1. The Negotiating Group held its twelfth meeting on 28 September 1989. It adopted the agenda contained in GATT/AIR/2824.

I. Examination of new submissions from delegations

2. The representative of Hong Kong introduced the submission of his delegation on rules of origin (MTN.GNG/NG2/W/41). This was a problem which had defied solution in the GATT for a very long time. While some work on the issue had been carried out in the CCC and the OECD, Hong Kong felt that the trade policy aspects of rules of origin were a matter to be addressed in GATT. Indeed, some of the benefits to which the contracting parties were entitled under the General Agreement and more particularly Articles I and II thereof, were dependent on rules of origin. Such benefits were increasingly at risk of nullification or impairment and Hong Kong therefore sought to provide explicit rights to protect them and to elaborate procedures to facilitate the exercise of these rights. Hong Kong's proposal was to introduce disciplines which had been tested in the General Agreement or the MTN Codes, into an importing country's determination of origin. This was a modest approach but Hong Kong considered it essential that some effective results in this area be included in the overall Uruguay Round package. In the long-term, harmonization of rules of origin could be sought as a complementary approach.

3. His delegation did not, at the present stage, wish to address the question of what form an agreement on rules of origin might take. It was for this reason that the words "multilateral rule-making approach" had been put in square brackets in the submission. However, its preference was for an agreement adopted by as many contracting parties as possible. Similarly, the elements of the proposal which related to administration, consultation and dispute settlement, were only illustrative at this stage.

4. The representative of the United States introduced her delegation's submission on rules of origin (MTN.GNG/NG2/W/43). With the increase in multiple sourcing of products and the proliferation of preferential trading arrangements, the issue of rules of origin had gained in importance. Nevertheless, GATT disciplines in this area were virtually non-existent.
Her delegation therefore believed that the time had come for the GATT to address this issue directly and explicitly bring it under the disciplines of the General Agreement. The objective of the United States proposal was to (i) launch a work programme to harmonize rules of origin; (ii) increase predictability in the multilateral trading system; and (iii) promote transparency.

5. According to her delegation, rules of origin had become the source of trade tensions over the years and had the potential to become a major non-tariff measure if they were not subjected to GATT disciplines. Recognizing the technical complexity of the issue, the United States envisaged a work programme which would involve the expertise of the Customs Cooperation Council, as had been done in the elaboration of the Standards Code. The proposal was generic and envisaged negotiations which would cover all products, programmes and policies which involved rules of origin subject to GATT disciplines. They were proposing to work towards harmonization, not the adoption of a specific common rule of origin. They had examined the advantages and drawbacks of different rules but had not reached conclusions as to which were preferable. The change in tariff classification approach was appealing since most countries were now using the Harmonized System nomenclature. This approach also provided a detailed framework in which to express origin. In order to prevent arbitrary application of rules of origin, specific rules were preferable to general principles as expressed in the Kyoto Convention, as these were often open to differing interpretations. Negotiations on the harmonization of rules of origin would need a timetable extending beyond the conclusion of the Uruguay Round and could be compared to the negotiations on the Harmonized System which had continued between rounds. However, an agreement on procedures and principles could be part of the Uruguay Round package.

