

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG5/W/170

11 July 1990

Special Distribution

Group of Negotiations on Goods (GATT)

Negotiating Group on Agriculture

FRAMEWORK AGREEMENT ON AGRICULTURE REFORM PROGRAMME

DRAFT TEXT BY THE CHAIRMAN

Introduction

1. In line with the requirements set out by the Chairman of the TNC at its eleventh meeting (MTN.TNC/14 refers) the following text outlines a framework of modalities for negotiation leading to agreement on the Reform Programme which has been adopted by participants in the Negotiating Group on Agriculture on Its purpose is to establish a basis for initiating the reform process in line with the objectives of the negotiations as set out in the Punta del Este Declaration and the Mid-Term Review Agreement. Participants note that their agreement to this text is conditional both on the satisfactory negotiation of certain issues within it and on the overall balance of agreements in the Round as a whole. The framework covers the following: internal support, border protection, export competition, reduction targets, sanitary/phytosanitary regulations and barriers, rules, surveillance, and provides a basis for taking account in the negotiation of non-trade concerns, special and differential treatment for developing countries, and the situation of net food-importing developing countries.

A. INTERNAL SUPPORT

2. Participants agree that a substantial and progressive reduction of internal support to agriculture shall be implemented so as to minimize trade distortion and increase the market orientation of production, while maintaining the possibility for contracting parties to pursue national policy goals affecting agriculture through policies with minimal trade effects.

3. Accordingly, the Mid-Term Review commitment by developed countries not to exceed current levels of support per commodity (MTN.TNC/11, paragraph 14 refers) shall continue in force for the duration of the implementation period to be agreed for the results of these negotiations. Furthermore, all internal support with the exception of policies which meet certain

GATT SECRETARIAT

UR-90-0397

agreed criteria shall be reduced from 1991-92 over an agreed number of years at a rate to be negotiated in line with paragraph 2 above, using an Aggregate Measure of Support as described below.

4. The progressive and substantial reduction of all internal support to agriculture other than that whose exemption is agreed under paragraphs 9-11 below shall apply at national and sub-national level. This commitment shall encompass market price support, including any measure which acts to maintain producer prices at levels above those prevailing in international trade for the same or comparable products, and taking account of levies or fees paid by producers; direct payments to producers other than those which may be exempted on the basis of the agreed criteria, including deficiency payments and taking account of levies or fees paid by producers; and input and marketing cost reduction measures available only in respect of agricultural production, including credit and other financial input assistance and taking account of input taxes.

5. Participants agree that an Aggregate Measure of Support (AMS) shall be used in the expression and implementation of the commitments to substantial and progressive reduction set out above, with equivalent commitments for products where an AMS cannot be calculated. The AMS will be expressed by total monetary value per commodity using the base year 1988 and a fixed reference price based on 1986-88 data. It will be applied for a negotiated period. The fixed reference price may be subject to periodic reassessment. The policy coverage of the AMS for the purpose of commitments shall include the policy categories noted in paragraph 4 above as well as any other policies not qualifying for exemption on the basis of the agreed criteria (see paragraph 9 below).

6. Participants will submit, no later than 1 October 1990, country lists drawn up according to the following parameters:

- (a) the level of support per commodity which is proposed to be bound as an overall ceiling;
- (b) the policies proposed for exclusion from the commitment to substantial and progressive reduction on grounds of their conformity with the criteria outlined below;
- (c) the products for which an AMS can be calculated;
- (d) for each of the above products, the AMS base level to be subject to reduction.

7. Participants also agree that, where the calculation of an AMS is not practicable, the products concerned shall be subject to equivalent commitments which are to be specified in conjunction with the country lists.

8. The policies which may be excluded from the commitment to progressive and substantial reduction, but which will remain subject to the overall ceiling on support as well as to surveillance and review on a basis to be

agreed, shall include programmes aimed at providing general services of a generally beneficial public nature to agriculture and the rural community; * environmental and conservation programmes; resource diversion and retirement programmes; bona fide disaster relief, crop insurance and domestic food aid; public stockholding for food security purposes; regional development and income safety-net programmes. Such policies must conform to criteria which are to be based on the following elements:

- (a) the assistance must be provided through a taxpayer-funded government programme not involving transfers from consumers;
- (b) it must not be linked to current or future levels of production or factors of production, except to remove factors from production;
- (c) it must not be restricted to to any specific agricultural product or product sector;
- (d) it must not have the effect of providing price support to producers;
- (e) in the case of income safety-net programmes, it must not maintain producer incomes at more than [x] per cent of the most recent three-year average.

The condition in (c) above shall not apply to general services.

9. The formulation as necessary of more specific criteria based on the elements above shall take account of the proposals in the country lists. This process will also allow for the possibility of negotiating additional requirements where justified. The criteria thus agreed will continue in force as part of the result of the negotiation.

10. In conjunction with the arrangements for monitoring and surveillance, a basis will be agreed for review of the initial assignment of a specific policy or policies to the category exempt from substantial and progressive reduction. Where in the course of such review a policy cannot be shown to have satisfied the agreed criteria for inclusion in this category, it shall be placed under the commitment to substantial and progressive reduction. The treatment of any new policies, including the modification of current policies, shall be decided on a similar basis following their prior notification. The review process will also provide the means of taking account of excessive rates of inflation in relation to the implementation of commitments.

