

MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND

RESTRICTED  
MTN.GNG/NG5/WGSP/W/2  
14 November 1988  
Special Distribution

---

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 SECOND MEETING  
OF THE WORKING GROUP ON SANITARY AND PHYTOSANITARY  
REGULATIONS AND BARRIERS

(3 November 1988)

Note by the Secretariat

1. The Working Group had before it 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 second meeting, and that consultations would continue on finding a permanent chairman for the Working Group.
2. The Working Group carried out an exchange of views under the relevant items of the work programme as contained in GATT/AIR/2702. As regards the reinforcement of GATT rules and disciplines in the area of sanitary and phytosanitary regulations and barriers, the Chairman noted that following from the first meeting of the Working Group, participants apparently believed there was in fact little scope for arriving at a common interpretation of the specific terms used in the relevant provisions of the General Agreement, particularly Article XX(b). One idea that had been proposed was to agree that national regulations which fully complied with international standards should be deemed to be in conformity with Article XX(b).
3. There was support expressed for the above suggestion at this second meeting of the Working Group. The question was raised, however, as to which international standards would be relevant in this regard. One participant stated that standards developed under the Codex Alimentarius, the International Plant Protection Convention and the International Zoo-Sanitary Code were relevant and appropriate. But another participant questioned whether these three should be the only ones retained, since standards developed under other regional organizations might also be pertinent. The Chairman asked how contracting parties could accept, for purposes of an interpretation of Article XX(b), standards developed by regional organizations whose membership was limited. The participant

responded that the European Economic Community, as such, was not a member of the three organizations which had been cited, and that regional groups operated under the IPPC. She suggested that the matter be left open, pending further information on participation in the three codes or organizations, and how standards developed by them were accepted by governments.

4. Another participant concurred that international standards should not be defined as limited to the above-mentioned three organizations. The International Organization for Standardization was also important in the field of testing and sampling. He also stated that the proposed interpretation of Article XX(b) should not imply that national standards which deviated from, or did not comply with, international standards would necessarily be considered as not in conformity with Article XX(b).

5. One participant stated that sanitary issues relating to human, animal and plant health should be the focus of the Working Group. Standards developed by international organizations which dealt with these issues, such as the three organizations mentioned, were relevant. Quality standards should not be the subject of the work of the Group. As regards regional organizations, he expressed concern about the possibility of different regional bodies arriving at different standards, which appeared not in keeping with the Group's efforts at minimizing trade distortions. Further on the question of coverage, another participant asked whether food hygiene was covered by the Working Group. There was consensus that this was the case.

6. One representative expressed the view that there might be a strong presumption that national standards which complied with international standards, would be in conformity with Article XX(b), but a final determination on this question should be left to CONTRACTING PARTIES in case of disputes. Another delegate supported the view that such a presumption of compliance should not be automatic.

7. The Chairman noted that if a national standard which conformed to an international standard would still be subject to the CONTRACTING PARTIES' determination on consistency, then the relative value or simplicity of the proposal appeared diminished. He referred to the suggestion already made to the Working Group that, where a national standard or regulation deviated from an international standard, or where no international standard existed on the product concerned, the country applying the standard, if challenged, had the burden of proof of providing sound scientific evidence to justify its measure. One representative observed that countries invoking any exception under the General Agreement must carry the burden of proof.

8. Another participant stated that the reinforcement of GATT rules was broader than the acceptance of international standards. Another way to accomplish reinforcing the rules could be to develop rules governing the use of sanitary and phytosanitary regulations and barriers. Although the format this set of principles should take would need to be clarified, the objective should be to minimize the adverse effects of these measures on trade. Sanitary and phytosanitary regulations should be based on sound, scientific evidence, and be no more restrictive than necessary to deal with

problems that threaten producers in importing countries. There should also be improved notification, surveillance and dispute settlement procedures. Another participant raised the possibility of developing linkages between the GATT and the relevant standards organizations for purposes of Article XXIII:2 - just as the findings of the IMF were taken into account under Article XV of the General Agreement - but leaving any final decision under the GATT to CONTRACTING PARTIES.

9. As to the question of sound scientific evidence, one participant was of the opinion that governments should retain the right to assess risk for their own countries; for example, the allowable level of cadmium or radiation in food. He also referred to certain restrictions or prohibitions, for example on pork, which were not based on scientific evidence, but on ethical considerations.

10. One participant stressed the need for greater surveillance of all exceptions under the General Agreement, including those under Article XX. He proposed that the Working Group examine the Agreement on Technical Barriers (Standards Code) and, with the help of a possible secretariat background note in this regard, consider how to apply principles of the Code to the Group's work. He noted that the Code had the largest membership, and the greatest participation of developing countries, of all the Agreements resulting from the Tokyo Round.

11. The Chairman observed that he had been struck by the similarity of the suggestions proposed so far to improve GATT disciplines on sanitary and phytosanitary measures, with the concepts and provisions already to be found in the Standards Code. To be more specific, there existed in the Standards Code provisions on the following matters, inter alia:

- national and m.f.n. treatment in relation to technical regulations and standards as well as certification;
- parties to use international standards where they exist as a basis for technical regulations and standards;
- encouragement to participate in the preparation of international standards by appropriate international standardizing bodies;
- where there is no relevant international standard, or where a national standard is different therefrom and would affect trade significantly, provisions for public notice, notification through the GATT secretariat, explanation, written comments by others and consultations in respect of a proposed technical regulation;
- similar provisions for public notice, notification, consultation on certification system;
- equivalency as regards certification and testing;
- enquiry points about technical regulations, standards and certification systems and centralized information systems;

- technical assistance;
- special and differential treatment of developing countries;
- technical expert groups to make, inter alia, findings concerning the detailed scientific judgments involved in a determination as to whether a measure was "necessary for the protection of human, animal or plant life or health", etc.

