

GENERAL AGREEMENT ON

RESTRICTED

TARIFFS AND TRADE

Spec(90)39

1 November 1990

Working Group on Domestically Prohibited Goods and Other Hazardous Substances

EIGHTH 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 eighth meeting on 14 September 1990 under the chairmanship of Ambassador John Sankey (United Kingdom). It adopted the agenda proposed in GATT/AIR/3063.

2. The Chairman reported that the Group had met informally on the previous day to discuss a revised version, dated 11 September 1990, of his comprehensive paper containing the Draft Decision on Trade in Banned or Severely Restricted Products and Other Hazardous Substances. He noted that the Group had thoroughly discussed the entire text except for the Annexes and, based on these discussions, the secretariat had redrafted certain Articles which would provide the basis for discussion at this meeting.

3. Delegations generally supported the revised versions of Articles 1 and 2 although several had concerns regarding the definitions contained in Annex I. One delegation, in particular, questioned using one definition of "severely restricted products" for all the products that could potentially be covered by the Decision. It was agreed that detailed discussion of the definitions would be referred to an informal discussion, at the level of experts, with the observers from the other international organizations. The date for this meeting would be announced. Regarding Article 2, one delegation stated that the criteria to determine product coverage would have to be extremely precise so that the exact nature of the obligations would be understood. In this vein, a more logical approach might be to specify precise products based on the coverage of the international instruments listed in Annex II. In this way the scope of the Decision would be no wider nor no narrower than the products covered by these instruments. Three delegations stated that product coverage should not be limited to only those products covered by the instruments in Annex II but that a broad coverage was necessary. Two delegations stressed the importance of including, in the Decision, a provision to deal with products whose indicated or approved period of use had expired or would expire by the estimated time of arrival in the country of destination. Another delegation described a situation, which existed in more than a few countries, where a pharmaceutical product that required governmental approval for domestic consumption did not require governmental approval if it was destined for export. It asked whether or not this practice would be covered by Article 2. Two delegations believed that to try to cover this situation in the Decision would be far too difficult because it would involve discussing the regulatory structure of countries. It noted that this situation underlined the importance and necessity for all contracting parties to assist those developing countries that needed assistance in

order to improve their own control systems so that they, as importers, could catch these types of problems. Another delegation, however, believed that the Group should consider the possibility of covering this type of situation by urging governments to ensure that certain rules and regulations were in place to prevent exports of such products that could be dangerous.

4. Two delegations were concerned that the provisions in Article 3.1 would have far-reaching consequences for the GATT system of rules. One of these delegations suggested language which would substitute the portion of this Article which urged delegations to consider the conditions outside their own territories, with the idea of specifying situations where there was a perceived serious risk or serious danger to human, animal or plant life or health. It suggested accompanying this new language with a paragraph in the Preamble to provide a more general formulation of the concept of shared extra-territorial responsibility. However, another delegation believed that specifying situations would create inappropriate limitations because danger to the environment was often a slow process, not always direct and easily specified. One delegation noted that Article 3.1 did not explain how a country would go about taking into account the need to pay fullest attention to the protection of human, animal and plant life and health within the territory of other countries. It believed that the consultation process between the exporter and importer, which would ensure an element of shared responsibility in preventing trade of dangerous products, was lacking. This delegation believed it would be more appropriate to create mechanisms along the lines of the prior informed consent procedures which would allow importing countries to formerly record and disseminate their decisions regarding the importation and use of products which had been banned or severely restricted in other countries. Two other delegations, however, stressed the importance of this Article 3.1 as it presented one of the key concepts in the Decision. One of these delegations noted that this Article did not intend to urge exporters to become involved in the domestic affairs of other countries, but to ensure a certain responsibility concerning products which had been deemed to be dangerous and whose use could have consequences on these other countries. The other delegation stressed that this Article should contain three basic elements: the adoption of domestic rules and regulations to ban, or restrict certain products in the exporting country; the consideration of banning or restricting the export of these products; and the consideration of the effects of these products on third countries. It suggested a textual revision of Article 3.1 to incorporate these ideas and to ensure that contracting parties would commit themselves to strengthening co-operation in this regard.

