

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED
MTN.GNG/NG2/W/45
23 October 1989
Special Distribution

Group of Negotiations on Goods (GATT)
Negotiating Group on Non-Tariff Measures

SUMMARY OF POINTS MADE IN RELATION TO PRESHIPMENT INSPECTION

Note by the Secretariat

This note has been prepared in response to a request by the Negotiating Group at its meeting on 28 September 1989, that the secretariat prepare a paper bringing together the points made in relation to preshipment inspection (PSI), so that the Group could identify the issues to be negotiated (MTN.GNG/NG2/12, paragraph 16).

Summaries of the discussions to date in the Negotiating Group on the subject of PSI can be found in the following notes on its meetings: MTN.GNG/NG2/6, paragraphs 11-12; NG2/7, paragraphs 4-7; NG2/8/Add.1, paragraph 7; NG2/9, paragraphs 8-9; NG2/10, paragraphs 3-6; NG2/11/Add.1, paragraphs 5-6. Three submissions have been made to the Negotiating Group on PSI (MTN.GNG/NG2/W/17, 30 and 39), and PSI has been included in four indicative lists (MTN.GNG/NG2/W/14, 16, 22 and 32). A background paper by the secretariat is to be found in MTN.GNG/NG2/W/11 and Add.1.

This paper outlines the issues raised and summarizes possible solutions that have been put forward by some individual participants in the context of the Uruguay Round.

(i) Objectives of governments using preshipment inspection

Representatives of PSI user governments state that PSI is necessary to deal with specific problems of developing countries: (a) financial difficulties requiring the prevention of capital flight and of illicit practices relating to commercial fraud, evasion of customs duties and export of capital; (b) insufficiencies in the importing country's own administrative infrastructure, necessitating resort to specialized private agencies. PSI is a legitimate means of meeting these problems and will only be used as long as necessary.

While others acknowledge the legitimate needs of developing countries and that their PSI programmes are not per se non-tariff measures, they state that implementation has created difficulties for exporters which should be minimized and that resort to PSI should be on a temporary basis.

(ii) Price comparison procedures

Representatives of exporting countries state that, on occasions, price comparison procedures appear to lead to arbitrary price determinations. Price modifications requested by PSI companies may pose serious practical problems and affect contracts agreed between buyer and seller.

Representatives of PSI user governments note that the IFIA Price Comparison Principles set out clear criteria for the conduct of price comparisons by PSI companies.

However, representatives of exporting countries consider that the IFIA principles and guidelines constitute a useful first step, but many of their provisions are vague and do not provide adequate disciplines.

(iii) Delays in shipment and associated costs

Representatives of exporting countries state that, in a significant proportion of cases, PSI causes undue delays in shipment. This constitutes an obstacle to trade and leads to increased costs. The effects are detrimental to both exporters and importers.

Representatives of PSI user governments note that physical inspection takes place upon notification from the exporter that the goods are available and that price comparison may precede this, once the import licence has been issued.

(iv) Increased administrative procedures and costs

Representatives of exporting countries state that exporters face further increases in costs due to the additional administrative procedures and documentation entailed by PSI.

Representatives of PSI user governments note that, in general, PSI has introduced only one additional document in the export process.

(v) Non-discrimination

Representatives of exporting countries state that inspection procedures and price comparison criteria are not always applied equally to all exporters and exporting countries.

Representatives of PSI user governments point out that in adhering to the IFIA Code of Practice, PSI companies would observe, in all exporting countries, the same procedures for physical inspection of goods and the same principles for the comparison of prices.

(vi) Transparency

Representatives of exporting countries point to lack of information on the requirements of PSI programmes and the procedures that must be followed. Non-transparent price verification procedures result in uncertainty for exporters, thus forcing them, in some cases, to lower legitimate prices.

Representatives of governments using PSI state that they make available to the public the decrees or other circulars establishing their PSI programmes. Furthermore, the IFIA Code of Practice requires PSI companies to "provide information and guidelines necessary to enable exporters to comply with the preshipment inspection regulations of the importing country", and to comply with a set of "price comparison principles" (see also (ii) above).

(vii) Protection of business confidential information

Representatives of exporting countries state that there are inadequate safeguards for the protection of pricing and other business confidential information required to be furnished by exporters to PSI companies.

Representatives of governments using PSI note that PSI companies generally only request information routinely available to customs services and other parties to the transaction. Also, the IFIA Code of Practice and Price Comparison Principles prohibit PSI companies from sharing confidential business information with any third party other than the appropriate government authority for which the inspection is being performed and limit the type of information that may properly be requested by PSI companies. However, as indicated under paragraph (ii), the guidelines adopted by IFIA are not considered by some participants to provide adequate disciplines.

('ii) Appeals and dispute settlement procedures

Representatives of exporting countries note a frequent lack of adequate and impartial appeals and dispute settlement procedures. A framework needs to be defined, and implemented in the national legislations of PSI user countries, for the settlement of disputes arising between exporters and PSI companies in the day-to-day operation of PSI.

Representatives of PSI user countries propose an Independent Review Body which would provide a forum for exporters' specific grievances. It should be composed of one exporter representative, one IFIA representative and a neutral third person selected by the other two. Its findings should not be binding as they should not interfere with the sovereign rights of governments using PSI.

Representatives of some exporting countries see an additional need for a dispute settlement procedure in GATT to resolve disputes between contracting parties relating to the implementation and administration of a GATT agreement on PSI.

(ix) Development of public administrative structures to replace PSI companies

Some participants state that the final objective of PSI user countries should be to develop their public administrations to take over the services performed by PSI companies. This should go hand-in-hand with accession to the Customs Valuation and Licensing Codes. In this context, they have expressed readiness to provide technical assistance to PSI user countries.

(x) Actions of governments of exporting countries

Representatives of governments using PSI state that unilateral actions of exporting countries in regulating the activities of PSI companies on their territories should not be allowed to frustrate the legitimate objectives of importing governments. They have therefore advocated a multilateral response to this multilateral issue.

(xi) GATT relevance

Some participants note that regulating the activities of private companies, even though mandated to carry out trade-related services on behalf of governments, might break new ground since GATT rules only apply to governments.

Others note that the services rendered by PSI companies are performed in other countries by the customs authorities of these countries in a way which is subject to multilateral disciplines.