

TE 005
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Environment features in Uruguay Round results and emerges as priority issue in post-Uruguay Round work of GATT

With the successful conclusion of the Uruguay Round negotiations, GATT member countries have met one of the main demands made by the 1992 Earth Summit for international co-operation to promote sustainable development through trade.

Commenting after the meeting of the Trade Negotiations Committee which adopted the results on 15 December 1993, Peter Sutherland, Director-General of GATT, said "the Uruguay Round agreements promise to enhance trade and development opportunities, and they respond explicitly to environmental considerations in several key areas. The conclusion of the Round represents a triumph for the process of multilateral policy coordination, and for the belief that collective efforts towards collective gain have realistic chances of producing results that far outweigh whatever might be achieved by countries acting alone. It should help to raise expectations of similar successes in the environmental field."

At the same time that it adopted the results of the negotiations, the Trade Negotiations Committee also took the decision (Annex I) to draw up

a comprehensive work programme on trade, environment and sustainable development for adoption no later than April 1994, thereby making this a priority for further work in the post-Uruguay Round period.

Within GATT itself, work on the issue has resumed with the recent meeting of the GATT Group on Environmental Measures and International Trade. Trade and environment also figured prominently at the 49th Session of the GATT Contracting Parties in January, and later this month the Council of Representatives will meet to review follow-up work that has taken place in GATT on the Earth Summit results.

GATT's Director-General, Mr. Peter Sutherland, is preparing to organize a seminar on trade, environment and sustainable development early this summer to help promote a dialogue among trade, environment and development communities. Further details of the seminar will be announced by the GATT Secretariat in due course

Recent discussions in GATT

In his opening remarks to the 49th Session of the Contracting Parties held on 25-26 January, the Chairman, Ambassador B.K. Zutshi of India, highlighted the need for a balanced approach to the new work programme on trade and environment that takes full account of the development dimension. He said that many contracting parties, especially the developing countries, trusted that the work programme would address each country's trade, environment and sustainable development needs and priorities in a balanced and equitable way and would remain focused firmly on trade and trade-related aspects of the subject which are within the competence of the multilateral trading system.

Ambassador Zutshi said that "trade liberalization coupled with financial and technological transfers, is essential for promoting sustainable development, particularly in the developing countries where poverty is the number one pre-occupation for all policy-making and the most important obstacle to better environment protection." He said that to overlook this fact, and instead focus on polemics about "greening the GATT" would reduce the trade-environment debate to an irrelevance for the great majority of contracting parties.

The Chairman of the GATT Group on Environmental Measures and International Trade, Ambassador Hidetoshi Ukawa, gave a progress report to the 49th Session of the Contracting Parties on 26 January (see previous issue). Many contracting parties reiterated the importance of GATT work on the trade-environment issue and welcomed the TNC Decision on trade and environment. Among the points they raised were:

- The Group's work during the past two years, which had anticipated many trade-related issues raised at the Earth Summit, had set the stage for a substantial Decision on trade and environment at the end of the Uruguay Round; and

- By successfully concluding the Round, GATT members had achieved on of the main objectives set in this area by Ministers at the Earth Summit.

The GATT Group on Environmental Measures and International Trade, on 27 January, agreed that its Chairman submit a factual progress report to the special Council meeting on trade and environment scheduled for late this month. One point raised by many delegations was that the work of the Group during the past two years had made clear that GATT was not opposed to environmental protection - on the contrary, its work on liberalizing world trade as exemplified in the completion of the Round could contribute significantly to environmental protection and sustainable development. In this regard, they welcomed the decision by the GATT Council on 17 December 1993 to derestrict background notes prepared by the Secretariat for the Group on various trade-environment issues. (See Annex II, Ambassador Ukawa's report to the Contracting Parties had been likewise derestricted. Copies are available from the GATT Secretariat).

The Uruguay Round results and the environment

The Uruguay Round was launched before environmental concerns took on the prominence which they now have on the policy agenda of many of the countries participating in the Round. Thus, the relationship between trade measures and environmental measures was not included as a separate subject for negotiation. However, environmental concerns are addressed, with or without an explicit environmental label in a number of final Uruguay Round agreements.