* Including: research, advisory and training programmes; inspection; pest and disease control; marketing and promotion.

11. Flexibility concerning the nature and extent of commitments and the timing of their implementation may be accorded to developing countries, on a basis to be agreed, in keeping with the recognition in the Mid-Term Review Agreement that assistance to agriculture to encourage agricultural and rural development is an integral part of the development programmes of these countries. In particular, developing countries' assistance to agriculture in pursuit of development objectives shall be exempt from the reduction commitments set out above, provided that (i) it has no, or a minimal, effect on trade and that (ii) it does not act to maintain domestic prices higher than free-at-frontier prices for like products.

B. BORDER PROTECTION

12. Participants agree that, in order to foster the market orientation of domestic policies which should result from commitments on internal support, market access opportunities will be improved in line with substantial and progressive reductions of support and protection. Accordingly, participants agree to negotiate commitments on all border measures on the basis of country lists covering all products subject to these measures. Relevant non-trade concerns shall be accommodated to the maximum possible extent within this approach. These country lists shall be tabled by 1 October 1990 and built on the following parameters:

- (a) conversion of all border measures other than normal custom duties into tariff equivalents, irrespective of the level of existing tariffs; the modalities of such a conversion should be based on the existing gap between external and internal prices as close as possible to actual prices and following the guidelines contained in Annex I;
- (b) binding of these tariff equivalents;
- (c) maintenance of current access opportunities on terms at least equivalent to those existing through, inter alia, tariff quotas;
- (d) in the case of absence of significant imports, establishment of a minimum level of access from 1991-92, also on the basis of tariff quotas at low or zero rate and representing at least [x] per cent of current domestic consumption of the product concerned;
- (e) for products subject to normal custom duties only, current access opportunities shall be maintained on terms at least equivalent to those existing; in particular, all existing tariff rates shall be bound.

13. Participants also agree that the tabling of these country lists shall be without prejudice to the possibility of negotiating specific solutions in case of particular situations which may exist for some products.

14. All tariffs and tariff equivalents as agreed on the basis of the country lists shall be substantially and progressively reduced from 1991-92 at an average rate and over a number of years to be negotiated in line with

paragraph 2 above. Tariff quotas as agreed on the basis of the country lists shall be expanded at an average rate and over a number of years to be negotiated as above. This would allow for the possibility of negotiating specific rates of reduction of tariff equivalents and/or specific rates of expansion of tariff quotas in case of particular situations which may exist for some products. All access opportunities over and above existing levels shall be on an m.f.n. basis.

15. Participants further agree that in implementing the commitments on market access, the particular needs and conditions of developing countries shall be fully taken into account by providing, inter alia, for a faster rate of reduction of tariffs and tariff equivalents and/or a faster rate or expansion of tariff quotas for products of particular interest to these countries. Developing countries shall also be allowed, where necessary, to give effect to the implementation of their commitments in a way commensurate with their development needs.

16. With respect to the implementation of the above commitments, participants agree that special safeguard provisions will be negotiated which should enable recourse to tariff increases, subject to notification requirements but without compensation, and which will become operative in case of import surges or world price movements, expressed in terms of domestic currencies, which exceed limits to be agreed. Such tariff increases would only remain in force as long as the conditions for their implementation continue to exist. Tariffs will then return to levels consistent with the commitments undertaken.

C. EXPORT COMPETITION

17. Participants agree that, in line with the objective of establishing a fair and market-oriented agricultural trading system, direct budgetary assistance to exports, other payments on products exported and other forms of export assistance are to be substantially and progressively reduced and that the use of permitted export assistance will be subject to strengthened and more operationally effective GATT rules and disciplines.

18. Participants agree that the commitments to reduce export assistance shall result in such assistance being reduced effectively more than other forms of support and protection and that these commitments may take the form of commitments to progressively reduce aggregate budgetary outlays on export assistance, per unit export assistance, the total quantity of a product in respect of which export assistance may be provided, or some combination of such commitments.

19. The annual average for the three most recent financial or marketing years in respect of budgetary outlays, per unit export assistance and quantities of subsidized exports shall constitute the base for negotiating an agreed percentage reduction in export assistance over an implementation period of [y] years.

20. Accordingly by 1 October 1990 participants shall table country lists for each of the three most recent financial or marketing years providing data on financial outlays or revenue foregone at the national and sub-national level in respect of:

- (a) direct financial assistance to exporters to compensate for the difference between the internal market price in the exporting country and world market prices;
- (b) payments to producers of a product which result in the price or return to the producers of that product when exported being higher than world market prices or returns;
- (c) costs related to the sale for export of publicly owned or financed stocks;
- (d) assistance to reduce the cost of transporting or marketing exports;
- (e) export credits provided by governments or their agencies on less than fully commercial terms;
- (f) the provision of financial assistance in any form by governments and their agencies to export income or price stabilization schemes operated by producers, marketing boards or other entities which play de facto a dominant role in the marketing and export of an agricultural product;
- (g) export performance-related taxation concessions or incentives;
- (h) subsidies on agricultural commodities incorporated in processed product exports.

