

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG5/WGSP/W/10
12 February 1990

Special Distribution

Group of Negotiations on Goods (GATT)

Original: English

Negotiating Group on Agriculture
Working Group on Sanitary and Phytosanitary
Regulations and Barriers

FORM AND DISPOSITION OF THE AGREEMENT ON SANITARY AND
PHYTOSANITARY REGULATIONS AND BARRIERS (SPS MEASURES)

Note by the Nordic Delegations

The Nordic countries have presented at NG 5 a general position paper on agricultural issues (MTN.GNG/NG5/W/143). For the benefit of the Working Group the section dealing with SPS measures of that document is attached as Annex 1.

As stated in the position paper, the Nordic countries consider that the most feasible way to establish an international discipline for SPS measures would be to give it the form of a code. In fact, the Nordic delegations have already presented proposals concerning harmonization and transparency in the form of a code (MTN.GNG/NG5/WGSP/W/7 and W/9). A proposal that has been prepared on consultation and dispute settlement will be issued separately (NG5/WGSP/W/11).

In order to give a more comprehensive picture of our thinking, a draft disposition of a code on SPS measures is presented in Annex 2. For practical reasons we consider it appropriate to discuss all the elements necessary for a stand-alone code on SPS measures. It is the Nordic countries' hope that a consensus can be reached on such elements. This would form a balanced base from which to assess, with regard to appropriateness and practicability, the two alternatives of a separate SPS code and a merging of the desired SPS discipline with the existing TBT Code.

ANNEX 1

SANITARY AND PHYTOSANITARY (SPS) MEASURES AND PROCEDURES

The basic aim of the Nordic countries in the SPS field is to establish a discipline which is so clear, unambiguous and comprehensive that disputes can, to the greatest extent possible, be avoided. In order to reach such a result, a rather detailed description of the rights and obligations of the parties seems necessary. It therefore appears that the most feasible way to establish the required discipline would be to give it the form of a code, either by amending the existing Agreement on Technical Barriers to Trade or by drafting a separate agreement on sanitary and phytosanitary measures.

Objective and scope of a discipline

The objective of an SPS discipline should be to ensure that, consistent with well-established scientific evidence, where available, SPS measures are only applied to the extent necessary to protect human, animal or plant life or health, and that they are not applied in a manner that creates arbitrary, disguised or unjustifiable obstacles to international trade.

The discipline should cover, in the field of agricultural products, regulations concerning:

- the products themselves;
- processes and production methods;
- testing, inspection, certification and approval procedures, quarantine treatments;
- packaging and labelling requirements;
- provisions on relevant statistical methods, sampling procedures and methods of risk assessment.

Rights and obligations under the proposed SPS agreement should be extended also to relevant local government bodies and non-governmental bodies, on a best efforts basis.

Establishing national requirements

National SPS measures which are in accordance with standards and recommendations adopted by relevant international organizations shall be considered to satisfy the general objectives of the proposed SPS discipline. Regional standards, where they exist, are usually particularly appropriate.

Parties should be encouraged by the discipline to contribute, within the limits of their resources, to the preparation of international

standards and recommendations and to use them as a basis for their own SPS regulations. Parties should also be encouraged to harmonize, as far as appropriate, their SPS regulations on a regional basis.

Whenever appropriate, SPS measures should be based on adequate risk assessment procedures, taking into account available scientific evidence and weighing the potential economic consequences of injury against the costs and feasibility of maintaining different levels of protection.

In addition, SPS measures should not be introduced or maintained against sound scientific evidence. Where scientific evidence is inconclusive or in doubt, the burden of proof should be reversed.

The discipline should encourage parties to agree on a bilateral or plurilateral basis that their SPS measures are equivalent, that is, meet each other's requirements to an acceptable degree even if they differ in content. Common rules of procedure for risk assessment should facilitate such agreements.

Where they may have a significant effect on the trade of other parties, deviations from relevant international standards and recommendations should be notified and their justification be provided upon request.

Regulations based on ethical or moral considerations would have to be justified under other GATT articles than Article XX(b) and would therefore fall outside the scope of an SPS discipline. For situations not covered by Article XX(b), mandatory labelling should be carefully considered as an alternative to stronger measures.

Verifying compliance

The discipline should encourage parties to agree upon common rules of procedure for testing, inspection, certification and approval, in order to ensure that unnecessary barriers to trade are not created. As a model, the corresponding provisions in Articles 5 to 9 of the GATT Agreement on Technical Barriers to Trade could be used.

Parties should be encouraged to enter into bilateral and multilateral agreements on mutual recognition of test and inspection results and certificates.

Non-discrimination

With regard to SPS requirements the discipline should ensure that, in a comparable situation, imported products are treated no less favourably than like products of national origin or like products originating from any other country.

The discipline should also allow for the bilateral or plurilateral recognition of disease/pest-free areas, whether within part of a country or in a geographic region which may include areas of several countries.

Transparency

In order to improve transparency, a system should be established to provide information on existing and planned SPS regulations and procedures upon request. In addition there should be a system for prior notification, limited to essential trade issues.

The operation of both these systems should be based upon national enquiry points and on services by the GATT secretariat.

Applying the Agreement

When introducing and implementing SPS measures and procedures, parties should take into account the special needs of the developing countries in order to minimize any negative trade effects for these countries.

Parties should be prepared to advise developing countries and grant technical assistance on mutually-agreed terms, on all aspects of the proper implementation of an agreement on SPS measures and procedures.

Upon request, parties should grant developing countries specified, time-limited exceptions from their obligations under an SPS agreement.

An SPS agreement should contain provisions for consultation and dispute settlement, taking into account the results achieved within the Uruguay Round in this area. A mechanism to monitor the implementation of the agreement should be established. This monitoring mechanism should include the possibility of deciding upon the correct interpretation of the agreement, and of making recommendations to parties on its appropriate implementation. The best available technical expertise should be used in the administration of the agreement as well as in the consultation and dispute-settlement procedures. Notably, allowance should be made for the assistance that relevant international organizations can provide.

ANNEX 2

GATT CODE ON SPS MEASURES

CONTENT

1. Preamble
 1. Background
 2. Objectives
 3. Considerations
2. General provisions
 1. Scope
 2. Definitions
 3. Basic rights and obligations
 4. Principles for risk assessment and determination of disease/pest-free zones
 5. Second level obligations
 6. Safeguard clause
3. Operative provisions
 1. Transparency
 2. Requirements on national SPS regulations
 3. International and regional harmonization of national SPS regulations
 4. Requirements on national testing, inspection, certification and approval procedures
 5. International harmonization of testing, etc. procedures
 6. Mutual acceptance of results of testing, etc. procedures; principle of equivalency
4. Technical assistance and special and differential treatment of developing countries
 1. Technical assistance
 2. Treatment of developing countries
5. Administration
 1. Committee
 2. Procedures
6. Consultation and dispute settlement
 1. Consultation
 2. Dispute settlement
 3. Retroactivity

7. Final provisions

1. Acceptance and accessions
2. Reservations
3. Entry into force
4. Review
5. Amendments
6. Withdrawal
7. Non-application
8. Annexes
9. Secretariat
10. Deposit
11. Registration