

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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SANITARY AND PHYTOSANITARY ISSUES

Supplementary Communication from the Cairns Group

This paper elaborates views provided by the Cairns Group in its earlier communication (MTN.GNG/NG5/W/112 of 2 October 1989).

**I. INTRODUCTION**

1. Both the Punta del Este Declaration and the April 1989 TNC Agreement called on the negotiations to develop ways to minimize the adverse effects on trade in agriculture of sanitary and phytosanitary regulations and barriers. The Cairns Group proposes the following principles and concepts as a basis for an understanding on sanitary and phytosanitary issues.

2. The Cairns Group supports harmonization as a key means of achieving the objective of the negotiations but recognizes the inherent difficulties involved in this process. It is therefore crucial that the GATT set up a multilateral framework of rules and disciplines which can apply immediately to guide bilateral negotiations on SPS issues.

3. The absence of a consistent multilateral framework and of transparency in agreements between contracting parties has resulted in much of the existing contention about the legitimacy of SPS measures. The rôle of a multilateral framework should be to interpret, clarify or reformulate Article XX and other relevant provisions of the GATT by applying the following principles:

- (i) recognition of the central rôle of the concept of the acceptable level of sanitary and phytosanitary risk based on risk assessment consistent with available multilaterally approved criteria and definitions and with contracting parties' responsibilities to protect human, animal and plant health and their obligation to allow maximum trade opportunities;
- (ii) recognition of the concept of equivalency in the application of different methods to meet SPS requirements;
- (iii) recognition of concepts of pest or disease-free areas, and areas of limited pest or disease prevalence, under guarantee of sanitary or phytosanitary control.

- (iv) recognition of the rôle of transparency in facilitating uniform approaches to bilateral SPS agreements and in building confidence that SPS measures are not being applied as unjustifiable barriers to trade;
- (v) recognition that an effective dispute settlement mechanism, including expert technical advice, needs to be applicable to SPS measures.

4. The Cairns Group recognizes the need of developing countries for special and differential treatment so as to assist them to comply with new SPS measures.

## II. GENERAL OBJECTIVE

5. So as to allow the maximum trade opportunities, SPS measures should only be applied to the extent necessary to protect human, animal or plant life or health and should be based on verifiable scientific evidence. They should not be applied in a manner which creates arbitrary, disguised or unjustifiable obstacles to international trade. Guidelines, recommendations and standards from the relevant international organizations should be deemed to be based on verifiable scientific evidence.

### Scope of SPS measures

6. GATT rules and disciplines for SPS measures should cover only issues directly related to human, animal or plant life or health. Food grading, consumer preference, consumer information, animal welfare and religious and moral issues, for example, are not SPS matters and should not be dealt with in this context.

## III. CONCEPTS

### Acceptable level of sanitary and phytosanitary risk

7. SPS measures should be determined on the basis of an assessment of an acceptable level of sanitary and phytosanitary risk, which would allow the maximum trade opportunities consistent with the general objective above. The risk assessment should take into account factors such as scientific evidence, processing technology, areas under sanitary and phytosanitary control, quarantine treatment, national inspection and control systems and relevant economic considerations.

8. In applying this concept in the SPS area, participants should agree to recognize the following principles:

- The importing country should provide clear and objective reasons, consistent with internationally accepted principles and procedures, for the application of SPS measures.

- Reasons for SPS measures should be made available on request. Whenever possible, this should be before their introduction. Where the need for urgent action precludes this, explanatory information should be provided to affected trading partners as soon as possible after the necessary action has been taken.
- SPS measures should be based on verifiable scientific evidence on matters such as the risk of entry and establishment of pests and diseases of concern and the potential biological consequences, or the risk to human health of excessive contaminants in foods.
- In cases where relevant and verifiable scientific evidence is insufficient, an acceptable level of risk should be determined temporarily on the basis of all available relevant information, including that from relevant international organizations, and measures applied in other regions or countries in similar circumstances. Contracting parties should obtain the additional information necessary for a more objective assessment of risk and review the SPS measures accordingly within a reasonable time-frame.
- Economic considerations which are relevant to SPS measures mainly involve the potential damage in terms of loss of production or sales in the event of entry and establishment of an exotic pest or disease, the costs of control or eradication, and the relative cost-effectiveness of alternative approaches to limiting risks. The economic considerations should take into account the importance of the aforementioned factors within the context of the economy of the importing country. In cases of dispute settlement, the damage in terms of loss of production or sales in an exporting country because of the adoption of SPS measures more stringent than necessary according to verifiable scientific evidence, or relevant economic considerations, or an acceptable level of risk, should also be taken into account.