World Trade Organization

The new World Trade Organization (WTO) envisages a single institutional framework for the multilateral trading system encompassing the GATT (as modified by the Uruguay Round), all agreements and arrangements concluded under

its auspices, and the complete results of the Uruguay Round negotiations. The WTO Preamble, unlike that of the current GATT, includes direct references to the objective of sustainable development and to the need to protect and preserve the environment. It states:

"Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development..."

In the course of negotiating the WTO Agreement, a proposal to establish a permanent WTO Committee on Trade and Environment was discussed. It did not gain sufficient support, among other things because it is not common practice in GATT to set up permanent institutional arrangements in a particular area of work before matters of a more substantive nature have been settled. Also, some felt that this approach might unnecessarily delay further work on trade and environment until ratification of the WTO allowed a committee to be established. The solution which attracted the support of all member governments, therefore, was to consider matters of institutional structure during the course of consultations which are taking place to draw up by the time of the Marrakesh meeting the work programme in the area of trade and environment (see below under "Decision on Trade and Environment").

The Agreement on Technical Barriers to Trade (TBT)

The TBT Agreement aims to ensure that the use of mandatory technical regulations, voluntary standards, and conformity assessment procedures do not create unnecessary barriers

to trade. These measures are already being used extensively by governments for environmental purposes, in the form for example of product standards and packaging and labelling requirements, and expectations are that their use will increase.

The Agreement recognizes that countries should not be prevented from taking measures necessary to protect human, animal and plant life or health or the environment, and that each country has the right to set the level of protection that it deems appropriate without having to justify the level chosen. It encourages countries to use international standards where these are available, but it does not require them to harmonize their domestic regulations and standards upwards or downwards as a result of international standardization activities.

Governments are likely in many cases to choose mandatory regulations over voluntary standards to fulfil their objectives in the areas of human, animal and plant life and health and the environment, given the risks that non-fulfilment of those objectives would create. The Agreement requires governments to apply the regulations in a non-discriminatory way (meeting the disciplines of most-favoured-nation and national treatment), and to ensure that the regulations are drafted in such a way that they are no more trade restrictive than necessary to meet the objective.

In this regard, the new TBT Agreement does not differ greatly from the existing Agreement which has been in operation since 1980. During that period, about 400 technical regulations that serve environmental objectives have been notified to GATT because the countries applying them consider that they may cause significant trade effects for their trading partners. In 1993 alone, around one-quarter of the notifications concerned new and revised environmental regulations covering, for example, products containing or treated with heavy metals, toxic or hazardous chemicals, the reduction of vehicle pollution, and so on. None has ever been challenged in GATT as being unnecessarily trade restrictive, and the expectation is that the new

Agreement will continue to provide governments with a wide degree of latitude to use these measures to address their environmental problems without facing challenges from their trading partners. If a problem were to occur, it should in all likelihood be possible to resolve it by redrafting a regulation to reduce its trade effects. There is no basis for believing that a government could be forced to put its environmental objectives at risk as a result of the disciplines contained in the Agreement.

One of the most valuable features of both the old and new TBT Agreements is that they provide for a very high degree of transparency of policy-making in this area. Transparency can help prevent trade disputes through encouraging close consultations between a country and its trading partners, and it provides the opportunity for private business to adjust to new trade-related regulations in export markets. The TBT Agreement also provides for a high degree of transparency for interested non-governmental parties to obtain information on proposed new regulations in, among others, the environmental field, by requiring that trade-related regulations be published in draft form to allow interested parties to become acquainted with them and by requiring all Members to establish enquiry points to answer questions about their trade-related regulations, standards, and conformity assessment procedures.

In the event of a dispute arising between two Members under the Agreement, the provisions relating to the establishment of technical expert groups have been carried over from the existing TBT Agreement. Technical expert groups can be called on at the request of either party to the dispute, and participation in them may include not only government officials but also persons of professional standing and experience in the field in question.

