

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Group of Negotiations on Goods (GATT)

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

SYNOPTIC TABLE OF PROPOSALS RELATING TO KEY CONCEPTS

Note by the Secretariat

1. The following synoptic table has been prepared by the secretariat as agreed at the 2-3 April meeting of the Working Group. It is an attempt to display, concept by concept, the substance of the various statements which have been made in written submissions by participants. In some instances, more than one submission by the same party has been referred to, where it appeared that additional or different points were presented. Statements which were very general or did not appear to address the concept under consideration may not have been included.
2. Although every attempt was made to be as thorough and correct as possible, it is perhaps inevitable that in any attempt to categorize, and sometimes summarize, a large volume of documents presented in varying forms some errors and omissions will have occurred. This has not been deliberate, nor is there any significance to the order in which statements are presented.
3. As was suggested, the source of the various statements is indicated only by reference to a document number; a complete reference list of all documents examined is attached as Annex 1.
4. The final entries for each concept, when marked with an asterisk (*), are secretariat-drafted statements reflecting commonly-occurring language. Given the nature of many of the country statements and the sequential order in which position papers have been tabled, the "common language" statements may reflect not only participants' written statements but to some extent also discussions held in the Working Group.

TABLE 1
BASIC OBJECTIVES

<p>A multilateral framework of rules and disciplines which can be applied to guide bilateral negotiations on sanitary and phytosanitary (SPS) issues should be established. The role of a multilateral framework should be to interpret, clarify or reformulate Article XX and other relevant provisions of the GATT through recognition of the central role of the concept of risk assessment; recognition of the concepts of equivalency and of pest or disease-free areas and areas of limited pest or disease prevalence; recognition of the role of transparency in facilitating uniform approaches to bilateral SPS agreements; and in building confidence that SPS measures are not being applied as unjustified barriers to trade; and recognition that an effective dispute settlement mechanism, including expert technical advice, needs to be applicable to SPS measures. (164)</p>	<p>There is a need to find the means to minimize the adverse effects of SPS regulations, without jeopardizing the health status of contracting parties. It is impossible to do without international harmonization. GATT could give contracting parties a greater incentive to participate in the framing of the international standards and apply them in full by ruling that national regulations complying with such international provisions would be deemed to conform to Article XX(b). Further, where trade barriers resulting from disparities in national health protection rules have a serious adverse effect, negotiations on the matter could be held in GATT, if possible in collaboration with the competent international body. In order to limit the adverse effects on trade of differences in national legislation which have not been dealt with by either of these two harmonization procedures, national laws should be subject to disciplines drawn up in GATT. Such rules could cover, e.g. transparency of national regulations, effects on trade, adapting protective measures to risk, non-discrimination, and consultation machinery. It would also be necessary to draft an appropriate framework of rules suited to the special case of agri-food process and production methods. (56)</p>	<p>Each country has the responsibility for doing its own sanitary and phytosanitary risk assessment for imports into its territory, but an agreement is needed which brings international discipline and accountability to the use of SPS measures. (US)</p>	<p>GATT disciplines should be developed which will ensure that phytosanitary and veterinary measures are based on sound scientific evidence. (153)</p>	<p>The objective is to provide a mechanism for notification, consultation and dispute settlement which would ensure that measures taken to protect animal, plant and human health are based on sound scientific evidence and recognize the principle of equivalency. (118)</p>	<p>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. (10)</p>	<p>It is necessary to achieve greater harmonization of SPS measures based on sound scientific evidence, secure transparency through improvement of notification procedures, and improve consultation and dispute settlement procedures. (131)</p>
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TABLE 2
SCOPE OF SPS MEASURES

<p>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. (164)</p> <p>It may be necessary to identify the sanitary or phytosanitary elements (i.e. those designed to protect life or health) from other elements relating to quality assurance (e.g. composition, grading and labelling requirements) or to fair trade or to the prevention of fraud. (146)</p>	<p>The discipline should cover regulations concerning agricultural products; 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.</p> <p>Regulations based on ethical or moral considerations would fall outside the scope of an SPS discipline. (10)</p>	<p>* The disciplines shall cover only those regulations, requirements and procedures directly related to human, animal or plant life or health, including processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; [and those packaging and labelling requirements directly related to food safety]. Measures relating to quality assurance, composition and grading, consumer preferences, consumer information, animal welfare and ethical and moral considerations shall not be dealt with in this context.</p>
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TABLE 3
DISCIPLINES TO BE APPLIED ON NATIONAL MEASURES

<p>National SPS regulations should be based on internationally recognized standards. (121)</p>	<p>National regulations on SPS measures should be scientifically proved, transparent and be consistent with the principle of national treatment. It is important in this context to recognize the role of FAO/WHO, CODEX, IPPC, OIE and promote harmonization of domestic rules and standards. (130)</p>	<p>Consistent with well-established scientific evidence, where available, SPS measures should only be applied to the extent necessary to protect human, animal or plant life or health, and should not be applied in a manner that creates arbitrary, disguised or unjustifiable obstacles to international trade. 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. 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 rests with the exporting country]. Where they may have significant effect on the trade of other parties, deviations from relevant international standards and recommendations should be notified and their justifications provided upon request. (10)</p>
	<p>On the basis of sound technical evidence, each contracting party should be free to take measures protecting its population, animals and plants. Sanitary and phytosanitary measures in principle serve the health of the population, animals and plants. Those SPS measures which do not serve their genuine purpose should be eliminated as soon as possible. (144)</p>	<p>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. On request, the importing country should provide clear and objective reasons, consistent with internationally accepted principles and procedures, for the application of SPS measures. (164)</p>
	<p>GATT disciplines should be developed which will ensure that phytosanitary and veterinary measures are based on a sound scientific basis. Standards developed in the international professional bodies should be the guidelines for an effective surveillance and dispute settlement procedure. (153)</p>	<p>Measures taken to protect human, animal or plant life or health shall be based on sound scientific evidence and recognize the principle of equivalence. A measure shall be deemed to be based on sound scientific evidence if the measure is equivalent to the appropriate standard established by an identified international organization or if the measure was developed using information and analysis comparable to that used by such organization. However, if there is not an international standard or guideline, or if a party maintains a measure which is not equivalent to or has not been developed using information comparable to that used in an international standard or guideline, then a contracting party shall have the option of using other experts, evidence, organizations or other relevant sources of scientific information to show that its measures are consistent with sound scientific evidence. (118)</p>

