

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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Group of Negotiations on Goods (GATT)

Negotiating Group on Agriculture

SANITARY AND PHYTOSANITARY REGULATIONS AFFECTING TRADE
IN AGRICULTURE

Background Note by the Secretariat

Introduction

1. At its meeting in December 1987, the Negotiating Group on Agriculture addressed the question of elaborating technical work on, inter alia, sanitary and phytosanitary regulations affecting trade in agriculture. The secretariat was asked to inform the Group about relevant past GATT work in this field. The present note has been prepared in response to that request.

Past GATT work in the field of sanitary and phytosanitary regulations

(a) Compatibility with the General Agreement

2. In only a few instances have CONTRACTING PARTIES been called on to examine the compatibility with the General Agreement of sanitary and phytosanitary regulations as applied in particular cases.

3. The Analytical Index records the following cases: a statement by a member of Committee II in the course of the 1959 consultation with Australia on agricultural policies (L/1055, paragraph 40); a recourse to Article XXIII:2 by Uruguay against fifteen contracting parties relating to sanitary regulations on meat which ended without a legal ruling by the panel (L/1923, Annex I); the discussion held in the Group on Meat in 1962 on the question of discriminatory effects of restrictions for phytosanitary reasons (CG/3); and a notification by France in 1969 indicating that the residual restrictions it applied on animal semen and certain live plants were consistent with Article XX(b). (L/3212/Add.12)

4. In 1980, a recourse to Article XXIII:2 by the United States concerning the United Kingdom application of EEC directives to imports of poultry involved, inter alia, arguments relating to Article XX(b). However, following the withdrawal of the complaint by the United States, the panel was not required to pursue its examination of the case. Currently, complaints on sanitary regulations are being considered by panels established both under Article XXIII and the dispute settlement procedures of the Code on Technical Barriers to Trade.

5. Pursuant to the standstill and rollback commitment of the Uruguay Round, a number of notifications relating to sanitary and phytosanitary regulations have also been put forward for examination by the Surveillance Body.

(b) Preparatory work for the Tokyo Round

6. A systematic attempt to deal with sanitary and phytosanitary regulations began in 1970 with the work of the Agriculture Committee, and notably its Working Group 4. It focused on the assembly and analysis of basic data on the incidence of these regulations on trade in agricultural products and on the examination of mutually acceptable solutions and possible approaches to negotiations.

7. Basic data on sanitary and phytosanitary regulations were collected, and up-dated from time to time, through counter-notifications submitted to the secretariat by countries which considered themselves to be adversely affected either by the maintenance of certain regulations or by the manner in which the regulations in question were formulated and applied. (For the latest compilation of these counter-notifications, see COM.AG/W/68/Add.4/Corr.1.)

8. Possible approaches to negotiations in the field of sanitary and phytosanitary regulations were initially examined by the Working Group 4 (L/3472, Annex IV) and subsequently by the Agriculture Committee itself (L/3472, paragraphs 45 to 52) and by the Working Group on Techniques and Modalities (COM.AG/W/88, paragraphs 136 to 147).

9. The approaches elaborated were basically concerned with:
(i) arrangements for negotiations on individual sanitary and phytosanitary regulations; (ii) the elaboration of a set of guidelines or a code of conduct for good behaviour; and (iii) the establishment of procedures for notifications and consultations and for the elaboration of the relevant principles of Article XX.

10. Although no consensus was arrived at regarding more specific lines of action, the general thrust of the debate in the Agriculture Committee was that the various approaches outlined above were neither mutually exclusive nor did they constitute necessarily an alternative to one another.

11. Work in the field of sanitary and phytosanitary regulations was also carried out with respect to the implications for developing countries of the various techniques and modalities suggested for their negotiations (COM.AG/W/86, COM.TD/W/190).

(c) The Tokyo Round

12. In 1974, the Trade Negotiating Committee gave to Group 3(e), which was subsequently termed "Group Agriculture", the task of continuing "the studies already begun on sanitary and phytosanitary regulations" (MTN/2).