The Agreement on Sanitary and Phytosanitary Measures (SPS)

The new SPS Agreement has some environmental aspects as it covers measures which protect animal and plant health, including that of

wild flora and fauna. It also addresses the wide variety of measures which governments use to ensure that human and animal food is safe with respect to contaminants, toxins, disease-causing organisms and additives, and measures to protect human health from pests or diseases carried by plants and animals. Many directly relating to animal and plant health protection and food safety, previously addressed in the 1979 Tokyo Round TBT Agreement, will be subject to the rules of the new SPS Agreement. All others, including more general labelling and packaging requirements, remain within the scope of the new TBT Agreement.

The SPS Agreement explicitly recognizes the right of governments to take measures to protect human, animal and plant health, but where trade restrictions result, these measures should be taken only to the extent necessary for health protection, on the basis of scientific principles and evidence. If there is not sufficient scientific evidence, governments may temporarily impose precautionary restrictions while they seek further information. Governments are to determine the level of health protection they consider to be appropriate on the basis of an evaluation of the risks involved. The SPS Agreement encourages countries to use international standards, guidelines and recommendations where these exist, but it does not require countries to change the level of protection which they have determined to be appropriate if this is not provided by the international standards.

Sanitary and phytosanitary (plant health) measures are to be applied in a non-discriminatory manner, although adapted to the health situations of both the area from which a product comes and the area to which it is destined. Furthermore, if there are a number of measures which could be used to ensure the determined level of health protection, governments are to use those which are no more trade restrictive than necessary to achieve the appropriate level, if these are technically and economically feasible. If the health protection practices of other countries, although different, are capable of pro-

viding an importing country's level of protection, these should be accepted as equivalent.

The SPS Agreement has transparency and notification requirements similar to those of the new TBT Agreement, including the establishment of enquiry points to answer questions about trade-related requirements. The new dispute settlement procedures would apply in the case of a dispute between two Members under the SPS Agreement. However, the SPS Agreement explicitly provides for the dispute panel to seek scientific expert advice as appropriate, including from a technical experts group or from other international organizations.

The Agreement on Agriculture

The SPS Agreement is part of the comprehensive Agreement on Agriculture which provides a framework for the long-term reform of agricultural trade and domestic policies. It makes a decisive move towards increased market orientation in agricultural trade by providing for commitments in the areas of market access, domestic support and export competition. A potential environmental benefit of the reform package will be reduced incentives for intensive farming in areas ill-suited to that activity.

An important element of the Agriculture Agreement is the commitment to the liberalization of trade through reducing domestic support for agricultural production, particularly of production-linked agricultural subsidies. Annex 2 of the Agreement contains the conditions and criteria for exemptions from the reduction commitments of domestic support measures that have, at most, a minimal impact on trade. One exemption is for direct payments under environmental programmes.

Eligibility for exemption of such payments is to be determined by whether the payments are part of a clearly-defined environmental or conservation programme and will be dependent on the fulfilment of specific conditions under the programme, including conditions related to production methods or inputs. Also, the amount of payment must be limited to the extra costs or

loss of income involved in complying with the government programme.

The Agreement on Subsidies and Countervailing Duties

The Subsidies Agreement is central to the rules restricting member governments from engaging in unfair trading practices and competing through the wealth of their national treasuries rather than on the basis of their comparative advantage.

Article 8 of the revised Subsidies Agreement identifies non-actionable subsidies on which countervailing duties cannot be applied. It covers, among others, assistance to adapt existing facilities to new environmental laws and requirements that result in greater constraints and financial burdens on firms. Subject to certain conditions, up to 20 per cent of the cost of adaptation would be considered a non-actionable subsidy.

The Agreement on Trade-Related Intellectual Property Rights (TRIPs)

The TRIPs Agreement provides more enforceable protection for trade-related intellectual property rights. As such, it will encourage more research and innovation and better access to new technology, including environmental technology, for all countries.

Article 27 of the TRIPs Agreement defines "Patentable Subject Matter". Paragraphs 2 and 3 of that Article provide for exclusions from patentability, and both cover areas that are likely to be of importance in the context of environmental protection. Paragraph 2 provides for the possibility of excluding inventions from patentability if preventing their commercial exploitation is considered necessary to avoid serious prejudice to the environment. Under Paragraph 3, governments may also exclude from patentability "plants and animals other than microorganisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes." However, Members must provide for the

protection of plant varieties by patents or by an effective *sui generis* system, or a combination of the two.