21. Corresponding data for the base period shall also be tabled on the quantities of subsidized exports and on related per unit export subsidies.

22. Concurrently negotiations shall proceed on disciplines to govern the use of export assistance including, inter alia: (i) conditions designed to eliminate targeted export subsidy practices; (ii) conditions governing government participation in the operation of producer-financed export subsidy schemes; (iii) disciplines relating to subsidies on agricultural commodities incorporated in exported products; (iv) disciplines on export credits; and (v) disciplines on food aid and concessional sales.

23. The disciplines to be negotiated on food aid and concessional sales shall ensure that supplies of basic foodstuffs are available to least developed and net food-importing developing countries on appropriate terms and conditions.

D. REDUCTION TARGETS

24. Participants will negotiate the amount and duration of the substantial and progressive reductions in support and protection as soon as the country lists are tabled as agreed above.

E. SANITARY AND PHYTOSANITARY REGULATIONS AND BARRIERS

25. Participants agree to conduct negotiations on sanitary and phytosanitary regulations and barriers on the basis of the text contained in Annex II.

F. RULES AND DISCIPLINES

26. Participants agree that concurrently with the negotiation of the commitments outlined above, they will undertake negotiations aimed at strengthening GATT rules and disciplines and making them more operationally effective in line with the long-term objective of the agricultural negotiations as agreed in the Mid-Term Review (MTN.TNC/11, paragraph 5 refers).

G. SURVEILLANCE

27. Arrangements for the surveillance of the implementation of the commitments negotiated on the basis of this framework shall be agreed by the end of the negotiation. Similar arrangements will also be agreed to provide as necessary for review of certain aspects of commitments as indicated in the preceding chapters.

ANNEX I

Guidelines for tariffication

The calculation involved in the conversion of border measures other than normal customs duties into tariff equivalents must be carried out in a transparent manner using data, data sources and definitions that are made available to all contracting parties. Following the estimation of initial tariff equivalents, their rates will be subject to scrutiny and negotiation by interested contracting parties.

The calculation of the initial tariff equivalents will use the following guidelines:

- (a) data used will be for the most recent period available;
- (b) calculations will be carried out for all principal products traded. This implies that:
 - (i) for major commodities, calculation would generally be made at the four-digit level of the HS;
 - (ii) for other products, including for individual fruits and vegetables, calculation would be made up to the six-digit level of the HS;
- (c) in all cases initial tariff equivalents for products derived from principal products would be calculated by multiplying the initial tariff equivalents for the principal product(s) by the proportion of principal product(s) in the derived product;
- (d) the initial tariff equivalent calculation for the principal product should be adjusted as necessary to take account of differences in quality or variety using an appropriate coefficient;
- (e) external prices would be, in general, actual c.i.f. unit values for the importing country;
- (f) where c.i.f. unit values are neither available nor appropriate, external prices would be either: (i) appropriate c.i.f. values of a near country; or (ii) estimated from f.o.b. values of an appropriate major exporter adjusted by adding an estimate of c.i.f. costs;
- (g) in all cases external prices would be converted to domestic currencies using the annual average market exchange rate for the same periods as the price data;
- (h) the internal price would be the average price ruling in the domestic market;
- (i) initial tariff equivalents would be expressed as ad valorem or specific rates.

ANNEX II

DRAFT TEXT FOR THE FRAMEWORK OF AN AGREEMENT
ON SANITARY AND PHYTOSANITARY MEASURES

The following draft framework of an agreement on sanitary and phytosanitary measures reflects discussions of the Working Group on Sanitary and Phytosanitary Regulations and Barriers. Although an attempt has been made to be as precise as possible with respect to possible disciplines, this draft is meant only to serve as the basis for further work and is without prejudice to the final decisions taken by any contracting party with respect to such an agreement.

To give order to the substance, this draft has been prepared basically in the form of a Decision by the CONTRACTING PARTIES, but is without prejudice to the final form the agreement may take. Some of the provisions of this draft may need modification in light of the form given to the final agreement.

Terms for which definitions are given in Annex A have been underlined when they first appear in the substantive text.

* * * * *

The CONTRACTING PARTIES,

Recognizing that no contracting party should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade;

Recognizing that sanitary and phytosanitary measures are often applied on the basis of bilateral agreements or protocols;

Desiring the establishment of a system of multilateral rules and disciplines to guide the application of sanitary and phytosanitary measures;

Recognizing the important contribution that internationally recognized standards, guidelines and recommendations can make in this regard;

Desiring therefore to encourage the development and use of such international standards and recommendations;

Recognizing that developing countries may encounter special difficulties in the formulation and application of sanitary and phytosanitary measures, and desiring to assist them in their endeavours in this regard;

Desiring therefore to elaborate rules for the application of the provisions of [the General Agreement,] [Article XX(b),] upon sanitary and phytosanitary measures in order to provide greater uniformity and certainty in their implementation;

Agree as follows:

Objectives

1. To establish a multilateral framework of rules and disciplines to guide the development and application of sanitary and phytosanitary measures in order to minimize their negative effects on trade.
2. To clarify, interpret and reinforce the relevant provisions of the General Agreement governing the use of sanitary and phytosanitary measures, in particular, the relevant provisions of Article XX[b].
3. To further the long-term harmonization of sanitary and phytosanitary measures between contracting parties whenever possible, on the basis of international standards, guidelines and recommendations established by the relevant international organizations including the Codex Alimentarius Commission, the International Office of Epizootics, and the administrative body of the International Plant Protection Convention.

