

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)
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PRESHIPMENT INSPECTION

Communication from Austria

Austria recognizes the right of developing countries lacking a suitable technical customs infrastructure to mandate preshipment inspection companies (PSIC) to inspect shipments on their behalf in order to avoid such practices as over- and under-invoicing, capital flight, fraud, tax and customs duty evasion.

Contracting parties and international organizations are called upon to assist these countries to overcome those problems and to enable them to phase out PSI programmes.

A multilateral framework, based on the basic principles of GATT, shall serve as a tool to avoid that the implementation of such preshipment inspection programmes amount to an obstacle to international trade.

Austria, therefore, submits some ideas and principles on which a multilateral framework might be built. Therefore, the ideas of this paper should be read and not its wording.

A. System of Authorization

1. The activities of preshipment inspection companies are/should be subject to authorization by a national authority (the Authority) of the country of export in order to assure the equal and non-discriminatory application of inspection procedures and standards.

B. Scope of PSI activities

2. This authorization should allow the following activities:

2.1. physical inspection for quality and quantity of goods (including services) for conformity with the contract covering the shipment;

2.2. evaluation of prices, financial terms and currency exchange rates by reference to the contract covering the shipment.

3. In order to facilitate the flow of trade, provisions shall be included in the national legislations of states mandating the PSIC, that PSI shall only be required for shipments exceeding a certain minimum amount.

4. Cross references to export prices of other countries are not permitted.

C. Confidential Business Information

5. In order to guarantee the confidentiality of any business information acquired in the course of inspection, mandating states will assure that the PSIC respect the following rules:

5.1. The PSIC must not request from exporters

- (a) information on not published technical data, non-public pending patents;
- (b) information on internal pricing including manufacturing costs, rebates;
- (c) information on sourcing as well as contractual relations with suppliers, accounts of suppliers, licence agreement.

5.2. Any confidential information the PSIC must not request may be released voluntarily by the exporter to illustrate a specific case.

5.3. Confidential business information provided to or otherwise obtained by the PSIC must not be shared with any related entity of the PSIC or with a third party. Confidential business information may only be shared with the mandating government of the PSIC to the extent customarily required for issuing letters of credit or other forms of payment, for customs procedures, import licensing or exchange control purposes. The PSIC will oblige their employees to strictly follow these rules.

D. Inspection procedures

6. The inspection procedure and the valuation criteria have to be transparent.

6.1. To this end, exporters subject to PSI shall be furnished in advance by the PSIC with all information and instructions necessary to allow the speedy and convenient performance of the inspection. This information shall include in particular the laws and regulations of the importing country concerning PSI, especially the inspection criteria to be applied and the rights and duties of the exporter vis-à-vis the importing state and the PSIC, including the procedure for a consultation mechanism set up under Section E. Any changes of these laws and regulations shall be communicated by the PSIC to the exporters concerned in a timely manner to avoid any disturbances in the exporting business.

6.2. All inspections, price evaluations and the issuance of a Clean Report of Findings (CRF) or of a Note of Non-issuance are to be performed in the state of the manufacturer or exporter respectively.

6.3. The PSIC will ensure that PSI will be performed in an objective, non-discriminatory, impartial manner, irrespective of the geographical location of the exporter; uniform performance of the PSI by different branches of the PSIC will be assured.

6.4. The PSIC will avoid conflicts of interest between the PSIC, any related companies or entities in which the PSIC has a financial or commercial interest, and other companies subject to PSI.

6.5. Price evaluation shall take into account the individual, commercial and technical circumstances of a transaction as reflected in the terms of the sales contract and the sales price. This shall include in particular services directly related to the sales transaction, if these services customarily are not separately invoiced.

6.6. Considering the criteria set out in 6.5., the reference price for price inspection is the national export price prevailing in the exporting country at the time of the conclusion of the contract. If there is no national export price, the export price of the most similar goods will be taken as the reference price.

6.7. The inspection of transport charges will relate only to the market price of the mode of transport in the exporting country at the time of inspection, as exporter and importer have mutually agreed upon in their contract.

6.8. The PSI will be performed without any unreasonable delay on the part of the PSIC.

7. The CRF (or the non-negotiable report) shall be sent to the exporter after the inspection without any delay.

E. Non-issuing of a Clean Report of Finding (CRF), consultation mechanism between exporter and PSIC

8.1. If the PSIC declines to issue a CRF, it shall promptly provide to the exporter a written and reasoned report.

8.2. The exporter will be given the opportunity to present a written statement explaining this view.

8.3. The PSIC shall arrange with the exporter for reinspection at the earliest possible date, if so requested by the exporter.

