PRESHIPMENT INSPECTION

Communication from the United States

The following communication, dated 27 December 1989, has been received from the delegation of the United States with the request that it be circulated to the members of the Group.

US URUGUAY ROUND PROPOSAL ON PRESHIPMENT INSPECTION*

(*The legal form of this Agreement will be examined at a later date.)

PREAMBLE

The Contracting Parties (hereinafter referred to as "Parties"),

NOTING that Ministers on 20 September 1986 agreed that the Uruguay Round of Multilateral Trade Negotiations shall aim to bring about further liberalization and expansion of world trade, strengthen the role of GATT and increase the responsiveness of the GATT system to the evolving international economic environment,

RECOGNIZING that governments of developing countries employ the services of preshipment inspection companies in the pursuit of legitimate objectives, and that governments should not interfere with the pursuit of these legitimate objectives,

RECOGNIZING also that certain activities of preshipment inspection companies may have the effect of distorting trade, and that governments employing preshipment inspection companies should ensure that the trade-distorting aspects of their activities are prevented or eliminated,

RECOGNIZING that the principles and obligations of the General Agreement apply to those activities of preshipment inspection companies that are mandated by governments that are Parties to the General Agreement,

DESIRING to provide for the speedy, effective and equitable resolution of disputes arising under this Agreement,

GATT SECRETARIAT
UR-90-0025
DESIRING to enhance the effectiveness of this Agreement through oversight and periodic review of its operation, and of the activities governed by it.

Have agreed as follows:

ARTICLE I

Obligations of Parties Employing Preshipment Inspection Companies

1. Contracting parties that employ or mandate directly or indirectly the employment of preshipment inspection companies (hereinafter referred to as user governments) shall ensure that these companies undertake the following obligations when conducting activities on their behalf.

Non-Discrimination/National Treatment

(a) Preshipment inspection companies shall conduct physical inspection, price verification and other relevant activities in a non-discriminatory manner. The procedures and criteria employed by preshipment inspection companies in conducting these activities shall be objective and shall be applied on an equal basis to exporters of all contracting parties. Preshipment inspection companies shall apply no less favourable technical criteria and procedural requirements when conducting quality inspections of foreign goods than would be applied by the user government to identical or similar domestic goods.

Standards

(b) Preshipment inspection companies should normally perform quantity and quality inspections based on international standards and guides. In exceptional cases where this is not possible, they may use national standards.

Transparency

(c) Preshipment inspection companies shall conduct their physical inspection, price verification and other relevant activities in a transparent manner.

(d) When initially contacting an exporter to arrange for an inspection, preshipment inspection companies shall send to the exporter all of the information, including procedures and criteria employed by preshipment inspection companies for inspection and price verification purposes and the exporter's rights vis-à-vis the preshipment inspection company, necessary for exporters to comply with inspection requirements. Additional procedural requirements or changes in existing procedures shall be sent to those exporters that have engaged in business with the preshipment inspection company during the previous twelve months, at least thirty days before they become operative.
(e) Preshipment inspection companies shall designate information points in each port or city in which they maintain administrative offices where the information described in (d) above shall be made available, and shall designate personnel in each port or city to answer questions from exporters during normal business hours. Additional procedural requirements or changes in existing procedures shall be placed in designated information points at least thirty days before they become operative.

Protection of Confidential Business Information

(f) Preshipment inspection companies shall ensure that confidential business information provided by exporters is adequately safeguarded.

(g) Preshipment inspection companies shall develop and maintain procedures to adequately safeguard confidential business information provided by exporters or otherwise obtained by preshipment inspection companies. Preshipment inspection companies shall make these procedures available through the information points in accordance with the obligations specified in (e) above.

(h) Confidential business information shall include information so designated by the exporter, and shall not include information which is generally available.

(i) Confidential business information shall only be shared by preshipment inspection companies, as necessary, with the relevant government entity mandating the inspection and shall only be used for purposes directly related to the inspection. User governments shall ensure that confidential business information received from preshipment inspection companies, as defined above, is adequately safeguarded. User governments shall require confidential business information from preshipment inspection companies in their employ only to the extent that such information is customarily required for letters of credit or other forms of payment or for customs, import licensing or exchange control purposes.