Scope

4. This agreement covers all sanitary and phytosanitary measures.
5. For the purposes of this agreement, the definitions provided in Annex A shall apply.
6. The annexes to this agreement are an integral part of this agreement.

Basic Rights and Obligations

7. Contracting parties shall have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, [including, when appropriate, measures more stringent than required by international standards, guidelines or recommendations,] provided that such measures are not inconsistent with the provisions of this agreement.
8. Contracting parties shall ensure that sanitary and phytosanitary measures are applied only to the extent necessary to protect human, animal or plant life or health and are consistent with available scientific evidence. Sanitary and phytosanitary measures shall not be applied in a manner which creates arbitrary, disguised or unjustified obstacles to international trade.

Harmonization

9. To harmonize sanitary and phytosanitary measures between contracting parties on as wide a basis as possible, contracting parties should, whenever appropriate, base their sanitary and phytosanitary measures on international standards, guidelines or recommendations.

10. Sanitary and phytosanitary measures which are in accordance with international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health and consistent with the obligations of this agreement [and of Article XX(b)].

11. Contracting parties should play a full part within the limits of their resources in the relevant international and regional organizations, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the administrative body for the International Plant Protection Convention, to:

- (a) promote within these organizations the development of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures, including the development and publication of, inter alia: methodologies and criteria for risk assessment; criteria for the establishment and recognition of pest- or disease-free areas and of areas of limited pest or disease prevalence; up-to-date lists of regions which parties have notified and/or recognized as being free of specific diseases or pests; guidelines for the determination of equivalency of different measures;
- (b) to respond to requests for identification of competent independent experts who might be available to advise and assist contracting parties on sanitary and phytosanitary matters of concern. The expenses incurred for the above-mentioned experts will normally be borne by the part(y)(ies) requesting the assistance.

12. Harmonization shall cover, as appropriate, all aspects of sanitary and phytosanitary measures.

[**Note:** It has further been suggested that specific procedures should be developed, as contained in Annex D, to monitor the process of international harmonization and co-ordinate efforts in this regard with the relevant international organizations.]

Establishment of sanitary and phytosanitary measures

13. Contracting parties shall ensure that their sanitary and phytosanitary measures are based on adequate risk assessment procedures, taking into account, whenever appropriate, the risk assessment procedures developed by the relevant international organizations.

14. Risk assessment procedures shall take into account available scientific evidence, relevant production processes and methods, inspection and control systems, disease- and pest-free areas, areas of limited pest or disease prevalence, quarantine treatment as well as the potential biological consequences of damage for the importing country or the risk to human health of contaminants in food, and the relevant economic considerations.

15. [Contracting parties shall base their sanitary and phytosanitary measures primarily on information or data collected in a legitimate scientific manner, and shall take into consideration all relevant scientific information and data which is made available to the contracting party or which is generally available. Contracting parties shall analyse the data upon which their measures are based in a legitimate scientific and non-discriminatory manner. Where a contracting party identifies data requirements necessary to establish a sanitary or phytosanitary measure, such requirements shall be applied in a non-discriminatory manner.]

16. Relevant economic considerations 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.

17. When preparing sanitary and phytosanitary measures to achieve the acceptable level of sanitary or phytosanitary protection, contracting parties shall ensure that such measures are not unnecessarily restrictive to trade, taking into account technical and economic feasibility. [Contracting parties shall not maintain measures that are more stringent than necessary to meet the objectives of those measures. Such measures shall be applied narrowly to encompass only those classes of products or events that are the objects of legitimate concern. A contracting party shall not maintain a measure when the circumstances giving rise to that measure no longer exist or when a change in circumstances allows them to be addressed in a manner less restrictive to trade.]

18. [Contracting parties shall, as far as possible, ensure that their sanitary or phytosanitary measures reflect an acceptable level of sanitary or phytosanitary protection which is consistent with respect to other internal measures taken to protect human, animal or plant life or health.]

[**Note:** It has further been suggested that the right of contracting parties to establish and apply bona fide processes of approval and registration for food additives and pesticide residues should be recognized, provided these processes are consistent with this agreement, non-discriminatory, transparent, have a scientific basis and result in a timely and expeditious determination of approval.]

19. When no appropriate international standard, guideline or recommendation exists, a contracting party shall, in the preparation of a sanitary or phytosanitary measure, take into consideration its obligations under this agreement, and the available scientific evidence [, as well as, when relevant, sanitary and phytosanitary measures applied by other contracting parties in similar conditions].

