

**NEGOCIATIONS COMMERCIALES  
MULTILATERALES  
NEGOCIATIONS D'URUGUAY**

RESTRICTED

MTN.GNG/RM/W/5  
24 June 1991

Special Distribution

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Groupe de négociation sur les marchandises (GATT)

Negotiating Group on Rule Making and  
Trade-Related Investment Measures

PRESHIPMENT INSPECTION

Note by the Secretariat

The Negotiating Group, at its meeting on 12 June 1991, noted that a procedural issue remained outstanding with respect to the draft agreement on preshipment inspection (MTN.GNG/RM/W/1), namely the establishment of the independent review mechanism foreseen in Article 4 of the draft agreement. The Group agreed that, for the convenience of participants, the proposals made in this respect by the International Chamber of Commerce (ICC) and the International Federation of Inspection Agencies (IFIA) would be distributed to participants with a request that their comments reach the GATT secretariat (Mrs. J. Taylor) by 10 July 1990. After receipt of the comments, the Chairman of the Negotiating Group will consult with participants on the best way to proceed in the contacts with ICC and IFIA.

Annexed to this note are the joint proposal made by ICC and IFIA in October 1990 and a letter containing a further proposal by ICC, dated 5 March 1991.

Some participants have already submitted comments on the joint ICC and IFIA proposal. These will be fully taken into account.

ANNEX I

JOINT IFIA/ICC PROCEDURE FOR IMPLEMENTATION OF  
ARTICLE 4 (INDEPENDENT REVIEW PROCEDURE) OF THE  
GATT AGREEMENT ON PRESHIPMENT INSPECTION

I. Organization of Independent Entity:

- A. The Independent Entity (I.E.) shall be composed of representatives of IFIA, ICC and a third appointed as Director.
- B. The I.E. shall be based in Paris.
- C. The I.E. shall establish and maintain the list of experts with three sub-lists (Exporter list, IFIA list, Independent Expert list). The geographical distribution of the experts on this list shall be such as to enable any disputes raised under these procedures to be dealt with expeditiously.
- D. The I.E. shall establish a fee schedule for the payment of panel members and to cover administration costs.
- E. The I.E. shall provide explanatory material for panel members, exporters and preshipment inspection entities.

II. Initiation of an Appeal

- A. The exporter shall file his appeal and an appropriate deposit for costs with the Director of the I.E. in Paris. Filing may be done by fax. A copy must be served simultaneously on the inspection entity from whose decision the exporter seeks to appeal.
- B. The Director must ensure that the exporter has first filed an internal appeal under Article 2.21 of the GATT Agreement and ascertain the date on which such internal appeal was filed. If no such appeal has been filed the Director shall refer the matter to the inspection agency for internal appeal. If the internal appeal has not resolved the matter within two working days, the Director shall commence the appeal before the I.E. by selection of an independent expert from the approved list. The choice of independent expert shall reflect the location and language of the dispute as well as the nature of the dispute.
- C. The Director shall select the independent expert from the approved list, advise the exporter and the inspection agency of the identity of the independent expert, and ask them to select panel members from the approved list or to waive such appointment and proceed solely with the independent expert.

- D. If a panel is utilized the independent expert shall serve as the chairman of the panel. The chairman shall take the necessary decisions to ensure an expeditious settlement of the dispute by the panel, for instance, whether the facts of the case require the panelists to meet and, if so, where such a meeting shall take place, taking into account the site of the inspection in question.
- E. The appeal by the exporter shall include the following:
  - 1. The identity of the exporter and the name, address, telephone number and fax number of the official representing the exporter.
  - 2. The decision, if any, of the internal appeal body constituted under Article 2.21 of the GATT Agreement.
  - 3. The identity and address of the importer.
  - 4. A description of the goods at issue.
  - 5. All documents submitted to and received from the inspection company in connection with the transaction.
  - 6. A statement of the basis on which the exporter contends that the inspection agency's decision is erroneous.
- F. The inspection agency shall file a response to the appeal in support of its decision.

