

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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

(22 September 1989)

Note by the Secretariat

1. The documents before the Working Group included the Mid-Term Review Agreement with respect to sanitary and phytosanitary regulations (MTN.TNC/11 page 13), submissions by the Nordic countries (NG5/WGSP/W/5) and the United States (NG5/W/98), and the summary record of the previous meeting of the Negotiating Group on Agriculture (NG5/14 and NG5/W/103). The Working Group adopted an agenda based on the objectives and work programme agreed by Ministers at the Mid-Term Review (GATT/AIR/2815). It was agreed that the secretariat would chair this meeting and that consultations would continue on finding a permanent chairman.
2. The representative of the Nordic countries presented their paper on the applicability of the Agreement on Technical Barriers to Trade (TBT) to sanitary and phytosanitary regulations and barriers. He indicated that, in principle, the TBT covered many of the problems before the Working Group, but that it had deficiencies which limited its applicability in practice. It was generally agreed that the Nordic analysis was useful, but that only after agreement was reached on the substance of the desired changes would decisions be made whether to incorporate these into the TBT or otherwise. The United States indicated the objective of its paper was to encourage increased coordination between the GATT and the relevant expert organizations, which was already occurring. It was agreed that the work of the technical bodies was indispensable for progress towards harmonization, but that the initiative remained with the GATT.
3. In discussing the long-term objective of harmonization, it was noted that because of differences in geography, pest and disease situations, etc, it was not realistic to try to make national sanitary and phytosanitary regulations identical. However, there was considerable scope for harmonization of procedures and agreement on some basic principles. In this regard, participants identified the major concepts which had to be considered in the course of the Working Group's deliberations. It was noted that sanitary and phytosanitary measures were

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based on an assessment of sanitary and phytosanitary risk. A number of participants suggested that "acceptable" levels of risk could be determined which would allow the maximum level of trade. A zero risk strategy, implying no access, would not be acceptable, and it should be agreed what were the relevant factors to be taken into account and the methodologies for risk assessment. Although some economic considerations (such as the impact of the introduction of pests or diseases into the importing country) had to be taken into account in the assessment of risk, the effect of import competition on domestic production was not a relevant concern. It was also suggested that the concept of pest- or disease-free areas, irrespective of political boundaries, should be respected. The concept of equivalency was also of great importance as countries had a need for different regulations, techniques and procedures depending on their particular situation, but these could achieve similar results, including meeting the acceptable level of risk. Many participants also believed that the GATT concept of national treatment was applicable in the area of sanitary and phytosanitary regulations.

4. Representatives from the Codex Alimentarius Commission, the International Office of Epizootics, and FAO's Plant Protection Service (for the International Plant Protection Convention) had been invited to this meeting. They informed the Working Group of recent discussions in their respective organizations relevant to the GATT. The Codex Alimentarius Commission discussed the GATT initiative at its July 1989 session. At that time it also simplified its acceptance procedures for pesticide residues and veterinary drug residues so that countries accepting the established limits either had to do so fully (and apply the same standard to their domestic products as well as imports) or allow imports which met the requirements even though they were not applied domestically. The Codex representative noted that such simplification was not yet possible with regard to food additives and environmental contaminants, although acceptance procedures were being examined.

5. The GATT mid-term agreement on sanitary and phytosanitary regulations had been discussed also at the May meeting of the Office of International Epizootics (OIE). The representative of OIE briefly described the steps towards harmonization undertaken by that organization, and its work in identifying different methodologies which had equivalent results. He noted that more precision was required with regard to the role his organization was expected to play in terms of the GATT objectives, so that it could develop an appropriate work programme.

6. With regard to plant protection, the representative of FAO observed that the International Plant Protection Convention was primarily implemented through regional plant protection organizations; there was no permanent body or secretariat. At a recent consultation among these regional groups, however, it had been decided to request the establishment of a permanent secretariat and to examine the possibility of creating a permanent body. Its major objective would be to develop guidelines for the harmonization, to the extent possible, of phytosanitary regulations and procedures. The representative observed that guidelines could be set for national quarantine legislation, though national laws

could not be made equal. There was scope, however, for the harmonization of regulations on a regional basis, and of procedures on a more global basis.

7. With regard to the objective of strengthening Article XX of the General Agreement, it was noted that progress towards harmonization as discussed above, along with an improved dispute settlement process and an effective system for notifications and consultations, would result in a stronger Article XX. Some participants noted that in addition to sound scientific evidence, other elements had to be taken into account. Risk assessment was based in part on ethical and political factors. Another representative indicated that Article XX covered the protection of human, animal and plant health in a broad sense and included the quality of life and protection of the environment. One delegate stated that although it was the importing country that would determine the acceptable level of risk, this would be subject to international scrutiny and had to have some rational basis with regard to the effects of the introduction of the pest or disease in the country. Another representative suggested that if, for political or ethical reasons, a country wished to oppose stricter requirements than those based on sound scientific evidence, it should be prepared to compensate affected exporters.

8. A number of participants remarked on the need for an informal or ad hoc consultation mechanism to address particular bilateral concerns. It was suggested that such consultations could involve technical experts, if appropriate, and would be separate from the more formal consultations associated with the dispute settlement procedures. With regard to notifications, several participants noted that the Agreement on Technical Barriers to Trade functioned quite well in this respect, within the limits of its coverage. It was agreed that improvements with regard to notification could be considered without prejudice as to whether these would eventually be incorporated into the TBT Code or be separate. One delegate also called attention to the problem of notification of emergency actions. The observer from the Plant Protection Division of FAO commented that there were many requirements for notification but that they were not always complied with. He further observed that the International Plant Protection Convention contained provisions for informal consultations, which had never been used.

9. With regard to dispute settlement, several participants made the point that a GATT panel would not determine the validity of international standards, but whether they were being appropriately applied. The international scientific organizations could not make decisions in GATT disputes, but they could give advice or provide lists of renowned experts in particular areas.

10. In discussing the needs of developing countries, it was indicated that there often existed an element of discrimination against developing countries, which had to be removed. Developing countries would also need a longer time to comply with sanitary and phytosanitary regulations, as well as technical assistance. One participant indicated the need also for longer time frames with regard to dispute settlement. Another noted the

need for a simple, adequate notification procedure for existing regulations and not just changes. It was also suggested that if sanitary and phytosanitary measures not based on sound scientific evidence were applied to developing countries, the affected countries should be compensated in some manner.

11. A few participants said that with regard to the short-term, there was scope for improved coordination with the international organizations, for progress with regard to notifications, and for ad hoc consultations on some of the most serious sanitary and phytosanitary obstacles to trade.

12. The Working Group was pleased with the expanding cooperation between the GATT and the three scientific organizations present. One participant, however, suggested that certain regional organizations should also be contacted and perhaps involved. Others, whereas in principle agreeing that other scientific organizations could be involved, noted that there existed a very large number of regional scientific bodies and that special treatment of some of them, vis-à-vis others, should be avoided.

13. It was agreed that the next meeting of the Working Group would be determined in relation to when specific proposals and position papers would be available. The Cairns Group of countries, the Nordic countries and the United States indicated their intention to present specific papers on this issue. A communication from the Cairns Group on Sanitary and Phytosanitary Issues was subsequently circulated as MTN.GNG/NG5/W/112.