6. Commenting on these submissions, the representative of the Customs Cooperation Council recalled the work which had been carried out on the subject in his organization, and which included the elaboration of the Kyoto Convention, three of whose annexes related to rules of origin. The CCC had also published in the "Compendium on Rules of Origin of Goods" information presented in a neutral form, on the rules maintained by twenty countries and had issued a "Compendium on Rules of Origin of Goods which are difficult to apply and control". The CCC had not gone further in the direction of harmonization because it had not found it easy to distinguish between the purely technical aspects of the question and those which relate to trade policy. Nevertheless, the CCC was prepared to accept proposals to be formulated by the Negotiating Group, which would associate it to work related to rules of origin. It worked to a precise calendar which was heavily loaded until July 1990 but would be prepared to make its experience available to the negotiations.
7. Many participants agreed that there was a need for multilateral regulation in GATT of rules of origin. Because these could result in arbitrary and discriminatory distortions of international trade they welcomed the pragmatic approach contained in the submissions put forward on the subject. The proliferation of preferential agreements under which similar products received differential treatment depending on their origin constituted a violation of the MFN clause, particularly in cases where this preference was accorded simply because the importing country had invested in the company from which it was importing. Some of these participants agreed with Hong Kong that the task of harmonizing rules of origin should be a long-term goal because it would be difficult to reach it during the Uruguay Round. In the meantime a framework agreement containing provisions on transparency, consultation and dispute settlement should be sought, with the technical support of specialized organizations such as the CCC. The role of the CCC should not, however, include policy matters. The first thing to do was to agree on a definition of rules of origin. One delegation suggested that the rules of origin used by the Latin American Integration Association (ALADI) be used as a model in the GATT because they were the most complete ones available.

8. Other delegations, while agreeing in principle to multilateral action on rules of origin, felt that these were legitimate instruments to identify the origin of internationally traded products. They therefore did not constitute non-tariff measures per se. Any administrative procedure could lead to costs and delays for traders. These delegations had therefore supported multilateral action in the CCC whose aim had been to reduce these to a minimum. Increased harmonization of rules of origin seemed to be called for nowadays because trade-neutral rules of origin were more necessary than ever. The criteria used had to be made simpler and more coherent so that they would be more predictable. Transparency had to be increased in relation to documentary evidence and administrative cooperation. Such action should take place first in the CCC, though there were aspects of the question which could be taken up in GATT. The CCC could be asked to analyze the problems arising out of the implementation of the Kyoto Convention and the reasons why the relevant Annexes of the Convention had only been ratified by a small number of countries. Some participants felt that this was a technical subject best dealt with by more widespread accession to the Kyoto Convention. Any further steps would require considerable reflection. A committee of contracting parties might not be the most competent body to judge disputes relating to rules of origin because this was a technical subject. Another comment was that rules of origin could not be bound as if they were tariffs.

9. Responding to comments which had been made about his delegation's submission, the representative of Hong Kong explained that rules of origin applied at the border should not be more rigorous than those applied internally to fulfill labelling requirements or to identify domestic products for government procurement purposes. The references to prior notification requirements in their proposal had been borrowed from the Agreement on Technical Barriers to Trade and envisaged consultations on rules of origin in the formulation stage. Existing rules of origin would
be notified when the agreement came into force. Hong Kong considered that concessions negotiated in the GATT could be nullified by arbitrary use of rules of origin and therefore thought that Article XXVIII was applicable. Hong Kong accepted that free trade agreements would necessarily distort trade because they generally contained restrictive rules of origin, but believed that these distortions should not be greater than those envisaged in Article XXIV.

10. Responding to comments on her delegation's submission, the representative of the United States regretted that the time-frame envisaged in it would extend beyond the duration of the Uruguay Round. The technical work which they envisaged the CCC to carry out would serve as a basis for negotiations but would not commit any delegations. The proposal did not deal with government procurement because this was not an area currently covered by GATT disciplines. On the other hand, disciplines should cover trade carried out under all preferential agreements such as GSP and free trade areas. The United States considered that the four month time-frame envisaged for advance notification of rules of origin was valid, even though it appeared too long for some.

11. The representative of Canada introduced the communication tabled by her delegation (MTN.GNG/NG2/M/42) which, while essentially dealing with tariff negotiations, envisaged substantial liberalization in the market access area. Non-tariff measures had to be dealt with principally through a generic approach, though those which did not lend themselves to such an approach should be taken up in request-and-offer negotiations. Her delegation considered that offers should be submitted before the end of January 1990 and that negotiations should lead to the binding of non-tariff measures. A number of delegations expressed full support for the ideas which related to the liberalization of non-tariff measures in the Canadian proposal.