20. In cases where relevant and verifiable scientific evidence is insufficient, an importing contracting party may temporarily adopt sanitary and phytosanitary measures, on the basis of all available pertinent information, including that from the relevant international organizations, taking into consideration its obligations under this agreement. Contracting parties shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

Documentation of Validity of Measures

21. When an exporting contracting party has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by an importing contracting party is not in accordance with the relevant international standards, guidelines or recommendations, or when such standards or guidelines do not exist, the exporting contracting party may request, and the importing contracting party shall provide, an explanation of the reasons for such sanitary or phytosanitary measure.

22. If an importing contracting party maintains a sanitary or phytosanitary measure which is more stringent than one based on international standards, guidelines or recommendations, and an exporting contracting party considers, in the light of the explanation provided, that such sanitary or phytosanitary measure is not consistent with this agreement and causes prejudice to its trade interests, the exporting contracting party may present a detailed request, and the importing contracting party shall provide, the necessary documentation of the validity of its measure on the basis of the available scientific evidence, the results of its risk assessment, and other relevant factors.

23. When no appropriate international standard, guideline or recommendation exists, and an exporting contracting party has substantial reason to believe, in the light of the explanation provided, that a sanitary or phytosanitary measure maintained by an importing contracting party is not consistent with this agreement and causes prejudice to its trade interests, the exporting contracting party may present a substantiated request, and the importing country shall provide, the necessary documentation of the validity of its measure on the basis of available scientific evidence, the results of its risk assessment, and other relevant factors.

24. [The provisions of paragraphs 21 through 23 above are without prejudice to the rights and obligations of contracting parties in the settlement of disputes.]

Adaptation to Regional Conditions, including the Level of Pest or Disease Prevalence

25. Contracting parties shall ensure that their sanitary and phytosanitary measures are, whenever appropriate, adapted to the sanitary and phytosanitary characteristics of the area - whether a country, part of a country, or areas of several countries - from which the product originated and to which the product is destined. In assessing the sanitary and phytosanitary characteristics of a region, contracting parties shall take into account, inter alia, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.

26. Contracting parties shall, in particular, recognize the concept of pest- or disease-free areas. Determination of pest/disease-free areas 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.

27. Exporting contracting parties claiming that areas within their territories are free from a specific disease or pest shall, upon request, give the necessary evidence thereof to the importing contracting party, including by giving reasonable access to the importing contracting party to inspect, test or otherwise satisfy itself that such areas are, and are likely to remain, free of that specific disease or pest.

28. The considerations of paragraphs 25 to 27 should apply also to areas of limited pest or disease prevalence under guarantee of sanitary or phytosanitary control.

National Treatment and Non-Discrimination

29. [Contracting parties shall ensure that their sanitary and phytosanitary measures do not result in unjustifiably stricter treatment of imported products from any contracting party than of like domestic products or like imported products from any other contracting party].

or

[Contracting parties shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between contracting parties where the same conditions prevail, including between the importing contracting party and other contracting parties. (Note: in this context, the same conditions does not mean identical conditions but those that are relatively similar.)]

Equivalence

30. Recognizing that the immediate harmonization of sanitary and phytosanitary measures is not possible or appropriate in all cases, contracting parties accept that different sanitary or phytosanitary measures applied to the same sanitary or phytosanitary situation can provide an acceptable level of sanitary or phytosanitary protection.

31. Importing contracting parties shall accept as equivalent those measures applied by an exporting contracting party which may differ from their own or from those used by other contracting parties trading in the same commodity, but which meet the level of sanitary and phytosanitary protection acceptable to the importing party. The exporting contracting party has the obligation of demonstrating, to the satisfaction of the importing contracting party, that the measures which it uses are equivalent.

32. Contracting parties shall, whenever appropriate, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary and phytosanitary measures.

Control, Inspection and Approval Procedures

33. In order to ensure that the administration of sanitary and phytosanitary measures does not present unjustifiable obstacles to trade, contracting parties shall ensure the operation of control, inspection and approval procedures as provided for in Annex B.

Transparency

34. With a view to maintaining a high degree of transparency with respect to all sanitary and phytosanitary measures affecting access to their territories, contracting parties shall ensure their compliance with the provisions of Annex C.

Technical Assistance

35. Contracting parties agree to facilitate the provision of technical assistance to other contracting parties, especially developing contracting parties, either bilaterally or through the appropriate international organizations. Such assistance may be, inter alia, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary and phytosanitary measures necessary to achieve the acceptable level of sanitary or phytosanitary protection in their domestic and export markets.

Special and Differential Treatment

36. In the preparation and application of sanitary and phytosanitary measures, contracting parties shall take account of the special needs of developing contracting parties, and in particular of the least-developed ones. [Where the acceptable level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary and phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing contracting parties so as to maintain access opportunities for their exports.]

37. Developing contracting parties shall benefit from a longer period of time than that provided in paragraph 45 in which to bring their sanitary and phytosanitary measures into conformity with the obligations of this agreement commensurate with their special development needs and problems.

38. [Where substantial investments are required in order for an exporting developing contracting party to fulfil the sanitary and phytosanitary requirements of an importing contracting party, importing contracting parties should consider according, on an MFN basis, additional market access opportunities for the product involved.]