13. In discharging its task, the Group considered the possibility of updating and/or improving the existing inventory of notifications, as well as certain possible approaches which could facilitate the selection of a limited number of alternative negotiating techniques. These included: (i) drawing up concrete proposals for strengthening and giving greater precision to Article XX(b), including the establishment of appropriate procedures for notification of, and consultation on, measures maintained under that Article; (ii) drawing up a draft code including general guidelines for the reduction or elimination of adverse trade effects of sanitary and phytosanitary regulations; (iii) an 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) an examination of the applicability in the field of sanitary and phytosanitary regulations of the provisions of the draft code on standards. (MTN/3E/W/2)

14. It was on this latter point that the Group's work focused its attention in the later stages of the Round, as part and parcel of the more general issue of the applicability of the draft standards code to agriculture. (MTN/AG/W/21)

15. Furthermore, the Group reviewed the obligations in effect in selected international and regional bodies¹ as regards notification, consultation and dispute settlement. It also analysed the degree and modalities of acceptance by countries of commodity standards provided for by the international and regional bodies considered. This analysis is contained in document MTN/AG/W/24.

16. As a result of the negotiations, a Code on Technical Barriers to Trade (the Standards Code) was accepted by a number of contracting parties.² Under this Code, which is applicable both to agricultural and industrial products, signatories are required not to prepare, adopt and apply technical regulations, standards and certification systems in a manner which could create unnecessary obstacles to international trade or discriminate between products originating in the territories of other parties and like products of national origin or originating in any other country. It covers sanitary and phytosanitary regulations which are relating to the characteristics of a traded product. It does not extend to technical regulations drafted in terms of processes and production methods. However, the Code recognizes that "The dispute settlement procedures ...

¹ i.e., the FAO/WHO Codex Alimentarius Commission; the United Nations Economic Commission for Europe; the OECD; the International Zoo-Sanitary Code; and the International Plant Protection Convention.

² The latest status of acceptance of the Standards Code is as follows: thirty-four contracting parties have accepted it; three contracting parties have signed it pending its acceptance; twenty-eight contracting parties are observers to it.

[of the Code] can be invoked in cases where a party considers that obligations under this Agreement are being circumvented by the drafting of requirements in terms of processes and production methods rather than in terms of characteristics of products". (BISD 26S/26)¹

(d) The Committee on Trade in Agriculture

17. Paragraph 1(c) of the Recommendations on Trade in Agriculture adopted by the CONTRACTING PARTIES at the 40th Session in 1984 stated:

"sanitary and phytosanitary regulations and other technical barriers to trade, including related administrative requirements, are brought within the ambit of improved procedures aimed at minimizing the adverse effects that those measures can have on trade in agriculture" (L/5753).

18. In its consideration of these Recommendations the CTA discussed at various times points relating to paragraph 1(c) on sanitary and phytosanitary regulations. A number of suggestions were made as to how these regulations and related administrative procedures might be brought within the ambit of improved procedures with a view to minimizing their adverse effect on trade. Most of the points raised related to the need to further enforce procedures aimed at increasing transparency in the application of sanitary and phytosanitary regulations. This could form the basis for establishing a sounder mechanism for consultation and dispute settlement by providing, for instance, an appropriate framework with agreed guidelines.

19. Another point raised for consideration related to the possible elaboration of disciplines designed to redress any imbalance that might arise where a concession is nullified as a result of action under Article XX(b), notably if such action purports to apply new regulations or regulations more stringent than those in effect when the concession was granted. Details of the Committee's discussion on sanitary and phytosanitary regulations are contained in documents AG/W/13, 14, 16 and AG/W/9/Rev.3, the relevant parts of which have been annexed to this note.

20. Countries participating to the CTA's work were also required to notify in the AG/FOR/series sanitary and phytosanitary measures affecting both their imports and exports of agricultural products.