12. The representative of the European Communities made a statement on the cost of services rendered in relation to import procedures, later circulated as MTN.GNG/NG2/W/44.

13. Commenting on the question of consular formalities, one delegation confirmed that as indicated in the study circulated by the European Communities (MTN.GNG/NG2/W/34), its authorities required consular certificates for certain pharmaceuticals. These formalities had been reduced recently and it considered that if a bilateral or multilateral agreement could be reached on the recognition of forms and stamps, it would be feasible to avoid them altogether.

14. At the end of the discussion, the Chairman stated that delegations would have, at the next meeting of the Group, a further opportunity for commenting on the submissions which were before it.
II. Establishment of a framework for future negotiations, including procedures

15. The Chairman informed the Group that as a result of consultations which he had held since the last meeting, he had reached the conclusion that the positions expressed at that meeting had not changed and that the draft procedures which he had put to the Group (MTN.GNG/NG2/11/Add.1, Appendix) could not be adopted at the present meeting. He therefore invited delegations to follow the procedures until such time as the Group was in a position to adopt them formally. Many delegations informed the Group that they would follow the procedures suggested by the Chairman. One delegation considered that since it had not been possible to reach consensus on a text, delegations would be free to apply the Chairman's suggestions with the modifications which had been proposed in the course of the discussion.

III. Other business, including requests for additional background studies by the secretariat

16. The Chairman informed the Group that the secretariat would issue in the near future, the notes which it had been requested to prepare on the effective role of assistance and related methods, and to bring into line with other similar background notes, the existing note on preshipment inspection (MTN.GNG/NG2/W/11). As requested at the meeting of 30 June 1989, the secretariat would also prepare a separate note which would bring together the points made in relation to preshipment inspection so that the Group could identify the areas to be negotiated. On the question of a paper which had been requested from the secretariat on national provisions relating to rules of origin and problems caused by differences in these provisions, the Chairman drew attention to the "Compendium of Rules of Origin of Goods" and the "Compendium of Rules of Origin of Goods which are difficult to apply and control", issued by the Customs Cooperation Council. He invited delegations which had not yet submitted in the required format, factual information for inclusion in the "Compendium of Rules of Origin of Goods", to do so as soon as possible so that it could be made available to participants in the negotiations. He also invited delegations which had policy problems with respect to rules of origin to communicate them to the GATT secretariat, which would issue them in document form. On the request for a paper which would update the information on the implementation of the 1957 Recommendations on Consular Formalities (BISD 65/25), he invited delegations to complete and correct as necessary the information contained in the study circulated by the European Communities (MTN.GNG/NG2/W/34).

17. The representative of Chile addressed the question of the relationship between the rollback commitment and negotiations on non-tariff measures. His delegation considered that the analysis of recent debates in the Negotiating Group indicated that some delegations wanted to ignore the fundamental commitment on rollback undertaken at Punta del Este. The insistence on using a request-and-offer approach to deal with practically all highly restrictive measures, most of which were contrary to GATT,
indicated intention to charge a price for their rollback, which was unacceptable to Chile. For this reason, his delegation insisted on multilateral or formula approaches, especially for quantitative restrictions and price-support measures, as foreseen in the proposal put forward by the delegation of Australia (MTN.GNG/NG2/W/31) which showed that a formula approach was not only feasible, but had been historically proved effective in the case of the EEC. Finally, his delegation thought that no product sector or measure should be excluded.

18. After a brief discussion, the Chairman said the agenda for the next meeting of the Group, scheduled for 24-25 October 1989 would be as follows:

- Examination of submissions relating to multilateral approaches;

- Review of any other developments in the negotiations, including the relationship between the rollback commitments and the negotiations on non-tariff measures;

- Any other business.

19. The Negotiating Group will also meet on 30 November and 1 December 1989. The Chairman suggested that meetings of the Group be scheduled for the weeks of 12-16 February and 19-23 March 1990, on the understanding that each meeting would last two days. It was so agreed.