

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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CONTRACTING PARTIES
Forty-Ninth Session

SUMMARY RECORD OF THE SECOND MEETING

Held at the International Conference Centre, Geneva,
on Wednesday, 26 January 1994, at 10.30 a.m.

Chairman: Mr. B.K. Zutshi (India)

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Presentation of reports (continued)

Presenting the report of the Committee on Trade and Development (L/7328), its Chairman, Mr. Zahran (Egypt), said that in addition to numerous informal consultations, the Committee had held three formal sessions in May, July and November 1993. Given the pressure of the Uruguay Round negotiations, the Committee had reduced to the extent possible its programme of work for 1993. Nevertheless, a number of substantive issues of considerable importance had been dealt with. At the request of the CONTRACTING PARTIES, the Committee had undertaken an examination, within the scope of its terms of reference, of matters raised by the United Nations Conference on Environment and Development (UNCED) in the context of promoting sustainable development through trade liberalization. An in-depth and enriching discussion had been held by the Committee on this issue during the year. The Committee had held five informal meetings early in the year and had then undertaken a formal discussion of the UNCED follow-up at its July Session. Five points had been identified for substantive examination and eventual follow-up work: (i) the sustainable development, environment and trade interface; (ii) improving market access, in particular to exports of developing countries; (iii) monitoring and data collection; (iv) relevance of existing GATT rules relating to developing countries, including Part IV, to the concepts of sustainable development, environment and trade; and (v) possible future rôle of the Committee in dealing with matters relating to sustainable development, environment and trade.

The Committee had not reached a consensus on the precise elements of its work in terms of the issues to be addressed by it in order to make its contribution in the area of trade and environment. A number of delegations had expressed the view that the list of topics to be dealt with by the Committee should only focus on those which were of particular relevance to its terms of reference. It had been felt that such an approach would also avoid possible duplication of work being carried out in the Group

on Environmental Measures and International Trade. Other delegations had emphasized the need to address a particular range of issues from Agenda 21, Chapter 2: Introduction and Section A of the UNCED Declaration, in order to enable the Committee to examine them from the perspective of developing countries. He would be submitting, under his own responsibility, a factual report on these discussions to the forthcoming Council meeting that would review the follow-up in GATT to the UNCED.

During 1993, extended consultations had been held on how best the Southern Common Market (MERCOSUR) agreement might be examined within the GATT system and, in particular, whether such examination should be carried out under the aegis of the Council or of the Committee. The Committee had been able to reach an agreement to establish a working party for the examination of MERCOSUR, and at its Session in July had taken note that Mr. C. Manhusen (Sweden) had agreed to serve as Chairman of the Working Party.

A number of informal consultations had also been held in the past year on how best to approach the question of the review of the participation of developing countries in the multilateral trading system, which the Committee had agreed to undertake on a regular basis. However, given the pressure of work to conclude the Uruguay Round negotiations by the end of 1993, it had been agreed that the Committee would postpone this review until after the conclusion of the Round.

The Committee had also examined a number of regular issues, including the review of the implementation of Part IV and of the Enabling Clause¹, and the overview of technical assistance activities within the GATT as well as in other organizations in relation to the Uruguay Round. The Committee had also examined and taken note of the proceedings of the Sub-Committee on Trade of Least-Developed Countries, which had held one session in May. In the context of the discussions on participation of developing countries in the trading system, a proposal had been made that the Sub-Committee on Protective Measures, which had been inactive since the launching of the Uruguay Round, be reactivated. This matter remained under consideration.

Other specific issues had been taken up by the Committee in the course of its 1993 activities, such as the question of the extension of the Generalized System of Preferences (GSP) treatment to Central and East European countries and former republics of the USSR. A number of important questions remained open for discussion in the forthcoming meetings of the Committee in 1994, as agreed by its members, including the review of participation of developing countries in the multilateral trading system, and the future work programme of the Committee in the light of the Uruguay Round results. The Committee had also agreed to pursue work further on the UNCED follow-up, but that question was now open for review in the light of the decision to be taken by Ministers at the forthcoming Marrakesh Conference.

¹Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203).

