

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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Group on Environmental Measures and International Trade

AGENDA ITEM 2: MULTILATERAL TRANSPARENCY OF NATIONAL ENVIRONMENTAL REGULATIONS LIKELY TO HAVE TRADE EFFECTS

Note by the Secretariat

1. This Note responds to requests at the Group's meeting on 4-5 February 1993 that the Secretariat compile an evolving list of the possible gaps that may exist in GATT transparency provisions, as identified by delegations in the Group's discussions.
2. The compilation builds on comments made by delegations on the information contained in TRE/W/2, in particular paragraph 11, and TRE/W/4.

General Concerns

3. Concerns have been raised regarding the implementation of and compliance with GATT transparency provisions. These can be viewed as cross-cutting concerns affecting transparency of all types of measures.
4. One concern relates to interpretation of the GATT notification provisions, which some delegations consider should be clarified so that the types of measures notified would be more uniform. It has also been suggested that clarification is needed regarding which body(ies) in GATT is responsible for notifications of measures taken for environmental purposes, because certain environmental objectives often involve a combination of measures.
5. It has been suggested that transparency would be facilitated by a timely flow of information which would make the actions or intended actions of governments known to trading partners at a sufficiently early stage. Trading partners would then be able to adequately prepare for such measures, and any significant reactions to the measures could be taken into account before implementation. In this regard it has been said that the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance which provides for ex-post notification after implementation, is not as satisfactory as ex-ante notification required by the TBT Agreement. The latter could be an appropriate model to improve the transparency of trade-related environmental measures.
6. Another concern is that although the existing procedures seem to ensure transparency of most, if not all, measures which have an impact on trade, the lack of clarity and specificity in the transparency rules make them too general to be effective. One delegation considered that the publication obligation in Article X was not sufficient because

environment-related trade measures were generally technical, complicated and variable in nature. Other concerns related to the dissemination of information such as translation of regulations into foreign languages, the ability to follow-up with questions or further explanations, and the ability for foreign suppliers to consult with local authorities.

Identified Gaps in Existing Transparency Provisions

7. Several delegations identified handling requirements for packaging and waste, such as recycling, recover and reuse systems for paper, glass, aluminium, and plastics as constituting potential gaps. Other packaging requirements of concern include bans, technical regulations that may require compliance with certain characteristics in order for packaging to be put on the market or allowed into the country, and take-back requirements. They could constitute gaps when instituted at any level of government, but it has been suggested that those instituted at the state, local or municipal government levels should be given particular attention with regard to transparency.

8. Potential gaps also include labelling and eco-labelling schemes, including the criteria to be satisfied in order to be granted a label. These could also constitute gaps at all levels of government, but again, it has been suggested that those at the state, local or municipal government levels could warrant particular attention.

9. Eco-labelling schemes based on a product life-cycle analysis raised concerns regarding the transparency or lack thereof of the process and production methods (PPMs) that would be evaluated to obtain the label. Some delegations, however, stressed that those PPMs that were unrelated to the characteristics of the product were not of concern to the GATT, and those that are related would be covered under the revised Agreement on Technical Barriers to Trade. Still other delegations considered that transparency of regulations focusing on PPMs, such as emission standards, was important and was not efficient or adequate at present.

10. General environmental measures taken by governments at the sub-federal level, as well as those emanating from independent or private organisations and industry were also identified as potential gaps in transparency.

11. Other gaps might include economic instruments or regulations which, although not always directly trade-related and which work with the market rather than against it, nevertheless represented government intervention. One delegation considered that such instruments, along with deposit refund schemes were not trade measures subject to notification requirements under the 1979 Understanding. However they could have significant trade effects and therefore were in need of new notification requirements.

12. Some delegations noted that there were no GATT notification requirements for domestic taxes which were increasingly being used in the environmental field and raised important dimensions for trade. There are provisions related to the notification of border tax adjustments, but one delegation voiced considerable uncertainty about what exactly these implied in relation to taxes applied for environmental purposes.

13. One delegation noted that although GATT contained notification requirements for measures related to subsidies, they did not cover the objectives of the subsidy; that might be an important gap.

14. Some delegations were concerned that Article XX may relieve a party from all transparency obligations, including Article X. One delegation noted that the 1979 Understanding covered measures under Article XX, although it was phrased as a best endeavour undertaking and actual practice needed review. This delegation considered that the drafting history of Article XX indicated that it did not allow derogation from the publication requirements of Article X.

15. Another delegation was concerned that because the GATT did not explicitly mention the term "environment", as did the TBT Agreement, general measures taken for environmental protection might not be sufficiently covered. Also, it was unclear whether measures taken for an environmental purpose that were not linked to Article XX but were considered Article III measures would be covered by present GATT provisions.

16. Other potential gaps might include trade measures taken for the implementation of multilateral environmental agreements. One delegation considered that specific notification requirements in the TBT Agreement or SPS Decision, if relevant, did not necessarily apply to measures taken on the basis of such agreements. Related to this were the potential gaps of regulations or standards based substantially on international standards. Finally, one delegation mentioned that the area of services might not be covered by present provisions and might merit attention in due course.

Possible Approaches

17. Many delegations considered that many gaps would effectively be taken care of by elements in the draft Final Act of the Uruguay Round. The revised TBT Agreement would cover PPMs that were related to product characteristics as well as standards or technical regulations instituted at the first level of local government. The single undertaking would widen the coverage of the TBT Agreement to all contracting parties. The FOGS text foresaw a central registry of notifications which would increase clarity and enable stronger monitoring of measures. It would also contain an undertaking to broadly review notification procedures.

18. Other suggestions include a review of notification practices in the Trade Policy Review Mechanism; however, this should not become a key issue in these reviews. Governments could establish environmental enquiry points similar to those established under the TBT Agreement. They could provide information on environmentally-related standards and regulations with an impact on trade such as internal taxes and charges, deposit refund schemes, subsidies, handling and waste disposal procedures, import and export prohibitions, and also trade opportunities created for environmentally-friendly products. Another suggestion was for additional interpretative decisions or understandings on GATT transparency provisions, similar to the recent Decision on Article 2.5 of the TBT Agreement concerning labelling.

ANNEX

Identified Gaps in Existing Transparency Provisions
(February 1993)

1. Handling requirements
2. Other packaging requirements including bans, technical regulations that may require compliance with certain characteristics in order for packaging to be put on the market or allowed into the country, and take-back requirements
3. Labelling and eco-labelling schemes including the criteria to be satisfied in order to be granted a label
4. Process and production methods, including those emanating from product life-cycle analyses
5. Packaging, labelling and other general environmental measures taken by governments at the sub-federal level
6. Economic instruments or regulations
7. Deposit refund schemes
8. Domestic taxes
9. Measures related to subsidies
10. Measures under Article XX
11. General measures taken for environmental protection
12. Article III measures
13. Trade measures taken for the implementation of multilateral environmental agreements
14. Regulations or standards based substantially on international standards
15. Environmental measures in the area of services