TABLE 3 (cont'd)
DISCIPLINES TO BE APPLIED ON NATIONAL MEASURES

<p>In taking sanitary and phytosanitary measures necessary to protect human animal or plant life or health, a contracting party shall consider the available scientific evidence and particularly that issued by international organizations, so that such measures are not maintained against sound scientific evidence. National regulations which conform to recognized international standards shall be deemed to be necessary to protect human, animal or plant life or health. Countries which have achieved a high health status shall, nonetheless, be allowed to apply standards more stringent than international ones where appropriate. A framework of rules should be drafted to provide for strengthened GATT disciplines in relation to sanitary and phytosanitary measures. 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.</p>	<p>Contracting parties should not apply sanitary and phytosanitary measures in a manner which would constitute a disguised restriction on international trade. It is also necessary to minimize the adverse effect of the measures on international trade.</p> <p>When a contracting party lays down a sanitary or phytosanitary measure along the guidelines or standards examined and drawn up by the identified international scientific organizations based on sound scientific evidence, the said measure is deemed to be in conformity with Article XX(b). In cases where no guidelines or standards exist, SPS measures taken by contracting parties are assumed to be in conformity with Article XX(b); however, other contracting parties may resort to consultation and dispute settlement procedures. When a contracting party lays down an SPS measure not based on existing international guidelines or standards, but makes it clear that the measure is based on sound scientific evidence, it is assumed that the measure is in conformity with Article XX(b). However, in this case other contracting parties may resort to consultation and dispute settlement procedures.</p>	<p>Standards and recommendations that have been worked out in the international organizations in this field should serve as guidelines for individual countries for their internal legislation and regulations on SPS measures. National regulations that fully comply with international standards should be considered to be in conformity with Article XX(b). This, however, would not imply that regulations deviating from international standards would not comply with Article XX(b). SPS regulations should be based on sound and verifiable scientific evidence. This scientific evidence should also serve as a guideline when considering the adequacy and GATT conformity of the regulations.</p> <p>In assessing regulations and their conformity with GATT Article XX(b) local and regional considerations, including consumption patterns, cannot be separated from the concept of sound and verifiable scientific evidence. It is part of the scientific argumentation. This concern is to a certain extent covered by the fact that international organizations already in their recommendations observe regional differences and in some cases even formulate their recommendations only regionally. In some cases, however, the scientific evidence is relative in nature: the greater the concentration of a certain substance, the higher the risk for health. In such cases governments must have the right to individually assess the acceptable risk level for their countries. (88)</p>
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TABLE 4
REGIONAL HARMONIZATION, LINKAGES WITH INTERNATIONAL ORGANIZATIONS

<p>The advisory role of the international professional bodies FAO Codex Alimentarius, OIE and IPPC, and their regional constituents, should be strengthened in GATT. (153)</p>	<p>Where sanitary or phytosanitary regulations are required and relevant international standards or recommendations exist or their completion is imminent, parties shall use them as a basis for the sanitary and phytosanitary regulations except where such international standards or recommendation are inappropriate for the parties concerned, for inter alia such reasons as national security requirements; the prevention of deceptive practices; enhanced protection of human, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; specific dietary habits; the spread of specific diseases or pests.</p>	<p>Such harmonization shall cover, as appropriate, requirements on products, processes, production methods and quarantine treatments; packaging and labelling; methods for diagnosis, testing, inspection, certification; statistical methods, sampling procedures; and methodologies for risk assessment.</p>	<p>With a view to harmonizing sanitary and phytosanitary regulations on as wide a basis as possible, parties shall play a full part within the limits of their resources in the preparation by appropriate international organizations of international standards and recommendations for purposes for which they either have adopted, or expect to adopt, sanitary or phytosanitary regulations. In case parties are not using relevant international standards and recommendations as a basis for their sanitary and phytosanitary regulations they shall, upon request by another party, explain the reasons therefore. With a view to further international (inter-regional) harmonization, parties shall whenever practicable harmonize their sanitary and phytosanitary regulations on a regional basis. (9)</p>	<p>Contracting parties shall harmonize their sanitary and phytosanitary measures on the basis of guidelines (including guidelines for laying down standards) or standards examined and drawn up by the international scientific organizations on the basis of sound scientific evidence. In cases where differences in sanitary conditions, geographical conditions, or dietary customs need to be considered, it would be more appropriate to effectuate harmonization by guidelines rather than standards. What could be harmonized would include principles on sanitary and phytosanitary measures, and methods of proof and inspection. (131)</p>	<p>Participants should seek to: adhere to standards promulgated by the relevant international scientific organizations wherever appropriate; take into account the general principles adopted by relevant international scientific organizations; harmonize SPS regulations among countries on a regional basis with a view to further inter-regional harmonization; standardize and use scientific methods for diagnosis, testing, monitoring, statistical methods, sampling procedures, etc.; develop agreed methodologies for risk assessment; and agree on processing technologies and quarantine treatments.</p>	<p>Participants recognize the role of appropriate international scientific organizations, in particular OIE, IPPC and FAO Codex, as responsible for promoting harmonization of rules and standards and contributing to improved international sanitary and phytosanitary conditions. These organizations are a principal source of scientific or technical advice relevant to consideration of SPS issues arising in international trade. Participants should actively take part in these international scientific organizations. (112)</p>
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TABLE 4 (cont'd)

**HARMONIZATION OF NATIONAL MEASURES ON AN INTERNATIONAL LEVEL
REGIONAL HARMONIZATION, LINKAGES WITH INTERNATIONAL ORGANIZATIONS**

A measure shall be deemed to be based on sound scientific evidence if the measure is equivalent to the appropriate standard established by an international scientific organization or if the measure was developed using information and analysis comparable to that used by such organization.

