

**Working Party on Preshipment Inspection**

MINUTES OF THE MEETING OF 24 SEPTEMBER 1997

Chairman: Mr. Chiedu Osakwe

The agenda proposed for the meeting, contained in WTO/AIR/671, was adopted as follows:

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1. Exchange of views on national experiences with preshipment inspection and with the implementation of the WTO Agreement on Preshipment Inspection (G/PSI/WP/W/7; G/PSI/WP/W/9; G/PSI/WP/W/10) . . . . .	1
2. Data related to preshipment inspection: Survey/Questionnaire circulated by the Chairman (G/PSI/WP/W/8 and Corr.1) . . . . .	5
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The Chairman welcomed Members to this third meeting of the Working Party. He recalled that the Working Party had been established to conduct the Article 6 Review of the Agreement on Preshipment Inspection (hereafter, "the Agreement"). He recalled that he had proposed conducting the review on the basis of four tracks: informal consultations; the national submissions; the empirical results of the Chairman's Survey/Questionnaire; and the Chairman's Checklist of Issues contained in G/PSI/WP/W/2.

1. Exchange of views on national experiences with preshipment inspection and with the implementation of the WTO Agreement on Preshipment Inspection

1.1 The Chairman recalled that at the last meeting, presentations of submissions were made by Ghana, the Philippines, Peru and Colombia. These were contained in documents G/PSI/WP/W/3, 4, 5, and 6 respectively. This had been followed by a productive exchange of views, questions and answers which were summarized in document G/PSI/WP/W/7. Delegations which would wish to address some of these issues again would have the opportunity after the presentations by the Côte d'Ivoire and Switzerland on their submissions (G/PSI/WP/W/10 and G/PSI/WP/W/9 respectively).

1.2. The representative of Sénégal stated that his delegation was still in the process of preparing its national experience, although it had responded to the questionnaire.

1.3 The representative of Switzerland noted that he had summed up his delegation's experience at the July meeting. The present submission addressed the issues contained in the Checklist of Issues and presented preliminary opinions. What was different from the submissions of other delegations was the suggestions of some instruments to be used as tools for solving some of the problems raised in the paper. The first instrument was a model inspection agreement which would take up, *inter alia*, uniform inspection criteria. This was something his delegation considered would be advisable for all parties involved in PSI procedures. The second instrument was guidelines for price verification. His delegation was aware that this second subject was the most debated in the Agreement. However, his delegation considered that some progress could be made, if not immediately, in the Working Party or in the Council on Trade in Goods. He requested that these instrumental or procedural proposals remain on the table when the Working Party would reach the stage of tackling problems raised.

1.4 The representative of Hong Kong, China stated that his delegation shared many of the views presented in the Swiss paper, for example, the reservation on the imposition of direct obligations on PSI entities and the views related to the future of the Independent Entity (IE). His delegation considered that suggestions for guidelines for price verification and a model inspection agreement were worth exploring.

1.5 The representative of the Philippines noted that the Swiss submission was under consideration in her capital. She added that while there was some merit to creating a model inspection agreement and uniform inspection criteria, she was not sure that this would be possible for user Members since each was using a PSI company to suit its own purposes. It could only be possible if it was not legally binding on the user Member.

1.6 The representative of Ghana noted his delegation's uneasiness about a model inspection agreement. His Government had its own objectives with using PSI and would not want to be bound by such an agreement, although it was not clear how it would actually work. His Government was of the view that the problems lied with the credibility of the PSI companies. There was a need for user Members to engage the services of reputable companies that were recognized by IFIA. All such companies should be represented by affiliates in all major exporting countries or recognized focal locations for other countries and territories. Therefore, his delegation proposed that the Working Party recommend a binding code of ethics for all PSI entities. This should be backed up by periodic auditing of PSI companies to ensure compliance with, not only the Agreement, but also with the code of ethics and the contracts between the companies and user Members. This would address the concerns of transparency, confidentiality, neutrality, and general corporate good behaviour. He would present his views in a formal paper soon.

