

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

Spec(90)36

4 September 1990

Working Group on Domestically Prohibited Goods
and Other Hazardous Substances

SEVENTH MEETING OF THE WORKING GROUP ON
DOMESTICALLY PROHIBITED GOODS AND OTHER HAZARDOUS SUBSTANCES

1. The Working Group on Domestically Prohibited Goods and Other Hazardous Substances held its seventh meeting on 6 July 1990 under the chairmanship of Ambassador John Sankey (United Kingdom). It adopted the agenda proposed in GATT/AIR/3032.

2. Delegations generally welcomed the comprehensive paper presented by the Chairman containing the Draft Decision on Trade in Banned or Severely Restricted Products and Other Hazardous Substances as a step forward in the negotiations to control trade in this area. They stressed the need to avoid duplication of work in this area and several sought clarification regarding the legal nature of the Draft Decision from the standpoint of its legal form as well as its content. A number of delegations considered, however, that best-endeavour language, along the lines of that utilized in the Draft Decision, was necessary in order to avoid creating in GATT more binding obligations with respect to the international agreements negotiated in other organizations. Three delegations stated, however, that since GATT was the international organization that formulated binding rules governing trade policy, and that the mandate of the Working Group was to examine trade-related aspects of these products and substances, the Draft Decision should aim at imposing more binding obligations.

3. Regarding the Preamble to the Decision, several delegations made comments with regard to the sixth paragraph. One delegation enquired if this paragraph was seeking to modify the language of Article XX of the General Agreement. Another delegation believed that the references to quality and deceptive practices in this paragraph were not pertinent to the work of the Group. Three other delegations believed they were not only pertinent, but were important to the Decision and should be retained. One delegation suggested deleting the third paragraph of the Preamble and adding the list of organizations as an addendum to the second paragraph. Another delegation noted, however, that GATT was dependent on the competence of other international organizations for technical expertise and meaningful disciplines in this area, and that any GATT agreement in this area should reflect this basic idea.

4. Several delegations, commenting on Article 2, Scope and Coverage, believed that the category of severely restricted or controlled products had to be more precisely defined in order to establish some threshold above which a product could be defined as severely controlled. Several delegations suggested textual revisions to this Article as well as to Articles 3 through 6.

5. Regarding Article 3, Coordinated Effort at National and International Level, one delegation proposed deleting Article 3.1 because it believed that it could create too broad a basis for the application of import restrictions by certain countries using environmental considerations as justification. Another delegation questioned the right of one country to include an extraterritorial aspect in its national legislation as Article 3.1 implied. Another delegation stated that interdependence was a reality in the world and that Article 3.1 represented a fundamental principle of global responsibility that had to be accepted by nations. It added that profit should not be the only motive governing trade, but concern for world health and protection of the environment had also to be considered, particularly for those countries which did not have the means to adequately address these concerns with regard to their imports. This delegation also suggested using stronger language in paragraph 3.2 to underline what he believed should be a common objective of controlling and supervising trade in these products. Another delegation noted that, as a best-endeavour obligation, Article 3 posed no problems. It added that since legislation could vary a great deal among countries which could allow significant room for discrimination, the second sentence of Article 3.1, dealing with non-discrimination, was important.

6. Two delegations believed that Article 4, Procedures for Notification and Exchange of Information, should be stated as a best-endeavour approach because otherwise it would imply either that all Parties were members of the agreements of other international organizations or that all Parties, whether or not they were members, would be obliged to accept and apply their provisions. Several delegations agreed that Article 5, Measures to Regulate and Control Trade, should follow Article 3 as Article 4, and the present Article 4 should become Article 5. Although seeking to maintain the information exchange aspect of Article 5.2.2(b), several delegations were concerned that it would require export licences on too large a scale and would therefore cause unnecessary obstacles to trade. Another delegation noted that export licences were instruments of the exporting government and that there did not appear to be any specific requirement in Article 5.2.2(b) that the information be transmitted to the importing country.

7. It was generally agreed that Article 6, Transparency and Publication Requirements, was an essential part of the Decision. One delegation asked if an already existing enquiry point that dealt with the products and substances concerned could be regarded as the enquiry point for the purposes of the Decision in order to avoid the burden of setting up other points. The observer from FAO stated that Article 6 could imply some danger of overlap with the prior informed consent procedures of UNEP and FAO, especially regarding the notification requirements of Article 6.1(a).

8. Regarding Article 7, Committee on Trade in Banned or Severely Restricted Products and Hazardous Substances, one delegation stated that it would prefer not to establish a permanent new Committee but to keep the Working Group in existence. It also suggested deleting the requirement to meet "not less than twice a year" in Article 7.2. This delegation reserved its position on the need for a comprehensive review in Article 7.3. Another delegation believed that, as formulated in Article 7, the Committee appeared to have administrative duties only. It believed that the Committee should play a larger rôle and that the rôle of the secretariat should also be mentioned. Another delegation noted that any established Committee should be called the Committee on Exports of Domestically Prohibited Goods and Other Hazardous Substances.

9. One delegation noted the importance of Article 8, Technical Assistance, since a long term goal of the of the work in this area was to enable all importing countries, particularly developing ones, to develop suitable mechanisms for effective control of the imports of products and substances covered by the Decision. This delegation believed it would be appropriate for Parties to the GATT, as well as the secretariat, to provide technical assistance. Another delegation believed that GATT should have a broader rôle in technical assistance. The observer from the FAO noted that several of the international agreements already had substantial technical assistance programmes, especially in the field of pesticides.

10. Regarding Article 9, Consultations and Dispute Settlement, one delegation stressed that GATT dispute settlement mechanisms could not be used to decide whether obligations under other international agreements had or had not been met and that there could be no cross-enforcement of other international obligations through GATT. Two delegations noted the necessity of following the discussions in the Uruguay Round Negotiating Group dealing with dispute settlement procedures. Another delegation believed that the concepts of interim action during the dispute settlement procedures and compensation for damages should be included.

11. Many delegations had comments regarding the definitions in Annex I. Several questioned the appropriateness of taking definitions which were devised for specific products in other international agreements and applying them generally over a wider range of products. One delegation specifically noted his concern over the meaning of the term "hazardous substances", stating that the only way to properly define such a substance was by noting whether a country had taken legislative action to ban or severely restrict the product. The observer from UNEP stated that the definition of hazardous substance, as it was presented in Annex I of the Decision, did not come entirely from the Basel Convention, only the last two lines did. He added that there did not exist a definition of hazardous substance in any UNEP Convention. It was agreed that revision of the definitions would be done in collaboration with the officials from the other international organizations. Two delegations stated that Annex II should be a revolving list of other international agreements and

conventions and should be updated by the contracting parties, not by the secretariat. One delegation suggested deleting reference to the United Nations Consolidated List of Products Whose Consumption and/or Sale Have Been Banned, Severely Restricted and/or Not Approved by Governments in Annex II as its scope was covered by the other agreements.

12. The Group took note of the statements made. Delegations agreed to submit written comments to the secretariat for a revision of the Draft Decision. The next meeting of the Working Group would be 14 September 1990, preceded by an informal meeting on 13 September 1990.