

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG5/WGSP/W/13  
19 March 1990

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

(19-20 February 1990)

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/2922). It was agreed that the secretariat would chair the meeting.
2. The representative of the Nordic countries presented their proposal with regard to harmonization and transparency (MTN.GNG/NG5/WGSP/W/9), indicating that it was a revision of NG5/WGSP/W/7 which took account of some suggestions by other participants concerning harmonization. He indicated that the proposed harmonization of production and processing methods (PPMs) and packaging and labelling requirements was not contained in the Cairns proposal, although the latter had served to give new ideas to the Nordics. He made it clear that the application of measures more stringent than international standards would be permitted only if a specific concern, such as a particular dietary habit, were not already taken into account in the international standard and would have to be based on sound scientific evidence. A few participants stressed the need to take account of the procedures regarding transparency which already existed in other international agreements.
3. The Nordic countries preferred that the proposed agreement on sanitary and phytosanitary measures take the form of a code where the detailed, unambiguous provisions necessary to avoid disputes in this area could most appropriately be provided. MTN.GNG/NG5/WGSP/W/10 presented the general Nordic position on this subject (also included in NG5/W/143) and an outline for a possible code. In response to various questions, the Nordic representative indicated that the provisions regarding packaging and labelling referred only to requirements such as which materials could come in contact with foodstuffs and labelling requirements concerning sanitary properties. He noted that the extension of obligations to sub-national governments [on a best efforts basis or more] was currently under development by the Technical Barriers to Trade (TBT) Committee. Although global harmonization was the major aim, regional harmonization might be the

best that could be achieved in some cases because of differing conditions. The Nordics proposed that developing countries which had a valid need could be given longer time periods to meet new sanitary and phytosanitary obligations internally. With regard to the burden of proof, it remained for the exporter to document his fulfilment of international standards. Should an importing country impose more stringent requirements, then it would be for the importer to provide the necessary scientific justification. However, when there existed no conclusive scientific evidence, for example as to the carcinogenicity of a product, the Nordic countries proposed that the importing country could restrict the product as it saw necessary and that the exporting country had the burden of proving that such restriction was unjustified. The Nordic proposal envisaged limitation of any agreement to only sanitary and phytosanitary measures in a strict sense, but recognized that definition of cases was not always clear, particularly with regard to animal welfare.

4. The proposal by the Nordic countries on dispute settlement procedures (NG5/WGSP/W/11) was also discussed. Concerns were raised at the discretion to be given to a panel with regard to the form and source of scientific evaluation, as well as to the need for a quick procedure in cases involving perishable products. Recognizing that the range of potential disputes could be very wide, the representative of the Nordic countries stated that use of the proposed roster of experts would not be binding, but such a mechanism could facilitate the setting up of panels in some cases. The point was also made that the proposed GATT dispute settlement procedures would not impinge on the procedures existing under other agreements, and further that the results of dispute settlement in the GATT had different implications than the settlement of disputes in the scientific organizations.

5. The representative of Korea presented his country's proposal with regard to sanitary and phytosanitary measures (NG5/W/130), stressing the need for technical assistance to the developing countries. A question was raised with regard to consideration of ecological conditions, and one participant noted that quarantine measures could be necessary to protect the natural environment.

6. In presenting her country's proposal (NG5/W/144), the representative of Austria indicated that it differed from most other proposals with regard to the suggested dispute settlement procedures. Austria proposed that all technical issues should be examined by the relevant scientific organizations, and only if it were found that there was not a sound scientific basis or that the measure were designed to protect the domestic market, would a dispute come before the GATT. She recognized that it would be necessary to strengthen the dispute settlement procedures of the technical organizations.

7. Although one participant agreed with the emphasis given to the use of the scientific organizations, others expressed concern that such a procedure could prolong the settlement of disputes, and reduce the effectiveness of these organizations in establishing standards. It was further observed that sanitary and phytosanitary measures were not based

only on science, but on a risk assessment which also took account of potential economic damage. The representative of the Codex Alimentarius Commission (CAC) observed that there was no dispute settlement clause in the Codex. On the other hand, the CAC had available extensive information regarding differing national requirements on products for which international standards had been developed. For new problems, development of scientific advice could require some time, although the Codex maintained lists of experts in different areas. The representative for the International Plant Protection Convention noted that although it contained provision for a technical dispute settlement procedure, this had never been used, probably due to the difficulty of reaching agreement on scientific evidence. The representative of the International Office of Epizootics (OIE) indicated that his organization was in the process of developing dispute settlement procedures, to be considered by its members in May 1990. The proposed OIE procedures established a mechanism for the internal examination of technical disputes, as well as for provision of a list of experts for possible assistance in GATT dispute settlements. One participant stated that the discussion had made evident the insufficiency of the dispute settlement procedures of the scientific international organizations, and the need to develop further the GATT procedures by using the expertise and advice of these organizations.

8. The representative for the European Communities introduced their proposal (NG5/W/146), emphasizing the key objective of harmonization of measures to the extent possible. Harmonization of regional standards could be a first step towards international harmonization. The EC proposed that existing international and regional standards and guidelines be quickly examined and a list made of those agreed for use in a GATT context. Countries applying the agreed standards and guidelines would be in conformity with their GATT obligations. Those who applied more stringent requirements could be subject to dispute settlement procedures and found in isolation of the GATT if the exporting country provided proof that the measures were maintained against sound scientific evidence. He also noted that the concept of equivalency should be applied as broadly as possible. The importing country would first judge the equivalency of other measures, but this could be done based on international guidelines or bilaterally, and could be subject to dispute settlement. The EC recognized the need for the scientific organizations to provide technical assistance to developing countries particularly with regard to their inspection capabilities and use of new technologies, since such countries could not be exempted from sanitary and phytosanitary requirements.

