OF WORK
IN THE NEGOTIATING GROUP

Report by the Chairman to the GNG

A. Multilateral Rule-Making Approaches: Preshipment Inspection and Rules of Origin

In accordance with the framework and procedures for the negotiations on non-tariff measures which were adopted by the Negotiating Group at its meeting of 15 February 1990, the Negotiating Group has carried out an examination of the specific proposals which were before the Group on categories of measures which have been put forward for rule-making approaches.

The Negotiating Group has set up two Informal Drafting Groups open to all interested participants, which would draw up elements of compromise texts on preshipment inspection and on rules of origin. The Drafting Groups have based their work on informal texts prepared by the secretariat at the request of the Negotiating Group, which drew together all the suggestions proposed for inclusion in a draft agreement. Oral reports on progress made at the meetings of the Drafting Group have been submitted to the Negotiating Group. The texts drawn up by the Drafting Groups and the covering notes explaining these texts are in Annex 1 (preshipment inspection) and Annex 2 (rules of origin).

B. Request-and-Offer Approaches

In accordance with the framework and procedures for the negotiations adopted by the Negotiating Group on Non-Tariff Measures at its meeting of 15 February 1990, 34 participants, counting the European Communities as one, have submitted request lists which follow the format provided for in the procedures. As agreed, the secretariat has prepared, in consultation with the party making the request, a summary of each request list. These summaries contain information on the number of tariff lines, and the products and categories of non-tariff measures covered by the requests. Additionally, a number of participants electing to do so have circulated their full request lists either to all participants in the Uruguay Round negotiations or to those which had themselves submitted request lists.

Five participants have submitted offers which follow the format set out on the agreed procedures. The agreed procedures call for participants which submit offers to indicate to the Negotiating Group the participants to whom the offers have been made. So far, only one delegation has given such information to the Negotiating Group.

Annex 3 lists:

- participants having made requests
- participants to which these requests have been made
- participants having made offers
- participants to which these offers have been made.

The agreed procedures provide for the participants to inform the Negotiating Group as to developments in the negotiations. At the meeting of the Group held on 6 June 1990, I requested participants in request-offer negotiations to provide the Negotiating Group with a brief statement of where they stand in these negotiations. A number of delegations informed the Negotiating Group of the progress they were making.

It is clear that further offers will have to be forthcoming soon if the objectives laid down in the Punta del Este Declaration and the Mid-term Review Decision are to be met.

The Group has taken note of a communication from Argentina relating to recognition of liberalization measures.

Proposals aimed at ensuring that concessions to reduce or eliminate non-tariff measures are not subsequently nullified or impaired received from the delegations of Uruguay and Australia are under examination in the Negotiating Group.

One of the tasks of the Negotiating Group in the autumn will be to establish the necessary guidelines for the implementation of the results of the negotiations.

ANNEX 1

PRESHIPMENT INSPECTION

The attached text is forwarded by the Informal Drafting Group in response to the request by the Chairman of the Negotiating Group on Non-Tariff Measures that the results of the work so far in the Informal Drafting Group be made available in time for the Negotiating Group's July 1990 meeting.

Square brackets have been used to indicate points on which agreement remains to be found. However, no part of the text will be finally agreed until the whole text is agreed. The text of the preamble has not been discussed in detail.

The final text will be accompanied by interpretative notes, for example on the question of technical assistance, where it is understood that such assistance may be given on a bilateral, plurilateral or multilateral basis.

The Informal Drafting Group suggests that its next meeting should be held in the week of 17 September 1990.

AGREEMENT ON PRESHIPMENT INSPECTION

Preamble

[NOTING that Ministers on 20 September 1986 agreed that the Uruguay Round of Multilateral Trade Negotiations shall aim to bring about further liberalization and expansion of world trade, strengthen the role of GATT and increase the responsiveness of the GATT system to the evolving international economic environment;

NOTING that a number of developing contracting parties have recourse to preshipment inspection;

RECOGNIZING that developing countries should be free to do so for as long and insofar as it is necessary to achieve their legitimate objectives;

MINDFUL that such programmes must be carried out without giving rise to unnecessary delays or unequal treatment;

NOTING that this inspection is by definition carried out on the territory of exporting contracting parties;

RECOGNIZING the need to establish an agreed international framework of rights and obligations of both user contracting parties and exporter governments;

RECOGNIZING that the principles and obligations of the General Agreement apply to those activities of preshipment inspection entities that are mandated by governments that are Parties to the General Agreement;

RECOGNIZING that it is desirable to provide transparency of the operation of preshipment inspection entities and of laws and regulations relating to preshipment inspection;

DESIRING to provide for the speedy, effective and equitable resolution of disputes between exporters and preshipment inspection entities arising under this agreement;]

The contracting parties* hereby agree as follows:

ARTICLE 1

Coverage. Definitions

1.1. This agreement shall apply to all preshipment inspection activities carried out on the territory of contracting parties, whether such activities are contracted or mandated by the government, or any government body, of a contracting party (hereinafter referred to as user government).

1.2. Preshipment inspection activities are all activities relating to the verification of the quality, the quantity, the price, including currency exchange rate and financial terms, and/or the customs classification of goods to be exported to the territory of the user government[, when such activities are performed in the customs territory from which the goods are exported [or in that in which the goods are manufactured]].

