The following communication, dated 15 March 1990, has been received from the delegation of the European Communities with the request that it be circulated to the members of the Group.

PREAMBLE

The Contracting Parties,

NOTING that a large number of developing countries have recourse to so-called Preshipment Inspection programmes in order to ensure a proper distribution of limited foreign currency resources to importers and in order to combat such practices as over-invoicing and fraud; noting that these developing countries have charged private companies with this task, which includes a check on quality, quantity, as well as price of the goods intended for export to the territory of these countries,

RECOGNIZING the right of countries to have recourse to preshipment inspection, but that preshipment inspection activities should not cause unnecessary obstacles to trade,

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

DESIRING that a quick and effective procedure for the settlement of disputes between exporters and preshipment inspection companies should be established,

RECOGNIZING that there is good reason to exclude from price inspection the review of prices in certain cases, notably low value shipments and prices resulting from open tendering procedures, commodities subject to wide or frequent price changes and shipments forming part of a turnkey contract where a total price is quoted, and to limit preshipment inspection in cases where regular exporters have proved themselves to be trustworthy,
DESIRING that efforts to establish multilateral rule-making on preshipment inspection should be accompanied by adherence of the Contracting Parties concerned to the existing codes on customs valuation and import licensing,

RECOGNIZING that Contracting Parties affected by preshipment inspection activities have the right to regulate such activities within their territories as necessary to implement this Agreement,

Have agreed as follows:

ARTICLE 1

Coverage

This agreement shall apply to activities of preshipment inspection companies on the territory of Contracting Parties when such activity is mandated by a government or any government body (mandating government) and concerns the inspection of the quality, quantity and/or price of the goods to be exported to the territory of the mandating government.

ARTICLE 2

Transparency

1. Contracting Parties having recourse to Preshipment Inspection programmes shall submit to the GATT secretariat within 6 months after entry into force of this agreement, copies of the laws, regulations and administrative practices they have in place relating to preshipment inspection as well as the detailed mandates given to the preshipment inspection companies without the references to remuneration.

Exporting parties shall submit to the GATT secretariat copies of the laws and regulations by which they put this agreement into force.

Contracting Parties shall notify the GATT secretariat of any proposed administrative, regulatory or legislative change to the laws, regulations and administrative practices relating to preshipment inspection at least (X) days before the change is to be adopted. Copies of new or revised laws, regulations or administrative practices shall be submitted to the GATT secretariat within (X) days of the date on which the change is adopted. The GATT secretariat will ensure the distribution thereof to Contracting Parties.

If a new regulation, procedure or administrative practice relating to preshipment inspection has not been notified to the GATT secretariat, it shall not be applied towards the economic operators of the Contracting Parties adhering to this Agreement and they are not obliged to comply with it.
2. Contracting Parties shall ensure that when initially contacting an exporter to arrange for an inspection, preshipment inspection companies shall send to the exporter all of the information, including procedures and criteria employed by preshipment inspection companies for inspection and price verification purposes and the exporters rights vis-à-vis the preshipment inspection company, necessary for exporters to comply with inspection requirements. Additional procedural requirements or changes in existing procedures shall be sent without delay to those exporters that have engaged in business with the preshipment inspection company during the previous twelve months.

Contracting Parties shall ensure that preshipment inspection companies designate information points in each port or city in which they maintain administrative offices where the information described above shall be made available, and shall designate personnel in each such port or city to answer questions from exporters during normal business hours.

Additional procedural requirements or changes in existing procedures shall be placed in the designated information points without delay.

ARTICLE 3
Standards of practice

1. Non-discrimination

Contracting Parties shall provide that preshipment inspection companies shall conduct physical inspection, price verification and other relevant activities in a non-discriminatory manner. The procedures and criteria employed by preshipment inspection companies in conducting these activities shall be applied on an equal basis to exporters of all Contracting Parties. Preshipment inspection companies shall apply no less favourable technical criteria and procedural requirements when conducting quality inspections of foreign goods than would be applied by the mandating government to identical or similar domestic goods.

The non-discrimination principle also applies to laws and regulations of exporting countries where preshipment inspection activities take place.

2. Price verification

Contracting Parties shall provide that price comparisons shall only be based upon facts relating to prices usually charged on exports from the exporting country. All technical, commercial and financial specificities relating to the shipment shall be taken into account in making such price comparisons.

Contracting Parties shall provide that the contract price between the exporter and the importer shall be accepted as valid unless there is clear evidence of circumvention of the laws or regulations of the mandating government.
Contracting Parties shall provide that, unless the exporter and importer expressly agree otherwise:

(a) the coming into effect of any contract relating to exports subject to price verification shall be conditional on the issue of a clean report of findings;

(b) any delivery period or other time period specified in the contract shall commence no earlier than the date of issue of a clean report of findings.