(e) Ministerial Declaration on the Uruguay Round

21. The Ministerial Declaration of 1986 launching the Uruguay Round provides in its Part I, Section D, under the sub-heading Agriculture, that:

¹Cf. also TBT/W/15 and TBT/16/Rev.2

"....

Negotiations shall aim to achieve greater liberalization of trade in agriculture and bring all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines, taking into account the general principles governing the negotiations, by:

....

"(iii) minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements" ...

22. Subsequently, at its meeting in January 1987, the Group of Negotiations on Goods has embodied the Ministerial language into the Negotiating Plan for Agriculture as part of its negotiating objective (MTN.GNG/5).

Other relevant decisions by the CONTRACTING PARTIES

23. In 1979, the CONTRACTING PARTIES adopted an understanding regarding notification, consultation, dispute settlement and surveillance. The section on notification stipulates:

"2. Contracting parties reaffirm their commitment to existing obligations under the General Agreement regarding publication and notification.

3. Contracting parties moreover undertake, to the maximum extent possible, to notify the CONTRACTING PARTIES of their adoption of trade measures affecting the operation of the General Agreement, it being understood that such notification would of itself be without prejudice to views on the consistency of measures with, or their relevance to, rights and obligations under the General Agreement. Contracting parties shall endeavour to notify such measures in advance of implementation. In other cases, where prior notification has not been possible, such measures should be notified ex post facto. Contracting parties which have reason to believe that such trade measures have been adopted by another contracting party may seek information on such measures bilaterally, from the contracting party concerned."
(BISD 26S/210-211)

24. At their 40th Session in 1984, the CONTRACTING PARTIES adopted the Report of the Group on Quantitative Restrictions and Other Non-Tariff Measures (BISD 31S/12). This Report contains an agreement on notification requirements affecting quantitative restrictions maintained, inter alia, by virtue of the provisions of Article XX (BISD 31S/221-222).¹

¹The latest status of these notifications, covering both agricultural and industrial products, is shown in document MTN(TG)W/3.

ANNEX

Excerpts from Relevant Documents of the
Committee on Trade in Agriculture

AG/W/13 (paragraphs 2 to 11):

Sanitary and Phytosanitary Regulations and Other Technical Barriers to
Trade

2. In the course of the Committee's discussions a number of general observations were made on the suggestions contained in paragraph 51 of AG/W/9 regarding the minimization of the adverse trade effects of sanitary and phytosanitary regulations and other technical barriers to trade. In several of the views expressed it was noted that the scope for improved procedures, aimed at minimizing the adverse trade effects that these measures can have, would tend to be conditioned by certain factors. These included the technical nature of the issues involved; the different geographic, climatic and production situations which prevailed in individual countries; and the fact that both the assessment of a threat to animal or plant life or health and the determination of the preventive or remedial measures considered necessary, were matters which lay within the competence of the relevant national authorities in each country. At the same time, as Article XX (b) itself recognised, such measures could constitute unnecessary or unjustified barriers to trade, which, though not negotiable in the ordinary sense, should be brought within the ambit of appropriate procedures relating to notification and transparency, consultation and dispute settlement.

3. The extent to which it might be possible to deal with the trade distorting effects of such measures otherwise than on a case-by-case basis under Articles XXII and XXIII was a matter on which various views were expressed. The suggestion was also made that consideration should be given to an approach under which, in order to restore a balance of rights and obligations, provision should be made for compensation in cases where concessions were nullified as a result of import prohibitions imposed under Article XX (b).