In food safety, the following standards of the Codex Alimentarius and the associated scientific information and analysis shall be deemed to be based on sound scientific evidence: acceptable levels for food additives, maximum residue limits for veterinary drugs, allowable levels of environmental contaminants, maximum residue limits for pesticides, methods of analysis and sampling, and codes and guidelines of hygienic practice.

In the area of animal health, the risk assessment guidelines developed under the auspices of the International Office of Epizootics for the use of the parties shall be deemed to be based on sound scientific evidence.

In the area of plant health, the risk assessment guidelines developed under the auspices of the International Plant Protection Convention for the use of the parties shall be deemed to be based on sound scientific evidence.

For matters not covered by the aforementioned standards or guidelines on food safety, animal health and plant health, the appropriate standards or guidelines of other scientific organizations open to full participation by all contracting parties shall be deemed to be based on sound scientific evidence.

If there is not an appropriate international standard or guideline, or if a contracting party maintains a measure which is not equivalent to or has not been developed using information and analysis comparable to that used in an international standard or guideline, then a contracting party shall have the option of using other experts, evidence, organizations, or other relevant sources of scientific information to show that its measures are consistent with sound scientific evidence. (118)

It is desirable that contracting parties harmonize their sanitary and phytosanitary regulations and measures based on guidelines or standards studied by the related international scientific organizations on the basis of sound scientific evidence. At the same time, it is necessary to recognize that differences in sanitary conditions, geographical conditions and dietary customs among contracting parties may necessitate application of more stringent standards than international standards to achieve the purpose of sanitary and phytosanitary measures. However, even in such cases, certain elements can be harmonized. For example, levels of acceptable intake or tolerable intake of environmental contaminants as well as scientific evidence on the base of which these levels were calculated can be harmonized. (156)

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. 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 Office of 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 and, on 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.

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.

However, it is necessary to provide for countries which have reached a high health status to be able to continue to apply standards more stringent than the international standards, when appropriate. (146)

TABLE 4 (cont'd)
HARMONIZATION OF NATIONAL MEASURES ON AN INTERNATIONAL LEVEL
REGIONAL HARMONIZATION, LINKAGES WITH INTERNATIONAL ORGANIZATIONS

<p>Where such international standards, guidelines, codes and recommendations exist, contracting parties should base their sanitary and phytosanitary measures on:</p> <ul style="list-style-type: none"> - for food safety, the standards, recommendations and guidelines of the Codex Alimentarius Commission relating to food additives, veterinary drug 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. <p>Contracting parties should participate in the preparation by the relevant international organizations of sanitary and phytosanitary standards, recommendations and guidelines.</p> <p>As appropriate, harmonization should cover, <i>inter alia</i>, requirements in the form of quarantine treatments, packaging <i>insofar as it may affect food safety</i>, methods for diagnosis, testing, inspection, certification, sampling and statistical analysis and methodologies for risk assessment.</p> <p>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.</p> <p>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.</p> <p>Contracting parties should promote harmonization of SPS measures among countries on a regional basis for the purpose of promoting further inter-regional harmonization. (164)</p>	<p>* With a view to harmonizing SPS measures on as wide a basis as possible, 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 and guidelines.</p> <p>National sanitary and phytosanitary regulations shall be based on internationally recognized standards or guidelines, in particular:</p> <ul style="list-style-type: none"> - for food safety, the standards, recommendations and guidelines of the Codex Alimentarius Commission relating to food additives, veterinary drug 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. <p>Harmonization shall cover, as appropriate, requirements on product characteristics, processes, production methods and quarantine treatments; packaging and labelling <i>insofar as it may affect food safety</i>; methods for diagnosis, testing, inspection, certification, statistical analysis and sampling procedures; and methodologies for risk assessment.</p> <p>National sanitary and phytosanitary measures which conform to the standards, recommendations and guidelines of the relevant international organizations are deemed to be based on sound scientific evidence and deemed to be in conformity with the relevant provisions of the General Agreement.</p> <p>If there is no appropriate international standard or guideline, or if a participant imposes or maintains a measure which does not conform to the relevant international standard or guideline, it shall, upon request, explain the reasons therefore and provide the necessary information to show that its measures are consistent with sound scientific evidence.</p> <p>Participants should promote the harmonization of SPS measures on a regional basis when appropriate for the advancement of intra-regional harmonization.</p>
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TABLE 5
RISK ASSESSMENT/ACCEPTABLE LEVEL OF RISK

The relevant international standards-setting organizations should provide risk assessment guidelines for national sanitary and phytosanitary measures, and these guidelines may be used to evaluate the legitimacy of a measure which is perceived as unjustified by another country. However, it is not the role of these international organizations to do the risk assessment for any individual country.

