

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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NEGOTIATING GROUP ON AGRICULTURE

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Sanitary and Phytosanitary Issues

Communication from the Cairns Group

The purpose of this paper is to provide an initial overview indicating how the Cairns Group sees the individual elements of the negotiations on sanitary and phytosanitary issues. The Group may re-elaborate these views as the negotiating process continues.

I. BACKGROUND

1. Discussions to date on agricultural sanitary and phytosanitary regulations in the Uruguay Round have focused primarily on the principles that should be established to facilitate the long-term harmonization or acceptance of equivalency of national regulations and standards.
2. The outcome of these discussions was summarized in the Trade Negotiations Committee (TNC) Agreement from Geneva on 8 April 1989.
3. Cairns Ministers had previously agreed at the Bariloche meeting (ref. GNG/NG5/W/53):

"In recognition of the need to minimize the trade impact of sanitary and phytosanitary measures and remove and prohibit the future use of those measures that represent unjustified trade barriers, Ministers resolved that the Group should further develop its proposals and seek to give impetus to negotiations in this area."

4. Pursuant to that commitment, this paper is intended to suggest the elements of a framework necessary to achieve the agreed objectives, inter alia, by more clearly defining, interpreting and, as appropriate, modifying the relevant provisions of Article XX of the GATT.

5. The Cairns Group proposes that participants in the Uruguay Round accept the following principles as the basis for an understanding on sanitary and phytosanitary (SPS) issues. These principles are consistent with the objectives of the General Agreement and reflect the mandate as determined by Ministers in the April TNC.

II. GENERAL OBJECTIVE

6. SPS measures shall only be applied to the extent necessary to protect human, animal or plant life or health and shall be based on verifiable scientific evidence. They shall not be applied in a manner which creates arbitrary, disguised or unjustifiable obstacles to international trade.

III. CONCEPTS

Acceptable level of sanitary and phytosanitary risk

7. SPS measures shall be determined on the basis of an assessment of an acceptable level of sanitary and phytosanitary risk, which would allow the maximum trade opportunities consistent with the general objective above. The risk assessment should take into account factors such as scientific evidence, processing technology, quarantine treatment, national inspection systems and relevant economic consideration. Further issues such as the concept of areas under a guarantee of sanitary and phytosanitary control should be explored.

Free areas

8. The participants agree to recognize the concept of pest or disease free areas. Recognition of disease/pest free areas, whether within part of a country or in a geographic region which may include areas of several countries, will be based on factors such as: geography, ecosystems, epidemiological surveillance and sanitary and phytosanitary control and should be verifiable by scientific evidence.

Harmonization

9. In order to pursue and facilitate the harmonization of SPS measures, participants should seek to:

- adhere to standards promulgated by the relevant international scientific organizations wherever appropriate;
- take into account the general principles adopted by relevant international scientific organizations;
- harmonize SPS regulations among countries on a regional basis with a view to further interregional harmonization;
- standardize and use scientific methods for diagnosis, testing, monitoring, statistical methods, sampling procedures, etc.;
- develop agreed methodologies for risk assessment;
- agree on processing technologies and quarantine treatments.

Equivalence

10. The participants agree to recognize the principle of equivalency. Different parties may use different regulations, techniques and procedures, which are judged to be equal to the extent that they achieve acceptably similar results including meeting the acceptable level of risk.

National treatment

11. Regulations and inspection systems should not impose unjustifiable stricter controls on imports than they do on domestic products.

12. Products imported from the territory of any Party shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country in relation to such sanitary and phytosanitary regulations or standards.

Special and differential treatment

13. Where the acceptable level of sanitary and phytosanitary risk allows, participants agree there should be longer timeframes for developing countries to comply with new measures or standards particularly when the issue is subject to dispute settlement.

14. When restrictive SPS measures not supported by scientific evidence are applied on a product or products originating in a developing country, compensation equivalent to the prejudice/market reduction or loss should be extended to the country affected.

Technical co-operation

15. Participants should actively facilitate the extension of technical assistance to developing countries, and to other countries which may be in need of such assistance in the form of advice, credits, donations, training and equipment to allow them to adjust to and comply with SPS measures in their export markets.

Linkages with international organizations

16. The participants recognize the rôle of appropriate international scientific organizations, in particular OIE, IPPC and FAO Codex as responsible for promoting harmonization of rules and standards and contributing to improved international sanitary and phytosanitary conditions.

17. These organizations are therefore a principal source of scientific or technical advice relevant to consideration of SPS issues arising in international trade.

18. Participants should actively take part in these international scientific organizations.

IV. INSTITUTIONAL MECHANISMS

Transparency

19. The participants agree to achieve and maintain a high degree of transparency with respect to factors such as national regulations, disease and pest profiles, production and quarantine treatments, inspection and certification systems and bilateral sanitary and phytosanitary agreements.

20. Information needed by exporting and importing countries in order to meet SPS requirements and to satisfy themselves that the principles of harmonization and equivalence are being followed shall be freely available, provided that there should be no requirements upon any participant to disclose commercially confidential information or information, the disclosure of which would impede law enforcement.

21. The participants should co-operate to develop measures to facilitate the availability of relevant information.

Informal consultations

22. The participants agree to participate in an effective process to resolve problems of a technical nature within a reasonable time before they become issues for formal dispute settlement.

23. The parties to the consultation may agree to request the relevant international scientific organizations to nominate independent experts to assist in the process.

24. The participation of a party in the process shall not prejudice the right of that Party to initiate the formal dispute settlement procedure.

Consultation and dispute settlement

25. The participants agree to the improvement of the mechanism for dispute settlement of sanitary and phytosanitary issues within the GATT. The mechanism should provide for technical advice from the relevant international scientific organizations, experts sanctioned by them, or independent experts agreeable to both parties.

V. FREEZE

26. The participants agree not to introduce any new sanitary or phytosanitary measures or intensifications of existing ones that are not necessary to protect human, animal and plant health from an imminent perceived threat thereto.

VI. AD HOC NEGOTIATIONS

27. Participants agree to initiate ad hoc negotiations on significant issues deriving from national sanitary and phytosanitary regulations which have an impact on trade.

28. Consultations should commence immediately to identify matters for such negotiations.

VII. IMPLEMENTATION

29. This paper does not prejudge the eventual decision for the legal implementation of the agreement on sanitary and phytosanitary issues, whether it be clarification, interpretation or modification of GATT rules or incorporation into the existing or a revised standards code (Tokyo Round Agreement on Technical Barriers to Trade), as a separate agreement or code, or as part of a more general agreement on agriculture. This issue should be addressed when the substantive results become apparent.