

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG2/W/11

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Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on Non-Tariff Measures

PRESHIPMENT INSPECTION

Background Note by the Secretariat

1. At the meeting of the Negotiating Group on Non-Tariff Measures which was held on 25 February 1988, the secretariat was asked to prepare an information note on preshipment inspection which would provide background for a discussion of the problem at the next meeting of the Group (MTN.GNG/NG2/6, para. 12). This note has been drawn up by the secretariat on its own responsibility. It provides some background information on preshipment inspection on the basis of what is available in the secretariat and summarizes the discussion which has taken place so far in various GATT bodies.

Background

2. For about a century, it has been customary for companies to arrange for some categories of goods to be inspected prior to shipment in the exporting country, with a view to determining whether they conform to the terms of the contract. Waiting until the goods have reached the country of destination may not always be appropriate, since they may need to be sent back to the exporter if problems between him and the importer cannot be settled. Specialized companies have been established to conduct preshipment inspection.

3. The business appears to have developed rapidly in the past 20 years, and the services of preshipment inspection companies have been used not only by traders but by governments. In particular, governments of some developing countries have resorted to the services of specialized agencies which are asked by these countries to systematically inspect their imports at the port of shipment. These countries, of which there are approximately 25 at the moment, are apparently motivated by the following principal considerations:

- (i) Limiting or eliminating capital flight by putting a check on over-invoicing of their imports;
- (ii) Ensuring that the proper amount of duty is paid for imports by preventing under-invoicing;
- (iii) Preventing the importation of sub-standard or dangerous products;

- (iv) Preventing over-charging of imported goods.

4. Especially in the last few years, exporters in a number of countries, particularly in the United States and the European Communities, have complained that preshipment inspection acts as a barrier to trade. In particular, the following claims have apparently been made by them in relation to preshipment inspection:

- (i) Exportation and payment are delayed;
- (ii) Additional administrative costs are being incurred by the exporter;
- (iii) Preshipment inspection agency employees are sometimes not qualified to carry out the inspection for which they are mandated;
- (iv) Price verification carried out immediately before shipment sometimes leads to pressure on the exporter to reduce the transaction price simply to make the shipment, and thus to breach of a freely agreed contract;
- (v) Preshipment inspection agencies feel obliged to achieve the results expected by the importing governments whether or not this is justified;
- (vi) Confidential business information can be divulged; and
- (vii) There is no system of appeal against the findings of preshipment inspection agencies.

5. Recently, a number of governments (eg. the Federal Republic of Germany) have required preshipment inspection agencies operating on their soil, to obtain a licence from the relevant government authority. At the same time, the Working Party on the Facilitation of International Trade Procedures of the United Nations Economic Commission for Europe has for a number of years shown concern about the additional costs and delays that preshipment inspection might impose on international trade and adopted in 1981 a decision entitled "Discouragement of preshipment inspection" (reproduced in VAL/W/42). Since then the Working Party has continued to review the matter. The International Chamber of Commerce's (ICC) Committee on Regulations and Procedures in International Trade has set up a Working Group entrusted with the task of drafting a Code of Conduct on the activities of preshipment inspection agencies. The International Federation of Inspection Agencies (IFIA) has prepared a draft Code of Practice which it has submitted to the ICC for consideration.

Discussion within the framework of the GATT and the multilateral trade negotiations

(a) The Committee on Customs Valuation

6. At the meeting of the Committee which was held on 30 April 1986, the delegation of the United States spoke of some growing trade problems associated with the activities of preshipment inspection agencies engaged in customs valuation on behalf of governments some of which were observers in the Committee. This delegation expressed the concern that those activities went beyond helping governments to check on false invoicing and that they were inconsistent with the basic notion of transaction value under the agreement as well as the principles of Article VII of the GATT (VAL/M/17, para. 45).

7. At the meeting of the Committee which was held on 10 November 1986, the delegation of the United States highlighted the following three problems which had been identified from the information gathered by its authorities from exporters:

- (i) costly and time-consuming delays from the preshipment inspection requirement itself;
- (ii) the ability of third parties to abrogate contractual agreements between exporters and importers with regard to prices and to reject prices because they were higher or lower than prices considered "reasonable" by preshipment inspection companies;
- (iii) requirements by preshipment inspection companies for the submission to them of a great deal of confidential business information and concern about the possible misuse of this information.