1.7 The representative of the United States found the Swiss submission constructive, particularly the development of inspection guidelines. Regarding the question of whether these would be binding, he noted that PSI companies were often engaged for different purposes, some of which did entail elements for which there were other WTO agreements. In such cases, the Working Party might want to explore and discuss the possibility that some of the guidelines should be binding. His delegation considered the idea of auditing the performance of PSI companies with regard to their contracts and obligations under the Agreement, proposed by the representative of Ghana, intriguing. His delegation was not sure how this path would be followed, but was interested in the idea.

1.8 The representative of Australia considered the Swiss submission useful and would support keeping the proposals contained therein on the table. The idea of an inspection format and the other ideas raised were the beginnings of a good pool of proposals to consider at a later stage.

1.9 The representative of Switzerland believed that the Working Party was on a promising path for its next steps. His delegation did not believe it would be possible to give a mandatory nature to

the outcome of the Working Party's results because it would imply a multilateral agreement or an amendment thereto. The terms of reference of the Working Party did not include amending the Agreement. This should assure those delegations that feared that his delegation was in favour of a binding model inspection agreement or uniform inspection criteria. The Working Party needed to consider how to design such instruments, which his delegation considered should be normative for practices of user Members. It was clear that the situation in each country varied and account of such differences would have to be taken. Regarding the model agreement, his delegation believed that the Working Party would have to consult IFIA and the International Chamber of Commerce (ICC). The former had already adopted a code of practice which had been revised in August 1997. This represented a sort of model agreement and, if the Working Party moved forward along these lines, it would have to decide if it should base itself on this agreement. Finally, he noted that his Government had established an intensive consultation mechanism which involved all parties concerned, for example, companies involved in the classic Swiss export sectors and inspection services, to solve problems which arose in Switzerland. The paper submitted was the outcome of these consultations. Thus, national experience would appear to indicate that PSI inspections were being carried out satisfactorily both for exporters and for inspection companies.

1.10 The representative of the Philippines, referring to the outstanding issues in her delegation's submission, stated that non-US exports did not receive faster treatment by PSI companies nor more favourable treatment regarding price verification than exports from the US. Because her delegation took this question very seriously, it wished the US to provide concrete cases so that her authorities could take appropriate measures. Concerning the purpose of the Technical Committee mentioned in her delegation's submission, it was established to ensure compliance by the PSI company with the terms of its contract with the Government of Philippines. It was comprised of representatives from the Bureau of Customs, the Central Bank, the Department of Trade and Industry, the Department of Finance, the Tariff Commission and the Bureau of Import Services and oversaw the implementation of all aspects of the PSI contract, except in matters related to issuance of Clean Reports of Findings (CRF). On the procedure, a concerned party which could be either an importer, an importer association, a trade body or any government body, which had a problem with the operation of the terms of the contract, would be required to write to the Undersecretary of Finance (as Chairman of the Technical Committee). The Chairman would then convene the Committee to discuss the problem raised and solutions would be recommended to the Secretary of Finance and the Monetary Board of the Central Bank for final approval and implementation.

1.11 The representative of the United States stated that his delegation would engage in consultations with the Philippines on the matter of price discrimination. His delegation was gathering information, however, there were some sensitivities involved regarding how the information should be presented. He noted that the Philippines' submission stated that the PSI company in the Philippines was not and had never been involved in the collection of customs revenue. However, he had copies of CRFs which not only indicated a customs valuation but also indicated duties payable; he would share this with the Philippines delegation.