For much of the food safety area there already exists a process for establishing guidelines for risk assessment; the process of setting Codex Alimentarius standards for the presence of chemicals in food includes the development of guidelines for evaluating risk. These guidelines, known as levels of acceptable daily intake (ADI), are established by respected scientists and are widely recognized throughout the world. For a country staying within these guidelines, food consumption should be "without appreciable health risk" from the substance for which the ADI level has been established. For the animal health and plant health areas, the technical experts should be encouraged to establish appropriate risk assessment guidelines. (15)

National regulations should systematically take the form least restrictive to trade, whilst ensuring an equal level of health protection. Consideration should be given to the possibility and appropriateness of limiting protective measures to the minimum strictly necessary to guard against actual risk occurring in modern conditions of production and trade. (56)

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 objective of protecting human, animal or plant life or health. 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.

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.

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. (164)

TABLE 5 (cont'd)
RISK ASSESSMENT/ACCEPTABLE LEVEL OF RISK

<p>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. (146)</p>	<p>Local and regional considerations, including consumption patterns, cannot be separated from the concept of sound and verifiable scientific evidence. It is a part of the scientific argumentation. This concern is to a certain extent covered by the fact that international organizations already in their recommendations observe regional differences and in some cases even formulate their recommendations only regionally. In some cases, however, the scientific evidence is relative in nature: the greater the concentration of a certain substance, the higher the risk for health. In such cases governments must have the right to individually assess the acceptable risk level for their country. (88)</p>	<p>* National regulations should systematically take the form least restrictive to trade, while ensuring an appropriate level of sanitary and phytosanitary protection. Verifiable scientific evidence, and, where they exist, the guidelines developed by the international scientific organizations, shall be used in the assessment of the risk of entry and establishment of pests and diseases of concern and the potential biological consequences, or the risk to human health of contaminants in foods. The risk assessment shall take into account processing technology, national inspection and control systems, quarantine treatment, and relevant economic considerations.</p>
		<p>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. (10)</p>

TABLE 6
EQUIVALENCY

<p>When applying the "principle of equivalency" (the principle that an importing country accepts the measure applied by an exporting country concerned as equivalent when that measure is proven to have the same effect with that applied by the importing country, and when its secondary effects do not cause any problem in terms of, for example, the safety of foodstuffs), it is necessary that the exporting country provide sufficient information necessary for the importing country to examine whether the measures concerned are equivalent, and that bilateral consultations be held whenever appropriate. (156)</p>	<p>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. (164)</p>	<p>Suitable principles of equivalency should be used to enable other countries 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. (146)</p>	<p>* Measures which are not identical but which are scientifically demonstrated to achieve similar results shall be accepted as being equivalent.</p>
<p>Measures which are not identical but which have the same effect in ensuring an acceptable level of protection shall be deemed to be equivalent. (118)</p>	<p>Different parties may use different regulations, techniques and procedures, which are judged to be equal to the extent that they achieve acceptably similar results including meeting the acceptable level of risk. (112)</p>		<p>Parties should be encouraged 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. (10)</p>

TABLE 7
NATIONAL TREATMENT AND NON-DISCRIMINATION

<p>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. (164)</p>	<p>In a comparable situation, imported products should be treated no less favourably than like products of national origin or like products originating from any other country. (10)</p>	<p>The products of the territory of any contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect to all sanitary or phytosanitary laws, regulations, requirements, measures or approvals for use. (118)</p>	<p>* The products of any contracting party shall not be accorded treatment less favourable than that accorded to like products of national origin without sound scientific justification. There shall not be unjustified discrimination in the treatment of products from different contracting parties when the same conditions prevail.</p>
			<p>National regulations on SPS measures should be consistent with the principle of national treatment. However, it should be recognized that dietary patterns, natural and ecological conditions and the level of technologies protecting human, animal and plant life or health might differ from country to country. (130)</p>
			<p>A contracting party shall take into consideration the necessity of not imposing, where the same conditions prevail, unjustifiably stricter controls on imports than apply to domestic products. A framework of rules should be drafted to ensure the absence of arbitrary or unjustifiable discrimination between countries where the same conditions prevail. (146)</p>

TABLE 8
PEST/DISEASE-FREE ZONES; AREAS OF LIMITED PEST/DISEASE PREVALENCE; REGIONALIZATION OF MEASURES OF PROTECTION AND GUARANTEES

<p>Risk should be assessed on a regional basis so that wherever possible, import bans no longer apply to the whole territory of an exporting country but only to specific areas defined in terms of health status and given guarantees. (56)</p> <p>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. (10)</p>	<p>Parties should 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. (146)</p>	<p>Contracting parties should agree to recognize the concept of sanitary or phytosanitary control. 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.</p> <p>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.</p> <p>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; by compiling and publishing up-to-date lists of areas which countries have notified as being free of certain pests or diseases; and on request, by 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. 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. (164)</p>
<p>When recognizing an area as a pest or disease-free area, it is necessary to fully examine whether or not pests exist in the particular areas concerned on the basis of scientific evidence, through bilateral consultations. (156)</p> <p><u>Areas of Limited Pest/Disease Prevalence</u></p> <p>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 concerning pest or disease free areas should apply to areas of limited pest or disease prevalence. (164)</p>	<p>Contracting parties should agree to recognize the concept of sanitary or phytosanitary control. Whether within part of a country or in a geographic region which includes all or parts of several countries, should be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary and phytosanitary controls, and should be verifiable by scientific evidence.</p>	<p>* The concept of pest- or disease-free areas should be recognized. Determination of such areas, whether within part of a country or in a geographic region which includes all or parts of several countries, should be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary and phytosanitary controls, and should be verifiable by scientific evidence.</p>

TABLE 9
INSPECTION AND CONTROL CONCERNING PRODUCTION AND
PROCESSING METHODS (PPMs): MUTUAL RECOGNITION
OF RESULTS OF TESTS, INSPECTION, ETC.

