

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG5/WGSP/W/1
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Group of Negotiations on Goods (GATT)
Negotiating Group on Agriculture:
Working Group on Sanitary and Phytosanitary
Regulations and Barriers

SUMMARY OF THE MAIN POINTS RAISED AT THE FIRST MEETING
OF THE WORKING GROUP ON SANITARY AND PHYTOSANITARY
REGULATIONS AND BARRIERS

(12 October 1988)

Note by the Secretariat

1. The Working Group had before it the agenda (GATT/AIR/2683), two background notes prepared by the secretariat (MTN.GNG/NG5/W/41 and MTN.GNG/NG5/W/54), submissions by the European Communities (MTN.GNG/NG5/W/56) and the United States (MTN.GNG/NG5/W/76 and NG5/W/77), and suggestions made on sanitary and phytosanitary measures within the general proposals submitted by the Cairns Group (MTN.GNG/NG5/W/69, paragraph (vi)) and by a group of developing countries (MTN.GNG/NG5/W/74, paragraph II(c)) respectively. It was agreed that the secretariat would chair this first meeting, and that consultations would continue on finding a permanent chairman for the Working Group.
2. Reference was made to the terms of reference for the Working Group, which had been proposed by the Chairman of the Negotiating Group at its meeting of 12-13 September 1988, and on which a number of participants had indicated at that time that they did not have instructions and might wish to revert to the matter (MTN.GNG/NG5/10).
3. One delegate referred to the proposals regarding sanitary and phytosanitary measures contained in Section II(c) of MTN.GNG/NG5/W/74. He suggested that the following two concepts be included in the work programme of the Working Group: first, "measures designed to remove barriers to trade, arising from the application of sanitary and phytosanitary regulations, should be included in the short-term and transitional arrangements so as to increase transparency and market access, particularly for products of developing countries"; and second, "minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements".
4. Another delegate expressed reservations on the lack of specific scope of the areas which the Working Group should cover: what was meant by "sanitary" and "phytosanitary" and whether health was included. Moreover, he referred to the need for avoiding duplication of work on these matters and work in other Negotiating Groups, e.g., the one on the Standards Code. As regards the specific terms of reference which had been proposed, he

suggested inserting "possible" before "common approach" (i.e., the first sentence would read "... the Working Group would consider and report to the Negotiating Group on the scope for a possible common approach with regard ..."). He objected to point (i) relating to harmonization as prejudging the final result of the negotiations. He also reserved on the reference to "the principle of equivalency" under point (ii). Finally, he suggested deleting the last sentence which refers to specific organizations as the basis for international harmonization, and substituting it with "it was agreed that the clarification of the scope of 'sanitary and phytosanitary' is an essential prerequisite for the work of the Group, bearing in mind the work of other related negotiating groups."

5. One participant was of the view that the terms of reference, which had been proposed by the Chairman of the Negotiating Group in September, were broad enough so that all the necessary matters could be considered in the Working Group, as regards "minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture". Another participant felt that the question of duplication of work had been dealt with pragmatically under the Punta del Este Declaration, which provided that "aspects of one issue may be discussed in more than one negotiating group", which would also apply to sub-groups of negotiating groups. As to the meaning of sanitary and phytosanitary, he suggested that perhaps the history of the interpretation of the language of Article XX(b) could offer guidance. He also averred that the lack of precise definition on agriculture had not hampered the overall work of the negotiations, in that a pragmatic solution had been worked out, consisting of relying on the first twenty-four tariff chapters. A third participant suggested that there could be agreement to start work provisionally on the three elements of the work programme which had been identified, on condition that it could be adjusted at a later stage when the terms of reference were finalized. He also shared the concern about duplication of work.

6. The Working Group agreed to proceed pragmatically by taking note of the comments made on the terms of reference and work programme, and leaving to its parent body, namely the Negotiating Group, the task of resolving and deciding this matter.

7. The substantive discussion of the Working Group was based on (i) reinforcement of GATT rules and disciplines; (ii) procedures for notification and consultation; and (iii) promotion of greater international harmonization and the application of suitable principles of equivalency.

8. As regards point (i), there appeared to be a consensus on the need for reinforcing GATT rules, particularly Article XX(b). A number of participants were of the view that the possibilities were limited for providing greater clarity and precision to, or arriving at a common interpretation of, the specific terms used in the chapeau and paragraph (b) of Article XX. This provision seemed to give contracting parties great scope to determine unilaterally how best to protect their sanitary or phytosanitary status.