He suggested that at some point the question would have to be addressed as to whether the negotiations being carried out on sanitary and phytosanitary regulations and barriers would result in improvements to the Standards Code or something separate.

12. The view was expressed that the Standards Code was obviously relevant to the Group's work, but that in practice that Code had not proven effective on sanitary and phytosanitary issues affecting trade. If the Code had operated satisfactorily, there would have been no specific reference to these measures in the Punta del Este Declaration, nor would this Working Group have been established. It was stated that solutions resulting from the negotiations on sanitary and phytosanitary regulations and barriers should cover all countries.

13. The question of greater recognition of equivalency was raised, and the need for clarification of the meaning of this term.

14. One participant stated that there was more than one method to reinforce GATT rules on these issues. The greater use of harmonization had been proposed. But there was also the proposal of having more precise rules and disciplines for national regulations as regards transparency, consultations, having national regulations take the form least restrictive to trade, the assessment of risk on a regional basis, limiting protective measures to real as opposed to theoretical risks of transmission, non-discrimination, and bilateral consultations to seek alternative guarantees to avoid trade distortions. This above-mentioned framework could run parallel with, and could facilitate harmonization, but was not identical thereto.

15. The Chairman noted that nineteen participants had indicated that they applied sanitary and phytosanitary measures affecting imports on agricultural products under the AG/FOR/REV/- series (of which seven participants had so indicated for every or virtually every CCCN chapter). Canada and Uruguay had counter-notified sanitary or phytosanitary measures applied by others in respect of the standstill and rollback commitments under the Punta del Este Declaration. As regards the Standards Code, twenty-nine signatories each made annually around forty notifications of proposed technical regulations and certification systems relating to agricultural products.

16. As regards improving transparency, it was suggested that the Working Group examine the procedures on notification under the Standards Code as well as relevant international standards organizations, to assess how they could form a basis for further discussion in the Working Group. The view

was expressed that the procedures under the Code need not necessarily be considered as the best way to improve notifications and reverse notifications or surveillance on sanitary and phytosanitary regulations and barriers. There was support for finding the simplest method to assure that contracting parties had access to information on relevant measures - via, for example, enquiry points or centralized information systems - without having truckloads of regulations descend on the GATT. One participant stressed the need for transparency on bilateral agreements in respect of the interpretation and application of sanitary and phytosanitary regulations.

17. Representatives from the Codex Alimentarius, the International Plant Protection Convention, and the International Office of Epizootics, which had been invited as observers to this meeting, were asked to make brief presentations, explaining the internal procedures under their respective codes. Their statements will be circulated as separate documents (MTN.GNG/NG5/WGSP/W/3, 4 and 5). Copies in English, French, and Spanish of an FAO/WHO publication, explaining the Codex Alimentarius, have been given to the GATT secretariat, and are available to participants upon request. It was hoped that the Trade Negotiations Committee would confirm that these observers would attend future meetings of the Working Group, in order to assist it in its consideration of the promotion of greater international harmonization and acceptance of international standards.

18. The item of the work programme relating to short-term and transitional measures had been inserted on the agenda by the specific request of one participant, and referred to the proposal contained in MTN.GNG/NG5/W/74, paragraph II(c) (MTN.GNG/NG5/W/86). This participant explained that suggestions on a framework for sanitary and phytosanitary regulations and barriers were focused on the long-term. His delegation felt that results could be achieved and action taken in the short-term on increased transparency of existing measures and changes thereto. This would enhance predictability, which was particularly important for agricultural trade, a significant proportion of which took place in perishable products. It would minimize the too frequent occurrence of shipments being impounded because exporters were unaware of new measures. It would provide the basis for effective progress on the long-term aspects of the Working Group's mandate. His delegation believed that there should be recommendations to enhance transparency as part of a short-term and transitional programme to be decided at the Mid-Term Review. One participant asked that there be further explanation and elaboration of how this proposal for short-term action could be implemented at Montreal and operated over the next two years.

19. As regards consideration of needs of developing countries, it was noted that certain proposals had made reference to the possibility of technical assistance to improve the health status in developing countries and thus help their exports (e.g., MTN.GNG/NG5/W/56 and MTN.GNG/NG5/W/74). One participant noted that the principle of special and differential treatment was provided in the Agreement on Technical Barriers, and international standards organizations. Technical assistance was an important aspect for developing countries to build their infrastructure on food legislation in order to conform to international standards.

20. Given the time constraints of a one-morning meeting, it was agreed that further elaboration on the items under the Working Group's work programme, particularly as regards short-term measures and the needs of developing countries, could take place in the next meeting of the Negotiating Group on Agriculture, 14-15 November 1988.

21. It was agreed that the date of the next meeting would be decided later in the light of the decisions taken by the Negotiating Group on Agriculture on the scheduling of its first meeting for next year.

22. The Working Group agreed that the Chairman would make a written report on this meeting to the Negotiating Group on Agriculture, which was meeting 14-15 November 1988. The secretariat would prepare a brief summary of the main points raised in the present meeting of the Working Group.