

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Group on Environmental Measures and International Trade

REPORT OF THE MEETING HELD ON 27 JANUARY 1994

Note by the Secretariat

1. The Group on Environmental Measures and International Trade held its thirteenth meeting on 27 January 1994 under the chairmanship of Ambassador H. Ukawa (Japan). The agenda for the meeting was contained in GATT/AIR/3543.
2. The Chairman stated that the main purpose of the meeting was to prepare the Group's report to the forthcoming Council meeting devoted to UNCED follow-up, and he invited delegations to give their views in that regard. He invited delegations also to offer guidance to the GATT Secretariat on what they would wish to see contained in the report which it would be submitting in mid-March to the Secretariat of the Commission on Sustainable Development (CSD), outlining the progress governments had made through GATT in the past twelve months in implementing the recommendations contained in Agenda 21. The Chairman noted that there had been a TNC decision on 15 December 1993 to draw up a work programme on trade and environment in time for the Ministers' meeting in Marrakesh, and said that he thought the focus of work on trade and environment from now on ought to be on that work programme.
3. With regard to the Group's contribution to the Council meeting devoted to UNCED follow-up, the Chairman suggested that he could send a short note to the Chairman of the Council forwarding the two reports he had made as Chairman of the Group to the CONTRACTING PARTIES on his own responsibility, along with the summary records of the two past meetings that had been held on UNCED follow-up and of this current meeting. In his covering note, he suggested that he could also draw the attention of the Council Chairman to the fact that the Group's work under its regular three agenda items had, to a very large extent, anticipated the UNCED recommendations and should also, therefore, be considered an important contribution by the GATT to UNCED follow-up.
4. As for the report that the Secretariat would be sending subsequent to the Council meeting to the Secretariat of the CSD, the Chairman said that in his view it should emphasize that the successful completion of the Uruguay Round was the most significant contribution that the GATT had made to UNCED follow-up, but that in addition considerable progress had been made in examining and analysing the trade and environment interface which, given the pressures of the trade negotiations on-going at the time, was testimony to the seriousness with which contracting parties had been tackling the subject.
5. The representative of Sweden, speaking on behalf of the Nordic countries, said that his delegations were in agreement with the Chairman's proposal on how to proceed. In his view, the report of the Secretariat to the CSD should be a factual account of the work carried out on the points that were included in the UNCED recommendations to the GATT. It was not appropriate at this stage to draw conclusions on points where there was no consensus in the Group, or in the GATT in general. One of the positive results of the past two years of work was that delegations had come to understand better the issues which merited analysis, and it was important to carry

over into the future work programme of the WTO some of the insights that had been gained. His delegations were in total agreement that the Secretariat's report to the CSD should focus on the successful completion of the Uruguay Round, which was a major contribution to the promotion of sustainable development, and should describe the TNC decision on trade and environment of 15 December 1993.

6. The representative of New Zealand supported the Chairman's suggestions on how to proceed. The Group had concentrated on attempting to define issues flowing from Chapter 2 of Agenda 21, not all of which had been fully captured in the Group's existing three-point agenda, and reports on the discussions on these issues should be passed on to the Council. Probably the single most important contribution GATT had made towards sustainable development had been the successful conclusion of the Uruguay Round, which would ensure greater market access for all contracting parties and thereby promote development and concomitant protection for the environment and avoid a number of distortions which had deleterious effects on the environment. Concluding the negotiations and laying a basis at the same time for a system-wide addressing of the trade and environment agenda was a significant and singular achievement in this respect. Furthermore, since there had been considerable overlap between the Group's work over the past two years and the UNCED agenda, a lot of that work could rightly be termed follow-up to UNCED.

7. The representative of Hong Kong supported the Chairman's suggestion, and said that the CSD should be informed of the work already done in the Group, where Uruguay Round results were relevant to the topic, especially to the recommendations of Agenda 21, and pointers to the future in the form of the TNC decision.

