

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG5/W/146
20 December 1989

Special Distribution

Group of Negotiations on Goods (GATT)

Original: English/
French

SUBMISSION OF THE EUROPEAN COMMUNITIES
ON SANITARY AND PHYTOSANITARY REGULATIONS AND MEASURES

With a view to advancing the implementation of the work programme outlined in the Mid-Term Agreement of 8 April 1989, the European Community presents its proposals and comments on each of the seven objectives of the programme. These have to be viewed in relation to the Community's initial submission on this subject which was made on 20 April 1988.¹

Harmonization

The first objective of developing harmonization based on standards² established under the auspices of international organizations is fully supported by the Community, as may be seen from its initial submission. The Community proposes the following steps towards realizing this objective:

- (a) Participants shall play a full part within the limits of their resources in the preparation by recognized international or regional organizations of sanitary and phytosanitary standards.
- (b) Recognition of relevant international organizations.

In order to develop harmonization of sanitary and phytosanitary regulations and measures, participants recognize as a principal source of scientific or technical advice in considering sanitary and phytosanitary aspects of international trade, the Codex Alimentarius Commission, the International Office of Epizootics and the International Plant Protection Convention.

Participants furthermore recognize that scientific and technical advice shall also be considered, where appropriate, from, on the one hand, organizations open to full participation by all contracting parties such as the World Health Organization and, on

¹Document MTN.GNG/NG5/W/56

²In this context, standards shall be understood in a general sense and shall include, inter alia, codes of practice, guidelines and recommendations.

the other hand, from organizations engaged in harmonizing sanitary and phytosanitary regulations and measures among countries on a regional basis with a view to further inter-regional harmonization, such as the UN/Economic Commission for Europe, the OECD and the European and Mediterranean Plant Protection Organization (EPPO).

- (c) Recognition of standards produced by recognized international organizations.

As many international standards comprise not only elements designed to protect life or health (i.e. sanitary or phytosanitary requirements) but also other elements relating to quality assurance (e.g. compositional, grading and labelling requirements) or to fair trade or to the prevention of fraud, it will, therefore, be necessary to separately identify the sanitary or phytosanitary elements of all these standards.

Since existing standards or guidelines often take the form of recommendations open to varying degrees of acceptance, a procedure shall be set up to establish a list of standards including guidelines which would be deemed to be recognized unless a contracting party objected within a specified period. In the event of an objection the onus would be on the objector to provide evidence as to why the disputed standard should not be recognized for GATT purposes.

In the framework of this procedure and in order to reach recognized standards, participants are asked to base their work first and foremost on the following:

- on food safety, the standards of the Codex Alimentarius relating to food additives, veterinary drugs, environmental contaminants, pesticides, methods of analysis and sampling, and codes and guidelines of hygienic practice;
- in the area of animal health, the guidelines developed under the auspices of the International Office of Epizootics;
- in the area of plant health, the guidelines developed in the framework of the International Plant Protection Convention by organizations engaged in these activities.

- (d) Application of more stringent national standards in particular circumstances.

A particular problem about standards of a voluntary character which are intended to apply to a wide range of countries with differing circumstances is that they often tend not to be very stringent. Countries which have achieved a high health status will find it difficult to systematically relinquish their

national standards in favour of lower, albeit "international", standards. It will, therefore, be necessary to provide for countries to continue being able to apply more stringent standards, where appropriate.

Article XX

In order to strengthen Article XX(b), participants shall adopt the following interpretations.