Activities of GATT (continued)

The following general statements were made:

Mr. Minoru Endo Ambassador Extraordinary and Plenipotentiary of Japan	SR.49/ST/8
Mr. Mikko Heikinheimo Director, Ministry for Foreign Affairs of Finland	SR.49/ST/9
Mr. Don Kenyon Ambassador, Permanent Representative of Australia	SR.49/ST/10
Mr. Roderick E. Abbott Director, General Directorate, External Relations, Commission of the European Communities	SR.49/ST/11
Mr. Guillermo Alberto Gonzales Ambassador, Permanent Representative of Colombia	SR.49/ST/12
Mr. Gerhard Wass Director-General, Federal Ministry of Economic Affairs of Austria	SR.49/ST/13
Mr. Rigoberto Gauto Counsellor, Chargé d'affaires, a.i., Permanent Mission of Paraguay	SR.49/ST/14
Mrs. Rosa Chávez Bustios Counsellor, Chargé d'affaires, a.i., Permanent Mission of Bolivia	SR.49/ST/15
Mr. Mounir Zahran Ambassador, Permanent Representative of Egypt	SR.49/ST/16
Mr. Valence Sahouet Bizie Director, Foreign Trade Promotion, Côte d'Ivoire	SR.49/ST/17
Mr. Tang Yufeng Deputy Permanent Representative of China (speaking as an observer)	SR.49/ST/18
Mr. Jamel Zarrouk Senior Economist, Economics and Technical Department of the Arab Monetary Fund (speaking as an observer)	SR.49/ST/19

Report of the Council (L/7376) (continued)Point 6. Trade and EnvironmentSub-point 6(a). Group on Environmental Measures and International Trade

The CHAIRMAN recalled that at its meeting in October the Council had been informed that the Chairman of the Group would report to the CONTRACTING PARTIES at their Session on the activities of the Group in 1993.

Mr. Ukawa (Japan), Chairman of the Group, highlighting the main features of his second report to the CONTRACTING PARTIES made on his own responsibility (L/7402), said that the Group had curtailed its meetings in the second half of 1993 by unanimous decision. Concluding the Uruguay Round had been by far the most significant contribution that governments could make through GATT to improving the climate for better environmental conservation and protection policies at both national and international levels, and it had been recognized that distracting attention from the negotiations at such a critical juncture would neither have served the interests of the Round, nor ensured a focused and constructive debate in the Group. Despite this curtailing of its work, the discussions in the Group over the past two years had resulted in delegations being better informed of, and more comfortable with, the subject of trade and environment. That had made easier his own task of moving the debate forward, and had meant that an increasing number of delegations had been able to participate actively in the Group's work with more confidence and in a spirit of mutual trust and cooperation. Although there had nevertheless been divergences of views and perspectives, these had, in fact, enriched the discussions. The widely shared conviction that there need not be, nor should be, any policy contradiction between upholding the values of the multilateral trading system and the protection of the environment, had been strengthened further in 1993. There had also been wide acceptance in the Group that the GATT provided wide scope for governments to use trade-related policies to protect national environmental resources without calling into question their GATT obligations. When it was felt necessary to use trade measures in multilaterally agreed environmental arrangements, many delegations had expressed the view that most often their design and implementation need not involve action that extended beyond that available to contracting parties under the GATT.

Under agenda item I of the Group, namely, trade provisions contained in existing multilateral environmental agreements (MEAs) vis-à-vis GATT principles and provisions, the concern that trade measures taken under MEAs could conflict with GATT provisions had formed the background for the discussion in the Group. Also, the concern that GATT provisions could work to inhibit, if not prevent, a desirable conclusion of future MEAs had been recognized but not shared by all. Efforts to seek cooperative multilateral solutions to environmental problems of a transboundary or a global nature had been welcomed by contracting parties, for there were grounds to believe that this approach would prove more effective and durable than ad hoc resort to unilateral trade measures to try to deal with such problems. Also, possibilities of conflicts arising in the future over the trade provisions contained in MEAs would be minimized through better coordination between trade and environmental officials in national capitals. As he had reported to the CONTRACTING PARTIES at their Forty-Eighth Session, many delegations had stressed that the work of the Group had enabled policy officials dealing with trade as well as the environment to seek a better coordination, and this was a welcome development.