Services

Article XIV of the General Agreement on Trade in Services (GATS) contains the General Exceptions to the Agreement. It is modelled on Article XX of the GATT, and sub-paragraph (b) is identical to Article XX(b) of the GATT.

Anticipating interpretative questions regarding the scope of Article XIV(b) of the GATS, the Agreement contains a Decision which is to be adopted at the first meeting of the Council for Trade in Services. The Decision states that it is not clear whether there is a need to provide for anything more by way of exceptions for measures necessary to protect the environment than is contained in Article XIV(b), but in order to clarify that matter a Working Party shall be established and shall examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development. The Working Party is also to examine the relevance of inter-governmental agreements on the environment and their relationship to the GATS. It will report on the results of its work within three years of the entry into force of the WTO.

Fuller transparency and expert review groups in dispute settlement

The Understanding on Rules and Procedures Governing the Settlement of Disputes provides for each panel to have the opportunity to seek information and technical advice from any individual or body which it deems appropriate. Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter under dispute. This would apply to experts in the field of the environment in the event a dispute involves trade-related environmental measures.

The Understanding also states, with respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute,

that a panel may request an advisory report in writing from an expert review group. Rules for the establishment of such a group and procedures for its work are provided in an Annex to the Understanding. This formula has been borrowed from the 1979 TBT Agreement which provides for technical expert groups to advise panels.

Appendix 3 of the Understanding also contains new working procedures for panels. They allow a party to a dispute to disclose statements of its own position to the public and, at the request of a Member of the WTO, parties to the dispute shall provide a non-confidential summary of the information contained in their own submissions to the panel that could be disclosed to the public.

Market Access

Increased market access for trade in goods and services resulting from the Uruguay Round results is expected to help global economic prospects. This in turn should lead to more public resources that would multiply policy options available to governments for pursuing better environmental protection and sustainable development.

From the point of view of developing countries, where poverty is the number one policy preoccupation and the most important obstacle to better environmental protection, trade liberalization on a global scale, coupled with financial and technological transfers, is essential for promoting sustainable development. Their export opportunities will be enhanced through the Uruguay Round package both generally, through the reduction of tariff escalation and removal of non-tariff barriers in their main trading partners, and specifically in areas such as textiles and clothing. This can make a real contribution to reducing the dependence of so many developing countries on natural resource exploitation, for want of other export opportunities, and assist them in moving factors of production into environment-intensive activities.

It will be some time yet before precise details of the full market-access package in goods and services are available and can be evaluated. GATT Secretariat estimates, prepared on the basis of partial data last November, suggested that the overall trade impact of the Round could amount to world merchandise trade reaching a level in the year 2005 about 12 per cent higher (roughly US\$ 745 billion, at 1992 prices) than would otherwise be if trade grew annually over that period at its average for the period 1980-91. The largest increases in trade were projected to be in the areas of textiles and clothing, agricultural, forestry and fishery products, and processed food and beverages.

The Decision on Trade and Environment

At the meeting held to adopt the Final Act of the Uruguay Round negotiations on 15 December, the Trade Negotiations Committee (TNC) adopted a Decision on Trade and Environment (see Annex I).

Several delegations referred at the meeting to the importance they attached to work on the inter-relationships between trade and environment. For the European Communities, the work programme to be agreed upon "should enable us to inject concerns for the environment in all aspects of the work of the Organization. This

holds great promise for the future." Malaysia, speaking on behalf of developing countries, said that "we have also to remember that much work will need to be done in respect of trade and environment. We in the developing countries remain committed to the need to ensure GATT's effective contribution towards the realization of Agenda 21. Developed countries have shown a great interest in the subject, particularly in the later stages of the negotiations, and given such show of commitment, we would also hope that these find manifestation in the other areas of Agenda 21 being dealt with elsewhere in other fora. We would like to see this consistency in their commitments."