4. The following suggestions or comments were made as to how sanitary and phytosanitary regulations and related administrative requirement might be brought within the ambit of improved procedures aimed at minimizing their adverse trade effects;

(a) in accordance with Article XX (b) such measures should not be used as disguised restrictions on trade and should not be applied in a manner which constitutes an arbitrary means of discrimination. Moreover imported and domestically produced goods should be subject to the same requirements. While these measures were not negotiable, transparency could be improved as regards the systems applied and the reasons for different measures. A possible consultation mechanism could be established to provide a framework for an exchange of views on these matters;

(b) changing disease conditions in different countries and the fact that countries decide their own standards, militate against the possibilities for establishing common standards. In these circumstances a case-by-case approach in the framework of improved procedures was indicated;

(c) consistently with the Committee's mandate the approach to be elaborated should be as in depth and as broadly based as possible at the multilateral or plurilateral level. A pragmatic start could be made in this direction by undertaking a global analysis of these measures on the basis, inter alia, of counter-notifications submitted by countries adversely affected by sanitary and phytosanitary measures. This analysis would be carried out with a view to identifying the products or sectors affected and to examining how individual countries deal with similar situations. Such a procedure could make it possible to arrive at a common minimum denominator and better assess and minimize the trade effects of individual measures;

(d) the principles and objectives behind sanitary and phytosanitary measures were in a different class from other trade restricting measures. However extensive such measures might be they were not something for which the country applying them should have to pay as a matter of course. Countries using such measures should nevertheless be prepared to consider changes where the national interests involved were capable of being protected in a way that was less harmful to the trade of other countries:

(i) the provisions of the Code on Technical Barriers to Trade provided an example of how what must remain an essentially case-by-case approach could be made more effective. One possibility would be to broaden the scope of the TBT Code to cover "all measures and administrative requirements in force which have the objective of protecting animal and plant life or health."

(ii) a complementary approach might consist in drawing up a "negative list" of practices or modalities which should be avoided when framing or applying sanitary and phytosanitary measures. The basic idea would be that the list would be drawn up in recognition of the fact that, as in the TBT Code, some modalities were more trade disruptive than others and should accordingly only be resorted to where this was unavoidable. For example, countries should avoid specifying sanitary and phytosanitary requirements in terms other than objective performance criteria; they should avoid departing from accepted international practice and should use international standards where appropriate; and, they should avoid discrimination between countries where comparable conditions existed. The listed practices and modalities would not as such be proscribed. However, countries using measures on the negative list, or intending to do so, would be required to provide advance notification to a transparency body, and would have to explain why it was necessary to resort to the modality in question;

(e) as the question whether a particular disease is a threat to animal or plant life or health was a matter exclusively for health and veterinary experts, the trade policy aspects were limited to a demonstration of whether or not the measures enforced were in fact justified. This in turn was a matter which could best be resolved in the first instance on a case-by-case basis through the provisions of Articles XXII and XXIII. Improved transparency with regard to the justification for sanitary and phytosanitary measures could be achieved through the notification procedures established by the Committee, through the general notification provisions under the Framework Text and through the rules relating to publication and administration of trade regulations under Article X of the GATT. A matter which could also be examined in a general way in the Committee was the conformity of regulations with Article III of the General Agreement;

(f) greater transparency should be established in order that countries should know what other countries were doing in the area of sanitary or phytosanitary measures. To a certain extent notifications should be compulsory. This was not the case at present but could be achieved through a decision of the CONTRACTING PARTIES. The scope of these notifications would need to be determined. For this purpose an ad hoc questionnaire might be drafted which should also cover administrative procedures. The introduction of a procedure for periodic review of notifications and counter-notifications should also be examined. This could be accompanied by efforts to harmonize standards in appropriate fora. In the GATT context consideration could be given to the establishment of a list of practices or modalities which countries should avoid when introducing or applying measures;

(g) the existence of sanitary and phytosanitary measures gave rise to problems concerning both their legitimacy and their impact on trade. Article XX (b) treated these measures as an exception to the general GATT rules on three conditions. At present no prior justification was required even though a complete prohibition of trade might be involved. It was only if such measures were challenged that they had to be justified. In practice it was the country applying the measures which determines for itself and according to its own, often subjective, criteria what risk it was prepared to accept, and the adequacy of measures taken by supplying countries to comply with its requirements:

