MULTILATERAL TRADE NEGOTIATIONS THE URUGUAY ROUND

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

PROPOSAL OF ZAIRE FOR A GATT INSTRUMENT ON PRESHIPMENT INSPECTION

The parties to this Agreement (hereinafter referred to as "Parties),

RECOGNIZING that preshipment inspection programmes which provide for verification of quality, quantity, price, customs classification and value, particularly on behalf of developing countries, do not constitute a non-tariff barrier and can facilitate international trade by deterring over-invoicing and under-invoicing and thereby minimizing opportunities for capital flight, fraud, discriminatory pricing, tax and customs duty evasion,

MINDFUL however that such programmes must be carried out without giving rise to unnecessary delays, unequal treatment, or procedures implemented in a non-transparent manner,

CONSIDERING therefore that preshipment inspection programmes should be facilitated, provided that such programmes remain in conformity with GATT rules, that there is not discrimination between suppliers and that the confidential information of exporters is protected,

RECOGNIZING that contracting parties using such programmes must ensure that their preshipment inspection requirements are made public and that the activities of preshipment inspection are conducted in an orderly and transparent manner, which is no more intrusive than is necessary,

RECOGNIZING also that governments of the exporting countries might be required to provide technical assistance as requested by countries using preshipment inspection programmes and that they should refrain from impairing the effectiveness of preshipment inspection,

Hereby agree as follows:

Article 1

Obligations of Parties Using Preshipment Inspection Programmes

1.1. Parties that employ or call on the services of preshipment inspection companies (hereinafter referred to as "user countries") will publish all applicable laws, regulations and directives relating to preshipment inspection or otherwise make such laws, regulations and directives available to the public.

1.2. The user countries shall ensure that preshipment inspection companies respect the following obligations when conducting activities on their behalf:

(a) Non-Discrimination:

Preshipment inspection activities will be carried out in a non-discriminatory manner and shall be applied on an equal basis to exporters of all Parties.

(b) Standards:

Quantity and quality inspections will be performed in accordance with the standards defined by the seller and the buyer in the purchase agreement. In the absence of such standards, the preshipment inspection company shall apply internationally recognized standards.

(c) Transparency:

Preshipment inspection companies will conduct their activities in a transparent manner. The preshipment inspection company will provide assistance to exporters by furnishing information and guidelines necessary to enable exporters to comply with the preshipment inspection regulations of the importing country. This assistance is not, however, intended to relieve exporters from their obligations in respect of compliance with the import regulations of the user country.

(d) Protection of Confidential Business Information:

(i) Preshipment inspection companies will not request from exporters information regarding manufacturing data related to patents (published or not) or licensing agreements. The preshipment inspection company will not attempt to identify the cost of manufacture, level of profit or, except in the case of export made through a buying agent or a confirming house, the terms of a contract between the exporter and his supplier.

(ii) Preshipment inspection companies will not divulge confidential business information imparted to them by an exporter to any third party other than the government which mandated them.

(iii) Preshipment inspection companies will maintain adequate procedures to safeguard all information submitted by exporters, together with proper security for any information provided in confidence to them.

(e) Conflicts of Interest:

Preshipment inspection companies shall avoid conflicts of interest between the preshipment inspection company, any related entity of the preshipment inspection company or any entity in which the preshipment inspection company has a financial interest, and whose shipments the preshipment inspection company is to inspect.

(f) Delays:

(i) Preshipment inspection activities will be conducted, and the Clean Report of Findings or notice of non-issuance thereof will be sent to the exporter, in a timely and convenient manner.

(ii) Whenever so requested by the exporter, and to the extent that the regulations of the importing country do not forbid it, the preshipment inspection company will undertake a preliminary price verification prior to receipt of the import document and on the basis of the contractual documents binding the two parties, pro forma invoice and application for import authorization. An invoice price or currency exchange rate that has been accepted by the preshipment inspection company on the basis of such preliminary verification will not be withdrawn, provided the goods and the submitted documentation conform with the information contained in the import licence. The Clean Report of Findings, however, will not be issued until the final documents have been received by the preshipment inspection company.

(iii) If a rejection were to occur at the stage of physical inspection, the preshipment inspection company will, if requested by the exporter, arrange the earliest date for reinspection of the goods.

(g) Price Verification and Customs Valuation

(i) Unless otherwise instructed by the mandating country, the preshipment inspection company will verify prices by reference to the prevailing export price, which is the price at which identical or comparable goods or services are offered for export under competitive conditions and under comparable terms and conditions of sale, in conformity with customary commercial practice, and net of any applicable standard discounts.

(ii) Price verification will take into consideration the terms of the sales contract and any generally applicable and allowable adjusting factors pertaining to the transaction.

(h) Small Shipments

Preshipment inspection companies will not normally inspect shipments whose value is less than a minimum value applicable to such shipments as defined by the user countries. This shall not, however, apply to part shipment.

(i) Internal Appeals

The user countries shall ensure that preshipment inspection companies establish procedures to receive, consider and render decisions concerning grievances raised by exporters. Information concerning such procedures shall be made available to exporters pursuant to paragraph (c) of this Article. Such procedures shall include the following elements:

- preshipment inspection companies shall designate one or more officials to consider the appeals or grievances of exporters;

- exporters shall provide in writing to the designated official or officials the facts concerning the specific transaction in question, the nature of the grievance and a suggested solution;

- the designated official of the preshipment inspection company shall render a prompt decision on the appeal with a view to reaching an objective and fair resolution in accordance with the principles applicable to preshipment inspection and the requirements of the user countries.

Article 2

Obligations of Parties Affected by Preshipment Inspection

2.1. All Parties undertake to ensure that any relevant domestic laws or regulations with respect to preshipment inspection or preshipment inspection companies will facilitate preshipment inspection and will not in any way change, limit or inhibit the operation of these programmes as adopted by the user countries.

2.1. Parties affected by preshipment inspection shall provide technical assistance, as requested by user countries, and refrain from taking any action that might impair the effectiveness of these programmes.

Article 3

Independent Review Body

3.1. User countries will ensure that the preshipment inspection companies, through their trade association and in consultation with exporters' representatives, establish in major commercial centres reasonably convenient to exporters an Independent Review Body for the resolution of disputes between exporters and the preshipment inspection companies. Each such Independent Review Body shall be composed of one representative of exporters, one representative of preshipment inspection companies, and a third representative selected by the other two, and shall have the authority to adopt rules of procedure adapted to the prompt and fair resolution of such disputes. The Independent Review Body may express an opinion, in each case brought before it, as to whether the preshipment inspection company has complied with its obligations under the laws, regulations and directives of the user country and under this Agreement, and whether the findings of the preshipment inspection company are reasonable and supported by the evidence that was before it. The Independent Review Body shall not infringe on the sovereign right of user countries to control and regulate their import régimes. User countries undertake, however, to give careful consideration to the opinion expressed by the Independent Review Body when taking a final decision on a specific import case referred to them.

Article 4

Notification

4.1. The Parties shall submit to the GATT secretariat copies of the laws, regulations and directives currently in force relating to preshipment inspection within ninety days after the date on which this Agreement enters into force.