

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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

(2-3 November 1989)

Note by the Secretariat

1. The Working Group met to discuss the proposals and papers submitted by various delegations and other issues on its agenda (contained in GATT/AIR/2862). It was agreed that the secretariat would chair the meeting.
2. Representatives of the Cairns countries, indicating the preliminary nature of their communication on health and sanitary regulations (NG5/W/112), invited comments from others before preparation of a revised proposal. They noted that because of the limited possibilities for developing internationally applicable standards, particularly with respect to phytosanitary concerns, the Cairns proposal focused on the harmonization of methodologies, procedures, treatments, etc. Regional harmonization was seen as a possible first step towards global harmonization. In response to comments and questions, Cairns representatives indicated that although there had to be a scientific basis for any sanitary or phytosanitary measure, bio-economic risk assessment required other factors to be taken into consideration. The biological risk of a pest or disease entering and establishing itself was only one factor, along with analysis of the scale of damage that could result - both in terms of loss of production and of eradication costs. However, they stressed that the trade impacts of sanitary and phytosanitary measures were not relevant economic considerations as it was inappropriate to use such measures in an attempt to affect trade. It was recognized that more precision was needed in the definition of "equivalency". Although determination of what was "equivalent", or an "acceptable" level of risk would be initially made by the country taking a measure, these decisions should be subject to external review and the dispute settlement process. Established levels of risk should be in line with the potential for entry or establishment of a pest or disease and with the potential scale of damage that could result.
3. With regard to compensation of developing countries for unjustified sanitary and phytosanitary measures, this was proposed as a follow-up to dispute settlement, and the compensation envisaged would be for lost export opportunities. In the resolution of disputes, it was envisaged that both parties would agree on the use of technical experts if informal

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consultations were held; if formal dispute settlement procedures were invoked then the decision would remain with the panel. It was also the position of the Cairns Group that the Working Group should concern itself only with measures taken to protect human, animal or plant health and not quality assurance or moral issues.

4. The representative of the United States introduced his country's proposal on sanitary and phytosanitary regulations (contained in NG5/W/118) as a way of moving towards the agreed long-term objective of harmonization. In response to questions and comments, he noted that the term "acceptable level of protection" in the United States proposal had essentially the same meaning as the "acceptable level of risk" used by the Cairns Group. Furthermore "consistent with" and "based on" were used interchangeably in the United States proposal. The United States proposed formal amendment of the text of Article XX(b) as a measure to move towards harmonization. He recognized that harmonization of regulations per se was not feasible in all cases, but rather a harmonized approach to establishing regulations, that is, common guidelines, procedures, risk assessment methodologies, etc. Regional harmonization could be a useful first step, particularly with regard to plant and animal health measures. The United States proposal would result in placing the burden of proof of justification for sanitary and phytosanitary measures on the imposing country, as was implied by the April mid-term agreement. Although countries would initially decide what measures were equivalent or reasonable, these could ultimately be subject to a panel decision. It was also proposed that an attempt should first be made to use national procedures before seeking a panel.

5. Some participants considered that establishing a list of technical experts for use in dispute settlements would be too limiting, compared to letting panels decide on the appropriate experts. One participant expressed concern that requiring countries to first pursue national approval procedures could unduly delay recourse to panels, whereas another remarked on the need for more comprehensive rules for national procedures. It was also observed that if the recommended standards developed by the existing standard-setting bodies were made binding, it would become virtually impossible for these organizations to agree on standards. Concerns were also expressed that the United States-proposed notification requirements could become too onerous, and that there were no provisions for emergency actions.

6. The representative of the Codex Alimentarius Commission explained how scientific expert panels were chosen to examine data and give recommendations regarding the handling, use and daily intake of food additives or pesticide residues. These scientific recommendations were then considered by the governmental representatives of the Codex Alimentarius Commission and turned into international recommendations which could be used by governments to protect food safety. He also noted that in contrast to plant protection, where regional standards appeared most appropriate, food safety standards should be internationally applicable to avoid becoming barriers to trade.

7. The representative of the Nordic countries presented their note on harmonization and notification (NG5/WGSP/W/7). He indicated that the

Nordic paper was not intended to prejudge what form any final agreement in this area might take, i.e., amendment of the General Agreement itself, establishment of a Code on sanitary and phytosanitary measures, amendment of the existing Code on Technical Barriers to Trade, or a combination of these. In response to concerns about the possible open-ended list of reasons why international standards might be considered inappropriate for national use, the Nordic representative indicated that countries not using international standards would have to notify their reasons. Other participants observed that these standards were developed with sufficient safety margins and in such a manner as to accommodate national differences. With regard to comments that regulations based on processing and production methods were often the most effective and efficient way of assuring safety, the Nordic representative stated his willingness to reconsider this point, but noted that requirements based on product characteristics in general posed less barriers to trade. Another participant expressed the view that processing and production requirements were often excessive with regard to the quality requirements of the products.

8. The representative of Morocco presented his country's statement on sanitary and phytosanitary measures (contained in NG5/W/121), observing that it was based directly on the text of the April mid-term agreement. Morocco proposed that countries use exclusively the methodologies and techniques developed by the International Office of Epizootics and under the International Plant Protection Convention, as well as the pesticide residue standards established by the Codex Alimentarius. He indicated the need to increase the resources provided to these three organizations to permit them to improve their research and expand their roles.

9. In addressing the issue of the effects on developing countries and their need for technical assistance in this area, attention was drawn to the statements on special and differential treatment submitted by Brazil (NG5/W/108) and Colombia (NG5/W/110). The need to eliminate any discriminatory effects of sanitary and phytosanitary measures was noted, along with requirements for technical assistance, longer time frames for implementation of new measures, and compensation for trade lost as a consequence of frequent changes in regulations or unjustified sanitary and phytosanitary measures. The representatives of the Food and Agriculture Organization (FAO) described its active technical assistance to countries developing food quality and safety legislation, export certification programmes, pesticide registration and control procedures. A technical co-operation programme to help developing countries faced with emergency sanitary and phytosanitary problems also existed.

10. The FAO representatives indicated to the Working Group the high priority FAO was giving to co-operation with GATT in this area. Additional funding was being made available to assure the necessary assistance to the GATT, and for ad hoc consultations on specific issues as proposed by various participants. FAO would also shortly decide on the establishment of a permanent secretariat for the International Plant Protection Convention, with the objective of harmonizing risk assessment processes, plant quarantine procedures, and the quarantine principles underlying phytosanitary regulations. FAO conference documents on these topics (C89/23 and C89/25) were made available to the Working Group.