39. Contracting parties should encourage and facilitate the active participation of developing countries in the relevant international expert organizations.

Consultations and Dispute Settlement

40. As provided in the dispute settlement procedures available in the GATT, contracting parties 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 contracting parties involved agree, they may seek technical advice from renowned experts, make use of the good offices of the relevant international organizations, or of the dispute settlement procedures, if any, of these organizations, or seek arbitration.

[Note: The provisions for dispute settlement which it may be necessary or appropriate to include in this agreement are highly dependent on the final form of the agreement and on the outcome of negotiations on dispute settlement taking place elsewhere in the GATT. However, a number of concerns particular to the resolution of disputes on sanitary and phytosanitary measures are under consideration by the Working Group. These include:

A. The need to ensure provision of appropriate technical and expert advice to panels examining a dispute on sanitary and phytosanitary measures.

- (1) In this regard, it has been suggested that any party to a sanitary or phytosanitary dispute should have the right to request and have established a technical experts group (TEG) composed of three, mutually agreeable persons to advise the panel.

The TEG shall address only issues relating to whether the sanitary or phytosanitary measure rests on a sound scientific basis, is based on internally consistent decisions with regard to the acceptable level of health assurance, is not unnecessarily restrictive, or could not have been established in a way which would have had a less discriminatory effect and still have achieved

its goal. The TEG shall not provide interpretations of the provisions of the agreement, and shall confine its deliberations to questions of fact. The TEG shall submit to the panel a written report setting forth its conclusions and the basis for those conclusions. The conclusions of the TEG shall have an advisory status only and shall not be binding upon the panel.

- B. In cases of dispute settlement, the damage in terms of loss of production or sales in an exporting country because of the adoption of sanitary and phytosanitary measures more stringent than necessary according to verifiable scientific evidence, or relevant economic considerations, or an appropriate level of sanitary or phytosanitary protection, should also be taken into account.
- C. When sanitary or phytosanitary measures which have been found to be inconsistent with the provisions of this agreement are applied on a product or products originating in a developing country, compensation equivalent to the prejudice or reduction or loss of market access should be extended to the country affected.
- D. Where a sanitary or phytosanitary measure by its terms or effects is found to be inconsistent with the obligations of Article III:4 of the General Agreement - in particular a measure which has the effect of excluding from the domestic market of an importing party a proportion of imports of a product greater than the proportion of like domestic product excluded by the measure - the general exception of Article XX(b) will apply only where the sanitary or phytosanitary measure in question could not have been established in a way which had a less discriminatory effect and still have achieved its purpose, and is consistent with the obligations of this agreement.

Where a sanitary or phytosanitary measure is inconsistent with the terms of Article XI:1 of the General Agreement - in particular a measure which has the effect of prohibiting or restricting imports of a product for which there is no commercially significant domestic production - the general exception of Article XX(b) will apply only where the measure in question could not have been established in a way which had a less restrictive effect and still have achieved its purpose, and is consistent with the obligations of this agreement.

A contracting party could resort to the dispute settlement procedures of the General Agreement if it considers that any benefit accruing to it directly or indirectly under the General Agreement is being nullified or impaired by the application of a sanitary or phytosanitary measure, whether

or not such application conflicts with the provisions of the General Agreement. In cases where the benefit alleged to be nullified or impaired is a tariff concession, nullification or impairment will be deemed to have occurred where the measure applied is inconsistent with the provisions of this agreement.]

41. In cases where developing contracting parties are involved in dispute settlement on sanitary and phytosanitary issues, the GATT secretariat shall facilitate the provision of technical advice and information to them.

Administration

42. A permanent group or committee on sanitary and phytosanitary regulations and barriers should be established to provide a regular forum for consultations on the operation of this agreement and the furtherance of its objectives (in particular with respect to harmonization). The Committee could also decide upon and enter into ad hoc consultations or negotiations on specific sanitary and phytosanitary issues of interest to its members.

43. The Committee would maintain close contact with the relevant international or regional organizations in the field of sanitary and phytosanitary protection, especially with the Codex Alimentarius Commission, the International Office of Epizootics and the administrative body for the International Plant Protection Convention, with the object of securing the best available scientific and technical advice for the administration of this agreement and in order to ensure that unnecessary duplication of effort is avoided.

Implementation

44. Contracting parties should ensure, to the extent within their legal powers, that governmental bodies at all levels, including supra-national governing bodies, national and sub-national governments, comply with the relevant provisions of this agreement. Contracting parties should also take such reasonable measures as may be available to them to ensure that non-governmental bodies within their territories, as well as regional bodies in which relevant bodies within their territories are members, comply with the relevant provisions of this agreement. In addition, contracting parties should not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental bodies to act in a manner inconsistent with the provisions of this agreement.

45. This agreement shall apply to all sanitary and phytosanitary measures which come into effect as of _____. Furthermore, contracting parties shall ensure that their sanitary and phytosanitary measures are made consistent with the provisions of this agreement within [two] years following the entry into force of this agreement.