Consultations will now take place to elaborate the work programme. It will build on the work that has already taken place in GATT over the past two years in this field, particularly in the Group on Environmental Measures and International Trade (see previous editions of this Bulletin) and extend into new areas of trade that will be covered by the rules of the World Trade Organization, notably trade in services and trade-related aspects of intellectual property rights (TRIPs).

Consultations will also address the question of what institutional structure should be put in place to undertake the work programme.

ANNEX I

Decision on Trade and Environment

(adopted 15 December 1993)

The Trade Negotiations Committee,

Noting:

- (a) the Rio Declaration on Environment and Development, Agenda 21, and its follow-up in GATT, as reflected in the statement of the Chairman of the Council of Representatives to the CONTRACTING PARTIES at their 45th Session in December 1992, as well as the work of the Group on Environmental Measures and International Trade, and of the Committee on Trade and Development;
- (b) the work programme envisaged in the Decision concerning Article XIV:B of the Services Agreement; and
- (c) the relevant provisions of the TRIPs Agreement;

Considering that there should not be, nor need be, any policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable Multilateral Trading System on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other; Desiring to coordinate the policies in the field of Trade and Environment, and this without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environment policies which may result in significant trade effects for its members;

Decides to draw up a programme of work:

- (a) to identify the relationship between trade measures and environmental measures, in order to promote sustainable development;

- (b) to make appropriate recommendations on whether any modifications of the provisions of the Multilateral Trading System are required, compatible with the open, equitable and non-discriminatory nature of the system, as regards, in particular:

- the need for rules to enhance positive interaction between trade and environmental measures, for the promotion of sustainable development, with special consideration to the needs of developing countries, in particular those of the least developed among them; and
- the avoidance of protectionist trade measures, and the adherence to effective multilateral disciplines to ensure the responsiveness of the Multilateral Trading System to environmental objectives, including Principle 12 of the Rio Declaration; and
- surveillance of trade measures used for environmental purposes, of trade-related aspects of environmental measures which have significant trade effects, and of effective implementation of the multilateral disciplines governing those measures;

Agrees to present the programme of work, and recommendations on an institutional structure for its execution, for adoption as soon as possible and no later than at the Ministerial Conference of April 1994.

ANNEX II

1. At its meeting on 17 December 1993, the Council agreed that the following documents to be derestricted on 25 January 1994:

TRE/W/1/Rev.1 - Describes and reviews the specific trade provisions contained in 18 multilateral environment agreements

TRE/W/2 - Summarizes issues related in the course of the Group's discussions on the multilateral transparency of the national environmental regulations

TRE/W/3, and Add.1 and Add.2 - A generic summary of packaging and labelling requirements based on publicly available information and information submitted to the secretariat by delegations

TRE/W/4 - A generic description of environmental policy instruments to supplement information contained in TRE/W/2

TRE/W/7 - Generic list of national environmental regulations likely to have trade effects that may not be covered adequately or at all by GATT transparency provisions

TRE/W/9 - Trade effects and concerns that could arise from new forms of packaging requirements

TRE/W/10/Rev.1 - Notification requirements that exist in multilateral environmental agreements

TRE/W/12 - Trade effects and concerns that could arise from new forms of labelling requirements

TRE/W/13 - Outline analysis of the trade effects of various environmental measures

TRE/W/14 - Report on the results of the first session of the Commission on Sustainable Development

TRE/W/16/Rev.1 - Review of the use in GATT of the concepts of "least trade-restrictive" and "proportionality"

TRE/W/17/Rev.1 - Description of the negotiating history of GATT Article XX(h) and its application

TRE/W/18 - Description of the application of GATT Article XXV:5 and of the potential of its existing provisions

2. Below are the references to three additional documents on environmental issues that have already been derestricted

L/6896 - Factual note describing the establishment of the Group on Environmental Measures and International Trade in 1971, information on other work in GATT on environmental issues, and description of the trade provisions of various multilateral environmental agreements and related GATT provisions.

L/6892/Add.3 - Report by the Secretariat to GATT Contracting Parties on the UNCED results that relate to trade.

"International Trade", 1990-91, Volume 1, Chapter 2. Commentary by the GATT Secretariat, on its own responsibility, on the trade and environment links.

These documents are available on request.