<u>The SPS discipline should cover processes and production methods. (10)</u>	<u>Mutual Recognition of Results of Tests, Inspection, etc.</u>
<p>The simple extension of the disciplines governing norms, expressed in terms of the characteristics of the finished product, to PPMs would lead to an alignment of PPMs to norms. However, this alignment does not correspond to the 'technical' characteristics of the two regulatory procedures. In fact, while a contracting party applying import regulations has the imported product in hand and can carry out the necessary checks, it is in a position to assess and verify the conditions of production taking place in another country only with the co-operation of the country concerned. It is, therefore, necessary to draft an appropriate framework of rules suited to the special case of agri-food process and production methods. (56) (164)</p>	<p>Parties should be encouraged to agree upon common rules of procedures for testing, inspection, certification and approval, in order to ensure that unnecessary barriers to trade are not created. The corresponding provisions of the GATT Agreement on Technical Barriers to Trade could be used as a model. (10)</p>

TABLE 10
TRANSPARENCY

To achieve enhanced transparency, notification procedures shall be set up on the basis of the 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. (146)

Parties shall ensure that all sanitary and phytosanitary regulations which have been adopted are published promptly in such a manner as to enable interested parties to become acquainted with them. Except in urgent circumstances, parties shall allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting countries, and particularly in developing countries, to adapt their products and methods of production to the requirements of the importing country.

Each party shall ensure that one inquiry point exists which is able to answer all reasonable questions from interested parties as well as to provide the relevant documents regarding any sanitary and phytosanitary regulation adopted or proposed within its territory. Parties shall ensure that where copies of documents are requested by interested parties in other parties, they are supplied at the same price (if any) as to the nationals of the party concerned.

Whenever a relevant international standard or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of relevant international standards or recommendations, and if the regulation may have a significant effect on trade of other parties, parties shall:

- (a) publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with it, that they propose to introduce a particular regulation;
- (b) notify other parties through the GATT secretariat of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Such notifications shall take place at an early appropriate stage, when a draft with the complete text of a proposed regulation is made available domestically, and when amendments can still be introduced and comments taken into account;
- (c) provide upon request to other parties copies of the proposed regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards or recommendations;
- (d) allow reasonable time for other parties to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.

The establishment of a system of notification to the GATT secretariat of measures likely to significantly affect the trade of other contracting parties and the establishment of inquiry points would be useful from the viewpoint of improving transparency. However, where the international scientific organizations already have or are capable of establishing a similar notification system, it is appropriate to consider making use of such systems.

In the field of food hygiene, the system of prior notification to the GATT secretariat of prospective measures likely to severely affect the trade of other contracting parties, the consultations based on comments from other countries, and the system of inquiry points are all running smoothly. It would be appropriate to further the work on this basis. (131)

Where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a party, it may omit such of the above steps as it finds necessary provided that it immediately notifies other parties through the GATT secretariat of the particular regulation and the products covered, with a brief indication of the objective and the rationale of the regulation, including the nature of the urgent problems; provides upon request copies of the regulation; and allows other parties to make comments in writing, discusses these comments upon request, and takes the comments and the results of the discussions into account.

Notifications to the GATT secretariat shall be in English, French or Spanish. The GATT secretariat shall promptly circulate copies of the notifications to all parties and interested international organizations and draw the attention of developing country parties to any notifications relating to products of particular interest to them. Parties shall designate one single central government authority that is responsible for the implementation on the national level of the provisions concerning notification procedures.

Nothing in this agreement shall be construed as requiring: the provisions of copies of drafts or the publications of texts other than in the language of the party; or, parties to furnish any information, the disclosure of which they consider contrary to their essential security interests.

Parties shall take such reasonable measures as may be available to them to ensure that local government bodies and non-governmental bodies within their territories as well as relevant regional bodies of which they are members comply with the above provisions. In addition, parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such bodies to act in a manner inconsistent with any of these provisions. (9)

TABLE 10 (cont'd)
TRANSPARENCY

Any new or existing regulations, including substantial changes in rules for imports, should be subject to appropriate procedures to make the information available to interested parties, who should in particular be informed of the practical implications and the possibilities of adaptations. Notification procedures and possible counter-notifications should be established as well as consultation procedures. (56)

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.

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 inquiry point; and through that central inquiry point, make available, within a specified time period of a request, the information outlined above. Contracting parties should not impose fees or charges in excess of the actual costs of gathering and reproducing the requested information.

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 of other parties, would be necessary to achieve the required degree of transparency.

These provisions should not require any contracting party to disclose confidential information which would impede law enforcement for SPS legislation or which would prejudice the legitimate commercial interests of particular enterprises, public or private. (164)

The GATT secretariat will, when it receives a sanitary or phytosanitary notification, circulate copies to all contracting parties and all interested international standardizing and certification bodies and draw the attention of developing country contracting parties to any notification relating to products of particular interest to them.

The normal time limit for comments on notifications shall be 60 days. Contracting parties shall discuss comments upon request and take these comments and the results of these discussions into account.

Each contracting party shall ensure that an inquiry point exists through which sanitary and phytosanitary notifications can be forwarded to the GATT secretariat, copies of all final regulations can be obtained, and all relevant inquiries can be directed. (118)

* Each participant shall maintain a high degree of transparency with respect to all SPS measures affecting access to its territory, including, inter alia, information concerning legislation and regulations, pest and disease profiles, production and quarantine treatment, inspection and certification systems, and bilateral or regional SPS agreement.

[Further consideration is required with regard to the establishment of notification and prior notification procedures as part of this agreement to take fully into consideration the existence of such provisions in other relevant international agreements and organizations, and the desire to avoid a duplication of obligations.]