ANNEX A

Definitions

For the purposes of this agreement, the following definitions shall apply:

1. Sanitary or phytosanitary measure - Any measure designed and applied to protect human, animal or plant life or health from risks arising from or created for agricultural, fishery or forestry products.

or

Sanitary or phytosanitary measure - Any measure intended to control or prevent the movement across national boundaries of pests, diseases, disease-causing organisms and disease-carrying organisms which can adversely affect human, animal or plant life or health or otherwise cause damage, together with measures intended to control or prevent the use of additives and the presence of contaminants in foods and beverages in order to protect human health.

Note 1 Sanitary and phytosanitary measures shall cover all laws, decrees, regulations, requirements and procedures related to human, animal or plant life or health including, inter alia, end product criteria; processing and production methods; testing, inspection, certification and approval procedures; quarantine treatments; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; packaging and labelling requirements directly related to food safety; [measures for the protection of animal welfare and of the environment, as well as consumer interests and concerns]. Measures relating, inter alia, to quality assurance, composition and grading, [consumer preferences, consumer information, animal welfare] and ethical and moral considerations are not considered to be sanitary or phytosanitary measures for the purposes of this agreement.

Note 2 Sanitary and phytosanitary measures may be applied by an importing contracting party to protect human, animal or plant life or health within its territory, or by an exporting contracting party for similar purpose within its territory or during transport to another contracting party of a commodity in trade.

Note 3 Sanitary and phytosanitary measures may intentionally or incidentally protect the natural and the built environment by controlling or preventing the movement across national boundaries of pests, diseases and organisms which may cause or carry disease.

2. Sanitary and phytosanitary regulation - Sanitary and phytosanitary measure such as law, decree and ordinance applicable generally.

Note - The definition thus excludes individual permits and approvals based on regulations.

3. Control, inspection and approval procedure - Any procedure to check and ensure the fulfilment of sanitary or phytosanitary requirements or measures.

Note - Control and inspection procedures include inter alia procedures for sampling, testing, inspection, certification and approval.

4. Harmonization - The establishment, recognition and application of common sanitary and phytosanitary requirements or measures by different contracting parties.

5. International standards, guidelines and recommendations

- 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, appropriate standards, recommendations and guidelines promulgated by other relevant international organizations [open to full participation by all contracting parties] [and regional organizations].

6. Risk assessment - The evaluation of the likelihood of entry, establishment and spread of pests, diseases or organisms within the territory of a contracting party and the relevant potential biological and economic consequences, or the evaluation of the potential adverse effects on human health of additives or contaminants in food and beverages.

or

Risk assessment - The qualitative and quantitative evaluation of the importance to human, animal or plant life or health of disease-causing organisms, pests, and chemical substances.

7. Acceptable level of sanitary or phytosanitary protection - The level of protection from risks, as identified through appropriate risk assessment procedures, which would allow the maximum trade opportunities while ensuring the legitimate and necessary protection of human, animal or plant life or health.
8. Pest/Disease-Free Areas - Areas, whether within part of a country or in a geographic region which includes all of or parts of several countries, in which a specific pest or disease is known/certified not to exist.
9. Areas of limited pest or disease prevalence - Areas, whether within part of a country or in a geographic region which includes all or parts of several countries, in which a specific pest or disease is known/certified to exist only at very limited levels.
10. Equivalence - The recognition that different sanitary or phytosanitary measures applied to the same sanitary and phytosanitary situation can provide an appropriate level of sanitary and phytosanitary protection.

ANNEX B

Control, Inspection and Approval Procedures

Contracting parties shall ensure, when operating control, inspection and approval procedures that:

- (1) control, inspection and approval procedures are undertaken and completed without undue delay and in no less favourable order for imported products than for like domestic products;
- (2) information requirements are limited to what is necessary for control, inspection and approval;
- (3) the confidentiality of information about imported products arising from or supplied in connection with control, inspection and approval is respected in the same way as for domestic products;
- (4) any deficiencies in the implementation of the procedures are promptly informed to the applicant;
- (5) any requirements for control, inspection and approval of individual specimens of a product are limited to what is reasonable and necessary;
- (6) any fees imposed for control, inspection and approval procedures on imported products are equitable in relation to fees charged on like domestic products or products originating in any other country and should be no higher than the actual cost of the service;
- (7) the siting of facilities used in control and inspection procedures and the selection of samples are such as not to cause unnecessary inconvenience to applicants, importers, exporters or their agents;
- (8) whenever specifications of a product are changed subsequent to its control and inspection in light of the applicable regulations, the control and inspection procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the regulations concerned;
- (9) a procedure exists to review complaints concerning the operation of control, inspection and approval procedures and to take corrective action when a complaint is justified.

Nothing in this agreement shall prevent contracting parties from carrying out reasonable spot checks within their territories.

[Note - Additional provisions may be added with respect to: control at the level of production, as well as at importation and marketing; acceptance of test results and of certification; and with respect to domestic approval procedures.]

ANNEX C

Transparency of Sanitary and Phytosanitary Regulations

1. Publication of regulations

1.1 Contracting parties shall ensure that all sanitary and phytosanitary regulations which have been adopted are published promptly in such a manner as to enable interested contracting parties to become acquainted with them.