1.3. The term "preshipment inspection entity" is any [private] entity contracted or mandated by a contracting party to carry out preshipment inspection activities.

ARTICLE 2

Obligations of user governments

Non-discrimination

2.1. User governments shall ensure that preshipment inspection activities are carried out in a non-discriminatory manner, that the procedures and criteria employed in the conduct of these activities are objective and are applied on an equal basis to [exporters of all contracting parties] [all exporters affected by such activities]. They shall ensure uniform performance of inspection by all the inspectors of the preshipment inspection entities contracted or mandated by them.

[National treatment]

2.2. User governments shall ensure that no less favourable technical criteria and procedural requirements are applied in the inspection of foreign goods subject to preshipment inspection than are applied by the user government to like domestic products put up for sale on its domestic market.]

Site of inspection

2.3. User governments shall ensure that all preshipment inspection activities, including the issuance of a clean report of findings or a note of non-issuance, are performed in the customs territory from which the goods are exported [to the territory of the user government] [or in that in which the goods are manufactured].

*The legal form of this agreement will be examined at a later stage.

Standards

2.4. User governments shall ensure that quantity and quality inspections are performed in accordance with the standards defined by the seller and the buyer in the purchase agreement and that, in the absence of such standards, relevant international standards¹ apply.

Transparency

2.5. User governments shall ensure that preshipment inspection activities are conducted in a transparent manner.

2.6. User governments shall ensure that, when initially contacted by exporters, preshipment inspection entities provide to the exporters a list of all the information which is necessary for the exporters to comply with inspection requirements. The preshipment inspection entities shall provide the actual information when so requested by exporters. This information shall include a reference to the laws and regulations of the user governments relating to preshipment inspection activities, and shall also include the procedures and criteria used for inspection and for price and currency exchange rate verification purposes, the exporters' rights vis-à-vis the inspection entities, and the appeals procedures set up under Articles 2:23 [, as well as the detailed mandates given to preshipment inspection entities without reference to remuneration]. [Except in an emergency situation,] [additional procedural requirements or changes in existing procedures shall not be applied to a shipment unless the exporter concerned is informed of these changes at the time the inspection date is arranged.] This assistance shall not, however, relieve exporters from their obligations in respect of compliance with the import regulations of the user governments.

2.7. User governments shall ensure that the information referred to in Article 2:6 is made available to exporters in a convenient manner, and that the preshipment inspection offices maintained by preshipment inspection entities serve as information points where this information is available.

2.8. User governments shall publish promptly all applicable laws and regulations relating to preshipment inspection activities in such a manner as to enable other governments and traders to become acquainted with them.

¹An international standard is a standard adopted by a governmental or non-governmental body, one of whose recognized activities is in the field of standardization.

Protection of confidential business information

2.9. User governments shall ensure that preshipment inspection entities treat all information received in the course of the preshipment inspection as business confidential to the extent that such information is not already published, generally available to third parties, or otherwise in the public domain. User governments shall ensure that preshipment inspection entities maintain procedures to this end.

[2.10. User governments shall ensure that information on the measures taken to protect the above information is provided to contracting parties upon request.]

2.11. User governments shall ensure that preshipment inspection entities do not divulge confidential business information to any third party, except that preshipment inspection entities may share this information with the government entities that have contracted or mandated them. User governments shall ensure that confidential business information which they receive from preshipment inspection entities contracted or mandated by them is adequately safeguarded. Preshipment inspection entities shall share confidential business information with the governments contracting or mandating them only to the extent that such information is customarily required for letters of credit or other forms of payment or for customs, import licensing or exchange control purposes.

2.12. User governments shall ensure that preshipment inspection entities do not request exporters to provide information regarding:

- (a) manufacturing data related to patented, licensed or undisclosed processes, or to processes for which a patent is pending;
- (b) unpublished technical data other than data necessary to demonstrate compliance with technical regulations or standards;
- (c) internal pricing, including manufacturing costs;
- [(d) remunerations deriving from patents or other intellectual property instruments;]
- (e) profit levels;
- (f) the terms of contracts between exporters and their suppliers [, except in the case of exports made through a buying agent or a confirming house].

2.13. The information referred to in Article 2:12, which preshipment inspection entities shall not otherwise request, may be released voluntarily by the exporter to illustrate a specific case.

Conflicts of interest

2.14. User governments shall ensure that preshipment inspection entities, bearing in mind also the provisions on protection of confidential business information in Article 2:9-13, maintain procedures to avoid conflicts of interest:

- (a) between preshipment inspection entities and any related entities of the preshipment inspection entities in question, including any entities in which the latter have a financial or commercial interest or any entities which have a financial interest in the preshipment inspection entities in question, and whose shipments the preshipment inspection entities are to inspect;
- (b) between preshipment inspection entities and any other entities, including other entities subject to preshipment inspection, with the exception of the government entities contracting or mandating the inspections;
- (c) with divisions of preshipment inspection entities engaged in activities other than those required to carry out the inspection process.