8. The representative of India also supported the broad thrust of the Chairman's suggestions. He agreed that the focus of work would shift now to the TNC decision and to the drawing up of a work programme, and that this presented a good opportunity for GATT to be able to deliver a message, without public pressure and in the right perspective, on the legitimate role that GATT had to play. He noted that as far as the GATT's role in the follow-up to UNCED was concerned, the successful conclusion of the Round had been considered desirable because it would lead to an open, non-discriminatory, secure and predictable multilateral trading system. In addition, the GATT was expected to analyze the relationship between trade and environment and whether trade restrictions were considered necessary and, if so, under what circumstances. The latter aspect had not yet been covered by the Group but a lot of analytical work had been done in this respect. More would be needed in the future work programme.

9. The representative of Brazil stated that a turning point had been reached in relation to trade and environment in GATT. The conclusion of the Uruguay Round and the TNC decision changed the way in which these issues were to be discussed within the GATT. He pointed out that the TNC decision was a good basis for determining a work programme. With respect to UNCED follow-up and the CSD, GATT discussions on trade and environment were part of the implementation of the whole of Agenda 21. The recently concluded negotiation of the international tropical timber agreement was a source of great preoccupation for his delegation. Specifically, the question of the transfer of resources and technology to developing countries, which were not correctly addressed in the context of the implementation of Agenda 21, would place increasing pressure on the multilateral trading system to admit unilateral measures if the root causes of the environmental problems were not dealt with. Discussions in the GATT and those which would be transmitted from the CONTRACTING PARTIES to the CSD would have to be closely related to the implementation of the whole of Agenda 21. He agreed that the Group's agenda items and the Chairman's summary covered a number of issues raised in Agenda 21 and these should be included in the report of the CONTRACTING PARTIES to the CSD, with some

elaboration in light of the discussions in the special Council and the Committee on Trade and Development.

10. The representative of the European Communities focused on the report to the special Council which he stated should incorporate the Chairman's report, the decision of the TNC, the minutes of the Group's last two meetings on UNCED follow-up and the minutes of this meeting. In addition, the Council should be informed of issues not covered by the Group's present agenda upon which to focus in the post-Marrakesh process. He agreed with point six of the Chairman's concluding statements (TRE/12) and added that point (d) of Chapter 2.22, which related to dealing with the root causes of environmental degradation, could be examined. He noted that the successful conclusion of the Uruguay Round and an open multilateral trading system were explicitly mentioned in the UNCED texts and were expected to have a good impact on the environment and on sustainable development. However, the same paragraphs of Agenda 21, which noted the usefulness of successfully concluding the Uruguay Round, also stated that a sound environment was needed to provide the resources for sustainable growth and that should be reflected in the report. He agreed that derestricting the Group's working documents was useful. In addition, he suggested the derestriction of his delegations' submissions on multilateral environmental agreements and the German packaging ordinance. Finally, he agreed that the report should be mostly factual in nature.

11. The representative of Mexico agreed that although the conclusion of the Uruguay Round constituted an important contribution to the UNCED follow-up process, this was not the end of GATT's contribution, specifically regarding market access for developing countries and ensuring that the trading system remained open and non-discriminatory. She agreed with other delegations that the conclusion of the Uruguay Round, the Group's work and the Chairman's report should be included in the report to the CSD. She emphasized that the future work programme of GATT in the area of trade and environment would go on within the framework outlined by the TNC decision for adoption by Ministers in Marrakesh. She agreed with others that the Agenda 21 follow-up exercise was a global commitment which should be taken as a whole as it gave general guidance to achieve the aims of sustainable development. The main principles and objectives in Agenda 21 which should be taken as a basis for future work were the fostering of international cooperation and consensus, and the avoidance of unilateral, extraterritorial and trade protectionist actions when dealing with environmental challenges.

12. The representative of Canada agreed with the key points of coverage, emphasis and structure of the report to the special Council that had been mentioned.

13. The representative of Japan limited his comments to the manner in which to report to the special Council. Concerning UNCED follow-up, he stressed that there had been a general convergence of views among delegations that trade liberalization and an open, non-discriminatory trading system could make significant contributions to sustainable development. Concerning the Group's report to the special Council, he stated that reference should be made to both convergence as well as divergence of views. In this context, his delegation supported the Chairman's suggestion to include the minutes of the past two meetings on UNCED follow-up in order to capture the Group's progress. He also supported the Chairman's suggestion to send two Chairman's reports to the CONTRACTING PARTIES attached to the Group's report to the special Council.