8. In the view of the delegation of the United States, problem area (ii) was likely to be of more direct interest to the Committee on Customs Valuation since it concerned the value of goods for customs purposes. This delegation recognized that there were serious problems leading countries to employ preshipment inspection agencies for valuation purposes and expressed the wish to find wherever possible mutually acceptable ways of dealing with these problems. Other delegations shared the concerns expressed by the delegation of the United States and its readiness for further multilateral consideration of problems connected with preshipment inspection (VAL/M/19, paras. 53-64).

9. At the meeting of the Committee which was held on 11 May 1987, the delegation of the United States submitted a communication containing information on the activities conducted by its authorities in relation to preshipment inspection and their views on the subject (VAL/W/43). It considered that the subject might be appropriately examined in the Negotiating Groups on Non-Tariff Measures or GATT Articles or in a separate Working Party. The delegation of Indonesia also made a submission to the Committee summarizing the benefits obtained from Indonesia's preshipment

inspection programme and the reasons which have led it to adopt this programme. The paper also lists the countries which at the time when it was circulated applied preshipment inspection (VAL/W/44).

10. In commenting on the subject of preshipment inspection, some delegations noted that only some of the activities of preshipment inspection companies related to obligations under the Agreement. They considered that in order to be able to continue discussions in the Committee, it would therefore be necessary to start defining the problems in terms of precise provisions of the Agreement, though they were concerned that the countries using preshipment inspection were not members of the Committee. Some delegations also stated that some of the activities of preshipment inspection companies were useful and legitimate, though there had been cases where exporters in their countries had decided to refrain from exporting to certain markets due to the control companies' excessive demands which sometimes constituted clear barriers to trade. One delegation stated that preshipment inspection by private companies existed in its country but that no complaint had been received. Preshipment inspection was welcomed in its country because it reduced delay in customs clearance in some countries. One delegation, speaking as an observer, stated that developing countries were at the mercy of certain suppliers who did not respect the clauses of the contracts, knowing the limited means of control in these countries. Until such time as the developing countries were able to undertake these practices themselves, they had to have recourse to preshipment inspection companies. Another representative considered that irrespective of the legitimacy of the practices, certain measures could be taken to deal with the particularly unacceptable features of the system such as lack of transparency, the non-publication of guidelines by the governments concerned and sources of delay in inspection (VAL/M/20, para. 52-68)

11. At the meeting of the Committee which was held on 9 November 1987, one representative informed the Committee of the discussion which had taken place on preshipment inspection at the Eighth meeting of the Directors of National Customs Administrations of Latin America which had been held in Ecuador on 27-30 October 1987. Delegations continued exchanging views on the problems associated with preshipment inspection and on the most appropriate forum for dealing with them. At the end of the discussion, the Committee agreed to keep the matter on the agenda (VAL/Spec/26, para. 39-48).

(b) Council

12. At the meeting of the Council held on 7 October 1987, the delegation of Indonesia recalled the discussion which had been held in the Committee on Customs Valuation and expressed the view that discussion of preshipment inspection should take place in a wider and more appropriate forum where the views of all affected countries, and not only of the signatories to the Agreement on Customs Valuation, could be taken into account. The representative of the European Communities said that the problem should be

dealt with both through the normal GATT mechanisms provided by the Agreements on Customs Valuation and on Import Licensing Procedures, and in the context of the Uruguay Round, in order to arrive at more transparency and agreed multilateral disciplines. Other delegations also supported the suggestion that discussion take place in a wider framework than the Committee on Customs Valuation (C/M/213, pages 27-28).

(c) 43rd Session of the CONTRACTING PARTIES

13. At the 43rd Session of the CONTRACTING PARTIES which was held in November 1987, the delegation of the European Communities stated that the Uruguay Round could play a rôle in bringing about more transparency on the subject of preshipment inspection, and in considering what part GATT itself could play in this area. Other delegations supported the call for early action and more transparency in this area (SR.43/5, page 7).

(d) Uruguay Round Negotiating Group on Non-Tariff Measures

14. At the meeting of the Negotiating Group which was held on 25 February 1988, the delegation of Indonesia stated that the subject of preshipment inspection required a multilateral response and that the Negotiating Group on Non-Tariff Measures was the competent body to take it up (MTN.GNG/NG2/6, para. 11).