Delays

2.15. User governments shall ensure that preshipment inspection entities avoid unreasonable delays in inspection of shipments. User governments shall ensure that, once a preshipment inspection entity and an exporter agree on an inspection date, the preshipment inspection entity conducts the inspection on that date unless it is rescheduled on a mutually-agreed basis between the exporter and the preshipment inspection entity, or the preshipment inspection entity is prevented from doing so by the exporter or by [circumstances beyond its control] [force majeure].

2.16. User governments shall ensure that, following receipt of the final documents and completion of the inspection, preshipment inspection entities within five working days of issuance of the final on-board bill of lading either issue a Clean Report of Findings or provide a detailed written explanation specifying the reasons for non-issuance. User governments shall ensure that, in the latter case, preshipment inspection entities give exporters the opportunity to present their views in writing and, if exporters so request, arrange for reinspection at the earliest mutually convenient date.

2.17. User governments shall ensure that, whenever so requested by the exporters, preshipment inspection entities undertake, prior to the date of physical inspection, a preliminary verification of price and, where applicable, of currency exchange rate, on the basis of the contract between exporter and importer, the pro forma invoice and, where applicable, the application for import authorization. User governments shall ensure that a price or currency exchange rate that has been accepted by a preshipment inspection entity on the basis of such preliminary verification is not withdrawn, providing the goods conform to the import documentation and/or import licence. They shall ensure that, after a preliminary verification has taken place, preshipment inspection entities inform exporters in writing either of their acceptance or of their detailed reasons for non-acceptance of the price and/or currency exchange rate.

2.18. User governments shall ensure that, in order to avoid delays in payment, preshipment inspection entities send to exporters or to designated representatives of the exporters a Clean Report of Findings as expeditiously as possible.

2.19. User governments shall ensure that, in the event of a clerical error in the Clean Report of Findings, preshipment inspection entities correct the error and forward the corrected information to the appropriate parties as expeditiously as possible.

Price verification

2.20. User governments shall ensure that, in order to prevent over- and under-invoicing, preshipment inspection entities conduct price verification according to the following guidelines:

- (a) [preshipment inspection entities shall not reject a contract price agreed between an exporter and an importer unless there is an indication of breach of the laws or regulations of the user government [, or of over-pricing]
[Over-pricing, over-invoicing and under-invoicing shall be regarded as breaches of the laws of the user government];]

or:

[preshipment inspection entities shall not reject a contract price agreed between an exporter and an importer unless they can demonstrate that price verification has been conducted in conformity with all the criteria set out in Article 2:20(b)-(e) below;]

- (b) price verification shall [,where relevant,] be based upon [the prevailing export price, which is] the price at which identical or similar goods are offered for export from the same country of exportation [to the same country of importation] at or about the same time under competitive conditions and comparable terms and conditions of sale, in conformity with customary commercial practice, and net of any applicable standard discounts. [Where such price does not exist, the following additional elements shall also be taken into account: the price of goods on the domestic market of the country of exportation, and the price of goods for export to a country other than the country of importation.] Appropriate adjustments shall be made for minor differences in the goods being compared, the time of exportation and/or the conditions of delivery;
- (c) when conducting price verification, preshipment inspection entities shall make appropriate allowances for the terms of the sales contract and generally applicable adjusting factors pertaining to the transaction; these factors shall include but not be limited to the commercial level and quantity of the sale, delivery periods and conditions, price escalation clauses, quality specifications, special design features, special shipping or packing specifications, order size, spot sales, seasonal influences, licence or other intellectual property fees, and services rendered as part of the contract if these are not customarily invoiced separately; they shall also include certain elements relating to the exporter's price, such as the contractual relationship between the exporter and importer [and delays in payments and financial transfers];
- (d) the verification of transportation charges shall relate only to the agreed price of the mode of transport in the country of exportation as indicated in the sales contract;
- (e) the following shall not be used for price verification purposes:
 - (i) the selling price in the country of importation of goods produced in such country;
 - [(ii) the price of goods on the domestic market of the country of exportation;]
 - [(iii) the price of goods for export to a country other than the country of importation;]
 - (iv) the price of goods for export from a country other than the country of exportation;
 - (v) the cost of production;
 - (vi) arbitrary or fictitious prices or values.

[2.21. User governments shall ensure that, unless the exporter and importer expressly agree otherwise:

- (a) the coming into effect of any contract relating to exports subject to price verification is conditional on the issue of a Clean Report of Findings; and
- (b) any delivery period or other time period specified in the contract commences no earlier than the date of issue of a Clean Report of Findings.]

[Customs valuation

2.22. User governments shall ensure that, when valuing goods for customs duties and other charges or for the application of restrictions on importation [or exportation] based upon or regulated by value, preshipment inspection entities comply with the GATT obligations on customs valuation undertaken by the user governments contracting or mandating them.]

