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COMMENTS FROM ZAIRE ON THE UNITED STATES PROPOSED AGREEMENT IN RESPECT OF PRE-SHIPMENT INSPECTION PROGRAMMES

The United States document (MTN.GNG/NG2/W/53) submitted to the Negotiating Group on Non-Tariff Measures contains a number of suggestions which we regard as positive. However, it is far too detailed for the type of agreement which is envisaged and there are items which are unlikely to assist our Negotiating Group to reach its set objectives.

For this reason, the delegation of Zaire ventures to make some critical comments on a number of points contained in the United States document. Our delegation's concern is to reach an agreement taking into account both the interests of the user governments and those of the exporters.

1. Preamble

The text presented by the United States suggests that the pre-shipment inspection programmes may be a source of distortion of international trade, whereas the said programmes have, in fact, been introduced to combat international trade distortion provoked by over-invoicing or under-invoicing on the part of certain exporters. We believe, therefore, that any reference to distortion of international trade being attributable to the inspection programmes is improper.

2. Article I

Non-discrimination/national treatment

The second sentence of Point (a), comparing inspection of domestic products with that of imported goods, does not appear to us as relevant.

Pre-shipment inspection companies carry out the inspection on the basis of the criteria fixed by the sellers and the buyers in the purchase agreement and do not intervene in the choice of these criteria.

If, on the other hand, the purchasing agreement does not foresee any specific criteria, the pre-shipment inspection companies apply national standards, universally recognized, such as: ASTM for the United States, DIN for Federal Germany, AFNOR for France.

3. Standards

It is not clear, in the light of the preceding paragraph, what the United States means by "national standards".

4. Transparency

The United States proposal introduces a very bureaucratic system which is in part unrealistic and which, additionally, fails to take into account exceptional situations which the user governments of pre-shipment inspection programmes may encounter. This is, in particular, the case of the last sentences of (d) and (e).

We are also concerned about the special problem which occurs when a country modifies its programme in a way that alters its scope. Advance warning of such changes may lead to many undesirable transactions intended to avoid the consequences of the new requirements.

5. Protection of confidential business information

Point (g): It does not seem desirable to compel pre-shipment companies to make their internal security measures public.

Point (j)(v): When a transaction is made through the intermediary of a "buying agent" or a "confirming house", the submission of the suppliers' invoice is a necessity.

6. Avoidance of delays

Point (m): We consider the United States proposal that a conditional CROF be issued is an unnecessary costly administrative burden, and a source of delays, seeing that the result of the preliminary price comparison can quite easily be communicated to the exporter by telex, telefax or courier service, as is the case today.

7. Price verification and customs valuation

Point (q)(i): The United States proposal would require the "contract price between the exporter and the importer" to be "accepted as valid unless there is clear evidence of circumvention of the laws or regulations of the user government".

This clause is wholly unacceptable for the following reasons.

With regard to valuation for customs purposes, my delegation must call the Group's attention to the fact that the user governments are not signatories to the 1979 Customs Valuation Code and the United States clause would, in effect, be equivalent to adoption of the Code by user governments.

Besides, it must be borne in mind that the pre-shipment inspection programmes are used for purposes other than customs valuation, namely control over the allocation of scarce foreign-exchange resources.

Acceptance of a contract price, without proper price verification, would be inconsistent with that objective.

Point (q)(ii): We would like to state that, generally speaking, goods should be sold, all terms and conditions being equal, at the same price to all importing countries. However, we recognize that certain economic factors, specific to the market of the importing country, may influence prices and that these should be taken into account.

On the other hand, to restrict price comparison to exports from one supplying country to a given country of destination, as suggested by the United States, can only encourage systematic over-invoicing or under-invoicing and abusive discriminatory practices in terms of pricing, which the inspection programmes are precisely intended to combat. For this reason, the restriction proposed by the United States is not acceptable.

Point (q)(iv)(B): This restriction is only applicable if the customs system of the importing country permits it.

Point (q)(iv)(D): This restriction is not acceptable for the reasons outlined under Point (q)(ii) above.

Point (r): This restriction is not acceptable for the reasons outlined under Point (q)(i) above.

8. Small shipments

It does not seem proper for GATT to fix such limits. Each user government should be free to judge the amount of the floor value below which inspection is not required. There is no single rule that is applicable to all cases.

9. Article II

The United States does not contemplate significant obligations to be incurred by exporter governments, resulting in a one-sided proposal. Any agreement arrived at by our Group must take into account the interest of both exporters and user governments.

We believe that this means, as a minimum, that the exporter governments must commit themselves not to adopt unilateral legislation with respect to pre-shipment inspection except insofar as such legislation may be necessary to implement specific provisions of the agreement.

In addition, in paragraph 2 the United States foresees a binding appeal mechanism to be established by the governments of exporter countries. We cannot accept such a mechanism as it would entail a breach of our sovereignty.

My delegation has recognized, however, that it may be more convenient to exporters if they can present their claims to a body located in their own country rather than in the country of importation. For that reason we have proposed an Independent Review Body. Although the decisions of such a body would be juridically non-binding, we believe that they would nevertheless be effective.

10. Articles III, IV and V

For the reasons stated under Point 4, above, we have serious reservations concerning advance notification of changes to pre-shipment inspection programmes in cases where such changes may expand the scope of the programmes.

In addition, we believe that periodic review of the laws of user countries and the operaion of the agreement is unnecessary and would by unduly budensome to the developing countries that use pre-shipment inspection.

Appropriate consultation procedures should be sufficient to ensure effective implementation of an agreement on pre-shipment inspection.

11. Conclusion

Besides the specific critical comments which we have taken the liberty of making on certain technical points and principles contained in the United States proposal, my delegation considers that, globally, the approach adopted by the United States does not meet the objective which GATT should set.

It is preferable in our opinion to revert to the concept we presented in our document MTN.GNG/NG2/W/50 of 11 December 1989, which foresees a more general and better balanced instrument, limited to defining the broad principles which should apply to the introduction of pre-shipment inspection programmes.

As provided for in the instrument which my delegation has proposed, user governments will have to draw up a Code of Practice which will include a number of principles, several of which are already mentioned in our document of 11 December 1989.

We wish to recall to recall that the Code of Practice which we have already presented contains most of the points suggested by the United States, over which there is no divergence of opinion, but we are prepared to review its contents in the light of the comments which the participants to our Negotiating Group may propose.

We hope that the observations made by my delegation will contribute towards the achievement of an acceptable basis for negotiation.