

GENERAL AGREEMENT ON

RESTRICTED

W.44/14

7 November 1988

TARIFFS AND TRADE

Limited Distribution

CONTRACTING PARTIES
Forty-Fourth Session

EXPORTS OF DOMESTICALLY PROHIBITED GOODS

The annexed Technical Note on Exports of Domestically Prohibited Goods is circulated to the CONTRACTING PARTIES at the request of the delegation of Nigeria.

ANNEX

TECHNICAL NOTE

Trade in Domestically Prohibited Goods

Introduction

This note is divided into two parts. The first part describes the present status of work in the area of Exports of Domestically Prohibited Goods. The second part describes the main elements that may have to be covered if it is decided to negotiate, in GATT, a separate Agreement or Code of Conduct, laying down rules and disciplines which should apply for bringing under control trade in domestically prohibited goods and other hazardous substances.

Part I

Status of Work in GATT

The question of Exports of Domestically Prohibited Goods was included in the work programme of GATT adopted at the 1982 Ministerial meeting as a result of the initiative taken by the delegations of Sri Lanka and Nigeria. Since then, the subject has been figuring on the agenda of the GATT's regular work programme for over six years now.

Consultations were held, pursuant to the decision of 24 November 1986 session of the CONTRACTING PARTIES, with a view to considering the action that could be taken in GATT in this area. There appears to be a general recognition that even though steps have been taken in other international organizations like the United Nations, UNEP, WHO and FAO to initiate information exchange in this area, GATT could play an important and complementary rôle by elaborating guidelines for action relating to trade aspects of the problems. At the last session of the CONTRACTING PARTIES, it has been decided that the secretariat should arrange for further consultations in 1988 and present a report on these to the forthcoming session for consideration.

Part II

Main elements to be covered in an Agreement to control trade in domestically prohibited goods and other hazardous substances

The approach which could be adopted for the negotiations in this area of a separate Agreement or a code of conduct and the main elements that could be included in such an Agreement are indicated below.

(i) A separate Agreement

The regulations which governments issue prohibiting sale, severely restricting or controlling sale or withdrawing from sale products which are considered to be dangerous to public health and safety are technical regulations. The elaboration of guidelines and rules governing trade in such products could be based on the provisions of the TBT Agreement. Negotiations could be held, aimed at elaborating a separate Agreement governing trade aspects of transactions relating to such products on the lines of the provisions of the TBT Agreement (Appendix contains a brief description of the main provisions of the Agreement).

In elaborating new rules in this area, due account would also have to be taken of the relevant GATT provisions. These include Article X, which imposes an obligation on contracting parties to publish their "Administrative and Trade regulations" and Article XX(d) which, inter alia, permits both exporting and importing countries, to take measures, that are necessary for the protection of "human, animal or plant life or health", even though they may not be otherwise consistent with GATT.

(ii) Aims and objectives

The Agreement would lay down the principle that a government, in formulating regulations, pay adequate attention to the protection of environment, and of health and life not only in its own country but also of those in other countries. The Agreement would further have to spell out the basis on which exporting and importing countries could co-operate and act bilaterally as well as multilaterally, with a view to ensuring that international trade in such products is compatible with the need of all countries concerned to protect safety, health, and life of people, animals and plants.

(iii) Coverage of Products

The Agreement would apply:

- (i) to all products which in the domestic market of a country:
 - (a) are prohibited from being sold
 - (b) the sale of which is severely restricted or controlled
 - (c) are withdrawn from sale
- (ii) to industrial, toxic and other wastes whose disposal in the domestic market is severely restricted or controlled

on the grounds that they are dangerous to the human health or safety, animal or plant life or health or the protection of environment.

The possibility might also be considered of covering exports of plants and other capital goods the use of which in manufacturing

processes is subject to severe restrictions in the exporting country on the grounds that unless strict security rules are followed they could be dangerous to public health and life.

It shall also apply to products which are not permitted to be sold in the domestic market on the grounds that the "approval for sale" required under the relevant regulations has not been obtained. The possibility of covering in the Agreement exports of products whose indicated or approved period for use or consumption has expired (e.g. pharmaceutical or processed agricultural products) should also be examined.

(iv) Specific provisions

(a) Undertaking to develop and participate in international schemes for Notification and for Exchange of Information

It is generally recognized that importing countries often are not informed that a product is banned for sale or its sale severely restricted in the exporting country. To assist the countries in deciding whether such products should be prohibited from being imported or should be allowed to be imported, taking into account the environmental and other differences, some of the international organizations like UN, UNEP, WHO and FAO and regional organizations like OECD and others, have established or are elaborating systems for notification, for exchange of information, and/or for preparation of registers of domestically prohibited goods in relation to the products which fall within their jurisdiction.