Discussions in the Group on this agenda item had focused on two of the most challenging questions raised, which related to the use of trade measures to help protect environmental resources

that did not fall within the national jurisdiction of any one or more contracting party, and to trade provisions under MEAs that applied separately to non-parties. In this context, several delegations had stressed the need for caution to be exercised in the negotiation of MEAs before including such trade provisions at all, and that it was generally undesirable and should not normally be necessary for contracting parties to use discriminatory trade restrictions against non-parties to an MEA. It had also been stressed that while trade measures might appear to be an attractive means of enforcing provisions of MEAs, their effectiveness was not always beyond doubt and the full costs of using them could be high and should be carefully taken into account. In spite of the deep-seated reservations held by some of these delegations, the spirit of confidence and cooperation which had prevailed had enabled the Group to move forward in line with the dictum of not rejecting any notion out of hand, nor taking any concept at face value. Consequently, it had been possible to explore analytically different approaches that might be envisaged to resolve or deal with a possible conflict.

One approach that had been suggested was already available under the GATT, namely to consider treatment of trade provisions in MEAs on a case-by-case basis, notably through the waiver provisions under Article XXV. This approach expanded on the view that the GATT already provided considerable scope for using trade measures for environmental purposes, and reflected serious doubts that trade measures which would exceed the limitations of existing provisions were likely to prove either efficient or effective policy tools for use in environment-related situations. It also reflected serious concern about disturbing the balance of rights and obligations in the GATT. Several delegations had stressed that the merit of this approach was to permit the remedy to fit the problem. A waiver procedure would provide a measured case-by-case response to any problems that might arise in the future. An MEA which reflected a genuine multilateral consensus would find broad enough support among contracting parties, and there need be little, if any, uncertainty about the chances of securing a waiver. The onus to demonstrate and convince others of their case would remain the responsibility of those that sought the waiver, and this would be a response in line with the time-honoured GATT tradition of flexibility which, through a combination of tolerance and safeguards, had enabled other objectives to be effectively realized over the years without compromising the balance of rights and obligations accruing to contracting parties.

Some doubts, however, had been raised over this approach. One was that it was an ex post case-by-case approach which might fail to provide negotiators of future MEAs with the necessary degree of predictability and security that there would not be a GATT challenge if trade provisions were included in an MEA. In the absence of a clear hierarchy among different, self-standing international agreements, a formal denial of a waiver would create an untenable conflict of international obligations for contracting party governments. Article XXV, it had been observed, was meant to address exceptional circumstances on a time-limited basis, and it was not clear that the GATT would wish to treat MEAs as exceptions. However, these questions were political in nature and did not in any way detract from the availability of the waiver approach.

Another approach that had been suggested and discussed in the Group was to define conditions for the use of trade measures in the context of an MEA in advance, and to ensure that as long as these conditions were met the GATT would accommodate the measures. In one formulation, this would involve a collective interpretation by the CONTRACTING PARTIES of the applicability of the provisions of Article XX in circumstances in which trade measures were applied separately in an MEA to non-parties to the MEA. This was an ex ante approach, which would bring predictability and security for negotiators of MEAs by clarifying the relationship between the trade provisions of MEAs and GATT principles and provisions. Some questions or doubts had been raised about this approach as well. One concern

was that it could upset the existing balance of GATT rights and obligations. The provisions of an MEA, or the judgement of parties to an MEA, should not be allowed to override those rights, especially without there being an obligation to explain the case for trade discrimination if there were to be a challenge under the GATT. Another doubt, of a more practical nature, was whether it would prove possible to find a single formula for implementing this approach that would, on the one hand, be general enough to encompass all legitimate requirements for the use of trade measures in the context of MEAs and, on the other, would neither overstretch the basic concept for an exceptions clause which underlined this approach nor open the door to protectionist abuse.

The constructive atmosphere that had prevailed in the Group had permitted discussion on some of the details of this approach. Even those that favoured it had seen that if it was to gain a wide measure of support it should be based on carefully defined, pre-established elements. A number of such elements had been identified as being of particular importance, and had been the subject of preliminary discussion. One element was what defined an MEA. Another was whether and to what extent a trade measure should be specified in an MEA if it was to be cleared under this approach. Another was the necessity of using trade measures, particularly discriminatory trade measures, to achieve the objectives of an MEA. The majority of delegations had yet to elaborate their positions over what, if anything, needed to be done on this subject. Many questions remained, and further work clearly needed to be done.

