1. The Negotiating Group on Rule Making and Trade-Related Investment Measures held its second meeting on 22-26 July 1991 under the chairmanship of Ambassador Mr. G. Maciel (Brazil). The Negotiating Group adopted the agenda circulated in GATT/AIR/3208.

2. At the beginning of the meeting the Chairman drew the Group's attention to an informal note prepared by the GATT secretariat, dated 22 July 1991, which contained a summary of comments received by the secretariat on proposals made by the International Chamber of Commerce and the International Federation of Inspection Agencies with respect to the independent review mechanism provided for in Article 4 of the draft text on preshipment inspection. These proposals had been circulated in document MTN.GNG/RM/W/5. He proposed that, on the occasion of the next meeting of the Negotiating Group, consultations be held with those delegations which had taken part in the negotiations on preshipment inspection with a view to elaborating a joint response to the proposals made by the ICC and IFIA. It was so agreed.

3. As agreed at its first meeting, the Negotiating Group then proceeded to evaluate the status of work with respect to anti-dumping, subsidies and countervailing measures, trade-related investment measures and balance-of-payments measures.

4. Following informal consultations, the Chairman noted with regard to anti-dumping that, while no draft text had been submitted for consideration by Ministers at the Brussels Conference in December 1990, very intensive discussions had taken place on this subject during the course of 1990 and a number of draft texts had been prepared in the context of these discussions. During the Brussels Conference a drafting group had prepared a text on a number of less controversial issues; this text, dated 5 December 1990, had recently been circulated in document MTN.GNG/RM/W/4. From consultations conducted on this subject it could be concluded that participants were interested in achieving a substantial agreement on anti-dumping which would go beyond the text prepared in Brussels. It also
appeared that there was a perception among delegations, based on the work done in 1990, that substantial progress in the area of anti-dumping required political decisions on major unresolved matters, decisions which could probably be taken only at a relatively late stage of the Uruguay Round. The Chairman suggested that, as from the meeting of the Negotiating Group in September, an informal general discussion be held on the difficulties encountered in the anti-dumping negotiations; this discussion would deal with issues not resolved or not discussed during the Brussels Conference. It was his intention to address these outstanding issues as a whole, rather than in any detailed individual way, in order to find out what possible solutions might be found as a package towards the end of 1991. These consultations would help to bring out the obstacles which must be overcome and to find the necessary balance to conclude an agreement. The Chairman noted that in the course of these discussions he would certainly need some technical advice and call on delegations to provide him with such advice. In this process he would continue to count on the assistance from Mr. Ramsauer.

5. With respect to subsidies and countervailing measures the Chairman recalled that document MTN.TNC/W/35/Rev.1 contained a draft text on subsidies and countervailing measures which had been submitted for consideration by Ministers at the Brussels Conference. An introductory commentary mentioned some outstanding problems which remained to be resolved and referred in a footnote to communications received from a number of delegations on this draft text. No changes had been made to the draft text during the Brussels Ministerial Meeting. It appeared from consultations carried out by Mr. Ramsauer that while no delegation intended to unravel the draft text or to propose another basis for the negotiations, participants were aware that certain basic issues remained to be resolved through political decision making at the appropriate point in time; he noted in this respect that the consultations which he had conducted himself more recently had led to the same conclusion. These consultations had been useful in that they had given him a better idea of issues in respect of which further efforts were necessary to narrow existing differences and find the basis for possible compromise solutions.

6. The Chairman noted that in his consultations some issues had emerged as being perceived by participants to require further examination or clarification. These issues related mostly to: disciplines in the use of subsidies based on rebuttable presumption of the existence of serious prejudice; treatment of certain subsidies as non-actionable subsidies; provisions regarding special and differential treatment of developing countries; aspects of the Illustrative List of Export Subsidies; application of the proposed disciplines to different levels of government and the concept of specificity in the case of subsidies granted by regional authorities; the concept of de facto specificity; territorial application of the specificity concept; the reference to "new practices"; de facto export subsidies; subsidies contingent upon the use of domestic goods; transitional arrangements; the treatment of economies in transformation to market-economies; certain procedural aspects and questions of definition
relating to countervailing duty investigations. Furthermore, the product coverage of the Agreement remained to be decided, taking into account work in other areas. The Chairman stated his intention to continue consultations on some of these issues during the next meeting of the Negotiating Group in order to help participants to work out constructive approaches in the negotiations.