In taking sanitary and phytosanitary measures necessary to protect human, animal or plant life or health, a contracting party shall:

- assess the appropriate level of sanitary or phytosanitary protection which allows the maximum trade opportunities while ensuring the protection of life or health in a broad sense. To this end, it shall consider factors such as available scientific evidence, in particular, that issued by recognized international organizations, technological feasibility, quarantine treatment, national inspection systems or guarantees, cost efficiency of measures and actual conditions of production, trade and the environment in relation to the risk involved;
- consider the available scientific evidence and particularly that issued by recognized international organizations, so that such measures are not maintained against sound scientific evidence;
- recognize the concept of regionalizing the protection measures or guarantees, for instance, the concept of pest or disease-free areas. Such requirements may include part of a country or areas of several countries and will be based on factors such as geography, ecosystems, nature and transmission patterns of the disease or pest, surveillance and control efficiency;
- use suitable principles of equivalency to enable other parties to satisfy the appropriate level of protection requested by using different measures, techniques and procedures which are proven to be equal to the extent that they ensure similar results to those of the measure practised in the importing country. To this end, it will take into consideration the necessity of not imposing, where the same conditions prevail, unjustifiably stricter controls on imports than apply to domestic products.

Furthermore, the Community proposes that national regulations which conform to recognized international standards shall be deemed to be necessary to protect human, animal or plant life or health.

In addition, a framework of rules should be drafted to provide for strengthened GATT disciplines in relation to sanitary and phytosanitary measures. In particular it is necessary to draft an appropriate framework of rules suited to the special case of agri-food process and production methods (PPMs). Such a framework will be helpful in defining more

precisely under which conditions the exception of Article XX(b) shall be applied to ensure, in particular, the absence of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or disguised restrictions on trade. Moreover, in situations where these general rules prove inadequate or insufficient they shall be supplemented by ad hoc negotiations, as proposed below, in order to resolve any practical problems that might arise.

Further consideration needs to be given to the question of how to deal with the varied impact of new technologies while minimizing any adverse effect on trade.

Notification¹

To achieve enhanced transparency, notification procedures shall be set up on the basis of those procedures which exist in the Standards Code. They should apply, in particular, to proposed regulations which do not conform to recognized international standards. Notification should be required before a regulation is adopted (except in special cases of urgency) with a minimum consultation period where requested by other contracting parties who have a particular interest in, or are affected by, the proposed regulation.

Consultation

The development of a consultation process is the fourth objective. Such a process is already provided for in Articles XXII and XXIII as well as in the Standards Code. However, the possibilities for resolving matters through consultations under Articles XXII and XXIII are limited by the exception contained in Article XX(b). Therefore, a consultation process along the lines of that contained in the Standards Code which, of course, does not cover PPMs at present, shall be developed.

The Community also advocates the incorporation into this process of provision for ad hoc negotiations on particular issues, as already proposed in its initial submission.

Dispute Settlement

The separation of technical issues from panel proceedings and legal issues has rendered the existing dispute settlement procedure of the Standards Code unworkable in certain situations. The Community, therefore, proposes that all the relevant issues should be examined by a single panel. Of course, provision already exists for taking scientific evidence into account in dispute settlement. Paragraph 6(iv) of the Annex to the

¹The following texts on Notification, Consultation, and Dispute Settlement are without prejudice to the question as to whether the Standards Code could accommodate the proposed rules or whether a separate Code should be developed.

"Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance" adopted on 28 November 1979 states: "Panels often consult with and seek information from any relevant source they deem appropriate and they sometimes consult experts to obtain their technical opinion on certain aspects of the matter". The panel procedures set down in Annex 3 of the Standards Code include the following: "Each panel may consult and seek information and technical advice from any source it deems appropriate". In this context it is suggested that the GATT secretariat be asked to establish a list of experts nominated by the recognized international organizations who could be called on to provide technical expertise as required.

Developing countries

The Community fully supports the idea of giving special consideration to the needs of developing countries. The proposed assessment of the possible effects on these countries of the GATT disciplines for sanitary and phytosanitary measures and the evaluation of the need for technical assistance should proceed without delay.

The enhanced transparency resulting from improved notification and consultation procedures will, of course, be to the advantage of these countries. Furthermore, the harmonization process will provide such countries with a better basis for their own work.

Short-term implementation

On the question of implementing elements of the programme in the short term, the Community proposes that the following tasks be undertaken as soon as possible:

- recognition of international standards and separate identification of sanitary and phytosanitary elements of standards;
- identification of suitable issues for the proposed ad hoc negotiations;
- initiation of a more effective notification procedure; and
- the actions envisaged above with respect to developing countries.