Appeals procedures

2.23. User governments shall ensure that preshipment inspection entities establish procedures to receive, consider and render decisions concerning grievances raised by exporters, and that information concerning such procedures is made available to exporters in accordance with the provisions of Article 2:6 and 2:7. User governments shall ensure that the procedures are developed and maintained in accordance with the following guidelines:

- (a) preshipment inspection entities shall designate one or more officials who shall be available during normal business hours in each city or port in which they maintain a preshipment inspection administrative office to receive, consider and render decisions on exporters' appeals or grievances;
- (b) exporters shall provide in writing to the designated official(s) the facts concerning the specific transaction in question, the nature of the grievance and a suggested solution;
- (c) the designated official(s) shall afford sympathetic consideration to exporters' grievances and shall render a decision as soon as possible after receipt of the documentation referred to in (b) above;

Derogation

2.24. By derogation to the provisions of Article 2, user governments shall provide that, with the exception of part shipments, shipments whose value is less than a minimum value applicable to such shipments as defined by the user government shall not be inspected, except in exceptional circumstances. This minimum value shall form part of the information furnished to exporters under the provisions of Article 2:6 above.

[Simplification of inspection procedures]

2.25. User governments [shall] [may] provide that, after an exporter has received a certain number of Clean Reports of Findings, inspection of every one of his shipments shall be replaced by spot checks for as long as these spot checks result in the granting of Clean Reports of Findings.]

ARTICLE 3

Obligations of Exporter Governments

Non-discrimination

3.1. Exporter governments shall ensure that their laws and regulations relating to preshipment inspection activities are applied in a non-discriminatory manner.

Transparency

3.2. Exporter governments shall publish promptly all applicable laws and regulations relating to preshipment inspection activities in such a manner as to enable other governments and traders to become acquainted with them.

Technical assistance

3.3. Exporter governments shall offer to provide to user governments, if requested, technical assistance directed towards the achievement of the objectives of this agreement on mutually agreed terms.

ARTICLE 4

Facilitation of Preshipment Inspection

4.1. [All contracting parties shall ensure that any relevant domestic laws and regulations relating to preshipment inspection activities shall facilitate such activities and shall not in any way change, limit or inhibit the operation of the preshipment inspection programmes as adopted by the user governments.]

or

[All contracting parties shall ensure that any relevant domestic laws and regulations relating to preshipment inspection activities are consistent with the provisions of the present agreement.]

or

[Exporter governments shall afford sympathetic consideration for preshipment inspection activities to be carried out on their territories in accordance with the provisions of this agreement and to the extent that the user governments do not possess the appropriate infrastructure to carry out the inspection themselves. This shall not, however, relieve preshipment inspection entities from their obligations in respect of compliance with the national legislation of the exporter governments.]]

ARTICLE 5

Independent review procedures

5.1. Contracting parties shall encourage preshipment inspection entities and exporters mutually to resolve their disputes. However, two working days after submission of the grievance in accordance with the provisions of Article 2:23, either party may refer the dispute to independent review. Contracting parties shall ensure that the following procedures* are established and maintained to this end.

5.2. These procedures shall be administered by an independent body constituted jointly by an organization representing preshipment inspection entities and an organization representing exporters.

5.3. These procedures shall be established and maintained in [each exporting country] [each exporting country, unless the exporting country concerned agrees otherwise] [each exporting country in which the preshipment inspection entities maintain a preshipment inspection administrative office] [major regional centres (initially New York, Paris, Singapore and Tokyo)].

*Further consultations on these procedures will be necessary.

5.4. A list of experts shall be established in each location referred to in Article 5:3 above, as follows:

- (a) a section of members nominated by an organization representing preshipment inspection entities;
- (b) a section of members nominated by an organization representing exporters;
- (c) a section of independent trade experts, nominated jointly by an organization representing preshipment inspection entities and an organization representing exporters.

This list shall be drawn up within two months of the entry into force of this agreement and shall be updated annually.

5.5. In case of a dispute between an exporter and a preshipment inspection entity regarding a specific shipment, a panel shall be established in the [exporting country] [regional centre] concerned. The panel shall consist of three members. The first member shall be chosen from section (a) of the above list by the preshipment inspection entity concerned, provided that this member is not affiliated to that entity. The second member shall be chosen from section (b) of the above list by the exporter concerned, provided that this member is not affiliated to that exporter. The third member shall be chosen from section (c) of the above list by the independent body referred to in Article 5:2 above. No objection shall be made to any independent trade expert drawn from section (c) of the above list. The third member shall serve as the chairman of the panel. If the parties to the dispute so agree, one independent trade expert could be selected from section (c) of the above list by the independent body referred to in Article 5:2 above to review the dispute in question.

5.6. The object of the review shall be to establish whether, in the course of the inspection in dispute, the parties to the dispute have complied with the provisions of this agreement [and the laws and regulations of the [user government] [contracting parties] concerned]. The procedures shall be expeditious and provide the opportunity for both parties to present their views in person or in writing.

5.7. A decision shall be rendered within [five] [ten] working days of the request for independent review and be communicated to the two parties.

5.8. [The decision of the panel shall be final.] [Exporter governments reserve their rights to ensure compliance with the decision.]

or

[The preshipment inspection entity should respect the reasoned opinion given by the panel. In cases where the preshipment inspection entity believes that the opinion of the panel is contrary to the laws and regulations of the user government, or to any provision of this agreement, it may refer the dispute to the user government, which will give sympathetic and careful consideration to the opinion expressed by the panel.]

