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RESTRICTED

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Working Group on Domestically Prohibited Goods
and Other Hazardous Substances

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OUTLINE OF A POSSIBLE GATT FRAMEWORK OF RULES IN THE AREA OF DOMESTICALLY PROHIBITED GOODS AND OTHER HAZARDOUS SUBSTANCES

The following communication has been received from the delegations of Nigeria and Cameroon for circulation to the Group.

The note is divided into two parts. Part I describes the objectives, principles and coverage of products. Part II enumerates some of the elements that could be included in the substantive provisions.

PART I

OBJECTIVES, PRINCIPLES AND SCOPE

- (a) The basic objective of the action in GATT would be to clarify and improve the GATT principles and rules applicable to trade or international transactions relating to:
- (i) products which in the domestic market of a country
 - are prohibited from being sold;
 - the sale of which is subject to the approval for sale being granted by a government controlled regulatory authority (e.g. pharmaceuticals, fertilizers, pesticides and other chemicals)
 - the sale of which is severely restricted or controlled.
 - (ii) products whose indicated or approved period for use and consumption has expired, or is about to expire (e.g. pharmaceuticals, food and other products intended for human or animal consumption).
 - (iii) industrial, toxic and other wastes, whose disposal in the domestic market is severely restricted or controlled

- (iv) plant, machinery and capital goods the use of which in the manufacturing process is subject to severe restriction on the grounds that unless strict security rules are followed they could be dangerous to public health
- (b) It is recognized that co-ordinated effort at international level for
- protection of health and safety of consumers and users;
 - preservation and improvement of environment;
 - for prevention of depletion and conservation of natural resources;
 - for prevention of extinction of endangered species
- would have to be made by adopting Conventions, Protocols or other international instruments in negotiations in international organizations such as UNEP, FAO and WHO, which have the necessary technical competence in the specific areas.
- (c) It is further recognized that for the effective achievement of the objectives of such conventions, these instruments may have to include not only detailed rules governing control of production and domestic sales or disposal, but also governing exports and imports of such products and substances.
- (d) In the light of this, one of the basic aims of the broad framework of GATT rules to be developed would be to ensure that the trade-related rules in the other legal instruments are consistent with the GATT principles and rules [Note: Doubts are being expressed whether some of the provisions in the Conventions/Protocols are consistent with the GATT provisions].
- (e) The GATT Framework shall also aim at:
- imposing more binding obligations on the contracting parties to control exports of products or substances that are considered to be dangerous to human, animal and plant life and thus complement and strengthen the trade-related rules under the Conventions; and
 - ensuring that the measures taken by government to prohibit or restrict imports and exports do not constitute unreasonable or unjustifiable barriers to trade; and
 - are not applied in a discriminatory way between countries where same conditions prevail.

- (f) The GATT instrument would include procedures for consultations and settlement of disputes in cases of complaints of nonfulfilment of the obligations. Such dispute settlement procedures shall provide that the panels shall when questions of a technical nature requiring detailed consideration by experts arise, take into account the opinion and advice of scientific bodies and specialised UN agencies having competence in the field.
- (g) The form of the GATT legal instrument should be such as to ensure that the new rules are accepted and adopted by all contracting parties.

PART II

MAIN ELEMENTS TO BE COVERED BY THE LEGAL INSTRUMENT

The main elements to be covered include:

- A) Publication of all laws, regulations relating to control actions (Article X)
- B) Development and participation in international schemes for notification and exchange of information.
- C) Elaboration of GATT Articles (Articles XI and XX) to impose more binding obligations to control exports.
- D) Review and Dispute Settlement Procedures

A) Publication of all laws and control action

- Elaboration of Article X, to require countries to publish control actions in designated official journals and to establish "focal points" from which information could be obtained on the existing and new regulations relating to products covered.

B) Development and Participation in international schemes for notification and exchange of information

Such schemes developed by international organizations aim at assisting countries in deciding whether the products banned or severely restricted for sale in the exporting country, should be allowed to be imported. However, the experience of the operation of the schemes has shown that obligations which they impose are not always taken seriously by all countries.

The GATT legal instrument could, inter alia, provide for obligations on countries.

- (i) to participate in such schemes and abide by its provisions for notification and supply of information regarding adverse effects on health of products notified;
- (ii) develop schemes for products and substances for which such schemes do not exist at present;
- (iii) periodic review of the operation of such systems on the basis of the reports to be furnished by the competent international organizations responsible for the operation of such systems.
- (iv) to provide technical assistance to developing countries to enable them to improve their participation in such schemes.