(j) Preshipment inspection companies shall not request from exporters information regarding:

(i) manufacturing data related to patented, licensed or undisclosed processes, or processes for which a patent is pending;

(ii) technical data other than testing data necessary to demonstrate compliance with technical standards;

(iii) manufacturing costs;

(iv) profit levels; or
(v) the terms of contracts between exporters and their suppliers.

Avoidance of Conflicts of Interest

(k) Preshipment inspection companies shall avoid conflicts of interest. To this end, they shall adopt and maintain procedures to ensure avoidance of conflicts of interest, including disclosure of confidential business information:

(i) among divisions of preshipment inspection companies engaged in activities other than those required to carry out the inspection process;

(ii) between preshipment inspection companies and any related entities of preshipment inspection companies, including entities in which preshipment inspection companies have a financial interest or entities which have a financial interest in preshipment inspection companies; or

(iii) between preshipment inspection companies and any other companies or entities, with the exception of those government entities identified in Article I:(i) above.

Avoidance of Delays

(l) Preshipment inspection companies shall avoid unreasonable delays in inspection of shipments. In this regard, once a preshipment inspection company and an exporter agree on an inspection date, the preshipment inspection company shall conduct the inspection on that date unless it is rescheduled on a mutually-agreed basis between the exporter and the preshipment inspection company.

(m) In order to avoid delays in shipment, a preshipment inspection company shall, whenever so requested by the exporter, undertake a preliminary price verification of an agreed contract between an exporter and an importer prior to the date of inspection. Once this preliminary verification has been made, it shall not be withdrawn, providing the goods conform to the import documentation and/or import licence. In instances where a preliminary price verification has taken place, the preshipment inspection company shall, within three working days of the date of inspection, (1) issue a conditional Clean Report of Findings; or (2) provide a detailed written explanation specifying the reasons for non-issuance and, if requested, arrange to reinspect the shipment at the earliest possible mutually-convenient time so as not to unreasonably delay the shipment. Once a conditional Clean Report of Findings is granted, it shall not be withdrawn provided that the actual goods inspected conform with respect to quantity and quality to the final on-board bill of lading and other import documentation.
(n) In cases where a preliminary price verification is not requested, the preshipment inspection company shall conduct the inspection and price verification in accordance with the obligations of this Agreement. In all cases, the preshipment inspection company shall, within three working days of issuance of the final on-board bill of lading, (1) issue a final Clean Report of Findings; or (2) provide a detailed written explanation specifying the reasons for non-issuance and arrange for a reinspection at the earliest possible mutually-convenient date.

(o) In order to avoid delays in payment, the preshipment inspection company shall send to the exporter or to a designated representative of the exporter a final Clean Report of Findings as expeditiously as possible.

(p) In the event of a clerical error in the conditional or final Clean Report of Findings, the preshipment inspection company shall correct the error and forward the corrected information to the appropriate parties as expeditiously as possible.

Price Verification and Customs Valuation

(q) Preshipment inspection companies shall conduct price verification inspections according to the following guidelines:

(i) the contract price between the exporter and the importer shall be accepted as valid unless there is clear evidence of circumvention of the laws or regulations of the user government;

(ii) in order to verify prices, preshipment inspection companies may compare the C.I.F. or F.O.B. price of a good to the C.I.F. or F.O.B. prices of identical or similar goods sold for export from the same country of exportation to the same country of importation and exported at or about the same time as the goods being valued. Appropriate adjustments shall be made for minor differences in the goods being compared, the time of exportation and/or the conditions of delivery;

(iii) when conducting price verification, preshipment inspection companies shall make appropriate allowances for the commercial considerations of each sale, including but not limited to the commercial level and quantity of the sale, delivery periods and conditions, price escalation clauses, quality specifications, special design features, special shipping or packing specifications, order size, spot sales, seasonal influences, licence or other intellectual property fees, and services rendered as part of the contract;

(iv) preshipment inspection companies shall not use the following for purposes of price verification or customs valuation:
A. the selling price in the country of importation of goods produced in such country;
B. the price of goods on the domestic market of the country of exportation;
C. the cost of production;
D. the price of goods for export to a country other than the country of importation;
E. reference prices or minimum values; and
F. arbitrary or fictitious prices or values.