1.2 Except in urgent circumstances, contracting 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.

2. Enquiry points

2.1 Each contracting party shall ensure that one enquiry point exists which is responsible for the provision of answers to all reasonable questions from interested contracting parties as well as for the provision of relevant documents regarding:

- (a) any sanitary and phytosanitary regulations adopted or proposed within its territory;
- (b) any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, which are operated within its territory;
- (c) risk assessment procedures, factors taken into consideration, as well as the target level of sanitary and phytosanitary protection;
- (d) the membership and participation of the contracting party, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems, as well as in bilateral and multilateral agreements and arrangements within the scope of this agreement and copies of the texts of such agreements and arrangements.

2.2 Contracting parties shall ensure that where copies of documents are requested by interested contracting parties, they are supplied at the same price (if any) as to the nationals of the contracting party concerned.

3. Notification procedures

[Note - Some of the proposed notification procedures may need revision if a monitoring procedure as described in Annex D is also established.]

3.1 Whenever an internationally recognized standard, recommendation or guideline does not exist or the content of a proposed sanitary or

phytosanitary regulation is not substantially the same as the content of an international standard, recommendation or guideline, and if the regulation may have a significant effect on trade of other contracting parties, contracting parties shall:

- (a) publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested contracting parties to become acquainted with it, that they propose to introduce a particular regulation;
- (b) notify other contracting 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 contracting parties copies of the proposed regulation and, whenever possible, identify the parts which in substance deviate from internationally agreed standards, recommendations or guidelines;
- (d) allow reasonable time for other contracting parties to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.

3.2 However, where urgent problems of safety, health, or environmental protection arise or threaten to arise for a contracting party, that contracting party may omit such of the steps enumerated in paragraph 3.1 of this Annex as it finds necessary provided that the contracting party:

- (a) immediately notify other contracting 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 problem(s);
- (b) provide upon request to other contracting parties copies of the regulation;
- (c) allow other contracting parties to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.

3.3 Notifications to the GATT secretariat shall be either in English, French or Spanish.

3.4 Contracting parties shall, if so requested by other contracting parties, provide copies of the documents or summaries of the documents covered by a specific notification in English, French or Spanish.

3.5 The GATT secretariat shall promptly circulate copies of the notifications to all contracting parties and interested international organizations and draw the attention of developing contracting parties to any notifications relating to products of particular interest to them.

3.6 Contracting parties shall designate one single central government authority as responsible for the implementation on the national level of the provisions concerning notification procedures according to paragraphs 3.1, 3.2, 3.3 and 3.4 of this Annex.

4. General reservations

4.1 Nothing in this agreement shall be construed as requiring:

- (a) the provision of particulars or copies of drafts or the publications of texts other than in the language of the contracting party except as stated in paragraph 3.4 of this Annex; or
- (b) contracting parties to disclose confidential information which would impede enforcement of sanitary and phytosanitary legislation or which would prejudice the legitimate commercial interests of particular enterprises.

[Note - Modification of the procedures for transparency may be necessary in the light of the proposed screening procedure on application of international standards.]

ANNEX D

Monitoring of Harmonization

[1. A list of the appropriate standards, guidelines and recommendations established by the relevant international organizations should be maintained in the GATT with an indication by contracting parties of those standards which they apply as import standards and on the basis of which imported products conforming to these standards or guidelines can enjoy access to their markets.

2. For those international standards, guidelines or recommendations which the contracting party cannot accept as an import standard, the contracting party shall indicate if the reason is (1) because it considers the standard to be more stringent than necessary; (2) because it considers that the standard is not stringent enough to provide the desired level of protection; or (3) because of specific conditions which make the standard inappropriate for its use.

3. The Committee on sanitary and phytosanitary measures shall, on the basis of the listing of standards and notification under paragraph 2 of this Annex, identify those standards on which a large degree of acceptance exists and, as appropriate, seek a consensus of all contracting parties to accept those standards, guidelines or recommendations as GATT-recognized import standards.

4. Following its indication of the acceptance of a standard, guideline or recommendation as an import standard, a contracting party may revise its acceptance. However, in such circumstances the contracting party shall provide a detailed explanation for its change and so inform the GATT as well as the relevant international organizations. The Committee may request the relevant international organizations to promptly investigate the basis of the explanation.

5. The Committee will, furthermore, ensure the co-operation with the relevant international organizations and in particular it shall, on the basis of an initiative from one of the contracting parties, request the relevant international organizations to examine specific questions with respect to a particular standard, guideline or recommendation. Subsequent to completion of such an examination by the relevant international organization, the Committee will determine whether either the original standard, guideline or recommendation, or some modified version if this is necessary, may be accepted under the provisions of paragraph 3 of this Annex.

6. Contracting parties will ensure the availability of any necessary additional resources including for the financing of requested reviews to be carried out by relevant international organizations.

7. A contracting party which has notified its acceptance of a standard, guideline or recommendation shall grant import clearance, with respect to the pertinent sanitary or phytosanitary requirement, for products conforming to such standards.]