

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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APPLICABILITY OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE
TO SANITARY AND PHYTOSANITARY REGULATIONS AND BARRIERS

Note Submitted by the Nordic Delegations

Background

1. At the last meeting of the Working Group some delegations drew the attention of the Working Group to the Agreement on Technical Barriers to Trade (Standards Code). It was considered that a further examination of that Agreement could provide the Working Group with material relevant to its task.

2. Thus it seems appropriate to study in more detail to what extent the said Agreement does cover the issues raised by sanitary and phytosanitary regulations and barriers.

Coverage of the Agreement on Technical Barriers to Trade

3. According to Article 1.3 of the Agreement "all products, including industrial and agricultural products, shall be subject to the provisions of this Agreement".

4. Articles 2.2 and 2.3 include obligations to harmonize national technical regulations and standards on the basis of relevant international standards.

5. Articles 2.5 ... 2.7, 7.3 ... 7.5 and 10 provide a comprehensive system for ensuring transparency, including the establishment of national enquiry points and a multilateral notification system.

6. Article 14 defines procedures for consultation and dispute settlement including necessary input of scientific expertise and judgement.

7. Article 11 deals with technical assistance to other parties of the Agreement and Article 12 with special and differential treatment of developing countries.

8. It would be easy to draw the conclusion that the Agreement does address most if not all the problems in connection with issues raised by sanitary and phytosanitary regulations and barriers. Unfortunately the Agreement also has, however, several deficiencies which are especially significant when the Agreement is applied to sanitary and phytosanitary regulations and barriers.

Deficiencies of the Agreement on Technical Barriers to Trade

9. As it now stands the Agreement covers testing and certification procedures, but neither other types of inspection procedures nor approval procedures. Such other types of inspection procedures as well as approval procedures are, however, commonly used for sanitary and phytosanitary purposes and may create barriers to international trade.

10. The Agreement covers all product specifications, but only to a very limited degree (Article 14.25) requirements on processes and production methods (PPMs). Sanitary and phytosanitary regulations are, however, in many cases based on PPMs rather than on product specifications.

11. The Agreement is directly applicable to activities under the control of the national central administration. As to local government bodies (states, länder, cantons), non-governmental bodies (national standards bodies, etc.) and regional bodies the obligations under the Agreement are of "best endeavour" or "second level".

12. Last but not least the Agreement has so far 39 Parties. Even if it has more Parties from the developing countries than any other GATT Code, nevertheless a great number of these countries have not acceded to this Agreement.

Proposals to Amend the Agreement on Technical Barriers to Trade

13. Under the Uruguay Round negotiations a number of countries have presented proposals to amend the Agreement. Of specific significance for the application of the Agreement to sanitary and phytosanitary regulations and barriers are the proposals concerning testing procedures, inspection procedures and approval procedures, the proposal concerning the extension of the coverage of the Agreement to PPMs as well as the proposals to strengthen the implementation of the "second level" obligations.

14. The extent to which these proposals will be accepted and new provisions included in the Agreement is of course still open and depends on the outcome of the negotiations.

Conclusions

15. It seems obvious that even if the Agreement on Technical Barriers to Trade in principle covers most problems facing the Working Group, the above-mentioned deficiencies in the Agreement result in a rather limited applicability of the Agreement to sanitary and phytosanitary regulations and barriers.

16. On the other hand, if all the proposals for amending the Agreement are adopted and incorporated in the Agreement, these deficiencies would probably disappear. The applicability of the Agreement to sanitary and phytosanitary regulations and barriers would consequently greatly increase.

17. The Agreement is open for accession to all GATT contracting parties as well as to other governments under specific conditions.