(i) there was substantial room for progress in the conformity of sanitary and phytosanitary measures with the provisions of Article XX (b). To this end, consideration might be given to the introduction of an obligation to notify and provide a justification for measures under Article XX and, in the case of other technical barriers, under Article III. In the first instance such an obligation might be limited to barriers which involve a prohibition either of imports generally or of imports from a geographical region. The introduction of a periodic review procedure, in particular on the negative impact of these measures on trade would also be appropriate;

(ii) while such procedural improvements might enhance the possibilities available to individual contracting parties to defend their GATT rights, they would be unlikely, given the potential for scientific controversy, to lead to a rapid improvement as regards the conformity of these measures with Article XX. In these circumstances and given the extensive adverse impact that sanitary and phytosanitary measures can have on trade, not only bilaterally but also in terms of their distortive effects on tariff concessions and on the broader balance of rights and obligations under GATT, a new or parallel approach to these problems was called for. The idea would be to restore a balance of rights and obligations amongst the parties concerned by adopting an approach analogous to that followed under other GATT articles. In the same way, for example, that countries resorting to certain measures are required to compensate countries which are adversely affected (Article XIX) or are required to restrict domestic production and provide a certain guarantee of access (Article XI: 2 (c)), there should also be a corresponding obligation in the case of import prohibitions based on sanitary or phytosanitary grounds to compensate countries which are deprived of the benefits of multilateral concessions by granting concessions on similar or other products.

5. In a number of the views expressed it was noted that trade in agriculture was more severely affected than other sectors of international trade by sanitary and phytosanitary measures, as well as by other technical barriers to trade. While the right of countries to protect legitimate national interests was not contested, the means adopted by some countries to prevent or control the transmission of particular diseases were a great deal more strict, and more adverse as regards their effects on trade, than the practice followed by other countries in dealing with the same or similar problems. Reference was made in this context to the trade impact of different national practices with regard to the prevention or control of the transmission of foot and mouth disease, and also to sanitary and phytosanitary requirements which had not kept pace with technological changes in the trade of certain products.

6. Reference was made as well to the practice of island countries in completely excluding imports as a means of preventing the introduction of exotic diseases and maintaining their longstanding disease free status. It was suggested that what could be regarded as necessary or unnecessary in such situations was directly related to the degree of risk that the countries concerned were prepared to accept and that this was an issue that should be approached in the light of how other countries perceived and responded to the same problems. In this connection, it was pointed out that those countries which imposed strict regulations were not unfamiliar with the diseases whose introduction they were designed to prevent, and that equally strict standards were applied to their own producers. Furthermore the strictness of certain sanitary and phytosanitary requirements had to be assessed against the highly damaging and dramatic economic consequences that the introduction of certain diseases would inevitably entail. It

was also noted that an approach involving the acceptance of a greater degree of risk than a country's technical experts considered appropriate would be to encourage trade in diseased products, and that the very real problems in this area of trade could not be solved by bringing disease free countries down to the level of unfortunate contagion prevailing elsewhere.

7. It was suggested that while unduly burdensome administrative procedures should be avoided, improvements were needed under which it would be possible to review regulations and practices from the point of view of what was necessary and unnecessary and from the point of view of the trade effects involved. A counter-notification process could serve as a useful filter in the identification of measures whose impact on trade was particularly disruptive. It was also suggested that having regard to the nature of the issues involved, any improved procedures for review, consultation and dispute settlement would have to make provision for technical expertise. It was suggested that the Committee itself might provide a permanent forum for periodic review of sanitary and phytosanitary measures and other technical barriers to trade.

8. It was observed that many factors, including different climatic, geographical and disease conditions, had led countries to adopt different levels of sanitary protection and that this was yet another expression of the specific characteristics of agriculture. It was also observed that while diseases or geographical locations might have specific characteristics, it was not possible to draw a conclusion from the variety of regulations applied that agriculture per se was therefore a specific area of trade. Geographical location, it was pointed out, was more a function of comparative advantage than of the specificity of agriculture as such.