14. The representative of Switzerland emphasized that the Group had started its exchange of views on UNCED from a common understanding with regard to the important aspects of the trade and environment interlinkages. The work of the Group on the regional agenda had given it the chance to exchange valuable information and to find common ground for in-depth analysis,

especially for the UNCED issues. Her delegation was convinced that the two main conclusions which could be drawn from the Group's formal exchange of views on UNCED should be reflected in the report to the special Council. First, there had been general support from the CONTRACTING PARTIES that GATT had to undertake measures to contribute to realizing sustainable development which should be coordinated with other international fora dealing with trade and environment. Second, there had been strong agreement that the most significant contribution GATT could make towards sustainable development was the successful conclusion of the Uruguay Round which ensured greater market access and the necessary macro-economic conditions. As such, both the successful conclusion of the Uruguay Round and the Group's past deliberations were important contributions to UNCED follow-up.

15. She said that it was important that the Group should continue to focus on regional agenda items and expand its work to include those subjects specifically related to Agenda 21. For example, one important question for her delegation was how to treat PPMs. Her delegation stated that it was important to create a common strategy for the examination of the principles and propositions enumerated in Section B of Chapter 2 of Agenda 21, in accordance with the Group's mandate and competence. Her delegation was convinced that the report should reflect that trade and environment policies had to be considered as being on the same level of the policy hierarchy. She noted that despite the fact that internationally agreed trade rules and disciplines had to be respected, an in-depth analysis might conclude that these rules and disciplines needed to be adapted in order to make trade and environment mutually supportive for the promotion of sustainable development. To this end, paragraph (b) of the TNC decision concerning the work programme on trade and environment referred to whether any modification of the provisions of the multilateral trading system were required.

16. The representative of Thailand, speaking on behalf of the ASEAN contracting parties, stressed that the Group's three agenda items could be considered as part of the GATT contribution to UNCED follow-up. She agreed with other delegations that the successful conclusion of the Uruguay Round was the most significant contribution the GATT could make to UNCED follow-up. She emphasized that the CONTRACTING PARTIES should fully adhere to UNCED principles and recommendations in their dealings with trade, development and environment issues. As such, unilateral action to deal with extraterritorial environmental matters would be avoided and solutions would be based on international consensus. She noted that more work needed to be done to ensure that the GATT and the WTO contributed to the implementation of UNCED, in particular to the objective of making trade, sustainable development and environment mutually supportive.

17. The representative of the Republic of Korea supported the Chairman's report to the CONTRACTING PARTIES. He noted that the report to the special Council should indicate the relevant provisions of Agenda 21, such as 2.22(e), (g) and (i). He agreed with other delegations that the successful conclusion of the Uruguay Round and the TNC decision to develop the work programme on trade and environment and its follow-up, as well as the results of two years of discussions in the Group, were achievements of the GATT towards sustainable development.

18. The representative of Hungary agreed that the report to the special Council could be built on the Chairman's report to the CONTRACTING PARTIES, the Group's work and mention the benefits of the completion of the Uruguay Round and the TNC decision on the work programme.

19. The representative of Austria generally agreed with the outline of the reports to the special Council and the CSD. He emphasized that a focus on sound environmental policies should retain equal attention in this report. In addition, both the report to the special Council and to the CSD should highlight the approach that had been taken by GATT in dealing with the interface between

trade and environment and mention the specific parts of Agenda 21 upon which the Group's work had been based.

20. The representative of Nigeria agreed with previous statements that the report to the special Council should be factual. Although this report should recognize the consensus which had developed in the Group, he stressed that environmental concerns should not be used as a reason for de-emphasizing the comparative advantage of countries in the pursuit of the objective of development or sustainable development. Concerning the derestriction of documents, he noted that the Group's work had been informed by public debate and reflected the intellectual as well as policy debates that were taking place outside the Group. Finally, he agreed that the successful conclusion of the Uruguay Round was not an objective in itself. As such, the implementation of the contents of the Uruguay Round was crucially important. His delegation expected that there would be a monitoring body set up in Marrakesh to gauge the implications of the Round on individual countries during the implementation of the Agreement.