Each participant shall ensure that an inquiry point exists which can respond, within a specified period of time, to all reasonable requests for information concerning its SPS measures. Fees or charges shall not be imposed in excess of the actual costs of gathering and reproducing the requested information.

Participants are not required to disclose confidential information which would impede enforcement of SPS legislation or which would prejudice the legitimate commercial interests of particular enterprises.

TABLE 11
TECHNICAL ASSISTANCE

	<p>Assessment of the possible effects on developing countries of GATT disciplines for SPS measures and evaluation of the need for technical assistance should proceed without delay. (146)</p>	<p>In order to help developing countries comply with sanitary regulations, technical assistance shall be provided either by developed contracting parties bilaterally, or by international organizations and should include, inter alia, credits, donations, training and equipment to prepare the export structure of developing countries to meet these regulations. (132)</p>	<p>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 such countries to adjust to, and comply with SPS measures in their export markets.</p>
	<p>Parties should, if requested, provide advice and technical assistance to other parties, especially the developing countries, on the preparation of health and sanitary regulations and measures; the establishment of national regulatory bodies and participation in international/regional organizations; the steps to be taken by their producers to get their products tested, inspected, certified or approved in systems operated by the importing country; and the establishment of the institutions and legal framework which would enable them to participate in international/ regional certification systems. Parties should also, if requested, arrange for their regulatory or certification bodies to advise other parties, especially the developing countries, and grant them technical assistance regarding the establishment of regulatory or certification bodies for providing certificates of conformity with SPS regulations and the methods by which their SPS regulations could best be met. In providing advice and technical assistance, priority should be given to the needs of the least-developed countries. (14)</p>	<p>Technical assistance for developing countries to strengthen their work in the preparation of sanitary regulations and the logistical resources for their implementation should be a central concern. (121)</p>	<p>The strengthening of the GATT approach to sanitary and phytosanitary measures may pose particular difficulties for developing countries. The contracting parties should evaluate the probable effects on developing countries of the enhanced GATT sanitary and phytosanitary procedures. If warranted by the results of this evaluation, the appropriate international organizations, for example the United Nations Food and Agriculture Organization, might be contacted for technical assistance. The assistance provided might focus on strengthening the regulatory mechanisms of developing countries, particularly with regard to food safety and plant health, and could also facilitate the establishment of inquiry points where needed. (118)</p>
			<p>It would be appropriate to pay particular attention to the situations of the developing countries, who are worst affected by health bans on various markets because of the different health problems they face; they should, therefore, be entitled to benefit from forms of co-operation to be defined in order to be able to cope with problems linked with this kind of regulation. (56)</p>

TABLE 12
SPECIAL AND DIFFERENTIAL TREATMENT

<p>Developing countries should have additional time to comply with sanitary and phytosanitary regulations, taking into account the need to protect human, animal or plant life and health. This approach should be coupled with technical assistance. (132)</p> <p>Where the acceptable level of risk allows scope for the phased introduction of new SPS measures, standards or PPHs, developing countries should be granted longer time-frames for compliance so as to maintain access opportunities for them. While substantial investments are involved, developed importing countries should consider according, on an MFN basis, additional market access opportunities for the product involved.</p>	<p>Parties shall provide differential and more favourable treatment to developing countries, giving particular attention to their rights and obligations and taking into account the special development, financial and trade needs of developing countries in implementing this agreement. In the preparation and application of SPS regulations and measures, parties shall take account of these special development, financial and trade needs with a view to ensuring that SPS regulations or procedures for testing, inspection, certification and approval of products do not create unnecessary obstacles to exports from developing countries.</p>	<p>Developing countries should not be expected to use international standards as a basis for their SPS measures which are not appropriate to their development, financial and trade needs. International standards organizations and international certification systems should be organized and operated in such a way as to facilitate the active and representative participation of all parties, taking into account the special problems of developing countries. These international organizations should, upon request by developing countries, examine the possibility of and, if practicable, prepare international standards concerning products of special interest to developing countries.</p>	<p>* Special consideration should be given to the needs of developing countries, and in particular of the least-developed countries, in light of their economic and technological development, financial and trade needs. In the preparation and application of SPS measures, participants shall take account of these special needs, and where the acceptable level of risk allows scope for the phased introduction of new SPS measures, developing countries should be accorded longer time-frames for compliance so as to maintain access opportunities for their exports.</p>
<p>Special consideration should be given to the needs of developing countries. The enhanced transparency resulting from improved notification and consultation procedures will be to the advantage of these countries. Furthermore, the harmonization process will provide such countries with a better basis for their own work. (146)</p>	<p>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. 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. (164)</p>	<p>It is recognized that developing countries may face special problems in the preparation and application of SPS measures, and that their special development and trade needs, as well as their stage of technological development, may hinder their ability to fully discharge their obligations under this agreement. Accordingly, the Committee may, upon request, grant them specified time-limited exceptions in whole or in part from obligations under this agreement. The Committee shall, in particular, take into account the special problems of the least-developed countries. (14)</p>	<p>Developing countries should not be expected to use international standards which are not appropriate to their development, financial and trade needs as a basis for their national SPS measures. The active participation of developing countries in the relevant international scientific organizations should be facilitated and encouraged.</p> <p>In cases where developing countries are involved in dispute settlement on SPS issues, the GATT secretariat shall facilitate the provision of technical advice and information to them.</p>