ARTICLE 6

Notification

6.1. Contracting parties shall submit to the GATT secretariat copies of their laws and regulations by which they put this agreement into force, as well as copies of any other laws and regulations relating to preshipment inspection when the agreement comes into force for the contracting party concerned. No changes in the laws and regulations relating to preshipment inspection shall be enforced before such changes have been officially published. They shall be notified to the GATT secretariat immediately after their publication. The GATT secretariat shall inform the contracting parties of the availability of this information.

ARTICLE 7

Review

7.1. The contracting parties shall undertake a [periodic] review of the provisions, implementation and operation of this agreement, taking into account the objectives thereof. [The review shall include any measures taken for the purpose of phasing out preshipment inspection requirements.]

ARTICLE 8

Consultation

8.1. Contracting parties shall consult with other contracting parties upon request with respect to any matter affecting the operation of this agreement. In such cases, the provisions of Article XXII of the General Agreement, as amended by the Uruguay Round, shall apply*.

*The wording of this phrase will depend, inter alia, on the legal form of the agreement.

ARTICLE 9

Dispute settlement

9.1. Any disputes among contracting parties regarding the operation of this agreement shall be subject to the provisions of Article XXIII of the General Agreement, as amended by the Uruguay Round*. [If such disputes concern individual cases of preshipment inspection activities, the procedures provided for in Article 5 shall first have been exhausted.]

[ARTICLE 10

Final provisions

10.1. Contracting parties shall take the necessary measures for the implementation of the present agreement.]

*The wording of this phrase will depend, inter alia, on the legal form of the agreement.

ANNEX 2

RULES OF ORIGIN

The attached text is forwarded by the Informal Drafting Group in response to the request by the Chairman of the Negotiating Group on Non-Tariff Measures that the results of the work so far in the Informal Drafting Group be made available in time for the Negotiating Group's July 1990 meeting.

Square brackets have been used to indicate points on which agreement remains to be found. However, no part of the text will be finally agreed until the whole text is agreed.

The Informal Drafting Group suggests that its next meeting should be held in the week of 17 September 1990.

AGREEMENT ON RULES OF ORIGIN¹

Preamble

[The contracting parties,

NOTING that Ministers on 20 September 1986 agreed that the Uruguay Round of Multilateral Trade Negotiations shall aim to bring about further liberalization and expansion of world trade, strengthen the role of the GATT and increase the responsiveness of the GATT system to the evolving international economic environment;

DESIRING to further the objectives of the GATT;

[DESIRING to ensure that rules of origin do not nullify or impair the rights of contracting parties under the GATT;]

[DESIRING to ensure that rules of origin do not create unnecessary obstacles to trade [and investment];]

RECOGNIZING that the unclear and unpredictable use of rules of origin may impede or distort the flow of international trade [and investment];

DESIRING to ensure that rules of origin are prepared and applied in an impartial, transparent, predictable, consistent and neutral manner;

RECOGNIZING that it is desirable to provide transparency of laws, regulations, and practices regarding rules of origin;

RECOGNIZING the availability of a consultative mechanism and procedures for the speedy, effective and equitable resolution of disputes arising under this agreement;

RECOGNIZING that it is desirable to harmonize rules of origin;

hereby agree as follows:¹]

¹The legal form of the agreement will be examined at a later stage.

PART I

DEFINITIONS AND COVERAGE

Article 1

Rules of Origin

1. For the purposes of this agreement, rules of origin shall be defined as those laws, regulations and administrative determinations of general application [and administrative practices] applied by any contracting party to determine the country¹ of origin of [traded] goods [provided such rules of origin are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of Article I:1 of the General Agreement].
2. [Rules of origin referred to under paragraph 1 shall be applied equally for all purposes covered by this agreement, including anti-dumping duties and government procurement.]

Article 2

Country of origin

[The country of origin shall be the one where the product has been wholly obtained. Where more than one country is concerned in the manufacture of a product, the country of origin shall be the one in which the last substantial transformation has been carried out.]

¹The word "country", wherever it appears in this agreement, may include a territory or a group of countries.

PART II

PRINCIPLES AND DISCIPLINES TO GOVERN
THE APPLICATION OF RULES OF ORIGIN

Article 3

Objectivity and predictability

Contracting parties shall ensure that their rules of origin are objective, understandable and [that their application is made] predictable. When administrative determinations of general application are issued, the requirements to be fulfilled shall be clearly defined. In particular:

- in cases where the criterion of change of tariff classification is applied, such a rule of origin, and any exceptions to the rule, must clearly specify the sub-headings or headings within the tariff nomenclature which are addressed by the rule;
- in cases where the ad valorem percentage criterion is applied, the method for calculating this percentage shall also be indicated in the rules of origin;
- in cases where the criterion of manufacturing or processing operation is applied, the operation which confers origin on the product concerned shall be precisely specified.

Article 4

Neutrality

1. Notwithstanding [the effects of] the measure or instrument of commercial policy to which rules of origin may be linked, contracting parties shall not use rules of origin as instruments to pursue trade [and investment] objectives.
2. Rules of origin shall not themselves create restrictive, distorting or disruptive effects on international trade [or investment]. [They shall not be adapted to specific purposes.] They shall not pose unduly strict requirements as a prerequisite for the determination of country of origin [or require the fulfilment of a certain condition not [directly] associated with manufacturing and processing of the goods concerned[, such as research and development]].