9. In this general context, the view was expressed that a parallel approach involving the concept of a waiver or derogation linked to the payment of compensation, was of doubted utility since the GATT itself in effect already provided a waiver or general exception under Article XX (b) and, moreover, the class of measures involved were not as such negotiable. In this view there appeared to be no reason why countries applying or introducing sanitary measures should have to seek an additional waiver, nor any reason why they should have to pay to protect their disease-free status. Another view expressed was that it would be ridiculous that a country should have to pay compensation to protect its livestock industry, and that the Committee should focus its attention on how, in a practical and realistic sense, the trade impact of sanitary and phytosanitary measures and related obstacles to trade in agriculture could be minimized.

10. It was pointed out that a parallel approach aimed at re-balancing rights and obligations as between countries applying prohibitive sanitary or phytosanitary restrictions and those countries affected by such measures, was a matter which would need to be addressed in the context of a future negotiation. It was also observed that the

suggested approach was not so far removed from existing practice under Article XXIII. Where a country had committed itself to a concession and that concession was subsequently nullified by sanitary or phytosanitary measures, recourse could be made to Article XXIII even though the measure itself may not conflict with the provisions of the General Agreement. In another view expressed it was observed that Article XXVIII would also be relevant in a case where a concession was impaired as a result of the introduction of sanitary or phytosanitary restrictions.

11. It was noted that some of the foregoing observations and comments were also relevant to the problems associated with other technical barriers to trade and related administrative requirements.

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AG/W/14 (paragraphs 82 to 84):

Sanitary and Phytosanitary Measures and Other Technical Barriers

82. The point was raised that if there were success in the reduction of other non-tariff trade restrictions such as quantitative restrictions, levies, etc., there would be more pressure to use health and sanitary regulations to restrict trade. It was generally agreed that a strengthening of the disciplines in this area, including improved consultation procedures, was necessary.

83. In several of the views expressed, it was considered that there was a need to extend the existing provisions for compensation in cases where concessions were impaired by health and sanitary regulations. It was suggested that such compensation should be required even in situations where the health and sanitary regulation in question had been in existence at the time the concession was granted. One possible approach suggested was the adoption of a provision similar to that of Article II:3, which would require that no contracting party shall change health or sanitary regulations or procedures in such a manner as to cancel or diminish the value of concessions or minimum access commitments. This would provide for a standstill on existing regulations and a basis from which to compute compensation. The point was made that health and sanitary measures were taken because of expert examination of scientific data. Restrictions differed due to differences in locations, in types of production, etc.

84. It was noted that rights could also be impaired by administrative requirements, such as those involving compliance with unreasonable methods or procedures. It was not always a question of open or closed markets, but of the excessive costs incurred in fulfilling specific production or processing requirements. The two approaches examined in the Draft Elaboration were not seen as mutually exclusive. In addition to improvement of Article XX:(b), it was necessary to reinforce disciplines in order to assure non-discrimination and national treatment. The definition of acceptable multilateral procedures in this respect was seen as a possible way to facilitate the identification of

unreasonable requirements. It was suggested that reference should be made to existing international standards, including the GATT Standards Code and the FAO Codex Alimentarius. The point was made that the existing international standards had not been successful in this area. In one view, what was necessary was a panel composed of both technical and trade policy experts to address the key question of what was an acceptable degree of risk with regard to the introduction of undesirable pests or diseases.

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AG/W/16 (paragraph 17):

Sanitary and Phytosanitary Measures

17. One view expressed with regard to the ideas outlined in paragraph 70 of the revised document was that the concept of treating health and sanitary measures as a species of safeguard action or of introducing a standstill on such measures would not be acceptable. It was also considered that these measures should be judged by experts from a purely technical viewpoint. Another view was that the role of the Committee was to analyse rather than to negotiate the various suggestions made and that in this sense the content of paragraph 70 could be supported. Reference was also made in this connection to concerns regarding the extent to which such measures were relied on in certain areas to exclude important exporters and their discriminatory effects in terms of market sharing. In this view it was considered that the manner in which such measures were applied and their adverse effects on trade warranted an approach being adopted that would lead to a better balance of rights and obligations in this area under the GATT.