1.12 The representative of Peru stated that her authorities had indicated that the assigned FOB customs value together with the CRF must be considered in the customs declaration. This served as a basis for the calculation for duties. There may be a physical check by customs; in reality 15 per cent of the total goods were checked. During the physical check of goods, the customs authority may make comments as to the value, quantity and tariff classification of the inspected goods, and may make corrections on any of these elements. In such cases, the PSI company could be fined for any offence. In addition, there was a subsequent random control of importers by the customs, prompted by intelligence, accounting audits, denunciations by foreign trade operators, etc. Responsibility for the evaluation and control of discrepancies arising from customs control rested with the Inspection Companies Control Division of the National Customs Inspectorate. The former was a specialized unit responsible

for the evaluation of PSI companies, and had the power to apply the corresponding sanctions as a consequence of discrepancy proceedings following a rule approved in January 1997. Discrepancies regarding value were the most representative, amounting to about 30 per cent of the total. The Peruvian customs retained the right to determine the customs value, tariff classification and quantity of the goods, either during the concurrent control (physical inspection of the goods) or during the subsequent control (four years of random controls) of the goods. The work of the PSI companies was technical, since the final word remained in the hands of the national authorities.

1.13 Regarding the clauses within the contracts referring to national mediation services, and the role of the multisectoral subcommission in such mediation, she replied that national legislation, in accordance with the Agreement, established that the contract between the importer and the PSI company must include a clause under which importers may submit disputes for settlement through the national arbitration procedures. In Peru, importers contracted with the PSI companies and paid a fee of 1 per cent of the FOB value of the merchandise inspected. This legislation also established a multisectoral commission with representatives of the Ministries of Economy and Finance which presided, a representative of the Confederation of Private Enterprises and a representative of the PSI companies. This subcommission considered complaints concerning the non-performance by PSI companies of their contractual obligations with respect to importers. The chairman had a casting vote. The National Customs Inspectorate of the National Customs Administration acted as the technical secretariat for the subcommission. The work consisted in hearing complaints by importers and making the corresponding recommendations. The procedure established began with an importer's complaint against a PSI company concerning non-performance of its contractual obligations. For the subcommission to hear an appeal, importers must demonstrate that they had previously sought a settlement with the PSI companies, and submit all supporting information and documentation. The subcommissions would then make the appropriate recommendations on each individual case. If it was determined that the PSI company was responsible, it would have to pay to the importer an amount to a maximum of ten times the fee charged for the transaction. Since its establishment in April 1995, less than ten appeals have been heard. The subcommission was not involved in arbitration between the PSI companies and importers, in which the two parties designated the arbitrator they considered appropriate for the settlement of their dispute. Accordingly, arbitration was a procedure in which customs did not intervene, and was subject to the provision of the Law on Arbitration.

1.14 The representative of the United States asked the representative of Peru if the reference to "supervisory companies" referred to PSI companies or to a different type of company. He also asked if there was any reference to rights of exporters, as there was to "rights of importers," in the legislation relating to the ability to seek recourse in the event of discrepancies found between the results of the inspection companies' findings and those of the national customs authority.

1.15 The representative of Peru clarified that "supervisory companies" referred to PSI companies. In national legislation, the term "supervisory" was used, but the meaning was the same. Regarding the second question, she noted that the users of PSI in Peru were the national importers. They were required to follow the national system and they had to contract with the PSI entities and pay their fees. If the PSI services were conducted incorrectly, the importers in Peru would be affected. This was why the national legislation established a procedure for the resolution of discrepancies. There were no laws that covered exporters because it was the importers that would be affected.

1.16 The representative of Colombia recalled that his delegation had responded in detail at the last meeting when the questions to his delegation had been raised. If there were any additional concerns regarding the functioning of the PSI system in Colombia, his delegation would be pleased to respond either in the Working Party or bilaterally.

1.17. The representative of Ghana underlined that price verification, part of its PSI program, ensured that transaction prices were not set beyond reasonable levels and should not be construed to be the same as customs valuation where national customs authorities laid down procedures for determining the value of goods for customs purposes. There was always the possibility that the transaction price could be dubious; this underlaid such concepts as dumping, anti-dumping and countervailing measures. On the other hand, national obligations under the Customs Valuation Agreement should be recognized and not be subjected to any interpretations in the Working Party.

1.18 The representative of the United States asked the representative of Colombia whether PSI companies were involved in anti-dumping and safeguard investigations. His Government was aware that PSI was mandatory when such procedures had been evoked, however it sought confirmation that PSI companies were not involved in the proceedings themselves.