7. With respect to trade-related investment measures (TRIMs), the Chairman noted that in the informal consultations which he had carried out on this subject participants had explained their positions and how these had evolved in the last few months which had enabled him to get a better understanding of the state of play and of the major difficulties which the Negotiating Group had to overcome in this area. On the basis of his consultations he had arrived at the conclusion that even though basic divergences of opinion remained on some key issues, there was room for optimism regarding the possibility of intensifying work in this area after the summer break. It had been agreed in these consultations that this intensification should be based on a detailed consideration of some basic issues in the TRIMs negotiations, including those identified in the commentary sent to the Brussels Ministerial Meeting in document MTN.TNC/W/35/Rev.1 plus certain additional points. This list of issues would not constitute a formal agenda but by facilitating a structured and focused discussion, would assist participants in pushing forward the negotiating process. It had been agreed that the list should contain the following issues, it being understood that further points could always be added if the Group so wished:

(i) Coverage

The Chairman observed that the Negotiating Group would need to decide whether the coverage of a trade-related investment measure should include measures which applied to all enterprises, whether new or existing, or should be restricted to new investments. It would also need to consider whether the coverage of a TRIM should include only investment measures applied as legally enforceable requirements or should also include measures applied in the form of the grant of an advantage or a benefit.

(ii) Disciplines

The Chairman noted that the Group would have to decide whether the disciplines on TRIMs should take the form of prohibitions of certain TRIMs or should be applied only on a case-by-case basis in GATT dispute settlement proceedings. Consideration would have to be given to whether it should be reaffirmed that certain TRIMs were prohibited under Articles III and/or XI of the General Agreement and to whether export performance measures should also be prohibited because of their trade distorting effects. It would also be necessary to address the related question of whether there should be an effects test to determine the trade restricting and distorting nature of certain TRIMs and if so to which TRIMs such a test should apply. The question of whether there should be
qualifications to any new disciplines (for example on structural adjustment grounds) would also have to be addressed. Finally, the Negotiating Group would have to address the obligations of countries in respect of TRIMs applied by sub-national levels of government.

(iii) Developing countries

The Chairman noted that consideration needed to be given to the issue of the treatment of developing countries in any TRIMs agreement and whether additional flexibility should be provided for these countries.

(iv) Transition periods

The Chairman said that consideration would have to be given to whether transition periods for the phasing out of prohibited TRIMs, if the agreement were to contain such prohibitions, should be available only to developing countries or more generally.

(v) Restrictive business practices

The Chairman noted that consideration would have to be given to the question of whether any agreement should address the restrictive business practices of private enterprises.

(vi) Other issues

The Chairman said that among other issues which would have to be addressed were questions relating to transparency and to possible institutional arrangements for further work.

8. One participant recalled its position that the Punta del Este Declaration did not provide a mandate to address the question of restrictive business practices in the Uruguay Round.

9. With respect to the balance-of-payments provisions of the General Agreement, the Chairman noted that during consultations participants had explained their current positions and with regard to this subject. A number of participants had drawn his attention to changes which had recently taken place in the economic environment relating to these provisions and to the need to take these into account in the future work of the Negotiating Group on this subject. The consultations had encouraged him to undertake a further round of informal consultations at the time of the next meeting of the Negotiating Group in September with a view to seeking common ground on which to base further work on this subject.

10. The Negotiating Group took note of the statements made by the Chairman regarding his consultations on anti-dumping, subsidies and countervailing measures, trade-related investment measures and balance-of-payments measures and agreed to proceed at its next meeting in the manner proposed by the Chairman.
11. The Chairman said that the next meeting of the Negotiating Group would take place in the week of 30 September 1991. This meeting would be devoted to a continuation of discussions (mostly informal meetings) of the four subject areas which had been discussed at the present meeting. In view of the fact that, as revealed by the discussions at the present meeting, in some areas there was a need for a thorough examination of rather basic questions, while on other subject-areas the discussion at the next meeting would be of a general nature, there was a need for some flexibility regarding the allocation of time to each of the four subject-areas. In addition, there might be simultaneous discussions of two of out of the four subject-areas although he would, when considering this option, take into account the fact that this might pose practical difficulties to smaller delegations.