9. Risk assessment principles and procedures should be applied in a uniform way. The acceptable level of risk used by an importing country should not be different for the same commodity from different origins or between locally produced and imported commodities. In determining the acceptable level of risk the importing country should take into account the least stringent acceptable level of risk adopted by other contracting parties in similar circumstances. The onus of justifying the acceptable level of risk established by an importing country rests with that country.

Pest or disease-free areas, under guarantee of sanitary or phytosanitary control

10. Contracting parties should agree to recognize pest or disease-free areas under guarantee of sanitary or phytosanitary control.

11. Recognition of such areas, whether within part of a country or in a geographic region which may include areas of several countries, should be based on factors such as: geography, ecosystems, epidemiological surveillance and the effectiveness of sanitary or phytosanitary control and should be verifiable by scientific evidence.

12. The onus of proof that an area is free of a pest or disease and can be guaranteed to remain so, is the responsibility of the country in which the area is located. Importing countries have the right to satisfy themselves by inspecting, testing or other methods that designated areas are, and will remain, free of particular pests or diseases.

13. The Cairns Group considers that the relevant international organizations can also significantly assist the establishment and recognition of free areas by:

- developing and promulgating criteria for the establishment and recognition of such areas;
- compiling and publishing up-to-date lists of areas which countries have notified as being free of certain pests or diseases;
- on request, nominating independent experts capable of providing scientific advice on the absence of particular pests or diseases within an area and on the adequacy of the control measures in place.

14. Such activities of the relevant international organizations, involving an expansion of their mandates as necessary, would be a first step towards providing appropriate multilateral support for the establishment of effective bilateral agreements on recognized free areas, and would improve the basis for effective consultation and dispute settlement.

Areas of limited pest or disease prevalence, under guarantee of sanitary or phytosanitary control

15. Contracting parties should also agree to recognize, as areas of low risk, those that have limited pest or disease prevalence and are under guarantee of sanitary or phytosanitary control. In these areas, the prevalence of particular pests or diseases is known and maintained by control measures at or below a certain level. All of the considerations outlined above concerning pest or disease-free areas should apply to areas of limited pest or disease prevalence.

### Harmonization

16. Where such international standards, guidelines, codes and recommendations exist, contracting parties should base their sanitary and phytosanitary measures on:

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

and, for matters not covered by the above organizations, relevant standards, recommendations and guidelines promulgated by other relevant international organizations open to full participation by all contracting parties.

17. Contracting parties should participate in the preparation by the relevant international organizations of sanitary and phytosanitary standards, recommendations and guidelines.

18. As appropriate, harmonization should cover, inter alia, requirements in the form of quarantine treatments, packaging in so far as it may affect food safety, methods for diagnosis, testing, inspection, certification, sampling and statistical analysis and methodologies for risk assessment.

19. National sanitary and phytosanitary regulations which conform with the standards, recommendations and guidelines of the relevant international organizations should be deemed to be necessary to protect human, animal or plant life or health and thus be in conformity with the provisions of Article XX(b) and other relevant GATT provisions.

20. In the event that contracting parties choose to impose sanitary or phytosanitary measures more stringent than indicated by the standards, recommendations or guidelines of the relevant international organizations, those contracting parties should have the responsibility of justifying that they are in conformity with the provisions of Article XX(b) and other relevant GATT provisions.

21. Contracting parties should promote harmonization of SPS measures among countries on a regional basis for the purpose of promoting further interregional harmonization.

### Equivalence

22. Contracting parties should agree to recognize the principle of equivalence. Measures which are not identical but which have the same effect in meeting an acceptable level of risk shall be deemed to be equivalent. Where such possibilities exist the exporting country should have the right to choose the approach most appropriate to its own circumstances, provided it can demonstrate the effectiveness of the adopted approach to the satisfaction of the importing country, taking into account paragraphs 19 and 20 above.

### Processing and production methods (PPMs)

23. Contracting parties should agree that the SPS provisions outlined in this paper apply to processing and production methods.

24. Where SPS measures are imposed in the form of PPMs there should be maximum scope for the use of the principle of equivalence.

### National treatment and non-discrimination

25. SPS measures should not impose unjustifiably stricter controls on imported products from any contracting party than they do on domestic products or imported products from any other contracting party.