TABLE 13
CONSULTATIONS AND DISPUTE SETTLEMENT, AD HOC NEGOTIATIONS

<p>Participants agree to participate in an effective process to resolve problems of a technical nature within a reasonable time before they become issues for formal dispute settlement. The parties to the consultation may agree to request the relevant international scientific organizations to nominate independent experts to assist in the process. The participation of a party in the process shall not prejudice the right of that party to initiate the formal dispute settlement procedure.</p>	<p>Contracting parties should respond to requests for consultations promptly and attempt to conclude consultations expeditiously with a view to reaching a mutually satisfactory conclusion. If a dispute is not resolved by consultations, the contracting parties involved in a dispute may request an appropriate body or individual to use their good offices with a view to the settlement of the outstanding differences between the parties. The contracting parties are particularly encouraged to use the good offices of the international scientific organizations established to address sanitary and phytosanitary measures, i.e. the Codex Alimentarius Commission, the International Office of Epizootics and the International Plant Protection Convention.</p>	<p>Provisions regarding dispute settlement should be considered in consultation with the Negotiating Group on Dispute Settlement.</p>	<p>Some contracting parties maintain a domestic régime which generally requires the certification or approval of a broad class of products (e.g. pharmaceuticals or pesticides) which may affect human, animal or plant life or health prior to the use or sale for use of those products within its territory. Before any other party may initiate dispute settlement proceedings under this instrument, it shall have attempted to obtain certification or approval of the product in question in accordance with the rules of that régime, provided that the régime is intended to address a class of products which includes the product in question, that the régime uses reasonable and scientifically-based procedures and evidentiary standards to evaluate such products and that the régime's treatment of foreign products is no less favourable than that accorded to like products of national origin. (118)</p>	<p>(11 - This document deals in its entirety with this issue; the preceding is only a brief summary of its major provisions.)</p>
<p>The parties to the consultation may agree to request the relevant international scientific organizations to nominate independent experts to assist in the process. The participation of a party in the process shall not prejudice the right of that party to initiate the formal dispute settlement procedure. (121)</p>	<p>Good offices, conciliation and mediation may be requested at any time by a party to a dispute, before referring the matter to the Committee, and, if both parties agree, may continue during the investigation by the Committee or panel. Parties may resort to arbitration subject to mutual agreement, with advance notice to the Committee.</p>	<p>If investigation by the Committee does not result in a solution within three months, the Committee may, upon request by any party to the dispute, establish a panel with either standard terms of reference or those agreed by the parties to the dispute. Panels may establish a technical expert group to assist them on technical questions. Panels shall, as a general rule, provide their final report to the parties within four months, or within two months in cases of urgency. In cases where a technical expert group has been established, the panel proceeding shall be extended for no more than two months.</p>	<p>After the investigation or panel procedure is completed, the Committee shall make appropriate statements, recommendations, or rulings. The party concerned shall inform the Committee of its implementation of recommendations or rulings, which will be monitored by the Committee. If warranted, the Committee may authorize the other party to suspend the application of specific obligations under the Agreement.</p>	<p>A consultation process along the lines of that contained in the Standards Code should be developed. Provisions for ad hoc negotiations on particular issues should also be incorporated into this process.</p>

TABLE 13 (cont'd)
CONSULTATIONS AND DISPUTE SETTLEMENT, AD HOC NEGOTIATIONS

	<p>Contracting parties should agree that the resolution of SPS disputes is an integral part of a single comprehensive multilateral dispute settlement mechanism. In this regard the existing GATT Articles XXII and XXIII and all the improvements relating to the dispute settlement mechanism agreed in the course of the Uruguay Round should apply fully to disputes relating to SPS measures.</p> <p>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. (164)</p>	<p>Disputes arising in the field of animal and plant health should first be resolved bilaterally. If bilateral resolution is not achieved, and an effective dispute settlement procedure is to be found in the international scientific organizations, it is desirable that a settlement be reached in those organizations.</p> <p>However, in the event of a solution not being reached through these methods, it may be useful to consider whether or not to establish within the GATT a procedure similar to that of the dispute settlement procedure in the Agreement on TBT. In this case, the CONTRACTING PARTIES shall request the international scientific organizations to participate, from the technical viewpoint, in the study of formation of the relevant procedures, and in the actual settlement of disputes. In any event, the rights of contracting parties in dispute settlement procedures under the General Agreement are not prejudiced. On the other hand, in the field of food hygiene, the dispute settlement system under the Agreement on TBT is currently functioning. These procedures may be reviewed as necessary. (131)</p> <p>* Participants shall respond to requests for consultations promptly and shall make every attempt to reach a mutually satisfactory solution within a limited period of time. In this respect, if the parties involved agree, they may seek technical advice from renowned experts, make use of the good offices of international scientific organizations, or of the dispute settlement procedures, if any, of these, or seek arbitration.</p> <p>If the parties cannot reach a mutually satisfactory solution to the dispute, they may take recourse to the dispute settlement procedures under the General Agreement, with all of the modifications agreed to in the course of the Uruguay Round. With respect to SPS disputes, panels should take note of, and be encouraged to make use of, those provisions allowing them to seek the relevant technical advice and assistance from the appropriate scientific experts or organizations.</p>
	<p>Where trade barriers resulting from disparities in national health protection rules have a serious adverse effect (import bans in particular), negotiations on the matter could be held in GATT, if possible in collaboration with the competent international body. The aim of these negotiations in the first instance would be to smooth out disparities and incompatibilities simply to the extent necessary to facilitate trade. This means finding a way to make differing national provisions compatible, rather than duplicating the process of international harmonization, which aims to regulate a given health issue. For instance, it might be possible to seek and agree upon alternative guarantees, acceptable in terms of health safeguards, to replace the import ban. Health barriers to be dealt with by this negotiating process can be identified on the basis of a list to be drawn up during the negotiations on agriculture. (56)</p>	<p>The OIE, IPPC and Codex should be strengthened and broadened in a manner to enable them to evaluate and appraise specific measures. These institutions should be equipped with a technical dispute settlement competence within their scope of activities. GATT contracting parties should be permitted recourse to these organizations for judgement and/or dispute settlement. These organizations should provide conclusive judgements and/or recommendations as to the implementation of their results. If the contracting party concerned has not taken appropriate measures in time, a trade-related dispute settlement procedure could be initiated within GATT. (144)</p>
	<p>Certain contracting parties apply to products from developing countries, without convincing and sound scientific evidence, stricter sanitary regulations than those applied to other suppliers. There are also cases of frequent changes in legislation, requiring from developing countries considerable effort and resources to adapt themselves to the disciplines that often constitute disguised barriers to trade. In these cases and if developing countries face a reduction of their market share or are excluded from markets for the reasons outlined above, an equitable compensation will be sought in the operation of dispute settlement mechanisms. (132)</p>	<p>Standards developed in the OIE, IPPC and Codex should be the guidelines for an effective surveillance and dispute settlement procedure in GATT. (153)</p>