Article 5

Non-discrimination

1. Rules of origin applied by each contracting party to imports and exports [under Article I of the General Agreement] [shall not be more stringent than the rules of origin it applies to its domestic products, and] shall not discriminate between other contracting parties, irrespective of the affiliation of the manufacturers of the products concerned.
2. [Rules of origin applicable to trade conducted under agreements covered by Article XXIV of the General Agreement, shall not create trade effects inconsistent with that Article.]

Article 6

Consistency

Each contracting party shall administer its rules of origin in a consistent, uniform, impartial and reasonable manner.

Article 7

Positive Standard

Each contracting party shall ensure that its rules of origin are based on a positive standard. Rules of origin which state what does not confer origin (negative standard) are permissible [only] as part of a clarification of a positive standard. [However, rules of origin which state only what does not confer origin shall be restricted to individual determinations of origin.]

Article 8

Transparency

Contracting parties shall treat laws, regulations, judicial decisions and administrative rulings of general application relating to rules of origin as if they were a requirement on imports and a customs matter within the meaning of Article X:1 of the General Agreement.

Article 9

Assessment of origin

Contracting parties shall issue upon the request of an exporter or importer [or any person with a justifiable cause], assessments of the origin of a product, within [120 days of a request for such an assessment] [in principle] [a reasonable period] whenever a determination of origin is required. Requests for such assessments shall be accepted before trade in the product concerned begins or, whenever necessary, at any later point of time. Such assessments shall remain valid for [one] [three] year[s] provided that the conditions under which they have been made remain comparable. [Provided that the parties concerned are informed in advance of the changes in such assessments, such assessments will no longer be valid when the rules of origin are modified or when a decision contrary to the assessment is made in a review as referred to in Article 11]. Such assessments shall be made publicly available subject to the provisions of Article 12.

Article 10

Non-retroactivity

[Contracting parties shall not apply retroactively rules of origin, or any modifications thereof, which are of general application.] [Contracting parties shall ensure that bona fide importers/exporters are not disadvantaged by the retroactive application of modified origin rulings or assessments.] [This commitment does not apply to cases where customs clearance is pending or the person liable has reason to believe at the time of importation that the determination of origin for the product in question may be incorrect.]

Article 11

Review of administrative action

Each contracting party shall ensure that any administrative action relating to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination.

Article 12

Protection of confidential information

All information which is by nature confidential or which is provided on a confidential basis by traders for the purpose of the application of rules of origin shall be treated as strictly confidential by the authorities concerned which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

PART III

PROCEDURAL ARRANGEMENTS ON NOTIFICATION, REVIEW,
CONSULTATION AND DISPUTE SETTLEMENT

Article 13

[Institutions

There shall be established under this Agreement:

1. A Committee on Rules of Origin (hereinafter referred to as the Committee) composed of the representatives from each of the contracting parties. The Committee shall elect its own Chairman and shall meet as necessary but not less than once a year, for the purpose of affording contracting parties the opportunities to consult on matters relating to the operation of Parts I, II, III [and IV] of the agreement or the furtherance of its objectives and to carry out such other responsibilities assigned to it under this agreement or by the CONTRACTING PARTIES. Where appropriate, the Committee shall request information and advice from the Technical Committee [in order to assist the Committee to carry out its functions] [to enable it to discharge its responsibilities]. The Committee may also request such other work from the Technical Committee as it considers appropriate for the furtherance of the objectives of this agreement. The GATT secretariat shall act as the secretariat to the Committee.
2. A Technical Committee on Rules of Origin (herein referred to as the Technical Committee) under the auspices of the Customs Co-operation Council as set out in Annex I of this agreement. The Technical Committee shall carry out the technical work called for in Part IV and prescribed in Annex I of this Agreement.]

Article 14

Notification and procedures for modification

1. Existing Rules

[Upon entry into force of this agreement, each contracting party shall notify within 90 days to the secretariat its rules of origin, judicial decisions, and administrative rulings of general application relating to rules of origin in effect on that date. Lists of notifications shall be circulated to contracting parties through the GATT secretariat.]

2. Proposed changes

[Contracting parties proposing to introduce [substantive] changes [other than de minimis changes] to their rules of origin, or to introduce new rules of origin, which, for the purpose of this Article, shall include any rule of origin not notified under paragraph 1 above [, unless the contracting party concerned demonstrates that this rule of origin has already been applied before the entry into force of this agreement,] shall:

- (a) publish a notice to that effect at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with the proposal;
- (b) notify the proposal to other contracting parties, through the secretariat, at least [120] days before it is to be adopted;
- (c) include in the notification a brief description of the proposal, products [and/or countries] affected, an explanation of the reasons for the proposal [, and an indication of its likely trade effects];
- (d) Allow [45] days prior to the adoption of the proposal for contracting parties to hold consultations with a view to ensuring that it is as neutral as possible and in conformity with the agreed principles and procedures, as well as with GATT obligations and principles, and take any written comments and the results of consultations into account before finalizing the proposal;

3. Exceptional Circumstances

Where exceptional circumstances arise or threaten to arise for a contracting party, that contracting party may omit such of the steps enumerated in paragraph 2 as it finds necessary, provided that party shall:

- (a) in a manner as prescribed in paragraph 2(b) above notify as soon as possible and in no case later than 10 days after adoption of the proposal, other contracting parties of the proposal and of the nature of the exceptional circumstances involved; and
- (b) consult with other contracting parties upon request, as soon as possible and in no case later than 30 days after adoption of the proposal.]