21. The representative of Venezuela agreed that the Chairman's report to the CONTRACTING PARTIES reflected the Group's discussions. He emphasized that the reports to the Council and the CSD should emphasize the importance that the CONTRACTING PARTIES attached to the elimination of unilateralism and protectionism for environmental reasons and should reflect discussions in the Committee on Trade and Development. Finally, his delegation considered that future work in the GATT should be closely linked to Agenda 21 and should complement work by the CSD.

22. The representative of the United States noted that this was a propitious moment to be preparing a report on the Group's work. His delegation welcomed the derestriction of the Group's documents and thought that it would be useful to summarize those documents to make it known more broadly to the public that they were available and reveal the large amount of work relevant to UNCED follow-up that had been done in the Group. With respect to the report to the CSD, the major contribution towards meeting one of the concrete objectives set out in Part A of Chapter 2 of Agenda 21, was importance attached to the conclusion of the Uruguay Round. Also, he said that the work of the Committee on Trade and Development was worthy of note and should be included in the report. The Group's work was central to Part B and hence it was important to emphasize the work that had been done to date related to UNCED follow-up and the forward looking nature of this work. More generally, he noted that the report should underline the determination of the CONTRACTING PARTIES to ensure that trade policies and environment policies were mutually reinforcing and supportive.

23. As far as documents to be attached, his delegation suggested adding Ambassador Zutshi's statement to the CONTRACTING PARTIES last year outlining the Group's agenda for UNCED follow-up in order to show how quickly and comprehensively the Group had accomplished the task.

24. The representative of New Zealand stated that he did not disagree with the representative of India or others that the first objective of the Round was not necessarily to deal with the environment. However, he felt that it was important for this work as the Round itself contained a number of provisions which related to the environment. It was worth summarizing those provisions in order to note that the Round did not leave out the environment (for example, the provisions on agriculture, subsidies, sanitary and phytosanitary measures, technical barriers to trade, etc.). He agreed with the representative of the United States that the report should mention that the Group had dealt with one of its responsibilities under Agenda 21. Finally, the future work programme noted in the TNC decision was indicative of the CONTRACTING PARTIES'

intentions to move forward in this area. He added that within the context of the Round, there was future work on the environment which remained to be accomplished.

25. The representative of Japan endorsed the idea that the conclusion of the Uruguay Round was the most significant contribution that governments could make to the GATT. Therefore, he believed that the content of the work programme to be adopted in Marrakesh should be incorporated into the CONTRACTING PARTIES' report as a valuable contribution to UNCED follow-up. In conclusion, he noted reference to the substantive progress that had been made in identifying the issues in the area of trade and environment through in-depth and wide-ranging deliberations of a constructive and pragmatic manner which provided a useful basis for future work under the new work programme to be adopted in Marrakesh.

26. The Chairman noted that a number of delegations had made reference to priorities they attached to certain topics to be pursued in the future which he had tried to incorporate in his report to the CONTRACTING PARTIES. If these priorities or their importance were not fully reflected in that report, he was confident that delegations would have an opportunity to make reference to these priorities in the special Council on UNCED follow-up.

27. He noted that the report to the CSD should make reference to the full part that the CONTRACTING PARTIES intended to play in ensuring the mutual compatibility of trade and environment policies. He asked the Secretariat to contemplate whether it was feasible and appropriate to have a summary reference to the Uruguay Round results that touched on environment which might be prepared as a joint exercise by different divisions of the Secretariat.

Agenda Item 1

28. With respect to agenda item one, the representative of Sweden, on behalf of the Nordic countries, commented on Article XX(h), which dealt with measures taken pursuant to international commodity agreements, as outlined in TRE/W/17/Rev.1. He noted that this provision dealt with similar kinds of situations as had been discussed in the Group concerning measures taken pursuant to multilateral environmental agreements. As an example of the similarities between Article XX(h) and a solution for MEA-based measures, he mentioned the question of defining what constituted an MEA. The Havana Charter addressed this question in Chapter VI by outlining that an international or intergovernmental commodity agreement (ICA) had to: (1) be open initially to all members on equal terms; (2) provide for adequate participation by countries whose interest was in the importation or consumption of a commodity; and (3) accord fair treatment to members who did not participate. In addition, the negotiation and administration of commodity agreements needed to be given full publicity. He noted that these criteria were similar to the ones that the Group had discussed when trying to understand what constituted an MEA.