(r) Preshipment inspection companies shall follow the guidelines in (q) above and the principles of Article VII of the General Agreement when valuing goods for purposes of customs duties and other charges, or for the application of restrictions on importation or exportation based upon or regulated by value.

(s) Preshipment inspection companies and exporters should attempt to mutually resolve their disputes. In this regard, preshipment inspection companies shall establish procedures to receive, consider and render decisions concerning grievances raised by exporters. These procedures shall be made available to exporters through the information points specified in (e) above and shall be developed and maintained in accordance with the following guidelines:

(i) preshipment inspection companies shall designate officials who will be available during normal business hours in each city or port in which they maintain an administrative office to receive, consider and render decisions on exporters' grievances;

(ii) exporters shall provide in writing to the preshipment inspection company facts concerning the specific transaction in dispute, the nature of the grievance and a suggested resolution;

(iii) preshipment inspection companies shall afford sympathetic consideration to exporters' grievances and shall render a decision within three working days of receipt of the grievance.

Small Shipments

(t) Preshipment inspection companies should not normally inspect shipments valued at US$ 10,000 or less. In exceptional circumstances, preshipment inspection companies may inspect such shipments provided that the preshipment inspection company explains these circumstances to the exporter in writing.
ARTICLE II

Obligations of Parties Affected by Preshipment Inspection Activities

Technical Assistance

1. Contracting parties affected by preshipment inspection activities (hereinafter referred to as exporter governments) shall offer to provide technical assistance, as requested, to user governments on customs matters on mutually agreed terms. Technical assistance could be provided on a bilateral basis and/or under the auspices of an international organization, such as the Customs Cooperation Council.

National Dispute Resolution

2. Exporter governments may establish national systems to resolve disputes between exporters and preshipment inspection companies. Exporter governments shall reserve their rights to ensure compliance with findings in dispute resolution cases. In cases involving disputes over prices where expeditious shipment is required, parties may agree to ship the goods on a conditional basis. In such cases, a bond covering the disputed portion of the total payment for the shipment could be posted to reimburse the appropriate party once the dispute has been resolved.

ARTICLE III

Notification

1. Contracting parties shall submit to the GATT Secretariat copies of the laws, regulations and administrative practices they have in place relating to preshipment inspection within ninety days of the date that this Agreement enters into force.

2. Contracting parties shall notify the GATT Secretariat of any proposed administrative, regulatory or legislative change to the laws, regulations and administrative practices relating to preshipment inspection at least sixty days before the change is to be adopted. The notice shall include a description of the proposed change, the products and/or countries affected, and an indication of its likely trade effects. Copies of new or revised laws, regulations or administrative practices shall be submitted to the GATT Secretariat within thirty days of the date on which the change is adopted.
ARTICLE IV

Review

1. A periodic review of the laws, regulations and administrative practices relating to preshipment inspection which are maintained by contracting parties, and the procedures administered by preshipment inspection companies in the employ of contracting parties, shall be undertaken taking into account the provisions of this Agreement, as well as with the obligations of the General Agreement.

2. The provisions of this Agreement shall also be reviewed periodically to ensure their effectiveness in achieving the objectives of this Agreement.

ARTICLE V

Consultation

1. Prior to the adoption of a proposed change in a law, regulation or administrative practice relating to preshipment inspection, the contracting party proposing the change shall consult with other contracting parties upon request. Such a request for consultations should be made no less than thirty days prior to the proposed date of adoption of the change.

2. Contracting parties shall consult with other contracting parties upon request with respect to any matter affecting the operation of this Agreement, including matters relating to specific preshipment inspection and/or exporting companies. In such cases, the provisions of Article XXII of the General Agreement, as improved and elaborated upon by the Negotiating Group on Dispute Settlement, are applicable.

ARTICLE VI

Dispute Settlement

1. Any dispute among contracting parties regarding the operation of this Agreement, including disputes relating to specific preshipment inspection and/or exporting companies may be resolved under the provisions of Article XXIII of the General Agreement, as improved and elaborated upon by the Negotiating Group on Dispute Settlement.