Article 15

Review

[1. The Committee shall review annually the implementation and operation of this agreement having regard to its objectives. [As part of the review, the Committee shall also examine the contracting parties' rules of origin, as well as their application, taking into account the provisions of this agreement and GATT obligations.] The Committee shall annually inform the CONTRACTING PARTIES of the GATT of developments during the period covered by such reviews.

2. [The outcome of] the programme of work for the harmonization of rules of origin prescribed in Part IV of this agreement shall also be reviewed [periodically] to ensure its consistency with the relevant provisions of this agreement.]

Article 16¹

Consultation

The provisions of Article XXII of the General Agreement, as improved and elaborated upon by the Negotiating Group on Dispute Settlement, are applicable to this agreement.

Article 17¹

Dispute settlement

The provisions of Article XXIII of the General Agreement, as improved and elaborated upon by the Negotiating Group on Dispute Settlement, are applicable to this agreement. [Before having recourse to the provisions of Article XXIII of the General Agreement, the complaining party concerned in consultations provided for in Article 16 may request the Committee established under Article 13, to investigate the matter which was the subject of the earlier consultations, with a view to facilitating a mutually satisfactory resolution. The Committee shall meet for this purpose within 30 days of receipt of such request and shall complete its investigation within three months of its first meeting on receipt of the request.]

¹It is understood that the procedures on consultation and dispute settlement, including the possible role of the Committee in this context, will be re-examined when the legal form of the agreement is examined.

PART IV

HARMONIZATION OF RULES OF ORIGIN

Article 18

Programme of work for the harmonization of rules of origin

First approach

- [1. On the basis of the provisions of Parts I and II, the Technical Committee provided for in Article 13:2 above shall:
 - (a) establish a definition of the goods which are to be considered as being wholly obtained in one country;
 - (b) determine harmonized rules of origin for goods not covered under point (a) above by specifying the criterion of the last substantial transformation, and by defining the minimal operations which do not by themselves confer origin.
2. The Technical Committee shall be free to express the interpretation of the last substantial transformation in the manner it judges most appropriate for the goods concerned by applying either a rule requiring a change of tariff heading, a manufacturing or processing operation, an ad valorem percentage or any combination of these methods.
3. The harmonization work shall be completed within two years of initiation and its results shall be communicated to the Committee on Rules of Origin provided for in Article 13.1 above.
4. The result of this work shall be laid down in a binding instrument.]

Second approach

[Phase One]

In the first phase, which shall be completed in one year, the CONTRACTING PARTIES shall request the CCC to:

1. Using the harmonized system nomenclature, undertake to identify in a technical and objective manner [, having regard to current practice in the structure of manufacturing or processing operations where appropriate]:

- (a) product areas where origin can be identified by means of the "wholly produced" criterion;
- (b) with regard to other product areas not identified by means of the "wholly produced" criterion:
 - (i) where change within the nomenclature results in transformation of a product sufficient to confer origin and, if so, the minimum change within the nomenclature sufficient to confer origin;
 - (ii) identify those product areas or specific products where use of the HS nomenclature may not allow an adequate basis for a logical rule of origin including where transformation of a product sufficient to confer origin does not result in any change within the nomenclature.

These determinations shall be made without consideration to secondary criteria such as trade policy considerations and existing rules, including but not limited to the ad valorem percentage criterion, specific requisite manufacturing processes or other similar non-tariff classification methodologies.

2. Identify those product areas which are typically subject to a variety of rules of origin and/or rules of origin different from the primary rule of origin used by individual countries. The CCC shall consult the CONTRACTING PARTIES in identifying those products and use the information concerning individual country origin systems provided to the GATT under agreed procedural rules. Taking this information into account, the CCC shall report to the GATT those product areas, along with the specific HS number(s) and the specific rules that are used by different countries.

3. Report the generic types of non-m.f.n. policies or programmes that are subject to special rules of origin, indicating the country, programme/policy used.

Phase Two

In the second phase, which shall be completed in one year, the CONTRACTING PARTIES will undertake the following work, using CCC expertise as appropriate:

1. With the objective of harmonizing rules of origin, in accordance with the principles prescribed in Part II of this agreement, increasing predictability in the multilateral trading system and promoting transparency, the CONTRACTING PARTIES shall use the above reports as a basis for negotiations. [The CONTRACTING PARTIES shall recognize that ad valorem percentage requirements in rules of origin inherently introduce an element of unpredictability and so shall be avoided to the extent practicable.]

2. [It is envisioned that during this phase the CONTRACTING PARTIES may make additional requests of the CCC to build on the work carried out in phase one. In particular, the CCC may be requested to examine and report technical possibilities for supplementary criteria, such as an ad valorem percentage or a specified manufacturing or processing operation, particularly for those product areas or specific products where the Harmonized System nomenclature alone may not provide an adequate basis for a logical rule of origin.]

