

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MTN/Æ/W/2

18 February 1974

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## Multilateral Trade Negotiations

### GROUP 3(e) - SANITARY AND PHYTO-SANITARY REGULATIONS

#### Note by the Secretariat

1. The present note has been prepared by the secretariat for the convenience of delegations in carrying out the tasks assigned to Group 3(e) under item 15 of the Programme of Work adopted by the Trade Negotiations Committee on 7 February 1974 (MTN/2), namely, "continuation of the studies already begun on sanitary and phyto-sanitary regulations". The object of this note is to summarize the work already completed or begun by the Agriculture Committee in the context of the Programme of Work adopted by the CONTRACTING PARTIES in 1967 and to put forward suggestions as to the manner in which Group 3(e) might proceed in this area.

#### Work already completed or begun

2. The work of the Agriculture Committee in the field of sanitary and phyto-sanitary regulations has been undertaken in two phases: the assembly and analysis of basic data on the incidence of health and sanitary regulations on trade in agricultural products, and the examination of mutually acceptable solutions and possible approaches to negotiations.

#### Basic data

3. The assembly and analysis of basic data on sanitary and phyto-sanitary regulations was based on notifications submitted to the secretariat by countries whose trade in a particular product or products within Chapters 1-24 of the BTN were considered to be adversely affected either by the maintenance of certain sanitary or phyto-sanitary regulations in the importing country or by the manner in which the regulations in question were formulated and applied. The sanitary and phyto-sanitary regulations notified have been collated by the secretariat and issued as document COM.AG/W/68/Add.4 dated 10 December 1970. The document itself is in two parts consisting of a summary table of commodities and countries in respect of which notifications were made, and an analysis of the notifications showing in each case the nature of the measures, comments by countries indicating an interest and by the country maintaining the measure.

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N.B.: The terms "health and sanitary" and "sanitary and phyto-sanitary" regulations have been used interchangeably throughout this note.

4. The last amendment of this analytical inventory of sanitary and phyto-sanitary regulations was in October 1971: document COM.AG/W/68/Add.4/Corr.1.

Examination of possible approaches

5. The identification of the principal problems arising from sanitary and phyto-sanitary regulations and the search for mutually acceptable solutions was undertaken initially by Working Group 4 established by the Agriculture Committee for this purpose in February 1970 (L/3320, paragraph 5) and subsequently in the Agriculture Committee and in the Working Group on Techniques and Modalities. In all its stages this work has been carried out on the understanding that the work of the various groups was essentially of an exploratory nature and did not imply a commitment to conform to any particular technique or approach.

6. The report of Working Group 4 (COM.AG/W/62, of 1 July 1970) contained a number of suggestions which were discussed in the report of the Agriculture Committee to the Council in December 1970 (L/3472, paragraphs 45 to 52, and Annex IV). While no consensus was arrived at some of the points raised would appear to have a bearing on any consideration by Group 3(e) of possible approaches in the area of sanitary and phyto-sanitary regulations.

7. First of all there was general agreement on the need to avoid duplication of the work of other international bodies. While the Committee did not have the special expertise required for dealing with the technical aspects involved, the trade effects of these regulations were within the Committee's competence and that there would be no duplication if the Committee concentrated on trade aspects.

8. Possible approaches discussed to the reduction or elimination of adverse trade effects ranged from proposals to establish guidelines and principles including procedures for arbitration similar to that in the International Plant Protection Convention, to proposals that reliance should be placed on bilateral consultations, with or without recourse to consultation procedures under the General Agreement.

9. Intermediate approaches suggested included proposals, inter alia, to supplement consultations on trade effects under Article XXII of the General Agreement through the use of expert rapporteurs and expert advice from specially competent bodies or international organizations; and proposals aimed at strengthening and giving greater precision to Article XX(b) including for example procedures for notification of, and consultations on, measures maintained under that Article. It was also questioned whether health and sanitary regulations were negotiable in the ordinary GATT sense and whether arbitral procedures were appropriate in a situation where in the last analysis the government of each contracting party was responsible for the health and sanitary matters.

10. With regard to proposals to draw up general guidelines to reduce or eliminate adverse trade effects of such regulations, the following elements have been suggested for inclusion:

- (i) elimination of health and sanitary regulations where they no longer meet the requirements of the situation which had motivated their establishment;
- (ii) relaxation, where necessary, of measures currently in force so that they would not be more stringent than necessary;
- (iii) new measures should not be made more stringent than necessary;
- (iv) equal treatment for imported and domestically produced goods;
- (v) measures taken by State or local authorities should be consistent with national and international regulations;
- (vi) health and sanitary regulations should be applied on a most-favoured-nation and non-discriminatory basis;
- (vii) provision for more co-operation between exporting and importing countries with regard to importation, testing and issuance of certificates.