C) Elaboration of GATT Articles to impose more binding obligations to control exports

The aim of the provisions would be to clarify the relevant GATT Articles (e.g. Article XI, and Article XX) with a view to

- (a) requiring countries, in appropriate cases, to prohibit exports or permit them only if they are accompanied by export licences;
- (b) requiring countries to participate in the schemes for "certification" and "prior informed consent" elaborated by competent international organizations for certain products and to participate actively in the work for elaboration of such schemes for other hazardous products and substances;
- (c) ensuring that the measures taken by importing countries to prohibit or restrict imports of such products do not constitute unreasonable or unjustifiable barriers to trade.

I) Prohibited or Severely restricted products

- In relation to products whose sale in the domestic market is prohibited or severely restricted consideration should be given in taking control action whether the same conditions should apply to exports.
- In cases where exports are permitted, the control action should clearly state the reasons for which the same conditions as are applicable to sales in domestic markets cannot apply to exports and the conditions under which such exports can take place.

II) Hazardous Substances

- In relation to hazardous substances, an undertaking that such substance should normally be further processed or disposed of within the territory of the country or customs union and to permit exports only in exceptional cases, after "prior informed consent" has been obtained from the importing country.
- Not to permit exports to countries, which have prohibited imports of such hazardous substances.

III) Products, sale of which in the domestic market is subject to "prior registration and approval" for sale in a number of countries

- In case of such products, (e.g. pharmaceuticals, fertilisers, pesticides etc.)
 - (a) Consideration should be given to exports being permitted only if accompanied by a certificate issued by a competent authority, that the product is registered for sale in the domestic market. In cases where product to be exported is not registered, the certificate should state the reasons why approval for sale in the domestic market was not obtained.
 - (b) Where such certification for exports to all destinations is not considered desirable, certification requirements may be applied for exports to countries which have not developed mechanisms for registration and approval of domestically produced or imported products or to countries which request for such certification.
 - (c) Countries should undertake to participate in the work in other international organizations in developing such certification schemes for products, sale and imports of which, is subject to prior registration and approval, in a large number of countries.

IV) Provisions Relating to Prior Informed Consent for Products and Substances considered to be inherently hazardous

- (a) In case of products and substances which are considered to be inherently hazardous, procedures for Prior Informed Consent should be elaborated at international level by competent international organizations, taking into account the broad guidelines laid down in the GATT instrument to ensure that these procedures do not constitute unreasonable barriers to trade.

- (b) All countries exporting products for which "Prior Informed Consent" procedures have been developed by competent international organizations, should undertake to participate in the procedures for exports to countries, which have notified that they would wish to participate in the system as importers.
- (c) Countries should undertake to participate and collaborate in the work in other international organizations for identification of products and substances, considered to be inherently hazardous, to which PIC procedures could apply.

V) Provisions Relating to Licensing of Exports

Exports of products, which are prohibited from being sold in the domestic market or which are severely restricted, and which are not covered by PIC procedures, should normally be permitted on the basis of export permits, to be issued by the competent authority, giving inter alia detailed information on the hazardous effects of such products, and on the regulations applicable in the exporting country regarding transport, labelling and their use.

VI) Provisions Relating to Control of Exports of Products, which do not meet the quality standards prescribed in the exporting country

Countries should adopt, where appropriate, systems for compulsory inspection of quality of perishable food and other products intended for human and animal consumption and prevent exports:

- of products which do not meet the minimum quality standards prescribed for sale in the domestic market;
- of products in respect of which, the date indicated by the manufacturer for sale and use has expired or is about to expire.

D) Provisions for Review and Dispute Settlement

- (i) A Committee, consisting of all contracting parties shall be established for periodic review of the operation of the legal instrument, in collaboration with the international organizations involved in work in this area.
- (ii) For the purpose of such review, the concerned international organizations would be requested to furnish inter alia report on:

- the experience of the operation of the notification and information exchange systems operated by them
- experience of the operation of the PIC and certification systems operated by them;
- list of new products and substances which have been identified as hazardous, to which PIC system would apply.

The Committee shall examine the reports submitted by the international organizations and shall make such recommendations as it deems appropriate, for improving the effectiveness the schemes and ensuring that they do not constitute barriers to trade.

- (iii) The GATT Legal Instrument would contain provisions for consultation and dispute settlement, which would complement the provisions for consultations in the various Conventions. Such dispute settlement procedures should provide for:
 - (a) interim measures to prevent exports of products which are considered to be harmful to health in the country of origin.
 - (b) payment of damages by the government of the exporting country, in cases where as a result of exports of products prohibited or restricted to be sold in the exporting country or of other hazardous substances, harm is caused to human or animal life or to the environment in the importing country.