Under agenda item II, namely, multilateral transparency of national environmental regulations likely to have trade effects, much had been accomplished in the analytical work of the Group. There appeared to be broad agreement that current GATT provisions, especially once they had been supplemented by the new Uruguay Round provisions, created a broad basis for ensuring multilateral transparency. Some delegations, however, had drawn attention to certain specific environmental measures which they felt might not be covered adequately by GATT provisions. A preliminary list of such measures had been compiled, and some delegations had concerns in particular over the adequacy of transparency of economic instruments such as measures taken by sub-federal government authorities and by the private sector, and voluntary measures. While ex ante notification, stressed by many, was desirable, others had noted that ex post notification, which was the norm in GATT, could go a long way towards meeting the required objectives when properly complied with. It had also been stressed that transparency was not an end in itself and that excessive ambition at a detailed level in this area could create compliance problems by over-extending notification requirements. There had been considerable discussion regarding the suggestion that governments might consider establishing an enquiry point to provide information on trade-related environmental measures. Some doubts had been raised about the practical aspects of implementing such enquiry points. However, an official pledge of assistance to help find information upon request might prove valuable, and the suggestions regarding enquiry points would clearly require further consideration.

Under agenda item III, namely, trade effects of new packaging and labelling requirements, discussions in the Group had been enriched by the provision by delegations on an individual and goodwill basis of information reflecting their own national experiences. Given the technical nature of the subject, a short statement could not do justice to the detailed discussion that had ensued in the Group, and he would refer contracting parties to the text of his report. The Group had been assisted in its deliberations by presentations made by the International Trade Centre and the International Organization for Standardization in informal meetings organized for that purpose. New packaging and labelling requirements aimed at protecting the environment were being used by an increasing number of countries. Discussions in the Group had concentrated on trying to identify the trade effects and to analyze to what extent they might differ from the trade-related technical regulations and standards that were more familiar

to contracting parties. The Group had begun to identify generic issues for further analysis, many of which were common to both packaging and labelling requirements. These included the practical distinction between voluntary and mandatory measures and their implications for trade; approaches to the setting of criteria and threshold levels in the design of the measures; the scope for standardization or harmonization and mutual recognition; the fact that complications could arise for trade through the setting of requirements in terms of product processes and production methods rather than product characteristics; and special difficulties and costs that might face small-size foreign suppliers, particularly from developing countries. Among other things, it had been stressed, in respect of eco-labelling, that whether a product had been tested or otherwise, the lack of such a label could be taken as a sign of undesirable characteristics of that product and could have an impact on competitive conditions. The fact that different labels applying to different markets could also complicate matters for traders that dealt with a number of different markets had also been stressed. In terms of packaging requirements, as in the case of eco-labelling, related industry associations were often mobilized by governments in the design and implementation of some of the requirements. Inasmuch as such industrial associations tended to reflect local concerns as well as to deal with packaging or labelling requirements of products with which they were familiar, they could inadvertently create difficulties for outside suppliers, particularly from long distances that required greater packaging material for transportation purposes.

The UNCED follow-up was a new task that had been assigned to the Group by the CONTRACTING PARTIES at their Forty-Eighth Session in 1992. Although the Group's work in 1993 had had to be curtailed, as he had mentioned earlier, a full discussion of national positions had taken place. It had been emphasized that the UNCED Declaration followed and reflected GATT provisions, language and experience, and that the three items on the agenda of the Group had therefore anticipated much of what was found in that Declaration. The work undertaken by the Group in respect of its three agenda items could therefore already be considered as a GATT contribution to the UNCED follow-up. It had also been noted that the UNCED results had been agreed by international consensus at the highest level, and that the principles and recommendations reflected therein should be taken as a common basis and point of departure for the work of the Group. The Group's work in this respect had been supported by the shared view of delegations that trade and environment were mutually supportive. The task assigned it — to give the UNCED Declaration and Agenda 21 principles appropriate operational effectiveness — would require much more detailed work by contracting parties and continued imaginative input by delegations.

He hoped that his report and its annexes, together with certain working documents of the Group that the Council had agreed in December to derestrict at the time he presented his report to the CONTRACTING PARTIES, would contribute to the public debate on trade and environment issues and correct misconceptions about GATT's rôle. They should also help to indicate the complexity of the matters under examination in the Group, the scope of its work, and the seriousness with which the delegations had addressed the task assigned to them.

The CHAIRMAN proposed that the CONTRACTING PARTIES agree to adjourn the meeting at this point to allow an informal meeting at the level of Heads of Delegations to be held. The CONTRACTING PARTIES would revert to this point of the Council's report at their next meeting.

The CONTRACTING PARTIES so agreed.

The meeting adjourned at 12 noon.