29. In addition, he noted that Article XX(h) dealt briefly but effectively with the question of the degree to which a trade measure would have to be specified in the international agreement, i.e. a measure must be obligatory under the agreement. As such, if a government were obliged to undertake a measure, the assumption was that this measure would have been known in advance. If the nature of the measure was not known beforehand, then there could not be any obligation. Thus the language of Article XX(h) assumed that there was a certain amount of specificity in the ICA.

30. Another aspect which he noted was the provisions regulating the procedure for negotiating an ICA which had to be motivated by situations which would "cause or threaten serious hardship". A further aspect was the requirements concerning content (such as dispute settlement) and governance (such as periodic review) of these agreements. Without drawing any conclusions,

his delegation noted that it was interesting to discuss the possibilities and difficulties with Article XX(h) in relation to MEAs in the future work on trade and environment in the GATT and the WTO.

31. With respect to the Secretariat paper on border tax adjustment (TRE/W/20), his delegation reiterated the centrality of the issue of border tax adjustment to any analysis of the relationship between trade and environment policies. He noted that the trade implications were important if the domestic use of environmentally-motivated product taxes were to be expanded and applied to imported products, in accordance with the rules of the trading system. As with Article XX(h), his delegation realized that the Group had played an important role in specifically identifying the kind of issues which would be elaborated in the future work programme.

32. Finally, he noted that TRE/W/21 dealt with the crucial concept of necessity, which would have a lot of bearing on any work on the trade and environment agenda explored in the future.

33. The representative of Hong Kong supported the Nordic observations that the relevant chapter on international commodity agreements of the Havana Charter could provide a source of inspiration for the Group's work on MEAs. He agreed that many approaches which were in that chapter pertained to MEAs as they were being discussed in the Group. He agreed that Article XX(h) was not necessarily an ex ante approach and wondered whether the fact that certain agreements could be covered if they conformed to principles approved by an ECOSOC resolution would not result in a certain ex ante approach. Finally, he noted that in Chapter VI of the Havana Charter, there were explicit references to agreements for the conservation of natural resources which would be interesting to study further.

34. Concerning the note on border tax adjustments, his delegation noted the complexity of this issue. However, in the light of the increasing interest in environmental taxes, this was an issue which should urgently be studied by GATT and the WTO in the future. His delegation had read with particular interest about the possibilities for exemption, remission and deferral of certain taxes upon exportation of products and would study the options that had been suggested.

35. Another issue for further study was the question of how far GATT and WTO rules would allow importing countries, which imposed environmental taxes on their domestic production, to apply related border tax adjustments to imported products if the exporting country did not have a similar tax in place. His delegation felt that this was an issue which had to be studied carefully before any conclusions were drawn.

36. His delegation found the information on the drafting history of "unnecessary obstacles to international trade" interesting but noted the changes in light of the Uruguay Round references to the TBT and SPS texts in order to minimize the negative effects on trade: i.e. measures were not to be more trade-restrictive than necessary to fulfil a legitimate purpose. In conclusion, he noted the reference to least trade-restrictiveness in point 2.22(i) of UNCED.

37. The representative of Australia referred to international commodity agreements with economic provisions in order to reflect the point made by Hong Kong that Article XX(h) had never been tested. He observed that an agreement with a provision for export or import restrictions - not unlike CITES - might possibly contravene the GATT. However, he noted that those agreements had never been contested. GATT was not perceived to be an appropriate place to resolve this issue. He noted that the Chairman's report mentioned the same applied to MEAs. There were a number of MEAs with provisions that might not be in conformity with GATT but the GATT had never been asked to adjudicate this and he doubted whether, in fact, the GATT would be used in this respect.

38. The representative of New Zealand complimented the Chairman on behalf of the Group for the intellectual analysis and leadership which he had provided in bringing the Group's work to this watershed point. He felt that the Group had provided a forum for discussion which had permitted all delegations to become more comfortable with the differing perspectives which existed in this area through thinking the issues through and in working with each other. In allowing this to happen the Chairman had rendered all delegations a great service.