11. In the tentative list of elements to be examined by the Working Group on Techniques and Modalities sanitary and phyto-sanitary regulations were included in a group of subjects for determination of the possible application of codes of good conduct governing non-tariff import measures (COM.AG/24, Annex, section C).

12. The report of the Working Group on Techniques and Modalities (COM.AG/W/88, paragraphs 136-149) reiterated some of the points which had emerged in previous discussion on the "negotiability" of sanitary and phyto-sanitary measures and on possible approaches. Suggestions as to the form multilateral negotiations could take included: presentation of request lists followed by bilateral or multilateral concessions; the negotiation of a code or set of general guidelines incorporating some of the elements and techniques for consultation, arbitration and expert advice already referred to; and the harmonization of regulations on an international or regional basis. The implications with regard to the limited degree of reciprocity attainable in this area were also discussed. It was, for example, suggested that a degree of reciprocity might be attained in a code, as in a non-self-balancing sectoral approach, with the possibility of an overall balance being found across several sectors.

#### Discussions in other GATT bodies

13. It has been recalled on a number of occasions in the discussion of this subject that it would be open to review the applicability to the agricultural sector of any solutions evolved in the Committee on Trade in Industrial Products.

The applicability in this respect of the draft code on standards (COM.IND/W/108, of 25 June 1973) could be examined. For example, the definition of "standard" for the purposes of the draft code is wide enough to embrace sanitary and phyto-sanitary regulations, although in its preamble the draft code recognizes that no country should be prevented from taking measures necessary for the protection, inter alia, of animal or plant life or health. Some of the provisions of the draft code relating to notification, opportunity for comment and publication, etc., could be relevant to some of the problems in the field of sanitary and phyto-sanitary regulations.

Group 3(e) - Future work

14. The following points are suggested for consideration by Group 3(e) as regards the continuation of studies already begun on sanitary and phyto-sanitary regulations:

1. Basic data

Whether the existing inventory of notifications could usefully be updated and if so whether document COM.AG/W/68/Add.4 should be revised in its present or some other format.

2. Possible approaches to further work on sanitary and phyto-sanitary regulations

Whether further general discussion of possible approaches might usefully be undertaken with a view to selecting a limited number of alternative negotiating techniques. These could include:

- (i) drawing up concrete proposals for strengthening and giving greater precision to Article XX(b); in this connexion the establishment of appropriate procedures for notification of, and consultation on, measures maintained under that Article might be considered;
- (ii) drawing up a draft code including general guidelines for the reduction or elimination of adverse trade effects of sanitary and phyto-sanitary regulations;
- (iii) examination of the practical and other implications, including arrangements and relationships with appropriate international organizations, of arbitral procedures in the context of one or other of the approaches to the reduction or elimination of adverse trade effects;
- (iv) examination of the applicability in the field of sanitary and phyto-sanitary regulations of the provisions of the draft code on standards (COM.IND/W/108).

3. Implications for developing countries

An examination of the implications of alternative approaches for the attainment of the objectives of the negotiations as regards developing countries.

15. A list of documents relating to previous discussions on the subject of sanitary and phyto-sanitary regulations appears in the Annex hereto.

ANNEX

Sanitary and Phyto-sanitary Regulations

List of Documents

1. COM.AG/W/62, of 1 July 1970 (Report of Working Group 4 to Agriculture Committee). This document is reproduced as Annex IV to L/3472
2. COM.AG/W/68, of 29 September 1970 (Import measures, summary, Table V)
3. L/3472, of 18 December 1970, paragraphs 45 to 52, and Annex IV (Agriculture Committee Report to Council)
4. COM.AG/W/68/Add.4, of 10 December 1970 (Health and Sanitary Regulations notified): COM.AG/W/68/Add.4/Corr.1, of 14 October 1971
5. COM.AG/W/77, of 28 March 1972, page 12 (Working Group on Techniques and Modalities, Working Paper prepared by the secretariat)
6. COM.AG/W/88, of 4 August 1972, paragraphs 136 to 149, and Annex, section 4 (Report of Working Group on Techniques and Modalities). Note of transmittal to Council, COM.AG/25, of 26 September 1972
7. COM.AG/W/86 of 1 September 1972, paragraphs 31 to 37 (Preliminary Examination of Implications for developing countries of various suggested techniques and modalities for negotiation on agriculture, Note by the secretariat)