1.19 The representative of Colombia stated that PSI companies were in no way involved in such proceedings.

1.20 The representative of the United States noted that the submission from the Côte d'Ivoire indicated that one of the objectives of the use of PSI related to elements of competition. The submission said that the objective of PSI was to "observe the rules of competition". His delegation sought an explanation from Côte d'Ivoire as to how this objective was being met.

1.21 The representative of Côte d'Ivoire stated that the PSI legislation had been established at the time Côte d'Ivoire had also established a program for the stabilization of its economy, including the liberalization of trade. It had been determined that under-invoicing was, in fact, not respecting competitiveness rules. In the 1991 law which established competitiveness, Côte d'Ivoire determined that rules of competitiveness should be respected. The PSI program was considered a means of countering unfair competition which tended to manifest itself through under-invoicing. This was the background to the establishment of the PSI program. The attempt was to create a level playing field for all importers, particularly where invoicing was concerned. She could provide more detail later if necessary.

1.22 The Working Party agreed that the Secretariat would update document G/PSI/WP/W/7 to take into account the responses represented and outstanding issues, and to keep this item on the agenda of the next meeting of the Working Party. The Chairman requested those Members who had not made national submissions to do so for the next meeting.

2. Data related to preshipment inspection: Survey/Questionnaire circulated by the Chairman

2.1 The Chairman explained that the results of the Survey/Questionnaire had been compiled into a table which was circulated to participating Members of the meeting. All Members who had responded were included in the table. He added that the questions had been drafted objectively and had been informally verified with the Statistics and Information Systems Division of the WTO. The results were important for the Working Group's work because they provided an empirical, factual basis for moving the review process forward by comparing these results with the national experiences presented and the Chairman's Checklist of Issues. Informal consultations would be carried out from now on with a view to elaborating the results of the review. He requested those Members which had not responded to the Survey/Questionnaire to do so as soon as possible.

2.2 The representative of Egypt presented his Government's response to the Survey/Questionnaire. These have been added to the table of results of the survey.

2.3 The representative of Hong Kong, China asked that a reply from his Government be added to the second question of the table to reflect its status as an exporting country with on-site presence of PSI companies.

2.4 The representative of Sénégal noted the following phrase should be added to his Government's contribution in question 8 of the Survey/Questionnaire: "it was not possible to obtain the statistics on the claims made by the exporters from the many offices of SGS". Also, in question 11, the year of the Paris seminar was 1993 and the Dakar seminar was 1996.

2.5 The representative of the Philippines agreed that the responses to the Survey/Questionnaire were encouraging. As a user Member, her delegation considered that it would be helpful to have more replies on questions 8(b), 9 and 10 from exporters so that her Government could look more closely at these complaints. She also considered that it would be useful to have a description of possible practical solutions to the problems.

3. Discussion of the Chairman's text "Issues for Consideration in the Article 6 Review of the Agreement on Preshipment Inspection"

3.1 The Chairman noted that at the second meeting, some representatives had mentioned the possibility of submitting additional texts or proposals to be added to the Chairman's text. He asked if there were any such submissions.

3.2 The representative of Ghana indicated that his delegation would submit its concluding views in this regard aimed at finding agreeable solutions to the problems that had been raised in the Working Party.

3.3 The representative of the United States stated that his delegation was not submitting a paper at this time because it believed that the Working Party was reaching the point where it would need to begin synthesizing the four tracks and move to another stage of work. At that point, his delegation may make a further submission.

4. Other business

4.1 The Chairman stated that he was satisfied with the Working Party's work up to the present. He was convinced that the four track process for the review made the process credible and balanced among all Members, both users and exporters.

4.2 The Working Party agreed to hold a series of informal meetings during the period before the next formal meeting involving all interested Members, although participation in the meetings would be open-ended. The aim was to create a new document, containing the results of the review exercise, which would be adopted by the Working Group at its next and last formal meeting. This document would be eventually communicated to the General Council through the Council on Trade in Goods.

a) Date of the next meeting

4.3 The next formal meeting of the Working Party would be 6-7 November 1997.