TABLE 14
FORM OF THE SPS DISCIPLINE

<p>An agreement on sanitary and phytosanitary issues could be implemented through the 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 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, 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. (134)</p>	<p>Article XX(b) should be amended to provide that nothing in the General Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures necessary to protect human, animal or plant life or health, provided that these measures are consistent with sound scientific evidence and recognize the principle of equivalence. To elaborate on this amendment, GATT instruments should be drafted to provide that the appropriate international standards are considered by a panel in determining whether a measure designed to provide an acceptable level of protection is consistent with sound scientific evidence. In addition, GATT instruments should be drafted to provide that a notification, consultation and dispute settlement system is available. Conforming amendments to the GATT instruments should be fully in effect in 1991. (118)</p>
<p>Article XX(b) should be strengthened through the adoption of interpretations so that in taking SPS measures parties: assess the appropriate level of SPS protection which allows the maximum trade opportunities; do not maintain SPS measures against sound scientific evidence; recognize the concept of regionalizing protection measures or guarantees; and use suitable principles of equivalency. In addition, a framework of rules should be drafted to provide for strengthened GATT disciplines in relation to sanitary and phytosanitary measures, and in particular address the special case of agri-food process and production methods (PPMs). Such a framework would define 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 <u>ad hoc</u> negotiations in order to resolve any practical problems that might arise. (146)</p>	<p>The basic aim 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. (10)</p>

ANNEX 1

The references in the synoptic tables are to the following documents:

- (9) - MTN.GNG/NG5/WGSP/W/9 Negotiating Group on Agriculture:
Working Group on Sanitary and
Phytosanitary Regulations and Barriers
- Harmonization and Transparency -
Note by the Nordic Delegations
- (10) - MTN.GNG/NG5/WGSP/W/10 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
- Note by the Nordic Delegations
- (11) - MTN.GNG/NG5/WGSP/W/11 Negotiating Group on Agriculture:
Working Group on Sanitary and
Phytosanitary Regulations and Barriers
- Dispute Settlement Procedures - Note
by the Nordic Delegations
- (14) - MTN.GNG/NG5/WGSP/W/14 Negotiating Group on Agriculture:
Working Group on Sanitary and
Phytosanitary Regulations and Barriers
- Technical Assistance to Other
Parties, and Special and Differential
Treatment of Developing Countries -
Note by the Nordic Delegations
- (56) - MTN.GNG/NG5/W/56 Communication from the European
Communities - Working Paper - Drafting
of an Appropriate Framework of Rules
for Sanitary and Phytosanitary
Regulations
- (88) - MTN.GNG/NG5/W/88 Negotiating Group on Agriculture -
Nordic Communication on Sanitary and
Phytosanitary Issues
- (112) - MTN.GNG/NG5/W/112 Negotiating Group on Agriculture -
(25-26 September 1989) - Communication
from the Cairns Group on Sanitary and
Phytosanitary Issues
- (118) - MTN.GNG/NG5/W/118 Negotiating Group on Agriculture -
Submission of the United States on
Comprehensive Long-Term Agricultural
Reform

ANNEX 1 (cont'd)

- (121) - MTN.GNG/NG5/W/121 Negotiating Group on Agriculture - Statement by the Kingdom of Morocco
- (130) - MTN.GNG/NG5/W/130 Negotiating Group on Agriculture - Proposal for Negotiations on Agriculture - Submitted by the Republic of Korea
- (131) - MTN.GNG/NG5/W/131 Negotiating Group on Agriculture - Meeting of 27-28 November 1989 - Submission by Japan
- (132) - MTN.GNG/NG5/W/132 Negotiating Group on Agriculture - Meeting of 27-28 November 1989 - Proposal on Special, Differential and More Favourable Treatment for Developing Countries - Communication from Brazil
- (144) - MTN.GNG/NG5/W/144 Negotiating Group on Agriculture - Submission by Austria
- (146) - MTN.GNG/NG5/W/146 Negotiating Group on Agriculture - Submission of the European Communities on Sanitary and Phytosanitary Regulations and Measures
- (153) - MTN.GNG/NG5/W/153 Negotiating Group on Agriculture - Communication from Israel expressing views on certain elements in the negotiations on agriculture
- (156) - MTN.GNG/NG5/W/156 Negotiating Group on Agriculture - Supplementary Submission of Japan on Sanitary and Phytosanitary Regulations and Measures
- (164) - MTN.GNG/NG5/W/164 Negotiating Group on Agriculture - Sanitary and Phytosanitary Issues - Supplementary Communication from the Cairns Group
- (US) - Informal Discussion Paper on Risk Assessment Submitted by the United States to the Working Group on 2 April 1990.