9. Some proposals already on the table had suggested that national regulations which fully complied with international standards would be deemed to be in conformity with Article XX(b). However, it was pointed out that not all participants were involved to the same extent in the work of the different international standards organizations operating in this field. The harmonization process was long and complicated, and could not resolve all problems. Diseases moved faster than the setting of international standards, which once established needed at any rate to be adapted to individual circumstances.

10. One participant stated that national laws should be subject to strengthened GATT disciplines, and pointed to the proposals relating to transparency, trade effects, non-discrimination, consultation and equivalency contained in MTN.GNG/NG5/W/56. Others shared the view that when harmonization was not possible, the principle of equivalency should be recognized to a larger extent. One delegate proposed the implementation of protocols and the elaboration of general rules on pre-shipment operations to this end.

11. A number of participants were of the view that the way to strengthen GATT rules and disciplines lay in stronger and more effective arrangements under the GATT as regards transparency, notification, reverse notification, consultation and dispute settlement, and in improving liaison between the GATT and competent international standards organizations. Where a national standard went beyond an international standard, it was suggested that the onus of proof lay on the contracting party, if challenged, to provide scientific evidence to justify maintaining a stricter standard. Formal procedural arrangements should be established whereby international standard organizations, with their accumulated scientific expertise, would provide technical advice as to whether any given sanitary and phytosanitary regulation was based on sound and verifiable scientific evidence. However, one participant noted that the 1979 Understanding already offered the possibility for panels consulting with experts to obtain their technical opinion on certain aspects (BISD 26S paragraph (iv) pp. 217-218), and that there were non-scientific aspects which also needed to be addressed in any determination under Article XX(b).

12. One participant questioned the justifiability of a contracting party maintaining more stringent requirements on external supplies than it applied within its territory. In his opinion, the GATT provisions of the chapeau of Article XX, should not be considered as allowing a derogation to the requirement of national treatment under Article III. Another delegate however countered that such a position would not make sense, since it would prevent a country from applying a standard against exotic diseases exclusively at the border, when it itself was free of diseases existing in other parts of the world and had free circulation of animals and plants within its territory.

13. With respect to improving notification procedures, it was noted that countries already notified their sanitary and phytosanitary regulations to the relevant international standards organizations (MTN.GNG/NG5/W/54 refers). It was suggested that there should be a system established within the GATT, to which interested parties could go to find out where information had been notified.

14. It was pointed out that elaborate notification procedures existed already under Article 2.5 of the Standards Code, to which 38 countries were signatories, and under which around 1,800 notifications had been made over the last 8 years.

15. One representative whose country was not a signatory to this Code, commented that it would seem appropriate for those wishing to know about his country's regulations, to address themselves directly to the national authorities concerned. There could be provisions for technical assistance for certain countries, to help them find out what steps they should take to comply with these regulations. What there should be, in his view, under the GATT was a system for reverse notifications and for opportunities to discuss the nature of sanitary and phytosanitary measures and their impact on trade.

16. Another participant stated that there should be arrangements under the GATT framework, for consultations on the trade effects of sanitary and phytosanitary regulations, as well as for ad hoc negotiations to find a way to make differing national provisions compatible where necessary. Such arrangements could help to avoid the abusive resort to dispute settlement on such matters.

17. It was also pointed out that Article X of the General Agreement provided for the publication of trade regulations, and in such a manner as to enable governments and traders to become acquainted with them.

18. It was suggested that the secretariat prepare a more comprehensive note, than those already available, as to the specific notification obligations on sanitary and phytosanitary measures under the General Agreement and the relevant GATT Codes. This would assist delegations in ensuring that the resulting proposals from the Working Group not duplicate notification obligations already in existence.

19. In order to better understand the operation of the Codex Alimentarius, International Plant Protection Convention and the International Office of Epizootics, the Working Group agreed to invite representatives from these three organizations or codes, as observers to their meetings. Other standards organizations might be invited to attend or otherwise collaborate as necessary, to be decided at a later stage of the Working Group's work.

20. It was pointed out that the IPPC was a convention under which there were regional organizations. The OECD and ECE also dealt with sanitary and phytosanitary matters. The Chairman noted that the Codex and IPPC were under the aegis of the FAO secretariat, which was already present as observer to the NG5 meetings. One participant stated that only the GNG had the competence to invite regional or international organizations as observers.