5. Delegations generally supported the revised version of Article 4. Two delegations believed that, pending the outcome of the Decision and, in particular, the provisions on dispute settlement, it was necessary to include in this Article all levels of obligation as indicated by the terms "shall", "shall endeavour", and "should endeavour". One of these

delegations asked what the mechanism for informing importing countries would be under Article 4.3. It noted that since there was no active export licensing scheme, it would be difficult for governments to know the destination of each export unless the information exchange was on a shipment-by-shipment basis. It added that other options to fulfil this obligation could be either through notification to the GATT secretariat which would then circulate the information to the contracting parties, or through the use of enquiry points.

6. Several delegations made comments of a drafting nature regarding Article 5. One delegation believed that the three levels of obligation should also be included in this Article.

7. Two delegations expressed confusion regarding the link between the Committee meetings, as contained in Article 7.2, and the Biannual review, as contained in Article 7.3. Though they agreed that it was important to review this Decision after a period of about two years, they did not believe that a provision to ensure this was necessary; the Committee, at its meetings, could decide on future reviews. In this regard, another delegation preferred an obligation for the Committee to meet at least twice a year to review the overall functioning of the Decision; if the Committee were to meet fewer times, it would become moribund. However, another delegation stated that there was nothing to prevent the Committee from setting up meetings whenever it deemed it necessary and suggested retaining the original language.

8. Regarding Article 8, two delegations stressed that the GATT should not duplicate the technical assistance provisions of the other international instruments listed in Annex II. Technical assistance under this Article should be limited to only trade-related matters associated with this Decision. Another delegation stated that it did not see a duplication problem because it understood that in certain cases, where technical assistance could not be provided by the GATT, the GATT would transmit the various requests for technical assistance to the relevant competent international organizations. In this way the GATT secretariat would not get involved in health and environmental issues.

9. Several delegations expressed concern regarding a possible link between the dispute settlement provisions of this Decision, contained in Article 9, and the provisions of the other international instruments listed in Annex II. They agreed that GATT dispute settlement provisions could not be used to enforce GATT contracting parties to fulfil their obligations under the other international instruments listed in Annex II. One of these delegations questioned the necessity of this Article since this Decision, once adopted, would be part of the General Agreement and therefore subject to its dispute settlement provisions. Another of these delegations suggested this problem could be resolved by limiting the dispute settlement provisions to trade-related aspects of this Decision. It added that, at

present, to the extent that these other instruments had trade-related provisions, they could be affected by GATT dispute settlement procedures. However, another delegation did not agree that this Article should be confined to trade-related matters because it would be impossible and illogical to divide this Decision into what was trade-related and what was not. It raised the the issue of who would decide what was trade-related and what was not. Two delegations expressed the desire for the inclusion of provisions to ensure compensation for damages and interim action in the event of an unauthorized shipment of hazardous or dangerous products. It was noted that the concept of arbitration, included in the Decision of 12 April 1989 on Improvements to the GATT Dispute Settlement Rules and Procedures, could be an option in this regard. However, one delegation believed that it would be difficult to incorporate a provision for financial compensation because this would amount to an agreement between governments and, apart from state trading companies, governments were not directly responsible for actions by private companies.

10. The group took note of the statements made. It was agreed to discuss Annex II and the Preamble in detail at the next meeting although the secretariat would prepare a revised version of the Decision based on the discussion at this meeting to be circulated before the next meeting. It was also agreed that the Chairman would submit a request to the Council for an extension of the mandate of the Group until 30 December 1990. It was believed that this would enable the Group to present a text of a Decision to the 46th Session of the CONTRACTING PARTIES in December 1990.

11. The week of 29 October through 2 November would be reserved for a series of further meetings, the first to be held on 29 October. The exact dates of the further meetings during this week would be decided at the first meeting.