3. [In these negotiations the CONTRACTING PARTIES shall take into account the interests of those contracting parties with economies that are relatively small or trade-impacted, and shall recognize that the rights of such contracting parties under GATT Articles I:1, II:1(b), III:2 and 4, VI:3, 4, 5 and 6(a), XI:1 and XIII:1 are dependent on the rules of origin adopted.]

4. The Committee on Rules of Origin to be established in the GATT shall be the appropriate forum for such negotiations.

5. Results from these negotiations shall be adopted by the CONTRACTING PARTIES subject to domestic authorization and shall become legally binding. Contracting parties shall take appropriate measures to bring their own rules into conformity with the results of the negotiations. The results will enter into force in accordance with a time-frame agreed upon by the CONTRACTING PARTIES.

6. The CONTRACTING PARTIES shall review the principles and procedures provided in Parts I, II and III above and amend them as necessary to implement and ensure the adherence to the results of the negotiations. In addition, the results of the harmonization negotiations shall be periodically reviewed.]

PART V

FINAL PROVISIONS

Article 19

National legislation

Each contracting party accepting or acceding to this agreement shall ensure, not later than the date of entry into force of this agreement for it, the conformity with the provisions of this agreement, of its laws, regulations and administrative practices to determine the country of origin of goods.

[ANNEX I

Technical Committee on Rules of Origin

1. The on-going responsibilities of the Technical Committee shall include the following:

- (a) at the request of any member of the Technical Committee, to examine specific technical problems arising in the day-to-day administration of the rules of origin of contracting parties and to give advisory opinions on appropriate solutions based upon the facts presented;
- (b) to furnish information and advice [on any matters concerning the origin determination of goods as may be requested by any contracting party or the Committee] [to enable the Committee to discharge its responsibilities].
- (c) to prepare and circulate [for the information of the Committee] periodic reports on the technical aspects of the operation and status of this agreement;

2. The Technical Committee shall exercise such other responsibilities as the Committee may request of it.

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by contracting parties or the Committee, in a reasonably short period of time, [particularly in respect of any work related to Article 17].

Representation

4. Each contracting party shall have the right to be represented on the Technical Committee. Each contracting party may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a contracting party so represented on the Technical Committee is herein referred to as a member of the Technical Committee. Representatives of members of the Technical Committee may be assisted by advisers at meetings of the Technical Committee. The GATT secretariat may also attend such meetings with observer status.

5. Members of the Customs Co-operation Council who are not contracting parties may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

6. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the Customs Co-operation Council (hereinafter referred to as the Secretary-General) may invite representatives of governments which are neither contracting parties nor members of the Customs Co-operation Council and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

7. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

Meetings

8. The Technical Committee shall meet as necessary, but not less than once a year.

Procedures

9. The Technical Committee shall elect its own chairman and shall establish its own procedures.]

ANNEX 3

Information on the Request and Offer Negotiations
on Non-Tariff Measures

	Requests		Offers	
	Participants having made requests (1)	Participants to which requests have been made (2)	Participants having made offers (3)	Participants to which offers have been made (4)
Algeria				
Antigua and Barbuda				
Argentina	X	X		X
Australia	X	X	X	X
Austria	X	X		X
Bangladesh		X		
Barbados		X		
Belize				
Benin				
Botswana				
Brazil		X	X	
Burkina Faso				
Burundi				
Cameroon				
Canada	X	X	X	X
Central African Rep.				
Chad				
Chile	X	X		X

	(1)	(2)	(3)	(4)
China				
Colombia	X	X		
Congo				
Costa Rica	X			
Côte d'Ivoire				
Cuba	X	X		
Cyprus				
Czechoslovakia	X	X		
Dominican Republic		X		
El Salvador				
Egypt	X	X		X
European Community and its member States	X	X		X
Fiji				
Finland	X	X		
Gabon				
Gambia				
Ghana				
Guyana				
Guatemala				
Haiti				
Honduras				
Hong Kong		X		
Hungary	X	X		
Iceland	X			
India		X		
Indonesia	X	X		

	(1)	(2)	(3)	(4)
Israel		X		
Jamaica		X		
Japan	X	X		X
Kenya		X		
Korea, Rep. of	X	X		X
Kuwait		X		
Lesotho				
Madagascar				
Malawi		X		
Malaysia		X		
Maldives				
Malta				
Mauritania				
Mauritius				
Mexico	X	X		
Morocco		X		
Myanmar				
New Zealand	X	X	X	X
Nicaragua				
Niger				
Nigeria	X			
Norway	X	X		X
Pakistan	X	X		
Paraguay				
Peru	X	X		X
Philippines	X	X		X
Poland	X	X	X	
Romania	X	X		X
Rwanda				
Senegal				

	(1)	(2)	(3)	(4)
Sierra Leone				
Singapore		X		
South Africa		X		
Sri Lanka	X	X		X
Suriname				
Sweden	X	X		X
Switzerland	X	X		X
Tanzania				
Thailand	X	X		X
Togo				
Trinidad and Tobago		X		
Tunisia		X		
Turkey	X	X		X
Uganda				
United States	X	X		X
Uruguay	X	X		X
Yugoslavia	X	X		X
Zaire				
Zambia				
Zimbabwe		X		