### Special and differential treatment

26. Where the acceptable level of risk allows scope for the phased introduction of new SPS measures, standards or PPMs :

- developing countries should be accorded longer time-frames for compliance so as to maintain access opportunities for them;
- where substantial investments are involved, developed importing countries should consider according, on an m.f.n. basis, additional market access opportunities for the product involved.

27. In cases where developing countries are involved in dispute settlement on SPS issues, the GATT secretariat should facilitate the provision of technical advice and information to them.

28. When SPS measures more stringent than necessary according to an acceptable level of risk are applied on a product or products originating in a developing country, compensation equivalent to the prejudice/market reduction or loss should be extended to the country affected.

#### Technical co-operation

29. Contracting parties should actively facilitate the extension of technical assistance to developing countries, and to other countries which may be in need of such assistance, inter alia in the areas of processing technologies, research and infrastructure, in the form of advice, credits, donations, training and equipment to allow them to adjust to and comply with SPS measures in their export markets.

#### Linkages with international organizations

30. Contracting parties should recognize the rôle of the relevant international organizations, in particular OIE, IPPC and the Codex Alimentarius Commission, as responsible for promoting harmonization of rules and standards and contributing to improved international sanitary and phytosanitary conditions.

31. These organizations are therefore a principal source of independent scientific or technical advice relevant to consideration of SPS issues arising in international trade.

32. Contracting parties should actively take part in these organizations.

#### IV. INSTITUTIONAL MECHANISMS

##### Transparency

33. Contracting parties should agree to maintain a high degree of transparency with respect to factors such as legislation and regulations, disease and pest profiles, production and quarantine treatments, inspection and certification systems, and bilateral or regional sanitary and phytosanitary agreements i.e. all information required for an exporting contracting party to become aware of the actual access requirements of an importing contracting party.

34. Taking into consideration the experience with existing transparency mechanisms, the Cairns Group considers that in order to provide the maximum degree of transparency with the least cost and the least degree of duplication with existing mechanisms, the minimum GATT obligations to be met by contracting parties should be that:

- all contracting parties maintain a central enquiry point; and
- through that central enquiry point, make available, within a specified time period of a request, the information outlined above.

35. Contracting parties should not impose fees or charges in excess of the actual costs of gathering and reproducing the requested information.

36. It is for further consideration whether a system of notification, and specifically pre-notification, of impending legislation or regulatory changes which may have a significant effect on the trade or other parties, would be necessary to achieve the required degree of transparency.

37. These provisions should not require any contracting party to disclose confidential information which would impede law enforcement for legislation that contracting parties make available pursuant to paragraph 35, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

#### Consultation and dispute settlement

38. Contracting parties should agree that the resolution of SPS disputes is an integral part of a single comprehensive multilateral dispute mechanism. In this regard the existing GATT Articles XXII and XXIII and all the improvements relating to the dispute settlement mechanism set out in MTN.TNC/11 should apply fully to disputes relating to SPS measures.

39. In addition it is recognized that various issues relating to dispute settlement are currently under discussion in the Negotiating Group on Dispute Settlement (NG13). It is the intention of the Cairns Group that at the conclusion of the Uruguay Round all provisions of the improved GATT Dispute Settlement System shall apply fully to disputes involving SPS issues.

40. The mechanism should provide for technical advice from the relevant international organizations, experts nominated by them, or independent experts agreeable to both parties. Contracting parties should recognize that, although these organizations may be consulted by GATT dispute settlement panels, the GATT is solely responsible for the conduct of its dispute settlement procedures. Additionally, experts nominated by these organizations would be individuals, known because of their expertise in the relevant field, but would not be representing the organizations.

#### V. IMPLEMENTATION

41. This paper does not prejudice an eventual decision on the legal implementation of the agreement on sanitary and phytosanitary issues, whether it be clarification, interpretation or modification of existing GATT rules, incorporation into the existing, or a revised standards code (Tokyo Round Agreement on Technical Barriers to Trade), as a separate agreement or code, or as a part of a more general agreement on agriculture. However, when the issue is addressed it is the view of the Cairns Group that the applicable framework of rules and disciplines for SPS measures should be comprehensive and should apply to all contracting parties, avoiding the past experience with codes which apply only to a limited number of them. In addition to existing GATT obligations, the Cairns Group considers that further consideration needs to be given to means of ensuring that all levels of government, including supra-national governing bodies for customs unions, national and sub-national governments are covered by the applicable framework of rules and disciplines.