9.1. The exporter and the PSIC shall attempt to solve any misunderstandings and disputes between them in good faith according to guidelines and procedures set up internally by the PSIC and communicated in advance to exporters subject to PSIC.

9.2. These procedures shall provide for quick access to higher officials of the PSIC and assure an objective, fair and transparent consultation mechanism with the aim of finding a mutually acceptable solution within five working days.

9.3. Independent experts from the list provided for under Section F may be associated to these consultations if both parties agree, because their participation could help in finding a solution.

F. Conciliation Procedure, Panel of Conciliators

10. For cases where no mutually acceptable solution can be found between the exporter and the PSIC according to the mechanism outlined in Section E, contracting parties may set up a national conciliation procedure by a national Conciliation Panel (Panel).

10.1. This conciliation procedure shall be set up and serviced by the national Authority;

10.2. The Panel could be composed of three persons, one nominated by the exporter, one by the PSIC;

10.3. The third person could be nominated according to one of the following procedures:

- (a) by the two conciliators already nominated;
- (b) by the two conciliators already nominated, from a list of independent experts in international trade;
- (c) by casting lot from the list of independent experts;
- (d) by casting lot from the list of independent experts if the two already nominated conciliators cannot agree on a third conciliator.

10.4. The list of independent experts in the international trade, who shall be persons of high moral character and recognized competence in the field of international trade, and who may be relied upon to exercise independent judgement, could be administered by the national Authority.

10.5. The right to nominate experts in international trade for inclusion in the list could rest with

- the Authority;
- professional associations;
- diplomatic/consular representations of importing states;
- international institutions in the field of international trade.

10.6. In order to enable the speedy convocation of such a Panel and to guarantee its expeditious and inexpensive functioning, only nationals and residents in the exporting country should be eligible for nomination on the list of independent experts in international trade.

10.7. The organizational framework of the Panel should be in such a manner as to enable it to meet within five working days after the filing of a request by an interested party. The procedure shall provide for an expeditious opportunity for both the PSIC and the exporter to present their views in person or in writing.

10.8. The Panel should meet at the seat of the Authority or at the seat of a regionally mandated authority or institution or at the seat of the exporter/manufacturer depending on the circumstances of each case.

11. Both parties shall make every effort to comply with the reasoned opinion given by the Conciliation Panel.

12. The conciliation procedure provided for in articles 10 and 11 does not infringe on the sovereign right of importing states to control and regulate their import régime. Importing states using PSIC shall, however, when taking a final decision on a specific import case, give sympathetic consideration to the opinion expressed by a Conciliation Panel.

G. Special Procedures

13. In the mutual interest of the importer and exporter, the PSIC will offer the following special procedures to accelerate and facilitate PSI:

13.1. after an exporter has demonstrated, during a certain period, that his exports with regard to price, quantity and quality, conform with the sales contracts and the relevant national standards, such an exporter shall be granted a "special status". Under this status inspection on every single shipment will be replaced by spot checks;

13.2. if the PSIC declines to grant this special status the exporter will have the right to apply to the Review Body as set out under Section F.

14. Inspection of price, including currency exchange rates where applicable, shall take place as soon as possible after the request by the exporter, which should be placed on a firm order regardless of whether import licence or other documentation has been received from the importing state. Once the commercial invoice unit price and/or currency exchange rate has been passed by the PSIC, this acceptance shall not be withdrawn subsequently, provided the goods conform with the documentation. This preliminary price inspection could be documented in a conditional CRF and shall be binding on the PSIC.

H. Notification

15.1. Importing and exporting countries, applying or being subject to PSI, undertake to notify all domestic laws, regulations and guidelines relating to PSI, to the GATT secretariat.

15.2. In order to prevent any disputes and disturbances in international trade, contracting parties shall notify the GATT secretariat in a timely manner of any changes in their laws and regulations concerning PSI.

I. Dispute settlement

16. In disputes regarding the functioning of this Agreement as well as disputes relating to specific import cases only, contracting parties shall, in the latter case after exhaustion of the local remedies under this Agreement i.e. consultation between the exporter and the PSIC (Section E) and the conciliation procedure of the Conciliation Panel (Section F), have recourse to the general dispute settlement of the GATT as amended by the Uruguay Round.

J. Technical assistance

17. Exporting countries, recognizing the legitimacy of importing developing countries to resort to PSI, undertake bilaterally or in cooperation with international organizations such as the International Trade Center, the Customs Cooperation Council, to provide technical assistance to strengthen the technical infrastructure of their customs authorities, if so requested by the country applying PSI.