### III. Appeal Procedures

- A. All papers submitted to the panel must be provided to the inspection agency and the exporter. No evidence may be considered by the panel that was not provided to both parties.
- B. No party may communicate with any member of the panel outside the presence of the other party.
- C. Generally the appeal shall be decided on the papers. However, in the sole discretion of the panel, oral presentation by telephone or in person may be permitted and, where necessary, reinspection of the goods.
- D. No formal rules of evidence shall apply.
- E. There shall be no discovery procedures between the parties.

- F. The panel shall have no subpoena power. The panel may request documents from the parties. Failure of a party to respond may be considered by the panel as affecting the merits of the dispute.
- G. The panel shall generally have no need for any expert assistance, but may in its discretion retain experts should a particular case so require.

IV. The Decision

- A. The decision of the panel shall be by majority vote. The decision shall be rendered within eight working days of the request for independent review and shall be communicated to the parties to the dispute. This time-limit could be extended upon agreement by the parties to the dispute.
- B. The panel shall apportion the costs of the proceedings among the parties based on the merits of the case. Costs shall include only a fee to the independent entity to cover its costs and expenses and the expenses for any expert retained by the panel.
- C. If either party fails to pursue the appeal before the panel, the panel may decide the dispute by default.
- D. The panel may render its decision with or without a statement of reasons.
- E. The object of the review shall be to establish whether, in the course of the inspection in dispute, the parties to the dispute have complied with the provisions of the GATT Agreement. The panel shall have no power to award damages or penalties of any kind.
- F. The decision of the panel shall be binding upon the parties to the dispute.

ANNEX II

INTERNATIONAL CHAMBER OF COMMERCE

Paris  
38 Cours Albert 1er  
Office of the Secretary General

7 March 1991 CF/tk

Mr. Peter Williams  
Director Operational Dept. A  
GATT  
Centre William Rappard  
154 Rue de Lausanne  
CH-1211 Geneva 21

Dear Mr. Williams,

The ICC's Working Party on Preshipment Inspection Services recently met to discuss the latest draft text of the Uruguay Round agreement on Preshipment Inspection which emerged from the Brussels Ministerial meeting (the draft dated 6 December 1990).

We understand that this text is unlikely to be subject to further modification and will go forward as it stands to be part of the Uruguay Round package should the Round be brought, as we very much hope, to a successful conclusion. With that in mind, the working party, in consultation with ICC National Committees, decided to lend its broad support to this text even though in some respects it does not fully reflect ICC views previously reported to GATT. We have concluded that it strikes an acceptable compromise between the interests of exporters and user governments.

The ICC does, however, have some reservation about the role that may, in some quarters, still be envisaged for us in the independent review procedure. This particular matter was recently discussed by the ICC's Executive Board and by its Council. In view of the extreme uncertainty about the case-load which the independent review body will be called upon to handle once the agreement is in place, the Board and the Council were not prepared to expose the ICC to such an open-ended financial commitment as would be entailed were we to undertake jointly with IFIA to house and pay the necessary Secretariat.

However, the ICC is prepared to play a positive role to ensure the success of the review procedure. We would be willing to a) nominate, in consultation with National Committees, a roster of experts representing exporters, and with IFIA, nominate a roster of independent experts, b) draw up jointly with IFIA presumably under GATT supervision, the procedural rules to govern the activities of the independent review body, and c) participate in any supervisory panel that may be necessary to monitor from time to time the implementation and the operation of the independent review procedure.

As for the Secretariat of the independent review body, we would ask you to consider further the proposal we have already discussed with you informally, namely, that this be housed in the GATT's headquarters and financed by the GATT. We understand that a somewhat similar arrangement already exists for the Textile Surveillance Body.

As a matter of courtesy a copy of this letter will be sent to Mr. Wareham.

I look forward to your early reaction to this letter.

Yours sincerely,

Jean-Charles Rouher (Signed)

Secretary General