Contracting Parties shall provide that preshipment inspection companies shall take into account certain elements relating to the exporter's price such as the traditional relationship between the exporter and the importer and the risks run by exporters on the markets of import countries, notably relating to delay in payments and financial transfers.

3. Confidentiality of proprietary information

Contracting Parties shall provide that preshipment inspection companies shall not request from exporters information relating to technical data, patents filed or being filed including licensed or undisclosed processes, the price calculations of the controlled enterprise, remunerations deriving from patents or other intellectual property instruments, sales agents or local affiliates. Neither shall preshipment inspection companies request information on the relationship between producers and importers and/or buying entities.

Contracting Parties shall provide that preshipment inspection companies shall not request from exporters information on their own price fixing modalities which relate to internal adjustments within the companies being inspected and modalities for technical supplies of these companies;

The Contracting Parties shall provide that as a general rule preshipment inspection companies shall only transmit other confidential business information to mandating governments or public entities concerned 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. However, the above-mentioned information may be verified by the preshipment inspection companies if the exporting companies agree to such verification and on the condition that the preshipment inspection companies give sufficient advance notice.

4. Avoidance of delays

Contracting Parties shall provide that preshipment inspection companies shall avoid unreasonable delays in inspection of shipments. In this regard, once a preshipment inspection company and an exporter agree on an inspection date, the preshipment inspection company shall conduct the inspection on that date unless it is rescheduled on a mutually agreed basis between the exporter and the preshipment inspection company or the preshipment inspection company is prevented from doing so by the exporter or circumstances beyond its control.
In addition, Contracting Parties shall provide that final inspection, where necessary, shall be made within ten working days of a notification by the exporter that all relevant goods and documents are available for inspection. Following the satisfactory completion of an inspection, the preshipment inspection company shall issue a Clean Report of Findings without delay, and in particular without awaiting the presentation of a bill of lading or an airway bill.

ARTICLE 4

Exclusions

By derogation to the previous provisions of this Agreement, Contracting Parties may provide that preshipment inspection companies shall comply with the following conditions when carrying out inspections.

1. Preshipment inspection companies should not normally inspect shipments valued at [20,000] SDRs or less. In exceptional circumstances, preshipment inspection companies may inspect such shipments provided that the preshipment inspection company explains these circumstances to the exporters in writing.

2. The price of goods exported as a result of an open public tender shall only be subject to such verification as specified in the public tender.

3. Regular exporters who are well known to the preshipment inspection companies and whose exports over the last (2 years) have not given rise to price disputes shall be accorded a simplified price verification procedure such as e.g. automatic clearance subject to spot checks.

4. Commodities/raw materials subject to wide or frequent price changes.

5. Shipments forming part of a turnkey contract where a total price is quoted including other services such as consultancy.

ARTICLE 5

Dispute settlement

1. Each exporting country will ensure that for the purpose of settling disputes between preshipment inspection companies and exporters a list of independent experts will be established. The list will include members of organizations representing preshipment inspection companies, members of organizations representing exporters, and trade experts having links with neither interest.
2. Exporting countries will provide that disputes on quality, quantity and/or price between preshipment inspection companies and exporters shall be resolved as follows:

(a) If the preshipment inspection company concludes that it must deviate from the price set out in the contract it must so inform the exporter before it establishes the report to the mandating government concerned.

(b) If the exporter does not accept the price as notified under (a) he must so inform the preshipment inspection company.

(c) If the exporter and the preshipment inspection company are unable to reach a solution, they must within (5) working days from receipt of the notification mentioned under (b) agree to choose one or more experts from the list established pursuant to point 1.

(d) If the period mentioned under (c) has expired, a panel of three experts, one from each of the categories listed in point 1, shall be designated by the President of the tribunal competent in commercial matters in the jurisdiction of residence of the exporter.

(e) The exporter must request the services of the panel of experts within (5) days of its designation. If the exporter fails to do so the preshipment inspection company is free to establish its report.

(f) The expert(s) shall hear both the exporter and the preshipment inspection company. They may also proceed to a physical inspection of the goods. They shall determine whether the price inspection has been carried out in conformity with the criteria laid down in Article 3, paragraph 2.

(g) The expert(s) shall notify their conclusions to the exporter and to the preshipment inspection company within (10) working days of their designation.

(h) The conclusions of the expert(s) shall be final.

ARTICLE 6

Pro memoria: Dispute settlement clause between Contracting Parties (to be filled in depending upon final solution in the dispute settlement Group).

ARTICLE 7

The Contracting Parties shall take the necessary measures for the implementation of the present Agreement.