PRESHIPMENT INSPECTION

Communication from Zaire

The following communication has been received from the delegation of Zaire with the request that it be circulated to members of the Group.

The Negotiating Group on Non-Tariff Measures has repeatedly discussed preshipment inspection. It is now well understood that approximately twenty-five developing countries have adopted such programmes and that the programmes have proven very useful for numerous purposes: fighting capital flight and customs evasion; reducing fraud, abusive trading practices, and price discrimination; and preventing the importation of sub-standard or dangerous products. Preshipment inspection provides an important support for the economic stabilization and development programmes of the developing countries that use it.

The Republic of Zaire was the first country in the world to adopt preshipment inspection, and after more than twenty years' experience it considers the programme as a direct contribution to its economic development. Zaire also believes that preshipment inspection is fully consistent with its obligations under the General Agreement, and it strongly objects to the view expressed by some exporters that preshipment inspection is a barrier to trade. On the contrary, Zaire believes that its programme is a means of increasing transparency in international trade and ensuring that Zaire continues to be a sound trading partner for the other contracting parties.

Exporters in some nations have raised objections to preshipment inspection programmes. After months of discussions, those objections still have not been convincingly supported by evidence. Nevertheless, Zaire wishes to ensure that preshipment inspection is performed in a way that protects both its own legitimate interests and the interests of exporters by virtue of predictability, fairness, and convenient administration. Thus, Zaire would be prepared to support an understanding that would have the following elements:

- Observance of IFIA standards: The International Federation of Inspection Agencies (IFIA) has adopted a CODE OF PRACTICE FOR GOVERNMENT-MANDATED PRESHIPMENT INSPECTION and PRICE COMPARISON PRINCIPLES. It is proposed that every contracting party that

1 A copy is available in the secretariat: Non-Tariff Measures Division (Tel: 739 50 74)

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maintains or adopts a preshipment inspection programme will require the preshipment inspection company or companies administering the programme to subscribe to and observe the Code and Principles.

- **Appeal in a convenient forum:** A form of independent review which provides a forum for exporters' specific grievances, whilst at the same time not affecting the sovereign rights of contracting parties using preshipment inspection is recognized as desirable. Hence it is proposed that every contracting party that maintains or adopts a preshipment inspection programme will require the preshipment inspection company or companies administering that programme to accept a mechanism that will allow exporters to present disputes to an **INDEPENDENT REVIEW BODY (IRB).** The IRB should be composed of one exporter representative, one IFIA representative, and a neutral third person selected by the other two. The IRB will have the authority to express an opinion, in each case brought before it, as to whether the inspection agency has complied with its obligation under the IFIA Code and Principles, whether the findings of the preshipment inspection company had a sound basis, and whether the exporter's challenge to those findings has merit. The findings of the IRB will not be binding as they cannot interfere with the sovereign rights of the contracting party using preshipment inspection.

- **Recognition of preshipment inspection:** It is proposed that all contracting parties recognize that preshipment inspection programmes are not a non-tariff measure and that they are a legitimate means by which countries may protect their economies against trade malpractice, abuses, and fraud and the waste of foreign-exchange resources. Accordingly, Zaire believes that this issue will be resolved in the event that the contracting parties using preshipment inspection adhere to a declaration requiring observance of IFIA standards and independent review in a convenient forum of the conduct and findings of preshipment companies.

In the view of Zaire, these undertakings should resolve any legitimate disagreements regarding preshipment inspection. On the one hand, recognition by exporting countries that preshipment inspection is not a trade barrier and is a legitimate means of serving the economic and development needs of the countries that use it would forestall the pressures for unilateral regulations which are contrary to the principles and the spirit of GATT and which in Zaire's opinion, would be a serious barrier to trade.

On the other hand, giving formal governmental endorsement to the IFIA Codes and Principles and endorsing appeal procedures in the exporting countries would resolve the most important exporter concerns regarding preshipment inspection:

- **Transparency:** Exporters complain that there is lack of information available on the requirements of PSI programmes and the procedures
that must be followed under such programmes. To our knowledge, every developing country using preshipment inspection has made available to the public the decrees or other circulars establishing its programme. The IFIA Code of Practice requires, in addition, that the preshipment inspection company "provide assistance to exporters by furnishing information and guidelines necessary to enable exporters to comply with the preshipment inspection regulations of the importing country". Furthermore, the IFIA Price Comparison Principles clearly set forth the principles followed by inspection companies in conducting price comparisons.

- **Non-discrimination**: The IFIA Code of Practice requires the preshipment inspection companies to observe in all exporting countries the same procedures for physical inspection of goods and the same principles for the comparison of prices.

- **Confidentiality**: The IFIA Code prohibits preshipment inspection companies from sharing confidential business information with any third party other than the appropriate government authority for which the inspection is being performed, and it also limits the type of information that may properly be requested by preshipment inspection companies. The Price Comparison Principles, in addition, provide that information furnished by sellers to assist preshipment inspection will be considered confidential unless it is already published, readily obtainable by third parties, or otherwise part of the public record.

- **Impartiality**: The IFIA Code broadly requires preshipment inspection companies to avoid conflicts of interest.

- **Appeal**: In general, the appropriate avenue for review of the opinions of preshipment inspection companies is for the exporter to challenge the companies' findings directly in the importing country. The IFIA Code provides an additional procedure for quick informal relief both within the inspection companies and with IFIA. A number of exporters have, however, sought independent review of inspection company opinions. The procedure we propose for review of the findings of preshipment inspection companies would provide a quick, convenient, and independent procedure that should respond to exporter concerns.

The Republic of Zaire wishes to propose here that all contracting parties which have adopted a preshipment inspection programme endorse a declaration incorporating the applicable elements set forth above. We believe that this procedure would enable the Negotiating Group to resolve the preshipment inspection issue on a basis satisfactory to all sides and to concentrate its efforts on more pressing issues, i.e. genuine non-tariff measures.