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AG/W/9/Rev.3 (paragraphs 66 to 70):

SANITARY AND PHYTOSANITARY REGULATIONS AND OTHER TECHNICAL BARRIERS

TEXT: "... under which (c) sanitary and phytosanitary regulations and other technical barriers to trade, including related administrative requirements, are brought within the ambit of improved procedures aimed at minimizing the adverse effects that these measures can have on trade in agriculture."

66. It is considered that the question of improved rules and disciplines on sanitary and phytosanitary measures might be approached from two not entirely separate angles. One would focus on improvements in consultation procedures with a view to minimizing adverse trade effects. The other would consist in the elaboration of disciplines designed to redress any imbalance that might arise where concessions are nullified as a result of action under Article XX(b).

67. Article XX(b) establishes certain requirements regarding the application of sanitary and phytosanitary measures. Such measures must be "necessary" for the protection of animal or plant life or health, and may not be applied in a manner which constitutes:

- (i) a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail;
- (ii) a disguised restriction on international trade.

68. One possibility suggested would be to seek to improve the existing procedures on the basis of an examination not only of whether in terms of Article XX(b) the measures in question are necessary or justified or are a disguised barrier to trade, but also on the basis of whether, accepting that the particular measures may be justifiable, the national interests involved can be protected in a way which is less harmful to the trade of third countries. An approach along these lines could involve a contracting party having to justify, or accept some measure of review of, the grounds on which, for example, imported products are subject to more stringent rules or requirements than those applied to the domestic products, or the reasons for which imported products should be subject to unduly burdensome administrative procedures. Another example would be a situation where an importing country enforces requirements or procedures which are more onerous or exacting than those applied by other comparable importing countries in similar circumstances. These are no more than possible examples.

69. Any improvement in the existing procedures would appear to depend to some extent on whether the opinion of suitably qualified or experienced trade and technical experts could be brought to bear on such questions in a GATT dispute settlement or consultation context. Given not only the diversity and complexity of possible disputes, but also the fact that domestic administrative or financial considerations might be at issue, probably the most that could be envisaged would be a procedure under which a complainant could obtain an informal advisory opinion on the questions at issue. The existing counter-notification procedures, with appropriate improvements, might provide a basis on which a consultation procedure along these lines might be developed. Moreover a first step in this direction could be to initiate a further round of counter-notifications, in order to have a more precise idea of the problems confronting the trade of contracting parties and the appropriateness of possible improvements.

70. The second aspect mentioned in paragraph 67 above concerns situations where tariff concessions are effectively neutralized by Article XX(b) action. The question which arises in such situations, or in a situation where possible minimum access commitments might be affected, is whether some form of compensatory action should be required under the GATT. For example, if concessions or commitments on meat are nullified by sanitary measures, should the country concerned have an obligation to compensate with equivalent concessions on other products?

From an operational point of view a country introducing or intensifying sanitary requirements in such circumstances could be induced to consider whether the measures could be applied in a less trade restrictive manner. An approach along these lines would be to treat the imposition of sanitary or phytosanitary measures "as if" they were a species of safeguard action. Another suggested approach was the adoption of a provision similar to that of Article II:3, which would require that no contracting party shall change health or sanitary regulations or procedures in such a manner as to cancel or diminish the value of concessions or minimum access commitments. This would provide for a standstill on existing regulations and a basis from which to compute compensation. On the other hand the formal position is that measures taken consistently with Article XX(b) are in exception to the general GATT rules. One of the basic issues is whether, in order to achieve a better overall balance of rights and obligations with respect to all measures affecting access, some greater degree of commitment under GATT on sanitary and phytosanitary measures is possible.