

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG5/WGSP/W/18

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Group of Negotiations on Goods (GATT)

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

SUMMARY OF THE MAIN POINTS RAISED AT THE SIXTH MEETING
OF THE WORKING GROUP ON SANITARY AND PHYTOSANITARY
REGULATIONS AND BARRIERS

(2-3 April 1990)

Note by the Secretariat

1. The Working Group met to discuss the proposals and papers submitted by various participants and other issues on its agenda (contained in GATT/AIR/2948).

2. Representatives of the Cairns Group presented their proposal (MTN.GNG/NG5/W/164) for the establishment of a multilateral framework to guide bilateral sanitary and phytosanitary (SPS) arrangements based on the principles agreed at the April Mid-Term meeting. Risk assessment was a key component of the technique to be used, to ensure that the least trade-restrictive measures possible were taken. The Cairns representatives also indicated that while they remained open on the question of the form of any future agreement, the key concern was that all contracting parties should participate.

3. In making preliminary comments on the Cairns proposal, many participants expressed their appreciation for the preparation of a comprehensive and detailed proposal. One participant indicated his concern that the Cairns approach aimed to strengthen bilateral arrangements, rather than establish a multilateral system. He was also concerned that if measures taken for reasons such as consumer preference were excluded from the scope of the new disciplines, these could become the basis for future trade barriers. Disagreement was also expressed with regard to who would bear the burden of proof; some participants believed that it should rest with the exporter, and that importing countries should not have to prove possible risks in new cases where scientific evidence was lacking. Others stated that the importer should have to show its implementation of agreed international procedures and principles, but would have the right to set its own acceptable levels of risk. One participant stated that further examination was needed of the implications on trade of accepting the principle of pest- or disease-free areas. Other points were made regarding the need for a mechanism to review all existing SPS measures and for

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notification of not only new measures but also any changes in existing ones. The observation was made that if developing countries were allowed longer time-frames to comply with new SPS requirements, the situation could arise that consumers would consider developing country products to be less safe and would not accept them. In addition, provisions for compensation in case of panel findings of unjustified SPS measures affecting developing countries would provide for distinct treatment of SPS cases and risk making adoption of such panel reports unlikely. The need for provisions for dispute settlement procedures that could be used in the case of perishable products was also mentioned.

4. In responding to some of the comments made, a representative of the Cairns Group stressed their commitment to the negotiation of multilateral disciplines, taking into account the actual largely bilateral nature of actions on animal and plant diseases. With regard to the scope of the proposed agreement, he observed that other concerns such as moral or ethical ones should appropriately be addressed elsewhere. The Cairns proposal, however, did not restrict SPS measures to commercial products only as one of their legitimate purposes was to protect the natural fauna and flora, but not for the conservation of natural resources. Although the burden of proof was a difficult topic, ultimately the responsibility of justifying application or compliance with certain regulations rested with both parties. Thus, although it would be expected that the exporter would provide evidence on the risk of a disease from his product, such data could not be rejected by the importer without reason. Importing countries should have the obligation to determine acceptable levels of risk in a non-discriminating way with regard to different suppliers or different products and their decisions should be subject to challenge under the dispute settlement procedures. Another phrase which tended to lead to misunderstanding was "acceptable level of risk". Perhaps use of another term, such as "level of negligible risk" or "acceptable level of protection", would be preferable. The use of this approach did not imply a relaxation of SPS measures, as safety concerns always had primacy. But an importing country could, for example, examine what others had done in similar risk situations and whether there was any justification for the imposition of more stringent measures. The representative also observed that the concept of areas of limited pest or disease prevalence was a logical extension of pest-free areas in terms of risk assessment.

5. With respect to the provision of longer time-frames for developing countries' compliance with SPS measures, the delegate observed that it was common practice for countries to adjust the timetable for implementation of new measures in order to reduce any negative economic effects on their domestic producers; the Cairns suggestion was that this could also be done to reduce the negative effects for developing countries. But the scope for longer time-frames should not be over-emphasized and a case-by-case approach was required. And although dispute settlement procedures should be sensitive to the effects on perishable products of the time involved, he did not see how a mechanism could be developed which would be fast enough to fully address this problem.

6. A representative for the Nordic countries presented their proposal for technical assistance and special and differential treatment of developing countries (NG5/WGSP/W/14). He noted that the general provisions of an SPS discipline would benefit the developing countries, and that special provisions should be real and realistic. A number of participants welcomed the Nordic proposal, and some noted that developing countries could not always meet all of the requirements of providing scientific justification for measures. Some also agreed that it was not always appropriate for developing countries to use international standards. Although some participants indicated that the Cairns and Nordic approaches were not dissimilar in this area, one noted that although the Nordic proposal appeared more detailed, the Cairns approach operationally provided for more. Some concerns were also raised at the implication of a double standard with lower SPS requirements applied to developing countries.

7. In responding to some of the comments, the representative of the Nordic countries clarified that developing countries should not be required to use international standards for their domestic purpose, but their exports would be expected to fully meet the standards established by the importing country. The Nordic proposal also allowed for temporary exemptions to be granted from such obligations as the establishment of inquiry points, or with respect to prior notification. He further observed that technical assistance was relevant between all parties as some developed countries might also need some technical assistance in meeting certain requirements.

8. No participant objected to the proposal by the United States to request the International Office of Epizootics (OIE) to provide guidelines with regard to measures for protection from foot and mouth disease (NG5/WGSP/W/12). One, however, stated that such a decision should appropriately be taken only by the Negotiating Group on Agriculture, and not the Working Group. The representative of the OIE informed the Group of recent improvements in the Zoo-Sanitary Code and of the work programme under consideration for the revision of the provisions on foot and mouth disease (see NG5/WGSP/W/19). He noted that Working Group members should encourage their technical experts to actively participate in the improvement of the Zoo-Sanitary Code, and that it would be helpful if countries would make known to OIE their best experts in the subjects to be dealt with. The Working Group agreed to recommend to the Negotiating Group on Agriculture that the OIE be requested to develop such guidelines.

9. The representative of the International Plant Protection Convention (IPPC) noted the need to ensure that any GATT agreement concerning phytosanitary measures fit into the provisions of the IPPC, and he indicated, in particular, that the IPPC contained provisions for an extensive notification system. He provided information on the relevance of the IPPC to the Working Group (NG5/WGSP/W/15) and on FAO technical assistance in the field of plant protection (NG5/WGSP/W/16). The representative of the Codex Alimentarius Commission indicated that information with respect to technical assistance provided by the Codex would be provided to the Working Group in the near future (document NG5/WGSP/W/20).

10. The Working Group began discussion of some of the major concepts involved, addressing the issue of national treatment. Several participants noted that the difference in sanitary or phytosanitary conditions made strict application of national treatment illogical and potentially trade restrictive. What was needed was assurance that there was a scientific justification for unequal treatment, whether between domestic and imported products, or between imported products from different countries. Further, non-discrimination should be required in the determination and application of risk assessment procedures. One participant noted that national treatment required the same treatment also at sub-national levels. It was also observed that the current GATT provisions for non-discriminatory application of sanitary and phytosanitary measures were contained in an exceptions clause (Article XX(b)), and were thus invoked only if another provision of the General Agreement were violated.

11. The Working Group agreed to continue its discussion of basic concepts at its next meeting, on the basis of an expanded synoptic table which presented the views expressed in the various negotiating proposals on an issue-by-issue basis. The secretariat was requested to identify common language, where such occurred. Future meetings of the Working Group were tentatively scheduled for 10-11 May, 5-6 June and 2-3 July 1990.