It would be necessary to ensure that the proposed Agreement does not result in GATT getting involved in the technical work which these UN specialized agencies or other international and regional organizations are doing in establishing a network for exchange of information.¹ The proposed Agreement should contain undertakings:

- (i) to encourage development of such schemes for Notification and Exchange of Information in relation to products covered by the Agreement, for which such schemes have not been developed at international or regional levels; and
- (ii) to participate effectively in the schemes for Notification and Exchange of Information on the type of products that are covered by the Agreement (see sub-paragraph iii above) and for compilation of registers of such products at international and regional levels.

¹The approach adopted in the TBT Agreement could be relevant in this context: The Agreement emphasizes that GATT would be responsible for the trade aspects and leaves it to the standardization organizations, the technical work for the development of international standards and certification schemes. Further, in order to promote development of international standards, it calls on signatory countries to participate in the activities of international standardization organization.

(b) Undertaking to publish all regulations relating to such products and to establish focal points from which information could be obtained

The Agreement should further contain undertakings:

- (i) to publish promptly all laws, regulations, administrative rulings, relating to the products covered, in accordance with the provisions of GATT Article X;
- (ii) to establish focal point or points from which information on regulations and technical information on harmful effects of such products could be obtained by importers or governments of outside countries;
- (iii) to notify to the GATT secretariat, at the commencement of the operation of the Agreement, the name of the official journals in which such regulations are published and the body which shall act as focal points.

(c) Measures to control exports

The Parties to the Agreement should further, while formulating their technical regulations prohibiting or otherwise seriously restricting sale in domestic market, give adequate consideration to whether exports of such products shall also be prohibited or restricted.

In cases where prohibition of exports is not considered desirable and appropriate, taking into account such factors as, inter alia, environmental and climatic differences among countries, and differences in dietary habits, the regulations should ordinarily provide that exports would be permitted on the basis of export licences and lay down conditions under which such licences would be issued. Such conditions could include the following:

- (i) in the case of products the sale or disposal of which is banned or severely restricted in the domestic markets on the grounds that they are inherently hazardous or dangerous to public and animal and plant health and safety (e.g. hazardous chemicals, pesticides, radioactive materials and toxic waste), export licence will be issued and exports permitted to be made only after "prior informed consent" to the import of such product has been received from the relevant control authority in the importing country;
- (ii) in all other cases, the authorities issuing export licences might have to inform the concerned authorities in the importing countries that export licence is being issued for export of products which are prohibited or otherwise severely restricted from sale or are withdrawn from sale in order to give the authorities in the importing country opportunity to decide whether the products should or should not be imported.

(d) Provisions relating to transshipment, transit through other countries and re-exports

The Agreement would have to include suitable provisions relating to:

- (i) measures which countries must take for safe transshipment or transit through other countries of goods which are considered to be inherently dangerous or hazardous to human, animal or plant health and safety;
- (ii) measures to control re-exports of goods covered by the Agreement.

(e) Institutional and other provisions

A Committee, consisting of Parties to the Agreement, shall be responsible:

- (i) for periodic review of the operation of the Agreement. For the purpose of such review, the Committee might invite international organizations responsible for technical work in the area and to submit, if they so wish, reports on their work and to participate in the discussion;
- (ii) consultation and dispute settlement, the procedures for which could be similar to those in the TBT Agreement.

APPENDIX

DESCRIPTION OF THE MAIN PROVISIONS OF THE AGREEMENT
ON TECHNICAL BARRIERS TO TRADE

The Agreement defines technical regulations as those whose compliance is mandatory and which lay down specifications, i.e. characteristics to which products must conform in relation to "level of quality, performance, safety and dimension".

Its basic objective is to ensure that such technical regulations which are adopted by countries for the attainment of various policy objectives, as well as voluntary standards, do not become unnecessary barriers to trade. The Agreement also urges countries to base their technical regulations on international standards to the maximum extent possible and to encourage development of international standards by participating actively in the work of international standardization organizations. Further, in cases where international standards do not exist or where a country adopting technical regulations considers that it is not possible for it to base them on the existing international standard, the Agreement requires signatory countries to publish them in draft form and to notify the GATT secretariat the products in respect of which such new technical regulations would be adopted. The GATT secretariat circulates the notification to all contracting parties. The purpose of prior publication and of prior notification to GATT is to provide an opportunity to other contracting parties to comment on draft technical regulations which they consider may cause unnecessary barriers to their trade. The Agreement imposes an obligation on countries to take into account such comments before finally adopting the regulation.

As in a large number of cases, traders find it difficult to know precisely the standards and technical specifications in the importing country to which the products they want to export have to comply, the Agreement, in addition, requires each signatory country to establish an "enquiry point" which could answer all reasonable enquiries regarding technical regulations and standards adopted within its territory. The Agreement further recognizes that developing countries may have special difficulties in accepting the obligations which the Agreement imposes, as well as in deriving full benefits from its provisions. It therefore contains special provisions for providing technical assistance to developing countries and for extension of special and differential treatment to them.