9. Although a number of participants agreed that countries should be able to impose measures more stringent than those internationally agreed, several contended that the importing country should bear the burden of justifying the need for such measures, and one participant indicated that such measures should be considered as safeguard actions. Clarification was sought with regard to disciplines to be applied to production and processing methods, and as to what kinds of measures were to be notified. Views were expressed regarding how economic, production and technological factors should be appropriately taken into consideration. One participant observed that since the same governments had participated in the

establishment of an international standard, the proposed examination of such standards and re-acceptance of some for GATT purposes seemed redundant. Such standards were not designed to be legally binding, but as recommendations to be taken into account.

10. The representative of the Codex Alimentarius Commission informed the Working Group that Codex had in the past developed regional standards for food safety, but as these had resulted in barriers to trade between regions, it was now developing only global standards. The observer from the International Plant Protection Convention indicated that global harmonization of plant protection regulations was not possible, but the principles of plant risk assessment, inspection procedures, sample taking, etc., could be harmonized on a global basis. The observer from the Office of Epizootics noted that the equivalency of various measures could also be established at an international level.

11. The representative of Japan introduced his country's proposal (NG5/W/131) and supplementary submission on sanitary and phytosanitary measures (NG5/W/156). Japan proposed harmonization on the basis of guidelines drawn up by the relevant scientific international organizations. Attention had to be given, however, to the undesirable secondary effects of some processes used to resolve primary concerns, such as residues from pesticide usage. Equivalency should be determined on a bilateral basis, but if agreement could not be reached, recourse to the good offices of scientific organizations could be possible. In Japan's view, countries should maintain the right to achieve zero risk in terms of product access. The concept of disease-free areas required case-by-case examination as no uniform application was possible. Japan considered that the notification and dispute settlement procedures of the Agreement on Technical Barriers to trade were sufficient with respect to food hygiene, but similar procedures were necessary with regard to animal and plant health measures.

12. One participant observed that the task of the Working Group was to develop a system of international disciplines on sanitary and phytosanitary measures that would allow individual countries to effectively protect themselves from legitimate risks while maximizing trade opportunities. Zero risk of introduction of a pest or disease was virtually impossible and unacceptable, whereas the concept of risk assessment and of acceptable levels of risk was becoming widely used. Other participants observed that at some stage a subjective judgement was required, but that agreement on risk assessment principles, techniques and factors to be examined was possible. It was nonetheless possible that the only way to reduce the risk of unacceptable economic damage in certain cases would be to ban imports. One participant noted that discussion in terms of appropriate levels of protection might be less confusing. The observation was made that many developing countries did not have the capability to adequately assess risks, and one participant suggested that the international technical organizations be asked to provide information on inspection and control capabilities of developing countries, on what types of assistance they needed and what was available.

13. In discussing the concerns of developing countries, a number of participants stressed the need for all kinds of technical assistance, to improve their capabilities for inspection, analysis, use of new technologies, etc. In addition, developing countries had a need for longer time frames and more flexibility in the implementation of any new commitments, taking into account the need to protect human, animal and plant health. Recognition of the concepts of disease free areas and of risk assessment were also important to developing countries.

14. The representative of the United States introduced his country's proposed request to the International Office of Epizootics (OIE) to develop guidelines for the use of trade restrictions with regard to Foot and Mouth Disease (FMD) (NG5/WGSP/W/12). This would advance work on international guidelines on a sanitary issue of major trade concern, taking into account risk assessment techniques and factors generally agreed upon in the discussion of the Working Group. Many participants supported the United States' proposal as very timely, although a few indicated their need for further examination of the proposal before a decision was taken. One participant suggested that the concept of equivalency should be included among the factors to be considered.

15. The representative of the International Office of Epizootics (OIE) described the United States' proposal as very interesting and very important. He noted that it should be possible to establish a range of criteria to be satisfied, according to the sanitary situation of each country, if a country wished to export animals or animal products. These criteria would necessitate a common agreement on methodologies, definitions, diagnosis, research methods and prophylaxis. He noted that the OIE Zoosanitary Code was dated with regard to FMD, and it would be necessary to start anew, first by seeking an international consensus on the actual risks involved. The examination would need to cover a wide range of products, including live animals, meat products, semen, embryos, and dairy products. It would also be necessary to seek consensus on the bioeconomic methods of measuring the undesirable consequences of introduction of an exotic disease. He observed that OIE had already done some work with regard to the scientific definition of disease free areas and would shortly be considering what rôle it should play in assisting countries to demonstrate their disease free status. Nonetheless, the proposed work could not be completed in less than one year, and only if OIE had the necessary resources. He concluded that the Director General of OIE would put this request before the OIE International Committee during their May 1990 General Session.

16. The Working Group discussed the need to conclude shortly the discussions and clarification of particular proposals and to focus in depth on the underlying precepts of an eventual agreement. The need to examine possible forms of the agreement was also raised. The Working Group agreed to meet again on 2-3 April 1990.