

TE 002  
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## **East European countries present packaging plans GATT groups to take up UNCED follow-up in July**

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### **US "Gas guzzler" taxes to be reviewed by GATT Panel**

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Two East European countries outlined national plans for packaging and eco-labelling during the May meeting of the GATT Group on Environmental Measures and International Trade. The presentations by Poland and Hungary came during a further discussion on the trade effects of national packaging regulations.

Poland said that the lack of an efficient system of collection and recycling of used packaging was a serious threat to the country's environment. The Government planned, as a result, to implement a system of eco-certificates for packaging and labelling based on EC directives: the aim being to limit the share of used packaging in the communal waste. The voluntary system of eco-certificates and labelling would promote the use of environment-friendly packaging.

For its part, Hungary told the Group that it was seeking to reduce the amount of packaging materials and to encourage recycling. New legislation would establish principles for bottles, boxes and other types of closed packaging that

contain liquid and which are re-usable. It was intended to re-introduce a deposit-refund system for bottles. At the same time the government was keeping in mind the need not to discriminate against foreign products. There would also be a system of product charges in which products made fully from recycled materials would be exempted while those made from partly-recycled materials would face a lower or no charge. The income from these charges would be used for the collection of re-usable materials and for neutralizing the one-way materials. Hungary was also seeking to legislate for a national environmental labelling system.

The issue of "like products" in the context of packaging was raised during the discussion. (The concept of "like products" is of considerable importance in the application of GATT obligations.) For one participant the matter could be reduced to two questions: are two products with identical characteristics but enclosed in different packaging material considered to be "like

products" or not; and which criteria should be satisfied for two packaging materials to be considered "like". For some delegations, qualities such as recyclability, bio-degradability, and life-cycle performance would be the key criteria: for others, economic factors might be more important.

The Group discussed procedures for taking its work on packaging forward and agreed to concentrate on labelling at the next meeting. It also received presentations from the International Standards Organization - on eco-labelling - and from the International Trade Centre (a UN body financed jointly by the GATT and the UN Conference on Trade and Development) on its work in advising developing countries on export packaging.

### **Trade measures in international environmental agreements**

The Group had only brief discussions on the two other items in its current mandate (see *TE 001*). However, one delegation chose to outline at some length its more-recent thinking on the trade provisions of existing multilateral environmental agreements with respect to GATT principles and provisions. In particular, it raised three questions which needed consideration with respect to the attitude that Contracting Parties might take to trade measures taken under such agreements.

First, was the question of what should constitute a multilateral agreement? It was an important issue because it might affect the way in which GATT viewed trade measures of an extrajurisdictional nature. Thus the level of global support might be crucial. Would a multilateral agreement be constituted by, for instance, one-half or two-thirds or three-quarters of the member states of the United Nations? (It had to be kept in mind that current GATT membership was only 111.) Perhaps a more qualitative assessment would be needed - for instance, that a meaningful number of producing and consuming nations of a product covered by an international environmental agreement should have signed it.

Second, was the degree of specificity in the agreement - that is, whether and to what degree it specified that trade measures might be used to promote its objectives. There might, at least, need to be some kind of explicit understanding that trade measures may be used in its implementation even if the measures themselves were not specified. Without such an understanding the agreement would not seem to represent international agreement that trade measures may be used. And there was a danger that the agreement would serve as an excuse for the misuse of unilateral measures. However, if governments were left to decide exactly which trade measures they wished to employ, they would still have to meet the criteria and conditions in GATT Article XX - as it now is or as it might be interpreted collectively in the future.

Third, questions arose with respect to dispute settlement. Procedures in international environmental agreements to resolve disputes between their parties tended to be few and general, leaving it for the parties themselves to agree on a suitable forum. In the case where both parties are members of GATT but only one is a member of the international environmental agreement, then it would be clear that the dispute settlement provisions of the GATT would apply to a conflict. However, if both were parties to the GATT *and* to the environmental agreement then the situation could be much more complicated. One of the problems to be faced would be the competence of GATT panels to interpret the General Agreement but not the terms of international environmental agreements.

### **UNCED follow-up**

It was agreed that the Group meet again in early July. At that meeting, for the first time, an in-depth discussion would commence on the issues in the UNCED "Agenda 21" which have been assigned to the Group by the GATT Contracting Parties (namely, the Introduction and Section B of Chapter 2). The Group would also continue work under its original three-part mandate.

The Chairman of GATT's Committee on Trade and Development has recently conducted intens-

ive consultations on matters relating to promoting sustainable development through trade liberalization (Introduction and Section A of Chap-

ter 2). The subject will be discussed by the Committee at its next meeting in July.

### **US auto fuel-efficiency taxes to be examined by GATT Panel**

At a meeting of the GATT Council on May 12, a panel was established to examine three US car taxes; two of which have attracted interest as environmental measures since they relate to fuel efficiency. The three taxes concerned are: the Corporate Average Fuel Efficiency (CAFE) payment; the so-called gas-guzzler tax; and the luxury tax as it is applied to cars.

According to the European Communities, which brought the complaint to the GATT, the CAFE payment was a civil penalty which must be paid by a car manufacturer or importer if the sales-weighted average of all types of cars produced by the manufacturer falls below a certain level (currently 27.6 miles per gallon). It was the view of the EC that the tax favoured large, integrated, full-line car producers and worked to the disadvantage of limited-line producers operating at the top of the market, such as many of the European producers exporting to the US. Such discrimination would be contrary to Article III of the GATT.

The "gas guzzler" tax operated progressively with a tax of \$1000 for model types with a fuel economy between 21.5 and 22.5 mpg up to \$7,700 for models with a fuel economy below 12.5 mpg. The EC contended that the threshold fuel economy standard, presently of 22.5 mpg, was not based upon any objective or reasonable

criteria and discriminated against imported cars, contrary again to Article III.

Over 80 per cent of the cars subject to the luxury tax, in 1990, the year of its introduction, were imported cars, said the Communities, with almost 50 per cent of imported European cars affected. The cut-off point of \$30,000 for imposition of the tax was capricious and irrelevant for GATT purposes since the customs tariff (2.5 per cent) made no distinction between luxury and "ordinary" cars.

The European Communities had had unsuccessful consultations with the US in 1992 and had put its request for a panel before the GATT Council, for the first time, at its March meeting. At the May meeting, the delegations of Sweden, Norway, Japan and Australia expressed an interest in the case.

It is the responsibility of the Chairman of the Council to designate members of the panel - usually three. The panel would normally be expected to produce a report within six months. However, such a report would place no obligation on any of the parties unless it is subsequently adopted by the Council. A decision to adopt is taken by consensus under GATT's current dispute settlement rules.